THIRTY-FIRST

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1967.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-first Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1966, 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 1966

1. Summary

The National Labor Relations Board's caseload continues to grow with the expansion of the economy and the increase in the Nation's work force. Fiscal year 1966 produced another recordbreaking intake of nearly 29,000 cases of all kinds, of which approximately 16,000 were unfair labor practice charges, and the rest dealt with representation elections and related matters. The Agency's output also reached a new peak. During the year, the Agency closed approximately 28,500 cases, of which about 15,500 involved unfair labor practice charges.

The NLRB has been able to cope with its huge volume of business because of the cooperation of a substantial majority of the parties in resolving their differences through voluntary settlement and adjustment of alleged unfair labor practices, and in expediting representation elections without protracted hearings or litigation. Operational statistics of the NLRB during fiscal 1966 disclose that voluntary adjustments and settlements continue to play a highly significant role in the disposition of unfair labor practice charges and representation petitions with their consequent effect of reducing the Agency's workload.

It is true that both management and labor in large measure live within the framework of the National Labor Relations Act administered by the NLRB, and recognize that their best interests as well as those of the public are best served through the voluntary observance of their duties and obligations under the Act and mutual respect for the rights of each.

While attention may focus on those who violate the law, it is no less true in the area of industrial relations than in other fields that those abiding by the law constitute the overwhelming majority. Tens of thousands of collective-bargaining contracts are concluded each year through the peaceful procedures called for by the Act. Hundreds of thousands of employees exercise the rights which the Act guarantees without interference either by management or labor.

Nevertheless, the Agency still encounters pockets of resistance to the Act and to its policies. NLRB decisions and orders in a number of cases during the past year tell their own story in this regard. And, for those who study the labor-management relations scene closely, there is significance in the proportions of types of unfair labor practice cases reaching the Agency.

Studies have been, and will continue to be, made to ascertain the sources and causes of resistance to the Act and to determine the adequacy of NLRB remedies to deal with it. The NLRB, of course, has a vital concern in this exploration and to that end has sought, not only for its own use but also for the use of management, labor, and scholars in the field, to compile and make available whatever statistical data is at its command which may shed light on these problems.

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, a basic national policy remains the same. Section 1 of the Act concludes, as it has since 1935, as follows: "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

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

NLRB case activity in fiscal 1966, while maintaining the consistent overall increases of recent years, was not marked by any sharp surges in particular categories of cases. Some highlights of the case activity follow:

- Total intake of 28,993 cases of all kinds, establishing a record. These included 15,933 unfair labor practice charges; 12,620 employee representation petitions (plus 124 requests for amend-

ments of employee bargaining unit certifications, and 179 clarifications of bargaining units); and 137 petitions to rescind unions' authority to make union-shop agreements with employers.

- A total of 28,504 cases closed, a new record, including 15,587 unfair labor practice cases, also a record.
- Among more predominant types of unfair labor practice charges filed, allegations of employer refusal to bargain were virtually the same as in the prior year, 3,811 in fiscal 1966 and 3,815 in fiscal 1965; allegations of illegal secondary boycotts against unions dropped to 1,317 from the previous year's 1,409.
- The General Counsel's office issued 1,936 formal complaints in unfair labor practice cases, a new high for a fiscal year.

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

2. Operational Highlights

a. Case Intake and Disposition

Case intake of the NLRB in fiscal 1966 showed a substantial increase, amounting to 28,993 cases of all types. This total was 968 above the 28,025 for fiscal 1965. In the last 10 years the Agency's intake has more than doubled. (For a breakdown on all cases received by the NLRB in 1966, see table 1.)

True weight of the caseload, however, is more significantly measured in a separation of unfair labor practice charges from employee representation and other types of cases received by the Agency. Unfair labor practice charges, requiring more manpower and processing time than other types of cases, accounted for 15,933, or 55 percent of the 28,993 cases received in fiscal 1966. By comparison, the unfair labor practice charges filed in 1966 tripled the 5,265 of 1956.

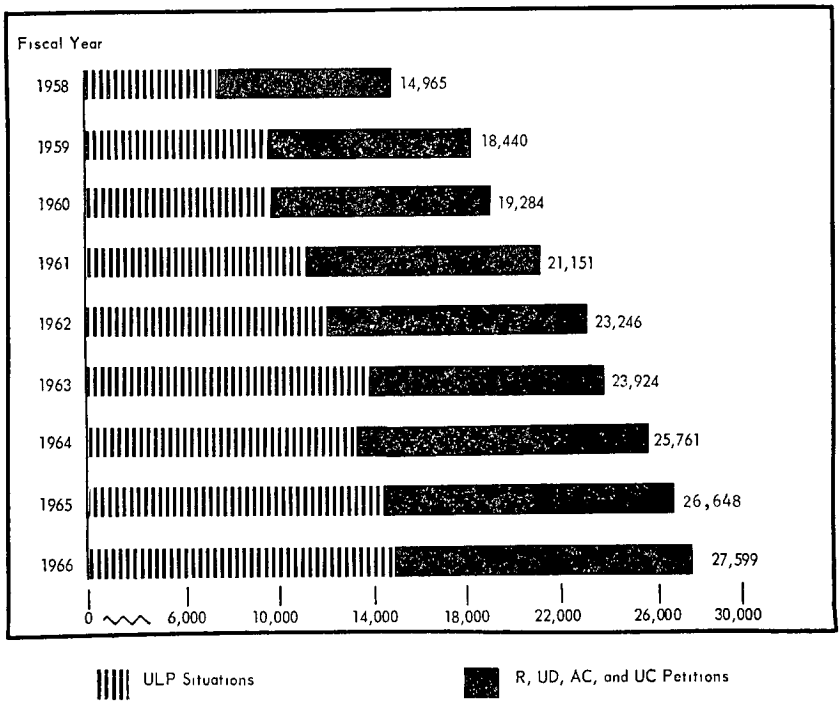
The 1966 charges were 133 above the 15,800 of 1965, thus continuing the widening margin in the excess of unfair labor practice charges over other types of cases received by the Agency in recent years.

Similarly, unfair labor practice situations continued to rise in 1966. A situation, in NLRB terms, comprises one charge (if only one is filed in a given case), or two or more related charges which are processed as a single unit of work. If, for instance, a number of employees in the same plant were to file separate but similar charges against an employer or a union, these would make up one situation.

In 1966 the Agency received 14,539 situations, an increase of 116 over the 14,423 of 1965, showing a close parallel to the 1966 increase in separate charges. (See charts 1 and 1A.)

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE SITUATIONS AND REPRESENTATION PETITIONS



The continuing recordbreaking submission of cases to the NLRB in fiscal 1966 also applied to petitions for employee elections of all kinds, with 12,757 of these filed, a gain of 662 over fiscal 1965.

NLRB disposition of cases also rose in fiscal 1966. There were 28,504 cases closed at all levels of the Agency, exceeding the previous year's total by 1,305. And in 1966 there were 15,587 unfair labor practice cases closed, or 368 more than in 1965.

On employee representation and union-security questions, there were 12,917 cases closed, including 133 in which petitions had been filed to allow employees to vote to rescind authority of unions to make union-shop agreements with employers, as well as 170 cases involving clarification of employee bargaining units, and 127 cases involving amendments of certifications of employee representation. The total 12,917 cases made for a sizable increase over the 11,980 of fiscal 1965.

At the end of fiscal 1966 there were 9,400 cases pending, which was 489 or about 5.5 percent above the pending caseload of 8,911 at the end of the prior year. In the 1966 pending caseload there were 6,658 unfair labor practice cases; 2,707 representation questions, including unit clarification and amendment of certification requests; and 35 union-shop deauthorization petitions.

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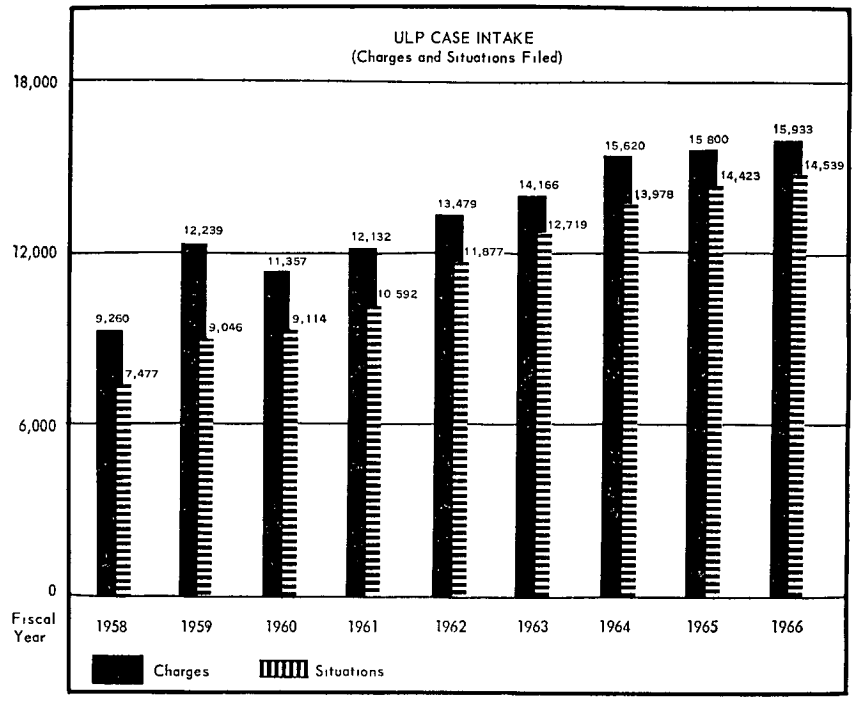
Chart 1A



Also in fiscal 1966 there were 62 notices of hearing issued in cases arising under the Act's section 10(k), compared with 98 in fiscal 1965. These are proceedings in which it is alleged that jurisdictional disputes between groups of employees have caused or threatened strikes over work assignments. In 1966 there were 52 such hearings (58 in 1965), resulting in 51 Board decisions and determinations of dispute, against 4,812 in 1965.

b. Unfair Labor Practice Charges

In the recordbreaking filing of 15,933 unfair labor practice charges with the NLRB in fiscal 1966, it was noteworthy that alleged violations of the Act by employers fell 29 below the level of fiscal 1965—a total of 10,902, as against 10,931 in 1965.

Charges against unions in 1966, on the other hand, rose to 4,941, as against 4,813 of 1965.

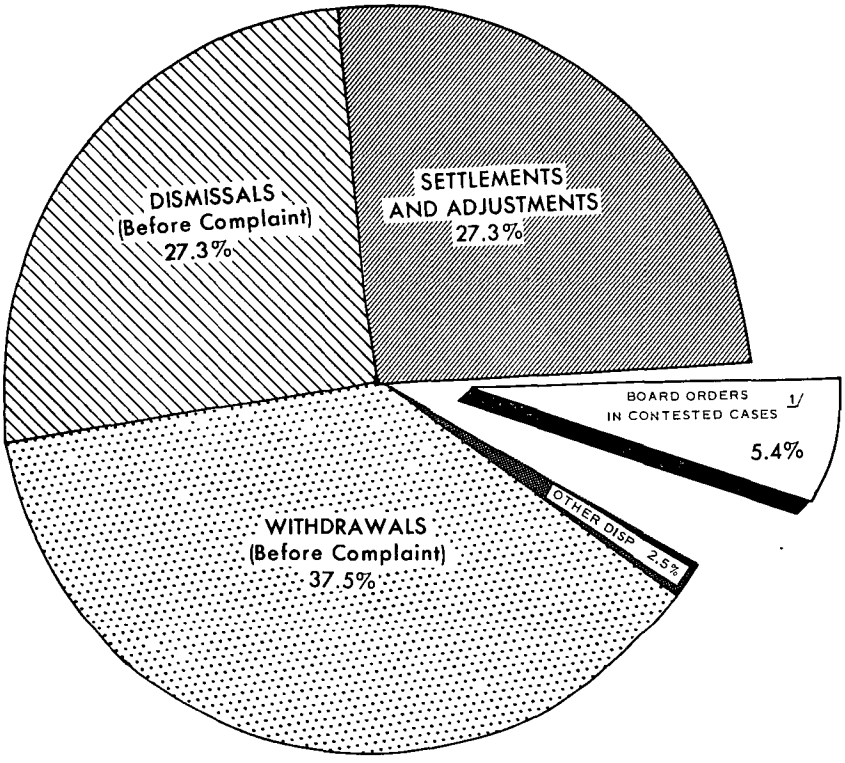
The above charges do not include those alleging violations of the Act's 8(e) hot cargo provisions, which are counted separately. In 1966 there were 73 of these filed against unions and 17 against employers and unions jointly. None were filed against employers only.

Chart 2

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1966



1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

Illegal discharge and other forms of discrimination against employees continued in 1966 to be the principal charge against employers. Refusal-to-bargain allegations also accounted for a substantial portion of charges against employers.

Charges of illegal restraint or coercion of employees formed a substantial portion of the total filings against unions, as did allegations of illegal secondary boycotts and prohibited discrimination against employees. (See table 2.)

The source pattern of charges in 1966 maintained the consistency of recent years. Against employers, unions filed 7,476 or 69 percent of the total of 10,902 charges; individuals submitted 3,418 (31 percent); and other employers filed 8.

Charges against unions included 2,560 (52 percent of the total) by employers; 2,098 (42 percent) by individuals; and 283 (6 percent) by other unions.

Of the 90 charges of 8(e) hot cargo violations, 64 were filed by employers; 12 by unions; and 14 by individuals.

A marked characteristic of the total charges filed with the Agency is that while the number from employers and unions show a year-by-year increase, those submitted by individuals dropped to 35 percent of the total in 1966 (34 percent in 1965) from the high of 1958, when individuals submitted 63 percent of the charges against unions and 56 percent of those against employers.

Additionally, on derivation of charges, unions in 1966 filed 7,771; employers 2,632; and individuals 5,530.

Of charges filed by unions, 5,301 came from AFL–CIO affiliates; 1,435 from the Teamsters union; 539 from other national unions not affiliated with AFL–CIO; and 496 from local unaffiliated unions.

Alleged illegal discrimination against employees accounted for 7,203 charges or 66 percent of the total filings against employers, a drop from the 7,367 of 1965. Refusal-to-bargain charges against employers were nearly equal to those of the prior year—3,811 in 1966 and 3,815 in 1965.

In 1966 there were 2,388 charges of illegal union restraint or coercion of employees in their exercise of rights related to union activity, amounting to 48 percent of the filings against unions. In 1965 there were 2,305 such charges.

Charges of illegal secondary boycotts by unions, including cases involving jurisdictional disputes, dropped to 1,692 in 1966 from the 1,717 of 1965.

There were 1,525 charges of illegal discrimination against employees by unions in 1966, an increase of 10 above the 1,515 of 1965; and there were 380 charges of unions picketing illegally to obtain recognition or for organizational purposes, a drop of 13 below the 393 of 1965.

c. Division of Trial Examiners

Formal hearings in unfair labor practice cases are conducted by NLRB trial examiners. Hearings also include cases where objections to conduct of employee representation elections have been consolidated with unfair labor practice charges. Hearings are conducted only when formal complaints (following investigation of charges) have

been issued by Agency regional directors, acting for the NLRB General Counsel; if there is intervening disposition of complaints, no hearings are conducted in those instances. Also, trial examiners conduct hearings on cases remanded by the U.S. Circuit Courts of Appeals and the NLRB.

Trial examiners, following hearings, issue decisions and recommended orders. These go to the five-member Board for decisions and orders. Exceptions to a trial examiner's decision may be filed with the Board within 20 days of the decision.

In fiscal 1966, trial examiners issued 867 decisions and recommended orders, a slight drop below the fiscal 1965 total of 875. (See chart 8.) No exceptions were filed to 100 of the 1966 trial examiners' decisions, amounting to 12 percent of the total decisions, as compared with 127 uncontested decisions (15 percent of the total) in 1965.

More hearings, 982 involving 1,399 cases, were conducted by trial examiners in 1966 than in 1965, when there were 917 hearings involving 1,318 cases. (See chart 8.)

In 1966, trial examiners also issued 21 backpay decisions (18 in 1965) and 13 supplementary decisions (same number in 1965).

d. Processing of Unfair Labor Practice Cases

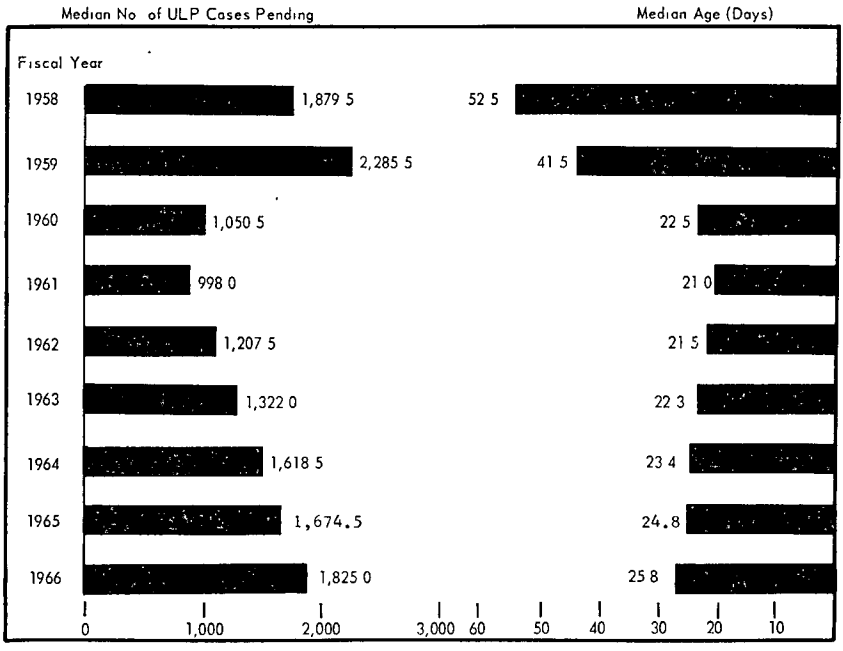
Fiscal 1966 showed a continuing high rate of unfair labor practice case closings without extended litigation. A high proportion of the 1966 cases were closed at the regional office level by withdrawal of charges by parties, settlements and adjustments, and dismissals when investigation showed lack of merit in charges.

As noted earlier in this chapter, NLRB may not initiate cases. These result from the filing of charges with regional offices by outside parties. Investigations are conducted by the regional offices to determine whether the charges have merit. Cases may be settled by the parties before or after issuance of formal complaints by the regional offices, and some cases are settled by stipulation following trial examiners' decisions. Cases also are withdrawn after filing and before issuance of complaints, and a substantial number are dismissed as not having merit. Remaining cases may go through a number of steps in litigation, beginning with formal complaint, then trial examiner's hearing and decision, Board decision, and possibly to a U.S. Court of Appeals for review or enforcement, and in some cases to the U.S. Supreme Court.

Of 15,587 unfair labor practice cases closed in fiscal 1966, about 65 percent either were withdrawn or dismissed before complaint issuance. An additional 27 percent of the cases closed were settled or adjusted

Chart 3

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



without need of trial examiners' decisions. (See chart 2 and table 1A for categories of unfair labor practice cases closed.)

In the last 2 years there were nearly constant levels in the percentages of cases dismissed (27.3 percent in fiscal 1966; 28.2 percent in fiscal 1965) and cases withdrawn (37.5 percent in both years).

Regional offices in 1966 secured settlement or adjustment of 4,261 cases without need for trial examiners' decisions, a gain of more than 11 percent over the 3,824 of 1965. (See chart 7.) Settlements and adjustments in 1966 amounted to 27.3 percent of the total unfair labor practice cases closed during the year, compared to the 25.1 percent of 1965. (See tables 7 and 7A.)

In sum, settlements and adjustments, withdrawals, and dismissals brought disposition of 92.1 percent of fiscal 1966's unfair labor practice cases. Approximately 5.4 percent went to the Board Members for decision (about 6.2 percent in 1965), and the remaining 2.5 percent had other disposition.

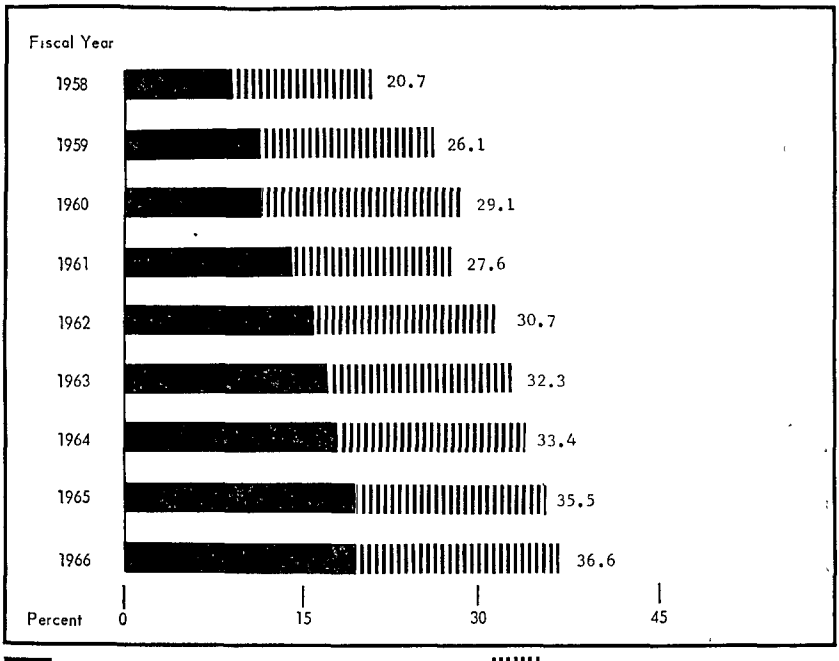
Merit charges, since they result either in issuance of formal complaints, or in settlement or adjustment procedures, increase the Agency's caseload, and in 1966 these rose to 36.6 percent of total charges,

as against the 35.5 percent of a lesser total of cases in 1965. (See chart 4.) Thus, 1,936 formal complaints were issued by regional offices in 1966, a gain of 132 over the 1,804 of 1965. (See chart 5.) Reflecting the proportions of charges filed, 82.4 percent of the 1966 complaints were issued against employers, 13.8 percent against unions, and 3.8 percent against both employers and unions. More than half the 1966 meritorious charges were settled or adjusted.

Despite the higher number of charges filed, and increased number found to have merit, NLRB regional offices in 1966 were able to maintain a median time of 58 days from filing of charge to complaint issuance. Median time was 59 days in fiscal 1965. This time includes 15 days in which parties have the opportunity to adjust a case and remedy violations without resort to formal Agency processes. (See chart 6.)

Chart 4

UNFAIR LABOR PRACTICE MERIT FACTOR



	1958	1959	1960	1961	1962	1963	1964	1965	1966
Precomplaint Settlements and Adjustments (%)	9.7	9.7	11.9	14.1	15.3	17.5	17.8	19.4	19.4
Cases in Which Complaints Issued (%)	11.0	16.4	17.2	13.5	15.4	14.8	15.6	16.1	17.2[1]
Total Merit Factor (%)	20.7	26.1	29.1	27.6	30.7	32.3	33.4	35.5	36.6

Chart 5

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS

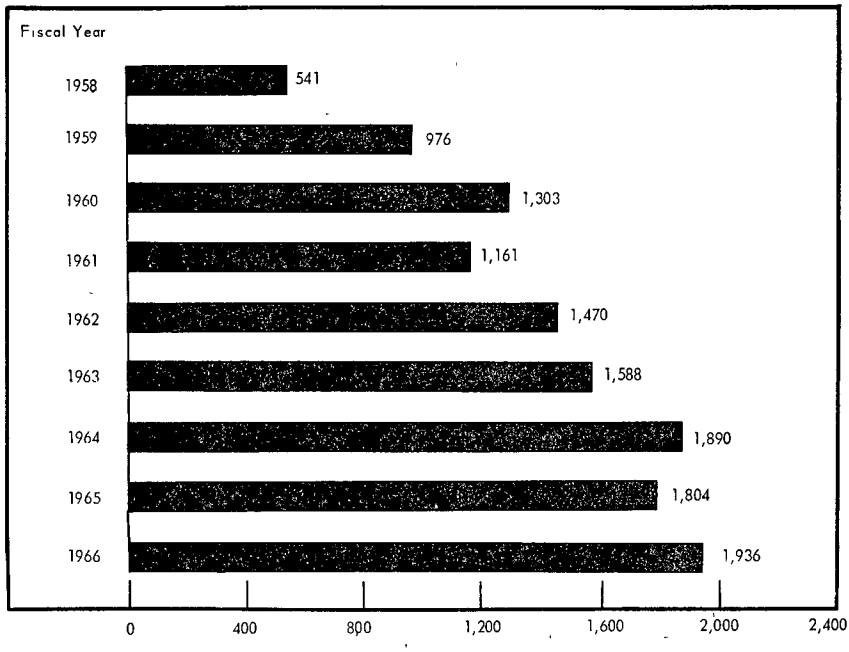
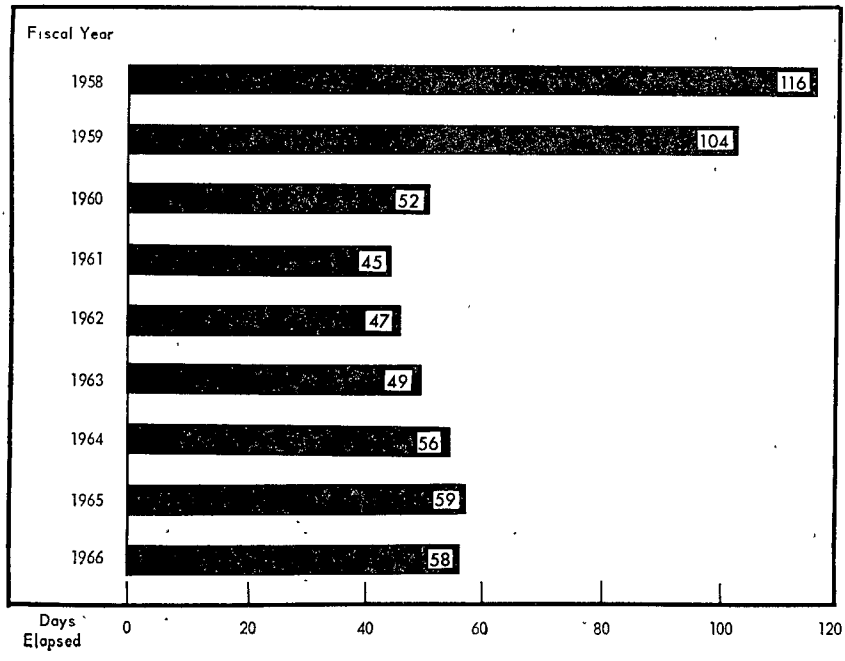


Chart 6

MEDIAN DAYS FROM FILING OF CHARGE TO ISSUANCE OF COMPLAINT



A note on case processing—in 1966 employees found to have been illegally discharged or to have suffered similar discrimination were awarded $8,911,040 in total backpay (lost wages) under formal decisions, or settlements and adjustments of charges. However, this unprecedented backpay total included one case in which there was a settlement calling for $3 million in backpay and $1,500,000 in pension adjustments. Despite this settlement, the remaining 1966 backpay award of $4,411,040 in itself established a new Agency record, exceeding the previous high in fiscal 1964 of $3,001,630 by $1,409,410, or more than 47 percent. The 1965 backpay figure was $2,782,360. (See chart 9 and table 4.)

In 1966 about 15,466 employees received backpay, and 6,187 were offered job reinstatement, substantially above the 4,644 receiving backpay and the 5,875 offered reinstatement in 1965. However, in 1965 approximately 86.5 percent of employees offered reinstatement accepted, while in 1966 the acceptance rate dropped to 74.7 percent (4,624 employees).

In 1966 employees also received a total of $63,580 in reimbursement of fees, dues, and fines as a result of charges filed with the Agency, more than double the $25,420 total of 1965.

e. Processing of Representation Cases

A new record of 12,917 representation and union deauthorization case closures was set by the Agency in fiscal 1966, the fifth full year of experience with delegation of authority to NLRB regional directors by the five-member Board to handle contested as well as uncontested representation cases.

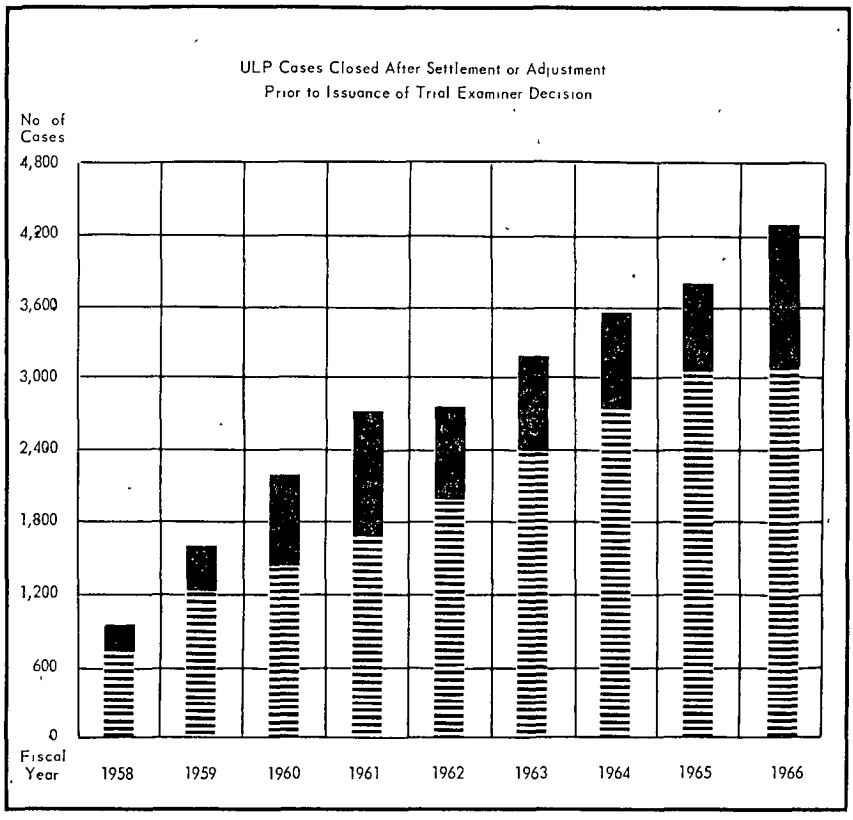
The recordbreaking total exceeded the 11,980 of 1965 by 937 cases and was marked by an increase in consent (uncontested) elections. Included in the 1966 total were 170 bargaining unit clarifications and 127 amendments of bargaining agent certifications. (See table 1.)

Collective-bargaining representation cases, that is, elections petitioned for by unions, employers, and employees, totaled 12,487 in 1966. This included 640 petitions for elections to determine whether unions should be decertified as representatives of employees. Also, there were 133 petitions for employee votes to decide whether unions should retain their authority to make union-shop agreements with employers, or a total of 12,620 cases in the above categories. (See table 9.)

Of the 12,620 cases, 8,462 or 67 percent were closed by elections. Withdrawals accounted for closing of 3,068 cases (about 24 percent of the total), and 1,090 or 9 percent were dismissed.

Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED

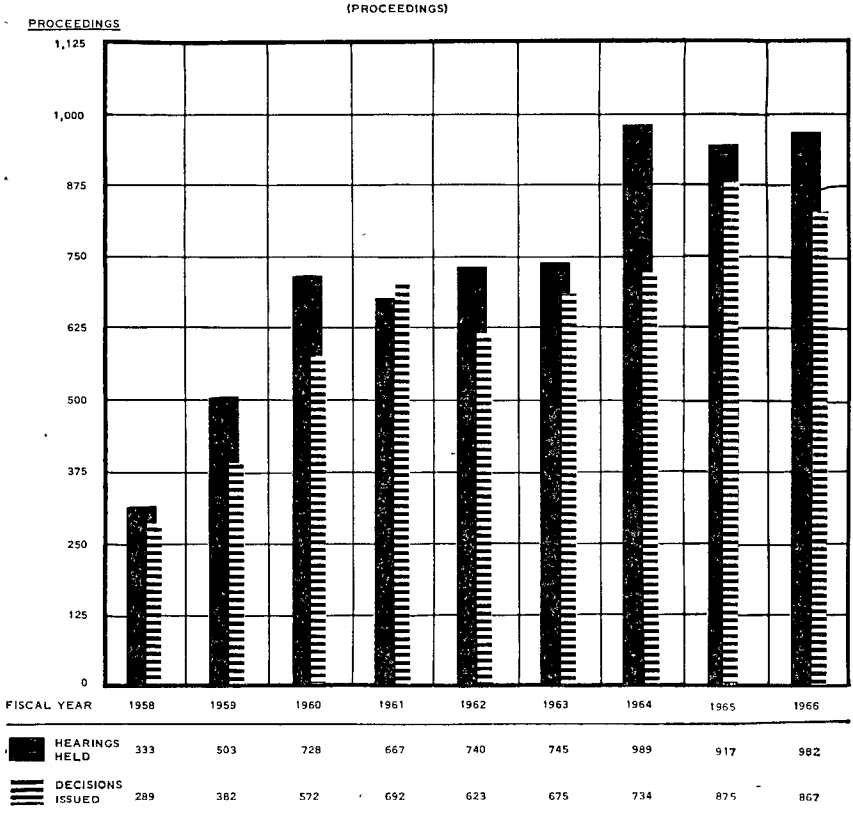


Fiscal Year	Precomplaint	Postcomplaint	Total
1958	725	262	987
1959	1,238	352	1,590
1960	1,480	748	2,228
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261

Election agreements rose to 6,673 in fiscal 1966, or 79 percent of cases closed by elections of all types. The agreements were 394 above the 6,279 of fiscal 1965. In 1966 there were 1,621 contested cases, in which regional directors ordered elections following hearings, or 19 percent of the 8,462 election closures; and 17 were expedited cases, less

Chart 8

TRIAL EXAMINER HEARINGS AND DECISIONS



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.

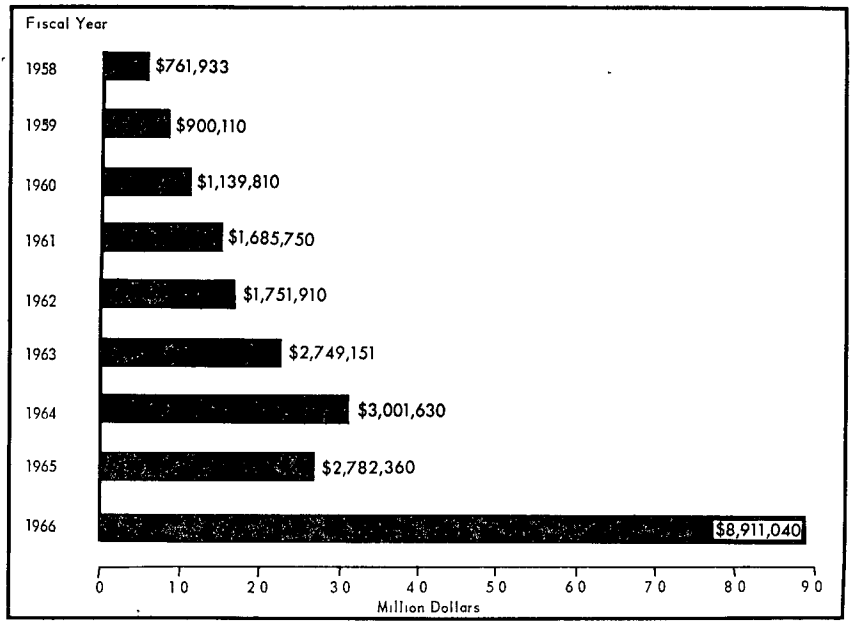
The Board ordered elections in 151 cases, about 2 percent of election closures, following appeal or after transfer from regional offices.

NLRB regional directors in 1966 issued 1,828 decisions in contested cases. The Board received 427 requests for review of regional directors' decisions. In processing 432 requests (5 carried over from the preceding fiscal year), the Board denied review in 365 and granted review in 57 (remanding 3 of these); and 10 cases were withdrawn before review requests could be acted on.

Board rulings were issued in 44 cases following review of regional directors' decisions. Regional directors were affirmed in 17 cases; 7

Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES

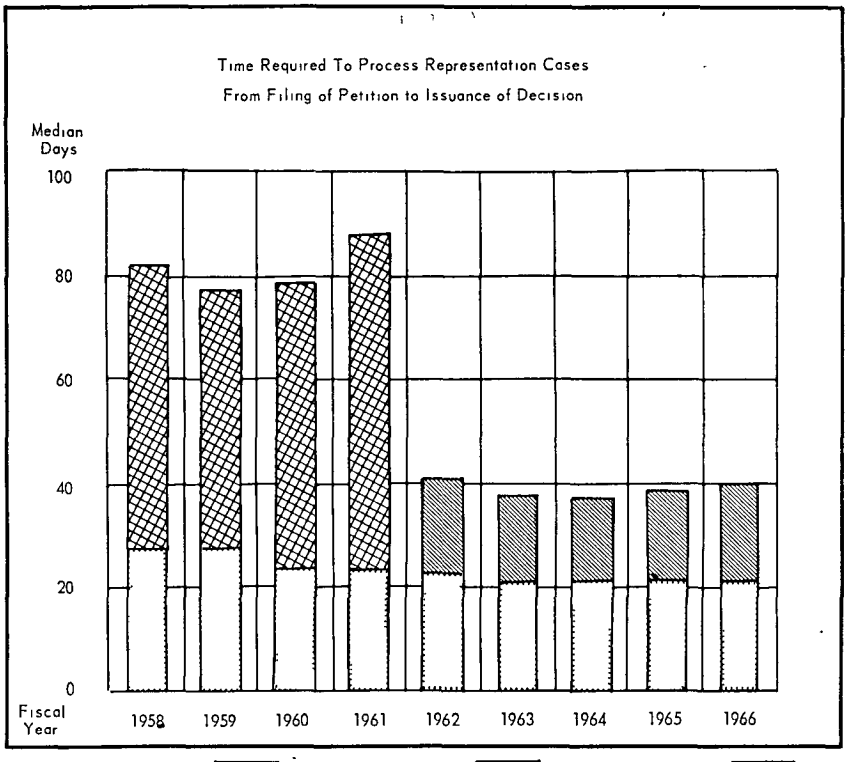


of their decisions were modified; and they were reversed in 20 cases. Reversals amounted to only about 1 percent of the regional directors' 1,828 decisions, and modifications were less than one-half of 1 percent.

The Board also received 106 requests for review of regional directors' supplemental decisions on objections to conduct of elections and challenges to ballots in elections. Acting on 103 requests, the Board granted review in 31 (remanding 6 of these); denied review in 70; and 2 were withdrawn before the Board could rule on them. After review, the Board issued 23 decisions, affirming regional directors in 13, modifying 4, and reversing regional directors in 6.

NOTE: Seeming inconsistencies in some statistics in this subchapter compared with those in the following subchapter are due to eventual consolidation of cases. For example, in cases closed by elections in fiscal 1966, the total is reported in this subchapter as 8,462. This is the total of cases—each election petition being a case, and in some instances more than one petition (such as one from a union, one from an employer) may have been filed for an election at the same plant. In the following subchapter, the number of elections conducted is reported as 8,392, this lower figure resulting from consolidation.

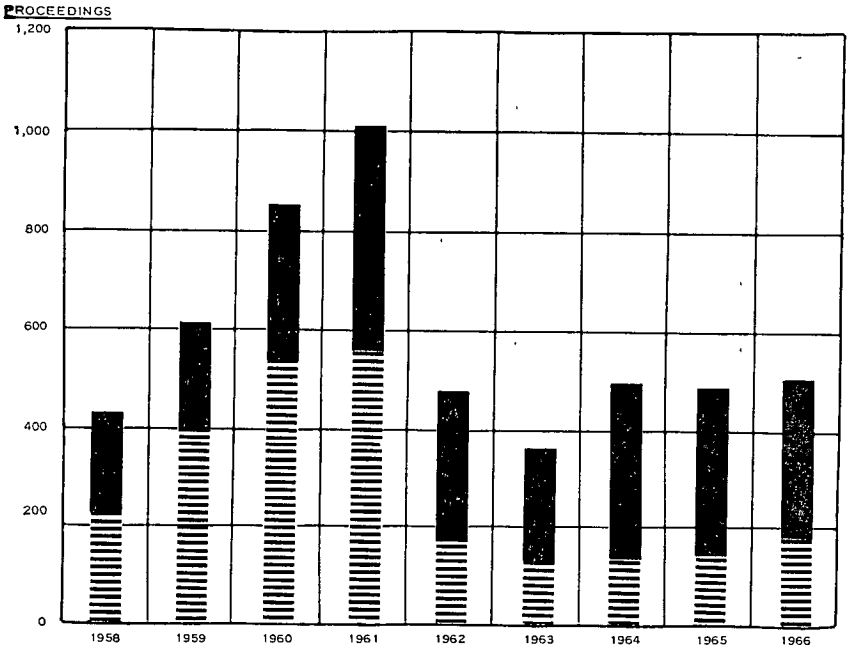
Chart 10



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
1966	21	-	19

Chart 11

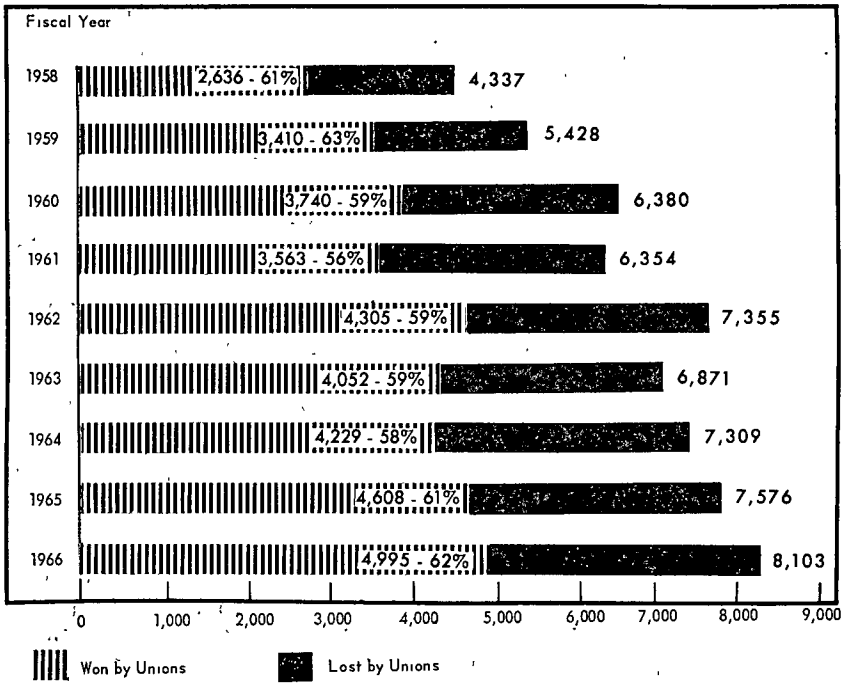
BOARD CASE BACKLOG



PROCEEDINGS									
C	199	210	330	460	323	256	344	336	323
R	222	399	522	549	165	122	142	148	190
TOTALS	421	609	852	1,009	488	378	486	484	513

Chart 12

COLLECTIVE-BARGAINING ELECTIONS CLOSED
Number and Percent



f. Elections

Employee elections conducted by the Agency in fiscal 1966 showed these characteristics—a continuing high percentage of voluntary agreements to the holding of elections, a substantial increase in total elections conducted by the NLRB, and numerical and percentage gains by unions in election victories.

There were 8,392 elections closed in fiscal 1966, a gain of 568 over the 7,824 of 1965. The 1966 total included 8,103 collective-bargaining elections 7,637 of which were petitioned for by unions and employees and 466 petitioned for by employers, to determine whether the employees wished to be represented by a particular labor organization for purposes of collective bargaining (see chart 12). An additional 221 elections were conducted to determine whether incumbent unions continued to represent majorities of employees; and 68 to decide whether unions should continue to have the right to make union-shop agreements with employers.

There were 6,553 elections, 78 percent of the total, conducted by voluntary agreement of the parties, compared to 6,193 and 79 percent in 1965.

In winning 5,059 representation elections in fiscal 1966, unions gained 379 over the 4,680 of 1965 and pushed their victory margin to 61 percent, as against 60 percent of the lesser total in 1965. (See table 13.)

The 540,000 employees voting in 1966 elections of all kinds were 43,000 more than valid votes cast in 1965. However, there was a drop in the size of employee bargaining units involved. In 1966 the average unit size was 64 employees, in 1965 it was 70, and in 1964 it was 73. Nearly 76 percent of the elections in 1966 were in units of 69 or fewer employees and 24 percent were in units of 9 or fewer workers.

Degree of employee interest in representation elections is indicated in these figures: In 1966 elections for certification of a bargaining agent (decertification elections are discussed later), 525,061 employees cast valid ballots, or 87 percent of the 582,212 who were eligible to vote. Of the eligibles, 306,895, or 53 percent, voted for union representation. And another result of the elections was that unions were certified to represent 334,958 employees, more than 57 percent of those eligible to vote.

Decertification elections, in which employees decide whether to retain their bargaining agents, increased to 221 in 1966, an 11 percent gain over the 200 of 1965.

In 1966 unions won 64 decertification elections but lost in 157, contrasted with 72 won, 128 lost in 1965. In other comparisons, unions in 1966 retained the right of representation of 4,449 employees in the decertification elections won, but lost the right of representation of 6,061 employees in elections lost. This reversed experience of 1965 in which right of representation by unions was continued for 7,847 employees in elections won, and loss of representation of 4,718 employees in elections lost.

A continuing aspect of decertification elections is that unions have more success in retaining bargaining rights in larger employee units than in smaller ones. In 1966 decertification elections, unions won in units averaging 70 employees, they lost in units averaging 39 employees. In 1965 decertification elections won by unions, the average unit had 109 employees; the average was 37 in elections lost.

Turning to another form of employee balloting, in 1966 there were 68 union deauthorization elections, in which employees decide whether incumbent unions should retain the right to negotiate union-shop agreements, under which 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.

In the 68 elections, unions lost the right to make union-shop agreements in 45 cases, or 66 percent of the total, while retaining the right in 23, or 34 percent, of the elections. In elections where the right to make union-shop agreements was retained by the unions, the bargain-

ing units included 2,331 employees. In the elections where the union-shop right was lost, the units had a total of 2,446 employees. The average unit size in the cases where unions retained the right was 101 employees; the average unit in the elections lost by unions had 54 employees.

g. Decisions and Court Litigation

Agency decisions in all categories in fiscal 1966 exceeded the total for 1965, marked by an increase in decisional output by NLRB regional directors. In 1966, the Agency issued 3,760 decisions in 4,610 unfair labor practice and employee representation cases, as indicated in chart 13. In addition, there were 184 decisions in 203 cases related to clarification of employee bargaining units, amendments to union representation certifications, and union-shop deauthorization cases. This makes a grand total of 3,944 decisions compared with 1965's total of 3,752.

Board Members issued 1,586 decisions (1,616 in 1965) in 2,179 cases. Regional directors issued 2,358 decisions in 2,634 cases, a substantial increase over the 2,136 decisions in 2,277 cases of 1965.

In 1,154 of the 1,586 decisions by the Board there was contest over either the facts or application of the law. The decisions, in these contested cases, included 686 dealing with alleged unfair labor practices; 21 supplemental unfair labor practice rulings; 19 decisions involving employee backpay; 51 determinations in jurisdictional disputes over job assignments under the Act's section 10(k); 157 decisions on representation questions; 16 decisions as to clarification of bargaining units; 1 in an amendment to certification case; and 203 rulings on objections and challenges in employee elections, including 1 decision in a union-shop deauthorization case. The remaining 432 decisions were in cases not contested before the Board.

Board decisions may cover a number of related cases; thus in 1966 the Board's decisions covered 1,041 contested unfair labor practice cases. Of those, the Board found violations of the Act in 922 or 89 percent, whereas in 1965 there were findings of violations in 735 or 81 percent of 907 contested cases.

Settlements and adjustments, withdrawals, and dismissals, as shown by chart 2 and table 7, account for the relatively small number of contested unfair labor practice cases which reach the Board Members, and the effectiveness of these processes in disposing of the vast bulk of charges filed with the Agency without need of extended litigation may be demonstrated by these statistics:

Although 10,643 unfair labor practice cases against employers were disposed of by the Agency in 1966, only 825 were contested before the Board. Of the 825, the Board found violations in 749. The con-

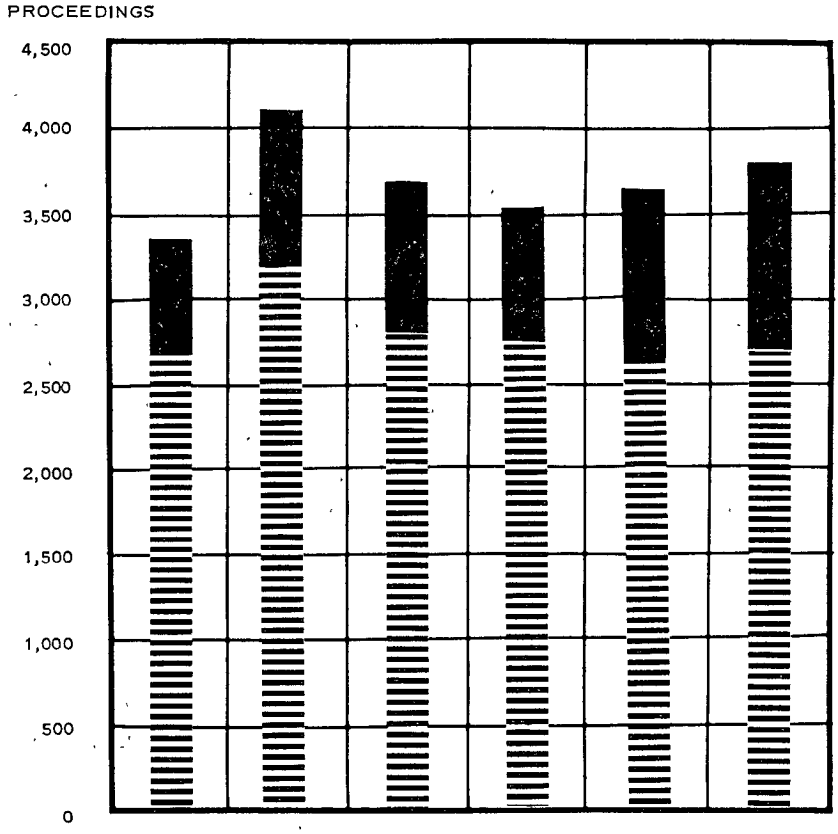
tested cases would amount to 7.8 percent of the total 10,643 cases, and those in which violations were found would equal about 7 percent. Board findings of violations were made in 91 percent of the 825 cases; in 1965 violations were found in 82 percent of the 707 cases.

Board decisions in 1966 included orders to employers to reinstate 951 employees, with or without backpay, and to give backpay without

Chart 13

DECISIONS ISSUED[1/]

(Excludes UD, AC, and UC decisions)



PROCEEDINGS	1961	1962	1963	1964	1965	1966
C	655	903	854	776	1,000	991
R	2,718	3,211	2,857	2,812	2,707	2,769
TOTALS	3,373	4,114	3,711	3,588	3,707	3,760

1/ Includes supplemental decisions in unfair labor practice cases and decisions on objections and/or challenges in election cases.

reinstatement to 278 employees. Employers in 31 cases were ordered to cease illegal assistance to or domination of labor organizations.

In 326 cases employers were ordered to bargain collectively with employee majority representatives, a 44-percent increase over the 226 orders of 1965.

With the same processes at work, there were 4,944 cases against unions closed in 1966 with only 216 contested cases resulting in decisions by the Board, or about 4.4 percent of the total. Violations were found in 173 of those cases, or about 3.5 percent of the total cases against unions closed during the year, and 80 percent of the contested cases. This represented an increase over the 77 percent of violations found in the 200 similar cases of 1965.

Of the Board orders issued in 1966 against unions, those based upon illegal secondary boycott findings were predominant. There were 68 such orders. Among other directives, unions in 4 cases were ordered to cease obtaining or receiving unlawful employer assistance; and unions were ordered to give 28 employees backpay. Unions and employers were held jointly liable for the backpay as to 6 of those employees.

At all levels of the Agency, the total of cases of all types closed in 1966 was the highest in the last 8 fiscal years, topping 1965's total by 4.8 percent. Unfair labor practice closings were 2.4 percent above those of 1965. Representation case closings were 7.8 percent above 1965. (See chart 14.)

Agency success in court activity affecting NLRB-related cases in 1966 continued at a high level, demonstrated by the enforcement in whole or in part of 79 percent of NLRB orders in 247 decisions by U.S. Courts of Appeals. In 1965 the appeals courts similarly enforced 80 percent of NLRB orders in 222 cases.

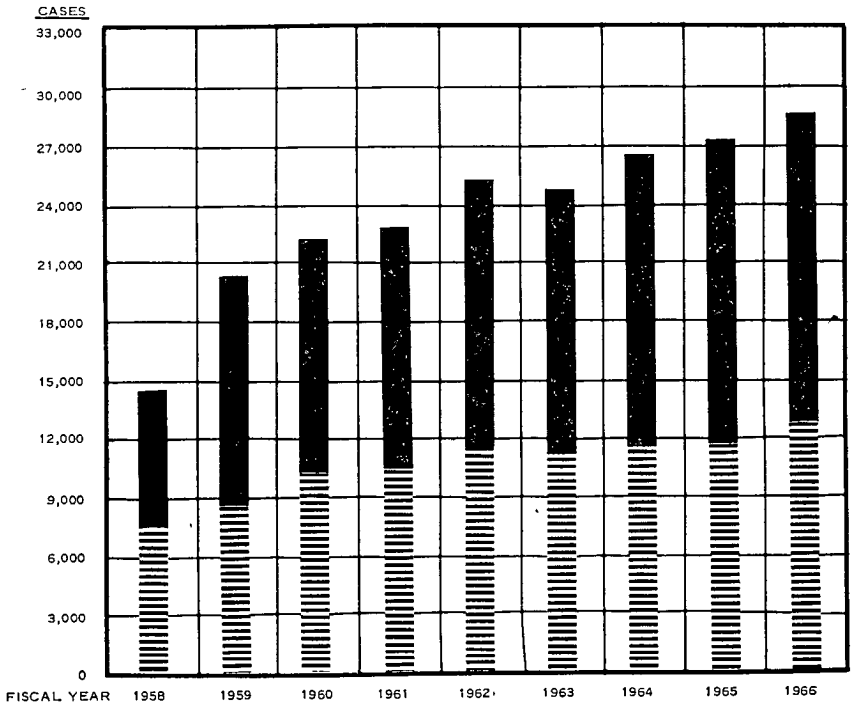
In 1966 appeals courts enforced NLRB orders in full in 134 cases; 41 were enforced with modification; 12 were remanded to the NLRB; 7 were partially affirmed and partially remanded; and 37 were set aside. In contempt cases, respondents in 4 cases complied with NLRB orders after contempt petitions had been filed; in 10 cases the courts held respondents in contempt; and in 2 cases the court denied Agency petitions.

In the U.S. Supreme Court, one case involving an NLRB order was remanded to the Agency in 1966. However, there was NLRB involvement in other cases before the Supreme Court, action which is described in footnote 3 of table 19.

In other litigation, U.S. District Courts in fiscal 1966 granted NLRB injunction requests in 94 percent of the contested cases litigated to final order, as against the 91 percent of the prior year. There were 83 injunction petitions granted, 5 were denied, 8 were withdrawn, and 1 was dismissed; also cases involving 85 petitions were settled or

Chart 14

CASES CLOSED



FISCAL YEAR	1958	1959	1960	1961	1962	1963	1964	1965	1966
C CASES	7,289	11,465	11,924	12,526	13,319	13,605	15,074	15,219	15,587
R, UD, AC, & UC CASES	7,490	8,890	10,259	10,289	11,708	11,073	11,641	11,980	12,917
TOTALS	14,779	20,355	22,183	22,815	25,027	24,678	26,715	27,199	28,504

placed on the courts' inactive dockets; and 21 petitions were awaiting action at the end of 1966. In the year there were 38 other cases involving miscellaneous litigation decided by appellate and district courts. NLRB-related injunction litigation in the district courts in 1966 was 22 percent below 1965 in terms of cases instituted—190 in 1966 against 245 in 1965.

h. Other Developments

In fiscal 1966, the five-member Board and the General Counsel contributed their views to legislative proposals on administrative procedure which would have an effect on the administration of the National Labor Relations Act, particularly proposals to amend the Administrative Procedure Act, where the Agency's concern has been

primarily with the amendments having a possible impact on speedy disposition of litigated cases.

In the year the Agency also cooperated substantially in the launching of the Equal Employment Opportunities Commission, lending its experience and some personnel to that agency to assist it in setting up its structures and procedures.

During the year the Board and the General Counsel continued the series of constructive meetings with the National Association of Manufacturers and local manufacturing associations, where frank discussion of labor-management relations problems, in the context of NLRB administration of the Act, has given to each side, Government and management, valuable understanding of the problems of the other.

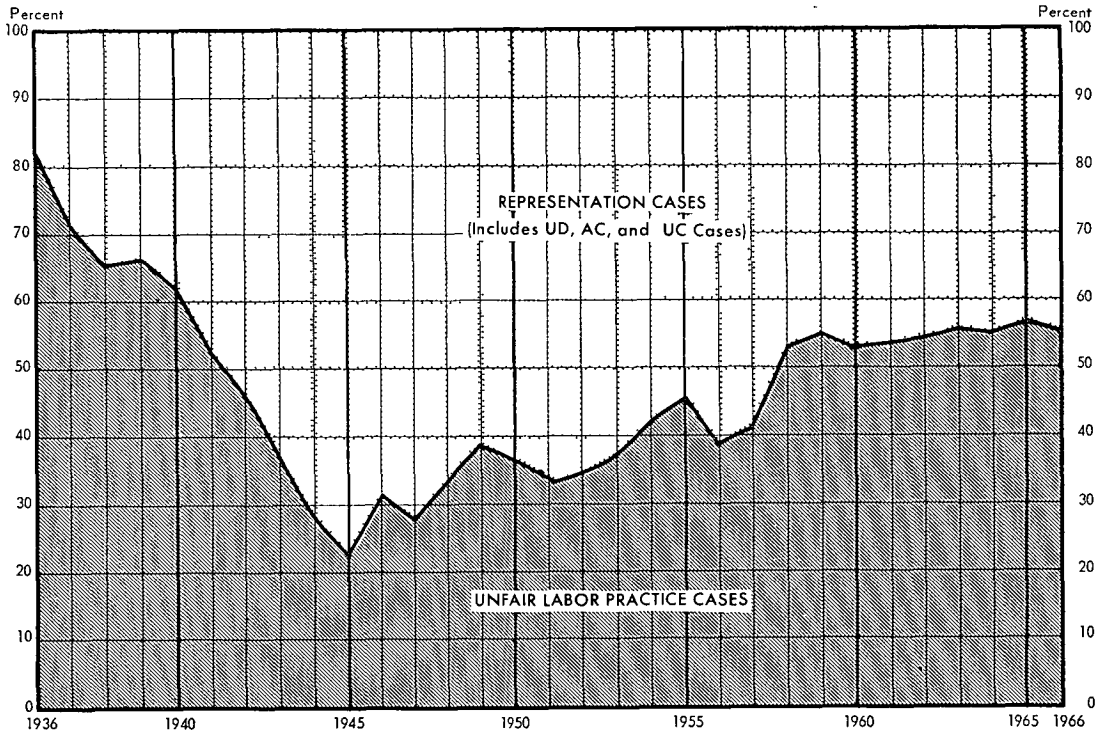
Board Members and the General Counsel also participated in conferences with representatives of management and labor in the construction industry intended to effectuate the voluntary processes of the newly reconstituted National Joint Board for the Settlement of Jurisdictional Disputes, the reconstitution of which had been observed in earlier White House ceremonies.

On August 25, 1965, Chairman Frank W. McCulloch, of Illinois, was sworn in, in a brief ceremony at NLRB Washington headquarters, for a second 5-year term on the Board.

Also in August, the Agency officially opened a new regional office (Region 31) in Los Angeles, its second in that city, to meet the mounting workload in the Southern California area as well as to afford improved field service to the public.

Chart 15

COMPARISON OF FILINGS OF UNFAIR LABOR 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 1936-1966.

i. Note on Statistical Tables for 1966 Annual Report

To increase usefulness of the statistical tables found in appendix A of this report, the Agency in the 1965 report added some new tables and expanded others. The changes are intended to advance the statistical information on Agency activity both in form and in detail. Also, in the appendix is a glossary of terms used in the tables and a subject index. Another listing to be noted is the index of cases discussed in this annual report, which is found immediately preceding appendix A.

Some of the changes in tables in the last two annual reports 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 complex problems arising from the many factual patterns in the various cases reaching it. In some cases new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. 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 some of the decisional highlights in certain areas.

a. Representation Issues

In accordance with a remand from the Supreme Court for an articulation of its reasons for insurance industry bargaining unit determinations, the Board reaffirmed its holding in that case that each of "the individual district offices is a separate administrative entity . . . and therefore is inherently appropriate for purposes of collective bargaining."[1] In the Board's view, "the district office in the insurance industry is the analogue of the single manufacturing plant or the single store of a retail chain." Although the Board would "ordinarily find a single district office to be an appropriate bargaining unit for insurance agents," a unit of two or more district offices may also be appropriate if there is "a reasonable degree of geographic coherence" among them. As either the district office or a combination of geographically related offices might thus be appropriate on

[1] *Metropolitan Life Insurance Co. (Woonsocket, R.I.)*, 156 NLRB 1408, *infra*, pp. 49–50.

the basis of factors other than the extent of organization, "the Board will take the union's request into account in deciding in which unit an election should be conducted." The units being otherwise appropriate, the Board concluded that section 9(c)(5) of the Act does not bar it from giving weight to the union's request, there being under the circumstances "no reason to compel a labor organization to seek representation in a larger unit than the one requested unless the smaller requested unit is itself inappropriate."

Election procedures were also evaluated by the Board in several cases, resulting in the establishment of new requirements relating to the advance disclosure to all parties of the names and addresses of the employees eligible to vote in an election, as well as the circumstances under which an employer may obtain an election in a unit represented by a certified incumbent union. In the landmark *Excelsior* case[2] the Board, acting in fulfillment of its function to conduct elections in which employees may vote "under circumstances free not only from restraint or coercion violative of the Act, but also from other elements that prevent or impede a free and reasoned choice," promulgated an employee name and address disclosure rule designed to facilitate communications with the employees eligible to vote, and thereby assure an informed electorate. After a careful evaluation of the limitations upon the employee's opportunity to be fully informed concerning the campaign issues, which results from the inability of a labor organization to identify and communicate with them as readily as the employer may, the Board established as a requirement applicable prospectively to all election cases that within 7 days after an election has been directed or agreed upon "the employer must file with the Regional Director an election eligibility list, containing the names and addresses of all eligible voters. The Regional Director, in turn, shall make this information available to all parties in the case. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed." The Board noted that the disclosure of the names and addresses may be expected to greatly decrease challenges and objections since it will eliminate the necessity for challenges based solely on lack of knowledge as to the voter's identity, as well as permit resolution of many disputes over voter eligibility well in advance of the election.

The disparity between the judicially approved presumption of continued majority status of a previously certified incumbent union for the purposes of determining an employer's obligation to bargain with that union, and the opportunity for an employer to challenge the incumbent's majority status notwithstanding that presumption by

[2] *Excelsior Underwear Inc.*, 156 NLRB 1236, *infra*, pp. 61–63.

filing a petition pursuant to section 9(c)(1)(B), was resolved by the Board during the year.[3] Upon consideration of the legislative history of section 9(c)(1)(B), the Board concluded that Congress in enacting that section did not contemplate the creation of a device by which an employer acting without a good-faith doubt of the union's status could disrupt collective bargaining and frustrate the policy of the Act favoring stable relations. It therefore held that "in petitioning the Board for an election to question the continued majority of a previously certified incumbent union, an employer, in addition to showing the union's claim for continued recognition, must demonstrate by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status since its certification."

b. The Bargaining Obligation

The Board's long-established policy that an employer may refuse to bargain and insist upon an election as proof of a union's majority status, unless its refusal and insistence were not made with a good-faith doubt of the union's majority, was reaffirmed by the Board in a number of cases in which it further defined the burden of establishing that the requisite doubt is not held.[4] Emphasizing that an election by secret ballot is normally a more satisfactory way of determining employees' wishes, although authorization cards signed by a majority may also evidence their desires, the Board held that "[w]here the General Counsel seeks to establish a violation of Section 8(a)(5) on the basis of a card showing, he has the burden of proving not only that a majority of employees in the appropriate unit signed cards designating the union as bargaining representative, but also that the employer in bad faith declined to recognize and bargain with the union. This is usually based on evidence indicating that respondent has completely rejected the collective-bargaining principle or seeks merely to gain time within which to undermine the union and dissipate its majority." Although the Board made clear that an employer's bad faith may be demonstrated not only by unfair labor practices but by a course of conduct which does not constitute an unfair labor practice, it made equally clear that, absent a *prima facie* case of bad faith established by the General Counsel, an employer, presented with a majority card showing and a bargaining request, will not be held to have violated his bargaining obligation under the law simply because he refuses to rely on cards rather than an election, as the method for determining the union's majority.

Finding that "[i]n principle, there is no basis for different treatment of union and employer withdrawals from multiemployer bar-

[3] *United States Gypsum Co.*, 157 NLRB 652, *infra*, pp. 59–60.

[4] *John P. Serpa, Inc.*, 155 NLRB 99; *Jem Mfg., Inc.*, 156 NLRB 643; and *Aaron Brothers Co. of California*, 158 NLRB No. 108, *infra*, pp. 80–82.

gaining units," the Board found[5] no refusal to bargain by unions which withdrew from multiemployer bargaining and then sought to bargain with each of the employers on an individual basis. In each instance the withdrawal notice was both timely and unequivocal and, if given by an employer, would have warranted his withdrawal under clearly established rules. Examining the circumstances under which multiemployer bargaining units are approved, the Board concluded that since the basis for such a "unit is both original and continuing consent by both parties, the Board cannot logically deny the bargaining representative the same opportunity it allows employers of withdrawing from the multiemployer unit by withdrawing its consent to such unit."

c. Secondary Picketing

Although it has been recently established that the picketing of gates at the premises of a struck employer reserved for use by employees of neutral employers is permissible when the employees using them are performing work related to the normal work of the primary employer, the Board during the report year considered for the first time the applicability of this concept to picketing at such reserved entrances at a common situs construction project.[6] The union, in furtherance of a primary dispute with a general contractor in the construction industry engaged in jobsite picketing at gates reserved and set apart for exclusive use by neutral subcontractors. The union's contention that the picketing was lawful under recent Supreme Court decisions[7] permitting the picketing of reserved gates at the premises of a struck employer where the neutrals using them were performing work related to the normal work of the primary employer, was rejected by the Board, which held that direct pressure by a labor organization upon secondary employers engaged on a common situs "must be resolved in the light of the *Moore Dry Dock* standards, traditionally applied by the Board in determining whether picketing at a common situs is protected primary activity." In the Board's view, it was precisely the union's claim "that the *close* working relations of various building construction contractors on a common situs involved them in a common undertaking which destroyed the neutrality and thus the immunity of secondary employers and employees to picket line appeals," which had been rejected by the Supreme Court in an early case involving construction of the secondary boycott provisions of the statute;[8] and

[5] *Evening News Assn.*, 154 NLRB 1494, *infra*, p. 90.

[6] *Building and Construction Trades Council of New Orleans (Markwell & Hartz, Inc.)*, 155 NLRB 319, *infra*, p. 107.

[7] *Local 761, IUE* v. *N.L.R.B.*, 366 U.S. 667; *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492.

[8] *N.L.R.B.* v. *Denver Building & Construction Trades Council (Gould & Preisner)*, 341 U.S. 675.

the more recent cases relied on by the union were not viewed by the Board as evidencing an intent to effect a reversal of a rule which has "been long understood by the parties to labor-management relations and by the Congress."

The asserted right of a secondary union to engage in non-picket line appeals to induce employees of a neutral employer, at whose premises the ambulatory situs of the primary dispute is temporarily located, to refuse to perform services for their employer in the absence of a lawful picket line, was also rejected by the Board during the year.[9] The union induced employees it represented not to perform normal work, assigned by their neutral employer, of loading at his premises a ship owned by the primary employer whose dispute was with a different union. There had been no contemporaneous appeal to them by the primary union nor was there a picket line. The Board commented on the necessity to preserve "the careful balance now existing between the right of the primary union, and those unions who would take up its cause, to appeal to employees approaching struck 'ambulatory' premises to refrain from entering those premises, and the right of the neutral employers to remain free from pressures directed towards forcing them to cease dealing with the primary employer." And it held that where the labor dispute is between a primary employer with an ambulatory situs and a union other than the one which seeks to induce secondary employees to take action because of that dispute, there must be some clear and contemporaneous notice given by the primary union to the employees appealed to, and to the neutral employer at whose premises the dispute became active, that the labor dispute involved is between it and the primary employer.

d. Unit Work Preservation Issues

Union efforts to obtain contract provisions protecting the work of the employees in the units they represented were again the subject of Board consideration in several cases. In one case[10] the Board concluded that the unions were entitled to insist upon contract provisions under which the motor carrier employers would use only "employees" to operate hired or leased equipment and would assert and exercise a "right of control" over the drivers of such equipment, thus converting the drivers, even though otherwise independent contractors, to employees subject to the union-security provisions of the contract. It based this conclusion upon the finding that under the agreement "*all* the work performed by the carriers" was being bargained for by the

[9] *Grain Elevator, etc., Workers, ILA, Local 418 (Continental Grain Co.)*, 155 NLRB 402, *infra*, p. 108.

[10] *Highway Truck Drivers and Helpers, Local 107, IBT (S & E McCormick)*, 159 NLRB No. 1, *infra*, p. 110.

unions and it was "the entirety of that work which constitutes the unit work the Unions have a legitimate primary interest in protecting for the carriers' employees." The Board noted that the work theretofore performed by independent contractors not in the unit, which the union sought to limit to independent contractors willing to become "employees," was sufficiently comparable in character, and the terms under which it was done would "sufficiently affect the terms and conditions of the work done in the unit, to cause the Union to have a direct and necessary interest in the work and to make it unit work . . . ." As the real target of the clause was unit work protection and not the imposition of a boycott on third parties, the clause was found valid notwithstanding its incidental impact necessitating changes in the long-established business relationship between the carriers and the independent contractors whom the provisions affected.

The Board also had occasion to further consider the types of private economic sanctions which may be imposed to enforce a subcontracting limitation exempt from the operation of section 8(e) because within the construction industry proviso to that section. The contract clause in issue in one case [11] prohibited subcontracting craftwork in the jurisdiction of the contracting local except to contractors having an agreement with a local of the parent international union. As sanctions for its violation by the employer, the local could terminate the agreement, and any other local of the international could then terminate their agreements with that employer also. The Board found that the threat of contract cancellation by the local involved and by other locals to insure compliance with the subcontracting clause involved a form of economic pressure proscribed by the Act, and that the clause was therefore unlawful as exceeding the limited exemption of the construction industry proviso to section 8(e).

e. Remedial Order Provisions

Remedial order provisions appropriate to redress employers' unlawful actions designed to frustrate union organizing campaigns were prescribed by the Board in several cases. In one,[12] involving an employer's coercive speeches and solicitation of withdrawals from the union, the Board recognized that "the possibility is strong that but for Respondent's unlawful conduct the Union would ultimately have secured the additional support it needed here to achieve majority status." Viewing it as an anomaly to preclude an employer from benefiting from misconduct which destroys a union's majority by ordering him to bargain with the union, while allowing it "to act with comparative impunity to prevent such majority status from ever being attained," the Board deemed "it appropriate that employees be af-

[11] *Local Union 769, IBEW (Ets-Hokin Corp)*, 154 NLRB 839, *infra,* pp 104, 113
[12] *H. W. Elson Botling Co.*, NLRB 714, *infra,* p. 121.

forded further opportunity to engage in organizational efforts." To do this it included in its remedy that the union be granted "reasonable access for a 3-month period" to employer bulletin boards and, "to redress the imbalance created" by the employer's coercive speeches on company time, the union be permitted to address the employees under similar circumstances at one 1-hour meeting at each plant.

Similar careful consideration was given the order in another case [13] where a large resort hotel, most of whose employees resided on the premises, violated the Act by barring nonemployee union organizers from the premises where they could solicit and communicate with the employees, while at the same time conducting its own coercive, anti-union campaign among the employees during working hours. The order required the employer to cease giving effect to its rule barring nonemployee organizers from reasonable access to its premises for the purpose of soliciting and communicating with the resident employees on their free time. It also provided that, at least until a new election also directed was held, should the employer make antiunion speeches to its employees during working time, the union be given a similar opportunity to address the employees.

4. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1966, are as follows:

Personnel compensation	$22,238,891
Personnel benefits	1,619,897
Travel and transportation of persons	1,443,849
Transportation of things	50,679
Rent, communications, and utilities	995,787
Printing and reproduction	563,544
Other services	746,600
Supplies and materials	248,492
Equipment	276,319
Insurance claims and indemnities	10,976
Subtotal obligations and expenditures [1]	28,195,034
Transferred to operating expenses, Public Building Service (rent)	62,179
Total Agency	28,257,213

[1] Includes reimbursable obligations distributed as follows:

Personnel compensation	$54,393
Personnel benefits	3,831
Travel and transportation of persons	14,687
Rent, communications, and utilities	1,327
Other services	2,005
Supplies and materials	479
Equipment	1,945
Total obligations and expenditures	78,667

[13] *S & H Grossinger's, Inc.*, 156 NLRB 233.

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. Territorial Scope of Board Jurisdiction

1. Guam

In *RCA Communications, Inc.*,[6] the Board determined that the territory of Guam was subject to the provisions of the Act and within the

[1] See secs. 9(c) and 10(a) of the Act and also 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, *inter alia*, in the Twenty-ninth Annual Report (1964), pp. 52–55, and *infra*, p. 36.

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

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

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question; Twenty-third Annual Report (1958), p. 18. See also *Floridan Hotel of Tampa*, 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.

[6] 154 NLRB 84.

Board's jurisdiction, the employer having conceded that its operations in Guam satisfied both the commerce definition of the Act and the Board's discretionary jurisdictional standards. Noting that Guam has the same governmental status as the Virgin Islands, over which the Board asserts jurisdiction,[7] the Board relied on the Organic Act establishing Guam as an "unincorporated territory"[8] to support its conclusion that Guam was a "Territory" within the meaning of the Act. Additional support was found in the report of the commission established by the Organic Act to indicate which statutes were applicable to Guam, that the Labor Management Relations Act was among those which should remain applicable. This report was acquiesced in by Congress.

The Board further found, contrary to the employer's contentions, that Congress' intent to include Guam within the coverage of the Act is also reflected in section 14(c)(1) and (2) of the Act. Otherwise, the Board observed, it would have ben anomalous for Congress to have conferred upon an agency or court of Guam authority under section 14(c)(1), where Guam is specifically included, to assert jurisdiction over labor disputes in which the Board declines to assert jurisdiction, unless in Congress' view the Board had jurisdiction *ab initio*. To hold otherwise, the Board said, would be to create a "no-man's land" which section 14(c)(2) was intended to eliminate.

2. Panama Canal Zone

In *United Fruit Co.*,[9] the Board deemed it inappropriate under the circumstances to assert jurisdiction over the employer's transportation operations in the Canal Zone, without reaching the question whether the Board in fact had jurisdiction. Although it was asserted that the United States was granted sovereignty over the Canal Zone by a 1903 treaty with the Republic of Panama, the Board noted that the President of the United States had recently announced that the two countries had agreed that the 1903 treaty would be abrogated, and that the new treaty, currently being negotiated, may recognize Panama's sovereignty over the area of the present Canal Zone and provide for its political, economic, and social integration with the rest of the Republic of Panama.[10]

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[7] E.g., *Caribe Lumber & Trading Corp.*, 148 NLRB 277.

[8] 48 U.S.C. 1421(a). No distinction is to be made between "incorporated" and "unincorporated" territories for purposes of the Board's jurisdiction. See *Ronrico Corp.*, 53 NLRB 1137.

[9] 159 NLRB No. 4.

[10] Statement by the President on the Progress of Treaty Negotiations with Panama, released by the Office of the White House Press Secretary, Sept. 24, 1965.

B. "Employees" for Purposes of Jurisdiction

During the report year, the Board had occasion again to consider whether owner-drivers and drivers of permanently leased trucking equipment were "employees" within section 2(3) of the Act,[11] as well as to determine the status as an "employee" of an unemployed member of the working force.

In *Indiana Refrigerator Lines*,[12] the Board emphasized that the application of the common law "right-of-control test" [13] used in making determinations whether an individual is an independent contractor or employee is not a "perfunctory exercise" [14] but demands a careful balancing of all relevant evidence. In applying the test to the facts of the case, the Board held that although the owner-drivers and drivers of the permanently leased equipment had an opportunity to affect their earnings by arranging desirable backhauls for their own account, that privilege was insufficient to outweigh other factors that established the employer's extensive control over their hauling operations. The other factors included employer control over the owner-drivers required by ICC regulations, the exclusive control over the use of the leased equipment given the employer by the terms of the lease, employer control over the hiring and activities of the drivers and laborers to assist them, and the employer's unilateral control over payment rates for the leased equipment.[15]

In *Lathers' Local 238*,[16] the Board held that an individual by being a member of a labor organization indicated his intention to be a participating member of the general work force, and was entitled to the rights assured "employees" by section 7 of the Act. In so doing, the Board asserted jurisdiction in an 8(b)(1)(A) proceeding, involving the imposition of a fine levied pursuant to an internal union rule prohibiting members from filing unfair labor practice charges with the Board.[17] Contrary to the union's contentions, the Board held that the term "employee" was not restricted by section 2(3) of the Act to those who stand in the proximate relationship of employer-employee but rather includes "members of the working class generally and not em-

[11] See Twenty-ninth Annual Report (1964), pp. 53–54.

[12] 157 NLRB 539

[13] As stated by the Board in its decision, "[U]nder this test, the employer-employee relationship exists when the employer reserves the right to control not only the ends to be achieved, but also the means to be used in reaching such ends."

[14] *National Freight, Inc.*, 153 NLRB 1536, 1539.

[15] Multiple owner-drivers, however, were held by the Board to be supervisors not entitled to inclusion in a unit with the other drivers. See also Twenty-ninth Annual Report (1964), pp. 54–55.

[16] *Wood, Wire & Metal Lathers' Intl. Union, Local No. 238 (Phillip A. Contreras)*, 156 NLRB 997.

[17] See Thirtieth Annual Report (1965), pp. 83–85.

ployees of a particular employer." [18] Moreover, the Board concluded, public policy demands that a union member's access to the Board's processes for vindication of his section 7 rights be free from coercion, regardless of his employment status at the time of the coercion.

C. "Employers" for Purposes of Jurisdiction

In the course of decisions issued in fiscal 1966, the Board had occasion to delineate further its statutory jurisdiction in cases involving an unincorporated association rendering pilotage services and an independent contractor providing services for an organization exempt under the Act.

In *Virginia Pilot Association*,[19] the Board asserted jurisdiction over an unincorporated association whose membership was comprised of pilots licensed to pilot ships in and out of the ports of Virginia, and thereupon directed an election among its employees who manned pilot boats operated by it. The association contended that since it acts as a political instrumentality of the State of Virginia the Board lacked jurisdiction under section 2(2) of the Act. Finding no merit in the association's contention and concluding that the association was an employer within the meaning of the Act, the Board noted that although the State licenses and regulates the pilots, "[P]rivate persons, and not a State statute, created the Association . . . [and it] is not administered by State-appointed or publicly elected individuals." The Board considered it significant that the association established its own personnel policies free of the State merit system and was authorized by statute to appeal the determination of pilotage rates by the State Corporation Commission. In the Board's view, this right of appeal supported the conclusion that the association was not an instrumentality of the State of Virginia, for a political subdivision of the State clearly could not sue the State of which it is a part.

The Board also asserted jurisdiction in the *Herbert Harvey, Inc.*[20] case, in which it directed an election in a unit of all charwomen, porters, and elevator operators employed by a building maintenance services contractor, but working at a complex of buildings owned by the International Bank for Reconstruction and Development under a contract with the Bank for the performance of such services on a cost-plus-fixed-fee basis. The employer contended that since the Board did not have jurisdiction of matters involving labor relations of the Bank, and that its own operations there were so intimately connected with the Bank that the employees involved were actually employees of

[18] See *Briggs Manufacturing Co.*, 75 NLRB 569, 570, footnote 3, quoting *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 U.S. 177.

[19] 159 NLRB No. 142.

[20] 159 NLRB No. 24.

the Bank, the Board should decline to assert jurisdiction. Rejecting these contentions, the Board found that although some conditions of employment were subject to review and approval by the Bank, a considerable area of effective control remained vested in the contractor who was therefore the employer of the employees within the meaning of section 2(2) of the Act. The Board also concluded that the maintenance and service activities of the employer were not so intimately connected with the purposes or operations of the Bank as to warrant withholding the exercise of jurisdiction over the activities of the employer at that location.

D. Application of Jurisdictional Standards

During the past year, a number of cases presented questions as to the manner or method of applying the Board's discretionary standards. Significant among them are three such cases which dealt with the application of the Board's current standards to a corporation engaged in the intrastate transportation of mail, to an enterprise engaged in the sale of goods wholly intrastate, and to a public market which leases stalls to individuals under a master lease agreement.

1. Computation of Indirect Outflow

Under the nonretail standard, the Board will assert jurisdiction over enterprises which have $50,000 annual out-of-State outflow or inflow, direct or indirect.[21] Indirect outflow includes sales within the State to enterprises meeting any standard, except solely an indirect inflow or indirect outflow standard.

In *Mendenhall Trucking, Inc.*,[22] the Board asserted jurisdiction over a corporation engaged in the intrastate truck transportation of mail under a contract with the U.S. Post Office, although the requisite jurisdictional amount for nonretail enterprises was not met by that operation alone. The "indirect outflow" standard was satisfied by combining the mail revenue with the revenue derived from the employer's other operation involving the intrastate bulk delivery of a daily local newspaper. The Board pointed out that the operations of the Post Office, although exempt from the Act's coverage, clearly affect interstate commerce and that the newspaper for which the delivery services were performed was directly engaged in interstate commerce.[23]

[21] See footnote 4.

[22] 153 NLRB 1276.

[23] Member Fanning concurred in the assertion of jurisdiction on the ground that the transportation of mail substantially affects interstate commerce regardless of the revenue derived therefrom, subject to the normal *de minimis* test. He would not find it necessary to rely on minimum standards criteria, as did the majority.

In another case, the Board asserted jurisdiction over an employer engaged in the sale of sand, gravel, and concrete, wholly intrastate, by applying the "indirect outflow" standard. In *Ark Redi-Mix Concrete Corp.*,[24] the Board found that one of the employer's customers, an apartment house builder, to which the employer had sold concrete valued in excess of $50,000, was engaged in interstate commerce and satisfied the Board's standards since it purchased furnishings valued at approximately $60,000 from out-of-State sources for installation in the apartment units. The Board rejected the contention that the expenditures for the furnishings should not be considered because they were of a non-recurrent capital investment nature. The Board noted that installation of such furnishings was customary and part of the normal cost of materials for construction of the project.

2. Combining Revenues of Individual Employers

During the past year, the Board had occasion to determine whether jurisdiction should be asserted over a group of employers who lease market stalls under a master lease agreement with a public market owner-lessor, and who appear to the public to be a single entity, where no one employer individually meets the Board's self-imposed jurisdictional standards. In *Grand Central Liquors*,[25] the Board asserted jurisdiction upon finding that the combined gross revenues of several retail enterprises satisfied its jurisdictional standard and that the totality of interstate operations involved, being more than *de minimis*, was sufficient to establish legal jurisdiction. The Board concluded that the public market owner-lessor and each stall lessee were joint employers in a common enterprise. On consideration of the lessor's authority to set common market hours, control all advertising on a marketwide basis, and establish regulations common to all employees with respect to dress and other aspects of personal appearance and behavior, the Board found that the operation of the market was represented to the public as a single integrated enterprise, and that the lessor was in a position to influence substantially the labor policies of the lessees. The Board therefore deemed it appropriate to combine the gross revenues of each of the lessees for jurisdictional purposes.[26]

[24] 158 NLRB No. 69.
[25] *David Gold & Harvey Tesler, d/b/a Grand Central Liquors*, 155 NLRB 295.
[26] See *Checker Cab Co.*, 141 NLRB 583, Twenty-eighth Annual Report (1963), p. 37.

III

Board Procedure

A. Presettlement Conduct as Evidence of Motive

In one case decided during the report year the Board, on reexamination of the rule in *Larrance Tank* [1] that activity prior to a settlement agreement may not be considered in assessing postsettlement conduct, overruled that decision to the extent that it bars the use of presettlement conduct as background evidence to establish the object or motivation of postsettlement activities.[2] There the regional director had approved an informal settlement agreement whereby the union agreed not to picket a general contractor to force him to cease doing business with a landscaping subcontractor employing nonunion workers. That approval was withdrawn when the union continued picketing, and a complaint issued based upon both the presettlement and postsettlement picketing. The Board held that the examiner, in finding that the union violated section 8(b)(4) (i) and (ii)(B) by its postsettlement picketing, wherefore the settlement was justifiably set aside, properly considered evidence concerning the objectives of the union's presettlement picketing in making his determinations concerning its postsettlement conduct.

B. Allocation of Burden of Proof

The burden of proof in determining whether an employer is "primarily engaged in the building and construction industry" lies with the party seeking to avail itself of section 8(f)'s statutory exception,[3] the Board has recently stated,[4] notwithstanding that the complaint

[1] *Larrance Tank Corp*, 94 NLRB 352

[2] *Northern California District Council of Hodcarriers & Common Laborers (Joseph's Landscaping Service)*, 154 NLRB 1384.

[3] Sec. 8(f) provides, *inter alia*, that "It shall not be an unfair labor practice . . . for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged . . . in the building and construction industry with a labor organization of which building and construction employees are members . . . because . . . (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment . . . ."

[4] *Carpet, Linoleum, etc., Local Union 1247, Painters (Indio Paint & Rug Center)*, 156 NLRB 951.

alleges that the employer is not primarily so engaged and the answer denies such allegation. The complaint in that case alleged that the union violated section 8(b) (2) and (1) (A) by executing an agreement containing an 8-day union-security provision with an employer engaged in the sale and installation of hard and soft floor covering, but not "primarily" in the construction industry. However, the complaint was dismissed upon a finding that the union had adequately borne its burden as to the primary nature of the employer's building and construction activities when it established that some 93 percent of the employer's gross revenue was from contracts requiring it to install the material it supplied.

C. Trial Examiner's Authority To Permit Withdrawal of Charge

In the *Local 638, Plumbers* case,[5] the Board had occasion to consider whether a trial examiner has authority to permit a charging party to withdraw the charge after the hearing has opened—thereby terminating the proceeding—over the objections of the General Counsel. In that case, the hearing had been concluded on a complaint alleging violations of section 8(b) (4) (i) and (ii) (B) by the union in refusing to work for a subcontractor installing piping and related equipment at an oil storage terminal. Two pipelines had been turned over to the owner who immediately put them into operation to transfer oil into a storage tank on which welding work was still in progress. When the owner refused to permit the subcontractor's employees to man the pipe valves controlling the oil flow into the tank while it was being worked on, but insisted upon putting his own men on the valves, the subcontractor's employees walked out.

The charging party's motion, objected to by the General Counsel, to withdraw the charge because new methods of operations made a recurrence of the situation unlikely, was made subsequent to hearing but before the trial examiner's decision issued. It was denied by the trial examiner "with extreme reluctance" because of a "lack of clear authority in the Trial Examiner" to grant the motion over the objection of the General Counsel. The trial examiner found the union had violated the Act by striking for the purpose of causing the subcontractor to cease doing business with the terminal owner.

The Board granted the motion to withdraw the charge and therefore dismissed the complaint, holding that the Rules and Regulations of the Board "expressly authorize and require a trial examiner to rule upon all motions made during and until the case has been transferred to

[5] *Local 638, Plumbers (Rowland Tompkins, Inc.)*, 158 NLRB No. 140.

the Board," including motions to withdraw the charge permitted by section 102.9 of the Rules. Finding that the trial examiner denied the motion because of an erroneous understanding of his authority, rather than in the exercise of his discretion to grant or deny a specific motion, the Board granted the motion and dismissed the complaint without reaching the substantive issues of the alleged violation.[6]

[6] Chairman McCulloch and Member Jenkins on the principal opinion. Member Fanning, concurring in the principal opinion, would moreover dismiss because the proceeding was improperly initiated under the secondary boycott provisions of the statute rather than those designed to resolve jurisdictional disputes. Members Brown and Zagoria, viewing the evidence as ambiguous at best and inadequate to establish an unlawful secondary object and upon consideration also of the charging party's desire to withdraw the charge, concurred in the dismissal of the complaint.

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, in the exercise of its discretion, will under appropriate circumstances withhold its processes in deference to an arbitration procedure.

A. Prerequisites to Recognition

The Board, in two cases during the report year, refused to defer to the arbitrators' decisions where the awards failed to meet the prerequisites of the *Spielberg*[2] standards of fairness and regularity. In *Auburn Rubber Company*,[3] it concluded that it would be improper to withhold the Board's adjudicatory hand in a case where the question of the validity of the discharge of employees who were sympathetic to an outside union was decided by a panel composed of representatives of the employer and the incumbent union. The Board also noted that the aspect of the discharges asserted to be illegal assistance under section 8(a)(2) was not before the arbitrator and, in any event, did not concern the application or interpretation of the collective-bargaining agreement.[4] The Board, however, did not rely on the

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

[2] In *Spielberg Manufacturing Co.*, 112 NLRB 1080, the Board concluded that encouragement of voluntary settlement of labor disputes would best be served by recognition of an arbitrator's award where "the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act. *Id.* at 1082.

[3] 156 NLRB 301.

[4] Chairman McCulloch and Member Zagoria for the majority. Member Brown, dissenting, would give binding effect to the determination issued by an impartial third party on grievances originating with the discharges in view of the absence of clear showing of fraud, collusion, serious procedural irregularities, or repugnance to the purposes and policies of the Act.

fact that the outside union, not a party to the existing collective-bargaining contract, had not agreed to be bound by the arbitration proceeding.

In *Virginia-Carolina Freight Lines*,[5] the arbitrator had found that the discharge of one of the employer's truckdrivers "for uncalled for threats of action against your employer" was in violation of the employee's duty to his employer and for cause, where the employee had threatened to seek Board assistance and advice concerning his rights under the existing collective-bargaining agreement. The Board concluded that the award was repugnant to the purposes and policies of the Act and not entitled to recognition under the *Spielberg* standards. It held that a discharge for seeking the aid of the Board is violative of section 8(a)(4) and (1) of the Act,[6] despite section 8(a)(4)'s literal wording about the filing of charges or the giving of testimony, since public policy requires that protection be afforded those seeking information from the Board.

B. Representation Cases

The Board has held that the same considerations supporting the policy of "hospitable acceptance to the arbitral process" in an unfair labor practice proceeding are equally persuasive to a similar acceptance in a representation proceeding.[7] However, in *Hotel Employers Assn. of San Francisco*,[8] the Board declined to defer to an arbitrator's finding that the multiemployer association involved was obligated, by an agreement with a union representing most of the association members' employees, to recognize the union as bargaining representative of the members' front office employees also, upon its showing of majority status. The Board observed that section 9 of the Act, which empowers it to decide questions concerning representation, "does not preclude the Board in a proper case from considering an arbitration award in determining whether such a question exists."[9] But the Board held that the award, which interpreted the contract, did not here dispose of the ultimate issue in the representation proceeding, since the award did not determine whether a question of representation was raised by the organizing efforts of a rival union and that union's prior claim which it had asserted by filing the representation petition with the Board.[10] That petition, the Board found, raised issues of

[5] 155 NLRB 447.

[6] *Precision Fittings, Inc.*, 141 NLRB 1034, 1035.

[7] *Raley's Inc. d/b/a Raley's Supermarkets*, 143 NLRB 256, 259

[8] 159 NLRB No. 15

[9] *Raley's, supra* at 259.

[10] Member Brown, dissenting, would find that the petition was untimely filed as to the front office employees since the employer and the intervenor (1) had a valid preexisting contract covering the employees, and (2) had a long bargaining history providing for voluntary arbitration and the instant petition was filed subsequent to a court order requiring arbitration.

appropriate unit and the majority status of competing unions—issues best resolved by the Board's own processes. Also, since the arbitrator's award issued almost a month after the petition was filed, at a time and under circumstances when basic principles of the Act required the choice of representative to be made by secret ballot election, the Board concluded it would not effectuate the purposes and policies of the Act to honor the award.

In *Pesi-Cola Bottling Co. of Merced-Modesto*,[11] the Board refused to delay the direction of a decertification election until an award was made in a pending arbitration proceeding. The issue before the arbitrator concerned the voting eligibility of five employees allegedly converted to independent contractors by the employer. Considering the primary issue before it to be whether the election sought should be directed, the Board found the eligibility of the employes to be no obstacle to its direction of the election, where the employees in question could be permitted to vote and their ballots challenged. The Board noted that if the challenged ballots proved to be determinative of the election, the regional director could then investigate further and report on the eligibility question.

[11] 154 NLRB 490.

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 hear-

[1] Secs. 8(a)(5) and 9(a).
[2] Sec. 9(c)(1).
[3] Sec. 9(b).

ing before the Board [4] shows that a question of representation exists. However, petitions filed under the circumstances described in the first 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 to operate as a bar a contract must be in writing, properly executed, and binding on the parties; that it must be of definite duration and in effect for no more than a "reasonable period"; and that it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act.

To operate as a bar, the contract must also clearly cover the employees sought in the petition.[6] In this regard, a contract is not removed as a bar by a mere relocation of operations accompanied by a transfer of a considerable proportion of the employees to the new location, without an accompanying change in the character of the jobs and the functions of the employees in the contract unit.[7] However, a contract may be removed as a bar if a change in the nature of the employer's operations occurs through a merger of two or more operations resulting in the creation of an entirely new operation with major personnel changes.[8] In the *Kroger Co.* case,[9] the Board was called upon to make this distinction between a relocation of operations and the consolidation of two or more operations. The employer built a new dairy and ice cream plant at which he consolidated the operations of two plants, one a dairy and ice cream plant and the other a dairy plant only. Most of the employees of the old plants were gradually transferred to the new, as it was phased into operation. In dealing with and rejecting contentions that two contracts barred a representation petition affecting employees at the new plant, the Board found that the two former plants "had been merged into an entirely new operation with major personnel changes" as the result of a consolidation, and

[4] A hearing must be conducted if the Board "has reasonable cause to believe that a question of representation exists."

[5] See NLRB Statements of Procedure, Series 8, as amended, sec. 101.23(b).

[6] *Appalachian Shale Products Co.*, 121 NLRB 1160, Twenty-fourth Annual Report (1959), p 21.

[7] *Ibid.*

[8] *General Extrusion Co.*, 121 NLRB 1165, Twenty-fourth Annual Report (1959), pp. 21–22.

[9] *Kroger Company*, 155 NLRB 546.

that there was no "relocation of operations." The contracts raised as bars were held by two unions which had represented employees at the old dairy and ice cream plant; [10] and the petition was filed by a third union which had represented the employees of the old dairy plant.

To avoid a contract as a bar, a rival petition must be filed timely in accordance with the Board's rules.[11] Generally, a petition will be held untimely if (1) filed on the same day a contract is executed; or (2) filed prematurely, viz, more than 90 days before the terminal date of an outstanding contract; [12] or (3) filed during the 60-day "insulated" period immediately preceding that date.

In the *Electric Boat Division* case,[13] the Board dismissed a petition for an election which was filed within the 60-day insulated period preceding the termination date of an existing contract, notwithstanding that the petition had been processed to a hearing which was required to resolve the status of the contract as a bar and which was completed subsequent to the expiration of the contract. Relying on *Stewart Die Casting*,[14] the Board found that the fact that a hearing had been held was not itself sufficient to warrant the direction of an election where, as here, the hearing established that the contract in effect at the time the unseasonable petition was filed was in fact operative as a bar. Therefore, it concluded that the parties had not had the opportunity to bargain, as contemplated by the *Deluxe Metal* rule,[15] free from the "threat of overhanging rivalry and uncertainty" for a 60-day insulated period. Accordingly, to effectuate the policies underlying the insulated-period rule, the Board provided that no new petition would be entertained for a period of 60 days from the date of it decision and then only if a question concerning representation still remained.

The statutory objective of stability in labor relations is also promoted by the longstanding, judicially approved Board practice under which the certification of a representative by the Board ordinarily will be held binding for at least 1 year,[16] barring all representation petitions filed within the 1-year period. Under some circumstances where the employer frustrates the union's bargaining efforts for a significant portion of the certification year, however, the Board may extend the period for a commensurate time.[17] This year the Board had

[10] A contract covering production employees at the old plant was renewed to cover all production employees at the new plant A multiplant maintenance employees unit contract with the old plant as one location covered was applied by the contracting parties to all maintenance employees at the new plant, which was treated by them as a relocation.

[11] See Twenty-fourth Annual Report (1959), pp 29–31.

[12] See *Leonard Wholesale Meats,* 136 NLRB 1000, Twenty-seventh Annual Report (1962), p. 58, revising the rule established in *Deluxe Metal Furniture Co.,* 121 NLRB 995.

[13] *Electric Boat Division, General Dynamics Corp.,* 158 NLRB No. 95.

[14] *Stewart Die Casting Div. of Stewart Warner Corp ,* 123 NLRB 447.

[15] 121 NLRB 995.

[16] *Ray Brooks* v. *N.L.R.B.,* 348 U.S. 96 (1954), Twentieth Annual Report (1955), p. 121.

[17] *Mar-Jac Poultry Co.,* 136 NLRB 785, Twenty-seventh Annual Report (1962), p. 61.

occasion to extend the bar period in one case, dismissing as not timely a decertification petition filed shortly after 1 year had elapsed following a certification, where the employer's actions prevented the union from enjoying a full year of bargaining after the certification.[18] For a period of 5 months during the certification year the employer had refused to furnish information requested by the union, but did so after a charge was filed and issuance of a complaint was authorized by the regional director, at whose request the union withdrew the charge after receiving the information. The Board found these events tantamount to a settlement of an unfair labor practice proceeding, less formal but not essentially different from the written settlement agreement between the employer and union which the Board in *Mar-Jac* considered a sufficient foundation for extending the certification bar period.

B. Units Appropriate for Bargaining

1. Insurance Industry Units

Twice within the report period the Board had occasion to consider questions concerning the appropriateness of employee bargaining units in the insurance industry. In the first of these cases,[19] upon remand from the Supreme Court [20] for an articulation of the reasons for its unit determinations in this area, the Board reaffirmed its holding that each of "the individual district offices is a separate administrative entity through which the employer conducts its business operations, and therefore is inherently appropriate for purposes of collective bargaining." In the Board's view, "the district office in the insurance industry is the analogue of the single manufacturing plant or the single store of a retail chain." Although the Board would "ordinarily find a single district office to be an appropriate bargaining unit for insurance agents," a unit of two or more district offices may also be appropriate if there is "a reasonable degree of geographic coherence" among them. As either the district office or a combination of geographically related offices might thus be appropriate on the basis of factors other than the extent of organization, "the Board will take the union's request into account in deciding in which unit an election should be conducted." The units being otherwise appropriate, the Board concluded that section 9(c)(5) of the Act [21] does not bar it from giving weight to the union's request, there being under the circum-

[18] *Gebhardt-Vogel Tanning Co.*, 154 NLRB 913.

[19] *Metropolitan Life Insurance Co. (Woonsocket, R.I.)*, 156 NLRB 1408.

[20] 380 U.S. 438, Thirtieth Annual Report (1965), p. 122. See also Twenty-ninth Annual Report (1964), pp. 113–114.

[21] Sec. 9(c)(5) provides: "In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

stances "no reason to compel a labor organization to seek representation in a larger unit than the one requested unless the smaller requested unit is itself inappropriate."

In the *State Farm* case,[22] however, the Board was presented with "a significantly different picture of field operating procedures" in the insurance business from that developed in the cases where the district office was the basic autonomous unit. In this case the employer's regional organization consisted of operating divisions in each of which several divisional superintendents exercised supervisory responsibilities over a grouping of field offices. The Board found that "the smallest component of the Employer's business structure which may be said to be relatively autonomous in its operation is not the field claims office, but rather the divisional unit of employees supervised by a divisional superintendent."

In finding inappropriate the requested single unit of employees in field claims offices within the supervisory jurisdiction of only two of the three divisional superintendents in the operating division, the Board stated: "The Board will itself establish a single unit of separate appropriate units only where the amalgamated unit is coherent and sensible for collective bargaining from the standpoint of geographic considerations or the employer's administrative or operational structure. But if two or more appropriate units are to merge (and, to some extent, sacrifice) their separate identities in a larger single unit, the resultant unit should encompass *all* similarly situated units in order to present some geographic or administrative coherence." [23]

2. Grocery Store Units

Recent Board decisions have made it clear that under the Act a unit of less than all the employees in a retail store may be appropriate.[24] The principle established by those cases was applied by the Board in *Mock Road Super Duper* [25] to find appropriate a requested separate unit of grocery employees in a retail grocery store, excluding meat department employees, rather than an overall storewide unit. In so holding it overruled to the extent inconsistent the *Schaeffers Prospect IGA Store* case,[26] which had held that a storewide unit was the only appropriate unit where no union sought to represent the meat department employees separately. The Board noted that the policy repre-

[22] *State Farm Mutual Automobile Insurance Co.*, 158 NLRB No. 84.

[23] As the requested unit failed to meet those standards, the Board directed elections in separate units of the claims offices under each of the two divisional superintendents, with an election in a single unit comprising the claims offices under all three divisional superintendents in the operating division if requested.

[24] See, e g., Thirtieth Annual Report (1965), pp, 45–50; *infra*, pp. 51–53.

[25] 156 NLRB 983.

[26] 124 NLRB 1433

sented by *Schaeffers* appeared to give undue weight to physical and administrative factors, without full appreciation of the importance of many other relevant factors. To the extent, therefore, that it had established limited criteria for the determination of the appropriate unit in the retail food industry, rather than providing that such determination rests "upon analysis of all relevant factors," it was overruled.[27]

Another retail food industry unit issue was presented in *Great Atlantic & Pacific Tea Co.*,[28] where a union filed petitions for bargaining units limited to two single-store units and one two-store unit in the employer's foodstore chain. The petitioner contended that the historical multistore unit of 20 stores of the employer's food chain, in which the incumbent union had represented the employees for 25 years, was not controlling because it was inconsistent with the administrative organization of the chain and was not limited to a coherent geographic area. The Board noted that it applied to retail chain operations the same unit policies applied to other types of multiplant enterprises, and would not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances. As the rival union failed to present any cogent justification for disrupting the 25-year bargaining pattern, even granting the asserted lack of cohesiveness, the Board found the historical unit appropriate.

3. Department Store and Warehouse Units

Following its decisions [29] recognizing the appropriateness of less than storewide units in the retail department store industry, the Board, in *Bonwit Teller, Inc.*,[30] found that each of the two units requested by separate petitions, one limited to nonselling employees in a retail department store and the other an overall unit of selling and nonselling employees, may be appropriate. In concluding that the nonselling employees constituted an appropriate unit, it noted that those employees worked separate and apart from the selling personnel and had minimum contact with customers. In view of the competing petitions, the Board directed a self-determination election among the nonselling employees. Their ballots were to be pooled with those of the second voting group consisting of all the other store employees

[27] *Mock Road* was expressly followed when the same issue was presented in *Priced-Less Discount Foods, d/b/a Payless*, 157 NLRB 1143, where, upon consideration of all relevant factors, a requested unit of grocery employees, including those in the delicatessen department, but excluding meat department employees, was found appropriate.

[28] 153 NLRB 1549.

[29] *Allied Stores of N.Y. d/b/a Stern's Paramus*, 150 NLRB 799, and *Lord & Taylor, Div. of Associated Dry Goods*, 150 NLRB 812. See Thirtieth Annual Report (1965), pp. 48–49.

[30] 159 NLRB No. 62.

only in the event that separate representation was rejected by the nonselling employees.

But in companion cases, units less than storewide in scope sought at two stores in a self-service discount department store chain were held inappropriate. In one of the cases,[31] a separate unit of janitorial employees was requested but rejected by the Board, since all store employees were unskilled and working conditions, including wage rates, were the same for all store employees, both selling and nonselling. There was a considerable overlap of duties among the various employees, and the Board also noted that there was no history of separate bargaining by the janitorial employees and another union was seeking to bargain for the janitorial employees as part of a storewide unit.[32] Similar considerations led to the dismissal of two petitions in the other case,[33] where separate units of janitorial employees at two discount department stores were sought by one union, and a two-store unit of nonsales employees of the same two stores was sought by another union. In that case also, all employees were unskilled and had the same working conditions and overlapping duties. There was no history of separate bargaining for either the janitorial or nonselling employees and a third union, which had intervened in the proceeding, had been recognized by the employer after a card check as representative of all the employees at both stores, including the janitorial and nonselling employees. Under these circumstances, the Board found that the separate units were not appropriate for bargaining purposes and dismissed the petitions.

The Board in other cases also found inappropriate a separate unit of warehouse employees in a retail department store, and a similar unit in a chemical processing complex. In the *Sears* case,[34] while recognizing that warehouse service employees in retail store operations may constitute an appropriate unit, the Board found that such employees in the instant case lacked the necessary cohesiveness and homogeneity to be considered a separate appropriate unit. It noted that they did not have common supervision, frequently interchanged with employees in other departments, and were not separate from the sales, service, and office departments located in the same building. And in *Riker Laboratories*,[35] the close proximity to the chemical production area of the warehouse shipping and receiving employees sought as a separate unit, and the substantial integration of the warehouse functions

[31] *White Front South San Francisco, Inc.*, 159 NLRB No. 63.

[32] Members Fanning, Jenkins, and Zagoria for the majority. Chairman McCulloch and Member Brown, dissenting, would find that a separate unit of janitorial employees may be appropriate in view of the bargaining pattern in the area and in the industry generally, including three other stores of this employer where such separate units exist.

[33] *White Front San Diego, & White Front La Mesa*, 159 NLRB No. 64.

[34] *Sears, Roebuck & Co.*, 154 NLRB 1818.

[35] *Riker Laboratories, Div. of Rexall Drug*, 156 NLRB 1099.

with other functions performed in the production area, led the Board to conclude that the requested employees did not possess "that degree of functional distinctness and autonomy which would warrant a finding that they have a separate community of interest."

In two other cases involving discount department stores arising during the report period, the Board found it necessary to determine whether the licensees and the owner-licensor were joint employers of the licensee's employees before making determinations as to the appropriateness of requested units. In *Triumph Sales*,[36] the Board found that effective control over the attributes of the employment relationship with employees of the licensee operating the chain's liquor departments, including the handling of grievances, was lodged with the licensee rather than being jointly controlled with the licensor. It therefore concluded that the licensor was not a joint employer of the licensee's employees and directed elections sought by the licensee in units limited to his employees.[37] The contention that contracts covering the employees of the prior liquor department licensee barred the petitions was rejected when the Board, applying the "employing industry" test,[38] found there was no successor relationship between the current licensee and the prior licensee who executed the contracts. In *K-Mart*,[39] however, the owner of a retail chain and the various licensees at one of the stores were held to be joint employers of the licensees' employees, and the requested storewide unit of employees was found appropriate. The Board found that the license agreement and related rules and regulations issued by the owner, which even included a provision whereby the owner sought to prohibit the continuance of labor disputes in which the licensees might become involved, established substantially joint control over working conditions and wage rates of the licensees' employees.

4. Craft Units

The appropriateness of craft employee units in retail department stores was also considered by the Board during the report period in a case in which the Board took an approach similar to that used in considering requests for less than storewide units of selling or nonselling employees. Separate units of employees in each of four traditional crafts, limited to one of the employer's three retail department stores, were found appropriate by the Board in *J. L. Hudson Co.*[40] Relying

[36] 154 NLRB 916.

[37] Chairman McCulloch and Members Fanning and Zagoria for the majority. Members Brown and Jenkins dissented for the reasons set forth in their dissenting opinion in *Esgro Anaheim, Inc.*, 150 NLRB 401, Thirtieth Annual Report (1965), p. 46.

[38] See, i.e., *Johnson Ready-Mix Co.*, 142 NLRB 437, 442; *Maintenance, Inc.*, 148 NLRB 1299, Thirtieth Annual Report (1965), pp. 65-66.

[39] *K-Mart, Div. of S. S. Kresge Co*, 159 NLRB No. 28.

[40] 155 NLRB 1345.

on recent department store unit decisions to reject the employer's contention that only a companywide or a storewide unit was appropriate, the Board found no reason to treat requests for craft units in the retail department store industry any differently from the manner in which requests for similar units have long been treated in other industries.

In the *Union Carbide* case[41] the integrated nature of the chemical manufacturing process at the employer's plant was not viewed by the Board as a factor to preclude its finding that two separate craft units, one composed of plumber-pipefitters and welders and the other consisting of instrument repairmen, as well as an overall production and maintenance unit, might be appropriate if the employees in those classifications desired to be so represented. Although the Board recognized that unplanned operational breakdowns might create serious safety hazards at the plant, the grouping of employees into more than one unit was not viewed as either enlarging the existing possibility of hazard or as preventing the taking of necessary steps to deal with such potential hazards. Noting the absence of a bargaining history on a more comprehensive basis, the Board indicated that it was neither expressing an opinion as to what ruling would be made in a similar case where there was a bargaining history on a production and maintenance basis and craft severance was sought, nor foreclosing the possibility that in other circumstances the integration of operations and functions might warrant a finding that only an overall unit was appropriate. However, in *Rohr Corp.*,[42] the Board dismissed a petition seeking severance of the employer's tool-and-die-making employees from an existing production and maintenance unit. The employer, in specializing its tool-and-die-making operations into various departments, had diluted the skills required of each employee so engaged to the point where the employee no longer met the craftsman criteria, since he did not exercise "the full gamut of skills normally associated with tool-and-die craftsmen." The Board therefore concluded that the severance of the employees as a craft unit was inappropriate, and the severance as a departmental unit was also inappropriate since the employees sought did not constitute a functionally distinct department.

5. Professional Employees

Section 9(b)(1) of the Act provides that the Board shall not decide that any unit is appropriate for the purposes of collective bargaining if it includes both professional and nonprofessional employees, unless a majority of the professional employees first votes for inclusion in

[41] *Union Carbide Corp. Chemicals Div.*, 156 NLRB 634.
[42] 157 NLRB 1351.

such a mixed unit. The Board had occasion to enforce this limitation in several cases, including *Chrysler Corp.—Space Div.*,[43] where an election had been held in a unit of production and development employees in the missile and rocket industry, but expressly excluding professionals. Upon motion to the Board filed after the election, a group of employees included in the unit and voting in the election for the first time advanced the contention that they were performing engineering functions for which "knowledge of an advanced type" was needed, and were therefore professional employees within the meaning of section 2(12) of the Act. After careful consideration of the record, the Board concluded the contention was correct since the work of the employees was "being performed in a relatively new industry, in which the end products (missiles and rockets) are of such novelty and complexity that widespread knowledge of an advanced type is essential to those having responsibilities related to formulation and guidance of the manufacturing process." As no self-determination election had been held, it vacated the certification and remanded the case to the regional director for appropriate action.[44]

In another case [45] the Board denied a petition for clarification of a certified unit of professional and nonprofessional employees which sought to include additional professionals as an accretion thereto. The existing unit had been established prior to the passage of section 9(b)(1) in 1947, without a self-determination election among the professionals. The Board rejected the contention that the certification was too old and its content too indeterminate by reason of changes resulting from bargaining to permit clarification. It concluded, however, that the addition of other professionals by Board action without a separate election was precluded by section 9(b)(1), "whether that section be interpreted as requiring an election among only those professionals sought to be added or among all professionals including those presently in the existing unit."

And in *Douglas Aircraft Co.*,[46] a union representing two separate units of professional employees at an aircraft plant sought to represent an additional unit of all professionals engaged in tool design work. The Board concluded that the unit requested was appropriate even though some other plant professionals with the same job classification but who performed other work functions would thereby be left unrepresented. It found that the employees requested "possess a unique com-

[43] 154 NLRB 352

[44] As the ballots of the professionals had not been separated from those of the other employees, it was impossible to ascertain whether a majority of the former had voted for inclusion in the mixed unit; and, excluding such employees from the unit, it was unclear that a majority of the remaining nonprofessionals had voted for union representation.

[45] *Lockheed Aircraft Corp*, 155 NLRB 702.

[46] 157 NLRB 791.

munity of interest based upon the distinct nature of their function, their separate supervision and work place, the lack of substantial interchange with other professional employees, and the fact that they are separately hired by the departmental supervisor," and were therefore not an arbitrary piecemeal segment of the plant professionals.

6. Multiemployer and Multiplant Unit Issues

A number of cases decided by the Board during the report year concerned the appropriateness for bargaining purposes of units composed of employees of employers bargaining on a multiemployer basis, or of employees at more than one plant of the same employer. In *Steamship Trade Assn. of Baltimore*,[47] a multiemployer association's contention that an unrepresented group of timekeepers should not be added to an existing multiemployer unit of checkers, slip-runners, and shop planners in the longshoring industry, because the association had been denied authority by the individual member employers to bargain for timekeeping employees, was rejected by the Board. It pointed out that while mutual consent is required to establish multiemployer bargaining, such consent "relates to the formation of the multiemployer unit and not to the scope of the duty to bargain" once the unit is established.[48] In the Board's view, "to hold otherwise would lodge all authority over the composition of the unit in the parties, and, in effect, deprive the Board of its duty under Section 9 to decide in each case the appropriate unit which will assure to employees the fullest freedom in exercising the rights guaranteed by the Act." Upon finding the timekeepers to be an appropriate unit and voting group, the Board directed an election to determine whether they desired to be included in the established unit.

In companion cases,[49] the Board held that separately certified single-office units at two of an employer's numerous branch offices had not been merged into a multioffice unit through central bargaining. The Board found they retained their separate identities notwithstanding that for an extended period contract negotiations with the union, which also represented similar units of employees at a number of other branch offices, had been conducted for all represented units on a centralized basis. Upon consideration of the circumstances the Board found that "the Employer and the Union have never mutually agreed that their negotiations have been for one overall or multiplant unit

[47] 155 NLRB 232

[48] The Board noted that, to the extent that dictum in *Andes Fruit Co.*, 124 NLRB 781, tends in a different direction from its holding that consent relates only to the formation of the multiemployer unit and not to the scope of the bargaining duty, it does not follow the dictum.

[49] *Univac Div., Sperry Rand Corp.*, 158 NLRB No. 87, and *Remington Office Machines, Div. of Sperry Rand Corp.*, 158 NLRB No. 88.

during the course of their collective-bargaining relationship." It likewise found no indication that the parties mutually intended to effect a consolidation of the branch office units, thereby extinguishing the rights of the employees in each to select, change, or decertify their representative by vote of their separate majority. To the contrary, it found the parties were motivated solely by considerations of convenience in participating in central bargaining sessions.[50] Therefore, elections were directed on decertification petitions limited to units of employees at each of the two branch offices.

The impact of management operating decisions upon unit placement was considered by the Board in one case,[51] where the employer shifted a food can depalletizing operation from its can manufacturing plant to its adjacent food processing and canning plant, at which the employees were represented by a different union in a separate unit. In considering the can manufacturing plant union's petition for unit clarification of previously certified unit to include employees in the depalletizing operation, the Board found that by the transfer that operation had become the first step in the food canning process rather than the last step in the can manufacturing process. It therefore amended the certification of the union in the food canning plant to specifically include the employees performing the depalletizing operation in the canning plant, thereby in effect excluding it from the coverage of the certification of the other union.

Another case involved a merger of operations which occurred when a large oil producer and distributor purchased a smaller oil distribution business and integrated the latter's operations and employees into its existing operating structure. There, the employer petitioned for unit clarification to include the newly acquired employees within the established certified unit. The Board held, over objection by the union which had formerly represented the employees at the purchased business and which asserted representation rights under an unexpired contract, that the employees were merged into the employer's existing unit, and could no longer be considered a separate appropriate unit. The Board also noted that whatever obligation the employer had as successor under the unexpired contract formerly covering the newly acquired employees, could not operate as a bar to their being so included.[52]

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[50] The Board overruled its decision in *Univac Div. of Remington Rand Div. of Sperry Rand,* 137 NLRB 1232, denying a separate unit election at another of the employer's plants for which bargaining had been conducted on a centralized basis, to the extent it may stand for the proposition that the separate certified units have been merged into one multiplant unit.

[51] *Libby, McNeill & Libby,* 159 NLRB No. 46.

[52] *Humble Oil & Refining Co.,* 153 NLRB 1361.

7. Other Unit Issues

One issue which the Board considered during the report period was the effect to be given to an extended bargaining history in separate units based upon racial discrimination. In *New Deal Cab Co.*,[53] two commonly owned taxicab companies, operating in the same city and found to be a single employer, historically bargained on the basis of separate units for white and Negro cab drivers with two separate union locals, likewise racially separated. Although the locals later merged, the same racially discriminatory bargaining pattern continued. Considering whether the established unit of Negro drivers was appropriate for decertification purposes, the Board found—

> . . . bargaining pattern here disclosed has principally resulted from racial factors which cannot be accepted as appropriate. Thus it is apparent that the separation of bargaining units was rooted originally in representation by separate segregated local unions, a situation which was fostered by the local government's issuance of separate permits to the separate enterprises for divided operations based essentially on lines of racial segregation. And the pattern of separate bargaining thus established on a racial basis has continued to exist upon such predicate to the present time.
>
> Throughout its entire history this Board has refused to recognize race as a valid factor in determining the appropriateness of any unit for collective bargaining. For this reason, we find that the bargaining history based on those separate units is not one which the Board may recognize in its determination of the appropriate unit in this proceeding. [Footnotes omitted.]

It concluded that upon unit factors other than bargaining history a unit limited to the Negro drivers was inappropriate, wherefore the decertification petition was dismissed.

In two other cases decided within the report period, the Board held that petitions to amend certifications by substituting as bargaining representative a local union for the international union,[54] or one local union for another,[55] should be denied, absent a showing of the knowledge and consent of the unit employees to the substitution. In both cases, however, the Board dismissed the petitions without prejudice to another request showing that the amendment reflected the desires of the employees in the certified unit.

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[53] 159 NLRB No. 111.
[54] *M. A. Norden Co.*, 159 NLRB No. 143.
[55] *Yale Manufacturing Co.*, 157 NLRB 597.

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, as the situation warrants, either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for decision. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, the regional director will then issue a decision on the objections which is final.[56] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will then issue a report on objections which is then subject to exceptions by the parties and decision by the Board.[57] However, if the election was one directed by the Board,[58] the regional director may (1) either make a report on the objections, subject to exceptions with the decision to be made by the Board, or (2) dispose of the issues by issuing a decision, which is then subject to limited review by the Board.[59]

1. Employer Petitions Challenging an Incumbent Union's Majority Status

The Board has long held that a question concerning representation is raised with respect to the status of an incumbent union if an employer files a petition under section 9(c)(1)(B) and, irrespective of the good faith of his refusal to grant continued recognition, shows only that the union has asserted a claim to representative status in the unit which the employer has rejected or questioned.[60] In those instances, however, where the incumbent union files an unfair labor practice charge that the employer has refused to bargain with it, the charge

[56] Rules and Regulations, sec. 102.62(a).
[57] Rules and Regulations, secs. 102.62(b); 102 69(c).
[58] Rules and Regulations, secs. 102.63; 102.67.
[59] Rules and Regulations, secs. 102.69(c); 102 69(e).
[60] I.e., *Whitney's*, 81 NLRB 75.

will be allowed to block further proceedings upon an employer's petition, and the union's entitlement to continued recognition resolved in the unfair labor practice proceeding. In such a proceeding, the Board has consistently held that in the case of a previously certified incumbent union there is an irrebuttable presumption that its majority status continues for 1 year from the date of certification; that thereafter the presumption is rebuttable, and an employer may lawfully refuse to bargain only if it can show by objective facts that it has a reasonable basis for believing that the union has lost its majority status since its certification.[61]

The Board considered the divergent standards of these rules in the *United States Gypsum* case,[62] where a successor employer filed a petition to challenge the majority status of a certified incumbent union. The union asserted its unexpired contract with the former owner as a bar to the petition, but did not press refusal-to-bargain charges. The Board noted that under the existing rules and interpretation of section 9(c)(1)(B), the employer's filing of a petition puts the certified incumbent to the choice of either "utilizing the time-consuming unfair labor practice route or submitting to the employer's use of the petition and being compelled to engage in endless election campaigning either at the close of each contract term or whenever the employing industry changes hands. Under these circumstances, uninterrupted and stable bargaining relationships would be impaired . . . ." Upon consideration of the legislative history of section 9(c)(1)(B), the Board concluded that Congress in enacting that section did not contemplate the creation of a device by which an employer acting without a good-faith doubt of the union's status could disrupt collective bargaining and frustrate the policy of the Act favoring stable relations. It therefore held that "in petitioning the Board for an election to question the continued majority of a previously certified incumbent union, an employer, in addition to showing the union's claim for continued recognition, must demonstrate by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status since its certification." [63] The petition was therefore dismissed.[64]

[61] *Laystrom Manufacturing Co.*, 151 NLRB 1482.

[62] 157 NLRB 652

[63] To the extent inconsistent, *Whitney's* and similar cases were overruled.

[64] In its decision in *United States Gypsum Co.*, 161 NLRB No. 61, the Board, in considering a subsequently filed petition for an election in the same unit, made clear that the adequacy of the "objective considerations" was a matter for administrative determination by the Board, and not subject to litigation by the parties. Finding that the employer had made the requisite *prima facie* showing of grounds for doubting the incumbent's continued majority status, the Board directed an election. It noted, however, that the finding of such a *prima facie* showing was not determinative of the employer's obligation to engage in further bargaining, or dispositive of any related refusal-to-bargain charge.

2. Timing of Election in Seasonal Industry

Although an election in an industry having a seasonal employment peak because the volume of operations fluctuates during the year is usually postponed to the annual peak of employment, in industries where there is a series of several employment peaks the Board must weigh the advantage of an early election, the possibility that more employees may vote at a higher peak of employment, and the relative interest of those employed during the various peaks as determined by their rate of recurrent employment.[65] In *Elsa Canning Co.*,[66] the employer conducted its vegetable canning operations on a year-round basis, during which there were several subsidiary employment peaks in addition to the annual peak, due to the different harvesting seasons for various vegetables. Noting the employer's established practice of recruitment and rehiring of experienced former employees through the State employment service, the Board directed an election among those employed during the next representative peak employment season rather than awaiting the annual peak, since it could reasonably be expected that the employees employed at the earlier peak would comprise a substantial portion of the complement of employees recurrently employed during the employer's year-round operation.

3. Disclosure of Names and Addresses of Eligible Employees

In fulfillment of "the Board's function to conduct elections in which employees have the opportunity to cast their ballots for or against representation under circumstances that are free not only from interference, restraint, or coercion violative of the Act, but also from other elements that prevent or impede a free and reasoned choice," the Board, in the *Excelsior Underwear* case,[67] promulgated an employee name and address disclosure rule designed to facilitate campaign communications with the eligible voters and thereby assure an informed electorate. It established as a requirement applicable prospectively to all election cases [68] that within 7 days after the election has been directed or agreed upon, "the employer must file with the Regional Director an election eligibility list, containing the names and addresses of all the eligible voters. The Regional Director, in turn, shall make this information available to all parties in the case. Failure to comply with this require-

[65] *Libby, McNeill & Libby*, 90 NLRB 279, 281.
[66] 154 NLRB 1810.
[67] 156 NLRB 1236.
[68] The requirement not only applies to petitions for certification or decertification of representatives under sec. 9(c)(1) of the Act, but also to deauthorization elections under sec. 9(e)(1). Due to the expedited procedure it does not apply to elections conducted pursuant to sec. 8(b)(7)(C). It became applicable only to elections directed or consented to subsequent to 30 days from the date of the *Excelsior* decision

ment shall be grounds for setting aside the election whenever proper objections are filled."

In setting forth the considerations which impelled the adoption of the rule, the Board stated:

> . . . an employee who has had an effective opportunity to hear the arguments concerning representation is in a better position to make a more fully informed and reasoned choice. Accordingly, we think that it is appropriate for us to remove the impediment to communication to which our new rule is directed.
>
> As a practical matter, an employer, through his possession of employee names and home addresses as well as his ability to communicate with employees on plant premises, is assured of the continuing opportunity to inform the entire electorate of his views with respect to union representation. On the other hand, without a list of employee names and addresses, a labor organization, whose organizers normally have no right of access to plant premises, has no method by which it can be certain of reaching all the employees with its arguments in favor of representation, and, as a result, employees are often completely unaware of that point of view. This is not, of course, to deny the existence of various means by which a party *might* be able to communicate with a substantial portion of the electorate even without possessing their names and addresses. It is rather to say what seems to us obvious—that the access of *all* employees to such communications can be insured only if all parties have the names and addresses of all the voters. In other words, by providing all parties with employees' names and addresses, we maximize the likelihood that all the voters will be exposed to the arguments for, as well as against, union representation.
>
> Nor are employee names and addresses readily available from sources other than the employer. The names of some employees may be secured with the assistance of sympathetic fellow employees, but, in a large plant or store, where many employees are unknown to their fellows, this method may not yield the names and addresses of a major proportion of the total employee complement. Additionally, there are not infrequently employees on layoff status, sick leave, leave of absence, military leave, etc., eligible to vote, yet unkown to their fellow employees. Furthermore, employees are frequently known to their fellows only by first names or nicknames, so that there may be significant problems in obtaining the home addresses even of those employees whose names are known. Finally, all the foregoing difficulties are compounded by the more or less constant turnover in the employee complement of any employer.

> In sum, not only does knowledge of employee names and addresses increase the likelihood of an informed employee choice for or against representation, but, in the absence of employer disclosure, a list of names and addresses is extremely difficult if not impossible to obtain. Accordingly, as we have stated, we shall in the future regard an employer's refusal to make a prompt disclosure of this information as tending to interfere with prospects for a fair and free election. [Footnotes omitted.]

The Board further noted that the adoption of such a disclosure rule may be expected to greatly decrease challenges and objections to elections based upon voter eligibility. Disclosing to all parties to an election employee names and addresses will eliminate the necessity for challenges based solely on lack of knowledge as to the voter's identity, as well as permit resolution of many disputes over voting eligibility, well in advance of the election. In rejecting the contention that disclosure could only be required if the union would otherwise be unable to reach the employees with its message, the Board distinguished court cases [69] which limit a union's access to employer's premises to those situations where alternative channels of communication are unavailable. It viewed those decisions as being predicated upon protection of property rights, a significant employer interest, whereas in the situation presented the employer has no such significant interest in the secrecy of employee names and addresses.

4. Secrecy of Ballot

In *J. Brenner & Sons*,[70] the Board sustained the exclusion of a signed ballot which assertedly would have affected the results of the union-won election, in view of the Board's longstanding policy of invalidating ballots which reveal the identity of the voter.[71] In rejecting the employer's contention that such policy is inapplicable where the voter would testify, if permitted, that he deliberately signed the ballot with intent to waive secrecy, the Board expressed the view that to allow such a distinction in the announced rule would defeat the principle of a secret election, which is a matter of public concern rather than a personal privilege subject to waiver by the individual voter. It "would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory con-

[69] *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105; *N.L.R.B.* v. *United Steelworkers (Nutone, Inc.)*, 357 U.S. 357.

[70] 154 NLRB 656.

[71] *George K. Garrett Inc.*, 120 NLRB 484, 485–486; and *Eboo Manufacturing Co.*, 88 NLRB 983, 984.

ditions which the Board strives to maintain in representation elections."

5. Conduct Affecting Elections

An election will be set aside, and a new election directed, if the election campaign was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals which interfered with the employees' exercise of their 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 the 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 resolution of the issues.

a. Election Propaganda

In determining whether an election should be set aside because in its campaign propaganda a party has misrepresented pertinent facts, the Board balances the right of the employees to an informed choice of a bargaining representative and the rights of the parties to wage a free and vigorous campaign with all the normal tools of legitimate electioneering. Consequently, it has held that an election will be set aside where there has been a misrepresentation, or similar campaign trickery, which involves a substantial departure from the truth, but will not be set aside on the basis of propaganda where the message to be conveyed was merely inartistically or vaguely worded, or subject to different interpretations.[72]

Applying this criterion to a recent case,[73] the Board refused to set aside an election where the union's election eve handbill stated that several union contracts in the same industry and area "provide" certain specified amount wage increases, but which failed to add that those increases did not become effective at one time but were to be received in three steps over a 3-year period. The Board found that this omission was not a deliberate effort to mislead employees, but, "at worst, was an exaggeration of fact, subject to different interpretations, and as such would not constitute a sufficient basis for setting aside an election." The Board noted in this connection that the characterization of a three-annual-step wage increase in terms of the total "cost of the package" is now a relatively common method of describing such benefits, since the future increases are guaranteed by the contract.

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[72] *Hollywood Ceramics Co*, 140 NLRB 221, Twenty-eighth Annual Report (1963), p. 57.
[73] *Russell-Newman Manufacturing Co.*, 158 NLRB No. 117.

In another case,[74] the Board upheld an election over objections based upon a statement distributed to employees with their pay on election day. The employees were paid in two pay envelopes, one of which contained the employee's regular pay minus $6. The other envelope contained a check for $6 and a statement that the check represented "the estimated amount the union would like to take out of your pay check every month" and that even that amount did "not includes fines, assessments, and other charges that the union may desire you to pay." The Board found that there was no misrepresentation as to the actual amount of dues, nor were there words in the statement which could reasonably be interpreted, either directly or impliedly, to mean that the employee would be compelled to join the union, such an implication being contrary to the "right-to-work" law in the State. Therefore, under all the circumstances, the Board found the union was not substantially disadvantaged by the lack of time to reply, since the employer's propaganda "differed in tone, context, and impact from the type of preelection propaganda which would warrant setting aside the election."

In three other cases decided by the Board during the year, the question presented was whether the employer's election propaganda contained threats of adverse economic consequences warranting setting aside the election. In the first of these cases,[75] an employer in an election eve speech to his employees sought to emphasize to them that unions could not guarantee job security, and in doing so equated the success or failure of certain companies in the industry, including his own, with whether or not the company was unionized. The Board set aside the election, finding that this speech, when viewed in context, contained "veiled threats of adverse economic consequences to the . . . plant employees if they vote in favor of the . . . [union]." The statements made it clear that in the employer's view the problems in the unprofitable plants were brought on by the unions. In the Board's view, the statements could reasonably lead the employees to fear that the employer, in the event of an election victory by the union, would close the plant or take other action which would adversely affect their economic welfare. The employer had thereby destroyed the atmosphere of free choice which the Board seeks to preserve for its elections. In the second case,[76] involving an election eve speech attempting to rebut union claims that job security depended upon unionization, the employer detailed the existing benefits and security it provided, asserting that unions were unable to create jobs lost to the community when as a consequence of uneconomic demands and strikes by

[74] *Caressa, Inc.*, 158 NLRB No. 150.
[75] *A. Werman & Sons*, 154 NLRB 1037.
[76] *Universal Electric Co.*, 156 NLRB 1101.

unions certain named employers had suffered severe financial losses and thereafter shut down or moved away from the community. The Board refused to set aside this election because in its opinion the employees would not reasonably construe these statements to mean that the employer would move if the union were selected. It found that the partisan nature of the statements and the possible exaggeration of the facts by the employer could be evaluated by the employees as campaign rhetoric, especially since the circumstances of the plant shutdowns and removals discussed were common knowledge in the local community.[77] The third case[78] also arose from the employer's efforts to rebut union claims that it could provide job security for employees. The employer, in a series of preelection bulletins, had stated that the selection of a union did not save jobs when certain unionized employers were forced to shut down, or when employees were permanently replaced during strikes. The Board noted that although the employer engaged in an aggressive campaign against the union, its statements were factual in character and relevant to the election issues. While its strong antiunion assertions were not limited merely to answering prounion propaganda, the employees could evaluate the statements as partisan electioneering. The Board further found that employees could not reasonably conclude that the selection of the union was necessarily an act of futility, since the employer in one bulletin unequivocally stated that he would recognize the union if it won, a statement which the employer buttressed by pointing out that in prior years he had entered into collective-bargaining agreements with a union. Considering all the statements in context, the Board concluded that the employer's remarks did not exceed the bounds of fair comment and impair the employees' exercise of free choice.[79]

Threats of adverse economic consequences as well as appeals to racism were alleged as a basis for objections to the election in the *Universal Manufacturing Corp.* case.[80] There, the Board was called upon to evaluate the impact of antiunion election campaign propaganda originating with community groups which injected themselves

[77] Members Fanning and Jenkins for the majority. Member Brown, dissenting, would find that the nature of the employer's comments created and intensified a fear among the employees that job security could not be maintained if the union won the election, thus creating an atmosphere in which an uncoerced vote could not be cast. In his view, employee knowledge of the other plant removals would only heighten the employees' fear of unemployment which the employer sought to impress on them.

[78] *Coors Porcelain Co*, 158 NLRB No. 109.

[79] Members Fanning and Zagoria for the majority. Member Brown, dissenting, was of the view that the employer's "equating of union representation with job insecurity" was a theme so repeatedly emphasized as to constitute "a campaign geared to inflaming fears of strike activity and job loss" and created an atmosphere in which an uncoerced vote could not be cast.

[80] 156 NLRB 1459.

into the campaign. The community members and groups, not shown to be acting as agents of the employer, were responsible for newspaper editorials, advertisements, and handbills containing appeals to racist sentiment, charges of Communist control over unions and the civil rights movement, and warnings of economic disaster to the community in the event of unionization of the plant. Applying its established standards [81] that racial propaganda will not be tolerated unless the statements are "truthful, temperate, and germane to a party's position," and do not "deliberately seek to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals," the Board found that permissible bounds had been exceeded by handbills, cartoons, and newspaper editorials concerning actions and attitudes of union leaders and supporters. The matters commented on were, at best, irrelevant to the campaign and inflammatory in nature and intent. In some instances the handbills were distributed by methods which also established that "the sponsoring parties intended, not to educate or inform the employees about an issue germane to the election, but to prompt them to vote against the union 'on racial grounds alone.' "

The newspaper editorials, full-page advertisements, and handbills reiterated the themes that success of the union might cause the plant to close and would squelch any chance for industrial expansion in the area, thereby impairing employment opportunities and causing higher taxes, and in general could spell out economic hardship for employees, their families, and neighbors. The newspaper communications also contained threats of blacklisting, along with statements which linked unions, civil rights, and communism as if they were aspects of a single pernicious entity, implying that union dues would end up in Communist Party coffers. The Board found that "By appealing to the employees' sentiments as civic minded individuals, injecting the fear of personal economic loss, and playing on racial prejudice, the full-page ads, the editorials, the cartoon, and the handbill were calculated to convince the employees that a vote for the Union meant the betrayal of the community's best interests. Faced with pressures of this sort, the employees in our opinion were inhibited from freely exercising their choice in the election." The election was therefore set aside.

b. Employer Talks to Employee Groups

In determining whether preelection propaganda has interfered with the holding of a free election, the Board looks not only to the content of the propaganda but also at the circumstances under which it was disseminated. One means of dissemination which may overstep per-

[81] *Sewell Manufacturing Co.*, 138 NLRB 66, Twenty-eighth Annual Report (1963), pp. 58–59.

missible bounds is employer talks to groups of employees brought together in some "locus of final authority in the plant," [82] such as a supervisor's office, under circumstances where statements made may be expected to have greater impact. In one case,[83] decided during the year, the Board overruled an objection to an election based upon the fact that the employer had held a series of meetings in the plant cafeteria attended by groups of from 10 to 14 employees to propagandize against union representation. The meetings, all held more than 24 hours before the election, were addressed by the company president and its attorney with comments limited to legitimate campaign propaganda. The Board noted that the plant cafeteria had been used for other employee meetings and activities in the past and that about 90 percent of the 400 unit employees, eligible and ineligible, were at different times called to the meetings in question. Under these circumstances, it found "insufficient basis for concluding that the Employer's action in holding group meetings constituted an isolation of a few from among the many at a locus of managerial authority in order to create an aura of special treatment to individuals, as distinguished from employees as a whole, so as to bring . . . [that] conduct within the prohibition of the *General Shoe* doctrine."

Another limitation upon the circumstances under which propaganda is disseminated is the *Peerless Plywood* [84] rule prohibiting either party from making election speeches on company time to massed assemblies of employees within 24 hours before the election, even though such speeches may not be otherwise objectionable. Applying that rule in one case [85] to the circumstances surrounding the union's use of sound amplifiers mounted on a car top to broadcast voting slogan appeals to employees entering and leaving the plant at a change of shift on the day preceeding the election, the Board concluded no violation of the rule had occurred and declined to set aside the election. The slogan appeals to vote for the union, interspersed with music, lasted for only about an hour and reached most of the employees as they were approaching or leaving the plant, or while punching the timeclock. Although it was assumed some employees heard the appeals at their work stations, that effect was inadvertent and incidental to the union's intent to reach the employees outside the plant at the shift change. The Board concluded that, under these circumstances, it was "clear that the

[82] *General Shoe Corp.*, 97 NLRB 499.
[83] *Dempster Brothers, Inc.*, 154 NLRB 688
[84] *Peerless Plywood Co*, 107 NLRB 427, Nineteenth Annual Report (1954), p. 65.
[85] *Crown Paper Board Co.*, 158 NLRB No. 55.

sound car broadcasts in the instant case were not made to a 'massed assembly' of employees on 'company time.' " [86]

c. Discharge of Supervisor

Although many actions which are objectionable and grounds for setting aside an election, under the strict standards by which election conduct is judged, do not amount to violations of the Act, the Board views conduct violative of section 8(a)(1) as conduct which, *a fortiori*, will interfere with an election.[87] This view was again stated in a case [88] where the Board found the employer had violated section 8(a)(1) by discharging a supervisor for appearing as a union witness at a Board hearing on a petition for an election, and thereby "demonstrated graphically to rank-and-file employees the extreme measures to which the Employer would resort in order to thwart employees in their desire to join or assist a labor organization." In setting aside the election, the Board emphasized that it "has consistently held that conduct of this nature which is violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with free choice in an election."

[86] Chairman McCulloch and Members Fanning and Jenkins for the majority. Member Brown, dissenting, would set aside the election on the ground that the use of the sound truck violated the *Peerless Plywood* rule, as found by the regional director Member Zagoria, dissenting, was of the view that the employees, grouped as they were at their place of work, were an assembly of employees, the voter slogans were the equivalent of a speech, and the voters were therefore influenced within the intendment and prohibition of *Peerless Plywood.*

[87] *Dal-Tex Optical Co.*, 137 NLRB 1782, Twenty-eighth Annual Report (1963), pp. 59–60.

[88] *Leas & McVitty*, 155 NLRB 389.

VI

Unfair Labor Practices

The Board is empowered under section 10(a) of 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 person 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 1966 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 engaging in 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. Limitations Upon Communication

The Board during the year reasserted its view that an employer and a union violate section 8(a)(1) and 8(b)(1)(A), respectively, by maintaining contractual provisions setting forth permitted bulletin board uses and literature distribution limitations in such a manner as to effectively preclude the distribution of literature in opposition to

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

the incumbent union or in favor of rival unions.[2] In explaining the reasons for its decision, the Board emphasized the Act's command that it "protect the employees' statutory right at appropriate times to review and reconsider their former selection of a union as their collective-bargaining representative, either by replacing it with another union or by completely abandoning collective bargaining." While recognizing the union's authority to make decisive commitments on the employees' behalf, the Board held that the contract clause in issue constituted an effort to debar employees from exercising their fundamental rights by proscribing the use of customary and vital channels of communication. Being unmitigated by any persuasive countervailing considerations justifying their imposition, the limitations essentially benefited the union *qua* union, to the detriment of the employees it represented.

2. Discharges for Engaging in Protected Activity

The rights guaranteed 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 report period the Board had occasion to determine whether particular instances of employee activity were "protected" from employer interference by section 8(a)(1). Two of such cases involved the refusals of unrepresented employees to cross a lawful picket line established at their employer's plant by represented employees striking in support of economic demands. In the first case,[3] the Board held the employer violated section 8(a)(1) by its discharge of an unrepresented employee when he refused to cross the picket line of his fellow employees to perform his regular work, and by later refusing to reinstate him for the same reason. The Board emphasized that the employee was engaged in protected concerted activity as a "sympathetic" striker when he honored the picket line, since he thereby aligned himself with the union and assisted it. It was found immaterial that he was not directly involved in the dispute giving rise to the strike, since, in the Board's view, he had a legitimate interest in its successful prosecution because of the reciprocal effect it might have upon his own conditions of employment.

In the second case,[4] the Board made clear that the guarantees of section 7 are no less applicable where the work to be done behind the

[2] *General Motors Corp*, 158 NLRB No. 149. The Board adhered to its view notwithstanding the denial of enforcement of orders based on similar findings in prior decisions. See *General Motors Corp.* v. *N L R.B.*, 345 F. 2d 516 (C.A.6), Thirtieth Annual Report (1965), pp. 131–132.

[3] *Canada Dry Corp.*, 154 NLRB 1763.

[4] *Cooper Thermometer Co*, 154 NLRB 502.

picket line is not the objecting employee's usual work but that of a striker. There a clerical employee willing to perform her regular work in the office building outside the picket line was discharged and denied reinstatement after the strike because she refused to obey the employer's instruction to cross the picket line to perform struck work in the production facility across the street. The Board found the refusal protected because it constituted assistance to the striking union and was "in a broad, but very real sense directed to mutual aid or protection," wherefore the discharge was a violation of section 8(a)(1). In rejecting the contention that the employee was not exercising a protected right because she did not interpose an absolute objection to performing struck work but sought to schedule her own time of crossing, the Board assessed the specific refusal for which the employee was discharged in the light of whether she had a protected right to refuse to cross the picket line at the particular time she did. It found that her conduct was not ambiguous but that she declined to cross the picket line to do the work of her fellow employees. The Board concluded that the focal point of inquiry "must of course be the nature of the activity itself rather than the employee's motives for engaging in the activity," noting also that, in the context of the case, the employer had no overriding business interest that would justify removal of her normal protection against discharge.[5]

In another case,[6] a restaurant owner discharged two waitresses who, although crossing a union's picket line protesting substandard working conditions to work their regular shifts, joined the nonemployee pickets on the picket line while off duty but still in their waitresses uniforms. The Board found their participation in the picketing was designed to secure customer assistance in improving working conditions and was therefore protected concerted activity. Although finding the discharges were in violation of section 8(a) (3) and (1), the Board declined to discuss what legitimate measures, short of discharge, an employer may take when faced with picketing by employees who continue to perform their regular duties.

The *San Juan Lumber Co.* case [7] involved the question of the protection afforded a strike by employees to protest their employer's recurrent practice of issuing them paychecks when his bank account contained insufficent funds to cover them. The contract in effect contained a grievance procedure which deferred the exercise of the right to strike until disputes relating to the operation of the agreement or its provisions had been taken through the grievance procedure. Finding

[5] *N.L.R.B.* v. *Rockaway News Supply Co*, 197 F. 2d 111 (1952), affd. 345 U.S. 71 (1953), and *Redwing Carriers*, 137 NLRB 1545, distinguished.

[6] *Edir, Inc., d/b/a Wolfie's*, 159 NLRB No. 72.

[7] 154 NLRB 1153.

that the dispute was not one related to the operation of any contractual provision since none related to the time, manner, or method of making wage payments, the Board held the employer's action in discharging the employees was in violation of section 8(a) (3) and (1), since the protection accorded the employees' strike action by the Act was not forfeited by the existence of the no-strike clause. However, even assuming the applicability of the grievance procedure, the Board viewed the negotiations over prior instances of dishonored paychecks, resulting in the employer's commitment to correct the situation, as having exhausted the grievance procedure, thereby leaving the employees free to strike. In any event, the Board concluded, the employer's "failure to issue paychecks covered by sufficient funds was a material breach of the Respondent's basic and fundamental obligation to pay agreed-upon wages when due, of a character sufficient to excuse the employees' resort to strike action in disregard of the contractual grievance and no-strike provisions."

Other cases in which the Board found employee protest activity protected include one [8] in which two employees filed claims with a State commission to obtain the payment of wages they believed to be due them under the contract with their employer. In finding the activity protected and the discharges violative of section 8(a) (1), the Board noted that the wage claims were filed after the employees as a group had discussed their belief that additional wages were due them. Also, although each claim was individual and separately filed, the other employees had knowledge of the filings. However, the Board further held that, irrespective of prior consultation, each "individual filing must itself be considered a protected activity, since the individual action so taken in implementation of the collective-bargaining agreement is but an extension of the concerted activity that gave rise to that agreement." In another case,[9] holding that "the protection afforded by Section 7 is not strictly confined to activities which are immediately related to the employment relationship or working conditions, but extends to the type of indirectly related activity involved herein," the Board found the employer violated section 8(a) (1) by discharging an employee for circulating a petition concerning a dispute over the manner of operation of a credit union. Although finding it unnecessary to adopt the suggestion that a credit union as a condition of employment would be a mandatory subject of bargaining, the Board concluded that the benefits of credit unions, made available to persons by reason of their employment status, are close enough in kind and character, and bear such a reasonable connection to matters affecting the interests of employees *qua* employees, as to come within

[8] *B & M Excavating*, 155 NLRB 1152.
[9] *G & W Electric Specialty Co.*, 154 NLRB 1136.

the general reach of the statutorily protected mutual aid and protection.[10]

3. Other Forms of Interference

The legality of employer requests to their employees to see copies of statements given by the employees to Board agents investigating charges against the employer were again [11] considered by the Board in several cases. Among these was *Braswell Motor Freight* [12] where the Board again emphasized that such requests violate section 8(a)(1) because they interfere with the Board's efforts to secure vindication of employees' statutory rights in that they necessarily exert an inhibitory effect on an employee's willingness to make such statements and to otherwise cooperate with Board agents.[13]

Two other cases considered by the Board involved situations where employers held out benefits to the employees and then, for the purpose of discrediting the union involved and discouraging membership in it, sought to shift to the union the onus for not instituting them. In the first case,[14] the employer was found to have violated section 8(a)(1) by conditioning the grant of a wage increase and fringe benefits upon the union's waiving its right to file objections or charges with the Board asserting that such actions constituted illegal unilateral changes in conditions of employment. The employer directed the employees' attention to the union burden in the matter by sending each employee a copy of its letter to the union seeking the waiver, before the union had opportunity to reply. The letter to the employees asserted that if the waiver were not given the employees would be unfairly denied these benefits while election questions were pending. In the other case,[15] the employer announced wage increases the day after the union requested recognition on the basis of authorization cards executed by all unit employees. However, although the increases were not conditioned upon the employees' rejection of the union, the employer informed the employees that it was prevented from putting the benefits into effect because of the union campaign. The Board con-

[10] Chairman McCulloch and Members Fanning and Zagoria for the majority. Member Jenkins, dissenting on this issue, would find the activity insufficiently related to the employment relationship between employers and employees to bring it within the protection of the Act.

[11] See, e.g., Twenty-seventh Annual Report (1962), pp 98–99; Twenty-ninth Annual Report (1964), pp 66–67.

[12] 156 NLRB 671.

[13] The Board expressed its respectful disagreement with the decision to the contrary by the Seventh Circuit in *W. T. Grant Co.* v. *N L R B.*, 337 F. 2d 447 (Thirtieth Annual Report (1965), p 131), as well as overruling to the extent inconsistent its decision in *Atlantic & Pacific Tea Co.*, 138 NLRB 325, purporting to distinguish between a request for statements and a demand for them.

[14] *McCormick Longmeadow Stone Co*, 158 NLRB No. 126.

[15] *American Paper & Supply Co., Container Div*, 159 NLRB No. 102.

cluded that the announcement was made to discourage unionization and was, therefore, in violation of section 8(a)(1), since its natural effect was to convince the employees that they did not need the union and would be receiving the wage benefit but for the union.

The *Leeds & Northrup Co.* case [16] presented the novel question of whether the employer violated section 8(a)(1) by furnishing free legal assistance and certain legal costs to those employee union members facing fines levied by their local for crossing its picket line during a strike at the plant. The Board concluded there was no violation on the basis of the particular facts. It pointed out that the employer did not offer its assistance until after the employees had refused to support the strike on their own personal convictions and after they were threatened with union discipline; that the employer did not solicit them to take such action or to resist the union suits to collect the fines; and, finally, that the employer advised the employees that, although he would furnish counsel, they would have to pay their own fines should the union prevail in the court action.

B. Employer Support of Labor Organization

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." [17] The section provides, however, that an employer may permit employees to confer with him during working hours without loss of pay.

1. Forms of Support

Support or assistance to a labor organization may take many forms, and during the year the Board was called upon in several cases to determine whether employer actions were of a form interdicted by section 8(a)(2). In *Penn Cork & Closures*,[18] the Board found the employer violated that section by continuing to deduct union membership dues from employees' wages pursuant to checkoff authorizations executed by individual employees at their own option during the existence of a union-security provision in the contract. The employer continued to withhold dues, notwithstanding the employees' requests to discontinue checkoff, after a majority of the employees had voted in a deauthorization election to withdraw the union's authority to require under its bargaining agreement membership in the union as a condi-

[16] 155 NLRB 1292

[17] Sec. 8(a)(1) contemplates a "labor organization" as defined in sec. 2(5).

[18] 156 NLRB 411.

tion of employment.[19] Rejecting the argument that the continuance of the checkoff was permitted within the valid term of the checkoff authorizations, notwithstanding deauthorization, the Board found that it would be unreasonable to infer that all employees who authorized the checkoff would have done so apart from the existence of the union-security provisions and the necessity of paying union dues, or to infer that these employees would wish to continue their checkoff authorizations even after the union-security provision was inoperative. It therefore held that "when there has been an affirmative deauthorization vote, outstanding checkoff authorizations originally executed while a union-security provision is in effect become vulnerable to revocation regardless of their terms."

In the *Farmbest* case,[20] however, the Board concluded that the employer did not violate section 8(a)(2) by compensating employees serving as union officers for time spent attending monthly meetings with management, since, under the circumstances, this was not the type of assistance proscribed by the Act. The matters discussed at the meetings were of importance not solely to the union or employees. The employer used the meetings as a forum to present its future plans and discuss daily production problems and procedures and, inasmuch as the meetings were held on nonworking time as a convenience to the employer in order to preserve the continuity of production, the minimal character of the compensation involved did not constitute exercise of control over the union.

In the same case the Board also held that although the employer violated section 8(a)(3) by discharging an employee for insisting upon the employer's strict conformance to contract terms, it did not thereby also violate 8(a)(2), as there was no showing that the union sought the discharge, or that the dischargee's activities were detrimental to the union. As regards the latter point, the Board observed that enforcement of the contract provisions which the union had bargained to obtain could only benefit the employees the union represented.

The applicability of the Board's *Midwest Piping* doctrine,[21] under which an employer renders unlawful assistance by recognizing one union while the claim to representative status of another union raises a real question of representation, was considered by the Board in a case [22] where two employer members of a multiemployer association recognized a union as representative of certain snackbar employees not

[19] Sec. 9(e)(1) provides, "Upon filing with the Board, by 30 percentum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer."

[20] *Farmbest, Inc.*, 154 NLRB 1421.

[21] 63 NLRB 1060 (1945).

[22] *Boy's Market, Inc.*, 156 NLRB 105.

previously represented or included in the multiemployer unit. In holding that the incumbent union's claim to representation of the employees did not "give rise to a genuine question concerning representation," the Board noted that its claim rested essentially upon the multiemployer contract and was a claim to represent all snackbar employees on a multiemployer basis. The Board found that the claim to represent the snackbar employees of these two employers in a less than multiemployer associationwide unit was not asserted as a separate independent claim, nor did the individual employers understand it to be such. It concluded that the multiemployer unit claim, unsupported by an adequate showing of authorization cards from the employees, could not preclude the individual employer's extension of recognition to the rival union in multistore units where the majority status of the union had been established upon the basis of reliable card checks. The Board therefore held the employers were under no legal obligation to withhold recognition once the rival union had established its majority status, and the extension of recognition was not in violation of section 8(a) (2) and (1) of the Act.

In another aspect of the *Farmbest* case,[23] the Board found that by entering into and maintaining a contract clause providing an "automatic termination of policies, benefits, and provisions" in the event of a change of bargaining representative the employer assisted the union in violation of section 8(a) (2) and (1), and the union attempted to cause the employer to discriminate against its employees in violation of section 8(b) (2) and (1)(A). The Board held that there was no necessity for interpretation of the provision's meaning, as the evidence with respect to its inclusion required a finding that the choice of terms was intentional, and the clause was calculated to lead employees to believe that any change in their current bargaining representative would be followed by wholesale, invidious changes, rather than by such changes as nondiscriminatory business judgment might dictate. In the view of the Board, under these circumstances the clause constituted a patent impediment to a free exercise of the rights guaranteed by section 7.

C. 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.[24]

[23] *Supra*, footnote 20.

[24] 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. Bargaining Lockouts

In several cases decided during the year, the Board had occasion to consider the applicability to particular situations of the decisions of the United States Supreme Court in the *American Ship Building* and *Brown* cases,[25] which restated the general guidelines applicable to lockouts, including those occurring in the context of multiemployer bargaining. In *American Stores*,[26] upon reconsideration of its earlier decision in the light of *American Ship Building*, after remand from the Tenth Circuit for that purpose, the Board concluded that "[t]here is nothing in the *American Ship Building* decision to suggest that the Supreme Court viewed the lockout as a legitimate bargaining weapon against unfair labor practice strikers or as permissible in support of unlawful bargaining demands." It therefore reaffirmed its holding that the employer had violated section 8(a) (3) and (1) by locking out, and subsequently refusing to reinstate upon their unconditional request, employees who had then remained out on strike because of a breakdown in bargaining negotiation occasioned by the employer's unlawful insistence that bargaining be limited to exclude certain mandatory and proper subjects for bargaining. As the employer conditioned reinstatement upon the union's signing a contract, and thereby acquiesing in the unlawful exclusion of bargainable matters, the Board found "the lockout or refusal to reinstate was not for a purpose of the kind held lawful in the *American Ship Building* case."

In applying the guidelines of the Supreme Court decisions to multiemployer bargaining situations, the Board considered one case[27] in which four employer members of an association, through which they and two other employers bargained jointly with two unions, locked out their employees when the unions struck the other two employers in support of bargaining demands. In holding the employers' did not thereby violate section 8(a) (3) and (1), the Board found it unnecessary to decide whether the association "existed, functioned, and was accepted by the Unions as a formal multiemployer bargaining unit." Viewing the situation as one where two or more employers bargain jointly with a union, an impasse in negotiations, is reached over a mandatory subject of bargaining, and the union strikes only some of the employers engaged in the joint bargaining, the Board found the lockout clearly lacked discriminatory motivation, while serving a "significant employer interest." It therefore concluded that whether the lockout was "viewed as a direct response to the Unions' strike

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[25] *American Ship Building Co.* v. *N L R B.*, 380 U.S. 300, and *N.L.R.B.* v. *Brown Food Store*, 380 U S. 278, Thirtieth Annual Report (1965), pp. 119–120.

[26] *American Stores Packing Co*, 158 NLRB No. 46.

[27] *Weyerhaeuser Co*, 155 NLRB 921.

against the other two members of the Association, in order to preserve the integrity of the Association, or as economic action taken to further their own bargaining position," the action was lawful under the Supreme Court decisions.[28]

In the *Acme Markets* case [29] the Board ruled that under the circumstances a lockout of nonunit employees was lawful as a multiemployer unit defensive measure. There, in response to the union's whipsaw strike against the respondent member's unionized retail food stores forming part of the multiemployer bargaining unit, the other members of the bargaining unit locked out, and the respondent closed its 28 nonunit stores as well. The Board reasoned that if the respondent member was not permitted to close the nonunit stores in the same competitive area as closed unit stores of other employers, the economic advantage would have passed to it, and the nonstruck employers in the association would thereby have been deterred from joining the defensive lockout as an equalizing measure, giving the whipsaw strike "an almost inescapable prospect of success." Since the lockout of nonunit employees was necessary to equalize the economic position of the struck and the nonstruck employers in this situation, it served a legitimate business end by protecting the integrity of the multiemployer unit. Moreover, the Board noted, there was no specific evidence of hostile motivation on the part of the respondent, who reimbursed the locked out nonunit employees for their losses.[30]

In another case [31] involving application of the lockout principles to multiemployer bargaining interests, the Board found an employer violated section 8(a)(3) in laying off employee-members of a union engaged in a bargaining demands strike against a multiemployer association of which the employer was not a member, but whose contracts it adhered to when performing work within the territorial jurisdiction of the striking union. The employer's contention that its interest in the outcome of the contract negotiations, albeit collateral and indirect, was an adequate legitimate business interest within the meaning of *American Ship Building* to justify its selective layoff, was rejected. Noting that the employer was not concerned with advancing a bargaining position of its own vis-a-vis the striking local, the Board found that by the selective layoffs the employer was seeking to intrude upon a

[28] Chairman McCulloch and Members Fanning, Brown, Jenkins, and Zagoria. Member Brown joined in dismissal of the complaint on the basis of affirmance of the trial examiner's finding that a multiemployer unit had been established and lockout was a defensive one, permitted to preserve the integrity of the bargaining unit from a whipsaw strike.

[29] 156 NLRB 1452.

[30] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria. Member Brown, concurring in the dismissal of the complaint, was of the view that there was no meaningful discrimination since the closing of the nonunit stores while continuing to pay the employees' wages did not constitute a lockout under the circumstances.

[31] *David Friedland Painting Co*, 158 NLRB No. 59.

labor dispute not its own, involving a union other than the one with which it was in an untroubled relationship.

D. 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 and conditions of employment with the representative selected by a majority of the employees in an appropriate unit.

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.[32]

1. Demands for Initial Recognition

The Board's long-established policy that an employer may refuse to bargain with a union demanding initial recognition and insist upon an election as proof of the union's majority status, unless its refusal and insistence were not based upon a good-faith doubt of the union's majority, was reaffirmed by the Board in a number of cases in which it further defined the burden of establishing that the requisite doubt is not held. In the *John P. Serpa* case,[33] the Board emphasized that—

> . . . Where the General Counsel seeks to establish a violation of Section 8(a)(5) on the basis of a card showing, he has the burden of proving not only that a majority of employees in the appropriate unit signed cards designating the union as bargaining representative, but also that the employer in bad faith declined to recognize and bargain with the union. This is usually based on evidence indicating that the respondent has completely rejected the collective-bargaining principle or seeks merely to gain time within which to undermine the union and dissipate its majority.

In that case the Board found that the union at the time of its demand for recognition placed five cards, constituting a majority of the unit, in front of the employer for his inspection in such a way that he probably saw the names and signatures on the cards. The employer requested time to consult his attorney, to which the union agreed, but the employer did not thereafter contact the union although he had promised to do so. The Board concluded that these facts were insuffi-

[32] 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."

[33] 155 NLRB 99.

cient to establish the employer's bad faith in refusing to recognize and bargain with the union and, therefore, dismissed the complaint.

In other cases applying this standard, however, the Board emphasized that "an employer's bad faith may also be demonstrated by a course of conduct which does not constitute an independent unfair labor practice." [34] In the *Jem* case,[35] the Board found that the employer had checked the cards submitted by the union, was satisfied that they established the union's majority status, and, in reliance upon that card check, commenced bargaining negotiations. In finding that the employer's subsequent refusal to bargain with the union was in violation of section 8(a)(5), the Board noted that under these circumstances the employer had the burden of bringing forth evidence as to why the card check was erroneous or why on other grounds it in good faith believed recognition was mistakenly granted. It emphasized that a *prima facie* case of bad faith "cannot be rebuted simply by asserting that authorization cards are unreliable as proof of employee desires." [36]

Another case in which the Board found the employer's bad faith had been established was *Lake Butler Apparel Co.*,[37] where the Board found the employer's "open gauged campaign" of flagrant 8(a)(1) conduct was calculated to undermine the union's position with the employees so as to dissipate its majority status. Against the background of these violations, the Board held that the "mere fact that the Respondent, after notice of the filing of the Union's representation petition, agreed to go to an election, is hardly sufficient to overcome the clear showing of its bad-faith motivation." In another case,[38] where the employer denied recognition while rejecting the union's proposal for submission of the cards for an impartial determination of its majority status, the Board dismissed the complaint. There the claiming union had participated in an election among the employees within the preceding 12 months which had ended in a tie vote and no certification. Although the employer did not question the union's claimed possession of authorization cards from the majority of the unit employees, but declined recognition on the ground that it was not obligated to bargain in view of the Board election held within the preceding 12-month period, the Board did not pass upon that affirmative defense but concluded that the General Counsel's proof, standing alone, would not provide an independent basis for finding that the denial of recognition was unlawful.

[34] *Jem Mfg Co.*, 156 NLRB 643.
[35] *Ibid.*
[36] See also *Drug King*, 157 NLRB 343.
[37] 158 NLRB No. 85.
[38] *Strydel Incorporated*, 156 NLRB 1185.

The circumstances under which the employer can insist upon a Board-conducted election were also considered by the Board in the *Aaron Brothers* case[39] where it restated the general rule as follows:

> While an employer's right to a Board election is not absolute, it has long been established Board policy that an employer may refuse to bargain and insist upon such an election as proof of a union's majority unless its refusal and insistence were not made with a good-faith doubt of the union's majority. An election by secret ballot is normally a more satisfactory means of determining employees' wishes, although authorization cards signed by a majority may also evidence their desires. Absent an affirmative showing of bad faith, an employer, presented with a majority card showing and a bargaining request, will not be held to have violated his bargaining obligation under the law simply because he refuses to rely on cards, rather than an election, as the method of determining the union's majority.

In that case, the Board concluded that the employer's insistence upon an election to establish the union's majority had not been shown to be improperly motivated. The employer engaged in no independent unfair labor practice which, although noted by the Board as not being dispositive of its bad faith, was considered by the Board where the employer had answered the union's demand for initial recognition by urging a Board election and requesting the union to reinstate the election petition withdrawn when the unfair labor practice charges were filed. The Board dismissed the complaint in its entirety.[40]

Even as a finding of bad faith may be supported by actions not constituting an independent unfair labor practice, so also Board decisions have established that not all related unfair labor practices support a finding of bad faith in the refusal to recognize and bargain with a union making an initial demand. In *Hammond & Irving*,[41] the union requested recognition upon the basis of authorization cards from a majority in the unit, and, having failed to receive an affirmative response to its request, filed a petition for an election. Although finding that the employer violated section 8(a)(1) by conversations shortly before the election creating the impression of surveillance and constituting unlawful interrogation of employees, the Board concluded that such conduct did not establish the employer's lack of good

[39] 158 NLRB No 108.

[40] Chairman McCulloch and Members Fanning and Brown on the majority opinion. Member Jenkins, concurring, was of the view that the "good-faith doubt" concept was misapplied in the context of this case, but that the test should be whether the employer's refusal was in "bad faith" which "may be established by, among other things, employer conduct displaying a rejection of the collective-bargaining principle, a purpose to thwart or interfere with the employees' free choice of their bargaining representative, or a desire to gain time within which to undermine the union or dissipate the majority, or by independent knowledge of the employer that the union has a majority."

Member Zagoria, also concurring, would not find unlawful "a refusal to recognize a union on the basis of a proffered card showing when the employer insists on an election and does not commit unfair practices."

[41] 154 NLRB 1071.

faith in insisting upon an election and refusing to bargain with the union. The Board noted that in considering whether a refusal to bargain by an employer constitutes a rejection of the collective-bargaining principle, or is motivated by a desire to gain time within which to undermine the union and dissipate its majority, the determination must be made upon the basis of "all the surrounding circumstances as well as direct evidence of motivation." Finding that the illegal conversations involved only 6 employees out of a 110-employee unit, the Board concluded that the interrogation, while unlawful, was not so flagrant that it must necessarily have had the object of destroying the union support. It therefore concluded that, upon the facts of the case, the employer's misconduct did not demonstrate bad faith in refusing to bargain and found that no violation of section 8(a)(5) had occurred.

A similar result was reached in another case [42] where the violations of section 8(a)(1) consisted of a supervisor's threats and promises of benefits to two employees in the unit. Noting the employer's prompt agreement to an election upon receiving the union's request for recognition, the absence of other unfair practices, and the fact that the supervisor had engaged in the conversations contrary to the prior instructions of the employer, the Board concluded that the circumstances would not warrant a finding of bad faith upon the employer's part in seeking to resolve the representation claim by an election. Although dismissing the 8(a)(5) violation allegation, the Board found that the 8(a)(1) violations had interfered with the election and, therefore, set it aside and directed a new one.

2. Validity of Authorization Card Designations

A significant number of cases decided by the Board in the course of the report year required consideration of the validity of authorization cards designating the union as representative of employees for bargaining purposes. These issues came before the Board when the cards were offered to establish the majority status of the union in cases involving refusals to recognize and bargain with it. The cases involved issues as to both the adequacy of the proof of the designation and the circumstances impeaching the validity of a designation appearing proper upon its face. An issue of the former type was presented in *Northwest Engineering Co.*,[43] where the employer contended that the General Counsel was obligated to submit individualized proof of each and every card separately, notwithstanding the employer's prior examination of the cards and specific objections as to only a small

[42] *Harvard Coated Products Co.*, 156 NLRB 162.
[43] 158 NLRB No. 48.

number. In that case, pursuant to an agreement designed to facilitate the hearing, the General Counsel had furnished the respondent the 464 authorization cards to be introduced into evidence, in order that it might examine them and identify which, if any, signatures or cards it found questionable. After examination the respondent identified 24 cards it viewed as questionable and, although referring to inadequacies in other cards, did not identify any others it wished to challenge. At the hearing the General Counsel introduced specific testimony to establish the cards individually challenged, but, as to the others, relied on the testimony of union officials who testified as to the general manner in which the union had acquired the signed authorization cards and identified the cards as having been thus obtained. In rejecting the employer's contention concerning the method of proof required, the Board concluded that the General Counsel had satisfied his burden of proving the authenticity of the cards upon which the finding of majority was based. In its view the employer's prehearing examination of the cards, and its failure thereafter to raise doubts about cards other than those questioned, "constituted an explicit acknowledgment that its check had disclosed that the signatures on such others were authentic." It therefore construed this action as being in the nature of an extrajudicial admission of the validity of the cards, and relied on that admission in making final disposition of the majority issue. In another case [44] involving the question of proof of cards signed only with an "X," in which the employees signing the cards were not available to testify as to the circumstances of affixing and marking, the Board viewed the cards as adequately established when the persons soliciting the cards testified that each was marked with an "X" in his presence after the employee had been told that the cards were "for the union."

A question of the continued validity of authorization cards designating an AFL–CIO affiliate local, when the local union officials had reestablished it as an independent union after revocation of its charter by the international with which it was affiliated, was considered by the Board in *Nelson Chevrolet.*[45] The Board found the cards could not be used to establish the representative status of the independent local insofar as the employees signing the cards "were not afforded an opportunity to express their preference as to whether they wished to have the local continue to act as their representative despite the substantial change wrought by the charter revocation." No adequate notice had been given the employees of the meeting at which the decision was made to reconstitute the local into an independent unaffiliated union,

[44] *Azalea Meats,* 159 NLRB No. 55.

[45] *Nelson Chevrolet Co,* 156 NLRB 829; see also *Gateway Chevrolet Sales,* 156 NLRB 856.

and the Board found that, in view of the substantial interaction between the local and the international union, the loss of affiliation would have a "significant effect on the expectations reasonably harbored" by the employees at the time they signed the cards. Under these circumstances, a reaffirmation of their intent subsequent to the reaffiliation was deemed necessary by the Board.

The Board's view that proof of objective facts that an employee signed a written authorization to the union to represent him for purposes of bargaining or an election is the best evidence of an employee's intent, and may not to be impeached by testimony concerning subjective intent or reservations in signing the card, was restated by the Board in the *Merrill Axle* case.[46] It rejected the employer's contention that certain cards were invalid because the employees would not have signed them except for misrepresentation by the union that a majority of the others had so signed. The Board emphasized that the testimony of the signers as to their subjective state of mind at the time of signing does not overcome the effect of the overt act of signing, and "there appears no reason even for receiving any testimony concerning such" subjective intent.

The effect of an employee's revocation of an authorization previously given the union was considered by the Board in one case[47] in which it concluded the revocation should not be given "legal effect because of the coercive atmosphere in which it took place." Although the revocation had been completed as to form, the Board concluded that since the letter effecting the revocation was submitted in the midst of the employer's "unlawful and coercive intimidating conduct," it could not be considered as truly reflecting the employee's attitude toward the union. The employee's card was, therefore, considered valid for purposes of supporting the union's majority status.

3. Defenses to the Bargaining Obligation

Among the cases decided by the Board involving the circumstances under which recognition must be extended to an employee representative were several presenting issues as to the duration of the obligation once established. Another concerned the employer's asserted defense that a Board election within the preceding 12-month period relieved it of the obligation to recognize the union upon its demand supported by authorization cards from a majority in the unit. Also decided were cases in which the Board was called upon to determine the effect of a history of bargaining upon the original unit certification.

[46] *Merrill Axle & Wheel Service,* 158 NLRB No 107.
[47] *Werstein's Uniform Shirt Co*, 157 NLRB 856.

The principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed,"[48] was applied by the Board in several cases to determine the duration of an employer's obligation to recognize a representative of his employees. In the *MacDonald case*,[49] the Board concluded that bargaining for a period of 6 months following an agreement settling unfair labor practice charges was not a reasonable time under the circumstances, notwithstanding its finding that the employer had bargained in good faith during that 6-month period and had withdrawn recognition only upon receipt of a petition signed by a majority of the employees in the unit stating that they did not want the union to represent them as their bargaining agent. The Board noted that negotiations had been fruitful, that no impasse had been reached, and that the parties had reduced an agreement to writing which the union was prepared to submit to the employees for their approval. Under these circumstances the Board found that the refusal to continue negotiations was in violation of section 8(a)(5) notwithstanding the employee petition, especially since the petition was submitted at a time when an election among the employees would not have been warranted.

In two other cases where the employers had signed initial recognition agreements the Board found the reasonable period principle applicable notwithstanding subsequent employee dissatisfaction with the union. In *Keller Plastics Eastern*,[50] the employer had properly extended recognition to the union as a statutory bargaining representative of its employees, but at the time of the execution of a contract 3 weeks later the union no longer retained the support of a majority of the employees in the unit. The Board found that the employer had not been the cause of the union's loss of majority and was unaware of the loss at the time it executed the contract. The Board concluded that with respect to a bargaining relationship established as a result of voluntary recognition of a bargaining representative, the parties must be afforded a reasonable time to bargain and to execute the contract resulting from such bargaining, as they are afforded in situations involving certifications, Board orders, and settlement agreements. It therefore held that the 3-week period following voluntary recognition was a reasonable period and that the union had remained the statutory bargaining representative at the time of execution of the contract. Therefore the contract was legal notwithstanding the lack of majority of the union at the time of its execution and the inclusion of a union-security provision in it. Voluntary recognition of a union whose

[48] *Franks Bros. Co.* v. *N.L.R.B.*, 321 U.S. 702, 705
[49] *N. J. MacDonald & Sons*, 155 NLRB 67.
[50] 157 NLRB 583.

majority status was established upon a check of authorization cards was also involved in another case [51] in which the primary issue was whether the subsequent filing of a decertification petition was sufficient grounds for the the withdrawal of recognition and refusal to bargain. In concluding that it was not, because the bargaining relationship established between the parties had not been permitted to function for a period of time in which it might have a fair chance to succeed, the Board noted that after only 3 weeks of bargaining the negotiations were suspended by the employer upon the filing of a decertification petition. They were not resumed until its withdrawal the following week, after the employees had reaffirmed their support of the union. But bargaining had barely begun again before the filing of a second decertification petition. This was concededly supported, however, by a showing of interest of less than 50 percent of the unit employees and the Board concluded that under these circumstances the withdrawal of recognition and refusal to bargain because of the filing were in violation of the statute.

Although section 9(c) (3) of the Act precludes the Board from holding an election in any unit where a valid election had been held within the preceding 12 months, the Board in *Conren, Inc.*,[52] held that this limitation upon the Board's authority does not justify an employer's refusal to bargain with a union that establishes its majority by valid authorization cards during that 1-year period. The union's demand had been made some 9 months after it had lost an election among the employees. The Board noted that neither the legislative history nor the plain terms of section 9(c) (3)[53] "manifest any congressional purpose to preclude a union from obtaining recognition either without an election, or within a year after an election, or within a year after an election which it did not win, if it in fact acquires majority status in an appropriate unit." The Board held that in view of the employer's unfair labor practices and its demonstrated absence of good-faith doubt of the union's majority, section 9(c) (3) did not relieve the employer of its obligation to recognize and bargain with the union its demand, and it violated section 8(a) (5) of the Act by its refusal.

In the *Pacific Coast Shipbuilders* case,[54] the Board had occasion to evaluate, for the purpose of assessing employer defenses, the impact of subsequent bargaining history upon a union's certification as bargaining representative. In that case, the petitioning union had been certified in a craft unit of electricians employed by members of a

[51] *Universal Gear Service Corp.*, 157 NLRB 1169.

[52] 156 NLRB 592.

[53] Sec. 9(c) (3) provides in pertinent part "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

[54] *Pacific Coast Shipbuilders Assn.*, 157 NLRB 384.

multiemployer association. For a period of 12 years subsequent to its certification, as well as for a substantial prior period, the union had bargained with the association jointly with eight other craft unions under the auspices of a trades council. When the union's separate request for bargaining with the association apart from the trades council was denied, it filed a petition for a separate craft unit in which it had been previously certified. In view of the many provisions of the master agreements which recognized the individual status of the various craft units, the Board concluded that neither the separate identity of the certification unit nor the union's representative status in that unit had been lost by the history of joint union bargaining. Acordingly, the Board dismissed the petition since the unit petitioned for was covered by the certification and therefore no question concerning representation had been raised. However, considering the petition alternatively as a motion to clarify the certification, the Board concluded that the history of multiunion bargaining had not destroyed the separate certified unit and the petitioning union was entitled to withdraw from the multiunion bargaining and demand separate bargaining with the association in the certified unit as amended to reflect accurately the present composition of the multiemployer group.

However, bargaining history subsequent to certification was found by the Board to have displaced the certification as the basis for the bargaining relationship in another case.[55] There an employer who withdrew recognition from the union as representative of professional employees in a mixed unit of professionals and nonprofessional employees contended that its action was not a violation of the Act. It asserted that the Board's certification of the mixed unit was not binding because made without first affording the professional employees a separate election as required by section 9(b)(1) of the Act.[56] Assuming that the certification, issued in 1951 without determining whether certain employees included in the unit with the professionals were also professionals, was invalid for the reason asserted, the Board concluded that it did not therefore follow that the unit as constituted 14 years later after a lengthy bargaining history was either illegal or inappropriate. The Board found that the parties' entire course of conduct since the certification, including the negotiation of six collective-bargaining contracts without objection to the unit, and many revisions, amendments, and clarifications in classfications modifying the unit composition, clearly evidenced their mutual intent to maintain a bar-

[55] *Intl. Telephone & Telegraph Corp. (ITT Federal Laboratories)*, 159 NLRB No. 145.

[56] Sec. 9(b)(1) provides in pertinent part that " . . the Board shall not (1) decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit. . . ."

gaining relationship founded on consent rather than the Board's certification. Since the mixed unit at the time of the employer's withdrawal of recognition was bottomed upon a consenual arrangement rather than the continued vitality of the certification, the Board viewed the rule of *Leedom* v. *Kyne*[57] inapplicable to justify the employer's withdrawal of recognition because that rule relates only to units established by the Board[58] and does not preclude voluntary recognition of a mixed unit by the parties.[59]

4. Multiemployer and Multiunion Bargaining

Although the Act does not specifically provide for multiemployer bargaining, the Board has long recognized multiemployer units stemming from consensual arrangements. In one case[60] the Board considered the ramifications of multiemployer bargaining relationships where an employer association's members dissolved the association within the year after the union had been certified as representative in the multiemployer unit on the basis of a consent election. The Board held that the agreement and ensuing certification obligated the individual association members to bargain jointly with the union for at least the period of the certification year. The principle relied on by the Board in rejecting the employers' contention that their dissolution of the association destroyed the basis for the unit—that an employer may not withdraw from an agreed-upon form of bargaining during the certification year—is analogous to other established principles of the Board, such as contract-bar and certification-year bargaining obligation, limiting the actions of employers and unions alike during either the term of a certification or of a contract.

It is well established that where an employer has once entered into a multiemployer bargaining relationship, he may effectively withdraw from that arrangement only if he does so at an appropriate time depending upon the contract term and pendency of negotiations, except where the withdrawal is with the consent, expressed or implied, of the union. In several cases decided during the year, the Board was faced with the question of whether a union could likewise withdraw from multiemployer bargaining upon its own initiative. Finding that

[57] 358 U.S. 184, holding that an employer was not obligated to bargain with a union as representative in a mixed unit certified by the Board without affording the professional employees a separate election as provided in sec 9(b)(1)

[58] *Retail Clerks, Local 324 (Vincent Drugs No. 3)*, 144 NLRB 1247, Twenty-ninth Annual Report (1964), p. 51.

[59] Chairman McCulloch and Members Brown and Zagoria for the majority. Members Fanning and Jenkins, dissenting on this point, would find the bargaining relationship to be "bottomed exclusively on the certification which only the Board and not the parties can modify," and that intervening acquiescence in the unit does not preclude the employer from disputing its appropriateness.

[60] *Southwestern Colorado Contractors Assn*, 153 NLRB 1141.

"[i]n principle, there is no basis for different treatment of union and employer withdrawals from multiemployer bargaining units," [61] the Board held the employers were obligated to bargain with unions which withdrew from multiemployer bargaining and then sought to bargain with each of the employers on an individual basis. In each instance [62] the withdrawal notice was both timely and unequivocal and, if given by an employer, would have warranted his withdrawal under clearly established rules. Examining the circumstances under which multiemployer bargaining units are approved, the Board concluded that since the basis for such a unit "is both original and continuing consent by both parties, the Board cannot logically deny the bargaining representative the same opportunity it allows employers of withdrawing from the multiemployer unit by withdrawing its consent to such unit." [63]

In so holding the Board found unpersuasive the contention that to permit union withdrawal under these conditions would permit the union to enhance substantially its bargaining position at the expense of the individual employer. Noting that "the bargaining power of either union or employer is not a criterion used to determine the appropriateness of a bargaining unit," the Board held that "[b]argaining power should not therefore be a test in determining whether a multiemployer unit once created should be retained against the desires of one of the parties." In setting forth its approach to multiemployer bargaining arrangements, the Board stated:

> Important practical considerations demonstrate the wisdom of leaving intact the freedom of the parties involved to form and dissolve, to modify and adapt, multiemployer units. Practices vary from industry to industry, from one section of the country to another, and from time to time even within one industry or one section of the country. No one pattern of bargaining structure has been found best adapted to all situations The benefits that flow from multiemployer bargaining result from the participants' mutual agreement that their individual interests are best served by negotiating within the framework of multiemployer units. We are far from persuaded that our failure to place greater restrictions upon union withdrawals from multiemployer units than are placed upon employer withdrawals will undermine the existence of such units. To the contrary, it appears

[61] *Evening News Assn*, 154 NLRB 1494

[62] See also *Evening News Assn*, 154 NLRB 1482; *Hearst Consolidated Publications*, 156 NLRB 210, and *Adams Furnace Co*, 159 NLRB No. 148. In *Adams Furnace*, a representation case, elections were directed in single-employer units of the employees of members of the former multiemployer unit, upon the union's petitions seeking to establish its majority status on a single-employer-unit basis after having withdrawn from multiemployer bargaining.

[63] *Evening News Assn*, 154 NLRB 1494, 1497. Chairman McCulloch and Members Fanning and Jenkins for the majority. Member Brown, dissenting, would hold that a union is not entitled to fragmentize a multiemployer bargaining unit in the absence of a demonstrable good reason for doing so. In his view, the union's withdrawal changes the "very identity, nature, and composition" of the employer with whom bargaining has been conducted, and such a change should be justified by considerations based upon the respective interests of the employers as a group and the employees as a whole.

more likely that such an intervention by the Board would preclude possible future experimentation with and expansion of such bargaining. These considerations support our conclusion that this is a situation where the experience and judgment of the parties themselves as to the best method of furthering their interest and structuring their bargaining relations in the multiemployer area should continue to be controlling.

In another case,[64] which involved application of the basic principle that a union may designate the personnel to represent it in bargaining negotiations, the Board held that an employer had violated section 8(a)(5) by declining to meet with the designated negotiating committee of the union because it included representatives of other unions whom the union had invited to attend the negotiations for the purpose of participating in the discussion and advising or consulting with it. The advisers and experts whose attendance was the center of the controversy had been selected by the union from its affiliated and international bodies, and included persons from the Industrial Union Department of the AFL–CIO and representatives of unions at plants of the employer other than that involved in the negotiations. Finding that companywide bargaining was not involved in the union's attempt to negotiate through its selected committee, the Board relied on its prior decision in *Standard Oil Co.*[65] in holding that it was immaterial whether the disputed representatives were in fact the representatives of the employees, so long as they had been designated as members of the bargaining committee by the bargaining representative.

5. 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." [66] These are mandatory subjects of bargaining. 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 as a condition of bargaining, or agreement on mandatory matters, constitutes an unlawful refusal to bargain.

The status as a mandatory subject for bargaining of food price changes in a company cafeteria was considered by the Board in the *Westinghouse* case,[67] decided during the report period. The company provided a cafeteria on its premises because there were inadequate dining facilities within a reasonable distance of the plant, and the

[64] *American Radiator & Standard Sanitary Corp.*, 155 NLRB 736.

[65] 137 NLRB 690, enfd. 322 F. 2d 40 (C.A. 6), Twenty-ninth Annual Report (1964), pp. 121–122.

[66] Sec. 8(d) of the Act.

[67] *Westinghouse Electric Corp.*, 156 NLRB 1080.

onsite eating facilities were essential to the employer's ability to attract and hold the necessary complement of employees. The Board found that under the circumstances the employees "are in substance and effect captive customers of the on-site cafeterias," and the cafeterias, even though operated under contract by outside companies, were conditions of employment. The Board therefore concluded that the employer's refusal to bargain on the union's request for bargaining concerning announced price changes was a violation of section 8(a)(5) of the statute. Although thus holding the cafeteria food prices to be a mandatory subject of bargaining, in recognition of the sharp fluctuation of cost invloved rendering it impracticable to require consultation before each change in price, the Board found there would be sufficient compliance with the statutory mandate if the employer "honors a specific union request for bargaining about changes made or to be made." [68]

In a number of other cases issued in the course of the past fiscal year the Board had occasion to define further the circumstances under which bargaining is required over decisions to change the method of operation.[69] In one of these cases,[70] an oil company had transferred the distribution of petroleum products to customers in a certain geographic area from one of its distribution terminals to another. It effected the distribution from the second terminal largely by common carrier contract haulers hired for the purpose rather than utilizing its own trucks and drivers who had formerly serviced the area from the first terminal. In finding that the respondent did not violate the statute by its unilateral transfer of functions and the concurrent utilization of contract haulers rather than employees to perform the work, the Board noted that the decisions were economically motivated and were consistent with the prior established practice of the company which had in the past utilized contract haulers for a significant portion of its work. The Board also noted that during the period when the changes were being made the employer was bargaining with the union, which was aware of the changes, concerning its request for limitation on the use of contract haulers, but no agreement was reached for incorporation into the contract. Since the changes had not resulted in any loss of work or effected any change in the terms and conditions of employment of the unit employees, the Board concluded that under the circumstances the employer had fulfilled its

[68] Chairman McCulloch and Members Fanning and Brown for the majority. Members Jenkins and Zagoria, dissenting, were of the view that bargaining over such matters has the potential for extensive preemption of management and employee time and they are not deserving of the status of mandatory subjects, being "better left to the mercies of the voluntary action of the market place."

[69] See Twenty-eighth Annual Report (1963), pp. 80–81; Thirtieth Annual Report (1965), pp. 72–77.

[70] *American Oil Co.*, 155 NLRB 639.

bargaining obligation concerning the changes. In the *Cities Service* case,[71] however, the Board found the employer had violated the statute when, without prior notification to or bargaining with the union, it entered into a distributorship agreement pursuant to which a new company began servicing many accounts previously serviced by unit employees. Its action, apparently unique in its history of bargaining with the union, resulted in a substantial loss of customary overtime earnings for employees in the unit, therefore constituting a significant detriment to those employees.

In another case in which the Board found that no violation of the statute had occurred,[72] the drivers in the unit certified after the union won an election voluntarily had quit working for the employer when he told them he could not meet their wage demands or pay them more than he was then paying them. After operating on a curtailed basis for a period of time by driving his own trucks, the employer resumed larger operations utilizing independent contract brokers to provide the additional trucks for the hauling work he had contracted. When approached by the union with the request to negotiate for the drivers should he rehire them, the employer discussed the situation with the union and expressed a willingness to deal with it if it organized the brokers or if the former employees obtained trucks of their own to do the hauling. Although noting that the respondent had subcontracted the work before talking to the union, the Board found that under the circumstances its overall conduct and continued willingness to treat with the union satisfied the bargaining requirements of the Statute.

6. Successor Employer's Obligation to Bargain

The advent of a successor employer who altered established terms and conditions of employment formed the issues in several cases in which the Board was called upon to determine the extent of the successor's bargaining obligation with the incumbent union.[73] In the *Overnite* case,[74] the purchaser of a truckline took over, pursuant to a purchase of assets, at a time when the conditions of employment were those established by the provisions of an expired contract with the incumbent representative which were being maintained by the seller during negotiations looking toward a new contract. The purchaser continued to operate the terminals and offered employment to all the employees, which they accepted, but then immediately placed them on the wage rates and conditions of employment established for other

[71] *Cities Service Oil Co.*, 158 NLRB No. 120.
[72] *William Eaborn, d/b/a Eaborn Trucking Service*, 156 NLRB 1370.
[73] See, e.g., *Chemrock Corp*, 151 NLRB 1074, Thirtieth Annual Report (1965), pp. 66–67.
[74] *Overnite Transportation Co*, 157 NLRB 1185.

terminals it operated. Although the employer sometime thereafter recognized and bargained with the union, it refused to undo its unilateral action and restore the preexisting working conditions. In concluding that the employer, having knowledge of the representative status of the union, violated section 8(a)(5) by its unilateral changes, the Board held that the employees were entitled to "the protection and assistance of collective bargaining before the change in corporate ownership is permitted to alter their economic relationship with their employer." To the same effect is a decision in another case [75] where a successor employer also took over a plant as a "going concern" after expiration of the contract between the selling employer and the union. The successor employer retained most of the employees to continue operations. It refused to recognize the union however, and in restaffing the plant also refused to recognize the seniority rights of the employees acquired in the course of their prior employment. The Board concluded that seniority matters are mandatory subjects of bargaining and that "[s]eniority rights acquired by employees are not necessarily annulled or obliterated when the contract expires" but may be bargainable beyond the contract term. Likewise, they "are not vitiated simply by the advent of another employer." It therefore concluded that the employer's unilateral disregard of seniority was in derogation of the incumbent union's representative status, and a violation of section 8(a)(5).[76]

7. Unilateral Changes During Contract Term

Although unilateral modification of working conditions may be permissible under some circumstances where "prior discussion" and "notification and consultation" lay a valid basis for the implementation of proposals after rejection by the union,[77] section 8(d) of the Act prohibits the unilateral modification of terms established by contract during the life of the contract except after a prescribed procedure, and relieves parties of the obligation during that period to discuss any proposed modifications.[78] During the year the Board considered several cases in which unilateral changes were alleged to be midterm modifications in violation of the statutory bargaining obligation, notwith-

[75] *Martin Marietta Corp.*, 159 NLRB No. 59.

[76] Chairman McCulloch and Member Fanning for the majority. Member Zagoria, dissenting on this issue, would find that none of the employees involved were the successor's employees for bargaining purposes.

[77] See *N.L.R.B.* v. *Katz*, 369 U.S. 736, 747.

[78] Sec. 8(d) provides in relevant part as follows: ". . . the duties so imposed [by this section] shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract."

standing the asserted defense that at most only a contract breach had occurred and the contract grievance procedure was the appropriate avenue for interpretation of the contract to determine the employer's right to make the change. In one such case [79] the employer had reduced the wage rates for a number of its employees from that specifically provided in the contract. Although prior to making the reductions the employer had met and bargained with the union concerning them, they concededly were unable to agree. In finding that the case involved "simply a contract modification made unilaterally in midterm over the objection of the Union," thereby establishing a statutory refusal to bargain, the Board rejected the employer's attempts to have the issue treated as a question of contract interpretation for resolution under the grievance procedure. It found the contract provision unambiguous and the wage reductions an unfair labor practice "whether viewed generally as a refusal to bargain or as one established by failure to comply with Section 8(d)." In a second case,[80] the Board reached the same conclusion where the employer unilaterally granted wage increases during the contract term which it contended were authorized by the contract. The Board found "the pertinent contract provisions are plain and unambiguous and they are not reasonably susceptible to the interpretation urged by Respondent." Rejecting as without merit the employer's contention that "it is within the exclusive province of an arbitrator to make such a determination, at least in the first instance," the Board held that as the contract manifestly did not sanction the wage increases, the employer's unilateral action was a "deliberate attempt to modify the contract which gave rise, not to an arbitrable matter of contract interpretation, but to an unfair labor practice."

In the *C & S Industries* case,[81] the employer unilaterally instituted a wage incentive system, notwithstanding a contract provision specifically prohibiting changes in the method of payment without the written consent of the union. In finding the action violative of section 8(a)(5), the Board stated:

> While it is true that a breach of contract is not *ipso facto* an unfair labor practice, it does not follow from this that where given conduct is of a kind otherwise condemned by the Act, it must be ruled out as an unfair labor practice simply because it happens also to be a breach of contract. Of course, the breadth of Section 8(d) is not such as to make any default in a contract obligation an unfair labor practice, for that section, to the extent relevant here, is in terms confined to the "modification" or "termination" of a contract. But there can be little doubt that where an employer unilaterally effects a change which has a continuing impact on a basic term or condition of employment, wages for exam-

[79] *Huttig Sash & Door Co*, 154 NLRB 811.
[80] *Century Papers*, 155 NLRB 358.
[81] 158 NLRB No. 43.

ple, more is involved than just a simple default in a contractual obligation. Such a change manifestly constitutes a "modification" within the meaning of Section 8(d). And if not made in compliance with the requirements of that section, it violates a statutory duty the redress of which becomes a matter of concern to the Board.

The Board did not view the case as one calling for deference to the available grievance and arbitration process. It noted that the issue did not primarily turn on the interpretation of contractual provisions of ambiguous meaning and was "essentially one involving a contract dispute, making it reasonably probable that arbitration will put the statutory infringement finally at rest in a manner sufficient to effectuate the policies of the Act."

Consistent with this approach, in a case [82] arising from the parties dispute "as to the meaning" of a provision of a newly adopted agreement, the Board stated that it was not its province "to construe the full meaning or effect of the contractual provision by which Respondent was permitted to make certain unilateral changes in incentive rates." Although finding the employer had violated the Act by repudiating the agreement, the Board did not find a violation under the circumstances in the unilateral changes, but left the parties free to pursue their contentions under the grievance-arbitration clause of the contract the Board held to be then in effect.

E. Union Interference With Employee Rights and Employment

1. Coercion in Organizing

The technique utilized by a union in attempting to organize unorganized shops was found by the Board in one case [83] to be coercive and a restraint upon employees in the exercise of section 7 rights violative of section 8(b)(1)(A). The organizing plan was for groups of 15 to 30 union supporters to walk into the unorganized shops during working hours, unannounced and without prior permission, and solicit the employees at their work stations. This mass invasion was carried out notwithstanding the employer's protests. The plan was implemented at four shops where the mass solicitation of the workers resulted in halting production and was accompanied by threats of violent action or loss of employment to the employees through work stoppages caused by picketing. The Board rejected the contention that because there was no violence, section 8(b)(1)(A) was inapplicable since intended to prohibit only physical violence and economic reprisals or threats

[82] *Crescent Bed Co*, 157 NLRB 296.

[83] *District 65, Retail Wholesale & Department Store Union (B. Brown Associates)*, 157 NLRB 615.

thereof. Noting that the union had coerced the employees also in coercing the employer by imposing its will upon him on his own premises in the presence of the employees, the Board concluded that, viewing the circumstances of each instance "in the totality of the record," the union's actions violated section 8(b) (1) (A).

2. Enforcement of Internal Union Rules

The applicability of section 8(b) (1) (A) as a limitation on union actions, and the forms of those actions protected by the proviso to that section,[84] continued to pose questions for the Board this year as in prior years.[85] The issue of whether a union was protected by the proviso in suspending from its membership an employee who filed a petition with the Board to have it decertified as representative of the unit in which he was employed, was considered by the Board in one case.[86] The suspension was imposed following internal union proceedings for violation of a provision of its constitution prohibiting members from attempting to bring about the withdrawal from the union of any member or group of members. Relying on its decision in *Tawas Tube*,[87] the Board held that the proviso to section 8(b) (1) (A) does protect a union disciplinary expulsion which does not affect job interests and is aimed at defending the union from "conduct which seeks to undermine its very existence." It distinguished as "an exception to the general principle" its decision in *Local 138, IUOE* [88] holding that union disciplinary action aimed at the filing of charges seeking redress for an asserted infringement of statutory rights is a violation of section 8(b) (1) (A) not protected by the proviso.

However, union disciplinary expulsions from membership in several other cases were found to be within the *Local 138, IUOE* exception, and therefore prohibited by section 8(b) (1) (A). In the *Cannery Workers* case,[89] the union had expelled a member for having filed charges with the Board against the union and certain employers with-

[84] Sec 8(b) (1) (A) provides: "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ."

[85] See e.g., Thirtieth Annual Report (1965), pp. 82–87; Twenty-ninth Annual Report (1964), pp. 83–85.

[86] *United Steelworkers of America, Local 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB 692.

[87] *Tawas Tube Products*, 151 NLRB 46, Thirtieth Annual Report (1965), p. 85

[88] *Local 138, IUOE (Charles S. Skura)*, 148 NLRB 679, Thirtieth Annual Report (1965), pp. 83–84.

[89] *Cannery Workers Union of the Pacific (Van Camp Sea Food Co.)*, 159 NLRB No. 47. See also *Industrial Union of Marine & Shipbuilding Workers (United States Lines Co.)*, 159 NLRB No. 95; *Brotherhood of Painters, Decorators & Paperhangers, Local 585 (Y. L. Narvaez)*, 159 NLRB No. 98; *Philadelphia Moving Picture Machine Operators' Union, Local 307, IATSE (Velio Iacobucci)*, 159 NLRB No. 124.

out first exhausting internal union procedures. The Board reasoned that expulsion from membership, like the imposition of a fine as in *Local 138, IUOE*, is "coercive" within the meaning of section 8(b)(1)(A), since it carries with it the loss of benefits inherent in union membership and the denial of the member's right to participate in the union's government. In rejecting the union's defense that it was acting in a "defensive manner" within *Tawas Tube*,[90] the Board pointed out that the union misconceived the fundamental differences between the filing of an unfair practice charge under section 8 and the filing of a decertification petition under section 9. In drawing the distinction, the Board noted that section 8 involves the investigation and correction of past events in vindicating the public interest and securing obedience to the statute, while under section 9 the Board is not concerned with past events but with the employees' present desires as to union representation. As the outcome of an election is determined in a vigorous contest for employee support by the union, the employer, and fellow employees, the Board viewed it as not inconsistent to permit a union to discipline hostile members in the interest of a unified position, while precluding discipline for seeking a determination of the legality of past actions.

3. Conditions of Referral and Employment

During the year the Board considered a number of cases involving the enforcement or attempted enforcement through the employment relationship of union referral standards or practices, or union interpretations of the applicability of contract provisions. In one such case [91] a joint union-employer committee, in order to enlarge the pool of qualified longshoremen available for referral through the jointly run hiring hall, adopted pursuant to their authority qualification standards which were applied to determine which employees on a limited registration list would be transferred to full registration. Pursuant thereto transfers to the full registration list were effected. The limited list was thereafter abolished with the result that those employees who had not qualified under the standards for transfer were disregarded. One of the standards for transfer disqualified applicants who had been late a stated number of times in making payment of their "pro rata share" of the expenses of running the hall. In holding that the application of this standard as a basis for deregistration was not in violation of section 8(b)(1)(A) by the union and section 8(a)(1) by the employer, the Board emphasized that "the true purpose or real motivation" behind the adoption and implementation of the

[90] Footnote 87, *supra*.
[91] *Pacific Maritime Assn.*, 155 NLRB 1231.

standard and not "auxiliary side effects" constitutes the test of lawfulness. In the Board's view, it was reasonable for the parties to judge character through consideration of financial reliability as well as judge physical ability, as a person's credit standing may well be related to his performance as a responsible employee. Finding that there was no discriminatory application of the standard or an ulterior motive for its adoption, the Board concluded that in the light of all the surrounding circumstances, the credit standard was not so grossly unrelated to the asserted objective as to warrant an implication of pretext.

Violations of section 8(b) (2) and (1)(A) were found in two other cases where the Board found the existence of discriminatory referral and hiring practices. In one case,[92] where Negroes had made efforts to obtain stevedoring employment but were unable to obtain information about either the local union or its membership, the Board found the local and the employer violated the Act by maintaining and enforcing an employment referral arrangement which discriminated against Negroes by conditioning job referrals on both race and union membership. The local did not accept Negroes into membership, and the arrangements required the employer to hire union members first before hiring other stevedores. This preferential arrangement, coupled with the local's discriminatory membership policy, effectively barred Negroes from obtaining the same work opportunities in the unit as those enjoyed by the unionized white stevedores.[93] In the other case,[94] the union was held to have unlawfully obtained the discharge of an employee by refusing to renew his work permit where the employer acted on the proposition that the union's denial of the work permit "*whatever* the reason" required termination of the employee. It found the discharge was for a discriminatory reason, the refusal to renew the work permit, and that the union's reason for the denial—the employees' failure to attend apprenticeship classes—was immaterial since never communicated to the employer.

Among the cases placing in issue the legality of union actions to enforce their interpretation of contract provisions was one [95] in which the union engaged in picketing to obtain the employer's compliance with a contract provision obligating the employer to assign or subcontract construction site electrical work only to contractors also under contract with the union. The clause was lawful under the construction industry proviso to section 8(e) of the Act. As a result of the picketing the employer terminated the subcontract made in viola-

[92] *Cargo Handlers*, 159 NLRB No. 17.

[93] Chairman McCulloch and Members Brown and Jenkins. Chairman McCulloch would base the findings of violations solely on the ground that the unlawful actions were related to union considerations of membership or nonmembership in the local.

[94] *Local 742, Carpenters (J. L Simmons Co.)*, 157 NLRB 451.

[95] *Intl. Brotherhood of Electrical Workers, Local 11 (T. A Thornburgh Co.)* 153 NLRB 1173.

tion of its contractual commitment to the union because with a contractor who did not have a contract with the union. The Board concluded that since the union's conduct "sought to achieve only what it was lawfully entitled to have under its contract," it did not thereby violate section 8(b) (2) and (1) (A).[96] A similar result was reached in another case[97] where the union threatened to picket unless the employer discontinued using a laborer, who could be hired without referral from the union, to do plumbing work. The union's contract with the employer provided for it to have an exclusive referral opportunity for all employees doing plumbing work. As the employer was using a laborer not so referred to do plumbing work in violation of the contract, and the union did not object to the employee's continued employment to do laborer's work, the Board concluded that in threatening to picket the union "was merely policing and enforcing the terms of its collective-bargaining agreement." In therefore found the actions lawful and not in violation of section 8(b) (1) (A) and (2) of the Act.

In the *Wanzer Dairy Co.* case,[98] the Board found no violation of section 8(b) (2) and (1) (A) in a union's strike to compel the employer to accept its view that "company seniority," instead of "area seniority" practices preferred by the employer, be followed in making an economic reduction of force. The Board noted that the contract did not literally spell out the order of seniority to prevail and that the union's position was not inconsistent with the contract, was reasonable, and had support in past practice. It held that in the absence of improper motivation, it was not necessary for the union's interpretation to be established as correct. It was sufficient that the union did not "act unreasonably, arbitrarily, unfairly, in violation of contract, or without legitimate purpose."

4. Enforcement of 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

[96] The Board noted, however, that the union would not have been entitled to enforce the contract by means proscribed by sec. 8(b) (4) (B)

[97] *United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry, Local 469 (McCulloch Plumbing Co.)*, 159 NLRB No. 94.

[98] 154 NLRB 782.

to satisfy the claimed dues obligation were alleged as violative of section 8(b)(2) of the Act.

In one case[99] the Board held that the union could not lawfully require the payment of dues for the employment period preceding certification of the results of a State referendum, where the union-security proviso of the contract, although valid under Federal law and in the contract during the period for which dues were demanded, was subject to a State law which required the unit employees to vote approval of such an "all-union" agreement before it could become operative in the State. Although the employer association and union were parties of long standing to an agreement containing a union-security clause, the Board found they did not contractually intend for the clause to become operative until compliance with the State law was achieved. It therefore held that the union violated section 8(b)(2) and (1)(A) by causing the discharge of two employees where the request was based in part on their dues delinquency antedating certification of the results of the State referendum.

In another case where the union alleged dues delinquency and requested discharge pursuant to a valid union-security agreement,[1] the issue of whether or not the union thereby violated section 8(b)(2) and (1)(A) depended upon whether a 25-cent discount allowed by the union for prompt payment of dues constituted a "fine" for late payment, the payment of which could not be lawfully required as a condition of employment, or formed part of dues regularly and uniformly required by the bylaws. The Board concluded that "the modest sum" should be viewed as part of the basic dues, since the union had never considered it as an assessment or penalty, and it had a reasonable relationship to the cost of servicing delinquent dues accounts.

The applicability of a maintenance-of-membership requirement in a contract to an employee who had let his membership lapse after termination, but was rehired during the same contract term, was also considered by the Board during the year.[2] In holding that the union's admitted attempt to cause the employee's discharge because he was not a member in good standing was in violation of section 8(b)(2) and (1)(A), the Board relied solely on its construction of the contract provision under consideration which did not by its terms apply to a rehire situation. As the former member had been "dropped" from union membership and was therefore not in good standing upon reemployment, the Board concluded that he was to be treated as a new employee for whom union membership could not be required.

[99] *Chauffeurs, Teamsters & Helpers "General" Local 200 (State Sand & Gravel Co.)*, 155 NLRB 273.

[1] *Lodge 1345, IAM (Cobak Tool & Mfg. Co.)*, 157 NLRB 1020.

[2] *District Lodge 94, Lodge 311, IAM (Parker Aircraft Co.)*, 154 NLRB 634.

F. Prohibited Strikes and Boycotts

The Act's prohibitions against certain types of strikes and boycotts are contained in section 8(b)(4). Clause (i) of that section forbids unions to strike, or to induce or encourage strikes or work stoppages by any individual employed by any person engaged in commerce, or in an industry affecting commerce, and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, in either case, for any of the objects proscribed by subparagraphs (A), (B), (C), or (D).

1. Identity of Neutral Employer

The insulation of neutral or secondary employers from involvement in primary disputes under the secondary boycott provisions of the Act requires, of course, 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" [3] such an employer is a neutral or secondary employer, and the employer who had the power to resolve the dispute is the primary employer.

During the past year, the Board had occasion to apply this standard in cases involving the efforts of a pipefitters' local union to obtain compliance with a fabrication clause in its contract with an employer's association which provided that, "as a primary working condition," trim piping on boilers "shall be fabricated on the jobsite . . . by employees covered by this agreement." Enforcement of this clause, intended to preclude loss of unit work resulting from the use of "packaged" boilers with trim piping attached at the factory, was sought by the union in one instance [4] when it threatened an employer member of the association that employees would be pulled off the job unless the trim piping were removed before installation from a packaged boiler the employer had ordered. In holding that the union did not thereby violate section 8(b)(4)(ii)(B), the Board noted that it was apparent that the union's aim "was to preserve, obtain, or reacquire for employees in this unit work which they had historically performed at the jobsite . . . . As [the employer] . . . ordered the boiler, it had control over the assignment of trim piping work and was in a position to effect the result sought by the union. We find, therefore, that the

[3] E.g., *Intl. Longshoremen's Assn. & Local 694 (Board of Harbor Commissioners)*, 137 NLRB 1178, Twenty-ninth Annual Report (1964), pp. 89–90; Thirtieth Annual Report (1965), p. 90.

[4] *United Assn. Pipe Fitters Local 539 (American Boiler Manufacturers Assn.)*, 154 NLRB 314.

dispute was primary." [5] A violation of section 8(b)(4)(ii)(B) was found in another instance,[6] however, where threats of a refusal to install a boiler with trim piping attached were made by the union to a company which had ordered such a boiler from its supplier and contracted with an employer member of the association for its installation. The Board concluded that although the company had control over the work through its control over specification and purchase of the boiler to be installed, since it was not a party to the union's contract with the employers' association containing a work-preservation clause and was not the employer of the employees involved in the dispute, the threats to it were threats of a secondary strike against the employer installing the boiler, with a prohibited object of forcing the company purchasing the boiler to cease handling packaged boilers produced by its supplier.

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 or Enforcement 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 several cases, the Board's finding that construction industry contract provisions were not within the proviso to section 8(e), because according the union "self-help" privileges in the event of breach of

[5] Chairman McCulloch and Member Jenkins. Members Fanning and Brown, concurring with a separate statement of views, would find that the fabrication clause had the primary objective of regulating relations with the employer and protecting the employees' legitimate interest in preserving unit work, wherefore, its incidental effects on other employers would not be a basis for invalidating the clause.

[6] *United Assn. Pipe Fitters Local 455 (American Boiler Manufacturers Assn.)*, 154 NLRB 285.

contract hot cargo provisions,[7] led to its conclusion that section 8(b)(4)(A) was violated by union attempts to obtain or enforce such provisions. In one such case,[8] the Board found violations when the unions engaged in coercive conduct to obtain a contract provision under which they were relieved of any obligation to furnish employees in the event of a contract breach. And in another case [9] a similar violation was found where the clause would have provided that the employees could refuse to perform their work on any job declared unfair by the union council.

In the *Ets-Hokin* case [10] a union threat of contract cancellation, as permitted by the contract, to require the employer to remove a construction site subcontractor not having a contract with the union, was held by the Board violative of section 8(b)(4)(A). Although the limitation of subcontracting to employers having a contract with the union was permissible under section 8(e), the provision for termination of the contract was held to be a form of prohibited self-help which was illegal notwithstanding the proviso, and the threat of its utilization to enforce the contract therefore prohibited also.

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 the *Mascali* case,[11] the Board was called upon to determine the legality of extended conduct of the union found to have the ultimate objective of compelling every employer in its area, who in the course of his business operations required labor to transport concrete, asphalt, and similar construction materials from the point of supply to the construction site, to have that work performed by drivers in his own direct employ, thereby eliminating the use of independent contract drivers or self-employed truck owner-operators on daily hire. In its efforts the union engaged in strike threats and direct pressures against employers whose employees they represented to require them to cease

[7] See, e.g., *Muskegon Bricklayers Union #5 (Greater Muskegon General Contractors Assn.)*, 152 NLRB 360, Thirtieth Annual Report (1965), pp. 102–103.

[8] *Los Angeles Building & Construction Trades Council [Elmer E. Willhoite]*, 154 NLRB 870. Members Brown and Jenkins for the majority. Member Fanning dissenting for the reasons stated in his dissent in *Muskegon Bricklayers, supra*, footnote 7.

[9] *Southern California Dist. Council of Hodcarriers (Swimming Pool Gunite Contractors)*, 158 NLRB No 28.

[10] *Ets-Hokin Corp.*, 154 NLRB 839. Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, would find the termination clause to be within the protection of the proviso for the reasons stated in his dissent in *Muskegon Bricklayers*, 152 NLRB 360, and *Local 217 Plumbers (Carvel Co.)*, 152 NLRB 1672, and would find lawful the threat to take economic action to enforce it. See also *Los Angeles Building & Construction Trades Council [Elmer E. Willhoite]*, 154 NLRB 870.

[11] *Local 282, Teamsters [F. Mascali & Sons]*, 155 NLRB 973.

using owner-operators to augment their represented truckdrivers in the distribution of products; direct pressures on material suppliers to persuade them to refuse to load the trucks of the owner-operators hired by a customer or contractor to haul the materials from the plant to the construction site; and combinations of the above where pressures were directed at a supplier who both employed owner-operators to deliver materials and loaded the trucks of owner-operators employed by others to pick up and deliver the materials. Although finding the union's basic dispute with the contractors and materials suppliers over whether deliveries should be made by truckdrivers hired as regular employees or by the independent owner-operators "fell within the area of the union's proper concern with conditions of employment," the Board found that in some instances the union sought to obtain its objectives through secondary pressures prohibited by section 8(a)(4)(B). In this regard, the direct inducement and coercion of suppliers not to employ owner-operators was held to be primary activity not violative of the Act, since it was action designed to support the union's economic demands. Violations were found, however, in those instances where the union applied pressure upon contractors and suppliers "as an oblique lever" to curtail the use of owner-operators by others employing them. As the suppliers could exercise no control over working conditions to satisfy the union's demands, the only way whereby they might relieve the pressure was by ceasing to do business with the customers or other employers who engaged the owner-operators.

Picketing by unions at housing subdivisions under construction to protest the use of "nonunion" materials and labor in the subdivision was found by the Board in other cases to be violative of section 8(b)(4)(ii)(B) of the Act. In the *Steiner Lumber* case,[12] the picketing was in furtherance of a dispute with a supplier of precut lumber used in construction of the subdivision which was obtained from a manufacturer whose employees were represented by a local of another union. Finding that the object of the picketing was to cause the contractor on the subdivision to cease doing business with the supplier of the precut lumber, the Board rejected the contention that the picketing was legal consumer picketing under the *Tree Fruits* decision[13] because the picketing signs were ostensibly addressed to consumers only to publicize the use of lumber prepared at wages and conditions below those established by the picketing union. The Board noted particularly that the time of the picketing coincided with the work time of the construction employees and not with the hours of the public sales office, the absence

[12] *Millmen & Cabinet Makers Union, Local 550, Carpenters (Steiner Lumber Co)*, 153 NLRB 1285.

[13] 377 U.S. 58, Twenty-ninth Annual Report (1964), pp 106-107.

of any effort to negate the appeal to employees of secondary employer's, and the absence of a request for action by consumers. In the second case,[14] *Tree Fruits* was also held inapplicable where the union picketed the subdivision development because of the presence of contractors whose employees were represented by another union. The Board found that "by merely naming the primary employer in the picket sign used at the secondary site Respondents did not sufficiently confine the appeal so as to achieve immunity from the sanctions of Section 8(b)(4)(ii)(B)." It also noted that the place of the picketing at the entrance of the subdivision demonstrated that it was aimed at the sales of the developer generally, as did the failure of the union to limit the appeal by requesting consumers not to buy houses built by the primary employer.

To assist in the determination of a union's objective in picketing when the primary employer is working at a situs at which neutral employers are also doing business, the Board in the *Moore Dry Dock* case[15] established certain standards for picketing at such a common jobsite which, if adhered to, would presumptively indicate that the union was trying to limit its dispute to the primary employer and avoid the enmeshment of neutrals. In two cases in which the picketing viewed in isolation was in compliance with the prescribed standards, the Board nevertheless found a prohibited cease-doing-business objective based upon an appraisal of the picketing in the context of accompanying statements as to objective made away from the situs of the picketing. In one case,[16] while the union was engaged in area-standards picketing of a subcontractor, the union business agent informed the general contractor that in order to have the pickets removed he would have to remove the offending subcontractor and bring in one with a contract with the union. Construing the statement to mean that an object of the picketing was to replace the subcontractor with one having a contract with the union, the Board concluded that, "from an examination of the entire course of conduct" engaged in by the union, the unlawful object of removal of the primary employer from the worksite, as well as the lawful object of maintaining area standards, was reflected in the picketing. It therefore held the picketing to be in violation of section 8(b)(4)(ii)(B).[17] In the other case,[18] the Board also held that

[14] *Alton-Wood River Bldg. & Construction Trades Council (Alton Dist. Ind. Contractors)*, 154 NLRB 982.

[15] *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547.

[16] *Intl. Brotherhood of Electrical Workers, Local 11 [L. G. Electric Contractors]*, 154 NLRB 766.

[17] Chairman McCulloch and Member Jenkins for the majority. Member Fanning, dissenting in relevant part, would hold the picketing not tainted by the union agent's statement which he viewed as nothing more than an expression of the union's intent to exercise its right to picket in a lawful manner so long as the primary employer remained on the job.

[18] *Carpenters Local 944 (Interstate Employers Assn.)*, 159 NLRB No. 41.

the inference of legality from literal compliance with the standards was negated by other relevant evidence. There also the union informed the general contractor, upon his request as to the action necessary to remove the line, that he would have to remove the objectionable subcontractor and replace him with one with a contract with the union. In the context of that statement as well as others indicating the pickets were there "to close the job down," the Board found the picketing had as an object the disruption of a business relationship and was therefore illegal.

3. Reserved Gate Picketing at Construction Jobsite

Although recent Supreme Court decisions [19] have established that the picketing of gates at the premises of a struck employer reserved for use by employees of neutral employers is permissible when the employees using them are performing work related to the normal work of the struck primary employer, the Board during the report year considered for the first time the applicability of that concept to picketing at such reserved entrances at a common situs construction project.[20] In that case the union, in furtherance of a primary dispute with a general contractor in the construction industry, engaged in jobsite picketing at gates reserved and set apart for exclusive use by the employees of neutral subcontractors. The union's contention that the picketing was lawful under the recent Supreme Court decisions [21] permitting the picketing of such reserved entrances when used by employees of neutral employers engaged in performing work related to the normal work of the primary employer, was rejected by the Board, which held that direct pressure by a labor organization upon secondary employers engaged on a common situs "must be resolved in the light of the *Moore Dry Dock* standards, traditionally applied by the Board in determining whether picketing at a common situs is protected primary activity." In the Board's view, it was precisely the union's claim, "that the *close* working relations of various building construction contractors on a common situs involved them in a common undertaking which destroyed the neutrality and thus the immunity of secondary employers and employees to picket line appeals," which had been rejected by the Supreme Court in an early case involving construction of the secondary boycott provisions of the statute, and the more recent cases relied on by the union were not viewed by the

[19] *Local 761, IUE* v. *N.L.R.B.*, 366 U.S. 667, Twenty-sixth Annual Report (1961), pp. 157–158; *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492, Twenty-ninth Annual Report (1964), pp. 107–108.

[20] *Building & Construction Trades Council of New Orleans (Markwell & Hartz)*, 155 NLRB 319.

[21] *Supra*, footnote 19.

Board as evidencing an intent to effect a reversal of a rule which has "been long understood by the parties to labor-management relations and by the Congress." Turning then to an examination of the facts of the case in the light of those principles, the Board found the union's picketing had been in violation of section 8(b)(4) (i) and (ii)(B) as designed to induce employees of the neutral employers to engage in work stoppages and thereby coerce their employers to cease doing business with the general contractor.[22]

In another case [23] involving construction jobsite reserved entrance picketing issues, the Board was called upon to determine whether the reserved entrance had been designated with sufficient clarity to require the union to restrict its picketing accordingly. The project areas were unenclosed, unpaved, and had no roadway, and the employees and deliverymen were accustomed to entering or leaving the projects at any convenient point. When pickets appeared in furtherance of a primary dispute with a subcontractor, stakes were placed to mark a separate entrance way posted as being reserved as "[the subcontractor's] employees entrance only." Even after the entrances were posted, however, primary employees and deliverymen failed to observe them. The Board concluded that under these circumstances "neither project was marked in an unconfusing manner so as to provide reasonable assurances to [the union] that, by picketing confined to the [posted] entrances, its message would be carried to all within legitimate, direct appeal of its picket signs." It therefore found the union's failure to restrict its picketing to the posted entrances did not render it illegal.

4. Inducement by Secondary Union

The asserted right of a secondary union to engage in non-picket line appeals to induce employees of a neutral employer, at whose premises the ambulatory situs of the primary dispute is temporarily located, to refuse to perform services for their employer in the absence of a lawful picket line was also rejected by the Board during the year.[24] The

[22] Chairman McCulloch and Members Brown and Zagoria for the majority. Members Fanning and Jenkins, dissenting, viewed the Supreme Court decisions as establishing rules of general applicability which should be applied in this case to determine whether the appeals to the secondary employees were permissible primary activity. They considered those principles equally applicable to the construction industry and, applying them, would conclude that the work of the employees of the subcontractors was related to the normal work of the general contractor, wherefore the *Moore Dry Dock* standards were fully met and the picketing permissible.

[23] *Intl Brotherhood of Electrical Workers, Local 441 (Suburban Development Co.)* 158 NLRB No. 57.

[24] *Grain Elevator, Flour & Feed Mill Workers, ILA, Local 418 (Continental Grain Co.)*, 155 NLRB 402. Chairman McCulloch and Members Fanning and Zagoria for the majority. Members Brown and Jenkins, dissenting, were of the view that prior verbal appeals by the primary union to members of the local representing the neutral's employees to support it by refraining from loading vessels of the struck employer, constituted lawful primary strike

union induced employees it represented not to perform normal work, assigned by their neutral employer, of loading at his premises a ship owned by the primary employer whose dispute was with a different union. There had been no contemporaneous appeal to them by the primary union nor was there a picket line. The Board explained that:

> The underlying considerations that lead the Board in ambulatory situs situations to infer an unlawful objective when picketing deviates from *Moore Dry Dock* standards also dictate a like inference where pressures are exerted against the neutral employees by a secondary union in the absence of a picket line directed at the primary employer while the situs of the dispute is lodged at the neutral premises. A failure to draw an inference of illegality in such circumstances would give, it seems to us, greater freedom to secondary unions to disrupt the business of the neutral employer whose premises temporarily house the primary ambulatory situs, than is given under our *Moore Dry Dock* tests to the primary union directly involved. Moreover, to permit such conduct on the theory that a "phantom" or "invisible" picket line is to be presumed even though there is no picket line in fact, would provide a ready device for evading the effects of an injunction prohibiting picketing that might be obtained against the primary union. It would also destroy the careful balance now existing between the right of the primary union, and those unions who would take up its cause, to appeal to employees approaching struck "ambulatory" premises to refrain from entering those premises, and the right of the neutral employers to remain free from pressures directed towards forcing them to cease dealing with the primary employer. [Footnote omitted.]

Having thus rejected the union's contention that it had the right, in the absence of a primary picket line, to induce the employees of the secondary employer to refuse to perform services for their employer related to an ambulatory situs temporarily on his premises, the Board held the union thereby violated section 8(b)(4)(i) and (ii)(B) of the Act. It emphasized that where the labor dispute is between a primary employer with an ambulatory situs and a union other than the one which seeks to induce secondary employees to take action because of that dispute, there must be some clear and contemporaneous notice given by the primary union to the employees appealed to, and to the neutral employer at whose premises the dispute becomes active, that the labor dispute involved is between it and the primary employer. Unless such notice is given, the dispute takes on the appearance and character of a dispute between the "inducing" union and the neutral employer over the latter's dealings with the primary employer rather than of a dispute between the primary union and the primary employer.

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action since inviting action only at the primary situs, and the refusal to load the vessels in response to those pleas was a protected refusal to perform services at a primary situs. They did not consider the absence of a picket line as requiring a different result on the record of the case, since the appeal specifically identified the primary employer and limited the requested action to that occurring at the primary situs.

In another case,[25] however, where the secondary union induced one of its members to refuse to work for his neutral employer behind a primary picket line, the Board found a violation of section 8(b)(4)(i)(B). Since the employee's employer was performing work for a general contractor for whom the primary was also working, the Board found the inducement had an object of requiring the employer to cease doing business with the general contractor in order to require it to cease doing business with the primary employer.

G. 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 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 repairing 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 and Union Standards Clauses

Union efforts to obtain contract provisions protecting the work or the work standards of the employees in the units they represented were again the subject of Board consideration in several cases. In one case,[26] the Board concluded that the unions were entitled to insist upon contract provisions under which the motor carrier employers would use only "employees" to operate hired or leased equipment and would assert and exercise a "right of control" over the drivers of such

[25] *Local 370, Plumbers (Baughan Plumbing & Heating Co.)*, 157 NLRB 20.
[26] *Highway Truck Drivers & Helpers, Local 107 (S & E McCormick)*, 159 NLRB No. 1.

equipment, thus converting the drivers, even though otherwise independent contractors, to employees subject to the union-security provisions of the contract. It based this conclusion upon the finding that under the agreement "*all* the work performed by the carriers" was being bargained for by the unions and it was "the entirety of that work which constitutes the unit work the unions have a legitimate primary interest in protecting for the carriers' employees." The Board noted that the work theretofore performed by independent contractors not in the unit, which the union sought to limit to independent contractors willing to become "employees," was sufficiently comparable in character, and the terms under which it was done would "sufficiently affect the terms and conditions of the work done in the unit, to cause the union to have a direct and necessary interest in the work and to make it unit work . . . ." As the real target of the clause was unit-work protection and not the imposition of a boycott on third parties, the clause was found valid notwithstanding its incidental impact necessitating changes in the long-established business relationship between the carriers and the independent contractors whom the provisions affected.

In the *Calhoun Drywall* case,[27] the Board, pursuant to court remand, gave further consideration to the union work preservation nature of a clause providing that in the event the employer "subcontracts any work" he would be personally liable to the union for the failure of the subcontractor to pay the wages and fringe benefits provided in the union agreement appropriate for that type of work. The Board rejected the contention that the clause lawfully protected the "work standards" of members of the unit, finding rather that it was aimed at aiding union members generally. The employer whom the union sought to have sign the contract was a general contractor who had no employees of his own on whose behalf the trustees of the relevant fringe benefit trust funds could have made premium payments, since they could only make such payment on behalf of employees covered by a contract with the union. Under these circumstances, the Board found the performance of the obligation imposed by the clause could only have been the imposition of a penalty for failing to contract to a union subcontractor. The Board further held that enforcement of such a contract provision could not have been designed to lawfully protect the work standards of employees in a "principal work unit," since the employer had no employees represented by the union and had no contract with the union seeking compliance with the provision. The absence of a principal work unit was further emphasized by the fact that the contract with the multiunion council in which the clause

[27] *Orange Belt District Council of Painters (Calhoun Drywall Co.)*, 153 NLRB 1196.

appeared neither defined a bargaining unit nor established terms and conditions for any employees, not even those categories of employees whose work standards the union sought to affect.

The problem of secondary objectives was also considered by the Board in the *Westinghouse Broadcasting* case,[28] which involved a contract provision which required that radio performers who were employed by subcontractors in the production of broadcast material made exclusively for the employer should not be paid less than the compensation payable if the employer produced the material itself. The Board concluded that the provision constituted a lawful "work-standards" clause and, in finding that an unlawful object was not established by the union's concession that in obtaining the clause it was also "seeking to protect union members in the area," stated:

> . . . paragraph 7 deals with the subcontracting of the production of broadcast material and the bargaining unit represented by the Respondent includes radio performers. We have already found that the Respondent was seeking to protect these unit employees by means of this clause. The fact that the Respondent's representative admitted that the Union also desired to protect the wage standards of union members not working for WINS does not, by itself, affect the lawfulness of such conduct. This is true because whenever a union also represents other units of employees doing the same type of work, its conduct aimed at setting the wage rates and protecting the work of unit employees will necessarily have the additional and incidental effect of protecting the wage standards of such other employees. To find that because of this additional object the Union's conduct is secondary would mean that in most cases it would not be permissible for a union to take action to obtain a "work-standards" clause.

In another case,[29] the Board found unlawful an agreement between a foodstore employers' council and a union representing store clerks which prohibited rack jobbers, outside suppliers of merchandise, from performing certain merchandise display services in the stores unless they recognized and became bound by the union's agreement. Contrary to a contention that the clause merely defended and protected the work of unit employees by "integrating" rack jobbers into the established bargaining unit, the Board considered the clause as extending beyond mere preservation of work or standards bargained for for the principal unit, and bearing all the vices of the "uniformly struck down" union signatory clauses. A further contention that section 8(e) did not apply because the clause involved a partial, rather than total, cessation of business with rack jobbers was also rejected. As the clause required disruption in the established method of operation, it therefore fell within the intended meaning of "cease doing business."

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[28] *American Fed. of TV & Radio Artists (Westinghouse Broadcasting Co.)*, 160 NLRB No. 24.

[29] *Retail Clerks Union 1428 (Food Employer's Council)*, 155 NLRB 656.

b. Self-Enforcement Clauses

The Board also had occasion to further consider the types of private economic sanctions which may be imposed to enforce a subcontracting limitation exempt from the operation of section 8(e) because within the construction industry proviso to that section.[30] The contract clause in issue in one case [31] prohibited subcontracting craft work in the jurisdiction of the contracting local except to contractors having an agreement with a local of the parent international union. As sanctions for its violation by the employer, the local could then terminate the agreement, and any other local of the international could then terminate its agreement with that employer also. The Board found that the threat of contract cancellation by the local involved and by other locals to insure compliance with the subcontracting clause involved a form of economic pressure proscribed by the Act, and that the clause was therefore unlawful as exceeding the limited exemption of the construction industry proviso to section 8(e).[32]

The rationale of *Ets-Hokin* was followed by the Board in another case [33] wherein a clause was found unlawful which permitted a construction trades council and its affiliated locals to terminate their contracts in the event of an employer breach. In addition, the same conclusion was reached with respect to a provision relieving the respective unions of the obligation to furnish employees in the event of a breach.

H. 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 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

[30] See, e.g., *Muskegon Bricklayers Union #5 (Greater Muskegon General Contractors Assn.)*, 152 NLRB 360, Thirtieth Annual Report (1965), pp. 102–103.

[31] *Ets-Hokin Corp.*, 154 NLRB 839.

[32] Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, would find the termination clause to be within the protection of the proviso, and, for the reasons stated in his dissent in *Greater Muskegon*, 152 NLRB 360, and *Local 217, Plumbers (Carvel Co.)*, 152 NLRB 1672, would find that the reservation of the right to take economic action to enforce a lawful no-subcontracting clause is not itself violative of sec. 8(e).

[33] *Los Angeles Building & Construction Trades Council [Elmer E. Willhoite]*, 154 NLRB 870. Members Brown and Jenkins for the majority; Member Fanning dissenting.

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.[34]

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 issued by the General Counsel in the event 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 sections 10(k) and 8(b)(4)(D) during the past year are those in which the Board had occasion to define further the circumstances under which section 10(k) could appropriately be invoked, the impact of a prior determination upon succesor employers, and the award of work involving a new method of distribution of a product.

The Board had occasion to point out again this year that section 8(b)(4)(D) was designed to grant relief to an employer caught between the conflicting claims of rival groups of employees for the assignment of work, and further, that absent such conflict, there may not be a dispute within the meaning of section 10(k). This latter type of situation was found to be involved in the *Slattery Contracting* case[35] where members of the Lathers struck two general contractors after learning that a certain subcontractor would deliver prefabricated concrete materials to the jobsites. The subcontractor had ceased his prefabrication operations in which he employed some members of the Lathers and had sold his equipment to a subsidiary which was located outside the territorial jurisdiction of that union. Under the subsidiary's method of operations only employees represented by the Laborers were employed. The Board found that, whether the object of the strike against the general contractors was to force them to cease using any prefabricated concrete material, or whether it was to force them to put pressure on the subcontractor to resume his prefabrication operations within the jurisdictional of the Lathers, and thus provide work for its members, no jurisdictional dispute

[34] *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.

[35] *Metallic Lathers Union of N.Y., Local 46 (Slattery Contracting Co.)*, 156 NLRB 749.

existed in any event, since only the employee group represented by the Lathers was directly involved in the dispute. It was pointed out that a union's protest over an employer's change in operations, by moving out of a union's jurisdiction, does not become a jurisdictional dispute because another group of employees is thereafter obtained to do the work. In conclusion, the Board noted that granting relief to employers under section 8(b)(4)(D) in such a situation would restrict unions from applying legitimate economic pressure in response to changes in production methods or to changes in location which employees believe are detrimental to their interests.

In another case,[36] the Board quashed a notice of 10(k) hearing because the charging party, an individual who had been a steward and member of the charged union's executive board, was found to be fronting for the charged union, which was one of the unions claiming the disputed work. It was found that the individual in filing the charge was acting in the interest and with full assistance and encouragement of the union. In addition, the other parties to the dispute, the employer and the rival union, not only refused to file a charge but also opposed the assertion of 10(k) jurisdiction. Noting the absence of a need to protect the parties to the dispute against economic injury or interference with production, and the absence of evidence that the respondent union's conduct had any impact upon other persons, the Board found that the policies underlying sections 10(k) and 8(b)(4)(D) would not be served by Board intervention in such a dispute. Determining a dispute solely upon charges filed by the claiming union would, in its view, convert section 10(k) into a compulsory arbitration procedure that is available without limitation to any labor organization contesting an employer's assignment of work. This would encourage jurisdictional claims, while concurrently discouraging resolution of such disputes through voluntary methods of adjustment. However, the Board left open the question whether, under other conditions, it will make a 10(k) determination on charges filed solely by a claiming union.

In one case [37] involving picketing, allegedly in protest of discriminatory hiring practices, by members of a union who lost their jobs when their employer's franchise to operate a dock facility was awarded to an employer who employed members of a rival union, the Board in finding that the picketing was prohibited by section 8(b)(4)(D) noted that one of its objects was to force the new franchise holder to replace his employees with members of the picketing union and to hire

[36] *Kentucky Skilled Craft Guild (K. R Lehrig)*, 155 NLRB 1196

[37] *Intl. Longshoremen's Assn, Great Lakes District (Lawrence Erie Co)*, 158 NLRB No. 125.

through its hiring hall.[38] The Board held the picketing went beyond the mere protest of what the union believed to be discriminatory hiring practices and was, in effect, based on the claim that work at the dock facility was within its jurisdiction. Although the union had filed an 8(a)(3) charge against the new franchise holder which alleged a discriminatory refusal to hire, and which was dismissed by the regional director and appealed to the General Counsel, the Board was of the view that such a question was not before it, since the General Counsel had issued no complaint containing such an allegation.

The Board, in two 10(k) determinations involving the same parties, was called upon to resolve disputes which arose when the employer, during a contract term, established a new corporation which made a work assignment to another union of work formerly performed by the claiming union. In the first of these cases, *State Lathing Co.*,[39] the Board found that a lathing and plastering contracting firm and a new corporation, which was formed by the same individuals who owned all the stock in the lathing firm, constituted a single employer, and that the new corporation's assignment of the disputed work of installing metal tracks and studs to the carpenters represented a change in the employer's past practice of assigning such work to the lathers and was inconsistent with an existing agreement between the Lathers and the old corporation. It pointed out that the lathers had been performing the work in dispute until the new corporation recognized the Carpenters and substituted carpenters for lathers on two projects.

The second case,[40] involved a similar dispute between the employer and the same unions, and the Board reaffirmed its prior holding [41] that the lathing business and the new corporation constituted a single employer, notwithstanding a change in stockholders and in corporate officers in the new corporation, subsequent to the prior decision. The Board found that there was reasonable cause to believe that section 8(b)(4)(D) was violated when the lathers picketed in support of their claim to disputed work which was related to the disputed work in the prior determination, but which was not specifically covered therein. However, the Board assigned the work to the lathers, notwithstanding the employer's assignment to the carpenters, because the work in question had been performed by the lathers consistent with the existing agreement between the Lathers and the old corporation, until the new

[38] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority. Member Fanning, dissenting, would find no jurisdictional dispute, since in his view the picketing against the successor employer to protest his failure to hire them was primary activity protected under secs. 7 and 13 of the Act.

[39] *Wood, Wire & Metal Lathers, Intl. Union, Local 68 (State Lathing Co.)*, 153 NLRB 1189.

[40] *Wood, Wire & Metal Lathers, Intl. Union, Local 68 (Drywall Steel Erectors)*, 159 NLRB No. 115.

[41] *Supra*, footnote 39.

corporation recognized the Carpenters and substituted carpenters for lathers on new projects not already under construction at the time of the Board's prior decision in the *State Lathing* case.

An employer's assignment of disputed work involving the filling and handling of a newly developed draft beer container, having the trade name of Tapper, to the employees represented by the Bottlers, rather than to members of the Brewers, was sustained by the Board in *Falstaff Brewing Corp.*,[42] primarily because of the location of the Tapper filling operation. The Bottlers argued that the Tapper was a bottle and that the manner of filling it was similar to the method utilized by its members to fill bottles and cans in the separately located bottling house of the plant. The Brewers relied on the similarity of appearance between the Tapper and the barrels which its members filled with draft beer in the brewhouse. In addition to the factors which it customarily relies on in jurisdictional dispute proceedings, the Board noted that the Internal Revenue Service had ruled that the Tapper is a bottle for tax purposes, and, although such ruling had no controlling force in itself, because of this ruling, the employer was required by the Federal Beer Regulations to place the Tapper filling operation in the bottling house. Since the filling operation was located there, where other employees represented by the Bottlers worked, the Board was of the view that the assignment of the Tapper work to the bottlers would permit greater efficiency in the employer's operations.

I. Recognitional 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

[42] *Brewers & Maltsters Local 6 (Falstaff Brewing Corp.)*, 154 NLRB 483.

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) [43] 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, has been interpreted by the Board as encompassing "all bargaining relationships immune from attack under Sections 8 and 9 of the Act." [44] The Board applied this standard during the year in several cases involving picketing alleged to be in violation of that section, where the test utilized was whether a question concerning representation could have been raised concerning the employees sought to be represented. In one case,[45] the Board found a violation in picketing at a new warehouse location by a union claiming recognition as the successor to the representation rights of a sister local which had represented employees in a meatcutting operation at the old location. The Board concluded that as the meatcutting operation was no longer being performed at the new location, where only precut meats were handled in such a manner as to constitute an accretion to the general warehousing unit represented by another union, the contract between that union and the employer precluded raising a question concerning representation. A violation was also found in another case [46] where the union struck and picketed to obtain inclusion in their contract unit of certain employee classifications included in the employer's contract with another union. Finding the other contract lawful on its face, the Board concluded no question concerning representation could be raised under section 9(c). Although finding sufficient evidence, *prima facie*, to warrant the conclusion that the respondent union's certification did not cover the disputed employees, the Board held that even if it could be said to do so, the subsequent contract with the other union was not thereby rendered unlawful. The Board rejected the contention that the certification covered the disputed

[43] 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. . . ."

[44] *Intl Hod Carriers' etc, Local 1298 (Roman Stone Construction Co.)*, 153 NLRB 659, Thirtieth Annual Report (1965), pp. 111–112.

[45] *Local 378, Meatcutters (Waldbaum)*, 153 NLRB 1482.

[46] *Intl. Longshoremen's Assn, Local 1575 (Sea-Land Service)*, 159 NLRB No. 35.

employees, concluding that proof of that issue was a matter of defense which the respondent had failed to establish.[47]

In another case,[48] the Board found the picketing was not precluded by a valid recognition since the contract asserted as a bar to raising a question concerning representation was inadequate for that purpose. The contract was found to be so indefinite as to terms, coverage, and duration as to lack all stabilizing influence. It was a "stale" form contract containing no firm termination date, wage scales were 4 years old when the contract was signed, and it purported to cover all hourly employees when it in fact covered only one full-time employee.

In one case arising under section 8(b) (7) (B),[49] the Board concluded that the union's handbilling activity at the company's office within 12 months after it had lost a valid election was, in fact, picketing within the meaning of section 8(b) (7) and, being conducted during a proscribed period, was a violation of that section. After receiving notice of its loss of the election, the union picketed for 4 months in violation of section 8(b) (7) (B), and at the end of that period, although discontinuing the use of picket signs, made use of handbills to publicize its position. The Board found that the union's recognitional and bargaining objectives remained constant despite this change in activity. In finding the handbilling activity to be picketing, it noted that patrolling or the carrying of placards is not a concomitant element in the definitions of picketing and that the important feature of picketing appeared to be the posting by a labor organization, or by strikers, of individuals at the approach to a place of business to accomplish a purpose which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer's business. Having found that the union's purpose in this case in posting its members in front of the employer's office with handbills was to confront both customers and employees or prospective employees, rather than the public passing on a nearby highway, to advance its dispute with the company, the Board concluded that the activity was, therefore, picketing and within section 8(b) (7)'s proscription.

Upon reconsideration pursuant to court remand in a case [50] involving discharges for picketing contended to be unlawful activity because in violation of section 8(b) (7) (B), the Board held that employees who picketed to protest their employer's failure to grant a promised

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[47] Chairman McCulloch and Members Fanning and Zagoria for the majority. Members Brown and Jenkins, dissenting, would remand the case for further hearing since they viewed disposition of the case on the burden-of-proof point as inappropriate for resolution of the question of the certification's coverage, and therefore inadequate consideration of the union's defense.

[48] *General Truck Drivers, Warehousemen & Helpers Union, Local 980, Teamsters (Meadow-sweet Dairy Farms)*, 158 NLRB No. 103.

[49] *Lumber & Sawmill Workers, Local 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388.

[50] *National Packing Co*, 158 NLRB No. 142.

wage increase shortly after the union had lost a valid election, did not thereby violate section 8(b)(7)(B), wherefore their discharge because of such picketing activity violated section 8(a)(1). Assuming *arguendo* that the picketing employees constituted a labor organization, the Board concluded that they did not thereby pursue an unlawful object of recognition, bargaining, or organization within the meaning of section 8(b)(7). Although the employees indicated a desire to have the business agent of the defeated union represent them to obtain "something in writing" from the employer, the Board noted that this was evidently because he was on the scene and they valued his experience, it being clear, however, that there was no "attempt to establish a continuing relationship" or negotiate a collective-bargaining agreement. Noting that section 8(b)(7)(B) does not preclude employees from picketing to protest an employer's unfair labor practices, the Board similarly found that it "does not preclude employees from protesting, by a peaceful walkout and picketing, their employer's broken promises. To read Section 8(b)(7)(B) as precluding such action would place employees under undue pressure to vote for a union in an election or lose the right for a year thereafter to engage in a concerted protest against any action taken by their employer, however unfair or disadvantageous to the employees." Finding that the picketing was not for an object violative of the Act, but constituted protected concerted activity, the Board affirmed its prior decision and order.

Among the cases arising under section 8(b)(7)(C) which were considered by the Board during the year was one in which the Board held that the union did not violate that section by picketing for recognition as representative of a one-man unit for a period in excess of 30 days without filing a petition for an election.[51] Analyzing the purpose and function of section 8(b)(7)(C) in the statutory plan, the Board stated:

> This statutory plan, designed to substitute Board elections for picketing of unreasonable duration as a means for resolving disputes over representation, is not applicable, however, where, as here, a one-man unit is involved. This is true because the Board has held that it is not empowered to certify a bargaining representative or by other procedures require bargaining in a unit comprising one employee and it therefore does not direct elections under Sections 9(c) or 8(b)(7)(C) in such units. In view of this construction of the Board's powers, a construction well established at the time Section 8(b)(7) was enacted, a union claiming recognition is disabled through no fault of its own from invoking the Board's election processes for purposes of resolving the question concerning representation raised by its picketing. In these circumstances, it would be inequitable, and be, we believe, not within the intention of Congress, to condition the lawfulness of the recognitional picketing in a one-man unit on the union's filing of a petition, since, if such petition were filed, it would be dismissed. [Footnotes omitted.]

[51] *Teamsters Local 115 (Vila-Barr Co.)*, 157 NLRB 588.

Other 8(b)(7)(C) cases involved issues of the union's objective in picketing which extended beyond the proscribed period. *In Bay County District Council*,[52] the Board found no violation where the object of the picketing was not initial recognition and bargaining,[53] notwithstanding the employer's prior withdrawal of recognition from the picketing union and then-current recognition of another union as bargaining representative. Finding that the intervening recognition was illegal assistance in violation of section 8(a)(2), the Board concluded that "no significance" should be attached to it for 8(b)(7)(C) purposes and, as the picketing union had been previously recognized, no violation was found. In the *Centralia Building & Construction Trades Council* case,[54] a violation was found where the union picketed a nonunion contractor with "area standards" informational picket signs in furtherance of what the Board found to be a recognitional objective. An admitted object of the picketing was to require the contractor to sign a settlement agreement not only to pay its employees the equivalent economic package of wages and benefits presently being received by area employees working under union agreements, but, additionally, to increase or decrease the economic package to conform to agreements to be negotiated by the union and other employers *in futuro*. The Board noted that with such an agreement in effect, very little would be left in the field of collective bargaining to a representative chosen by the contractor's employees, that the employees' choice when and if exerted with respect to a bargaining agent would be thwarted and nullified, and their freedom to make their own choice in such matters would be unlawfully foreclosed.

J. 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. Remedial order provisions appropriate to redress employers' unlawful actions designed to frustrate union organizing campaigns were prescribed by the Board in several cases. In one,[55] involving an employer's coercive speeches and solicitation of withdrawals from the union, the Board recognized that "the possibility is strong that but for Respondent's unlawful conduct the Union would ultimately have secured the

[52] *Bay Counties District Council of Carpenters* [*Disney Roofing & Material*], 154 NLRB 1598

[53] Sec 8(b)(7)(C)'s proscription is limited to initial recognition objectives. *Building & Construction Trades Council of Santa Barbara* [*Sullivan Electric Co*], 146 NLRB 1086, Twenty-ninth Annual Report (1964), pp. 98–99.

[54] (*Pacific Sign & Steel Bldg Co*), 155 NLRB 803

[55] *H W Elson Bottling Co*, 155 NLRB 714. See also *James A Pearson, d/b/a Crystal Lake Broom Works*, 159 NLRB No 30

additional support it needed here to achieve majority status." Viewing it as an anomaly to preclude an employer from benefiting from misconduct which destroys a union's majority by ordering him to bargain with the union, while allowing it "to act with comparative impunity to prevent such majority status from ever being attained," the Board deemed "it appropriate that employees be afforded further opportunity to engage in organizational efforts." To do this it included in its remedy that the union be granted "reasonable access for a 3-month period" to employer bulletin boards and, "to redress the imbalance created" by the employer's coercive speeches on company time, the union "be given an opportunity to present its views" to the employees under similar circumstances at a one 1-hour meeting at each plant.

In several cases, including the above, the Board found it appropriate to require that the employer, in addition to posting the notices required by its order, mail copies to each employee. In the *J. P. Stevens* case,[56] in addition to the posting and individual mailing requirements, the Board also directed the employer "to convene during working time meetings of employees in the various departments of . . . [its] plants and read to them a copy of the . . . notice." The Board viewed that requirement appropriate, among others, in view of its finding "that the conventional reinstatement, backpay, and posting of notice requirements for 8(a) (3) and (1) violations are not completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by Respondent in its successful efforts to frustrate organization by its employees." [57] The Board also required that the union be given reasonable access to the bulletin boards in the plants for a period of 1 year.

Similar careful consideration was given the order in another case [58] where a large resort hotel, most of whose employees resided on the premises, violated the Act by barring nonemployee union organizers from the premises where they could solicit and communicate with the employees, while at the same time conducting its own coercive, antiunion campaign among the employees during working hours. The order required the employer to cease giving effect to its rule barring nonemployee organizers from reasonable access to its premises for the purpose of soliciting and communicating with the resident employees on their free time. It also provided that, at least until a new

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[56] 157 NLRB 869.

[57] The Board had "found that the Respondent discharged 71 employees and discriminated in assigning overtime to 2 employees in violation of Section 8(a) (3), that it discriminated against 2 employees in violation of Section 8(a) (4); that it made at least 23 threats of reprisal and promises of benefit to employees, that it engaged in at least 17 acts of interrogation of employees about their union activities; that it engaged in 4 acts of surveillance and in another instance created the impression of surveillance of union activities; and that it posted threatening notices on plant bulletin boards, all in violation of Section 8(a) (1)."

[58] *S & H Grossinger's Inc.*, 156 NLRB 233.

election also directed was held, should the employer make antiunion speeches to its employees during working time, the union be given a similar opportunity to address the employees.

Other remedial order issues considered by the Board included the determination of the portion of excessive hiring hall fees to be refunded to nonmembers, the efficacy of a Board notice when the employer posted another notice alongside it, and the adequacy of reinstatement to a workweek shortened because of the retention of replacements. In the *J. J. Hagerty* case,[59] the Board, pursuant to remand from the court for the purpose of determining what portion of the hiring hall permit fees paid by nonmembers for the use of the hall was reasonably related to the value, as well as the cost, of the services provided by the union, concluded that the refund to the permit men should be based on the excess they paid over the costs and services allocable to the operation of the hiring hall. It rejected the contention of the union that the amount charged could be based on the fair value of all the services they received from the union. In determining which expenses were allocable to the hiring hall, the Board permitted the union to claim all its office expenses, including rent, salaries, etc., but deducted expenses incurred by the union as an organization, such as per capita taxes and other assessments paid to its international, as well as expenses connected with the litigation of the case before the Board.

In *Bangor Plastics*,[60] the Board set aside a settlement agreement because the respondent employer posted alongside the Board notice, which apprised the employees that the respondent employer would not engage in 8(a)(1) conduct or violate the rights guaranteed them under section 7 of the Act, a supplementary notice of its own which vitiated the impact of the Board's notice. The employer's notice informed the employees that the Board's notice was being posted as a mere formality and easy way to avoid litigation expense, and that respondent's true sentiments were to be found in its own notice, not the Board's. In the Board's view, the notice was a patent attempt to minimize the effect of the Board's notice and therefore the employer failed to comply with the settlement agreement. In so holding, the Board explained:

> Unlike a settlement between private parties, a Board settlement involves a public right which the Board must protect. In deciding whether or not to approve a settlement agreement, the prime consideration must, of necessity, be to what extent the proposed settlement will effectuate the policies of the Act. Therefore, the Board requires that a settlement agreement provide for the posting of a notice which sets forth the statutory guarantee. Where, as here, the posting of that notice is the only affirmative action Respondent must take, we cannot agree that the policy of the Act is effectuated when the Respondent undertakes to post

[59] 153 NLRB 1375.
[60] 156 NLRB 1165.

with it a statement evidencing to employees its position that the posting of the Board's notice is to be considered nothing more than a mere formality and that the settlement agreement will not effect any change in Respondent's attitude toward the statutory rights of its employees.

In the *Trinity Valley* case,[61] the Board found that some strikers had not been properly reinstated to equivalent employment where their weekly average hours of work was sharply below that enjoyed by employees in the prestrike period, and the decrease was attributable to the employer's failure to discharge the large number of replacements who were hired while the strike was in progress. Rejecting the employer's defense that it was necessary to retain a large number of replacements in order to implement its policy of eliminating overtime, the Board noted that the employer's consistent prestrike overtime practice belied the existence of such a policy. Although noting that the obligation to restore unfair practice strikers to their former jobs and terms and conditions of employment is not so absolute as to preclude the respondent employer from showing changed circumstances justifying a reduction in the prestrike workweek or a change in other conditions of employment, the Board was of the view that the employer had the burden of establishing such changed circumstances and that its efforts to show that the shortening of work hours might be advantageous did not satisfy that burden. The Board concluded that the strikers could be considered fully reinstated, and backpay terminated when respondent employer's total employment dropped to the normal prestrike level.

[61] *Trinity Valley Iron & Steel Co.*, 158 NLRB No. 80.

VII

Supreme Court Rulings

During fiscal 1966 the Supreme Court did not decide any cases involving review of Board decisions or orders,[1] but did decide three cases involving labor relations issues of concern to the Board. Two of the cases involved the question of whether the jurisdiction of courts to apply State law to events growing out of a labor dispute was preempted by the jurisdiction of the Board and the standards of the Federal statute. The third required determination of the rights of parties successful in unfair labor practice proceedings before the Board to intervene in court of appeals review proceedings.

A. Libelous Statements During Union Campaign

In *Linn*[2] the Court was called upon to determine the extent to which the National Labor Relations Act preempts court jurisdiction over "a civil action for libel instituted under state law by an official of an employer subject to the Act, seeking damages for defamatory statements published during a union organizing campaign by the union and its officers." The Court noted that, "although the Board tolerates intemperate, abusive and inaccurate statements made by the union during attempts to organize employees, it does not interpret the Act as giving either party license to injure the other intentionally by circulating defamatory or insulting material known to be false." Moreover, the Court noted that the State's concern with redressing malicious libel was "deeply rooted in local feeling and responsibility," and that the interest which the State sought to vindicate—the injury to reputation—had "no relevance to the Board's function." The Court balanced the legitimate State interest involved against the need to avoid interference with effective administration of the national labor policy. It concluded that both objectives could best be attained by not barring State remedies for libel, but by limiting their availability "to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage."[3]

[1] In *Newspaper Drivers & Handlers Local 372, Teamsters* v. *Detroit Newspaper Publishers Assn*, 382 U.S. 374, however, the court granted certiorari and remanded the case to the Board for further consideration in light of the court's prior decision in *American Ship Building Co.*, 380 U.S. 300.

[2] *Linn [Pinkerton's Natl. Detective]* v. *United Plant Guard Workers of America, Local 144*, 383 U.S. 53.

[3] Justice Clark wrote the opinion for the Court, Justice Black filed a dissenting opinion, as did Justice Fortas, who was joined by Chief Justice Warren and Justice Douglas.

B. Picketing by Union of Supervisors

Another case in which the "federal interests normally justifying preemption" were found to be absent was *Hanna Mining*,[4] where the Court held that, under the circumstances, a State court had jurisdiction to enjoin picketing by a union seeking to represent certain marine engineers. The Board had previously declined to order an election on the ground that the engineers were supervisors under section 2(11) of the Act. The Court concluded that the Board determination had resolved the issue of the supervisory status of the employees involved, and thereby the nonapplicability of the Act to them, "with the clarity necessary to avoid preemption" of the State suit to enjoin the picketing. The Court also rejected the further argument that a State court injunction banishing the pickets would impinge upon the Board's authority to regulate the picketing insofar as it had secondary effects. The Court noted that the General Counsel had found that earlier picketing by the union, of a similar nature, was merely primary and not secondary. Moreover, since the union's primary picketing was in any event not protected by the Act, the Court concluded that State regulation of any secondary aspects would be of a peripheral nature and would not, in this case, impair the regulatory scheme of the Act.

C. Intervention in Court of Appeals

In consolidated cases [5] the Court also considered whether parties who are successful in unfair labor practice proceedings before the Board—a charged party when the complaint is dismissed and a charging party when the complaint is sustained in its entirety—have a right to intervene in court of appeals proceedings to review or enforce the Board's order. The Court concluded that intervention by the charged party when the complaint against him was dismissed was clearly appropriate, despite the absence of specific standards in the Act to govern the propriety of intervention. In support of this conclusion the Court, in addition to noting that the reversal by the court of appeals of the Board's dismissal would inevitably result in entry of an order against the charged party, pointed out that the disallowance of intervention would foster multiple appellate review and "circuit shopping," and place the charged party at a disadvantage in the presentation of his views and argument to the reviewing court.

Similar considerations were deemed relevant by the Court in determining the right of intervention by the charging party whose charges

[4] *Hanna Mining Co.* v. *District 2, Marine Engineers Beneficial Assn.*, 382 U.S. 181.

[5] *Intl Union, UAW, Local 283* v. *Scofield, and Intl Union, UAW, Local 133* v. *Fafnir Bearing Co.*, 382 U.S. 205.

have been sustained by the Board. Rejecting the contention that such a charging party has no interest in the proceeding, since he stands only to become a beneficiary of an order entered in furtherance of the public interest which the Board vindicates, the Court observed that "the statutory pattern of the Labor Act does not dichotomize 'public' as opposed to 'private' interests. Rather, the two interblend in the intricate statutory scheme." Accordingly, the Court concluded that intervention by the successful charging party should also be permitted.

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subject of judicial review by the courts of appeals in 233 court decisions issued during fiscal 1966.[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 union locals representing nonoperating personnel of railroads subject to the Railway Labor Act was sustained by the court,[2] and the Board's order enforced, in one case. The Board had found the locals' picketing of neutrals in support of a multiunion strike against the railroad was a violation of the Act, since conducted in furtherance of a joint venture with unions concededly subject to the Act as "labor organizations." [3] Although the locals were not themselves "labor organizations" since the railway employees they represented were not "employees" within the Act, the court agreed with the Board that they were liable as "agents" of labor organizations since they "were engaged in a joint venture with statutory labor organizations, and . . . the secondary activity was within section 8(b)(4) though directed ultimately at a Railway Labor Act employer." Noting that the Railway Labor Act did not prohibit secondary activity, the court found that omission "in no way detracts from" the reach of the National Labor Relations Act, to whose provisions the locals subjected themselves in becoming involved in a common undertaking with the statutory labor organizations.[4]

In *Harrah's Club*,[5] the court sustained the Board's assertion of jurisdiction over an employer operating a Nevada gambling casino,

[1] The results of enforcement and review litigation are summarized in table 19 of appendix A.

[2] *Intl Brotherhood of Electrical Workers [B B. McCormick & Sons]* v. *N L R B*, 350 F 2d 791 (C A D C), certiorari denied 383 U S 943

[3] *Intl. Brotherhood of Electrical Workers (B.B. McCormick & Sons)*, 150 NLRB 363, Thirtieth Annual Report (1965), pp 36–37.

[4] A dissenting judge was of the view that "Congress' failure to forbid secondary boycotts under the Railway Act implies its acquiescence in such behavior by railroad employees." Noting that the actions of the locals were entirely for the benefit of railroad employees in their dispute with a railroad employer, he would have remanded the case to the Board for further consideration of the agency issue in the light of the objectives of the Railway Labor Act.

[5] *N L R.B.* v. *Harrah's Club*, 362 F. 2d 425 (C A. 9), certiorari denied 386 U.S. 915.

which was based upon recognition of the essentially interstate nature of the gambling industry in that State.[6] The court rejected the employer's contention that the Board's assertion of jurisdiction was arbitrary and capricious because the Board has consistently declined to assert jurisdiction over racetracks and the horseracing industry for reasons which, the employer asserted, were equally applicable and should have been applied to the gambling industry. Assuming the applicability of the Board's racetrack criteria to the gambling industry, the court held "this alone is not sufficient to establish that regulation of the gambling industry will result in unjust discrimination. It must also be shown that the gambling industry will be substantially prejudiced by Board regulation because racetracks are not similarly regulated." Finding that no contention of prejudice had been made, and no record support for such a conclusion, the court affirmed the Board's exercise of jurisdiction.

B. Board Procedure

The Board's rule prohibiting the relitigation in a subsequent related unfair labor practice proceeding, of issues which were or could have been litigated in a representation proceeding, was examined by the court in the *Sagamore Shirt* case.[7] The Board, relying on section 102.67(f) of its Rules,[8] had held that the status of certain employees as supervisors could not be relitigated in an unfair labor practice proceeding where certain conduct by them was alleged to be in violation of section 8(a)(1), for which the employer was responsible. The employer had not sought Board review of a determination made in a prior representation proceeding that the employees were supervisors and therefore not entitled to vote in the election. In defining the circumstances under which, in its view, the limitation of the Board's rule could be applied, the court stated:

> Where a company is charged with refusal to bargain with a union certified after election, the proceeding in sufficiently "related" to the representation proceeding to preclude relitigation of such common issues as the scope of the appropriate unit and employees therein. Where, however, as in this case, the part of the charge involved in the relitigation issue is not refusal to bargain, but rather interference with rights of organization, the proceedings are not so related as to foreclose presentation to the Board of the underlying issues.

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[6] See, e.g., *El Dorado Club*, 151 NLRB 579, Thirtieth Annual Report (1965), p. 34.

[7] *N.L.R.B.* v. *Sagamore Shirt Co. d/b/a Spruce Pine Manufacturing Co.*, 365 F. 2d 898 (C.A.D.C.).

[8] Sec. 102.67(f). The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

This construction of section 102.67(f) of the Board's rules, which estop relitigation in a related proceeding, is in accordance with the long-held objective of avoiding undue and unnecessary delay in representation elections. There will be cases where an employer will be as interested as the Board in holding a speedy election and will be willing to forego the presence of a given employee in the unit or his vote in the tally. We see no basis for assuming that the Board wishes to require such an employer to delay the election while he completely litigates subsidiary questions, such as supervisory status, in an effort to protect his rights in the future on matters other than the determination of the unit and eligible voters therein. [Footnote omitted.]

The court therefore remanded that portion of the case to the Board for further proceedings in accordance with its opinion.

C. Representation Proceedings

1. Circumstances Requiring an Evidentiary Hearing on Representation Issues

Judicial decisions have long recognized that the Act does not require the Board to hold an evidentiary hearing to resolve issues raised by objections to election conduct and challenges to ballots. The Board's Rules and Regulations [9] authorize resolution of objections and challenges upon the basis of an administrative investigation unless "substantial and material factual issues exist which can be resolved only after a hearing." Evaluations of the circumstances of particular cases to consider whether an evidentiary hearing was required under this standard were made by courts of appeals in several decisions issued during the report year. In one,[10] the employer contended it should have had an evidentiary hearing on its objections to the election based upon prounion electioneering by supervisory employees. The court, in rejecting this contention, pointed out that the employer's objections did not "supply the Board with specific evidence which *prima facie* would warrant setting aside the election" [11] and it could hardly complain about the absence of a hearing when it had pointed out no evidence to be heard. But as a further ground, it emphasized that the employer's own statements established that the supervisors' campaigning was known to him and he had made it clear to his employees that they were not speaking for management in that respect. It held that as a matter of law the supervisors' electioneering under these circumstances would not be a basis for setting aside the election, and "[t]he law's conclusion on the substantive contention of unauthorized supervisory electioneer-

[9] Sec. 102.69(c).

[10] *N.L.R.B.* v. *Douglas County Electric Membership Corp.*, 358 F. 2d 125 (C.A. 5).

[11] The court quoted its own decision in *N.L.R.B.* v. *O.K. Van Storage*, 297 F. 2d 74 (C.A. 5).

ing made it unnecessary procedurally to have a further hearing." The same circuit in another case,[12] however, remanded the proceeding to the Board for a hearing on objections alleging that, unbeknown to the employer until the day before the election, a supervisor had advocated employee support for the union. Finding that the evidence presented by the employer and additional evidence uncovered by the regional director in the course of his investigation "made out a *prima facie* case of supervisory coercion," the court concluded that a hearing was required.

The Third Circuit also reached different results in two cases it decided involving this issue. In *Capital Bakers*,[13] which also involved a contested unit determination, the supervisory status of an employee whose vote was challenged and which vote could have been determinative of the election was resolved administratively without a hearing, despite the employer's repeated contention that a hearing was required. The court, reversing the Board, found that the record established the existence of a substantial issue of fact "surrounding the employment of the challenged voter." It noted that "[t]he history of prior representation petitions, the disputed appropriate unit questions, and the closeness of the vote making the challenged ballot critical, all support the conclusion that a hearing on the challenged ballot was the only fair and proper method of procedure. Where all of these circumstances co-exist all procedural safeguards ought to be used." However, in another case,[14] the court, distinguishing *Capital Bakers*, agreed that the additional evidence the employer sought to offer at a hearing did not raise a substantial issue of fact, stating that "[i]t is only where an additional element goes to a substantial and material disputed factual point of a crucial issue that a hearing is required." The court concluded that "respondent here sought an evidentiary hearing to determine whether there was a substantial and material question of fact. This is a question of law and due process does not require an evidentiary hearing as a prerequisite to a valid determination of a question of law."

Another case in which allegations raising factual issues were found to render a summary disposition of legal issues inappropriate was decided by the Sixth Circuit during the year.[15] In a Board proceeding based upon a refusal to bargain with the certified union, the employer had sought to litigate the continued appropriateness of the unit as determined in the representation proceeding, offering proof that changes in technology and assignment practices since that hearing had rendered it inappropriate under Board precedent. The Board refused

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[12] *N.L.R.B.* v. *Lamar Electric Membership Corp.*, 362 F. 2d 505 (C.A. 5).
[13] *N.L.R.B.* v. *Capital Bakers*, 351 F. 2d 45.
[14] *N.L.R.B.* v. *Sun Drug Co.*, 359 F. 2d 408 (C.A. 3).
[15] *N.L.R.B.* v. *KVP Sutherland Paper Co.*, 356 F. 2d 671.

to consider the offer of proof and granted a motion for summary judgment. The court concluded that the factual issues raised by the employer were substantial and could not appropriately be disposed of by summary judgment, and remanded the case to the Board for a hearing. It noted that as the offer of proof related to events subsequent to the representation hearing they could not have been litigated in that proceeding, but were nevertheless of sufficient substance to require resolution prior to court review.

2. Unit Issues

Issues resolved by the Board in determining the appropriate unit for bargaining purposes were reviewed by the courts in a number of cases. Among these was the *Rohm & Haas* case,[16] where the Fourth Circuit affirmed the Board's finding that a unit limited to powerhouse employees at the employer's integrated process chemical plant was appropriate under the circumstances. The employer contended that the Board's determination permitted the severance of a craft unit which would not have been permitted in the integrated process industries protected by the Board's *American Potash* doctrine,[17] and the Board's failure to accord the chemical industries' integrated processes the same sheltered position by prohibiting craft severance in that industry also, was arbitrary and capricious. The court, however, agreed with the Board that its determination was not a craft severance since the powerhouse employees, by agreement between the company and the union, had been expressly excluded from the represented maintenance workers unit, and had even participated in several elections in which they were recognized as a separate unit. In view of this history of treatment as a separate unit, although never heretofore represented, the court concluded there was "in fact no severance" and that it could "perceive no inconsistency or arbitrariness in the Board's action."

However, in another case,[18] the Seventh Circuit held "that the Board improperly recognized respondent's employees as an appropriate bargaining unit." The Board had found that each of the employer's 10 restaurants of a chain in the same city was an essentially autonomous operation which could constitute an appropriate unit, and a representative had been certified at one such restaurant after winning an election held by the Board. The court, disagreeing with the Board's evaluation of the degree of autonomy of each restaurant, denied enforcement of

[16] *Rohm & Haas Co.* v *N L R B*, 362 F 2d 410

[17] *American Potash & Chemical Corp*, 107 NLRB 1418 Under the rule of that case the severance of craft units from larger represented units is not permitted in the basic steel, wet milling, lumber, and aluminum industries, due to the integrated nature of the manufacturing processes in those industries

[18] *N.L.R.B* v. *Frisch's Big Boy Ill-Mar*, 356 F. 2d 895.

the Board's bargaining order. Emphasizing the central ownership and direction of all the locations, and the uniformity imposed upon operations, the court concluded that each restaurant was not autonomous, noting that "none of the store managers will be deciding questions affecting the employees in the context of collective bargaining."

A third case [19] presented for court review the propriety of the Board's exclusion of a ballot cast by the daughter of an official and part owner of the corporation among whose employees the election was held. The court agreed that the exclusion only of "any individual employed by his parent or spouse" from the definition of "employee" in section 2(3) of the Act does not preclude the Board from excluding any other person having a family relationship to the owners, if because of the relationship "the employee enjoys a special status which allies his interests with those of management." Finding upon the record that the Board's conclusion that the employee in question enjoyed such a special status was neither arbitrary nor capricious, the court affirmed the exclusion of the employee's ballot and enforced the Board order.

3. Other Representation Issues

Among the many other representation issues reviewed by the courts during the period were the use of racial appeals as election propaganda, the effect of a potential conflict of interest upon a union's qualification as representative, and the effect to be accorded an election conducted by a State agency under circumstances where the Board could not have done so. In a case in which the Board had declined to set aside an election because some of the union's preelection propaganda had appealed to the racial pride and solidarity of the predominantly Negro employees to achieve economic betterment through union representation, the court reversed the Board,[20] concluding that the "reliance upon race inhibited a 'sober, informed exercise of the franchise' and was altogether out of place." In the court's view "[e]quality of race in privilege or economic opportunity was not presently an issue. That a majority of employees were Negroes did not make it so. For the union to call upon racial pride or prejudice in the contest could 'have no purpose except to inflame the racial feelings of voters in the election.' "

The conflict-of-interest issue arose upon court review of a case [21] in which the Board directed an employer to bargain with a Teamsters local over the employer's objection that the local was disqualified by a conflict of interest created when the pension fund of another Teamsters organizational unit, not associated with the local but similarly

[19] *Cherrin Corp* v *N L R B*, 349 F 2d 1001 (C A 6)
[20] *N L R B* v *Schapiro & Whitehouse*, 356 F 2d 675 (C.A. 4).
[21] *N L R B.* v *David Buttrick Co*, 361 F 2d 300 (C.A. 1).

under the control of the International union's leadership, had loaned large sums of money to a competitor of the employer's. The employer contended that protection of the interests securing the loan might cause the International to require the local to take a position based upon those considerations, rather than the best interests of the employees. The court concluded that the Board had applied the wrong standard in overruling the objection upon the ground that there was insufficient evidence of a "definite and substantial connection" between the local union representative and the loans to the competitor. In the court's view, it was "the interrelationship of powers and temptations" created by the loans to the competitor which gives raise to the problem, "without regard to the circumstances leading to the existence of the loans." The local union must be able to engage in bargaining negotiations "free of the suspicion that it is motivated by any purpose other than its loyalty to the employees it represents." The case was therefore remanded to the Board to consider whether a conflict of interest existed by virtue of the potential power and temptation to the representative to abuse its authority in view of the contingency of competition, irrespective of evidence of present abuse.

The Board's policy of crediting the results of elections conducted by State agencies, where they contain no irregularities and are accorded procedural safeguards of secrecy and fairness, was reviewed in one case [22] in which it had been applied under somewhat unusual circumstances. The Board had relied on the results of a State-conducted election in a refusal-to-bargain proceeding to find the union was the majority representative of the employees, notwithstanding the fact that an election in the same unit had been held by the same State agency 6 months earlier, which the union had lost. The court, noting that the Board had accorded only the same effect to the results of a State election as it would to one conducted by itself, denied enforcement of the Board order. It concluded that since section 9(c)(3) of the Act prohibits the Board from directing an election in a unit where a valid election was been held within the preceding 12 months, the second State-directed election could not have been held by the Board. As stated by the court, "the Board . . . cannot compel recognition of a bargaining agent selected without the parties' consent through indirect procedures which the Board could not directly initiate under the provisions of the National Act."

[22] *N.L.R.B. v. Western Meat Packers*, 350 F. 2d 804 (C.A. 10).

D. Employer Differentiation in Employment Relationship

In one case decided during the year, the Fifth Circuit enforced [23] a Board order based upon its finding that the employer violated section 8(a) (1) of the Act by refusing to recall a supervisor from layoff status because he gave testimony in support of the union's position at a Board hearing, thereby instilling a fear of retribution in its employees if they were to testify. In the court's view, however, the principle requiring enforcement of the Board's order "as an inherent protection of its source of information necessary to protect rank-and-file employees in the exercise of their statutory rights," was, as stated by the court:

> . . . Rank-and-file employees have a right to have their privileges secured by the Act vindicated through the effective administrative proceedings provided by Congress. Included in this privilege is the right to have witnesses testify without fear of being penalized by their employer. As in the instant case, it may often be necessary to have supervisory personnel testify. It follows, therefore, that any discrimination against supervisory personnel because of testimony before the Board directly infringes the right of rank-and-file employees to a congressionally provided, effective administrative process, in violation of section 8 (a) (1).

The Board's decision that an employer violated section 8(a) (1) and (3) of the Act when he denied accrued vacation pay to striking employees who did not return to their jobs shortly after the strike began, while awarding it to employees who did not strike or who abandoned the strike at an early date, was denied enforcement by the court in another case.[24] The court viewed the disparate treatment as insufficient to establish a violation in the absence of any showing that the employer was motivated by a subjective intent to penalize the strikers. If, the court said, the employer's conduct "carries with it *any other* reasonable inferences of a legitimate motive, the inference of illegality does not control." Although conceding that "the record does not reveal such alternative motives," the court nevertheless found it "reasonable to infer" that the company "might have acted: (1) to reduce expenses; (2) to encourage longer tenure among present employees; or (3) to discourage early leaves immediately before vacation periods." Finding no "circumstantial evidence on which to base an inference of improper motive" the court concluded the Board's decision had no support in the record.

The Board's reliance to some degree on the small number of employees in a plant as a basis for an inference of employer knowledge of union activity among those employees, was evaluated by the First

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[23] *Oil City Brass Works* v *N L R B*, 357 F 2d 466.

[24] *N.L R B.* v. *Great Dane Trailers*, 363 F. 2d 130 (C.A. 5) ; Board petition for certiorari granted 385 U.S 1000

Circuit in two cases decided during the year.[25] The court approved this "small plant doctrine" "not as a rubric, but only insofar as it furnishes a logical basis for an inference." The court viewed the small size of the plant, or staff, as material "only to the extent that it may be shown to have made it likely that the employer had observed the activity in question." Reviewing the Board decisions in the two cases which had found violations in discharges for union activity known to the employer, the court approved the use of the inference in one case where "the employees' activity took place openly in the plant, during business hours" and there was other affirmative proof that the reason given for the discharge was a pretext. In the second case reliance on the inference was disapproved, since "all that was proved" was "an off-hour, off-the-premises meeting."

And in a case involving a question as to whether the particular employee activity was protected by section 7 of the Act.[26] the Seventh Circuit denied enforcement of an order based upon the Board's finding that the company had violated section 8(a) (1) by discharging an employee solely because of his solicitation of employee support for complaints he had raised concerning the manner in which a credit union at the plant was being managed. The court emphasized that the company exercised no control over the credit union, its management, or its operations. It held that while the employee-members of the credit union had a legitimate concern in the proper administration of its affairs, their interest, although mutual, was one arising from their status as borrowers or depositor-investors and was not an interest derived from their status as company employees, or one bearing any significant connection to their employment relationship with the company within the protection of section 7 of the Act.

E. Bargaining Obligations

1. Validity of Union Authorization Cards

In several cases decided during fiscal 1966, the courts decided questions relating to a union's use of authorization cards, i.e., whether the cards were valid authorizations to the unions to represent the particular employee and thus legally sufficient to establish the union's majority status. In *Cumberland Shoe*,[27] the Sixth Circuit affirmed the Board's finding that an employer violated section 8(a) (5) and (1) by refusing, in the context of other unfair labor practices, to bargain in good faith with the union, whose majority status was established

[25] *N L R B.* v. *Joseph Antell, Inc*, and *N L.R.B.* v. *Malone Knitting Co.*, 358 F. 2d 880.
[26] *G & W Electric Specialty Co.* v. *N.L.R.B.*, 360 F. 2d 873 (C.A. 7).
[27] *N.L R B.* v *Cumberland Shoe Corp.*, 351 F. 2d 917.

by authorization cards. The company's asserted good-faith doubt, based upon the contention that some of the authorization cards were invalid because the employees were solicited by fellow employees through statements that the purpose of the cards was to secure a Board election, was rejected by the court. The court noted that the cards signed by the employees were not ambiguous and related solely to the authorization of the union as collective-bargaining representative. It held that the fact that a number of employees testified generally to the effect that they had been told that the purpose of the cards was to have an election did not invalidate their cards, since the signing of cards is an essential preliminary to a union petition for an election, and the union filed such a petition, withdrawing it only because of the employer's coercive unfair labor practices. In no instance did any employee testify that he was told that the election was the only purpose of the card.

The Seventh Circuit in another case [28] also sustained the Board's finding that dual-purpose authorization cards were valid, rejecting the company's contention that in the light of *N.L.R.B.* v. *Peterson Brothers*, 342 F. 2d 221 (C.A. 5), the cards were not reliable and ambiguous because the statements on the cards concluded with a recital that the card "is for use in support of the demand of [the union] for recognition or for an NLRB election." The court stated:

> We do not subscribe to the rationale of *Peterson* insofar as that case may be taken as holding that the recital of the possible alternative uses of the authorization card—either in support of a demand for recognition or for the purpose of obtaining an election—raises such an ambiguity as deprives the plainly expressed authorization to represent the signer in collective bargaining with the employer of its effectiveness absent testimony establishing a subjective intent of the signer to confer such authority without an election. The card expressly confers the requisite authority. The recital of alternative methods by which the card might be used to make the authority granted operative with respect to the employer in our opinion neither negates the grant nor beclouds it with ambiguity.

The Board's finding that dual-purpose authorization cards were valid was also sustained by the District of Columbia Court of Appeals, in a case where the body of the card stated that the employee authorized the union to represent him "in collective bargaining," and in smaller print at the bottom of the cards stated that it was for use in support of a "demand . . . for recognition or for an NLRB election." The court, in rejecting the employer's contention that the authorization cards were ambiguous and did not constitute an unequivocal designation of the union as the bargaining representative, held that despite the different sizes of print the overall purpose of the card was clear. But

[28] *N L R B.* v. *C. J. Glasgow Co.*, 356 F. 2d 476.

in *Bauer Welding* [29] the Eighth Circuit, while agreeing with the Board finding that the authorization cards used by the union clearly and without ambiguity designated the union as the employees' bargaining agent, concluded that the ostensible purpose of the card was beclouded by a letter which the union sent to each employee with the authorization card and which imparted misrepresentation or ambiguity to the purpose of the cards. In the court's view, the emphasis throughout the letter was on the prompt signing of the authorization cards, which woud then, and not before, allow the Board to conduct an election. The letter was designed, the court concluded, for the purpose of, and succeeded in, creating the impression in the minds of the employees that the union would become the bargaining agent only by winning an election. Accordingly, the Board's findings of 8(a) (5) and (1) violations were set aside.

2. Doubt of Majority Status of Incumbent Union

It is well settled that in the absence of special circumstances a union's majority status is conclusively presumed for a period of 1 year following the union's certification. Upon the expiration of the certification year, the presumption continues but may under some circumstances be rebutted by objective circumstances supporting a good-faith doubt of that majority status. Several cases during the year involved court review of the Board's finding that there was insufficient basis for an asserted doubt to justify an employer's refusal to continue to recognize an incumbent union. Among these was *Gulfmont Hotel*,[30] where the Fifth Circuit enforced the Board's order based on a finding that respondent refused to bargain in good faith with the certified union and that the basis for its asserted doubt of majority status was not sufficient to refute the presumption of such status. The employer refused to bargain with the union near the end of the contract year, asserting doubt of the union's majority status because the number of checkoff authorizations had fluctuated, due to employee turnover during the contract year, in a manner from which the employer concluded the union had lost its majority status. The court noted that since there was no compulsory checkoff, there was no necessary connection between the checkoff list and the number of union supporters, and the information relied on by the employer "in a legal sense, showed nothing with reference to what percentage of the . . . employees . . . still wished to have their bargaining unit represented by the unions. The effort by the company to challenge the unions' status by reliance on such information therefore does not arise to the dignity of substantial

[29] *Bauer Welding & Metal Fabricators* v. *N.L.R.B*, 358 F. 2d 766.
[30] *N.L.R.B.* v. *Gulfmont Hotel Co.*, 362 F. 2d 588.

evidence to justify a doubt of the continuing majority status." However, the Seventh Circuit set aside the Board's finding in another case [31] that the employer's action in withdrawing recognition from the union after the close of the certification year, on a claim of good-faith doubt of the union's majority status, constituted an unlawful refusal to bargain. Contrary to the conclusion reached by the Board, the court found that the circumstances of the case, including the close vote at the prior election, a substantial employee turnover in the 2-year interim during which union membership was required as a condition of employment, and the expressed willingness of the respondent to negotiate a renewal of a contract subject only to proof of the union's majority at a Board election, sufficiently established a good-faith doubt warranting "a recommendation that the complaint be dismissed and that the employees themselves—whose rights the Act was designed to protect—be given an opportunity to express themselves at a secret election."

3. Subjects for Bargaining

a. Contracting Out and Termination of Operations

Following Supreme Court affirmance [32] of the Board's holding that the subcontracting out of work performed by members of the bargaining unit is a mandatory subject of bargaining, several courts of appeals reviewed Board decisions on that issue in the light of the Supreme Court decision. In one case [33] the court affirmed a decision in which the Board had found that, in the absence of a showing of a resulting substantial adverse impact on the employees, the employer had not violated the Act by refusing to notify and bargain with the representative of its maintenance employees in advance of awarding its numerous contracts for scheduled maintenance repairs. The court viewed the Supreme Court *Fibreboard* decision as imposing the duty to bargain where the employer action "will effect some *change* in *existing* employment terms or conditions which adversely affects the employee unit." Noting the employer's past practice of making a choice, without prior consultation with the union, between assigning the scheduled maintenance repairs to its own employees and contracting them out, and that the employer's continuation of that practice did not result in reducing the amount of work available for the employees, the court agreed with the Board that the employer was not obligated to bargain with the union concerning the subcontracting of the work in question.

[31] *N L R B.* v. *Laystrom Mfg Co*, 359 F. 2d 799.

[32] *Fibreboard Paper Products Corp* v *N L R.B*, 379 U S 203, Thirtieth Annual Report (1965), pp 118–119.

[33] *District 50, UMW, Local 13942* [*Allied Chemical*] v. *N L.R B.*, 358 F. 2d 234 (C.A. 4).

The court also expressed its view that because of the varying impact of decisions of this nature and the competing interests to be protected, the extent of bargaining required in any given situation "is a matter of degree and the statutory bargaining obligation should be flexibly administered to meet the needs of the particular case." It approved the Board's approach as one pointing "toward a balanced and economically feasible accommodation between the interests of the parties in respect to decisions to subcontract."

Relying on the *Fibreboard* decision to hold that "[q]uite apart from anti-union conduct, or here the claim of economic justification, the decision to subcontract work is a subject for mandatory bargaining," the Fifth Circuit in another case [34] sustained the Board's finding that an employer violated section 8(a) (5) and (1) of the Act when, without consultation or discussion with the union designated by its employees to represent them, it discharged drivers delivering its products to customers, sold its trucks, and had the deliveries made by an independent trucking firm. However, the court remanded the case to the Board for further consideration of the provision of its remedial order requiring the employer to resume its former truck delivery operations.

A somewhat similar case was decided by the Eighth Circuit upon remand from the Supreme Court for reconsideration of its prior decision in the light of the decision in *Fibreboard*. The court reaffirmed [35] its prior decision, reversing the Board's finding that the employer violated section 8(a)(5) when, during the contract term and without prior negotiation or consultation with the union, it discharged the delivery route drivers handling the distribution of its dairy products, sold its delivery trucks to independent distributors, and thereafter sold its dairy products to the independent distributors who covered territories similar to those formerly serviced by the employee-drivers. In distinguishing *Fibreboard*, the court stated that the case before it involved more

> . . . than just the substitution of one set of employees for another. In [this case] there is a change in basic operating procedure in that the dairy liquidated that part of its business handling distribution of milk products. Unlike the situation in *Fibreboard*, there was a change in the capital structure of [the employer] which resulted in a partial liquidation and a recoup of capital investment. To require Adams to bargain about its decision to close out the distribution end of its business would significantly abridge its freedom to manage its own affairs. Bargaining is not contemplated in this area under the history and usage of § 8(a)(5).

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[34] *N.L.R.B.* v. *American Mfg Co. of Tex.*, 351 F. 2d 74.
[35] *N.L.R.B.* v. *Adams Dairy*, 350 F. 2d 108, certiorari denied 382 U.S. 1011.

An employer's decision to terminate operations at one of his plants, rather than move the operations to another location when he was forced to sell the first location to a State agency as an alternative to imminent condemnation proceedings, was viewed by the Third Circuit in another case [36] as one which also "involved a management decision to recommit and reinvest funds in the business" and was therefore exempt from a prior bargaining obligation. It therefore denied enforcement of a Board order based upon the Board's finding that the plant closing accomplished without prior notification to and bargaining with the union, although contract negotiations were then in process, was a partial termination of operations concerning which the employer was required to notify the union and give it opportunity for discussion of the matter. Relying on the *Fibreboard* decision, the court held:

> . . . The decision to close the . . . plant rather than move the operations to another location involved a management decision to recommit and reinvest funds in the business. The business had been suffering severe losses for approximately seven years and the management had to decide whether the business should be continued. There is no question but that the decision to terminate was made for economic reasons. The decision involved a major change in the economic direction of the Company. . . . We conclude that an employer faced with the economic necessity of either moving or consolidating the operations of a failing business has no duty to bargain with the union respecting its decision to shut down.

The court found, however, that the employer was obligated to notify the union and bargain about the effect of the decision upon the employees and remanded the case to the Board to determine a remedy appropriate for that violation.

b. Exclusive Hiring Hall

The right of a union to insist on bargaining about a contract provision providing for an exclusive nondiscriminatory hiring hall referral system in a right-to-work State was upheld by the Fifth Circuit in affirming the Board decision in one case.[37] Noting that an exclusive nondiscriminatory hiring hall is legal, absent the actual practice of discrimination, the court found that the purpose of the union's proposal was to "establish a system of seniority rights and job priority," thereby "regulating relations between the employers and employees." The proposal therefore concerned a term or condition of employment within the meaning of section 8(d) and was a mandatory subject of bargaining. The court rejected the contention that the hiring hall

[36] *N L R B.* v. *Royal Plating & Polishing Co*, 350 F 2d 191

[37] *N L R B.* v. *Houston Chapter, Associated General Contractors*, 349 F. 2d 449, certiorari denied 382 U.S. 1026.

clause was "a form of compulsory unionism left for regulation by the States under section 14(b) of the Act." It concluded that section 14(b) contemplates prohibition of only those forms of union security which are the practical equivalent of compulsory unionism. As the hiring hall sought would be administered on a nondiscriminatory basis, it was found not to constitute a form of compulsory unionism.

4. Duty to Furnish Information

a. Support for Claim of Competitive Disadvantage

As a general rule, an employer who during the course of negotiations resists a proposed wage increase by reference to his own financial position must, in order to meet his obligation to bargain in good faith, produce substantiating data upon request of his employees' bargaining representative.[38] The application of this general rule to specific circumstances, as resolved in Board decisions, was considered by courts of appeals in three cases decided during the report year. In the *Western Wirebound Box* case,[39] the court affirmed the Board's finding that an employer who insistently asserts that competitive disadvantages preclude him from acquiescing in a union wage demand has the duty to come forward, upon the union's request, with some record substantiation. The company's contention, that it had adequately met the duty of substantiating its claim that competition required the minimization of costs when it offered available wage data of its competitors and other information about competing products, was rejected by the court as "less than adequate substantiation." Although the union's request had been for figures relating to the productivity and unit cost of the employer's operations, information not readily available, the court found the request adequate to impose a duty of substantiation, noting that the duty "is not to be defeated because the union fails to ask for the precise kind of information which is relevant to the claim, or because the company, although capable of supplying relevant information, is unable to supply other relevant or irrelevant data specifically requested by the union. The hallmark of lawfully adequate negotiations for a collective bargaining agreement is good faith, and good faith contemplates that both negotiating parties will do what is reasonably possible to reach agreement."

The Board's decision was also affirmed by the court in another case[40] where it had found that the employer was not obligated to reveal its

[38] *N.L.R.B.* v *Truitt Manufacturing Co*, 351 U.S. 149, Twenty-first Annual Report (1956), p. 123.

[39] *N.L.R.B.* v. *Western Wirebound Box Co*, 356 F 2d 88 (C.A 9)

[40] *Dallas General Drivers, etc., Local 745, Teamsters [Empire Terminal Warehouse Co.]* v. *N.L.R.B.*, 355 F. 2d 842 (C A.D C.)

financial position to support its resistance to a wage increase on the grounds that it was already paying more than its competitors and could hire men in the area for less than the existing union rate. The court agreed that "[t]he company's position on wages was not based on a claim of financial inability to pay but on the ground that it was paying rates in excess of prevailing rates of its competition in the same labor market." In a third case,[41] however, the court refused to affirm the Board's finding that the company's proposal of a wage reduction required it to provide financial information in substantiation. The court concluded that the employer's position had been that it simply would not meet the union's wage demands, rather than that it could not pay what the union requested.

b. Information To Evaluate Desirability of Arbitration

The obligation to furnish relevant information to the union is a continuing one which may also arise during the term of the contract. In two cases the courts reviewed Board decisions holding employers were obliged to furnish information to the unions to assist it in evaluation of the desirability of taking grievances to arbitration as provided by the contract. In *Fafnir Bearing*,[42] the court affirmed the Board's decision holding that a union was entitled to access to the employer's plant to conduct its own time study for the purpose of determining whether the union should accept certain proposed piece rates established by the employer, or proceed to arbitration with pending grievances challenging the proposed rates. The court agreed that the information concerning piece-rate studies performed by the employer and furnished the union at its request was not in all respects adequate for the union to verify the proposed rates and intelligently determine whether to accept them or invoke arbitration. Concluding that union-conducted live time studies "provided the only means for full assessment and verification of the Company's proposed rates," the court found that the subjective nature of the information sought, being also within the company's exclusive control, adequately supported the Board's determination "that the Union's need to conduct these tests outweighed the Company's interests in closing its doors to outsiders." The court also agreed that, under the circumstances, the Board's decision would not unduly invade the company's property rights, even though nonemployees were to conduct the test on behalf of the union.

In the other case,[43] the Board found an employer obliged by the statutory bargaining requirements to furnish its employees' represent-

[41] *United Fire Proof Warehouse Co.* v. *N L R B.*, 356 F. 2d 494 (C.A. 7).

[42] *Fafnir Bearing Co.* v. *N L R B.*, 362 F. 2d 716 (C.A. 2).

[43] *Acme Industrial Co.* v. *N L R B*, 351 F. 2d 258 (C.A. 7); Board petition for certiorari granted 383 U.S 905.

ative requested information concerning the circumstances of equipment removal from the plant. The current contract provided certain employee rights in that event and the machinery removal had been made the subject of grievances capable of being carried by the union to arbitration under the contract. Reversing the Board's finding that the union was entitled to the information in order to intelligently evaluate the grievances and determine whether to press for arbitration, the court observed that "apart from provisions such as the subcontracting and work transfer clauses of the agreement here involved it is not apparent that the removal of machinery from an employer's plant would have relevance to a possible grievance or to contract administration or policing." The court concluded that since the relevancy of the information was dependent on the construction and application of the contract, a matter exclusively reserved for the arbitrator, the Board's intervention to make the determination of relevancy was "improper." The court referred to the policy expressed in Supreme Court decisions [44] that priority should be accorded grievance and arbitration procedures provided for by contract as the means of implementation of the continuous collective-bargaining process. Since, in the court's view, the Board's order clashed "with the policy of effectual achievement of contractual arbitration" and would "contravene the national policy" preferring adjustment of disputes by methods agreed upon by the parties, enforcement of the Board's order was denied.

c. Unilateral Changes in Employment

The Board's authority to construe collective-bargaining agreements was also in issue in the *C & C Plywood* case,[45] where the Board found the employer violated section 8(a) (5) and (1) of the Act by unilaterally instituting a group wage-incentive plan during the term of the contract without prior bargaining with the employee representative. The court reversed the Board's decision, finding that the Board was without jurisdiction to adjudicate as an unfair labor practice a controversy relating to a unilateral change of conditions by the employer, where, as in this case, the decision requires the interpretation of a provision of a collective-bargaining agreement relied on in good faith by the employer as authorizing the unilateral action taken. The court viewed the controversy between the employer and the union as being concerned with "whether the provisions of the contract positively sanction" unilateral action which, absent the contract, the Act would admittedly condemn as an unfair labor practice. The court expressed

[44] *Textile Workers* v *Lincoln Mills*, 353 U.S. 448; *United Steelworkers of America* v. *Warrior & Gulf Navigation Co*, 363 U.S. 574.

[45] *N L R B* v. *C & C Plywood Corp*, 351 F. 2d 224 (C A. 9); Board petition for certiorari granted 384 U S. 903.

the view that since "the Board has no jurisdiction to enforce collective-bargaining agreements as such, both reason and policy dictate that adjudication of disputes, as to the scope of contractual rights and obligations, be by tribunals empowered to compel compliance with them," such as the courts or an arbitrator. Finding that the specific controversy in this case was whether the company or the union correctly interpreted the provisions of the collective-bargaining agreement and that therefore the existence or nonexistence of an unfair labor practice would not turn entirely upon the provisions of the Act, the court denied enforcement of the Board's order "for lack of the Board's present jurisdiction over the subject matter."

5. Withdrawal From Multiemployer Bargaining Unit

Board decisions holding that employer members of multiemployer associations bargaining with a union on behalf of the employees of all members may not withdraw from the multiemployer bargaining once negotiations for new contracts have begun were reviewed by courts of appeals in two cases. In *Sheridan Creations* [46] the employer, a member of a multiemployer bargaining association, attended the first negotiation session for a new contract, thereafter filed a petition with the Board requesting an election in a unit limited to his own employees, and refused to ratify the contract subsequently reached between the union and the association. The court, affirming the Board order, expressed its approval of the Board's holding that withdrawal from a multiemployer unit is untimely absent union consent once negotiations for a new contract have begun, irrespective of the good faith of the employer in so doing. The court noted that "[w]ithdrawal should be restricted to the period before negotiations to assure that it is not used as a bargaining lever" and that "[a] shift in membership after negotiations have begun has lively possibilities for disrupting the bargaining process." The *Sheridan* case was followed by the Sixth Circuit in a case [47] sustaining a Board decision holding that an employer was obligated to ratify the contract negotiated between an association of which he had been a member and the union, notwithstanding that at the beginning of negotiations it had announced that it would withdraw from the association if the new contract provided for a wage increase. The court emphasized that multiemployer bargaining "cannot be effective unless an employer who has designated an employers' association as its bargaining representative is bound by the terms of the negotiated contract."

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[46] *N L R.B* v *Sheridan Creations*, 357 F. 2d 245 (C.A. 2), certiorari denied 385 U.S. 1005.
[47] *Universal Insulation Corp.* v. *N L R.B.*, 361 F. 2d 406.

F. Union Interference With Employee Rights and Employment

Board decisions [48] construing the scope of the proviso of section 8(b)(1)(A) of the Act, providing that that section's prohibition of union interference with employee rights "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein," were reviewed by courts of appeals in several decisions during the year. The Seventh Circuit in one such case [49] reversed the Board's holding that the proviso protected union action in imposing fines on members who crossed the local's picket line to work during a strike of the local, and in bringing an action in the State court to collect the fines. A majority of the court, reversing the initial decision upon rehearing *en banc*, concluded that the "statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification." Construing section 7 and the proviso to section 8(b)(1)(A) literally, the court held that union discipline of its members for exercising the section 7 right to refrain from concerted activity, in this instance the refusal to honor the picket line, was limited to expulsion from the union. Therefore the imposition of other forms of discipline such as fines, even though not affecting the employee's employment, were violations of section 8(b)(1)(A) not protected by the proviso.[50]

In two other cases involving construction of the proviso, the Board position was sustained. In the *H. B. Roberts* case,[51] the court affirmed the Board's holding that a union violated section 8(b)(1)(A) when it imposed a fine upon a member for filing an unfair labor practice charge against the union with the Board without having first exhausted internal union remedies. The court noted that by filing a charge with the Board a union member "stepped beyond the internal affairs of the Union and into the public domain. The Act, in enabling the Board to inhibit the Union from penalizing him for doing so keeps open the channels created by Congress for the administration of a public law and policy." The court rejected the union's argument that the provisions of section 101(A)(4) of the Reporting and Disclosure Act required the Board to withhold action until the employee had exhausted internal remedies to resolve internal matters before resorting to outside authorities. In another case [52] the Ninth Circuit

[48] See Thirtieth Annual Report (1965), pp. 83–85

[49] *Allis-Chalmers Mfg Co* v. *N L R B*, 358 F. 2d 656

[50] Board petition for certiorari granted 385 U S. 810.

[51] *H B Roberts Business Manager of Local 925, IUOE [Wellman-Lord Engineering]* v. *N L R B*, 350 F 2d 427 (C A D C)

[52] *N L R B* v. *Hod Carriers' Bldg. & General Laborers' Union, Local 652 [Earl C. Worley]*, 351 F 2d 151.

upheld a Board finding that a union violated the Act by refusing to refer an employee for employment and subsequently causing his discharge, because he had filed an unfair labor practice charge against the union. The court likewise found "inapposite" the contention that employee failure to exhaust internal union administrative remedies precluded the Board action.

Although it is clear that an exclusive hiring hall is not unlawful absent actual discrimination in its operations, and that referral priorities based upon length of prior employment, work competence, and residency may be utilized under appropriate circumstances, in one case [53] decided during the year, the court affirmed the Board finding that referral criteria valid on their face were in practice "perpetuating the illegal preference previously accorded to members of Local 269." Under the contract in effect, referral was based upon work experience gained by past employment under contracts which the Board found provided for unlawful preference to union members. The court agreed that although "the contract provisions regarding qualifications for referral priority are not necessarily evidence of discrimination," upon taking into account the prior history of the local's referral practices "it is clear that those provisions, when they are carried out, will give preference to applicants who are members of Local 269 or another local of" the parent international. The court also rejected the contention of the union that its contract provisions were permissible as embodying referral criteria permitted by section 8(f)(4) of the Act,[54] noting that "the subsection does not sanction the use of seemingly objective criteria as a guise for achieving illegal discrimination."

G. Work Preservation Boycotts and Agreements

In one case,[55] the court enforced Board findings that union work stoppages to enforce a provision in a collective-bargaining agreement that the employees would not handle prefabricated materials incorporating work they had traditionally performed at the construction site violated the Act under certain circumstances. Applying its "right-

[53] *N.L.R.B.* v *Local 269, IBEW & Mercer County, Natl Electrical Contractors Assn.*, 357 F. 2d 51 (C.A. 3).

[54] That section provides in relevant part as follows: "It shall not be an unfair labor practice under subsection (a) and (b) of this section for an employer engaged in the building and construction industry to make an agreement covering employees engaged . . . in the building and construction industry with a labor organization of which building and construction employees are members . . . because . . . (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area . . . ."

[55] *National Woodwork Mfg. Assn.* v. *N.L.R.B.*, 354 F. 2d 594 (C.A. 7); Board petition for certiorari granted 384 U.S. 968.

of-control" test,[56] the Board had found the stoppages were secondary and therefore violated section 8(b)(4)(B) in circumstances where the employer was required by his contract specifications to install the prefabricated materials, but were primary and not violative of the Act where the employer himself had determined to use the prefabricated materials. The court, however, reversed the Board finding that the contract provision did not violate section 8(e) of the Act, and that the unions therefore did not violate section 8(b)(4)(A) in utilizing a work stoppage to enforce it.

The Board's holding that no violation was committed by somewhat similar efforts of the union in the *Houston Insulation Contractors* case,[57] to enforce a no-subcontracting provision of its contract against an employer's efforts to have certain cutting and fitting work covered by the contract done outside the unit, was also the subject of court review during the year. The court agreed that the refusal to install the precut products was protected primary activity by the employees directed at their employer for the object of enforcing the concededly lawful ban on subcontracting contained in the collective-bargaining agreement. However, it disagreed with the Board's finding that the refusal of a sister local to handle the precut material, when installation work was being performed within its jurisdiction subject to a similar contract, was likewise protected. Referring to the fact that under the contract the precutting work would be done by members of the first local and not by the members of the sister local, the court concluded that the latter could not lawfully exert economic pressure on the employer to obtain benefits for employees in another unit; namely, that represented by the first local.

The legality of contract provisions designed to enforce clauses protected by the construction industry proviso to section 8(e) were before the court in another case.[58] The Board had found a violation of section 8(b)(4)(B) when union members refused to work at a project where a subcontractor would not meet union standards of employment. The contract provided that no union member be assigned, expected, or required to work at a project where any work was being performed not in accordance with union standards. Although agreeing with the Board that contract provisions protected by the 8(e) proviso may not be enforced by means proscribed by section 8(b)(4)(B) as the union did in this case, the court did not agree that the provision that employees could refuse to work in the event of breach removed the clause from the protection of the proviso. Noting that section 8(b)(4)(B) "does

[56] See Twenty-eighth Annual Report (1963), pp 92–95

[57] *Houston Insulation Contractors Assn* v. *N L R B*, 357 F. 2d 182 (C A 5); Board petition for certiorari granted 385 U S 811.

[58] *N.L.R B.* v. *Local 217, Plumbers* [*Carvel Co*], 361 F 2d 160 (C.A. 1).

not prohibit all forms of self-help," the court emphasized that a distinction must be maintained between union-induced and independent self-help. It held that insofar as the "abstract terms of the present contract . . . do not call for section 8(b)(4) proscribed conduct, they remain within the construction industry proviso to section 8(e)."

H. Recognitional Picketing

A union may legitimately picket an employer for the purpose of truthfully advising the public that the employer is undermining area standards by maintaining substandard working conditions, so long as that is the sole purpose and there is no recognitional objective.[59] In one recent case, the District of Columbia Circuit enforced a Board decision holding that a union's picketing for the asserted purpose of informing the public of substandard conditions actually had a recognitional objective and its continuation for more than 30 days without filing a petition for an election violated section 8(b)(7)(A) of the Act.[60] It affirmed the Board's finding that the union's request that the employer execute a settlement agreement obligating it to meet conditions established under union agreements covering the type of work performed that might exist from time to time, and permit the union's accountant to make inspection of its records to assure that it was being done, adequately established the union's recognitional objective. In the court's view, "the net affect of [the employer's] entering upon the imposed agreement would have been to establish the [union] as the negotiator of wage rates and benefits to the [employer's] employees."

I. Remedial Order Provisions

In a number of cases decided during the report period, the courts considered issues relating to the remedial provisions of Board orders. Significant among them were decisions holding that in proceedings to determine the backpay due discriminatees under Board orders, it is the obligation of the Board to produce the discriminatees for examination by the employer as to potential willful loss of earnings offsetting backpay liability, and a decision evaluating the adequacy of offers of reinstatement to a workweek shortened due to the retention of striker replacements. In the *Mastro Plastics* case,[61] the court examined at length the respective burdens of proof of the parties in resolving con-

[59] *Houston Bldg & Construction Trades Council (Claude Everett Construction Co.)*, 136 NLRB 321, Twenty-seventh Annual Report (1962), p. 185.

[60] *Centralia Bldg & Construction Trades Council [Pacific Sign & Steel Bldg. Co.]* v. *N.L.R.B.*, 363 F. 2d 699 (C.A.D.C.).

[61] *N.L.R.B.* v. *Mastro Plastics Corp.*, 354 F. 2d 170 (C.A. 2); company petition for certiorari denied 384 U.S. 972.

tested issues as to the amount of backpay due under a reimbursement order. "[A]nalyzing the purpose behind the backpay proceeding and the practical considerations present in resolving factual issues through administrative adjudication," the court agreed with the Board the burden is on the employer to come forward with evidence in mitigation of backpay based on the lack of available jobs at the plant for the discriminatee, since the employer has greater knowledge of the facts involved. However, where the employer raises the issue of willful losses it is incumbent on the Board to make the discriminatees available at the hearing.

In so holding the court emphasized that it was not relieving the employer of the need to raise the defense of willful loss of earnings in his answer, and that when there was no way of producing a discriminatee the Board was free to decide to accept other evidence such as depositions. The court's view was also adopted by the District of Columbia Court of Appeals in a case [62] where it held that the amount of backpay payable to a discriminatee who was not produced to testify at the hearing should be placed in escrow until such time as he was available, so that the employer could adequately "inquire of him about matters which might mitigate the amount, if any, due to him."

The adequacy of an offer of reinstatement to a workweek reduced because of the employer's intention to retain employees hired subsequent to the time the discriminatees became entitled to reinstatement was considered by the court in the *Kohler* case.[63] The court agreed with the Board that the offer of the reduced workweek was not an offer of substantially equivalent employment complying with the Board's order of reinstatement. Holding that "an employer is not required to dismiss one replacement for every unfair labor practice striker reinstated," the court noted that the purpose of the statute is to remedy the effects of the unfair labor practice and "not to punish strike breakers." However, it also recognized that an effective remedy requires that returning strikers be given a preference and that by adopting a policy of reducing the workweek rather than laying off employees hired after the strikers had applied for reinstatement, the employer violated the Board's order notwithstanding the promises of continued employment it had made to the replacements it had hired.

[62] *N L R B.* v *Rice Lake Creamery Co*, 365 F. 2d 888.

[63] *N L R B* v *Kohler*, 351 F. 2d 798, (C A.D.C.); company petition for certiorari denied 382 U S 836

IX

Injunction Litigation

Section 10 (j) and (l) authorizes 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 1966, the Board filed 17 petitions for temporary relief under the discretionary provisions of section 10(j)—13 against employers and 4 against unions. Injunctions were granted in nine cases and denied in one. Of the remaining cases, one petition was withdrawn, two were disposed of when the respondents stipulated to refrain from the alleged unlawful conduct pending final disposition of the Board proceeding, and five were pending at the close of the report period.[1]

Injunctions were obtained against employers in six cases, five of which involved refusals to bargain with the labor organizations certified by the Board as representatives of the employers' employees, unilateral changes in conditions of employment, and acts of interference and discrimination. In the other case, the employer was enjoined from committing acts of interference and making discriminatory discharges. Injunctions or restraining orders were obtained against unions in two cases: one enjoined a refusal to bargain and strike allegedly in violation of section 8(d) of the Act, and the other restrained the union's acts of violence and coercion of employees.

In one of the cases involving an allegedly illegal refusal to bargain [2] the employer, after its objections to the representation election had been overruled and the union certified by the Board, refused to bargain with the union, reasserting claims litigated in the representation proceeding as the grounds for its refusal. The court found that the

[1] See table 20 in appendix Also, one petition filed during fiscal 1965 was pending in court at the beginning of fiscal 1966.

[2] *Hoban* v. *Connecticut Foundry Co*, 62 LRRM 2139, 53 LC ¶11,255 (D C Conn.).

regional director had reasonable cause to believe that the employer had violated the Act, granted the temporary injunction, and ordered the employer to recognize and bargain with the union. And in *Herron Yarn Mills*,[3] a union certified by the Board requested the employer to bargain and to furnish certain wage data. The company refused to meet with the union unless the union amended its constitution and bylaws to permit it to organize employees in the company's industry, qualified itself to do business in Shelby County, Tennessee, as required by State law, and supplied an affidavit that none of its officers "are in any way affiliated with the communist party." The court, in granting the injunction, noted that the objection advanced by the employer had been found inadequate by the Sixth Circuit Court of Appeals in another case.[4] It therefore found that there was reasonable cause to believe that respondent had committed an unlawful refusal to bargain, and enjoined that refusal. In the third case,[5] the court found that the regional director had reasonable cause to believe that the employer had violated section 8(a) (1) and (5) of the Act by refusing to bargain with the certified union and unilaterally changing the classifications and wages of its employees. It ordered the respondent to bargain with the union and also enjoined respondent from unilaterally changing or altering the existing wages, hours, rates of pay, and other conditions of employment. Similarly, in the *Curley Printing* case,[6] the court held that there was reasonable cause to believe that respondent had refused to bargain in good faith with the certified union and had engaged in discrimination in employment in violation of section 8(a) (1) and (3) of the Act. Accordingly, respondent was enjoined from continuing to engage in these practices and was ordered to bargain with the union and to offer immediate and full reinstatement to the discriminatorily discharged employees. In another case,[7] the employer was enjoined by the court from continuing to refuse, in violation of section 8(a) (1) and (5), to recognize unions whose representative status was premised upon authorization cards signed by a majority of the employees in the unit. After rejecting the bargaining request, the employer had allegedly engaged in numerous coercive unfair labor practices designed to intimidate the employees and destroy their support of the union. The court ordered the employer to recognize and bargain with the unions as the collective-bargaining representative of the employees and enjoined the continuation of the other acts of interference, pending Board determination of the issues.

Enforcement of a union's bargaining obligation was obtained

[3] *Reynolds* v *Herron Yarn Mills*, 53 LC ¶11,347 (D C Tenn)
[4] *Memphis Moldings* v *N L R B* , 341 F 2d 534
[5] *Hoban* v *Potato Service*, No 1602 (D C Maine), decided May 9, 1966 (unreported).
[6] *Reynolds* v. *Curley Printing Co* , 247 F Supp. 317 (D C Tenn).
[7] *Henderson* v. *Azotea Contractors*, 53 LC ¶11,081 (D.C.N.Mex.).

through 10(j) proceedings in *Pulverizing Services*,[8] where 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.[9] In another strike situation occurring at the Nevada Test Site,[10] the court exercised its discretion to deny without prejudice injunctive relief sought upon an alleged 8(b)(3) violation, when during the injunction hearing the court was informed that all the strikers had returned to work. And in *Teamsters Local 777*[11] the district court entered an injunction under section 10(j) restraining the union from inflicting or threatening to inflict physical harm upon employees of a company involved in a labor dispute with the union, and from preventing the employees from entering or leaving the plant.[12]

In *Finesilver Mfg. Co.*,[13] 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 issue. The court found that there was reasonable cause to believe that respondent had engaged in certain conduct violative of section 8(a)(1) and had discriminatorily discharged several employees in violation of section 8(a)(3). It accordingly enjoined the unlawful conduct and ordered the employer to offer immediate reinstatement to the discharged employees.[14]

In another case,[15] an injunction was sought under section 10(j) to prevent an anticipated dissipation of assets by a respondent in a Board proceeding where a substantial backpay liability might result. The court, agreeing that such relief was appropriate, enjoined the respondent employer from selling or otherwise disposing of any of its machinery and equipment, raw materials, or finished products, except in accordance with existing liens or chattel mortgages, or for full and fair consideration, with disbursements limited to those in the due course of business, pending final disposition of the case by the Board.

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[8] *Samoff* v *United Pulverizing & Processing Union, Local 532*, No. 283–66 (D C N J), decided Mar 25, 1966 (unreported)

[9] 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.

[10] *Hoffman* v *Local No 525, Plumbers* [*Reynolds Electrical Co*], No 868 (D C Nev), decided Feb 9, 1966 (unreported)

[11] *Madden* v *Local 777, Teamsters* [*Vaughan Mfg Co*], No 65–C–1608 (D C Ill), decided Oct 8, 1965 (unreported).

[12] Injunction was also granted under sec 10(l) predicated on violations of sec. 8(b)(4)(i) and (ii)(B) where the strike and picketing were held to have a "cease doing business" object

[13] *Potter* v *Finesilver Mfg Co*, No 3575 (D C Tex), decided Sept. 9, 1965 (unreported)

[14] See also *Reynolds* v *Curley Printing Co*, *supra*

[15] *Compton* v. *Southland Mfg Corp*, No 505–65 (D C P R), decided Dec. 3, 1965 (unreported).

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), and (C),[16] or section 8(b)(7),[17] and against an employer or union charged with a violation of section 8(e),[18] 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 has 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 1966, the Board filed 173 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 12 cases pending at the beginning of the period, 62 cases were settled, 1 dismissed, 21 continued in an inactive status, 7 withdrawn, and 16 were pending court action at the close of the report year. During this period 78 petitions went to final order, the courts granting injunctions in 74 cases and denying them in 4 cases. Injunctions were issued in 39 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 case involved a strike

[16] 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 an 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)

[17] Sec 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice

[18] 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.

in violation of section 8(b)(4)(C) to require recognition when the Board had certified another union as representative. Injunctions were granted in 25 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 4 also involved proscribed activities under secton 8(b)(4)(B). Injunctions were issued in nine cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7).

Of the four injunctions denied under section 10(l), all involved alleged secondary boycott situations under section 8(b)(4)(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 case 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.

Two of the cases decided during the year, however, involved legal principles of particular consequence to the nature of the injunction proceeding itself, in that they dealt with the extent of the Board's control over the proceeding. In one case,[19] the employer who had filed the charges with the Board and subsequently intervened in the court proceeding in which an injunction was issued, sought to initiate contempt proceedings before the court for what it considered a violation of the injunction. The court declined to consider the application for a citation, relying on *Auto Workers* v. *Scofield*[20] to hold that a charging party, even though an intervenor in the injunction proceeding, has no standing to initiate proceedings for contempt of an injunction issued under section 10(l), that standing having been reserved to the Board alone.

In *Retail Clerks Union*,[21] the Ninth Circuit held that the district court had not abused its discretion by issuing a temporary injunction under section 10(l) restraining the union from proceeding to arbitration to enforce its collective-bargaining agreement, parts of which were alleged to be violative of the hot cargo provisions of section 8(e). The injunction had been issued over the objection of the regional director who had instituted the action, but on the basis of a stipulation between him and the union sought a lesser form of relief than the injunction originally prayed for in the petition initiating the proceedings. The charging parties before the Board had intervened in the injunction

[19] *Davis* v. *Hotel & Restaurant Employees & Bartenders Intl. Union, Local 246*, No. 66-68 (D C Okla), decided May 12, 1966 (unreported).

[20] *Intl Union, United Automobile Workers* v *Scofield*, 382 U.S 205 See *supra*, p 126

[21] *Retail Clerks Union, Locals 137, et al & Kennedy* v. *Food Employers Council*, 351 F. 2d 525.

proceeding and opposed approval of the stipulation. Upon appeal, the contention that the district court was powerless to grant relief not sought by the regional director was rejected. In the court's view, while it may be true that the regional director could not be compelled to institute proceedings under section 10(l), it does not follow that once having petitioned the court for injunctive relief he retains exclusive control over the precise form of relief to be granted by the district court. Such a construction of section 10(l), the court held, flies in the face of the statutory language which obligates the regional director to seek appropriate injunctive relief, and places in the district court the discretion as to the form of relief to be granted.

X

Contempt Litigation

During fiscal 1966, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 18 cases; 14 for civil contempt, 1 for criminal contempt, and 3 for both civil and criminal contempt. In two of these cases the petitions were withdrawn following compliance by respondents during the course of the proceedings.[1] In five cases the petitions were granted and civil contempt adjudicated,[2] while another was disposed of by entry of an order approving a compromise by which respondent undertook to pay stipulated backpay in fixed installments.[3] In five cases the courts referred the issues to special masters for trials and recommendations.[4] One case was dismissed on the ground that the petition presented matters which arose after respondent had complied fully with the court's enforcement orders.[5] The remaining four cases are pending in various stages.[6] Contempt was also adjudicated in four cases which had been commenced prior to fiscal 1966; three such adjudications resulting from confirmation of the recommendations of special masters;[7] the other, because the respondent refused to comply with his earlier stipu-

[1] *N L.R.B* v. *Delsea Iron Works,* in contempt of the bargaining provisions of 316 F. 2d 231 (C.A 3) (see Thirtieth Annual Report (1965), p. 148, footnote 1, for contempt as to backpay) ; *N L R B.* v. *Nelson Manufacturing Co ,* in contempt of backpay decree No. 15,226 (C A 6).

[2] *N L.R.B.* v. *Columbus McKinnon Corp ,* orders of Mar. 17 and Oct. 27, 1966 (C.A 2), certiorari denied 385 U.S. 821 ; *N L R B.* v. *Joseph Auto Co ,* order of Nov. 8, 1965 (C A. 2) ; *N L R B* v *Warrensburg Board & Paper Co ,* No 28,735, in contempt of 340 F. 2d 920 (C A 2) ; *N L R B.* v *Art Lance, Jr ,* No 15,433, order of Apr. 20, 1966 (C A 3) ; *N L R B.* v. *Nickey Chevrolet Sales, Inc ,* No 15,122, order of Nov 10, 1965 (C A 7)

[3] *N.L R B.* v. *Ozark Hardwood Company,* in contempt of 282 F. 2d 1 (C A 8).

[4] *N L R B* v. *Reliance Fuel Oil Corp ,* (C A. 2), referred to U.S.D C. Judge Rayfiel, see 371 U.S. 224, reversing 297 F. 2d 94 , *N.L R B* v. *Warren Heldman* (C A 2), referred to U S D C Judge Bruchhausen (adverse findings Nov. 22, 1966) , *N L R B* v. *Alamo Express, Inc ,* Nos. 17,594 and 21,456 (C A 5), referred to F.T.C. Trial Examiner Kaufman ; *N L R B* v. *Satilla Rural Electric Membership Corp ,* in contempt of 322 F 2d 253 (C.A. 5), referred to F T.C. Trial Examiner Moore ; *N L.R.B.* v. *Local 426, Reinforced Steel Workers, etc AFL–CIO,* No. 16,222 (C A. 6), in criminal contempt, referred to U.S.D.C. Judge Thornton. (Union and business agent adjudged guilty and sentenced Nov. 9, 1966.)

[5] *N.L R B.* v. *Nelson Manufacturing Co.,* 363 F. 2d 829 (C A. 6), see footnote 1, *supra.*

[6] *N.L R B* v *Interurban Gas Corp ,* in contempt of 354 F. 2d 76 (C A. 6) (backpay) ; *N.L.R.B.* v. *Indianapolis Transit Mix Corp ,* No. 14,635 (C A. 7) (backpay) ; *N L.R.B.* v. *Kit Manufacturing Co ,* in contempt of 319 F. 2d 857 and 335 F. 2d 166 (C.A. 9), certiorari denied 380 U S. 910 (bargaining order) ; *N.L.R.B* v. *Sakrete of Northern California,* in contempt of 332 F. 2d 902 (C A 9), certiorari denied 379 U.S. 961 (bargaining order).

[7] *N L.R.B.* v. *Mooney Aircraft, Inc ,* 61 LRRM 2163, 52 LC ¶16,839 (C A. 5) , *N L R B.* v *Mooney Aircraft, Inc ,* 61 LRRM 2164, 54 LC ¶11,445 (C.A. 5) ; *N.L R B.* v. *Winn Dixie Stores, Inc.,* 353 F. 2d 76 (C.A. 5).

lation to liquidate his backpay indebtedness in fixed installments.[8] During this fiscal period the *Kohler Co.* case was settled.[9] On three occasions the courts issued writs of body attachment against individuals responsible for the respondents' failure to purge themselves of contumacy as ordered by the court.[10]

Three opinions were issued which warrant comment. In *Murray Ohio*,[11] the Sixth Circuit in the exercise of its discretionary powers refused to entertain civil contempt jurisdiction because the Board had conducted an administrative hearing on the same violations. The court felt that its busy calendar justified dismissal in the absence of expressed reasons for requiring a duplication of trials.

In *Savoy Laundry*,[12] the Second Circuit Court of Appeals reaffirmed that a union's loss of support, which is attributable to a prior unfair labor practice, cannot be relied on to justify a refusal to comply with a bargaining decree. Rejecting this asserted defense to the Board's charge that the company had failed to purge itself of contempt, the court issued a writ of body attachment directing the incarceration of the respondent's president until such time as respondent was brought into compliance with the decree.

In *Mooney Aircraft*,[13] the Fifth Circuit Court of Appeals rejected the company's defense that the consummation of a bargaining agreement during the pendency of refusal-to-bargain contempt proceedings mooted the proceedings. The court noted that after the contract was executed the company acted in derogation of the union's status as the employees' exclusive bargaining representative.

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[8] *N L R B* v. *Roy Stealy, d/b/a Roy's Packing Plant & Market*, No. 13,875 (C.A. 7) (see Thirtieth Annual Report (1965), p. 148, footnote 3)

[9] *N L R B.* v *Kohler Co*, see p 150, *supra*

[10] *N L R B.* v. *Pease Oil Co. & James O. Porter*, order and writ issued June 8, 1966 (C.A. 2) (backpay); *N L R B* v. *Savoy Laundry, Inc*, 354 F. 2d 78 (C A 2); *N L R B.* v. *Art Lance, Jr.*, order and writ issued May 17, 1966 (C A. 3) (backpay).

[11] *N L.R.B.* v. *Murray Ohio Mfg Co*, 60 LRRM 2257.

[12] See footnote 10, *supra*

[13] See footnote 7, *supra*.

XI

Miscellaneous Litigation

Miscellaneous litigation during fiscal 1966 involved Board rulings in representation proceedings and on interlocutory appeals in unfair labor practice proceedings, questions concerning the right of a charging party to an evidentiary hearing on objections to a settlement agreement, what constitutes a "person aggrieved" within the meaning of the Act, and the availability to a private litigant of affidavits in the Board's investigatory files.

A. Representation Issues

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 petitions. The plaintiffs' effort 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.

One case during the year involved a district court suit to enjoin the counting of ballots in an election on the ground that an employer whose employees' ballots had been challenged was a separate employer entitled to individual notice of the proceeding, and not a wholly owned subsidiary of the company named in the petition, as found by the Board.[2]

The named employer obtained an injunction in the district court enjoining the counting of the challenged ballots as directed by the Board, on the ground that the Board's failure to serve notice of the proceeding on the subsidiary violated due process. In reversing, the Fifth Circuit noted that the Board found the subsidiary, located in the same building as the parent, to be a single employer with the parent, that it was an active participant in the election campaign, and that its employees were included in the unit stipulation entered into by the parent. Thus, "implicit within these findings is the con-

[1] 358 U.S., 184, discussed in Twenty-fourth Annual Report (1959), pp. 117–118

[2] *Potter* v. *Castle Construction d/b/a Baker Homes of San Antonio*, 355 F. 2d 212 (C.A. 5).

clusion that [the subsidiary] in fact had adequate notice," the court said, noting that the Act does not require "stringent adherence to form or technical application of the notice requirement." The court also noted that congressional policy requires the court to treat the question of notice as one of fact, reviewable only after the dispute concerning its validity culminates in an unfair labor practice finding by the Board. Here the employer could have refused to bargain and eventually tested the validity of the election in subsequent review proceedings.

However, in *Bullard Co.*[3] a district court enjoined the Board from conducting a second election, compelling it to certify the results of the first election, where the Board was found to have violated its statutory duty to certify the results of an admittedly valid election. Union objections grounded on alleged irregularities by the Board agent conducting the election were sustained by the Board which found that although "the Board agent did not in fact engage in any irregularities, there is a possibility that some of his conduct may erroneously have given such an appearance," which of itself departs from Board standards. Finding under these circumstances that the Board had in effect set aside the results of a valid election which the employer had a statutory right to have certified, the court held that the employer should not be subjected to the stigma of first becoming guilty of unfair labor practices in order to have standing to obtain judicial relief. And in *Greensboro Hosiery*,[4] a district court enjoined the regional director from changing the site of an election to a location off the employer's premises because of the company's refusal upon his request to remove from its bulletin board a statement to employees which the regional director viewed as containing language which exerted a coercive influence on the employees, and rendered the premises unsuitable for a free election so long as it remained posted. The court found the regional director's action "penal in nature" and in excess of his powers, as the notice to employees was virtually in the language of a speech referred to in the *Threads* case,[5] which the Fourth Circuit had found to be "protected free speech." The court held that under these circumstances the Board exceeded its authority in that it undertook "to cut off the privilege of free speech guaranteed the plaintiff by the First Amendment to the constitution and court decisions."[6]

[3] *Bullard Co* v *N L R B*, 253 F Supp 391 (D C D C)
[4] *Greensboro Hosiery Mills* v *Johnston*, 60 LRRM 2060, 52 LC ¶16 587 (D C N C)
[5] *N L R B* v. *Threads, Inc*, 308 F 2d 1
[6] The Board has perfected an appeal from the district court decision

B. Unfair Labor Practice Issues

The Board's broad authority to settle cases through stipulated agreements with respondents was again challenged before a court of appeals this year.[7] The Third Circuit in the *Leeds & Northrup* case [8] set aside the Board's holding that under the circumstances the company as charging party in an unfair labor practice proceeding was not entitled to an evidentiary hearing on its objections to an informal settlement agreement executed by the regional director and the union, pursuant to which a complaint was withdrawn. In the court's view, it had jurisdiction of the company's petition for review under section 10(f) of the Act and section 10(c) of the Administrative Procedure Act, notwithstanding the absence of a formal order of the Board, since the court may not be precluded from reviewing what is in fact a final disposition of a proceeding by an administrative agency.[9] As to the nonconsenting charging party's entitlement to a hearing on objections to the settlement, the court held that in its view of the statutory design, once a complaint has issued, the charging party is entitled to an evidentiary hearing upon its objections to a proposed settlement agreement, be it formal or informal; that the regional director in closing the case upon compliance with the settlement agreement was not acting as "agent" for the General Counsel, but under the direct authority of the Board through its rule 102.18,[10] and that his withdrawal of the complaint, acting with the authority and on behalf of the Board, was no less "final" than direct action by his principal, the Board itself. The court reasoned that "withdrawal" of a complaint by the regional director "on his own motion" under rule 102.18, which does not provide an avenue of review under the Board's rules, would constitute a usurpation of the statutory authority of the Board. It is therefore inconsistent with the scheme of the Act, and arbitrarily attempts to abort both administrative and judicial review. In *United Aircraft* [11] the district court held that it did not have jurisdiction over the plaintiff's suit for an injunction seeking the withdrawal of a Board order entered on an interlocutory appeal from the trial examiner's dismissal during the hearing of certain allegations in the complaint. The petition also sought relief with respect to the manner in which the Board should dispose of future interlocutory appeals from the examiner's rulings during the remainder of the hearing. In the

[7] See Thirtieth Annual Report (1965), pp 153–154

[8] *Leeds & Northrup Co* v *N L R B*, 357 F 2d 527.

[9] Citing *Columbia Broadcasting System* v *U S*, 316 U S 407.

[10] Sec. 102 18 of the Board's Rules and Regulations, Series 8, as amended, provides as follows. "Any such complaint may be withdrawn before the hearing by the regional director on his own motion"

[11] *United Aircraft Corp* v. *McCulloch*, No. 3037–65 (D.C.D C.), decided Apr. 26, 1966 (unreported).

court's view, it could not be said that the Board clearly acted beyond the scope of its statutory authority in making the rulings, and review of any alleged error in the rulings themselves could be obtained in due course upon review of the final order of the Board.

C. Status as "Person Aggrieved"

Two cases decided by courts of appeals during the report year dealt with the nature and degree of aggrievement which entitles a party to seek judicial review of a Board order under section 10(f) of the Act. In each case the principal basis of the petitioning party's complaint was that the Board had not granted all the relief it requested by way of remedy. In the *Insurance Workers* case,[12] the court held that the charging union was not an "aggrieved" party, even though the Board's order directing the company to bargain with the union did not require, as requested by the union, that the company also bargain respecting a draft of the proposal the union would have submitted if the employer had bargained upon the certification of the union, rather than contesting the Board's unit findings. Taking note of the "peculiar circumstances" of the case and that the sole issue which the parties had stipulated as the subject matter of the litigation did not encompass the additional relief sought by the union, the court concluded that the union "is not . . . such a person aggrieved as to be entitled to seek review of the Board's order in this court when [the company] has filed its petition for review in the Seventh Circuit."

In *N.L.R.B.* v. *General Electric Company* [13] on the other hand, the Second Circuit on reconsideration of orders remanded by the Supreme Court "for further consideration in light of *Automobile Workers* v. *Scofield*" [14] held that the charging union could intervene in the consolidated proceeding by the Board for enforcement of its order against the employer and by the employer to set aside the order, but could not maintain a separate action to review the Board's failure to find certain unfair labor practices and provide for relief from them. The court noted that as an intervenor the union could raise all relevant issues, and, under the circumstances, a determination of its status as a "person aggrieved" was not necessary to protect its interests.

D. Discovery of Board Records in Title III Actions

In two instances during the year a district court upheld the General Counsel's refusal to make available to private litigants affidavits

[12] *Insurance Workers Intl. Union [United Insurance Co.]*, v. *N.L.R.B.*, 360 F. 2d 823 (C.A.D.C.).

[13] 358 F. 2d 292.

[14] *Intl. Union, United Automobile Workers* v. *Scofield*, 382 U.S. 205. See, *supra*, p. 1261.

obtained by Board agents in the course of their official investigative duties. In *J. Stewart Hunt* [15] the Board's motion to quash *subpoenas duces tecum* was granted where the union, seeking discovery pursuant to a section 301 action, sought to have produced a sworn affidavit given to the Board by the plaintiff during the investigation of a prior unfair labor practice charge filed by another union, and upon which the regional director had refused to issue a complaint. The court held that mere conjecture as to its contents was not a sufficient reason for producing the affidavit, and the facts did not warrant overriding the policy that protects from public disclosure files of a Government agency. Likewise in *Public Constructors*,[16] the court upheld the Board by granting its motion to quash a *subpoena duces tecum* in a section 303 action where the union sought the affidavit of the plaintiff's president given to the Board pursuant to an investigation of an unfair labor practice charge. The court noted that the defendant could avail itself of the opportunity to take depositions from plaintiff's president and "thus has available to it all the knowledge that he has." It concluded that the "strong policy protecting the files of a government agency" is amply warranted since the "threat of disclosure of the product of an agency's investigation would seriously hamper investigative work in the future and destroy public confidence in the work of the agency."

[15] *J. Stewart Hunt* v *Local 581, IBEW*, 61 LRRM 2302 (D C N J)

[16] *Public Constructors, Inc* v. *Local 400, IBEW*, No 170–65 (D C N J.), decided Dec. 9, 1965 (unreported).

Index of Cases Discussed

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APPENDIX A

Statistical Tables for Fiscal Year 1966

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of Statistical Reports and Evaluations, National Labor Relations Board, 1717 Pennsylvania Avenue NW, Washington, D.C., 20570.

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, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. 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 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.S. 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 unfair labor practices 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 filed 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.

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.

SUBJECT INDEX TO ANNUAL REPORT TABLES

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1966 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending July 1, 1965	8,911	4,296	1,084	331	278	1,769	1,153
Received fiscal 1966	28,993	12,122	4,643	1,216	846	6,317	3,849
On docket fiscal 1966	37,904	16,418	5,727	1,547	1,124	8,086	5,002
Closed fiscal 1966	28,504	11,974	4,574	1,180	772	6,182	3,822
Pending June 30, 1966	9,400	4,444	1,153	367	352	1,904	1,180
Unfair labor practice cases [2]							
Pending July 1, 1965	6,312	2,913	555	198	121	1,638	887
Received fiscal 1966	15,933	5,301	1,435	539	496	5,530	2,632
On docket fiscal 1966	22,245	8,214	1,990	737	617	7,168	3,519
Closed fiscal 1966	15,587	5,322	1,370	531	361	5,406	2,597
Pending June 30, 1966	6,658	2,892	620	206	256	1,762	922
Representation cases [2]							
Pending July 1, 1965	2,526	1,357	526	132	156	100	255
Received fiscal 1966	12,620	6,636	3,193	667	329	646	1,149
On docket fiscal 1966	15,146	7,993	3,719	799	485	746	1,404
Closed fiscal 1966	12,487	6,466	3,187	640	395	639	1,160
Pending June 30, 1966	2,659	1,527	532	159	90	107	244
Union-shop deauthorization cases							
Pending July 1, 1965	31	----	----	----	----	31	----
Received fiscal 1966	137	----	----	----	----	137	----
On docket fiscal 1966	168	----	----	----	----	168	----
Closed fiscal 1966	133	----	----	----	----	133	----
Pending June 30, 1966	35	----	----	----	----	35	----
Amendment of certification cases							
Pending July 1, 1965	17	13	1	0	0	0	3
Received fiscal 1966	124	82	9	2	6	2	23
On docket fiscal 1966	141	95	10	2	6	2	26
Closed fiscal 1966	127	87	9	2	4	2	23
Pending June 30, 1966	14	8	1	0	2	0	3
Unit clarification cases							
Pending July 1, 1965	25	13	2	1	1	0	8
Received fiscal 1966	179	103	6	8	15	2	45
On docket fiscal 1966	204	116	8	9	16	2	53
Closed fiscal 1966	170	99	8	7	12	2	42
Pending June 30, 1966	34	17	0	2	4	0	11

[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 1966 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1965	4,730	2,845	543	181	95	1,064	2
Received fiscal 1966	10,902	5,210	1,414	482	370	3,418	8
On docket fiscal 1966	15,632	8,055	1,957	663	465	4,482	10
Closed fiscal 1966	10,643	5,218	1,350	472	272	3,326	5
Pending June 30, 1966	4,989	2,837	607	191	193	1,156	5
	CB cases						
Pending July 1, 1965	840	48	10	5	8	554	215
Received fiscal 1966	2,869	60	16	17	46	2,036	694
On docket fiscal 1966	3,709	108	26	22	54	2,590	909
Closed fiscal 1966	2,784	67	18	16	21	2,017	645
Pending June 30, 1966	925	41	8	6	33	573	264
	CC cases						
Pending July 1, 1965	439	8	1	10	11	10	399
Received fiscal 1966	1,206	8	2	23	23	37	1,113
On docket fiscal 1966	1,645	16	3	33	34	47	1,512
Closed fiscal 1966	1,220	14	2	25	26	37	1,116
Pending June 30, 1966	425	2	1	8	8	10	396
	CD cases						
Pending July 1, 1965	154	9	0	0	3	5	137
Received fiscal 1966	486	17	1	10	23	16	419
On docket fiscal 1966	640	26	1	10	26	21	556
Closed fiscal 1966	483	15	0	10	23	13	422
Pending June 30, 1966	157	11	1	0	3	8	134
	CE cases						
Pending July 1, 1965	50	2	1	0	2	4	41
Received fiscal 1966	90	4	2	2	4	14	64
On docket fiscal 1966	140	6	3	2	6	18	105
Closed fiscal 1966	86	6	0	2	5	5	68
Pending June 30, 1966	54	0	3	0	1	13	37
	CP cases						
Pending July 1, 1965	99	1	0	2	2	1	93
Received fiscal 1966	380	2	0	5	30	9	334
On docket fiscal 1966	479	3	0	7	32	10	427
Closed fiscal 1966	371	2	0	6	14	8	341
Pending June 30, 1966	108	1	0	1	18	2	86

[1] See "Glossary" for definition of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1966 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1965	2,170	1,356	526	132	155	1	
Received fiscal 1966	10,820	6,627	3,193	666	328	6	
On docket fiscal 1966	12,990	7,983	3,719	798	483	7	
Closed fiscal 1966	10,687	6,461	3,187	639	393	7	
Pending June 30, 1966	2,303	1,522	532	159	90	0	
	RM cases						
Pending July 1, 1965	255						255
Received fiscal 1966	1,149						1,149
On docket fiscal 1966	1,404						1,404
Closed fiscal 1966	1,160						1,160
Pending June 30, 1966	244						244
	RD cases						
Pending July 1, 1965	101	1	0	0	1	99	
Received fiscal 1966	651	9	0	1	1	640	
On docket fiscal 1966	752	10	0	1	2	739	
Closed fiscal 1966	640	5	0	1	2	632	
Pending June 30, 1966	112	5	0	0	0	107	

[1] See "Glossary" for definition of terms

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1966

	Number of cases showing specific allegations	Percent of total cases
A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8(a)		
Subsections of Sec. 8(a): Total cases	10,902	100.0
8(a)(1)	869	8 0
8(a)(1)(2)	350	3 2
8(a)(1)(3)	5,427	49.8
8(a)(1)(4)	30	0 3
8(a)(1)(5)	2,347	21 5
8(a)(1)(2)(3)	182	1.7
8(a)(1)(2)(4)	2	0 0
8(a)(1)(2)(5)	92	0 8
8(a)(1)(3)(4)	217	2 0
8(a)(1)(3)(5)	1,233	11.3
8(a)(1)(4)(5)	8	0 1
8(a)(1)(2)(3)(4)	14	0 1
8(a)(1)(2)(3)(5)	97	0.9
8(a)(1)(2)(4)(5)	1	0 0
8(a)(1)(3)(4)(5)	23	0 2
8(a)(1)(2)(3)(4)(5)	10	0.1
RECAPITULATION [1]		
8(a)(1)[2]	10,902	100 0
8(a)(2)	748	6 9
8(a)(3)	7,203	66 1
8(a)(4)	305	2 8
8(a)(5)	3,811	35 0
B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)		
Subsections of Sec. 8(b): Total cases	4,941	100.0
8(b)(1)	938	19 0
8(b)(2)	182	3 7
8(b)(3)	265	5 4
8(b)(4)	1,692	34 3
8(b)(5)	7	0 1
8(b)(6)	12	0.3
8(b)(7)	380	7.7
8(b)(1)(2)	1,285	26.0
8(b)(1)(3)	108	2.2
8(b)(1)(5)	2	0.0
8(b)(1)(6)	2	0.0
8(b)(2)(3)	7	0 1
8(b)(2)(5)	1	0.0
8(b)(3)(6)	7	0 1
8(b)(1)(2)(3)	39	0 8
8(b)(1)(2)(5)	8	0 2
8(b)(1)(2)(6)	3	0 1
8(b)(1)(3)(5)	1	0 0
8(b)(1)(3)(6)	2	0 0

	Number of cases showing specific allegations	Percent of total cases
RECAPITULATION [1]		
8(b)(1)	2,388	48 3
8(b)(2)	1,525	30 9
8(b)(3)	429	8.7
8(b)(4)	1,692	34.2
8(b)(5)	19	0.4
8(b)(6)	26	0 5
8(b)(7)	380	7.7
B1. ANALYSIS OF 8(b)(4)		
Total cases 8(b)(4)	1,692	100 0
8(b)(4)(A)	70	4.1
8(b)(4)(B)	1,003	59.3
8(b)(4)(C)	25	1 5
8(b)(4)(D)	486	28 7
8(b)(4)(A)(B)	93	5.5
8(b)(4)(B)(C)	12	0.7
8(b)(4)(A)(B)(C)	3	0 2
RECAPITULATION [1]		
8(b)(4)(A)	166	9 8
8(b)(4)(B)	1,111	65 7
8(b)(4)(C)	40	2.4
8(b)(4)(D)	486	28.7
B2. ANALYSIS OF 8(b)(7)		
Total cases 8(b)(7)	380	100 0
8(b)(7)(A)	126	33.2
8(b)(7)(B)	11	2.9
8(b)(7)(C)	231	60.8
8(b)(7)(A)(B)	6	1.6
8(b)(7)(A)(C)	4	1.1
8(b)(7)(B)(C)	1	0 2
8(b)(7)(A)(B)(C)	1	0.2
RECAPITULATION [1]		
8(b)(7)(A)	137	36.1
8(b)(7)(B)	19	5.0
8(b)(7)(C)	237	62.4
C. CHARGES FILED UNDER SEC. 8(e)		
Total cases 8(e)	90	100.0
Against unions alone	73	81 1
Against employers alone	0	0.0
Against union and employers	17	18.9

[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 1966 [1]

Type of formal action taken	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA Combined with CB	C Combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices					
10(k) notice of hearing issued	88	62				62						
Complaints issued	2,727	1,936	1,475	110	99		8	1	17	72	120	34
Backpay specifications issued	60	41	36	0	0		0	0	0	5	0	0
Hearings completed, total	1,553	1,080	747	60	54	52	7	2	5	43	97	13
Initial ULP hearings	1,465	1,034	716	56	54	52	6	1	4	35	97	13
Backpay hearings	50	34	26	3	0		0	0	0	5	0	0
Other hearings	38	12	5	1	0		1	1	1	3	0	0
Decisions by trial examiners, total	1,376	901	667	46	44		9	7	10	22	84	12
Initial ULP decisions	1,315	867	640	44	44		9	6	9	20	83	12
Backpay decisions	24	21	18	2	0		0	0	0	1	0	0
Supplemental decisions	37	13	9	0	0		0	1	1	1	1	0
Decisions and orders by the Board, total	1,492	991	682	51	57	51	14	6	11	36	59	24
Upon consent of the parties:												
Initial decisions	168	106	57	9	15		0	1	1	9	5	9
Supplemental decisions	4	1	0	0	0		0	0	0	0	0	1
Adopting trial examiners' decisions (no exceptions filed)												
Initial ULP decisions	125	100	77	5	6		2	2	1	2	4	1
Backpay decisions	9	7	7	0	0		0	0	0	0	0	0
Contested												
Initial ULP decisions	1,064	707	492	32	33	51	6	3	8	21	50	11
Decisions based upon stipulated record	39	30	16	2	3		6	0	1	1	0	1
Supplemental ULP decisions	61	21	16	2	0		0	0	0	2	0	1
Backpay decisions	22	19	17	1	0		0	0	0	1	0	0

[1] See "Glossary" for definition of terms.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1966 [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	2,449	2,167	1,980	106	81	2
Initial hearings	2,314	2,034	1,854	101	79	1
Hearings on objections and/or challenges	135	133	126	5	2	1
Decisions issued, total	2,249	1,985	1,809	91	85	1
By regional director	2,005	1,828	1,676	79	73	1
Elections directed	1,794	1,647	1,525	56	66	1
Dismissals on record	211	181	151	23	7	0
By Board	244	157	133	12	12	0
After transfer by regional director for initial decision	197	113	96	10	7	0
Elections directed	159	86	76	7	3	0
Dismissals on record	38	27	20	3	4	0
After review of regional director's decision	47	44	37	2	5	0
Elections directed	32	30	25	2	3	0
Dismissals on record	15	14	12	0	2	0
Decisions on objections and/or challenges, total	869	784	732	38	14	5
By regional director	444	364	341	15	8	4
By Board	425	420	391	23	6	1
In stipulated elections	377	373	346	21	6	0
No exceptions to regional director's report	222	218	202	12	4	0
Exceptions to regional director's report	155	155	144	9	2	0
In directed elections (after transfer by regional director)	25	24	23	1	0	1
In directed elections after review of regional director's supplemental decision	23	23	22	1	0	0

[1] See "Glossary" for definition of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1966 [1]

Type of formal action taken	AC	UC
Hearings completed	10	63
Decisions issued after hearing	9	70
By regional director	8	55
By Board	1	15

[1] See "Glossary" for definition of terms

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1966 [1]

Action taken	Total all	Total	Remedial action taken by—										
			Employer					Union					
			Pursuant to—						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] 5,102												
Notice posted	2,766	2,086	1,380	108	104	259	235	680	395	74	16	101	94
Recognition or other assistance withdrawn	104	104	65	19	1	16	3						
Employer-dominated union disestablished	44	44	23	7	3	6	5						
Employees offered reinstatement	1,177	1,177	878	42	55	105	97						
Employees placed on preferential hiring list	90	90	73	6	3	5	3						
Hiring hall rights restored	40							40	33	0	1	1	5
Objections to employment withdrawn	64							64	42	1	3	9	9
Picketing ended	526							526	457	36	3	18	12
Work stoppage ended	222							222	199	12	0	6	5
Collective bargaining begun	1,229	1,103	875	32	34	86	76	126	116	0	1	7	2
Backpay distributed	1,222	1,162	873	42	57	111	79	60	31	3	3	11	12
Reimbursement of fees, dues, and fines	60	36	24	2	1	6	3	24	15	3	1	4	1
Other conditions of employment improved	440	229	226	0	1	2	0	211	199	0	0	6	6
Other remedies	20	12	12	0	0	0	0	8	8	0	0	0	0

B. By number of employees affected.													
Employees offered reinstatement, total	6,187	6,187	3,897	159	168	230	1,733						
Accepted	4,624	4,624	3,175	101	122	139	1,087						
Declined	1,563	1,563	722	58	46	91	646						
Employees placed on preferential hiring list	782	782	738	20	5	13	6						
Hiring hall rights restored	50							50	38	0	1	1	10
Objections to employment withdrawn	107							107	68	2	3	10	24
Employees receiving backpay													
From either employer or union	15,418	15,361	3,822	249	124	464	10,702	57	28	7	1	7	14
From both employer and union	48	48	15	1	2	1	29	48	15	1	2	1	29
Employees reimbursed for fees, dues, and fines													
From either employer or union	1,458	1,271	375	5	0	683	208	187	161	1	0	25	0
From both employer and union	96	96	0	3	6	31	56	96	0	3	6	31	50
C. By amounts of monetary recovery, total	[3] $8,974,620	$8,864,790	$1,127,010	$187,190	$115,730	$535,530	$6,899,330	$109,830	$23,210	$27,840	$2,190	$6,390	$50,200
Backpay (includes all monetary payments except fees, dues, and fines)	8,911,040	8,812,110	1,118,670	179,090	115,710	509,570	6,889,070	98,930	13,980	27,760	2,170	5,290	49,730
Reimbursement of fees, dues, and fines	63,580	52,680	8,340	8,100	20	25,960	10,260	10,900	9,230	80	20	1,100	470

[1] See "Glossary" for definition of terms Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1966 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

[3] Includes $4,500,000 paid by one company (including $1,500,000 pension restoration).

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1966 [1]

Industrial group	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	28,933	15,993	10,902	2,869	1,206	486	90	380	12,620	10,820	1,149	651	137	124	179
Manufacturing	14,665	7,700	5,995	1,263	255	98	15	74	6,686	5,797	526	363	73	98	108
Ordnance and accessories	59	40	25	12	3	0	0	0	14	13	0	1	0	2	3
Food and kindred products	1,894	942	700	168	51	10	5	8	919	821	62	36	8	13	12
Tobacco manufacturers	34	26	17	9	0	0	0	0	8	7	0	1	0	0	0
Textile mill products	487	333	275	48	4	0	1	5	150	126	15	9	2	2	0
Apparel and other finished products made from fabric and similar materials	552	370	303	52	9	0	0	6	177	131	29	17	2	1	2
Lumber and wood products (except furniture)	570	252	211	21	9	9	0	2	306	268	20	18	5	3	4
Furniture and fixtures	493	287	248	32	4	1	0	2	198	176	14	8	2	4	2
Paper and allied products	625	288	218	51	15	2	0	2	324	292	18	14	2	6	5
Printing, publishing, and allied industries	844	425	331	53	18	19	0	4	408	349	37	22	3	4	4
Chemicals and allied products	860	418	306	80	16	7	0	9	428	386	25	17	4	5	5
Products of petroleum and coal	231	136	110	16	6	2	1	1	85	65	10	10	1	5	4
Rubber and plastic products	553	264	232	24	4	3	0	1	273	245	18	10	3	7	6
Leather and leather products	227	136	121	12	1	0	0	2	87	80	4	3	2	2	0
Stone, clay, and glass products	815	431	318	78	21	4	4	6	370	325	32	13	2	7	5
Primary metal industries	917	520	390	110	9	6	0	5	374	324	22	28	2	11	10
Fabricated metal products (except machinery and transportation equipment)	1,553	766	591	130	25	13	2	5	765	655	65	45	10	7	5
Machinery (except electrical)	1,240	596	465	88	25	11	0	7	616	526	51	39	8	7	13
Electrical machinery, equipment, and supplies	975	523	426	83	7	3	1	3	428	374	31	23	7	3	14
Aircraft and parts	203	118	79	37	1	1	0	0	80	65	9	6	0	1	4
Ship and boat building and repairing	101	60	37	19	3	0	0	1	40	32	3	5	0	0	1
Automotive and other transportation equipment	722	406	314	64	17	7	1	3	306	274	19	13	2	5	3
Professional, scientific, and controlling instruments	182	90	78	9	3	0	0	0	89	69	15	5	1	0	2
Miscellaneous manufacturing	528	273	200	67	4	0	0	2	241	194	27	20	7	3	4

Mining	571	362	217	56	27	13	2	47	199	178	11	10	2	0	8
Metal mining	57	20	14	3	2	1	0	0	30	28	0	2	0	0	7
Coal mining	297	245	128	44	19	8	1	45	51	45	5	1	1	0	0
Crude petroleum and natural gas production	87	33	30	0	1	2	0	0	54	48	4	2	0	0	0
Nonmetallic mining and quarrying	130	64	45	9	5	2	1	2	64	57	2	5	1	0	1
Construction	2,973	2,417	680	622	653	318	18	126	543	482	58	3	8	4	1
Wholesale trade	2,263	870	683	112	36	8	4	27	1,363	1,165	124	74	18	4	8
Retail trade	3,045	1,411	1,087	186	55	7	20	56	1,602	1,237	271	94	17	4	11
Finance, insurance, and real estate	183	93	75	8	8	1	0	1	88	77	5	6	2	0	0
Transportation, communication, and other utilities	3,198	1,887	1,301	417	102	28	12	27	1,260	1,129	79	52	5	11	35
Local passenger transportation	306	164	118	33	6	1	0	6	136	128	4	4	4	2	0
Motor freight, warehousing, and transportation services	1,880	1,133	793	232	69	11	9	19	737	651	59	27	1	2	7
Water transportation	322	246	126	103	8	6	2	1	67	61	3	3	0	3	6
Other transportation	68	46	34	5	5	2	0	0	21	20	1	0	0	1	0
Communications	322	162	132	22	4	2	1	1	152	132	7	13	0	1	7
Heat, light, power, water, and sanitary services	300	136	98	22	10	6	0	0	147	137	5	5	0	2	15
Services	2,095	1,193	864	205	70	13	19	22	879	755	75	49	12	3	8
Hotel and other lodging places	328	214	169	35	4	1	1	4	111	95	13	3	1	0	2
Personal services	300	134	102	17	11	0	0	4	164	143	11	10	2	0	0
Automobile repairs, garages, and other miscellaneous repair services	366	130	102	16	6	1	0	5	231	201	19	11	2	0	3
Motion picture and other amusement and recreation services	367	315	203	78	15	1	14	4	49	41	4	4	1	0	2
Medical and other health services	49	22	14	3	2	0	2	1	25	21	2	2	1	1	0
Educational services	38	28	7	14	6	0	0	1	10	9	1	0	0	0	0
Museums, art galleries, and botanical and zoological gardens	2	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Nonprofit membership organizations	72	61	48	9	3	0	1	0	11	5	2	4	0	0	0
Miscellaneous services	573	289	219	33	23	10	1	3	276	238	23	15	5	2	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

Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1966 [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	28,993	15,933	10,902	2,869	1,206	486	90	380	12,620	10,820	1,149	651	137	124	179
New England	1,452	742	528	108	63	26	4	13	690	608	52	30	5	7	8
Maine	136	92	64	15	12	0	0	1	41	36	4	1	0	2	1
New Hampshire	40	13	12	1	0	0	0	0	27	26	0	1	0	0	0
Vermont	55	19	17	2	0	0	0	0	36	34	2	0	0	0	0
Massachusetts	807	406	291	59	28	18	1	9	392	342	31	19	2	3	4
Rhode Island	98	49	36	8	3	1	1	0	49	44	3	2	0	0	0
Connecticut	316	163	108	23	20	7	2	3	145	126	12	7	3	2	3
Middle Atlantic	5,723	3,324	2,128	807	194	95	12	88	2,311	1,980	214	117	43	17	28
New York	2,776	1,656	1,053	398	99	51	4	51	1,072	892	125	55	27	7	14
New Jersey	1,318	776	479	197	46	27	4	23	518	458	34	26	11	4	9
Pennsylvania	1,629	892	596	212	49	17	4	14	721	630	55	36	5	6	5
East North Central	5,807	3,121	2,135	604	193	104	13	72	2,578	2,207	224	147	26	31	51
Ohio	1,607	818	545	153	55	36	6	23	769	673	55	41	6	7	7
Indiana	792	404	320	76	5	2	0	1	377	348	15	14	4	2	5
Illinois	1,548	931	614	218	47	21	3	28	589	478	71	40	12	7	9
Michigan	1,288	686	466	116	52	40	0	12	577	495	44	38	4	6	15
Wisconsin	572	282	190	41	34	5	4	8	266	213	39	14	0	9	15
West North Central	2,113	1,038	696	142	116	39	20	25	1,052	922	74	56	9	5	9
Iowa	319	118	90	15	8	1	0	4	201	178	20	3	0	0	0
Minnesota	306	113	77	11	13	8	1	3	188	160	13	15	4	0	1
Missouri	1,042	589	365	99	77	25	12	11	436	389	25	22	5	4	8
North Dakota	39	12	7	0	2	2	0	1	27	23	2	2	0	0	0
South Dakota	34	17	13	1	2	0	0	1	17	15	0	2	0	0	0
Nebraska	124	59	45	5	5	2	0	2	65	55	6	4	0	0	0
Kansas	249	130	99	11	9	1	7	3	118	102	8	8	0	1	0

South Atlantic	3,147	1,820	1,337	232	172	31	15	33	1,303	1,166	79	58	6	6	12
Delaware	72	30	21	9	0	0	0	0	42	34	5	3	0	0	0
Maryland	476	256	165	50	37	0	4	0	209	193	13	3	5	1	5
District of Columbia	162	64	44	11	5	1	1	2	96	89	4	3	1	0	1
Virginia	322	187	134	12	29	3	1	8	132	118	9	5	0	0	3
West Virginia	263	162	94	38	16	7	0	7	100	92	4	4	0	0	1
North Carolina	425	275	261	13	1	0	0	0	149	132	7	10	0	1	0
South Carolina	142	96	87	6	3	0	0	0	46	34	6	6	0	0	0
Georgia	434	246	199	23	14	5	0	5	184	166	13	5	0	3	1
Florida	851	504	332	70	67	15	9	11	345	308	18	19	0	1	1
East South Central	1,854	1,070	815	135	50	30	0	40	769	693	51	25	1	5	9
Kentucky	366	176	142	19	5	2	0	8	186	169	12	5	1	2	1
Tennessee	773	487	408	54	12	9	0	4	279	250	18	11	0	1	6
Alabama	511	306	177	58	29	14	0	28	201	181	16	4	0	2	2
Mississippi	204	101	88	4	4	5	0	0	103	93	5	5	0	0	0
West South Central	2,453	1,369	1,042	196	72	43	2	14	1,047	935	59	53	1	23	13
Arkansas	219	104	94	5	2	2	0	1	108	90	7	11	0	3	4
Louisiana	465	288	184	60	30	11	0	3	174	166	5	3	0	3	0
Oklahoma	255	125	101	10	4	5	1	4	129	108	14	7	0	0	1
Texas	1,514	852	663	121	36	25	1	6	636	571	33	32	1	17	8
Mountain	1,425	814	598	97	61	39	3	16	580	470	71	39	5	7	19
Montana	146	91	66	14	4	4	0	3	49	36	10	3	2	0	4
Idaho	105	58	40	9	3	5	0	1	46	37	5	4	0	1	0
Wyoming	68	42	34	2	4	2	0	0	26	21	4	1	0	0	0
Colorado	401	229	157	33	21	14	0	4	167	126	22	19	1	3	1
New Mexico	168	104	76	10	10	5	2	1	58	43	10	5	2	1	3
Arizona	204	96	63	11	12	7	0	3	99	87	8	4	0	0	9
Utah	97	40	30	3	4	1	0	2	54	50	3	1	0	2	1
Nevada	236	154	132	15	3	1	1	2	81	70	9	2	0	0	1
Pacific	4,541	2,452	1,489	514	274	79	19	77	2,027	1,595	312	120	31	7	24
Washington	407	227	156	49	12	5	0	5	175	119	42	14	2	0	3
Oregon	392	187	133	20	28	3	1	2	188	124	49	15	11	0	6
California	3,391	1,915	1,136	421	211	64	18	65	1,443	1,146	209	88	18	6	9
Alaska	157	34	18	8	2	2	0	4	119	115	4	0	0	0	4
Hawaii	194	89	46	16	21	5	0	1	102	91	8	3	0	1	2
Outlying Areas	478	183	134	34	11	0	2	2	263	244	13	6	10	16	6
Puerto Rico	453	175	128	32	11	0	2	2	246	234	7	5	10	16	6
Virgin Islands	25	8	6	2	0	0	0	0	17	10	6	1	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 1966 [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	15,587	100 0	-------	10,643	100 0	2,784	100 0	1,220	100 0	483	100 0	86	100 0	371	100 0
Agreement of the parties	4,046	26 0	100 0	2,886	27 1	513	18 4	525	43 0	1	0 2	21	24 4	100	27 0
Informal settlement	3,855	24 8	95 3	2,772	26 0	480	17 2	484	39 7	1	0 2	20	23 2	98	26 5
Before issuance of complaint	2,870	18 4	70 9	1,933	18 2	423	15 2	412	33 8	(2)	-------	19	22 0	83	22 4
After issuance of complaint, before opening of hearing	885	5 7	21 9	750	7 0	47	1 7	71	5 8	1	0 2	1	1 2	15	4 1
After hearing opened, before issuance of trial examiner's decision	100	0 7	2 5	89	0 8	10	0 3	1	0 1	0	-------	0	-------	0	-------
Formal settlement	191	1 2	4 7	114	1 1	33	1 2	41	3 3	0	-------	1	1 2	2	0 5
After issuance of complaint, before opening of hearing	130	0 8	3 2	75	0 7	17	0 6	35	2 8	0	-------	1	1 2	2	0 5
Stipulated decision	16	0 1	0 4	5	0 0	1	0 0	10	0 8	0	-------	0	-------	0	-------
Consent decree	114	0 7	2 8	70	0 7	16	0 6	25	2 0	0	-------	1	1 2	2	0.5
After hearing opened	61	0 4	1 5	39	0 4	16	0 6	6	0 5	0	-------	0	-------	0	-------
Stipulated decision	7	0 1	0 2	2	0 0	2	0 1	3	0 2	0	-------	0	-------	0	-------
Consent decree	54	0 3	1 3	37	0 4	14	0 5	3	0 3	0	-------	0	-------	0	-------
Compliance with	841	5 4	100 0	628	5 9	103	3 7	76	6 2	10	2 1	5	5 8	19	5 1
Trial examiner's decision	127	0 8	15 1	110	1 1	8	0 3	6	0 5	0	-------	0	-------	3	0 8
Board decision	367	2 4	43 6	271	2 5	31	1 1	40	3 2	7	1.5	4	4 7	14	3 8

Adopting trial examiner's decision (no exceptions filed)	54	0 4	6 4	44	0 4	4	0 1	3	0 2	1	0 2	0	-------	2	0 5
Contested	313	2 0	37 2	227	2 1	27	1 0	37	3 0	6	1 3	4	4 7	12	3 3
Circuit court of appeals decree	302	1 9	35 9	212	2 0	62	2 2	23	1 9	2	0 4	1	1 1	2	0 5
Supreme Court action	45	0 3	5 4	35	0 3	2	0 1	7	0 6	1	0 2	0	-------	0	-------
Withdrawal	5,804	37 2	100 0	4,107	38 6	1,127	40 5	406	33 3	0	-------	24	27 9	140	37 7
Before issuance of complaint	5,653	36 2	97 4	3,996	37 6	1,102	39 6	393	32 2	(2)	-------	24	27.9	138	37 2
After issuance of complaint, before opening of hearing	116	0 7	2 0	78	0.7	24	0 9	12	1 0	0	-------	0	-------	2	0 5
After hearing opened, before trial examiner's decision	9	0 1	0 1	9	0 1	0	-------	0	-------	0	-------	0	-------	0	-------
After trial examiner's decision, before Board decision	15	0 1	0 3	13	0 1	1	0 0	1	0 1	0	-------	0	-------	0	-------
After Board or court decision	11	0 1	0 2	11	0 1	0	-------	0	-------	0	-------	0	-------	0	-------
Dismissal	4,424	28 4	100 0	3,020	28 4	1,041	37 4	213	17 5	2	0 4	36	41 9	112	30 2
Before issuance of complaint	4,181	26 8	94 5	2,832	26 6	1,009	36 2	201	16 5	(2)	-------	32	37 2	107	28 8
After issuance of complaint, before opening of hearing	26	0 2	0 6	21	0 2	3	0 1	0	-------	2	0 4	0	-------	0	-------
After hearing opened, before trial examiner's decision	5	0 0	0 1	5	0 0	0	-------	0	-------	0	-------	0	-------	0	-------
By trial examiner's decision	2	0 0	0 0	2	0 0	0	-------	0	-------	0	-------	0	-------	0	-------
By Board decision	151	1 0	3 4	109	1 0	24	0 9	9	0 7	0	-------	4	4 7	5	1 4
Adopting trail examiner's decision (no exceptions filed)	33	0 2	0 7	26	0 2	3	0 1	2	0 2	0	-------	2	2 4	0	-------
Contested	118	0 8	2 7	83	0 8	21	0 8	7	0 5	0	-------	2	2 3	5	1 4
By circuit court of appeals decree	57	0 4	1 3	50	0 5	5	0 2	2	0 2	0	-------	0	-------	0	-------
By Supreme Court action	2	0 0	0 1	1	0 0	0	-------	1	0 1	0	-------	0	-------	0	-------
10(k) actions (see table 7A for details of dispositions)	470	3 0	-------	-------	-------	-------	-------	-------	-------	470	97 3	-------	-------	-------	-------
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	2	.0	-------	2	.0	0	-------	0	-------	0	-------	0	-------	0	-------

[1] 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 7A.

Table 7A.—Analysis of Method of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1966 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	470	100 0
Agreement of the parties—Informal settlement:	178	37.9
Before 10(k) notice	153	32 6
After 10(k) notice, before opening of 10(k) hearing	16	3 4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	9	1.9
Compliance with Board decision and determination of dispute	37	7.9
Withdrawal	188	40 0
Before 10(k) notice	174	37.0
After 10(k) notice, before opening of 10(k) hearing	8	1 7
After Board decision and determination of dispute	6	1.3
Dismissal	67	14 2
Before 10(k) notice	61	13 0
After 10(k) notice, before opening of 10(k) hearing	1	0.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	
By Board decision and determination of dispute	5	1.0

[1] See "Glossary" for definition of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1966 [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	15,587	100 0	10,643	100 0	2,784	100 0	1,220	100 0	483	100 0	86	100 0	371	100 0
Before issuance of complaint	13,174	84.5	8,761	82 3	2,534	91 0	1,006	82.4	470	97 3	75	87.2	328	88 4
After issuance of complaint, before opening of hearing	1,157	7.4	924	8.7	91	3 3	118	9.7	3	0 6	2	2 3	19	5 1
After hearing opened, before issuance of trial examiner's decision	175	1.1	142	1 3	26	0 9	7	0.6	0	--------	0	--------	0	--------
After trial examiner's decision, before issuance of Board decision	144	1.0	125	1 2	9	0.3	7	0 6	0	--------	0	--------	3	0.8
After Board order adopting trial examiner's decision in absence of exceptions	88	0 6	71	0 7	7	0 3	5	0 4	1	0 2	2	2 3	2	0 6
After Board decision, before circuit court decree	440	2 8	319	3 0	48	1 7	44	3 6	6	1 3	6	7 0	17	4.6
After circuit court decree, before Supreme Court action	361	2 3	264	2 5	67	2 4	25	2 0	2	0.4	1	1 2	2	0 5
After Supreme Court action	48	0 3	37	0 3	2	0 1	8	0 7	1	0 2	0	--------	0	--------

[1] See "Glossary" for definition of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1966 [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	12,487	100 0	10,687	100 0	1,160	100 0	640	100.0	133	100 0
Before issuance of notice of hearing	6,555	52 5	5,387	50 4	747	64 4	421	65 8	81	60.9
After issuance of notice of hearing, before close of hearing	3,680	29 5	3,315	31 0	231	19 9	134	20 9	0	----------
After hearing closed, before issuance of decision	96	0 8	83	0 8	10	0 9	3	0 5	0	----------
After issuance of regional director's decision	1,919	15 3	1,731	16 2	117	10 1	71	11.1	52	39 1
After issuance of Board decision	237	1 9	171	1 6	55	4 7	11	1.7	0	----------

[1] See "Glossary" for definition of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1966 [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	12,487	100 0	10,687	100 0	1,160	100 0	640	100 0	133	100 0
Certification issued, total	8,395	67 2	7,618	71 3	553	47 7	224	35 0	67	50 4
After:										
Consent election	3,298	26 4	2,984	27 9	215	18 5	99	15 5	13	9 8
Before notice of hearing	2,320	18 6	2,085	19 5	167	14 4	68	10 6	13	9 8
After notice of hearing, before hearing closed	970	7 7	891	8 3	48	4 1	31	4 9	0	
After hearing closed, before decision	8	0 1	8	0 1	0		0		0	
Stipulated election	3,360	26 9	3,092	28 9	198	17 1	70	10 9	2	1 5
Before notice of hearing	1,704	13 7	1,538	14 4	129	11 1	37	5 8	2	1 5
After notice of hearing, before hearing closed	1,638	13 1	1,536	14 3	69	6 0	33	5 1	0	
After hearing closed, before decision	18	0 1	18	0 2	0		0		0	
Expedited election	17	0 1	6	0 1	11	1 0	0			
Regional director-directed election	1,569	12 6	1,438	13 5	79	6 8	52	8 1	52	39 1
Board-directed election	151	1 2	98	0 9	50	4 3	3	0 5	0	
By withdrawal, total	3,015	24 2	2,373	22 2	388	33 4	254	39 7	53	39 8
Before notice of hearing	1,886	15 1	1,400	13 1	289	24 9	197	30 8	53	39 8
After notice of hearing, before hearing closed	952	7 6	815	7 6	87	7 5	50	7 8	0	
After hearing closed, before decision	35	0 3	30	0 3	4	0 3	1	0 2	0	
After regional director's decision and direction of election	119	1 0	107	1 0	7	0 6	5	0 7	0	
After Board decision and direction of election	23	0 2	21	0 2	1	0 1	1	0 2	0	
By dismissal, total	1,077	8 6	696	6 5	219	18 9	162	25 3	13	9 8
Before notice of hearing	631	5 1	361	3 4	151	13 0	119	18 6	13	9 8
After notice of hearing, before hearing closed	118	0 9	71	0 7	27	2 3	20	3 1	0	
After hearing closed, before decision	34	0 3	26	0 2	6	0 5	2	0 3	0	
By regional director's decision	231	1 8	186	1 7	31	2 7	14	2 2	0	
By Board decision	63	0 5	52	0 5	4	0 4	7	1 1	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 1966

	AC	UC
Total, all	127	170
Certification amended or unit clarified	67	55
Before hearing	63	18
By regional director's decision	63	18
By Board decision	0	0
After hearing	4	37
By regional director's decision	4	30
By Board decision	0	7
Dismissed:	22	53
Before hearing	17	20
By regional director's decision	17	19
By Board decision	0	1
After hearing:	5	33
By regional director's decision	4	25
By Board decision	1	8
Withdrawn:	38	62
Before hearing	37	61
After hearing	1	1

Table 11.—Types of Elections Conducted in Cases Closed, Fiscal Year 1966 [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	8,392	3,249	3,304	185	1,639	15
Eligible voters	597,499	140,203	288,067	24,451	144,084	694
Valid votes	538,238	125,002	264,048	19,999	128,552	637
RC cases:						
Elections	7,637	2,965	3,093	97	1,480	2
Eligible voters	551,408	130,030	272,688	13,845	134,770	75
Valid votes	498,845	115,944	250,121	12,004	120,707	69
RM cases:						
Elections	466	169	141	85	58	13
Eligible voters	30,804	5,676	10,611	10,564	3,334	619
Valid votes	26,216	5,073	9,725	7,958	2,892	568
RD cases						
Elections	221	101	68	3	49	0
Eligible voters	10,510	3,556	4,627	42	2,285	0
Valid votes	9,393	3,214	4,114	37	2,028	0
UD cases						
Elections	68	14	2	0	52	----
Eligible voters	4,777	941	141	0	3,695	----
Valid votes	3,784	771	88	0	2,925	----

[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 1966 [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	8,324	1,471	17.7	7,637	1,316	17 2	466	128	27 5	221	27	12 2	68	0	
Objections alone or with challenges		1,156			1,030			108			18			0	
Challenges only		315			286			20			9			0	
In consent elections, total	3,235	380	11 7	2,965	352	11 9	169	23	13 6	101	5	5 0	14	0	
Objections alone or with challenges		255			242			11			2			0	
Challenges only		125			110			12			3			0	
In stipulated elections, total	3,302	533	16 1	3,093	503	16 3	141	20	14 2	68	10	14 7	2	0	
Objections alone or with challenges		424			401			16			7			0	
Challenges only		109			102			4			3			0	
In expedited elections, total	15	4	26 7	2	2	100 0	13	2	15 4	0	0		0	0	
Objections alone or with challenges		3			2			1			0			0	
Challenges only		1			0			1			0			0	
In regional director-directed elections	1,587	450	28 4	1,480	426	28 8	58	13	22 4	49	11	22 4	52	0	
Objections alone or with challenges		380			361			11			8			0	
Challenges only		70			65			2			3			0	
In Board-directed elections, total	185	104	56 2	97	33	34 0	85	70	82.4	3	1	33 3	0	0	
Objections alone or with challenges		94			24			69			1			0	
Challenges only		10			9			1			0			0	

[1] See "Glossary" for definition of terms.

Table 11B.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1966 [1]

Type of case	Objections filed	Objections withdrawn	Objections ruled upon	Disposition of objections ruled upon			
				Overruled		Sustained [2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All elections	1,311	329	982	739	75 3	243	24 7
RC elections	1,176	315	861	628	72 9	233	27 1
RM elections	115	10	105	99	94 3	6	5 7
RD elections	20	4	16	12	75 0	4	25 0

[1] See "Glossary" for definitions of terms
[2] See table 11C for rerun elections held after objections were sustained In 72 elections in which objections were sustained, the cases were subsequently withdrawn, therefore, in these cases no rerun elections were conducted.

Table 11C.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1966 [1]

Type of case	Total rerun elections		Union certified		Union lost		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent of total rerun elections
All elections	171	100 0	67	39 2	104	60 8	63	36 8
RC elections	163	100 0	66	40 5	97	59 5	62	36 3
RM elections	5	100 0	1	20 0	4	80 0	1	0 6
RD elections	3	100 0	0	----------	3	100 0	0	----------

[1] See "Glossary" for definitions of terms.

Table 11D.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1966 [1]

Type of case	Total		By employer		By union		By both parties [2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All elections	1,311	100 0	366	27 9	851	64 9	94	7 2
RC cases	1,176	100 0	355	30 2	803	68 3	18	1 5
RM cases	115	100 0	10	8 7	32	27 8	73	63 5
RD cases	20	100 0	1	5 0	16	80 0	3	15 0

[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 1966

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	68	45	66.2	23	33.8	4,777	2,446	51.2	2,331	48.8	3,784	79.2	2,100	44.0
AFL-CIO unions	49	32	65.3	17	34.7	3,554	1,938	54.5	1,616	45.5	2,845	80.1	1,660	46.7
Teamsters	13	8	61.5	5	38.5	780	374	47.9	406	52.1	578	74.1	317	40.6
Other national unions	0	0	----	0	----	0	0	----	0	----	0	----	0	----
Other local unions	6	5	83.3	1	16.7	443	134	30.2	309	69.8	361	81.5	123	27.8

[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 1966 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote							In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by					
											AFL-CIO unions	Teamsters	Other national unions	Other local unions		
A. ALL REPRESENTATION ELECTIONS																
Total representation elections	8,324	60.8	5,059	3,215	1,382	320	142	3,265	592,722	339,407	248,437	40,521	26,244	24,205	253,315	
1-union elections	7,397	57.7	4,268	2,755	1,241	214	58	3,129	457,033	220,870	180,654	27,908	8,816	3,492	237,063	
AFL-CIO	4,758	57.9	2,755	2,755				2,003	369,205	180,654	180,654				188,551	
Teamsters	2,185	56.8	1,241		1,241			944	64,596	27,908		27,908			36,688	
Other national unions	353	60.6	214			214		139	18,548	8,816			8,816		9,732	
Other local unions	101	57.4	58				58	43	5,584	3,492				3,492	2,092	
2-union elections	882	85.1	751	431	135	105	80	131	125,474	110,353	61,299	11,930	17,185	19,939	15,121	
AFL-CIO v. AFL-CIO	206	69.9	144	144				62	23,828	13,559	13,559				10,269	
AFL-CIO v. Teamsters	286	83.6	239	129	110			47	31,305	28,001	17,908	10,093			3,394	
AFL-CIO v. Natl.	200	93.5	187	98		89		13	32,704	31,481	17,224		14,257		1,223	
AFL-CIO v. Local	123	96.7	119	60			59	4	30,261	30,191	12,608			17,583	70	
Teamsters v. Teamsters	4	100.0	4		4			0	109	109		109			0	
Teamsters v. Natl.	21	85.7	18		7	11		3	1,011	932		310	622		79	
Teamsters v. Local	31	93.5	29		14		15	2	2,694	2,608		1,418		1,190	86	
Natl. v. Natl.	2	100.0	2			2		0	571	571			571		0	
Natl. v. Local	4	100.0	4			3	1	0	2,208	2,208			1,735	473	0	
Local v. Local	5	100.0	5				5	0	693	693				693	0	
3 (or more)-union elections	45	88.9	40	29	6	1	4	5	9,315	8,184	6,484	683	243	774	1,131	
AFL-CIO v. AFL-CIO v. AFL-CIO	9	77.8	7	7				2	1,785	857	857				928	
AFL-CIO v. AFL-CIO v. Teamsters	5	80.0	4	3	1			1	624	621	395	226			3	
AFL-CIO v. AFL-CIO v. Natl.	4	75.0	3	3		0		1	750	604	604		0		146	
AFL-CIO v. AFL-CIO v. Local	7	100.0	7	6			1	0	2,608	2,608	2,459			149	0	
AFL-CIO v. Teamsters v. Teamsters	1	100.0	1	0	1			0	14	14	0	14			0	
AFL-CIO v. Teamsters v. Natl.	5	80.0	4	1	2	1		1	990	936	363	330	243		54	

AFL-CIO v. Teamsters v Local	7	100 0	7	5	1		1	0	1,151	1,151	1,073	63		15	0
AFL-CIO v. Natl. v Local	2	100 0	2	1		0	1	0	526	526	77		0	449	0
Teamsters v. Natl. v. Local	1	100 0	1		1		0	0	161	161		0		161	0
Teamsters v. Local v Local	1	100 0	1		0	0	1	0	50	50		50	0	0	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Local	2	100.0	2	2			0	0	511	511	511			0	0
AFL-CIO v. AFL-CIO v. Natl v. Local	1	100 0	1	1		0	0	0	145	145	145		0	0	0

B. ELECTIONS IN RC CASES

Total RC elections	7,637	62.3	4,756	3,007	1,301	312	136	2,881	551,408	314,094	226,022	38,541	25,931	23,600	237,314
1-union elections	6,815	59.4	4,050	2,615	1,171	208	56	2,765	431,251	209,015	170,544	26,549	8,542	3,380	222,236
AFL-CIO	4,381	59 7	2,615	2,615				1,766	347,590	170,544	170,544				177,046
Teamsters	2,007	58 3	1,171		1,171			836	60,284	26,549		26,549			33,735
Other national unions	334	62 3	208			208		126	18,025	8,542			8,542		9,483
Other local unions	93	60 2	56				56	37	5,352	3,380				3,380	1,972
2-union elections	782	85 8	671	365	126	103	77	111	111,770	97,823	49,688	11,382	17,146	19,607	13,947
AFL-CIO v. AFL-CIO	202	70.3	142	142				60	22,950	12,878	12,878				10,072
AFL-CIO v Teamsters	205	85.9	176	71	105			29	19,986	17,569	7,905	9,664			2,417
AFL-CIO v Natl	196	93 4	183	96		87		13	31,854	30,631	16,413		14,218		1,223
AFL-CIO v Local	117	96 6	113	56			57	4	30,018	29,948	12,492			17,456	70
Teamsters v Teamsters	2	100 0	2		2			0	28	28		28			0
Teamsters v. Natl	20	85 0	17		6	11		3	1,007	928		306	622		79
Teamsters v Local	29	93 1	27		13		14	2	2,455	2,369		1,384		985	86
Natl v. Natl	2	100 0	2			2		0	571	571			571		0
Natl v. Local	4	100 0	4			3	1	0	2,208	2,208			1,735	473	0
Local v. Local	5	100 0	5				5	0	693	693				693	0
3 (or more)-union elections	40	87 5	35	27	4	1	3	5	8,387	7,256	5,790	610	243	613	1,131
AFL-CIO v. AFL-CIO v AFL-CIO	9	77 8	7	7				2	1,785	857	857				928
AFL-CIO v. AFL-CIO v. Teamsters	5	80 0	4	3	1			1	624	621	395	226			3
AFL-CIO v. AFL-CIO v. Natl	4	75 0	3	3		0		1	750	604	604		0		146
AFL-CIO v. AFL-CIO v. Local	6	100 0	6	5			1	0	1,989	1,989	1,840			149	0
AFL-CIO v. Teamsters v Teamsters	1	100 0	1	0	1			0	14	14	0	14			0
AFL-CIO v. Teamsters v. Natl	4	75 0	3	1	1	1		1	980	926	363	320	243		54
AFL-CIO v. Teamsters v. Local	5	100 0	5	4	0		1	0	1,013	1,013	998	0		15	0
AFL-CIO v. Natl. v. Local	2	100 0	2	1		0	1	0	526	526	77		0	449	0
Teamsters v. Local v Local	1	100 0	1		1		0	0	50	50		50		0	0
AFL-CIO v AFL-CIO v. AFL-CIO v Local	2	100.0	2	2			0	0	511	511	511			0	0
AFL-CIO v. AFL-CIO v. Natl v Local	1	100 0	1	1		0	0	0	145	145	145		0	0	0

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1966 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
C. ELECTIONS IN RM CASES															
Total RM elections	466	51 3	239	163	63	8	5	227	30,804	20,864	18,855	1,163	313	533	9,940
1-union elections	375	44 8	168	100	60	6	2	207	17,246	8,480	6,983	1,111	274	112	8,766
AFL–CIO	235	42 6	100	100				135	13,410	6,983	6,983				6,427
Teamsters	122	49 2	60		60			62	3,208	1,111		1,111			2,097
Other national unions	12	50 0	6			6		6	411	274			274		137
Other local unions	6	33 3	2				2	4	217	112				112	105
2-union elections	88	77 3	68	62	2	2	2	20	12,768	11,594	11,253	42	39	260	1,174
AFL–CIO v. AFL–CIO	4	50 0	2	2				2	878	681	681				197
AFL–CIO v. Teamsters	74	75 7	56	55	1			18	10,678	9,701	9,672	29			977
AFL–CIO v. Natl	4	100 0	4	2		2		0	850	850	811		39		0
AFL–CIO v Local	4	100 0	4	3			1	0	144	144	89			55	0
Teamsters v. Teamsters	1	100 0	1		1			0	13	13		13			0
Teamsters v. Local	1	100 0	1		0		1	0	205	205		0		205	0
3 (or more)-union elections	3	100 0	3	1	1	0	1	0	790	790	619	10	0	161	0
AFL–CIO v. AFL–CIO v. Local	1	100 0	1	1			0	0	619	619	619			0	0
AFL–CIO v. Teamsters v Natl	1	100 0	1	0	1	0		0	10	10	0	10	0		0
Teamsters v Natl v. Local	1	100 0	1		0	0	1	0	161	161		0	0	161	0

D. ELECTIONS IN RD CASES

Total RD elections	221	29 0	64	45	18	0	1	157	10,510	4,449	3,560	817	0	72	6,061
1-union elections	207	24 2	50	40	10	0	0	157	9,436	3,375	3,127	248	0	0	6,061
AFL-CIO	142	28 2	40	40				102	8,205	3,127	3,127				5,078
Teamsters	56	17 9	10		10			46	1,104	248		248			856
Other National unions	7	0 0	0			0		7	112	0			0		112
Other local unions	2	0 0	0				0	2	15	0				0	15
2-union elections	12	100 0	12	4	7	0	1	0	936	936	358	506	0	72	0
AFL-CIO v Teamsters	7	100 0	7	3	4			0	731	731	331	400			0
AFL-CIO v Local	2	100 0	2	1			1	0	99	99	27			72	0
Teamsters v Teamsters	1	100 0	1		1			0	68	68		68			0
Teamsters v National	1	100 0	1		1	0		0	4	4		4	0		0
Teamsters v. Local	1	100 0	1		1		0	0	34	34		34		0	0
3 (or more)-union elections	2	100 0	2	1	1		0	0	138	138	75	63		0	0
AFL-CIO v Teamsters v Local	2	100 0	2	1	1		0	0	138	138	75	63		0	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 1966 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes 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	534,454	227,883	158,425	29,392	20,258	19,808	74,339	83,500	67,527	11,943	3,485	545	148,732
1-union elections	415,598	132,595	106,781	18,115	5,495	2,204	65,854	77,504	62,464	11,357	3,151	532	139,645
AFL-CIO	334,568	106,781	106,781				54,827	62,464	62,464				110,496
Teamsters	59,025	18,115		18,115			7,627	11,357		11,357			21,926
Other national unions	17,071	5,295			5,495		2,592	3,151			3,151		5,833
Other local unions	4,934	2,204				2,204	808	532				532	1,390
2-union elections	110,604	88,747	47,162	10,699	14,461	16,425	7,825	5,518	4,606	586	313	13	8,514
AFL-CIO v AFL-CIO	22,007	9,873	9,873				2,482	3,724	3,724				5,928
AFL-CIO v. Teamsters	26,592	20,520	11,582	8,938			3,052	1,269	702	567			1,751
AFL-CIO v. Natl	28,695	25,964	13,645		12,319		1,578	469	168		301		684
AFL-CIO v. Local	26,818	26,241	12,062			14,179	517	14	12			2	46
Teamsters v. Teamsters	92	89		89			3	0		0			0
Teamsters v. Natl	876	723		368	355		82	15		3	12		56
Teamsters v Local	2,412	2,305		1,304		1,001	31	27		16		11	49
Natl. v. Natl	544	539			539		5	0			0		0
Natl. v. Local	1,977	1,946			1,248	698	31	0			0	0	0
Local v. Local	591	547				547	44	0				0	0
3 (or more)-union elections	8,252	6,541	4,482	578	302	1,179	660	478	457	0	21	0	573
AFL-CIO v. AFL-CIO v. AFL-CIO	1,646	621	621				148	401	401				476
AFL-CIO v. AFL-CIO v. Teamsters	577	469	242	227			105	1	1	0			2
AFL-CIO v. AFL-CIO v. Natl	551	370	354		16		60	54	54		0		67
AFL-CIO v. AFL-CIO v. Local	2,315	2,260	1,771			489	55	0	0			0	0
AFL-CIO v. Teamsters v. Teamsters	14	14	0	14			0	0	0	0			0
AFL-CIO v. Teamsters v. Natl	919	716	364	208	144		153	22	1	0	21		28

AFL–CIO v. Teamsters v. Local	979	854	510	72		272	125	0	0	0		0	0
AFL–CIO v. Natl. v. Local	495	493	153		121	219	2	0	0		0	0	0
Teamsters v. Natl v. Local	79	67		21	0	46	12	0		0	0	0	0
Teamsters v. Local v. Local	50	50		36		14	0	0		0		0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. Local	486	486	347			139	0	0	0			0	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	141	141	120		21	0	0	0	0		0	0	0

B. ELECTIONS IN RC CASES

Total RC elections	498,845	212,498	145,531	27,470	20,058	19,439	68,263	79,192	64,074	11,176	3,430	512	138,892
1-union elections	391,582	125,447	100,823	17,152	5,343	2,129	62,176	73,540	59,335	10,610	3,096	499	130,419
AFL–CIO	315,091	100,823	100,823				51,542	59,335	59,335				103,391
Teamsters	55,153	17,152		17,152			7,338	10,610		10,610			20,053
Other national unions	16,599	5,343			5,343		2,501	3,096			3,096		5,659
Other local unions	4,739	2,129				2,129	795	499				499	1,316
2-union elections	99,741	81,225	40,793	9,824	14,417	16,191	5,442	5,174	4,282	566	313	13	7,900
AFL–CIO v. AFL–CIO	21,196	9,250	9,250				2,482	3,666	3,666				5,798
AFL–CIO v. Teamsters	17,881	14,607	6,401	8,206			1,024	983	436	547			1,267
AFL–CIO v. Natl	27,881	25,478	13,203		12,275		1,250	469	168		301		684
AFL–CIO v. Local	26,592	26,040	11,939			14,101	492	14	12			2	46
Teamsters v. Teamsters	26	25		25			1	0		0			0
Teamsters v Natl	872	719		364	355		82	15		3	12		56
Teamsters v. Local	2,181	2,074		1,229		845	31	27		16		11	49
Natl v. Natl	544	539			539		5	0			0		0
Natl. v. Local	1,977	1,946			1,248	698	31	0			0	0	0
Local v. Local	591	547				547	44	0				0	0
3 (or more)-union elections	7,522	5,826	3,915	494	298	1,119	645	478	457	0	21	0	573
AFL–CIO v. AFL–CIO v. AFL–CIO	1,646	621	621				148	401	401				476
AFL–CIO v AFL–CIO v Teamsters	577	469	242	227			105	1	1	0			2
AFL–CIO v. AFL–CIO v. Natl	551	370	354		16		60	54	54		0		67
AFL–CIO v. AFL–CIO v. Local	1,784	1,732	1,249			483	52	0	0			0	0
AFL–CIO v. Teamsters v. Teamsters	14	14	0	14			0	0	0	0			0
AFL–CIO v. Teamsters v. Natl	909	706	364	202	140		153	22	1	0	21		28
AFL–CIO v. Teamsters v. Local	869	744	465	15		264	125	0	0	0		0	0
AFL–CIO v. Natl. v. Local	495	493	153		121	219	2	0	0		0	0	0
Teamsters v. Local v Local	50	50		36		14	0	0		0		0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v Local	486	486	347			139	0	0	0			0	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	141	141	120		21	0	0	0	0		0	0	0

See footnote at end of table.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1966 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes 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	
C. ELECTIONS IN RM CASES													
Total RM elections	26,216	12,427	10,620	1,291	200	316	4,984	2,778	2,144	560	42	32	6,027
1-union elections	15,583	5,120	4,105	788	152	75	2,616	2,434	1,820	540	42	32	5,413
AFL–CIO	12,166	4,105	4,105				2,269	1,820	1,820				3,972
Teamsters	2,865	788		788			243	540		540			1,294
Other national unions	371	152			152		91	42			42		86
Other local unions	181	75				75	13	32				32	61
2-union elections	10,013	6,702	5,993	476	44	189	2,353	344	324	20	0	0	614
AFL–CIO v. AFL–CIO	811	623	623				0	58	58				130
AFL–CIO v Teamsters	8,032	5,239	4,833	406			2,023	286	266	20			484
AFL–CIO v. Natl	814	486	442		44		328	0	0		0		0
AFL–CIO v. Local	139	137	95			42	2	0	0			0	0
Teamsters v. Teamsters	12	12		12			0	0		0			0
Teamsters v Local	205	205		58		147	0	0		0		0	0
3 (or more)-union elections	620	605	522	27	4	52	15	0	0	0	0	0	0
AFL–CIO v AFL–CIO v. Local	531	528	522			6	3	0	0			0	0
AFL–CIO v. Teamsters v. Natl	10	10	0	6	4		0	0	0	0	0		0
Teamsters v. Natl. v Local	79	67		21	0	46	12	0		0	0	0	0

D. ELECTIONS IN RD CASES

Total RD elections	9,393	2,958	2,274	631	0	53	1,092	1,530	1,309	207	13	1	3,813
1-union elections	8,433	2,028	1,853	175	0	0	1,062	1,530	1,309	207	13	1	3,813
AFL-CIO	7,311	1,853	1,853				1,016	1,309	1,309				3,133
Teamsters	1,007	175		175			46	207		207			579
Other national unions	101	0			0		0	13			13		88
Other local unions	14	0				0	0	1				1	13
2-union elections	850	820	376	399	0	45	30	0	0	0	0	0	0
AFL-CIO v. Teamsters	679	674	348	326			5	0	0	0			0
AFL-CIO v Local	87	64	28			36	23	0	0			0	0
Teamsters v Teamsters	54	52		52			2	0		0			0
Teamsters v Natl	4	4		4			0	0		0	0		0
Teamsters v. Local	26	26		17		9	0	0		0		0	0
3 (or more)-union elections	110	110	45	57	0	8	0	0	0	0	0	0	0
AFL-CIO v. Teamsters v. Local	110	110	45	57		8	0	0	0	0		0	0

[1] See "Glossary" for definition of terms.

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1966

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 employees 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	8,324	5,059	3,215	1,382	320	142	3,265	592,722	534,454	311,383	225,952	41,335	23,743	20,353	223,071	339,407
New England	467	269	137	111	14	7	198	30,989	28,361	14,245	10,079	2,248	1,162	756	14,116	12,995
Maine	37	19	13	5	0	1	18	3,612	2,623	1,484	1,343	32	0	109	1,139	1,469
New Hampshire	23	17	11	6	0	0	6	2,686	2,495	1,248	1,173	73	2	0	1,247	1,573
Vermont	25	13	12	1	0	0	12	750	705	359	315	8	36	0	346	379
Massachusetts	246	154	70	71	8	5	92	14,192	12,994	7,188	4,529	1,160	988	511	5,806	6,851
Rhode Island	33	17	10	6	0	1	16	2,603	2,334	888	634	156	0	98	1,446	719
Connecticut	103	49	21	22	6	0	54	7,746	7,210	3,078	2,085	819	136	38	4,132	2,004
Middle Atlantic	1,445	879	545	229	67	38	566	114,433	100,465	63,260	45,999	6,535	6,168	4,558	37,205	70,017
New York	647	400	284	88	15	13	247	53,861	44,712	29,860	23,717	2,202	3,040	901	14,852	37,702
New Jersey	331	205	102	74	18	11	126	19,415	17,565	10,808	6,893	1,697	862	1,356	6,757	10,815
Pennsylvania	467	274	159	67	34	14	193	41,157	38,188	22,592	15,389	2,636	2,266	2,301	15,596	21,500
East North Central	1,829	1,094	721	269	67	37	735	139,405	125,948	77,080	52,720	9,830	4,811	9,719	48,868	79,740
Ohio	533	333	207	84	20	22	200	41,534	37,800	25,683	15,667	2,465	1,123	6,428	12,117	26,887
Indiana	290	173	103	55	10	5	117	22,424	20,356	11,412	7,904	1,807	580	1,121	8,944	11,302
Illinois	381	209	152	45	8	4	172	33,327	29,953	17,489	11,229	3,252	1,804	1,204	12,464	16,096
Michigan	433	249	168	49	27	5	184	30,396	27,129	16,049	12,868	1,228	1,157	796	11,080	18,253
Wisconsin	192	130	91	36	2	1	62	11,724	10,710	6,447	5,052	1,078	147	170	4,263	7,202
West North Central	713	475	294	164	13	4	238	33,019	30,559	17,778	13,314	3,432	691	341	12,781	19,951
Iowa	141	92	51	35	3	3	49	7,564	7,091	4,190	3,000	652	336	202	2,901	4,020
Minnesota	132	84	49	32	3	0	48	4,303	3,985	2,280	1,647	570	49	14	1,705	1,979
Missouri	284	209	139	65	5	0	75	14,196	13,082	7,530	5,639	1,748	126	17	5,552	8,945
North Dakota	20	14	3	11	0	0	6	387	345	215	55	160	0	0	130	279
South Dakota	17	12	10	2	0	0	5	2,062	1,890	1,129	1,114	15	0	0	761	1,785
Nebraska	38	23	14	8	0	1	15	1,182	1,099	641	452	81	0	108	458	673
Kansas	81	41	28	11	2	0	40	3,325	3,067	1,793	1,407	206	180	0	1,274	2,270

South Atlantic	941	525	353	135	30	7	416	90,801	83,124	42,950	34,033	4,793	3,353	771	40,174	47,739
Delaware	26	18	13	3	0	2	8	1,852	1,691	854	687	129	0	38	837	844
Maryland	146	82	56	25	1	0	64	10,672	9,553	4,986	4,372	561	34	19	4,567	6,894
District of Columbia	63	43	35	7	1	0	20	3,031	2,456	1,512	1,278	178	14	42	944	1,834
Virginia	104	68	41	16	10	1	36	13,187	12,225	7,575	4,804	507	1,872	392	4,650	9,633
West Virginia	79	57	30	14	11	2	22	6,948	6,542	3,726	2,549	258	709	210	2,816	4,514
North Carolina	134	53	41	11	1	0	81	20,922	19,452	9,087	8,550	441	96	0	10,365	9,142
South Carolina	40	17	13	4	0	0	23	7,664	7,116	3,047	2,851	196	0	0	4,069	1,911
Georgia	133	76	53	19	4	0	57	11,501	10,567	5,595	4,320	912	363	0	4,972	6,732
Florida	216	111	71	36	2	2	105	15,024	13,522	6,568	4,622	1,611	265	70	6,954	6 235
East South Central	535	327	202	91	30	4	208	53,706	49,010	27,533	20,818	4,075	2,332	308	21,477	32,043
Kentucky	123	81	35	33	12	1	42	9,252	8,344	5,181	2,480	2,115	467	119	3,163	5,810
Tennessee	205	114	70	35	8	1	91	26,280	23,760	13,390	10,443	1,459	1,352	136	10,370	15,522
Alabama	145	92	66	19	7	0	53	11,629	10,798	5,845	5,095	364	386	0	4,953	7,533
Mississippi	62	40	31	4	3	2	22	6,545	6,108	3,117	2,800	137	127	53	2,991	3,178
West South Central	764	481	355	108	13	5	283	56,632	51,934	30,008	23,201	3,616	2,251	940	21,926	35,177
Arkansas	85	45	24	20	1	0	40	8,775	8,133	4,310	3,770	514	9	17	3,823	4,696
Louisiana	116	69	52	14	2	1	47	8,469	7,677	5,093	4,718	256	1,049	70	2,584	5,998
Oklahoma	89	57	46	8	2	1	32	6,788	6,271	3,530	2,752	191	113	474	2,741	3,241
Texas	474	310	233	66	8	3	164	32,600	29,853	17,075	12,961	2,655	1,080	379	12,778	21,242
Mountain	321	199	128	57	10	4	122	14,185	12,689	6,900	4,601	1,420	350	529	5,789	7,048
Montana	22	15	4	10	1	0	7	654	567	300	188	107	5	0	267	226
Idaho	29	13	10	3	0	0	16	3,663	3,179	1,375	1,092	283	0	0	1,804	1,902
Wyoming	18	13	7	3	3	0	5	405	357	178	94	10	74	0	179	157
Colorado	101	61	37	20	4	0	40	3,201	2,944	1,440	669	580	191	0	1,504	1,227
New Mexico	31	19	12	6	0	1	12	973	857	585	315	154	0	116	272	677
Arizona	60	43	34	7	1	1	17	2,852	2,590	1,908	1,465	171	26	246	682	1,952
Utah	35	21	16	4	1	0	14	1,755	1,597	814	630	95	54	35	783	541
Nevada	25	14	8	4	0	2	11	682	598	300	148	20	0	132	298	366
Pacific	1,182	729	428	214	73	14	453	49,276	43,654	26,068	17,775	5,006	2,509	778	17,586	28,861
Washington	105	64	41	18	4	1	41	2,644	2,264	1,348	962	304	67	15	916	1,398
Oregon	109	66	41	18	5	2	43	4,735	4,245	2,441	2,010	215	150	66	1,804	2,781
California	837	496	274	166	47	9	341	36,925	33,489	19,657	13,060	4,249	1,736	612	13,832	20,339
Alaska	68	60	51	3	5	1	8	2,453	1,305	1,137	1,000	14	110	13	168	2,345
Hawaii	63	43	21	9	12	1	20	2,519	2,351	1,485	743	224	446	72	866	1,998
Outlying Areas	127	81	52	4	3	22	46	10,276	8,710	5,561	3,412	380	116	1,653	3,149	5,836
Puerto Rico	122	78	49	4	3	22	44	10,170	8,613	5,510	3,361	380	116	1,653	3,103	5,784
Virgin Islands	5	3	3	0	0	0	2	106	97	51	51	0	0	0	46	52

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 1966

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 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 industrial groups	8,324	5,059	3,215	1,382	320	142	3,265	592,722	534,454	311,383	225,952	41,335	23,743	20,353	223,071	339,407
Manufacturing	4,798	2,840	1,970	564	206	100	1,958	459,146	419,874	241,246	178,712	26,630	18,106	17,798	178,628	253,532
Ordnance and accessories	8	5	3	0	2	0	3	1,330	1,130	896	490	0	406	0	234	1,114
Food and kindred products	713	423	219	167	25	12	290	53,695	47,887	29,775	17,701	7,344	2,613	2,117	18,112	35,523
Tobacco manufacturers	4	4	2	2	0	0	0	1,729	1,460	1,154	760	394	0	0	306	1,729
Textile mill products	109	54	38	8	2	6	55	22,269	20,546	9,525	8,213	168	642	502	11,021	9,332
Apparel and other finished products, made from fabric and similar materials	88	57	44	10	1	2	31	15,813	14,215	8,303	6,779	1,330	142	52	5,912	10,970
Lumber and wood products (except furniture)	222	133	103	18	8	4	89	15,287	13,885	7,778	6,598	549	376	255	6,107	8,552
Furniture and fixtures	143	75	57	10	5	3	68	16,543	15,235	7,794	6,172	771	656	195	7,441	7,670
Paper and allied products	213	136	91	32	8	5	77	21,383	19,875	12,304	9,026	2,188	817	273	7,571	12,145
Printing, publishing, and allied industries	271	157	128	15	11	3	114	9,901	9,024	5,208	4,378	441	307	82	3,816	5,076
Chemicals and allied products	326	200	107	57	28	8	126	25,927	24,262	14,430	8,995	1,422	2,941	1,072	9,832	13,363
Products of petroleum and coal	61	40	23	12	1	4	21	4,618	4,145	3,001	1,575	386	10	1,030	1,144	3,332
Rubber and plastic products	223	123	81	28	9	5	100	21,367	19,442	11,019	8,350	1,069	578	1,022	8,423	11,155
Leather and leather products	64	25	22	0	2	1	39	17,205	15,400	7,130	6,609	198	184	139	8,270	7,523
Stone, clay, and glass products	287	186	116	51	13	6	101	22,174	20,309	11,906	9,104	1,949	436	417	8,403	12,884
Primary metal industries	281	176	124	26	21	5	105	28,416	26,446	15,920	11,593	1,116	1,797	1,414	10,526	17,165
Fabricated metal products (except machinery and transportation equipment)	564	244	273	46	18	7	220	46,255	42,043	26,622	17,882	1,921	1,645	5,174	15,421	28,722
Machinery (except electrical)	473	273	216	24	21	12	200	46,150	42,940	24,314	18,957	1,454	1,470	2,433	18,626	23,717
Electrical machinery, equipment, and supplies	279	144	110	20	10	4	135	46,778	42,652	22,396	17,579	2,530	1,686	601	20,256	20,248
Aircraft and parts	45	30	22	3	2	3	15	6,957	6,345	3,102	2,623	188	65	226	3,243	3,516
Ship and boat building and repairing	22	12	11	0	1	0	10	1,806	1,675	888	726	0	15	147	787	735

Automotive and other transportation equipment	218	142	106	23	7	6	76	18,875	17,487	10,188	8,871	663	292	362	7,299	12,044
Professional, scientific, and controlling instruments	59	31	26	3	2	0	28	5,303	4,916	2,873	2,181	218	474	0	2,043	2,671
Miscellaneous manufacturing	125	70	48	9	9	4	55	9,365	8,555	4,720	3,550	331	554	285	3,835	4,346
Mining	115	82	49	10	23	0	33	7,372	6,671	4,364	2,434	308	1,411	211	2,307	5,520
Metal mining	21	15	12	1	2	0	6	2,596	2,369	1,645	1,531	12	40	62	724	2,383
Coal mining	24	18	2	1	15	0	6	1,769	1,621	1,341	23	12	1,166	140	280	1,515
Crude petroleum and natural gas production	20	13	13	0	0	0	7	644	551	288	265	23	0	0	263	386
Nonmetallic mining and quarrying	50	36	22	8	6	0	14	2,363	2,130	1,090	615	261	205	9	1,040	1,236
Construction	223	176	153	8	11	4	47	8,154	6,257	4,526	4,009	74	264	179	1,731	6,627
Wholesale trade	894	523	151	337	27	8	371	17,681	16,374	9,016	3,636	4,594	390	396	7,358	9,354
Retail trade	912	526	373	127	18	8	386	29,871	26,317	13,833	11,017	2,089	217	510	12,484	13,003
Finance, insurance, and real estate	49	30	27	3	0	0	19	1,803	1,649	953	670	275	8	0	696	1,157
Transportation, communication, and other utilities	864	578	309	245	14	10	286	47,939	39,322	26,840	18,563	5,137	2,296	844	12,482	37,461
Local passenger transportation	185	133	129	3	0	1	52	22,580	16,710	11,470	10,761	504	0	205	5,240	20,160
Motor freight, warehousing, and transportation services	418	265	39	217	4	5	153	8,999	8,093	4,775	1,011	3,571	30	163	3,318	5,308
Water transportation	34	26	17	2	6	1	8	1,279	1,026	691	500	10	102	79	335	751
Other transportation	12	10	7	3	0	0	2	2,012	1,842	1,367	1,027	340	0	0	475	1,977
Communications	103	66	62	1	2	1	37	6,573	5,594	4,179	2,882	12	1,221	64	1,415	4,497
Heat, light, power, water, and sanitary services	112	78	55	19	2	2	34	6,496	6,057	4,358	2,382	700	943	333	1,699	4,768
Services	469	304	183	88	21	12	165	20,756	17,990	10,605	6,911	2,228	1,051	415	7,385	12,753
Hotel and other lodging places	57	31	23	3	3	2	26	5,858	4,956	2,627	2,114	115	330	68	2,329	3,465
Personal services	86	53	26	25	2	0	33	3,856	3,542	2,107	1,234	819	46	8	1,435	2,059
Automobile repair, garage, and other miscellaneous repair services	134	92	47	40	1	4	42	2,573	2,342	1,586	787	677	18	104	756	1,854
Motion picture and other amusement and recreation services	15	10	9	0	0	1	5	765	633	342	158	61	0	123	291	417
Medical and other health services	6	3	2	1	0	0	3	306	291	175	86	61	0	28	116	146
Educational services	2	0	0	0	0	0	2	17	17	2	0	0	2	0	15	0
Nonprofit membership organizations	7	5	1	2	0	2	2	327	234	166	98	54	0	14	68	274
Miscellaneous services	162	110	75	17	15	3	52	7,054	5,975	3,600	2,434	441	655	70	2,375	4,538

[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 1966 [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								Elections in which no representative was chosen	
					AFL-CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
A CERTIFICATION ELECTIONS (RC & RM)														
Total RC & RM elections	582,212	8,103	100 0		3,170	100 0	1,364	100 0	320	100 0	141	100 0	3,108	100.0
Under 10	10,874	1,926	23 8	23 8	658	20 8	596	43 7	72	22 5	12	8 5	588	18 9
10–19	23,976	1,723	21 3	45 1	653	20 6	355	26 0	76	23 7	22	15 6	617	19 9
20–29	22,594	944	11 7	56 8	388	12 2	142	10 4	36	11 3	16	11 3	362	11 6
30–39	19,871	581	7 2	64 0	243	7 7	62	4 5	27	8 4	11	7 8	238	7 7
40–49	17,653	398	4 9	68 9	166	5 2	47	3 5	12	3 8	6	4 3	167	5 4
50–59	18,828	346	4 3	73 2	139	4 4	35	2 6	15	4 7	10	7 2	147	4 7
60–69	15,838	246	3 0	76 2	99	3 1	21	1 5	6	1 9	2	1 4	118	3 8
70–79	15,868	215	2 6	78 8	91	2 9	21	1 5	5	1 6	5	3 5	93	3 0
80–89	14,770	176	2 2	81 0	73	2 3	14	1 0	7	2 2	4	2 9	78	2 5
90–99	12,963	138	1 7	82 7	68	2 1	6	0 4	7	2 2	4	2 9	53	1.7
100–109	11,691	112	1 4	84 1	48	1 5	8	0 6	4	1 3	1	0 7	51	1.6
110–119	14,376	126	1 5	85 6	53	1 7	5	0 4	3	0 9	5	3 5	60	1.9
120–129	10,893	88	1.1	86 7	35	1 1	3	0 2	2	0 6	3	2 1	45	1 4
130–139	11,914	89	1 1	87 8	38	1 2	3	0 2	4	1 3	2	1 4	42	1 4
140–149	11,542	80	1 0	88 8	38	1 2	3	0 2	2	0 6	3	2 1	34	1 1
150–159	7,407	48	0 6	89 4	17	0 5	4	0 3	3	0 9	1	0 7	23	0 7
160–169	10,326	63	0 8	90 2	30	0 9	1	0 1	0	----------	3	2 1	29	0 9
170–179	9,085	52	0 6	90 8	17	0 5	3	0 2	4	1 3	2	1 4	26	0 8
180–189	7,575	41	0 5	91 3	21	0 7	1	0 1	2	0 6	1	0 7	16	0 5
190–199	8,890	46	0 6	91 9	20	0 6	3	0 2	2	0 6	1	0 7	20	0 6
200–299	62,924	263	3 2	95 1	104	3 3	11	0 8	11	3 4	10	7.2	127	4 2
300–399	55,427	163	2 0	97 1	73	2 3	8	0 6	6	1 9	9	6 4	67	2 2
400–499	34,520	78	0 9	98 0	30	0 9	6	0 4	3	0 9	2	1 4	37	1 2
500–599	23,950	44	0 5	98 5	20	0 6	2	0 2	2	0 6	0	----------	20	0.6
600–799	35,719	52	0 6	99 1	21	0 7	1	0 1	3	0 9	2	1 4	25	0 8
800–999	18,997	22	0 3	99 4	9	0 3	2	0 2	2	0 6	1	0 7	8	0 3
1,000–1,999	43,362	33	0 4	99 8	12	0 4	1	0 1	4	1 3	2	1 4	14	0 5
2,000–2,999	14,229	6	0 1	99 9	4	0 2	0	----------	0	----------	0	----------	2	0.1
3,000–9,999	16,150	4	0 1	100 0	2	0 1	0	----------	0	----------	1	0 7	1	0 0
10,000 and over	0	0	----------	100 0	0	----------	0	----------	0	----------	0	----------	0	----------

B. DECERTIFICATION ELECTIONS (RD)

Total RD elections	10,510	221	100 0		45	100 0	18	100 0	0		1	100 0	157	100 0
Under 10	267	46	20 8	20 8	2	4 4	4	22 1	0		0		40	25 5
10–19	767	55	24 9	45 7	6	13 4	4	22 1	0		0		45	28 7
20–29	809	34	15 4	61 1	7	15 7	1	5 6	0		0		26	16 6
30–39	694	20	9 0	70 1	4	8 9	3	16 7	0		0		13	8 3
40–49	752	17	7 7	77 8	4	8 9	1	5 6	0		0		12	7 6
50–59	275	5	2 3	80 1	0		0		0		0		5	3 2
60–69	520	8	3 6	83.7	2	4 4	2	11 1	0		0		4	2 6
70–79	291	4	1 8	85 5	2	4.4	0		0		1	100. 0	1	0 6
80–89	587	7	3 2	88 7	3	6 7	1	5 6	0		0		3	1 9
90–99	279	3	1 5	90 2	2	4 4	0		0		0		1	0 6
100–109	206	2	0 9	91 1	2	4 4	0		0		0		0	
110–119	459	4	1 8	92 9	2	4 4	0		0		0		2	1 3
120–129	126	1	0 4	93 3	0		0		0		0		1	0 6
130–139	272	2	0 9	94 2	1	2 2	1	5 6	0		0		0	
140–149	0	0		94 2	0		0		0		0		0	
150–159	153	1	0 4	94 6	1	2 2	0		0		0		0	
160–169	0	0		94 6	0		0		0		0		0	
170–199	379	2	0 9	95 5	2	4 4	0		0		0		0	
200–299	1,409	6	2 7	98 2	5	11 2	1	5 6	0		0		0	
300–399	0	0		98 2	0		0		0		0		0	
400–499	1,331	3	1 4	99 6	0		0		0		0		3	1 9
500–799	0	0		99 6	0		0		0		0		0	
800–999	934	1	0 4	100 0	0		0		0		0		1	0 6
1,000 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 1966 [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
Total	[2] 13,529	100 0	--------	9,188	100 0	1,763	100 0	926	100 0	362	100 0	54	100 0	319	100 0	742	100 0	175	100 0
Under 10	2,924	21 6	21 6	1,802	19 6	446	25 3	277	29 9	94	26 0	28	51 9	88	27 6	138	18 6	51	29 1
10–19	1,682	12 4	34 0	1,186	12 9	163	9 3	136	14 7	45	12 4	5	9 2	56	17 6	67	9 0	24	13 7
20–29	1,125	8 3	42 3	812	8 8	101	5 8	82	8 9	30	8 3	4	7 4	43	13 5	37	5 0	16	9 1
30–39	815	6 0	48 3	571	6 2	85	4 8	72	7 8	25	6 9	0	--------	32	10 1	23	3 1	7	4 0
40–49	508	3 8	52 1	379	4 1	49	2 8	29	3 1	12	3 3	0	--------	10	3 1	20	2 7	9	5 1
50–59	588	4 3	56 4	366	4 0	81	4 6	60	6 5	17	4 7	2	3 7	17	5.3	36	4 9	9	5.1
60–69	375	2 8	59 2	282	3 1	34	1 9	20	2 2	13	3 6	0	--------	10	3 1	16	2 2	0	--------
70–79	373	2 8	62 0	255	2 8	49	2 8	23	2 5	6	1 7	0	--------	11	3 4	22	3 0	7	4 0
80–89	240	1 8	63 8	170	1 9	18	1 0	16	1 7	13	3 6	3	5 6	9	2 8	9	1 2	2	1 2
90–99	171	1 3	65 1	132	1 4	16	0 9	6	0 6	1	0 3	0	--------	5	1 6	8	1 1	3	1 7
100–109	525	3 9	69 0	352	3 9	61	3 5	35	3 8	15	4 0	5	9.2	5	1 6	42	5 7	10	5 7
110–119	109	0 8	69 8	86	0 9	12	0 7	0	--------	3	0 8	0	--------	3	0 9	5	0 7	0	--------

120–129	184	1 4	71 2	137	1 5	19	1 1	10	1 1	2	0 6	0	--------	4	1 3	10	1 3	2	1 2
130–139	99	0 7	71 9	77	0 8	8	0 5	6	0 6	2	0 6	0	--------	1	0 3	4	0 5	1	0 6
140–149	69	0 5	72 4	58	0.6	4	0 2	3	0 3	0	--------	0	--------	2	0 6	2	0 3	0	--------
150–159	307	2 3	74 7	206	2 2	48	2 7	18	2 0	6	1 7	0	--------	4	1 3	24	3 2	1	0 6
160–169	81	0 6	75 3	64	0 7	6	0 3	5	0 5	3	0 8	0	--------	0	--------	2	0 3	1	0 6
170–179	107	0 8	76 1	92	1 0	4	0 2	2	0 2	2	0 6	0	--------	1	0 3	6	0 8	0	--------
180–189	63	0 5	76 6	46	0 5	4	0 2	4	0 4	0	--------	0	--------	0	--------	6	0 8	3	1 7
190–199	38	0 3	76 9	25	0 3	2	0 1	9	1 0	0	--------	0	--------	1	0 3	1	0 1	0	--------
200–299	738	5 5	82 4	533	5 8	108	6 1	24	2 6	14	3 9	5	9 2	7	2 2	41	5 5	6	3 4
300–399	505	3 7	86 1	347	3 8	78	4 4	11	1 2	15	4 1	1	1 9	5	1 6	44	5 9	4	2 3
400–499	287	2 1	88 2	218	2 4	36	2 0	6	0 6	3	0 8	0	--------	1	0 3	21	2 8	2	1 2
500–599	274	2 0	90 2	169	1 8	53	3 0	10	1 1	10	2 8	0	--------	1	0 3	23	3 1	8	4 5
600–699	155	1 1	91 3	117	1 3	16	0 9	9	1 0	4	1 1	0	--------	0	--------	9	1.2	0	--------
700–799	77	0 6	91 9	55	0 6	11	0 6	3	0 3	3	0 8	0	--------	0	--------	3	0 4	2	1 2
800–899	81	0 6	92 5	56	0 6	12	0 7	2	0 2	0	--------	0	--------	0	--------	11	1 5	0	--------
900–999	49	0 3	92 8	34	0 4	8	0 5	3	0 3	0	--------	1	1 9	0	--------	3	0 4	0	--------
1,000–1,999	440	3 2	96 0	248	2 7	100	5 7	27	2 9	13	3 6	0	--------	1	0 3	48	6 5	3	1 7
2,000–2,999	202	1 5	97 5	115	1 3	47	2 7	8	0 9	4	1 1	0	--------	1	0 3	26	3 5	1	0 6
3,000–3,999	149	1 1	98 6	99	1 1	30	1 7	2	0 2	1	0 3	0	--------	0	--------	14	1 9	3	1 7
4,000–4,999	56	0 4	99 0	22	0 2	13	0 7	7	0 8	3	0 8	0	--------	1	0 3	10	1 3	0	--------
5,000–9,999	131	1 0	100 0	75	0 8	41	2 3	1	0 1	3	0 8	0	--------	0	--------	11	1 5	0	--------
10,000 and over	2	0 0	100 0	2	0 0	0	--------	0	--------	0	--------	0	--------	0	--------	0	--------	0	--------

[1] See "Glossary" for definition of terms

[2] Based on revised situation count which absorbs companion cases, cross-filing 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 1966; and Cumulative Totals, Fiscal Years 1936–66

	Fiscal year 1966									July 5, 1935–June 30, 1966	
	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	247	197	27	5	18						
On petitions for review and/or enforcement	231	182	26	5	18	100 0	100 0	100 0	100 0	3,162	100 0
Board orders affirmed in full	134	99	23	3	9	54 4	88 5	60 0	50 0	1,815	57 4
Board orders affirmed with modification	41	38	2	0	1	20 9	7 7		5 6	634	20 1
Remanded to Board	12	7	0	1	4	3 8	0	20 0	22. 2	123	3. 9
Board orders partially affirmed and partially remanded	7	5	0	0	2	2 7			11 1	40	1. 3
Board orders set aside	37	33	1	1	2	18 2	3 8	20 0	11 1	550	17 3
On petitions for contempt	16	15	1	0		100 0	100 0				
Compliance after filing of petition, before court order	4	4	0	0		26 7					
Court orders holding respondent in contempt	10	9	1	0		60 0	100 0				
Court orders denying petition	2	2	0	0		13 3					
Proceedings decided by U S Supreme Court [3]	1	1	0	0	0	100 0				160	100 0
Board orders affirmed in full	0	0	0	0	0					98	61. 3
Board orders affirmed with modification	0	0	0	0	0					13	8. 1
Board orders set aside	0	0	0	0	0					28	17 5
Remanded to Board	1	1	0	0	0	100 0				7	4. 4
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	0 6
Contempt case remanded to court of appeals	0	0	0	0						1	0 6
Contempt cases enforced	0	0	0	0						1	0 6

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964 This term more accurately describes the data inasmuch as 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

[3] The Supreme Court remanded three additional cases, not included in this table, to circuit courts of appeals. These cases involved not the enforcement or review of Board orders, but the rights of parties to intervene in proceedings in the circuit courts of appeals *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 283* v *Fanir Bearing Co* , 382 U.S 205, *UAW* v *Scofield, id* , *I U E* v *N L.R.B* , 382 U S 366 In addition, the Board appeared as *amicus curiae* in two preemption cases *Hanna Mining Co* , *et al* v *District 2. Marine Engineers Beneficial Association, AFL–CIO, et al* , 382 U S. 181, and *Linn* v *United Plant Guard Workers of America, Local 114*, 383 U S. 53. Its position was sustained by the Court in both cases

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1966 Compared With 5-Year Cumulative Totals, Fiscal Years 1961 Through 1965[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1966	Total fiscal years 1961–65	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1966		Cumulative fiscal years 1961–65		Fiscal year 1966		Cumulative fiscal years 1961–65		Fiscal year 1966		Cumulative fiscal years 1961–65		Fiscal year 1966		Cumulative fiscal years 1961–65		Fiscal year 1966		Cumulative fiscal years 1961–65	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	231	950	134	58 0	520	54 7	41	17 8	191	20 1	12	5 2	51	5 4	7	3 0	16	1 7	37	16 0	172	18 1
1 Boston, Mass	22	53	15	68 2	25	47 2	4	18 2	5	9 4	2	9 1	7	13 3	0	------	4	7 5	1	4 5	12	22 6
2 New York, N Y	18	122	10	55 6	77	63 1	5	27 7	21	17 2	0	------	10	8 3	1	5 6	2	1 6	2	11 1	12	9 8
3 Philadelphia, Pa	12	69	10	83 4	49	71 0	0	------	7	10 1	1	8 3	3	4 4	0	------	0	------	1	8 3	10	14 5
4 Richmond, Va	14	67	10	71 4	33	49 2	2	14 3	12	17 9	0	------	3	4 5	0	------	0	------	2	14 3	19	28 4
5 New Orleans, La	37	159	21	56 8	89	55 9	12	32 4	44	27 7	2	5 4	2	1 3	0	------	3	1 9	2	5 4	21	13 2
6 Cincinnati, Ohio	29	117	20	69 0	64	54 7	3	10 3	23	19 7	2	6 9	2	1 7	2	6 9	1	.8	2	6 9	27	23 1
7. Chicago, Ill	28	88	9	32 1	39	44 3	5	17 9	22	25 0	0	------	0	------	1	3 6	0	------	13	46 4	27	30 7
8 St Louis, Mo	14	50	3	21 4	23	46 0	4	28 6	18	36 0	0	------	0	------	0	------	1	2 0	7	50 0	8	16 0
9 San Francisco, Calif	29	105	20	68 9	50	47 6	4	13 8	20	19 0	1	3 5	9	8 6	1	3 5	1	1 0	3	10 3	25	23 8
10 Denver, Colo	5	39	3	60 0	28	71 8	0	------	4	10 3	0	------	2	5 1	0	------	0	------	2	40 0	5	12 8
Washington, D C	23	81	13	56 5	43	53 1	2	8 7	15	18 5	4	17 4	13	16 1	2	8 7	4	4 9	2	8 7	6	7 4

[1] Percentages are computed horizontally by current fiscal year and total fiscal years

Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1966

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1966
		Pending in district court July 1, 1965	Filed in district court fiscal year 1966		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec 10(e), total	2	0	[1] 2	2	0	2	0	0	0	0	0
Under sec. 10(j), total	18	1	17	13	9	1	2	1	0	0	5
8(a)(1)(2)(3)(4)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)	3	1	2	1	0	0	1	0	0	0	2
8(a)(1)(3)(4)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(3)(5)	3	0	3	2	2	0	0	0	0	0	1
8(a)(1)(5)	5	0	5	4	4	0	0	0	0	0	1
8(a)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(1)(A)	2	0	2	2	1	0	0	1	0	0	0
8(b)(3)	2	0	2	2	1	1	0	0	0	0	0
Under sec 10(l), total [2]	185	12	173	169	74	4	62	7	1	21	16
8(b)(4)(A)	1	0	1	1	0	0	0	0	0	1	0
8(b)(4)(A)(B)	5	0	5	5	1	0	3	0	0	1	0
8(b)(4)(A)(B)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(A)(B), 8(e)	2	1	1	2	0	0	1	0	0	1	0
8(b)(4)(A), 8(e)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B)	106	8	98	96	38	4	35	4	1	14	10
8(b)(4)(B)(D)	16	0	16	16	4	0	9	0	0	3	0
8(b)(4)(D)	35	2	33	34	21	0	11	2	0	0	1
8(b)(7)(A)	7	1	6	3	2	0	0	0	0	1	4
8(b)(7)(C)	11	0	11	10	7	0	2	1	0	0	1

[1] Filed in the Fifth Circuit Court of Appeals

[2] Nine cases were reported in the 1965 Annual Report as pending June 30, 1965, however, three proceedings filed in district courts during fiscal years 1965 were not reported until fiscal 1966.

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1966

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	36	28	8	11	10	1	25	18	7
NLRB-initiated actions	10	9	1	4	4	0	6	5	1
To enforce subpena	4	3	1	1	1	0	3	2	1
To restrain dissipation of assets by respondent	2	2	0	2	2	0	0	0	0
To defend Board's jurisdiction	1	1	0	0	0	0	1	1	0
Other	3	3	0	1	1	0	2	2	0
Action by other parties	26	19	7	7	6	1	19	13	6
To restrain NLRB from	17	11	6	1	1	0	16	10	6
Proceeding in R case	14	10	4	1	1	0	13	9	4
Proceeding in unfair labor practice case	3	1	2	0	0	0	3	1	2
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	9	8	1	6	5	1	3	3	0
Issue complaint	3	3	0	3	3	0	0	0	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	3	3	0	1	1	0	2	2	0
Other	3	2	1	2	1	1	1	1	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1966 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1965	1	1	0	0	0
Received fiscal 1966	9	5	4	0	0
On docket fiscal 1966	10	6	4	0	0
Closed fiscal 1966	10	6	4	0	0
Pending June 30, 1966	0	0	0	0	0

[1] See "Glossary" for definition of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1966 [1]

Action taken	Total cases closed
	10
Board would assert jurisdiction	0
Board would not assert jurisdiction	4
Unresolved because of insufficient evidence submitted	1
Dismissed	2
Withdrawn	3

[1] See "Glossary" for definition of terms.

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