THIRTY-SECOND ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

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UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. • 1968

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1968.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-second Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1967, 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 1967

1. Summary

The National Labor Relations Board received an unprecedented caseload in fiscal year 1967—more than double the filings of just 10 years ago. A total of 30,425 cases was filed, contrasted with the 13,356 cases filed in fiscal 1957. (See chart 1.) Of the total, 17,040 (56 percent) were unfair labor practice cases and 12,957 (42.6 percent) representation petitions. Union-shop deauthorization petitions (0.4 percent), amendment to certification petitions (0.3 percent), and unit clarification petitions (0.7 percent) accounted for the remainder.

The Agency's output also reached a new peak by a total closing of 29,494 cases, of which 16,360 were unfair labor practice cases and 12,724 were representation cases. (Statistics regarding stage and method of closing, by type of case, may be found in tables 7, 8, 9, and 10.)

Keeping pace with prior years, 91.7 percent of the total 16,360 unfair labor practice cases closed were disposed of at the regional office level, without protracted hearings or litigation. Of these, 27.3 percent were settled or adjusted voluntarily by the parties, demonstrating the willingness of a large area of labor and management to resolve their differences through voluntary agreement; 37.7 percent were withdrawn voluntarily by the charging parties; and 26.7 percent were dismissed administratively. An additional 2.9 percent were disposed of through compliance with trial examiner decisions or in other ways without Board adjudication, resulting in only 5.4 percent reaching the Board as contested cases. (See chart 3.)

In fiscal 1967, the Agency conducted 8,183 secret-ballot elections of all types affecting some 628,730 employees. Approximately 77 percent of these elections were arranged by agreement of the parties as to the appropriate unit and the date and place of election thus illustrating the high degree of acceptance, by labor and management, of the principle of secret-ballot elections in deciding representation questions.

The Agency notes, as it has in the past, that while attention may focus on those cases of violations of the law, it is still true that both

management and labor, by large majority, voluntarily observe their duties and obligations under the Act. But the proportionate increase of unfair labor practice cases reaching the Agency pinpoints the need for continuing studies to ascertain the sources and causes of resistance to the Act and the adequacy of NLRB remedies to deal with such resistance. The Agency, accordingly, compiles and make available whatever statistical data is at its command which may shed light on these problems.

Appendix A of this report contains statistical tables on the Agency's activities in fiscal 1967, a glossary of terms used in the tables, and a subject index. Immediately preceding appendix A, is an index of cases discussed in this annual report.

a. NLRB Administration

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 and by delegation. 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 directors 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. Case Activity Highlights

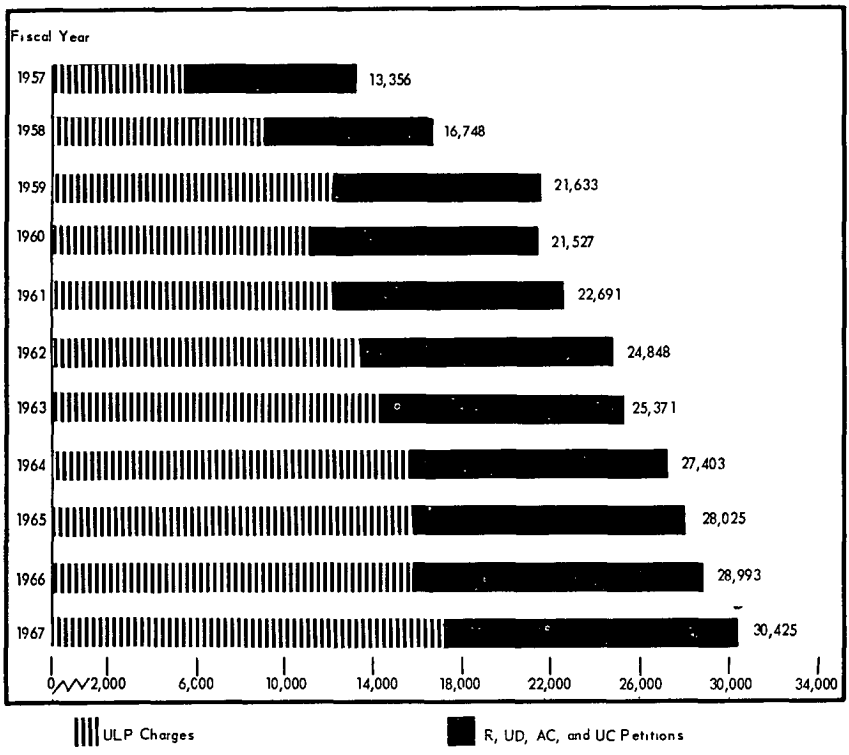
Fiscal 1967 was the seventh consecutive year in which the number of cases received by the NLRB was higher than that of the preceding year. Other major case activity included:

- More than 30,400 cases of all kinds were received, of which 17,040 were unfair labor practice charges. The others were representation petitions and related matters.
- Cases closed were 29,500, of which a record 16,400 involved unfair labor practice charges.
- The Board issued a total of 1,023 unfair labor practice decisions.

- The General Counsel's office issued 1,945 formal complaints.
- A total of 1,024 initial unfair labor practice hearings were closed, including 31 under section 10(k) of the Act.
- Regional directors issued 1,892 initial decisions in representation cases.
- Trial examiners issued 934 initial decisions and an additional 47 on supplemental matters.
- Backpay amounting to $3,248,850 was awarded to about 14,000 employees and hiring rights were restored to 112 employees. Employees offered reinstatement totaled 4,274, and 3,436 employees accepted the offers.
- A total of 4,462 unfair labor practice cases were settled or adjusted before issuance of trial examiner's decisions.
- Representation hearings totaled 2,265, including 2,092 initial hearings and 173 on objections and/or challenges.
- More than a half million employees cast ballots in NLRB-conducted elections.

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES 1/ AND REPRESENTATION PETITIONS



1/ Changed this year from "situations" to show actual total case intake - See chart 2 for relationship of charges to situations.

2. Operational Highlights

a. Unfair Labor Practices

The alltime high of 17,040 unfair labor practice cases filed in fiscal 1967 practically tripled those filed 10 years ago and exceeded those filed in fiscal 1966 by 1,107 cases, or 7 percent. In terms of situations (wherein related charges are counted as a single unit of work) there was an increase of 6.6 percent over fiscal 1966. (See chart 2.)

Charges alleging violations of the Act by employers rose to 11,259 from 10,902, and charges against unions also advanced considerably over last year's filing, 5,747 as against 4,941. In addition there were 34 charges alleging violations of section 8(e) of the Act (hot cargo provisions). Thirty-three of these were filed against unions and one was filed against both union and employer. (For a breakdown of cases received by the NLRB see tables 1 and 1A.)

Of the total charges filed against employers 7,463, or about two out of three, alleged discrimination or illegal discharge of employees; while the 3,819 refusal-to-bargain allegations were contained in one out of three charges. (See table 2.)

Union violations of illegal restraint and coercion of employees were alleged in 2,971 charges, 52 percent of the total as against last year's 48 percent of the filings against unions. Next, charges against unions of illegal secondary boycotts and jurisdictional disputes accounted for about one-third of the filings, 1,815 or 7 percent more than the 1,692 filed in fiscal 1966. Illegal discrimination against employees was alleged in 1,681 charges, a rise of 10 percent above fiscal 1966; and there were 528 charges of unions picketing illegally for recognition or for organizational purposes. These compare with 380 such charges last year. (See table 2.)

As to identification of parties alleging employer misconduct, unions continued to lead by filing more than 67 percent of the charges against employers. Unions filed 7,559 charges. Individuals filed 3,682 charges against employers, or nearly 33 percent, and employers filed 18 charges against other employers.

Of the total 7,559 charges against employers by unions, the AFL–CIO submitted 5,229, Teamsters filed 1,518, other national unions filed 421, and local unaffiliated unions filed 391.

Employers filed more than half the charges against unions, 2,943 or 51 percent of the total 5,747 charges; individuals filed 2,519 or 44 percent; and the remaining 285 charges came from other unions. Of the 34 hot cargo charges under section 8(e), 27 were filed by employers, 5 by individuals, and 2 by unions.

Of the record 16,360 closings in 1967, 91.7 percent were disposed of at the regional office level, as compared to 92.1 percent in fiscal 1966

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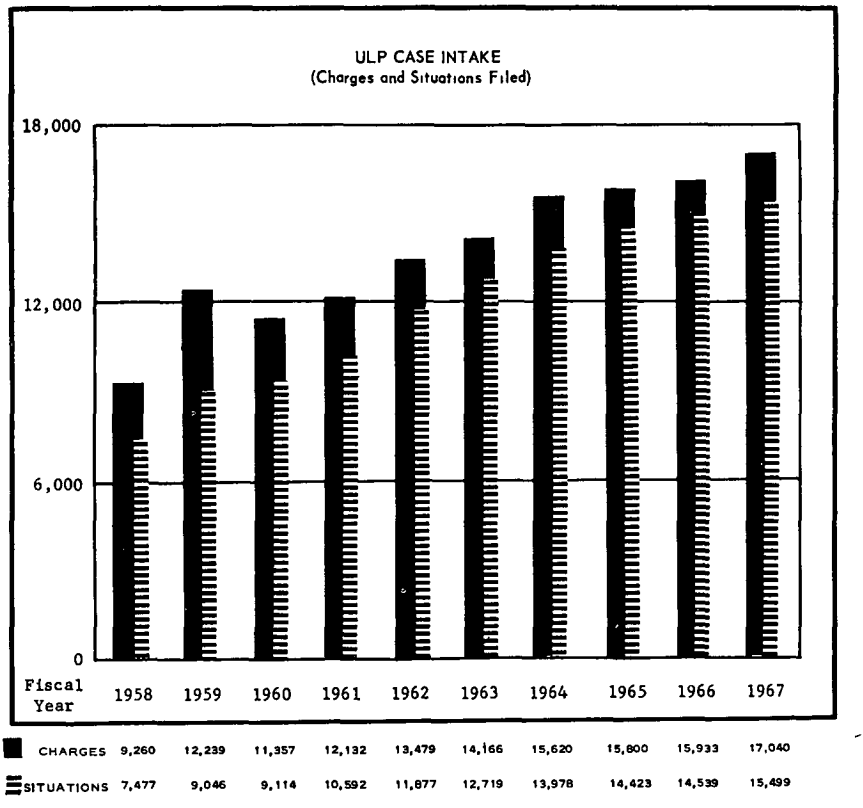
Chart 2



and 90.8 percent in fiscal 1965. The regional disposition pattern in 1967 practically duplicates that of fiscal 1966 with the same proportion, 27.3 percent, of cases settled or adjusted before issuance of trial examiner decisions. The proportion of withdrawals by the charging parties, 37.7 percent, and administrative decisions, 26.7 percent, in 1967 compares to 37.5 percent and 27.3 percent, respectively, in 1966.

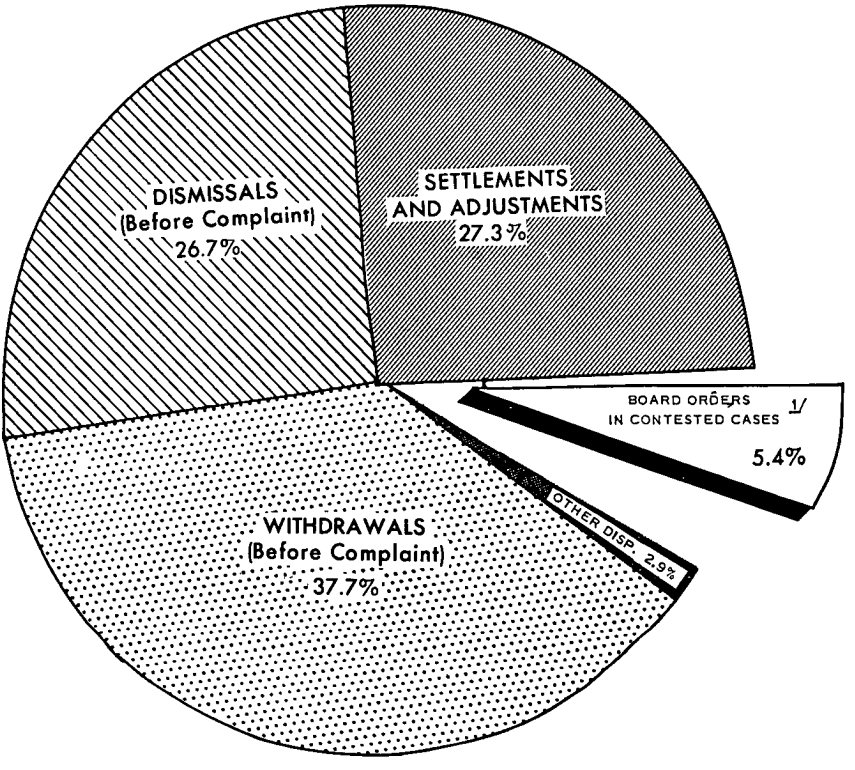
In the processing of unfair labor practice charges the number determined to be meritorious after investigation is an important factor in evaluating regional workload. Since fiscal 1958, when only 20.7 percent of the cases were determined to have merit, this factor has been steadily rising and reached an alltime high of 36.6 percent in fiscal 1966. In fiscal 1967, this factor remained fairly constant at 36.2 percent. (See chart 5.) Hence, during the period 1965–67, the merit factor has stabilized in the 35–37-percent range. This stability was further reflected in charges against employers which revealed a 38-percent merit factor in fiscal 1967, compared to 37.7 percent in fiscal 1966. Similarly, with respect to charges against unions, 32.8 percent

Chart 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1967



1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

were determined to be meritorious in fiscal 1967 compared to 34.2 percent in fiscal 1966.

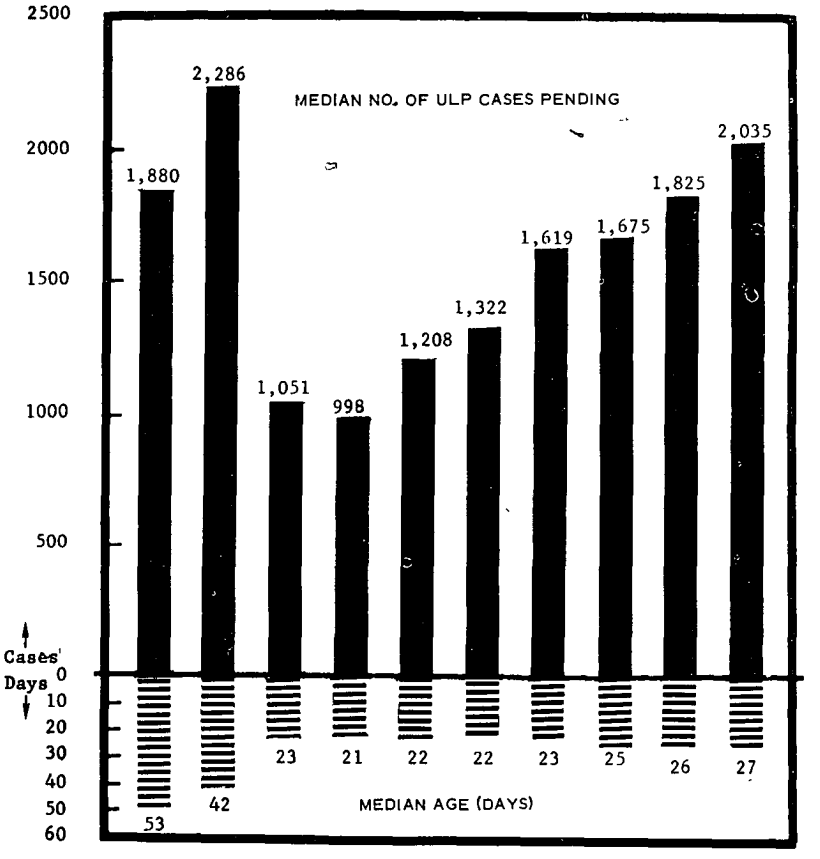
Since 1961, as illustrated in chart 5, 50 percent or more of the total merit package has resulted in precomplaint settlements and adjustments reaching a high of 56 percent in fiscal 1967.

There were 2,597 charges found to have merit that resulted in issuance of complaints and there were 3,390 precomplaint settlements or adjustments. The two combined totaled 5,987 and represented 36.2 percent of unfair labor practice cases. This proportion was about the same as last year. (See chart 5.)

Formal complaints issued by regional offices totaled 1,945, virtually the same as the 1,936 issued in 1966, but substantially more than in prior years. (See chart 6.) Of the complaints issued, 80.6 percent were against employers, 14.2 percent against unions, and 5.2 percent against both employers and unions.

Chart 4

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



Despite the higher number of charges filed, as well as the steady proportion of cases found to have merit, NLRB regional offices in fiscal 1967 were able to process cases from filing of charge to issuance of complaint in a medium of 61 days, only 3 days more than in fiscal 1966 when fewer charges were filed. The 61 days include 15 days in which

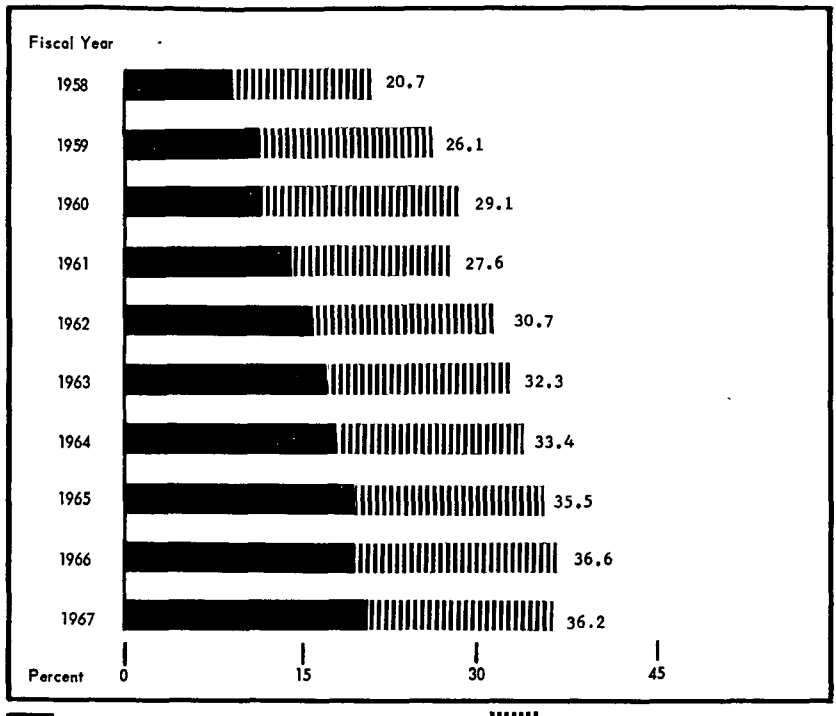
parties have the opportunity to adjust a charge and remedy the violations without resort to formal NLRB processes. (See chart 6.)

Trial examiners conducted 993 initial hearings involving 1,469 cases during the year compared with 982 hearings involving 1,399 cases held in fiscal 1966. (See chart 8 and table 3A.) Also, trial examiners conducted 44 additional hearings on supplemental matters.

At year's end there were 7,338 unfair labor practice cases pending before the Agency, about 10 percent above the 6,658 such cases pending at the end of fiscal 1966.

Chart 5

UNFAIR LABOR PRACTICE MERIT FACTOR



	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
Precomplaint Settlements and Adjustments (%)	9.7	9.7	11.9	14.1	15.3	17.5	17.8	19.4	19.4	20.5
Cases in Which Complaints Issued (%)	11.0	16.4	17.2	13.5	15.4	14.8	15.6	16.1	17.2	15.7
Total Merit Factor (%)	20.7	26.1	29.1	27.6	30.7	32.3	33.4	35.5	36.6	36.2

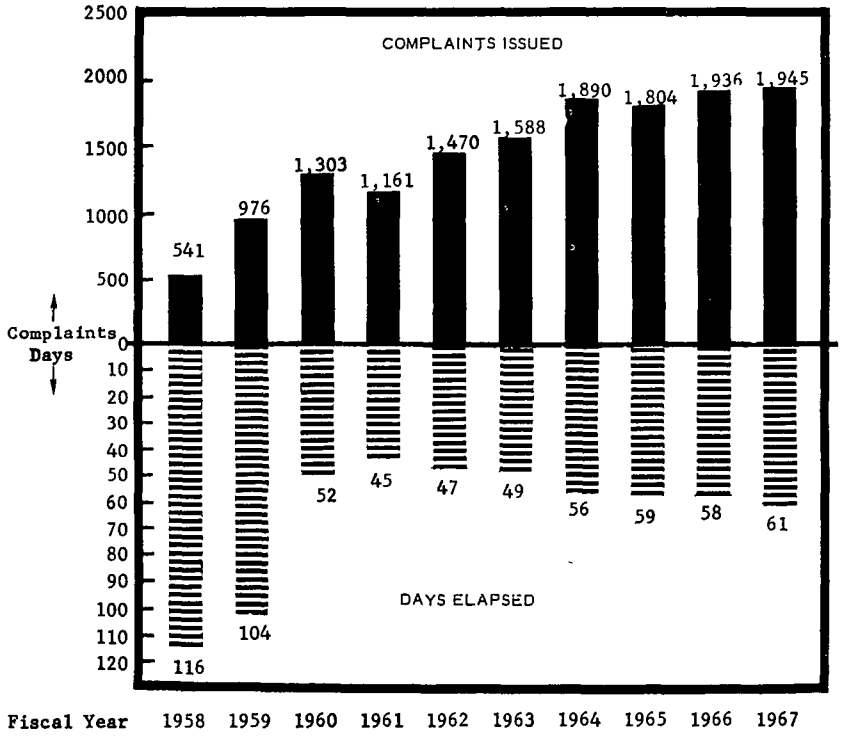
The NLRB in its further services to the public and to employees in particular awarded backpay to nearly 14,000 workers in the amount of about $3.3 million. These backpay awards were 26 percent less than last year (excluding the one case accounting for $4.5 million last

year); however, a greater number of employees were awarded backpay (excluding that one case). (See chart 9.) There were 1,641 cases involved in the distribution of backpay compared to 1,222 cases in 1966. Employees, in 1967, also received $37,610 in reimbursements for fees, dues, and fines as a result of charges filed with the Agency. In 1,184 cases the number of employees offered reinstatement totaled 4,274, and 3,436, or 80 percent, accepted reinstatement. In fiscal 1966, 75 percent of the employees offered reinstatement accepted.

In cases closed, work stoppages ended in 261 cases, but collective bargaining was begun in 1,451 cases. (See table 4.)

Chart 6

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS AND MEDIAN DAYS FROM FILING TO COMPLAINT



b. Representation Cases

This sixth year since the delegation of authority to NLRB regional directors by the Board to handle both contested and noncontested representation cases also marks the fourth consecutive year of advance in the number of cases concerning representation questions.

The total number of petitions received, 13,385, included 12,333 collective-bargaining cases; 624 petitions for decertification; 125 union-shop

deauthorization petitions; 86 petitions for amendment of certification; and 217 petitions for unit clarification. The total intake was about 3 percent, or 325 cases, above the 13,060 of last year.

The total number of cases closed climbed to 13,134, a rise of 2 percent over the 12,917 closed last year. The 13,134 cases closed included 12,112 collective-bargaining petitions; 612 petitions for elections to determine whether unions should be decertified; 132 petitions for employees to ascertain whether unions should retain their authority to make union-shop agreements; and 278 unit clarification and amendment of certification petitions. (See chart 14 and tables 1 and 1B.)

Of the 12,856 representation and union-deauthorization cases closed, 8,394, or 65 percent, were closed after elections. Withdrawals accounted for 3,132 cases or 24 percent, and the remaining 1,330 cases were dismissed.

The bulk of the 8,394 cases closed after election were by election agreements, 6,520 or 78 percent (79 percent in fiscal 1966).

Regional directors ordered elections following hearings in 1,718 cases, or 20 percent of those closed by elections. Twenty-eight cases resulted in expedited elections pursuant to the 8(b)(7)(C) provisions pertaining to picketing. The Board ordered elections in 128 cases, about 2 percent of the election closures, following appeals or after transfer from regional offices. (See table 10.)

c. Elections

During the report year, 7,882 or 96 percent of the 8,183 total elections conducted in cases closed were collective-bargaining elections. (See chart 12.) In addition there were 234 elections conducted to determine whether incumbent unions would continue to represent the majority of the employees, and 67 elections to determine whether the union would continue to make union-shop agreements with employers.

In 45 of the 67 deauthorization elections, unions lost the right to make union-shop agreements, while the remaining 22 elections resulted in continued authorization covering 2,178 employees. (See table 12.)

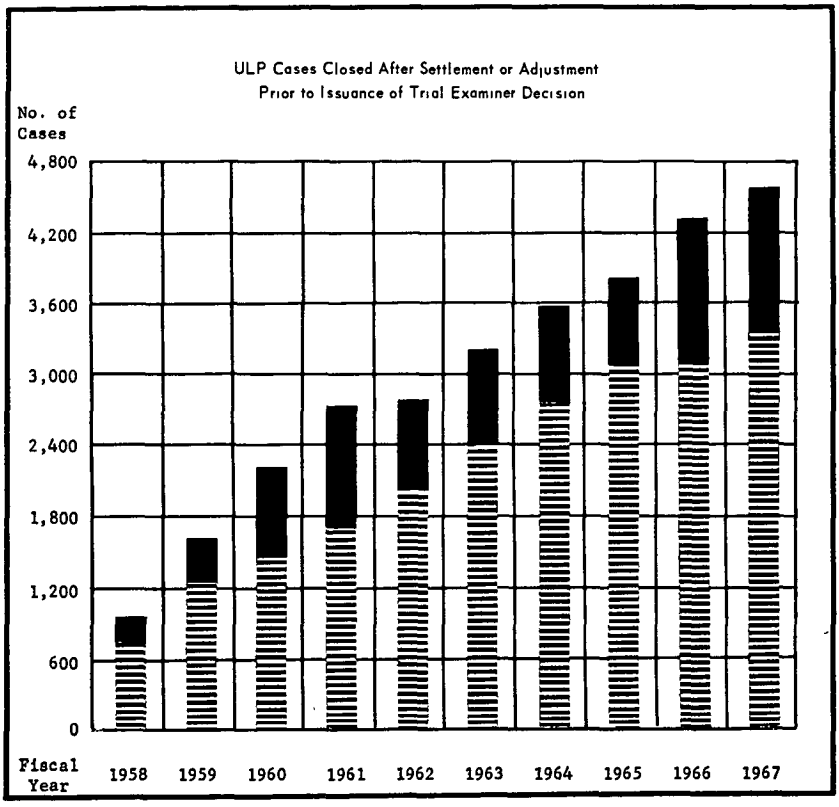
By voluntary agreement of the parties involved, 6,324 stipulated and consent elections were conducted, representing 77 percent of the total elections, compared to 78 percent last year. (See table 11.)

Unions won 4,791 representation elections during this period, 59 percent of the total (8,116), as against 61 percent last year. (See table 13.)

Although fewer elections were won by unions, 557,822 employees exercised their rights to vote. This was a gain of 19,584 voters, or 4 percent over the previous year. For all types of elections the average number of employees voting per establishment was 68. Three-fourths of the collective-bargaining elections covered 59 or fewer employees,

Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



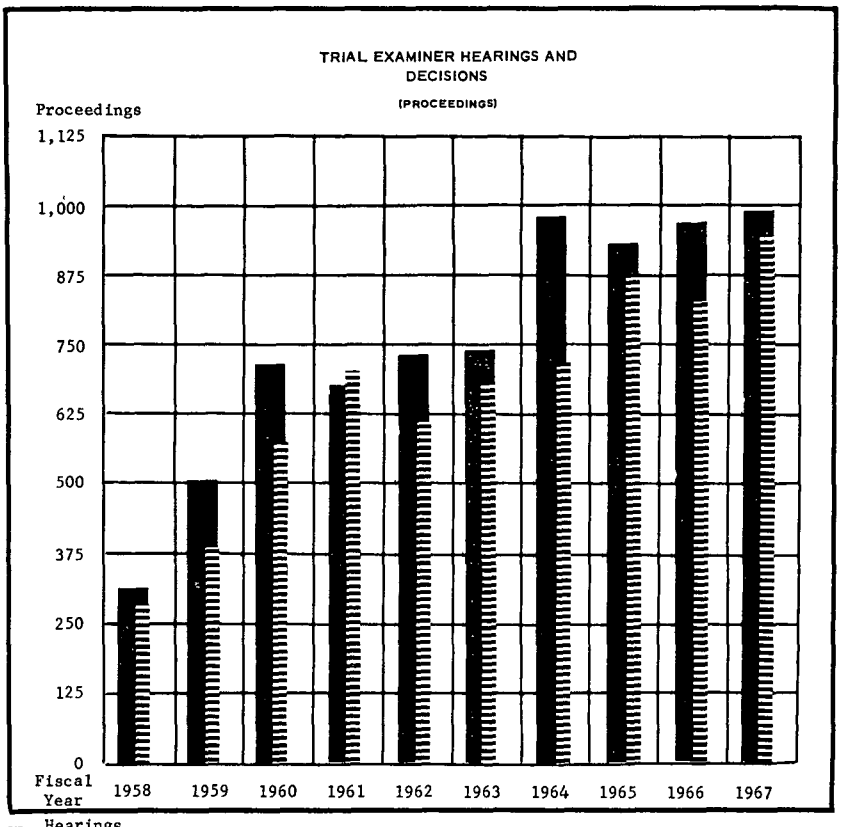
Fiscal Year	Precomplaint	Postcomplaint	Total
1958	725	262	987
1959	1,238	352	1,590
1960	1,480	748	2,228
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261
1967	3,390	1,072	4,462

while about the same proportion (73 percent) of the decertification elections averaged 39 or fewer employees. (See tables 11 and 17.)

In the certification of bargaining-agent elections, 542,999 employees cast valid votes, representing 89 percent of the 611,006 employees eligible to vote. (See tables 11 and 14.)

In decertification elections, unions won in 69 and lost in 165. Unions retained the right of representation of 7,708 employees in the 69 elections won. With respect to the size of these bargaining units, unions

Chart 8



won in units averaging 112 employees, and lost in units averaging 30 employees. (See table 13.) The average number of employees per election in union-shop deauthorization elections was 63 and 99 employees, respectively, for deauthorization and continued authorization. (See table 12.)

d. Decisions Issued

Trial examiners issued 934 decisions and recommended orders during 1967, an 8 percent rise above the 867 such decisions issued during fiscal 1966. (See chart 8.) Also issued by trial examiners were 28 backpay decisions (21 in 1966) and 19 supplemental decisions (13 in 1966). (See table 3A.)

Decisions issued by Board members and regional directors in 1967 exceeded 1966 issuances in all categories. During the year 4,178 decisions issued. (See chart 13.) These involved 5,179 unfair labor prac-

tice and representation cases. In addition, the Board and regional directors issued 184 decisions in 186 cases related to clarifications of employee bargaining units, amendments to union representation certifications, and union-shop deauthorization cases. Thus, a grand total of 4,362 decisions were issued by the Agency during 1967, an 11 percent rise above the 3,944 decisions issued in 1966.

Of the total 4,362 decisions, Board members issued 1,858 (272 more than the 1,586 in 1966) in 2,476 cases, while regional directors issued 2,504 (146 more than the 2,358 in 1966) in 2,889 cases.

In 1,262 of the 1,858 decisions issued by the Board, the parties contested the facts or application of the law. Thus, contested Board decisions were issued in the following areas:

Total contested Board decisions issued		1,262
Unfair labor practice decisions (including those based on stipulated record)		741
Supplemental unfair labor practice decisions		22
Backpay decisions		20
Determinations in jurisdictional disputes		23
Representation decisions:		
After transfer by regional director for initial decision	115	
After review of regional director's decision	58	
Total representation decisions		173
Decisions on objections and challenges		266
Decisions as to clarification of bargaining units		12
Decisions as to amendments to certifications		5

The remaining 596 decisions were not contested before the Board.

Settlements and adjustments, withdrawals, and dismissals (as shown by chart 3 and tables 7 and 7A) 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 the following statistics.

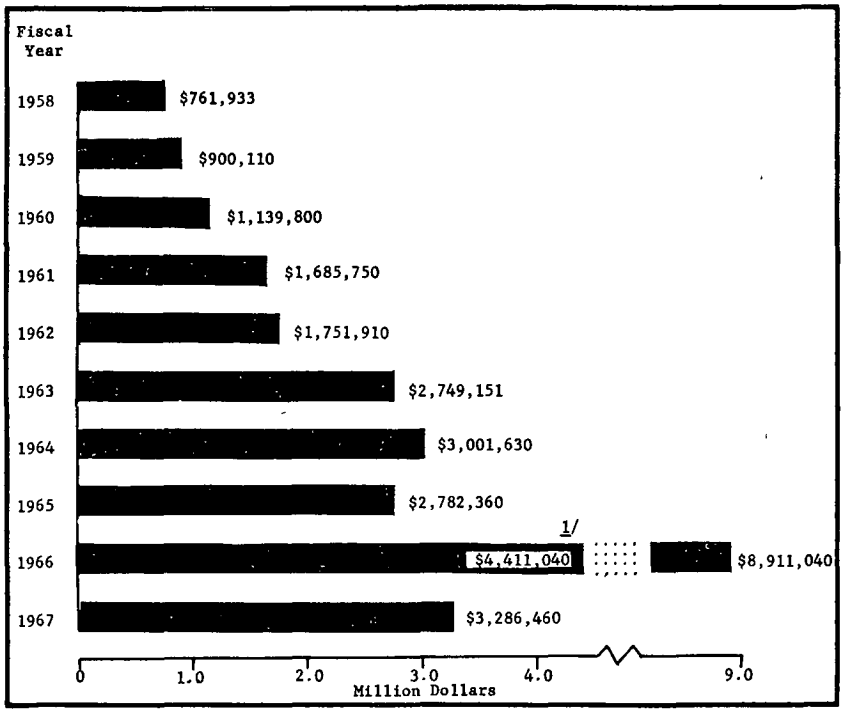
Board decisions may cover a number of related cases: thus, in 1967, the 741 initial contested unfair labor practice Board decisions encompassed 1,192 cases. Of the 1,192 cases ruled on, the Board found violations of the Act in 1,054 or 88 percent (in 1966 violations were found in 922 or 89 percent of the 1,041 contested cases).

Board rulings in contested cases concerning employers and unions follow:

1. *Employers*—The Board handed down decisions in 991 contested unfair labor practice cases against employers during the year, or 9 percent of the 10,824 unfair labor practice cases against employers disposed of by the Agency in 1967. Of the 991 cases,

Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/ 1966 - less the Kohler Case

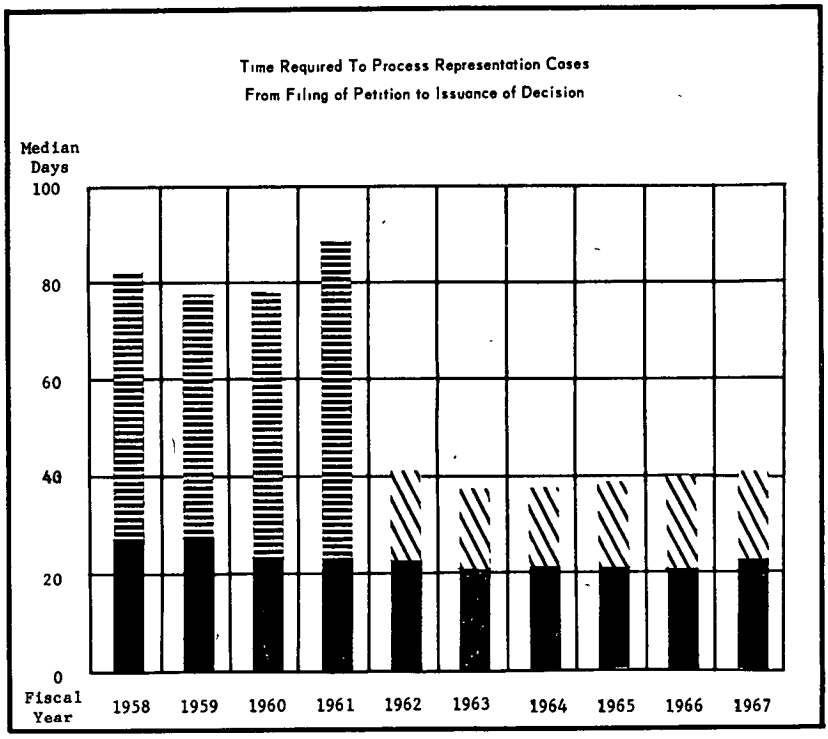
violations were found in 874 (88 percent) as compared with 1966 when violations were found in 91 percent of 825 cases.

The Board's remedies in the 874 cases included ordering employers, among other things, to reinstate 1,648 employees, with or without backpay; to give backpay without reinstatement to 213 employees; to cease illegal assistance to or domination of labor organizations in 85 cases; and to bargain collectively with employee representatives in 366 cases.

2. *Unions*—Decisions were reached by the Board in 201 contested unfair labor practice cases against unions—3.6 percent of the 5,536 union cases closed in 1967. Of the 201 cases, 90 percent, or 180 cases, resulted in findings of violations. In 1966, 80 percent of 216 similar cases produced violations.

In remedying the unfair labor practices found in the 180 cases, the Board directives to unions included orders in 5 cases to cease obtaining or receiving unlawful employer assistance and to give 129 employees backpay. Unions and employers were held jointly liable for the backpay as to 48 of these employees.

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
1967	22	-	20

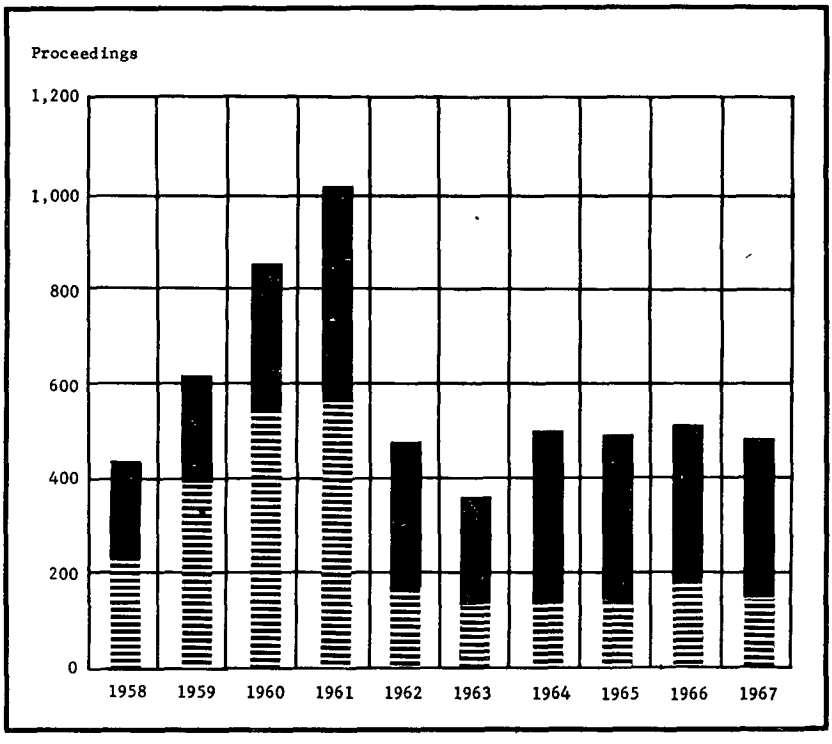
At year's end, decisions pending issuance by the Board totaled 489 (343 dealing with alleged unfair labor practices and 146 with employee representation questions), a 5 percent decline from the 513 decisions pending at the beginning of the year. (See chart 11.)

e. Court Litigation

During the year Agency success in court litigation affecting NLRB-related cases continued at a high level in the U.S. Supreme Court, U.S. Circuit Courts of Appeals, and U.S. District Courts.

Chart 11

BOARD CASE BACKLOG



Proceedings										
C	199	210	330	460	323	256	344	336	323	343
R	222	399	522	549	165	122	142	148	190	146
Totals	421	609	852	1,009	488	378	486	484	513	489

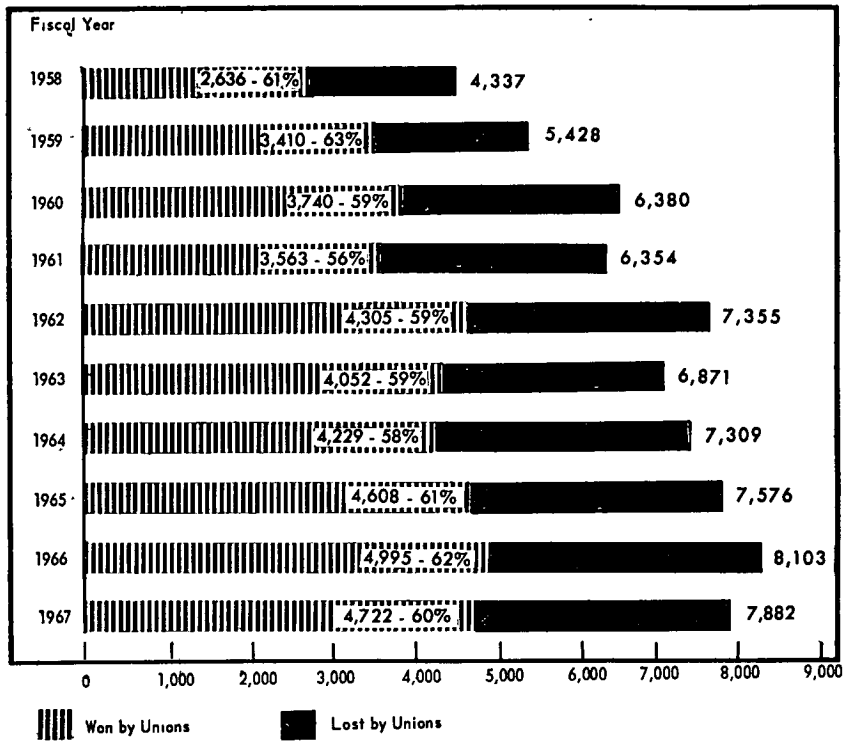
Appeals courts handed down 244 decisions related to enforcement and/or review of Board orders. Of these, 81 percent affirmed the Board in whole or in part. In 1966 appeals courts similarly affirmed Board orders in 79 percent of 233 cases. A breakdown of circuit court rulings shows the following results:

Total NLRB cases ruled on	244
Affirmed in full	152
Affirmed with modification	43
Remanded to NLRB	13
Partially affirmed and partially remanded	3
Set aside	33

In an additional 20 contempt cases before the appeals courts, respondents in 8 complied with NLRB orders after contempt petitions had been filed, but before court decisions; in 9 the courts held re-

Chart 12

COLLECTIVE-BARGAINING ELECTIONS CLOSED
Number and Percent



spondents in contempt; and in 3 the courts denied agency petitions. (See tables 19 and 19A.)

Of seven NLRB orders ruled on by the U.S. Supreme Court during the year, six were affirmed in full while the remaining case was remanded to a U.S. Circuit Court of Appeals. Also, in two additional cases, the NLRB appeared as *amicus curiae*. The position that it supported was sustained in both cases. (See table 19.)

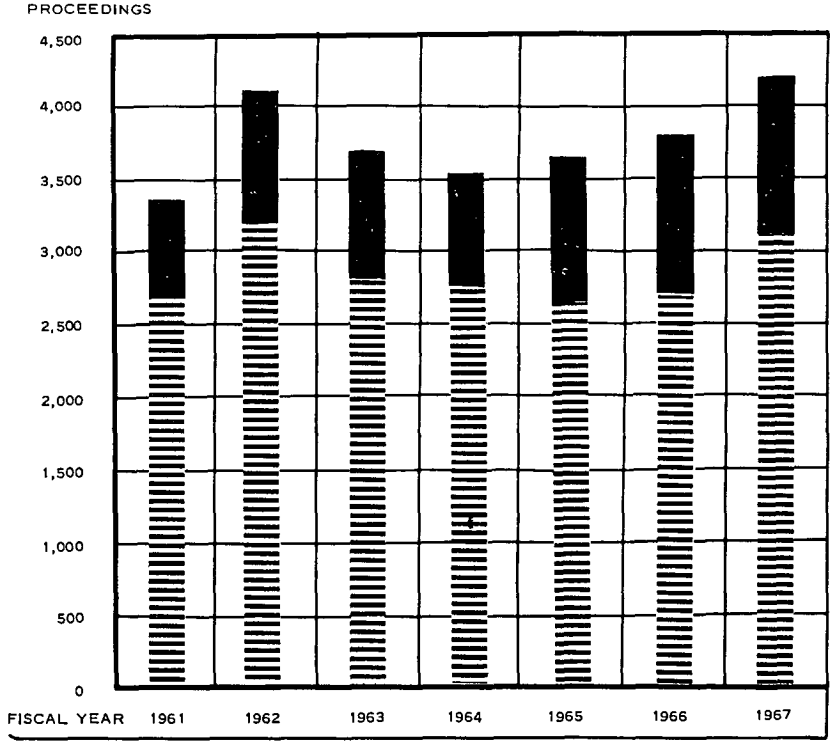
Ruling on NLRB injunction requests filed pursuant to sections 10(j) and (l) of the Act, U.S. District Courts in 1967 granted 88 percent of the contested cases litigated to final order. In 1966, 94 percent of such requests were granted by the courts. NLRB injunction activity during 1967 in the district courts showed:

Granted	73
Denied	10
Withdrawn	12
Dismissed	4
Settled or placed on courts' inactive docket	93
Awaiting action at the end of fiscal 1967	9

Chart 13

DECISIONS ISSUED[1/]

(Excludes UD, AC, and UC decisions)



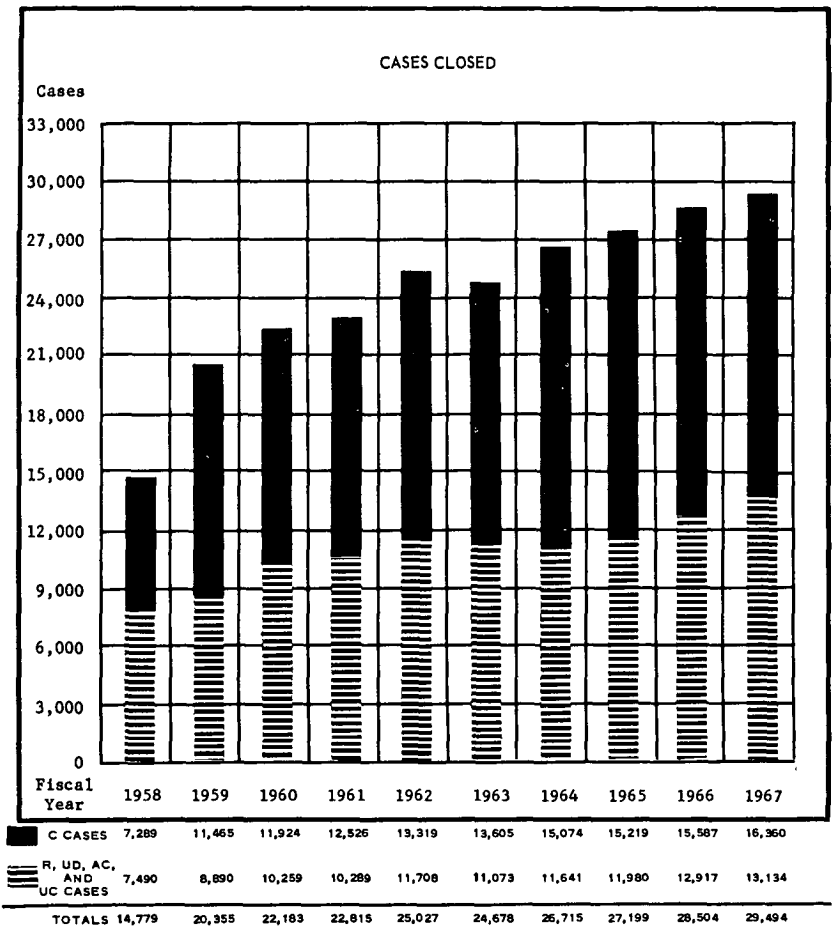
PROCEEDINGS	1961	1962	1963	1964	1965	1966	1967
C	655	903	854	776	1,000	991	1,023
R	2,718	3,211	2,857	2 812	2,707	2,769	3,155
TOTALS	3,373	4,114	3,711	3,588	3,707	3,760	4,178

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

In terms of cases instituted in 1967, NLRB-related injunction petitions filed with the district courts were 5 percent below those filed in 1966—180 compared with 190. Also during 1967 the NLRB filed four petitions for injunctions in the Fifth Circuit Court of Appeals pursuant to the provisions of the Act's section 10(e)—two were granted and two were pending court action at the end of the year. (See table 20.)

During 1967 there were 25 additional cases, involving miscellaneous litigation decided by appellate and district courts—all of which upheld the NLRB's position. (See table 21.)

Chart 14



	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
C CASES	7,289	11,465	11,924	12,526	13,319	13,605	15,074	15,219	15,587	16,360
R, UD, AC, AND UC CASES	7,490	8,890	10,259	10,289	11,708	11,073	11,641	11,980	12,917	13,134
TOTALS	14,779	20,355	22,183	22,815	25,027	24,678	26,715	27,199	28,504	29,494

f. Other Developments

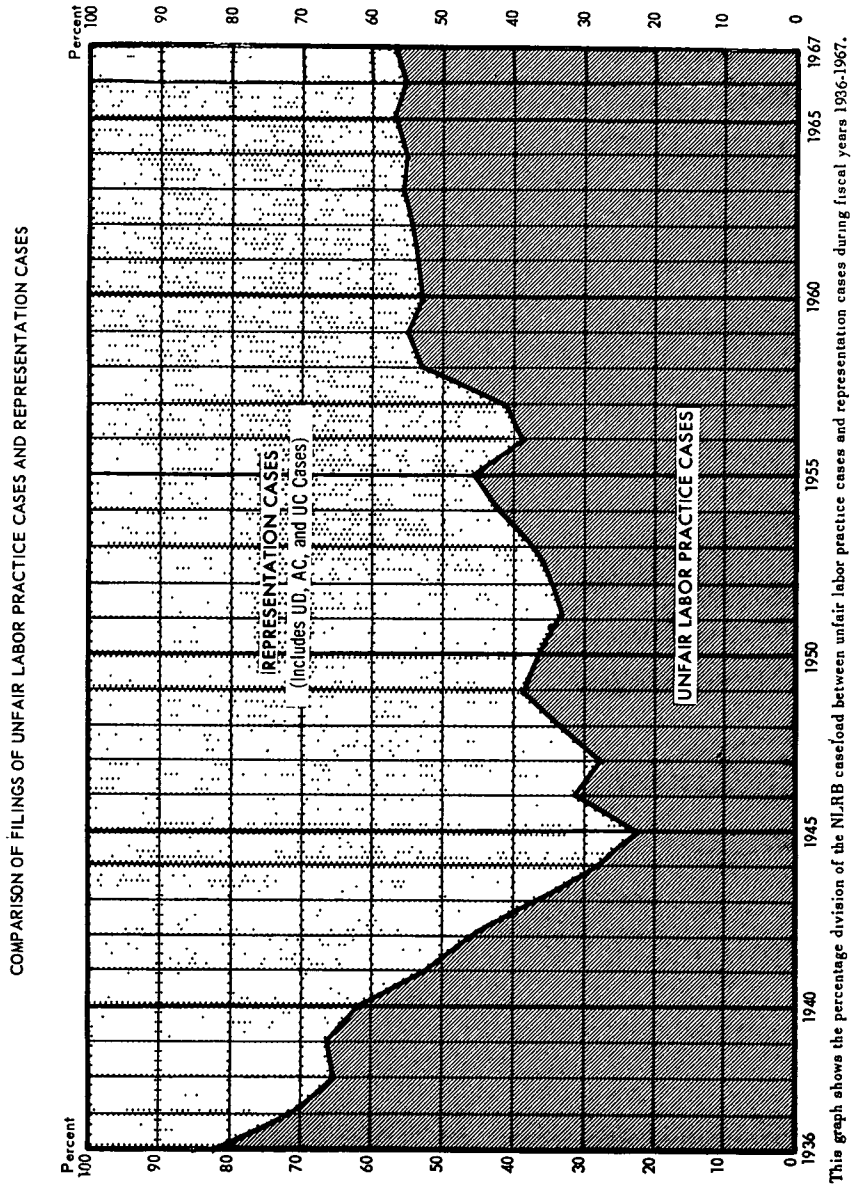
In August 1966, Gerald A. Brown was sworn in to begin his second 5-year term as a member of the Board.

In June 1966, Arnold Ordman began his second 4-year term as NLRB General Counsel.

The Board and the General Counsel during the year continued constructive conferences on NLRB processes and decisions with the National Association of Manufacturers, highlighted by a meeting in Washington, D.C., in July 1966 attended by top authorities of the NLRB and the NAM.

In the fiscal year, the Board and the General Counsel issued new regulations regarding *ex parte* communications, in line with recommendations of the Administrative Conference of the United States

Chart 15



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1967.

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and the Administrative Law Committee of the American Bar Association.

During the year, the Agency gave recognition to the 25th millionth vote cast in NLRB employee representation elections, culminating in ceremonies at the Interior Department's auditorium on March 2, 1967. Vice President Hubert H. Humphrey spoke at the ceremonies. Other speakers included Secretary of Labor W. Willard Wirtz, Undersecretary of Commerce J. Herbert Holloman, J. Warren Madden, the first NLRB chairman, Leon Keyserling, an author of the Wagner Act, and Congressman Robert A. Taft, Jr. The symbolic 25th millionth voter was Leonard P. Scheno, an employee of Reynolds Metal Company.

This was the most extensive public information undertaking in the Agency's history. It was directed by NLRB Member Sam Zagoria. Contributing to the ceremonies in recognition of the vote were the National Association of Manufacturers and the AFL–CIO and the Electronic Industries Association. In addition to the Washington, D.C., functions, NLRB regional offices across the country arranged local luncheons and other affairs to direct attention to this observance of the National Labor Relations Act's protections to free choice of employees in elections, collective bargaining, and industrial stability.

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 decisions establishing basic principles in certain areas.

a. Representation Issues

In decisions issued during the report year, the Board made a comprehensive review of its policies regarding the circumstances of severance of craft and traditional department units from established units. This involved consideration also of the closely related problems of the initial establishment of such units in integrated process

industries. In the *Mallinckrodt Chemical Works* case [1] which involved a petition for the severance of a unit of skilled instrument repairmen in a continuous process uranium extraction and manufacturing operation, the Board reviewed the statutory interpretation of section 9(b)(2) of the Act, which provides "That the Board shall not . . . decide that any craft unit is inappropriate . . . on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation," as it had been articulated in the Board's *American Potash* [2] and *National Tube* [3] doctrines. It noted that underlying unit determinations in severance cases "is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation." From an examination of the legislative history of section 9(b)(2), the Board found it clear that Congress did not intend to take away "the Board's discretionary authority to find craft units to be inappropriate for collective-bargaining purposes if a review of *all* the facts, both *pro* and *con* severance, led to such result." It found this full review approach to have been that adopted by the Board in the *National Tube* decision as a matter of initial construction of the subsection, but that the *American Potash* doctrine, under which severance was granted if (1) the employees involved constituted a true craft or departmental group, and (2) the union was one traditionally devoting itself to the special problems of the group involved, represented an almost diametrically opposite construction of the statute. Rejecting the statutory interpretation of *American Potash* since it was "predicated in substantial part on the view that Section 9(b)(2) virtually forecloses discretion and compels the Board to grant craft severance," the Board further concluded that the tests laid down in that case do not permit satisfactory resolution of severance case issues. It therefore determined that in circumstances where unions seek to represent craft or departmental units, the Board's inquiry would be broadened, and the unit determinations made "on the basis of all relevant factors, including those factors which weigh against" establishment of a separate unit. Some of the unit determinations made upon the basis of this broader inquiry are summarized on pp. 51–55, *infra*.

Other significant unit decisions concerned the construction and

[1] *Infra*, pp. 49–51
[2] *American Potash & Chemical Corp.*, 107 NLRB 1418.
[3] *National Tube Co.*, 76 NLRB 1199.

hotel industries. In *Butler*,[4] the Board was for the first time presented with the question of whether a proposed single unit of laborers in the construction unit is appropriate where none of the other construction employees of the employer are represented or requested to be represented. The construction laborers, who performed heavy-duty manual work at the construction site, were not required to have any special skills or training and worked on a job-to-job basis for the employer, being frequently transferred from one job to another. The petitioning union was one that had traditionally represented laborers engaged in construction work throughout the area and had many collective-bargaining agreements covering employees who performed substantially the same work as that of the employees in the requested unit. Observing that although an overall unit is presumptively appropriate for the purposes of collective bargaining, the Act did not compel labor organizations to seek representation in the most comprehensive grouping, but only in an appropriate unit, the Board viewed the decision before it as limited to whether a separate unit of construction laborers is an appropriate unit for collective bargaining under the Act. The Board found that in the construction industry, collective bargaining for groups of employees identified by function is an established accommodation to the needs of the industry and of the employees. In view of this functional distinctness, their substantially lower rate of pay, and their traditional representation by the petitioner in the type of unit requested, the Board held the laborers constituted "a readily identifiable and homogeneous group with a community of interests separate and apart from other employees," and the requested unit was therefore an appropriate unit under the Act.

As a result of "much experience and better insight into the nature of the hotel-motel industry" gained since issuance of its *Arlington Hotel* decision,[5] the Board in *Holiday Inn* [6] overruled the holding of *Arlington* that all hotel-motel operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for unit purposes. The Board recognized that its experience indicated that such a degree of integration of functions and employee interests does not exist in every hotel or motel. It therefore determined to consider each case on the facts peculiar to it in order to determine the true community of interest among particular employees. Considering the functions and interests of the employees of a motel and restaurant which formed a single business enterprise for juisdiction purposes, the Board concluded that their functions were not so integrated as to preclude a finding that the

[4] *R. B Butler, Inc.*, 160 NLRB 1595, *infra*, pp. 56–57

[5] 126 NLRB 400.

[6] *John Hammonds and Roy Winegardner d/b/a 77 Operating Co., d/b/a Holiday Inn Restaurant*, 160 NLRB 927, *infra*, pp 57–58.

restaurant employees form a separate appropriate unit. Consistent with and relying on the above holding, the Board in the *Capitol Park* case [7] found that a unit limited to "blue collar workers" in a coordinated complex of high rise and townhouse apartment units was appropriate.

b. The Bargaining Obligations

The Board's long-established policy that an employer may refuse to bargain with a union seeking to establish its majority status through authorization cards signed by the employees as evidence of their desires, and insist upon an election instead as proof of the union's majority status, unless its refusal and insistence were not made with a good-faith doubt of the union's majority status, was reaffirmed by the Board in a number of cases in which it further defined circumstances sufficient to establish that the requisite doubt is not held. Continuing to emphasize that an election by secret ballot is normally a more satisfactory way of determining employee wishes, the Board, in cases where the General Counsel sought to establish a violation of section 8(a)(5) on the basis of a card showing, implemented its policy that "an employer who in good faith withholds recognition because of a doubt of majority, though his doubt is founded on no more than a distrust of cards, may have an election to resolve that doubt, and will not be subject to an 8(a)(5) violation simply because he is unable to substantiate a reasonable basis for his doubt." [8]

Board decisions during the years also further defined and articulated the limits of applicability of the principle established by the Board in its *Fibreboard* decision that the subcontracting of unit work is a subject concerning which the employer must bargain with the union. In *Ozark Trailers*,[9] where the employer, motivated solely by economic considerations and without animus toward the union, permanently closed down one of its three plants without bargaining with the union about the decision, the Board concluded that the closing of the plants, as in the subcontracting situation, had as its necessary result the termination of employment of the employees and thus affected a "term and condition of employment." In holding the decision to terminate a portion of an operation to be a bargainable subject, the Board noted the Supreme Court's holding in *Fibreboard* that such limitations on absolute freedom to manage the business as are inherent in compelling bargaining on contracting out are justified by the potential gains of requiring bargaining, and concluded that as a judgment *a fortiori* it would also be true "with respect to decisions regarding the relocation or termination of a portion of the business." Although recognizing that

[7] *Shannon & Luchs T/A Capitol Park One.*, 162 NLRB No 130, *infra*, pp 58
[8] *H & W Construction Co.*, 161 NLRB 852, *infra*, pp. 98–99
[9] 161 NLRB 561, *infra*, pp. 110–111.

the economic factors in some partial closing situations may be so compelling as to limit meaningful bargaining to the effects of the decision, the Board concluded that "nevertheless in other cases the effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a decision which cannot be revised." The scope of that holding was further defined in another case [10] where the Board, considering the bargainability of the employer's decision to relocate his business for economic reasons, emphasized that "before an employer definitely decides to contract out, move, or relocate its business, it is obligated to bargain not only with respect to the effect of that decision but also as to the decision itself."

c. Prohibited Picketing

The Board in one case [11] was called upon to resolve the issue of whether picketing in furtherance of a primary labor dispute, conducted at premises occupied solely by neutral employers, violates section 8(b)(4)(B), notwithstanding the absence of a present business relationship between the employers involved. Picketing with signs advertising that buildings had been constructed under substandard conditions by the named primary took place at customer entrances to the buildings after occupation by the businesses of neutral employers. The Board, viewing the victims' neutrality as the central element of congressional concern, rejected the contention that an existing business relationship between the primary and secondary employers is "an indispensable prerequisite" to the finding of a violation of section 8(b)(4). Noting that the picketing stemmed directly from the actions of the neutrals in utilizing the services of the primary in constructing their buildings, and that the primary remained "within that class of employers to whom future construction contracts might be awarded," the Board found it apparent that at the very least the picketing had an object of forcing the neutrals to refrain from awarding future contracts to the primary. The Board further found that the nature and location of the picketing indicated that the union's conduct was also designed to serve notice on all other persons of "the retaliatory economic consequences" of retaining or otherwise doing business with the primary.

In the *Dallas Building & Construction Trades Council* case,[12] the Board held that the council, composed of representatives of local building trades unions, violated section 8(b)(7)(A) by picketing cer-

[10] *McLoughlin Mfg Corp*, 164 NLRB No 23, *infra*, p. 113.

[11] *Salem Building Trades Council (Cascade Employers Assn.)* 163 NLRB No. 9, *infra*, p 122.

[12] 164 NLRB No. 139. Cf. *Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council (R. A. Chambers & Associates)*, 165 NLRB No 86, *infra*, p. 131.

tain general contractors to obtain their agreements to a contract with the council restricting subcontracting in crafts where the council's member unions had jurisdiction, to employers who had collective-bargaining agreements with the appropriate council-affiliated unions. At the time of the picketing employers had lawfully recognized various council-affiliated local unions and had current contracts with them covering many of their regular employees. In finding that the picketing had an object of seeking recognition and bargaining as the representative of employees of the general contractors, the Board noted that the council "sought a formal agreement, enforceable throughout its term," which applied to work the general contractor might do either with his own employees or by subcontract. It concluded that the subcontracting proposal would significantly affect employees of the general contractors to the extent that it regulated the subcontracting of work, a matter of interest and consequence to the employees, and would tend to erode the employers' right to operate under the terms of the agreement negotiated with the representatives of their employees.

d. Remedial Provisions

The responsibility of a bona fide purchaser of a business to remedy unfair labor practices of its predecessor of which it had knowledge at the time of purchase was considered by the Board during the year.[13] Upon reexamination of its "past restrictive view of its remedial powers in this area" the Board, reversing prior decisions to the contrary, concluded that "one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct." Although not unmindful that such a purchaser was not a party to the unfair labor practices and has no business connection with the predecessor, the Board concluded, upon balancing the equities, that where there is no real change in the employing industry so far as the victims of the unfair labor practices are concerned or in the need for remedying the violations, appropriate steps must still be taken to erase the effects of the predecessor's actions. As the successor in control of the business is in the best position to remedy the unfair labor practices most effectively, and by substituting himself in place of the perpetrator has become the beneficiary of the unremedied violations under circumstances where his potential liability to remedy can be negotiated and

[13] *Perma Vinyl Corp., Dade Plastics Co.*, 164 NLRB No 119, *infra*, p. 133.

reflected in the terms and conditions of the purchase, the Board concluded that remedial responsibility should attach to a bona fide purchaser with notice, when the determination of such a status has been made upon due notice and hearing.

4. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1967, are as follows:

Personnel compensation	$23,785,072
Personnel benefits	1,790,789
Travel and transportation of persons	1,459,071
Transportation of things	52,890
Rent, communications, and utilities	1,134,239
Printing and reproduction	671,535
Other services	940,170
Supplies and materials	299,727
Equipment	275,917
Insurance claims and indemnities	15,426
Subtotal obligations and expenditures [1]	30,424,836
Transferred to operating expenses, Public Building Service (Rent)	20,191
Total Agency	30,445,027

[1] Includes reimbursable obligations distributed as follows:

Personnel compensation	$50,028
Personnel benefits	3,575
Travel and transportation of persons	9,208
Rent, communications, and utilities	1,752
Printing and reproduction	50
Other services	56
Supplies and materials	231
Equipment	170
Total obligations and expenditures	65,070

II

Jurisdiction of the Board

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

A. Enterprises Subject to Board Jurisdiction

During the report year the Board had occasion to further delineate the extent to which it would or would not assert jurisdiction over various enterprises to effectuate the policies of the Act. Among the decisions made were those pertaining to activities intimately related

[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 Thirty-first Annual Report (1966), 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.

to statutorily exempt nonprofit hospitals, school bus operations, agricultural workers, and travel enterprises wholly owned by, and selling tickets for, rail travel and accommodations on behalf of an agency of a foreign government.

1. Activities Related to Nonprofit Hospitals

Several cases involved construction of the Board's policy of declining jurisdiction over enterprises intimately related to the operations and purposes of nonprofit hospitals, which are themselves excluded from the jurisdiction of the Board by section 2(2). In *Bay Ran Maintenance Corp.*,[6] the Board determined that jurisdiction should be exercised over an employer engaged in supplying cleaning and janitorial services to a nonprofit hospital. In concluding that an intimate relationship did not exist between the employer and the hospital, the Board emphasized that the services supplied by the employer had no direct relationship to patient care. It also found that the hospital did not maintain any direct control over the management of the cleaning services, and that under the fixed-cost contract it was the employer, not the hospital, who hired employees, determined labor relations policy and particular aspects of wages and conditions of employment, and provided supervision of work crews. However, in *Inter-County Blood Banks*,[7] a case found factually distinguishable from *Bay Ran*, the Board did not exercise jurisdiction over a nonprofit employer which provided blood bank services for a large group of hospitals, all but three of which were exempt from jurisdiction under section 2(2) of the Act. The employer was regulated by county, State, and national health agencies and maintained the majority of its donor centers at the hospitals to which it regularly supplied blood services. The hospitals received blood without cost, and no fee was charged the employer for use of space at the hospitals. At the centers, the blood bank provided its own medical staff and equipment, collected blood from donors under various plans providing blood credits for the participants, and maintained lists of request donors upon whom it called in special situations. Considering the intimate relationship between the medical services' related activities of the employer and the purposes of the nonprofit hospitals, the Board concluded that the policies of the Act would best be effectuated if jurisdiction were declined.

In refusing to exercise jurisdiction over a medical education and research center in another case,[8] the Board followed its established policy of distinguishing between research activities which are educational in nature and those which are commercially oriented to benefit

[6] 161 NLRB 820

[7] 165 NLRB No. 38.

[8] *Lovelace Foundation for Medical Education and Research,* 165 NLRB No. 99

private industry.[9] The nonprofit employer consisted of an in-patient hospital, out-patient clinic, and the foundation research facilities, all of which were functionally and geographically integrated. Research projects of a medical and para-medical nature were conducted for various Federal agencies including the Atomic Energy Commission, the National Aeronautics and Space Administration, and the National Institutes of Health. The employer had developed "an extensive educational program," partially related to the State medical school, the phases of which included public presentation of research results, education of students training for advanced degrees, intern, staff exchange, and residency programs for medical students, visiting professor programs, and fellowships in respiratory physiology available to foreign nationals.

The Board concluded that under the circumstances the policies of the Act were best effectuated by declining jurisdiction over such a noncommercial research foundation which participates extensively in educational programs, without regard to whether or not it is immediately or directly connected with a recognized educational institution.[10]

2. School Bus Operations

In two decisions, the Board adhered to its established policy of declining jurisdiction over intrastate bus operations primarily engaged in transporting children to and from school. Viewing such activities as essentially local in character, the Board decided [11] that the transportation enterprises, which were in the business of finding school bus service and charter bus transportation intrastate and which derived approximately five-sixths of their annual revenue from providing bus services to public schools, were "essentially local enterprises engaged primarily in aid of the State in the field of education," and that to exercise jurisdiction over such activities would not effectuate the policies of the Act.

3. "Agricultural Employees"

The Board also again considered cases in which it was asserted that the employees in issue fell within the definition of "agricultural laborers" under section 2(3) of the Act and were therefore excluded from the Board's jurisdictional reach. In *Strain Poultry Farms*, [12] the

[9] See *Woods Hole Oceanographic Institution*, 143 NLRB 568 (1963), Twenty-ninth Annual Report (1964), p. 34.

[10] See *University of Miami, Institute of Marine Science*, 146 NLRB 1448 (1964); *Massachusetts Institute of Technology*, 152 NLRB 598 (1965), Thirtieth Annual (1965), p 35.

[11] *S & L Lines, d/b/a Pacific-Scenic-Lines*, 164 NLRB No. 140; *Community Interprises, d/b/a Community Charter Bus System*, 164 NLRB No. 141.

[12] 160 NLRB 236.

Board continued to distinguish between truckdrivers engaged in hauling produce from their employer's farms to market and those engaged in hauling produce for their employer from independent farms to market.[13] The "coop" drivers under consideration hauled their employer's chickens, which subsequent to hatching had been placed on independent farms to be raised to market size, from those independent farms to market. In accordance with prior decisions, the Board found that these drivers were not agricultural laborers to the extent that they regularly transport produce for the employer from independent farms. In *Sutter Mutual Water Co.*,[14] the Board found that workers employed at pumping stations, ditches, and canals operated by a nonprofit employer corporation engaged solely in supplying water to its farmer members were agricultural laborers within the meaning of the rider to the Board's appropriation Act which exempts such laborers from the Board's jurisdiction. Since 1954,[15] a continuing rider on the Board's appropriation acts has included within the definition of agricultural laborers "employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 per centum of the water stored or supplied thereby is used for farming purposes." [16] The Board, therefore, found that the individuals in the instant case were agricultural laborers within the meaning of the rider and therefore were excluded from its jurisdiction.

4. Ticket Sales Activities of Subsidiary of Agency of Foreign Government

Without deciding whether in fact it had jurisdiction, the Board, in *British Rail-International*,[17] declined jurisdiction over an enterprise incorporated in New York State which was engaged in the sale of tickets in the United States and Canada for British railways and vouchers for accommodations in British hotels in connection with rail travel in Britain. The entire stock of the employer was owned by the British Railway Board, an agency of the British Government, which appointed its six-man board of directors. Three of the directors resided in London, from where overall policy directives regarding labor relations and personnel policies emanated. Three other directors, Americans residing in the United States, had no managerial responsibilities.

[13] *N L R B.* v. *Olaa Sugar Co*, 242 F 2d 714, remanding 114 NLRB 670 (1955), Supp Decision and Order 118 NLRB 1442 (1957) Accord *Farmers Reservoir & Irrigation Co.* v *McComb*, 337 U.S. 755 (1949), *Samuel B Gass; Lapman Bros.*, 154 NLRB 728 (1965).

[14] 160 NLRB 1139

[15] See *Mississippi Chemical Corp*, 110 NLRB 826 (1954).

[16] 80 Stat 1401 (1966), 79 Stat. 609 (1965).

[17] 163 NLRB No. 89.

A British labor organization which represented employees of the British Railway Board had negotiated contracts with that agency which also encompassed significant terms and conditions of employment applicable to the employees of British Rail-International. The agreements arrived at applied to all North American employees, regardless of citizenship. The Board noted that two-thirds of the employer's New York office staff were British nationals hired in England who were in this country on treaty trade visas. Those who were members of the labor organization representing BRB employees continued to make pension fund contributions and payments to British National Insurance, and under these circumstances, particularly in view of the employer's close relationship with BRB, an agency of the British Government, the Board deemed it inappropriate to exercise jurisdiction.[18]

B. Discretionary Jurisdictional Standards

During the past year, the Board took the opportunity to redefine its jurisdictional standards with respect to the residential apartment housing industry and community television antenna systems.

Eschewing a prior practice of deciding cases in the residential apartment housing industry on an *ad hoc* basis,[19] the Board, in *Parkview Gardens*,[20] established an applicable dollar-volume jurisdictional standard for that industry. Recognizing that there is "an increasing incidence of cases involving this industry," that sizeable apartment developments are "almost invariably financed by interstate financial institutions," and that the industry is "continually growing," the Board announced that jurisdiction would be asserted over apartment house projects which receive at least $500,000 in gross revenue per annum. In establishing that figure, the Board was guided by its experience in asserting jurisdiction over retail concerns and other concerns in the hotel and motel industries where the same gross annual revenues standard applies. The Board noted that "our experience persuades us that it is desirable to have a fixed-dollar standard of general applicability to the industry, rather than to determine the impact on commerce on some other basis, because the ease of applications of such a standard, as well as its predictable application to given cases, results in advantages to employers and employees in the industry, and to the Board."

[18] See *United Fruit Co.*, 159 NLRB 135; *McCulloch* v *Sociedad National de Marineros*, 372 U S. 10 (1963).

[19] See, for instance, *M S. Ginn & Co.*, 114 NLRB 112 (1955); *Western Area Housing Co.*, 107 NLRB 1263 (1954); *Horizon House*, 151 NLRB 766 (1965).

[20] 166 NLRB No. 80.

In *General Telephone & Electronics*,[21] jurisdiction was exercised over the employer, CATV System, since its dollar volume of business satisfied the $100,000 communications system standard found to be applicable. Independently evaluating the economic facts which led the Federal Communications Commission to reconsider its former position and conclude that CATV systems, except for apartment house master antennas and systems serving less than 50 customers, must realistically be viewed as "a connecting link in the chain of communications," [22] and not a service, the Board concluded that its established basic communications standard, announced in *Raritan Valley Broadcasting*,[23] should be amended to encompass all community antenna systems, without regard to whether they are microwave or nonmicrowave.[24]

The Board also gave further consideration to the circumstances under which proof of commerce activity satisfying the dollar-volume amounts of the jurisdictional standards will be waived. It had previously announced [25] that such proof would be waived and proof of legal jurisdiction would suffice where the employer has refused, upon reasonable request, to provide the Board or its agents with information relevant to the Board's jurisdictional standard. In *Supreme, Victory and Deluxe Cab Companies*,[26] owner-drivers and rent-drivers of taxicabs independently owned, but operated as a part of the combined enterprise appropriate for unit purposes and the assertion of jurisdiction, were subpenaed to testify as their earnings, since the company kept no earnings records. Less than half of the drivers appeared to testify, and the employer conceded that full enforcement of the subpenas would "do little to further clarify" testimony already received. With statutory jurisdiction clearly established, the Board projected average individual income figures from the scant testimony available. Those figures indicated the dollar-volume standard was probably met by the combined revenues of the drivers. But lacking more precise information, the Board rested its jurisdictional determination on the conclusion that the net effect of the absence of records and failure to respond to subpenas upon the ability of the Board to discharge its statutory obligation, is little different from the deliberate refusal involved in the *Tropicana* case, and therefore the jurisdictional standard should be waived for the reasons stated in *Tropicana*.

[21] 160 NLRB 1192.

[22] See 31 Fed. Reg 4540, *et seq*, and especially at 4561, 4541, 4543, 4567 (Mar. 17,-1966).

[23] 122 NLRB 90 (1958).

[24] Compare *Perfect T.V.*, 134 NLRB 575 (1961), with *Warren Television Corp*, 128 NLRB 1 (1960).

[25] *Tropicana Products*, 122 NLRB 121, 123 (1958).

[26] 160 NLRB 140.

III

Board Procedure

A. Discretion of General Counsel To Delay Issuance of Complaint

The proper disposition of a proceeding in which the General Counsel had delayed issuance of a complaint on a timely charge for a substantial period of time, while awaiting the outcome of a Board case which might change the applicable legal rule, was considered by the Board in the *Bryant Chucking Grinder Co.* case.[1] Charges of refusal to recognize and bargain had been filed against an employer by a union after it had lost an election at a time when the doctrine of *Aiello Dairy Farms*,[2] holding that a union which had gone to an election would be held to have waived its right to assert that an antecedent refusal to bargain violated section 8(a)(5) of the Act, was valid and applicable. Upon receiving an appeal from a dismissal of the charge, the General Counsel held the case on appeal for some 15 months pending Board decision in a case which the General Counsel believed, correctly as it turned out, that the Board might decide to overrule the *Aiello* doctrine.[3] The appeal was then sustained and issuance of the complaint authorized.

The Board[4] rejected the contention that the complaint should be dismissed because of the delay in its issuance. Noting that under section 3(d) of the Act the General Counsel has final authority with respect to the issuance of complaints, the Board perceived no abuse of that discretion, but rather concluded that the General Counsel had acted reasonably under the circumstances in awaiting the outcome of the pending case. It viewed his action as essential to the effective and uniform application of the important rights involved, since the only alternative would be to issue and litigate a complaint on each such

[1] 160 NLRB 1526.

[2] 110 NLRB 1365 (1954).

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

[4] Chairman McCulloch and Member Zagoria for the majority; Member Jenkins dissenting in part.

charge, despite the hazard that the Board might decide against the principle on which the complaints were based and dismiss all the cases.

The Board also noted the absence of a showing of any prejudice to the employer as a result of the delay in scheduling the hearing of the case—a delay largely a consequence of the time required for the decisionmaking procedure at the Board's level. Under these circumstances, it found the retroactive application of the principle established in *Bernel Foam* to this case to be warranted and required by the "overriding policies of the Act." [5]

B. Standing of Charging Party in Withdrawal of Complaint Allegations

The standing of the party filing charges of unfair labor practices to obtain or block the withdrawal of those charges after issuance of a complaint was further clarified [6] in two cases decided by the Board during the report year. In *Watkins Furniture*,[7] the complaint alleged that the respondent employer was guilty of dominating as well as unlawfully interfering with and supporting an employees' committee in violation of section 8(a) (2) and (1) of the Act. The General Counsel's motion during the hearing to withdraw the allegation of domination, which would normally have carried with it the more drastic remedy of disestablishment of the committee rather than merely withdrawal of recognition, was opposed by the charging party. The trial examiner's denial of the General Counsel's motion was sustained by the Board, although it ultimately disagreed with the conclusion that the evidence was sufficient to establish domination. In another case,[8] the local union filed a motion with the trial examiner for permission to withdraw the charges upon which a complaint alleging a refusal to bargain through direct dealings with the employees and unilateral changes in working conditions had been issued. In support of the motion the union asserted that the matters in dispute between it and the employer had been settled and a renewal agreement had been executed

[5] Although concurring in the remedial order based upon postelection 8(a)(1) violations found, Member Jenkins dissented to the application of the *Bernel Foam* doctrine as a basis for the order. In his view, the appeal to the General Counsel, under the circumstances of this case, should have been disposed of upon the basis of the rule existing at the time of the appeal, and that, on balancing the extended delay against the "reasonable dispatch" requirement of section 6(a) of the Administrative Procedure Act and the policy in section 10(b) of the Act against processing stale charges, the case should be disposed of under the "before *Bernel*" rule and the complaint dismissed as to the preelection misconduct.

[6] See *Local 638, Plumbers (Rowland-Thompkins)*, 158 NLRB 1747 (1966), Thirty-first Annual Report (1966), pp 41–42. Compare *Intl Union, UAW, Local 283* v. *Scofield*, 382 U.S. 205 (1965), Thirty-first Annual Report (1966), pp. 126–127, and *Leeds & Northrup Co.* v. *N.L.R.B.*, 357 F.2d 527 (C.A. 3, 1966), Thirty-first Annual Report (1966), pp. 161–162.

[7] 160 NLRB 188.

[8] *L-U-C-E Manufacturing Co.*, 165 NLRB No. 35.

by authorized representatives of the parties. The union's International, which participated in the hearing, also joined in and consented to the motion. The motion was granted by the Board over the objection of the General Counsel, upon consideration of the longstanding harmonious bargaining relationship between the parties and the fact that the matters in dispute had been settled and another binding agreement executed.

C. Right to Counsel in Precomplaint Investigations

In several cases decided during the course of the report year, the Board was called upon to determine whether respondent had the right to the assistance of counsel guaranteed by the Constitution or required by the Administrative Procedure Act, during investigation of charges under the National Labor Relations Act. The Board concluded that the Supreme Court decision in *Escobedo* v. *Illinois* [9] with regard to the right of criminal defendants, under the sixth amendment to the Constitution, to the presence of counsel during in-custody interrogation was not applicable to Board procedures. It emphasized that the precomplaint investigation did not involve the administration of justice in criminal cases.[10] The Board also held that the right to counsel was not required by section 6 of the Administrative Procedure Act either, since that section relates only to persons compelled to appear and does not apply to interviews aimed at obtaining voluntary statements during the investigation of charges.[11] The Board, therefore, rejected the contention that statements taken from respondents and the agents of respondents by Board agents during precomplaint investigations without informing those persons that they had a right to have counsel present during the interviews violated their constitutional rights, or rendered the statements obtained unavailable as evidence or for impeachment purposes.

[9] 378 U.S. 478 (1964).

[10] *Crown Imports Co.*, 163 NLRB No 4; *F. J Buckner Corp, d/b/a United Engineering Co.*, 163 NLRB No. 7; and *Wilber J. Allingham, d/b/a Mary Anne Bakeries*, 164 NLRB No. 30.

[11] *Mary Anne Bakeries, supra.*

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. No Deference on Accretion Issues

In the *Beacon Photo Service* case,[2] in which an employer had filed a petition for an election among employees at a new plant which it had established, the Board considered the contention of the incumbent union at the old plant that the Board should defer to the available arbitration procedure resolution of the issue as to whether recognition of the union at the new plant was required by the terms of the existing collective-bargaining contract. The Board viewed the case as presenting two issues: (1) whether the multiemployer collective-bargaining contract was intended to cover the subsequently established new plant; and (2) whether, assuming it was so intended, the contracting parties could so extend the contract without the consent of the employees at the new plant. The Board concluded that the first question could be answered by an arbitrator "but the second question is only for the Board. Even if an arbitrator should decide that the existing contract was intended to cover employees to be hired after the execution of the contract at new facilities of the employer, the Board will never-

[1] E.g., *Textile Workers Union* v. *Lincoln Mills*, 353 U S. 448 (1957) , *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578–581 (1960).

[2] 163 NLRB No. 98.

theless refuse to find the contract a bar to a petition seeking to resolve a question of representation at the new facilities unless these are an accretion to the contract unit." [3] Having thus made clear its view that it will not defer to the construction of a contract by an arbitrator under circumstances purporting to require determination of a question concerning representation of employees at a new facility, the Board examined the facts of the case to determine whether the new facility was in fact an accretion to the preexisting operations. Finding that it was not such an accretion and therefore the collective-bargaining contract relied on by the union was not a bar to the petition, and that a question concerning representation consequently existed, the Board directed an election in an appropriate unit of employees at the new plant.

B. Prerequisites to Deferral

In a number of cases decided during the report year, the Board was called upon to determine whether arbitrators' decisions met the prerequisites of the *Spielberg* [4] standards of fairness and regularity, and deferral was therefore appropriate. Other cases involved the appropriateness of deferral to arbitration where it was asserted that the issues were of such an individualized nature as to be more appropriately handled under available contract procedures. In *Howard Electric Co.*,[5] the Board dismissed a complaint alleging violations of section 8(a)(3) in the discriminatory discharge and refusal to reinstate two employees, when it concluded that the procedure and award of an arbitration panel which considered the discharges met the criteria for deference set forth in *Spielberg*. The arbitration was conducted under the collective-bargaining agreement by a panel composed of employer and union representatives whose award was to be final and binding. The unanimous decision in the case of each of the discriminatees provided for reimbursement for pay loss because of a discharge without proper cause under the contract, and reestablished the employment rights of the employees in accordance with the agreement. In another case,[6] however, deference was not accorded an arbitration panel's decision in a discharge situation alleged in the complaint before the

[3] The Board noted its previous decision in *Pullman Industries*, 159 NLRB 580 (1966), in which under similar circumstances the Board refused to defer to a decision made by an arbitrator that a contract covered a new facility and required recognition of the union as the representative of employees there

[4] In *Spielberg Manufacturing Co*, 112 NLRB 1080, 1082 (1955), 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.

[5] 166 NLRB No. 62

[6] *Illinois Ruan Transport Corp*, 165 NLRB No 34.

Board to have been in retaliation for protected activity. The award upholding the discharge was entered by a joint committee which failed to note reasons for the upholding of the discharge, and the employee's activity in complaining to the Interstate Commerce Commission concerning breaches of safety regulations, found by the Board to be the reason for his discharge, was never brought to the attention of the committee, before which the employer relied on other reasons.

Deference was also declined in the *Westinghouse Electric Corp.* case.[7] There the arbitrator, in determining whether a union was entitled under its contract to represent certain employees, notwithstanding the claim of another union not party to the proceeding to represent the employees as a part of its unit, relied only on an estimate of the skills required in performing the various jobs and did not treat other significant factors considered by the Board to be relevant criteria for the determination. Although according the award some consideration, the Board did not defer to it entirely since "the ultimate issue of representation could not be decided by the arbitrator on the basis of his interpreting the contract under which he was authorized to act, but could only be resolved by utilization of Board criteria for making unit determinations. In such cases the arbitrator's award must clearly reflect the use of and be consonant with Board standards." Upon an examination of all the significant factors, including bargaining history, integration of operations, job progression, and the effect of the decision upon the employees and the employer's operations, the Board concluded that the employees in issue were properly included in a unit previously certified. It therefore clarified that certification by specifically including within it the employees in question. Another case in which the limited nature of the contract issues which could be considered by the arbitrator caused the Board to decline deference was *Scam Instrument Corp.*,[8] where grievances concerning the employer's unilateral changes in insurance coverage had been processed under the arbitration clause on an individual basis. Since the nature of the issue presented to the arbitrator was limited to consideration of the individual employee's entitlement to insurance coverage under the contract, and thus did not reach the comprehensive issue considered by the Board in a complaint alleging unilateral changes in violation of section 8(a)(5) of the Act, the Board declined deference in order to resolve the issue as it concerned the rights of all employees.

In two other cases deference was declined notwithstanding the contention that the issues involved were of a particularized and individual nature which an arbitrator was in a better position than the Board to

[7] 162 NLRB No. 81.
[8] 163 NLRB No. 39.

resolve by applying his sound judgment and sense of equity in interpreting the contract. One case [9] involved the employer's repudiation of a checkoff provision in its collective-bargaining contract with the union following a deauthorization election in which the employees voted to revoke the union's contract authority to require membership in it as a condition of employment. The repudiation affected not only the authorizations of employees who may not have wished to revoke them, but also those of new employees who might wish voluntarily to authorize that method of paying their dues. The trial examiner's dismissal of the complaint because he regarded the matter as involving "something less than 'basic' to the collective-bargaining relationship" which lent itself more properly to resolution through the contract's grievance-arbitration procedure than through an unfair labor practice proceeding, was reversed by the Board. In the Board's view, the respondent had—

> . . . unilaterally changed a contractual term or condition of employment, modifying its contract with the Union in a significant respect; its action will have a continuing impact on its relationship with the Union and the affected employees. We thus have before us what is essentially a matter of statutory violation (under section 8(d) and 8(a)(5) of the Act), rather than of contract interpretation. The issue presented as a result of respondent's conduct is the effect under the Act of an affirmative deauthorization vote upon a contractual dues-checkoff obligation of an employer; it relates directly to the employer's statutory duty and is one which the Board is specially competent to resolve.

The other case [10] concerned a complaint alleging the employer's unilateral change of working conditions through refusing to consider the bid of a summer replacement employee for a new job opening in the plant. The contract did not differentiate by status among the employees entitled to bid. The Board rejected the contention that because of the internal plant nature of the dispute deference should be made to an available arbitration procedure provided under the collective-bargaining agreement.[11]

[9] *W. P. Thrie & Sons*, 165 NLRB No. 2.

[10] *Anaconda Aluminum Co*, 160 NLRB 35.

[11] Chairman McCulloch and Member Zagoria for the majority. Member Brown, dissenting, would defer, since in his view "the conduct in issue falls within the class of internal plant disputes which are more suitably adjusted through the parties' agreed-upon grievance settlement procedures."

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 who have been previously certified, or who 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. Existence of Questions Concerning Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate hearing

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

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]

The investigation of a petition for a representation election must establish a proper basis [6] for a finding of the existence of a question concerning representation. One case [7] considered by the Board involved the issue of whether a question concerning representation ostensibly raised by an employer's petition for an election existed after he signed a recognition agreement with the union named in the petition as having demanded recognition. The union's demand for recognition was accompanied by a picket line at the employer's terminal which caused a work stoppage until the recognition agreement was signed, notwithstanding the union's refusal to provide the requested proof of majority status. Such proof was subsequently provided but the employer nevertheless filed a petition for an election which was not withdrawn even after execution of a collective-bargaining agreement with the union. The employer conceded that it had no doubts of the union's majority status, but contended that because of the coercive impact of the picketing neither the recognition agreement nor the collective-bargaining agreement precluded its entitlement to an election to test the claim of majority status. This contention was rejected by the Board in dismissing the petition. It noted that the employer's execution of the collective-bargaining agreement unconditionally recognizing the union after the filing of a petition for an election, placed the employer in a position wholly inconsistent with its attempt to establish a question concerning representation to be resolved by the election. The Board did not view the picketing or strike as a basis for altering this conclusion in view of the union's conceded majority status.

In another case,[8] the Board found no question concerning representation was raised when an independent union requested amendment of its certification to reflect its affiliation with the international union it had defeated at the election. The affiliation was accomplished at a special meeting of the membership called for that purpose and adequately publicized among the membership. The meeting was attended

[4] Sec. 9(c)(1) provides that 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] The ultimate finding of the existence of a representation question depends further on the presence or absence of certain factors, *viz*, qualification of the proposed bargaining agent; bars to a present election, such as contract or prior determinations; and the appropriateness of the proposed bargaining unit. These factors are discussed in subsequent sections of this report.

[7] *Ward Trucking Corp.*, 160 NLRB 1190.

[8] *North Electric Co.*, 165 NLRB No. 88.

by only 55 of the 238 union members among the 288 unit employees. The affiliation was approved by secret ballot in which 52 votes were cast for and 2 votes against affiliation. The independent was thereafter chartered as a local of the international with the same officers continuing in office, and it continued the administration of the contract negotiated by the independent with the employer. In granting the motion to amend the certification, the Board concluded that no question concerning representation was raised, since the certified representative as such no longer continued in existence but functioned as the local of this international and the change of affiliation reflected the majority's view. It concluded that the fact that many employees chose not to attend the announced meeting was not significant, since the decision was reached after full notice and was effected in as democratic a manner as possible. In view of the voluntary and regular procedures, according recognition under appropriate safeguards to the democratic principle of majority rule after due notice to all, which were followed to determine the employees' wishes on the question of affiliation, and the support of the change of affiliation by the bulk of the adherents and all of the officers of the certified independent, the Board amended the certification as requested.[9]

B. Bars to Conducting an Election

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.

[9] Chairman McCulloch and Members Fanning and Brown for the majority. Members Jenkins and Zagoria, dissenting, were of the view that the procedure for the amendment did not comport with minimal standards of due process and undermined the Board's own election and certification procedures. Since the change of representatives could not be effected through Board processes due to the existence of the contract, and since the affiliation was accomplished at a union election at which 50 nonmember unit employees were not qualified to vote, the dissenting members would find that the outcome of a private election among union members, in which "less than a *majority of a majority*" of the unit voted affirmatively and other unit members were precluded from voting, should not be a basis for Board approval, and the amendment petition should be denied.

To operate as a bar, the contract must be viable and of a currency to permit the parties to "look to the actual terms and conditions of their contract for guidance in their day-to-day problems." [10] The Board's adherence to this requirement in the *Raymond's* case,[11] caused it to hold that a contract was not a bar to the raising of a question concerning representation. The contract was last negotiated in 1961 to remain in effect until March 1963. Although automatically renewable on a year-to-year basis absent notice, none of the substantial changes that had been made in the conditions of employment of the covered employees since 1961 had been reduced to writing or incorporated into the contract. Wage rates, insurance coverage, and other conditions of employment had been altered in the intervening period without being made part of the contract, and even the terms of the 1961 contract had not been implemented in some respects. In rejecting the contract as a bar to a petition, the Board stated: "Where, as here, the only written document does not contain the current terms and conditions of employment and, to the contrary, embodies substantial terms which have since been abandoned by the parties, we cannot honor that contract as one imparting sufficient stability to the bargaining relationship to justify our withholding a present determination of representation."

The contract must also clearly cover the employees sought in the petition if it is to serve as a bar.[12] This requirement was reemphasized by the Board in *Sound Contractors Assn.*,[13] where it found that agreements between the union and three of the six individual members of a multiemployer association were not operative to bar a question concerning representation raised by a petition for an election in a unit of employees coextensive with the multiemployer association. The Board noted that the contracts were not complete collective-bargaining contracts and that they did not all contain provisions regulating wages and hours, or establish definite termination dates or provisions "sufficiently complete to stabilize the bargaining relationship of the parties." It rejected the contention that the agreements nevertheless could be considered a bar within the principle of *Keller Plastics Eastern*,[14] under which the parties to a bargaining relationship established as a result of voluntary recognition of a bargaining representative must be afforded a reasonable time to bargain and to execute a contract resulting from such bargaining as they are afforded in situations involving certifications, Board orders, and settlement agreements. The Board

[10] *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958), Twenty-fourth Annual Report (1959), p. 21.
[11] 161 NLRB 838.
[12] *Appalachian Shale Products, supra*, fn. 10
[13] 162 NLRB No. 45.
[14] 157 NLRB 583 (1966), Thirty-first Annual Report (1966), p. 86.

noted the absence of a showing that the employer extended recognition through the contracts in good faith on the basis of a previously demonstrated showing of majority, and at a time when only that union was actively engaged in organizing the unit employee.

The *Keller Plastics* principle was likewise found inapplicable to bar a petition in a case where, at the time the employer agreed with the union to a card-check certification proceeding before a State board which resulted in the execution of a recognition agreement, it was aware that another union might have an interest in the proceedings, but did not disclose that fact to the State board.[15] The Board emphasized that it would not hold a recognition agreement a bar to a petition where it "was entered into at a time when the petitioning union had a substantial claim of interest and that union was not afforded prior opportunity to demonstrate the extent of its interest by means of an election or through other appropriate procedures." [16]

Under the somewhat unusual circumstances of another case, the Board found that a contract initially valid as a bar was vitiated for that purpose by the union's withdrawal of representation from a substantial number of unit employees covered by the contract. During the term of the contract, the union had polled the employees to determine whether they were willing to forgo a pending wage increase provided by the contract and apply the money instead to a pension plan proposed by the union. When the employees elected to receive the raise and rejected the pension plan, despite the union's efforts to persuade them otherwise, a majority of the unit employees were tendered and accepted "honorable withdrawal cards" from the union. In view of this withdrawal of representation, the Board found the contract no longer constituted a bar. In another case, the contention that the period of time during which the contract would serve as a bar was extended through its adoption by a successor employer was rejected by the Board. In *Shop Rite Foods* [17] the employer and its parent corporation merged and only the employer survived as a legal entity. Thereafter the new employer adopted the contract previously negotiated, including a midterm extension of the contract executed shortly prior to the merger. The Board rejected the contention that by the adoption of the existing contract the employer and the union had entered into a new collective-bargaining agreement operative as a bar until its expiration. It found that the merger's changes in the corporate ownership and structure did not result in any significant changes in the nature of the stores' operation and management, the composition of the contractual unit, the terms and conditions of employment, or the stability of the existing

[15] *Rheingold Breweries,* 162 NLRB No. 32.
[16] *Grocers Wholesale,* 163 NLRB No. 133.
[17] 162 NLRB No. 98.

bargaining relationship. Finding this "substantial continuity of identity" in the employing business before and after the merger, the Board concluded that the adoption of the extended agreement was not a newly executed contract. But it also found that the contract raised as a bar was a premature extension and therefore did not bar the petition timely filed with respect to the original contract's anniversary date.

The provision of the *Deluxe Metal* rule (121 NLRB 995) that a collective-bargaining contract executed on the same day that a rival union petition has been filed with the Board will bar an election if the employer has not been informed at the time of execution that a petition has been filed, was considered by the Board in the *Rappahannock Sportswear Co.* case.[18] There the employer had been informed prior to the time of execution of the first contract with a voluntarily recognized union that a rival petition was to be filed. Such a petition was in fact filed on the same day and before execution of the contract, although the employer had not then been informed of the fact of the filing of the petition. In holding the petition timely filed in substantial compliance with the rule, thereby precluding assertion of the contract as a bar, the Board noted that at the time the employer signed the contract he had been notified of the petitioner's interest and intent to file a petition. It found that no prejudice to the employer resulted from the fact that it received notification a few hours before the petition was actually received in the regional office, since the important fact is that it was informed of the filing before it signed the contract.

The Board also rejected the employer's contention that the petition was ineffective because the petitioner did not submit a showing of interest in support of the petition within the time alloted by section 101.17 of the Board's Statements of Procedure. That section requires that the showing of interest be submitted within 48 hours after filing of the petition "but in no event later than the last day on which the petition might timely be filed." While recognizing that a literal reading of the section would require that a petition filed on the last day in which it could be filed due to the execution of a contract be supported by a showing of interest filed that same day, the Board noted that this showing of interest is an administrative matter of procedural significance only, intended for the Board's convenience "to screen out those cases in which there is so little prospect of the Petitioner winning an election, if directed, as not to warrant the Board incurring the expense of further proceedings on the petition. Such investigation has no bearing on the issue of whether a representation question exists." [19] The Board held that where, as in the instant case, two unions are organizing simultaneously and there is no existing collective-bargaining contract

[18] 163 NLRB No. 66.
[19] *Sheffield Corp.*, 108 NLRB 349, 350 (1954).

to establish a frame of reference for computing with certainty in advance the last date on which a petition can be filed, the limiting "last day" language of section 101.17 is inapplicable, and the petitioner should be allowed the full 48 hours, if required, within which to submit the showing of interest.

C. Units Appropriate for Bargaining

1. "Joint Employers" for Unit Purposes

The problem of determining just who is the employer of employees among whom an election is to be conducted, and thereby assure that the bargaining obligation evolves upon the party with authority to fulfill it, again confronted the Board in three cases involving department stores and the operators of licensed or leased departments in the stores.[20] In *Thriftown*,[21] the Board was called on to determine whether the owner and manager of a discount department store was also joint employer of the employees in its shoe department, which was operated by another employer pursuant to a department operating agreement. This agreement contained detailed provisions relating to the financial arrangements between the store owner and its operators and governing the operation of the department. Although providing that the agreement would not be construed to constitute a co-partnership or co-venture, the provisions obligated the operator to conduct its department "in such manner that it will appear to the public as a department of the business carried on in the store and not as though under separate management." Under the agreement, the store owner could establish conditions which all store employees are required to follow and the operator was specifically obligated to conform to the owner's rules, policies, and regulations. Noting from an examination of the operating agreement the retention of overall managerial control by the owner whether or not exercised, the Board found it unnecessary to consider the actual practice of the parties regarding these matters. It held that where, "as here, the parties operate an integrated business enterprise under a single roof and the provisions of the operating agreement establish that the owner possesses significant control over the operational and personnel policies of the operator, we conclude that the owner and operator are joint employers of the employees of the operator." [22]

[20] For other recent cases involving such stores see the Thirty-first Annual Report (1966), p. 63.

[21] *Thriftown, d/b/a Value Village*, 161 NLRB 603.

[22] Members Brown, Jenkins, and Zagoria for the majority. Chairman McCulloch and Member Fanning, dissenting, were of the view that neither the license agreement nor the actual practice of the parties established that the owner was in possession of power to exercise control over the operator's labor policy. Since the conformity requirements designed to foster the appearance to the public as a single integrated enterprise had nothing to do with the employment relationship as such, the dissenting members would find no joint employer relationship.

In two other cases, the Board also found the joint employer relationship existed in view of the explicit terms of the license agreement which reserved to the licensor subtantial power to affect the employment conditions of employees in the licensed department. In *K-Mart*,[23] the Board found a requested storewide unit appropriate, including both the owner's direct employees and the employees of various licensees, since the owner, under the license agreement, had "the power substantially to affect employment conditions" of the licensee's employees. It also found independent evidence to confirm that authority in that a licensee had been instructed to start his full-time employees at a minimum rate not less than the rate paid by the owner. In the other case,[24] the Board similarly found the owner had "the power to control effectively" the conditions of employment of the employees of the licensees. Although there was no evidence of exercise of the power, the license agreement required that the licensee's employees would, *inter alia*, be subject to the general supervision of the licensor and comply with general rules and regulations which might be established, that the licensee would conform to a uniform store policy with reference to wages, hours, and terms and conditions of employment for all sales and stock personnel, and that the licensor could request the discharge of any employee, which request the licensee was required to honor.

2. Craft and Traditional Department Unit Severance and Units in Integrated Process Industries

In decisions issued during the report year, the Board made a comprehensive review of its policies regarding the circumstances of severance of craft and traditional department units from established units. This involved consideration also of the closely related problems of the initial establishment of such units in integrated process industries. In the *Mallinckrodt Chemical Works* case [25] which involved a petition for the severance of a unit of skilled instrument repairmen in a continuous process uranium extraction and manufacturing operation, the Board reviewed the statutory interpretation of section 9(b)(2) of the Act, which provides "That the Board shall not . . . decide that any craft unit is inappropriate . . . on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation," as it had been articulated in the Board's *American Pot-*

[23] *K-Mart Division of S S. Kresge Co*, 161 NLRB 1127.
[24] *Jewel Tea Co*, 162 NLRB No. 44.
[25] 162 NLRB No. 48.

ash [26] and *National Tube* [27] doctrines. It noted that underlying unit determinations in severance cases "is the need to balance the interest of the employer and the employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation." From an examination of the legislative history of section 9(b)(2), the Board found it clear that Congress did not intend to take away "the Board's discretionary authority to find units to be inappropriate for collective-bargaining purposes if a review of *all* the facts, both *pro* and *con* severance, led to such result." It found this full review approach to have been that adopted by the Board in the *National Tube* decision as a matter of initial construction of the subsection, but that the *American Potash* doctrine, "predicated in substantial part on the view that Section 9(b)(2) virtually forecloses discretion and compels the Board to grant severance," represented an almost diametrically opposite construction of the statute. Rejecting therefore the statutory interpretation on which *American Potash* was premised, the Board further concluded that the tests laid down in that case do not permit satisfactory resolution of severance case issues. In this regard it stated:

> . . . *American Potash* established two basic tests: (1) the employees involved must constitute a true craft or departmental group, and (2) the union seeking to carve out a craft or departmental unit must be one which has traditionally devoted itself to the special problems of the group involved. These tests do serve to identify and define those employee groups which normally have the necessary cohesiveness and special interests to distinguish them from the generality of production and maintenance employees, and place in the scales of judgment the interests of the craft employees. However, they do not consider the interests of the other employees and thus do not permit a weighing of the craft group against the competing interests favoring continuance of the established relationship. Thus, by confining consideration solely to the interests favoring severance, the *American Potash* tests preclude the Board from discharging its statutory responsibility to make its unit determinations on the basis of all relevant factors, including those factors which weigh against severance. . . .
>
> Furthermore, the *American Potash* decision makes arbitrary distinctions between industries by forbidding the application of the *National Tube* doctrine to other industries whose operations are as highly integrated, and whose plantwide

[26] *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954), holding that "a craft group will be appropriate for severance purposes in cases where a true craft group is sought and where, in addition, the union seeking to represent it is one which traditionally represents that craft." See Nineteenth Annual Report (1954), pp. 38–41.

[27] *National Tube Co.*, 76 NLRB 1199 (1948), holding that sec. 9(b)(2) does not preclude consideration of the employer's collective-bargaining history at the particular plant in question as a factor weighing against splitting off a craft unit, much less the historical pattern of bargaining in the industry as a whole. See Thirteenth Annual Report (1948), pp. 36–37. This doctrine, enunciated in a case involving the basic steel industry, was subsequently extended to basic aluminum (*Permanente Metals Co.*, 89 NLRB 804 (1950)), wet milling (*Corn Products Refining Co.*, 80 NLRB 362 (1948)), and the basic lumber industry (*Weyerhaeuser Timber Co.*, 87 NLRB 1076 (1949)).

bargaining patterns are as well established, as in the case in the so-called "*National Tube*" industries. In fact, the *American Potash* decision is inherently inconsistent in asserting that ". . . it is not the province of this Board to dictate the course and pattern of labor organization in our vast industrial complex," while, at the same time, establishing rules which have that very effect. Thus, *American Potash* clearly "dictate[s] the course and pattern of labor organization" by establishing rigid qualifications for unions seeking craft units and by automatically precluding severance of all such units in *National Tube* industries.

It is patent, from the foregoing, that the *Ameriacn Potash* tests do not effectuate the policies of the Act. We shall, therefore, no longer allow our inquiry to be limited by them. Rather, we shall, as the Board did prior to *American Potash*, broaden our inquiry to permit evaluation of all considerations relevant to an informed decision in this area.

Proceeding then to evaluate "all considerations relevant to an informed decision" of the severance issue,[28] in accordance with the announced case-by-case approach, the Board found that although the instrument repairmen constituted an identified group of skilled employees similar to groups previously found to be craftsmen, their separate community of interests had been largely submerged in the broader community of interest of the other employees. The Board considered the failure of the union to meet the traditional representative test as a factor in its determination. It also gave consideration to the highly integrated continuous flow production system, in which the controls worked on by the 12 employees sought were an integral part, and the work integration of the employees. There was no evidence of neglect of the employees' special interests during their 25 years of representation in the established unit. Finding that upon these and other factors "the interests served by maintenance and stability of the existing bargaining unit" outweigh the interests served by affording the repairmen separate representation, the Board denied the petition.[29]

In other cases involving craft or departmental severance, as well as the initial establishment of craft or departmental units in an integrated industry without prior bargaining history, the Board followed this

[28] Illustrative of the considerations described by the Board as relevant to such a decision were: (1) status of the employees as craftsmen working at their craft or of employees in a traditionally distinct department; (2) existing patterns of bargaining relationships, their stabilizing effect, and the possible effect of altering them; (3) separate identity of the employees within the broader unit; (4) history and pattern of bargaining in the industry; (5) degree of integration and interdependence of the production system; and (6) qualification and experience of the union seeking to represent the employees.

[29] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority Member Fanning, dissenting, viewed it as manifest that sec. 9(b)(2) did not require that craft employees always be given an opportunity to vote for separate representation but that it likewise did not weaken the presumption in favor of the appropriateness of a craft unit, whether in a severance case or one involving initial organization. He would apply to severance cases the same principles as nonseverance cases and place "upon the parties who would deny separate representation to craft employees the burden of demonstrating that the separate community of interests normally possessed by craftsmen has become submerged in the larger community of interests of the employees in the broader unit." Finding on the facts that such submergence had not occurred, he would direct a self-determination election.

standard of evaluation of all considerations. Among the cases involving petitions for craft severance from an established plantwide unit was *Holmberg*,[30] in which a self-determination election for tool-and-die makers and allied tool craftsmen in a metal stamping process was sought. The Board found that due to the considerable overlap in the job duties of the employees in the unit sought with those of other employees, the two groups shared a substantial community of interest. Moreover, the tool-and-die makers' work was not confined to tasks requiring the exercise of their special skills, and even when engaging in their specialized tasks, the work they performed was an integral part of the production process in which the other employees were also engaged. Finding nothing to demonstrate that the common unit grouping had not proved workable, or that the incumbent union could not adequately represent all the employees, the Board concluded that the interests of maintaining the existing unit outweighed such special interests as the tool-and-die makers might have in establishing separate representation.[31] A petition for a self-determination election was similarly denied in another case [32] involving severance of a unit of carpenters from a production and maintenance unit engaged in the continuous process manufacture of industrial chemicals. In evaluating the many factors present, the Board rejected the contention that direction of a severance election more than 10 years before, in which the carpenters rejected separate representation, constituted binding precedence. It noted that despite the fact that the carpenters are craftsmen, they do almost all their work in production areas on assignments important to the continuous flow of the production process, where they work in close cooperation with operating personnel and where they are subject to supervision by individuals who also supervise production employees. In the absence of compelling countervailing considerations, the Board viewed this close functional integration and community of interest of the carpenters with the operational employees during their 22-year history of inclusion in the unit as rendering a separate unit inappropriate.[33] However, in the *Jay Kay Metal Specialties* case,[34] a self-de-

[30] 162 NLRB No. 53.

[31] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority. Member Fanning, dissenting, viewed the record as showing that the occasions of overlap in work assignments between the tool-and-die makers and the other employees were only occasional in nature, and that the requested employees had maintained their separate identity despite inclusion in the broader unit for an extended period of time.

[32] *Allied Chemical Corp.*, 165 NLRB No. 23

[33] Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, would grant the petition on the ground that the carpenters have maintained their identity as a functionally distinct group of craft employees in a plant which has a long history of craft elections. In his view, the absence of interchange between the carpenters and other crafts or production employees, and the fact that carpenters worked only on the day shift, preclude viewing their work as a necessary condition to the continuous efficiency and safe function of the production process although contributing to the orderly functioning of the process, and also preclude reliance on a finding that their work is integrated with that of other employees.

[34] 163 NLRB No. 86.

termination election was granted a unit of tool-and-die employees in the plant of a manufacturer of electrical appliances. The tool-and-die makers and toolroom department employees sought worked in a separate location under separate supervision doing craft work of a repetitive nature with only a small portion of their time spent in plant production areas. Special provisions in the contract left the employer sole discretion of classification, and wage rates were negotiated with those employees individually. Under these circumstances the Board found their separate identity had been maintained and that it was established that they enjoyed a separate community of interest warranting separate representation if they so desired.

The *Dupont* case [35] involved a petition for establishment of a craft unit of electricians in a continuous process chemical manufacturing plant without prior bargaining history. In finding the separate unit appropriate, the Board noted that although the electrical maintenance work performed by unit members was coordinated with the production work, the actual electrical work was performed solely by the electricians subject only to the supervision and direction of electrician supervisors. The Board found this separate community of interest existed notwithstanding the highly integrated nature of the manufacturing process. In so holding it stated: "Integration of a manufacturing process is a factor to be considered in unit determinations. But it is not in and of itself sufficient to preclude the formation of a separate craft bargaining unit, unless it results in such a fusion of functions, skills, and working conditions between those in the asserted craft group and others outside it as to obliterate any meaningful lines of separate craft identity." The Board concluded that notwithstanding these circumstances, there had been no such merger of functions, skills, and working conditions as to erase the separate identity of the craftsmen, and no other conditions precluded a finding that their separate community of interest was sufficiently distinct to allow formation of the unit sought.[36]

The Board's view that the integrated aspect of an employer's operation is "but one relevant factor in determining the appropriateness or inappropriateness of a proposed unit regardless of the industry involved" was also made clear in the *Timber Products Company* case,[37] which involved a petition for the initial establishment of a unit of electrical maintenance employees in the primary lumber industry. The Board had early held [38] that industry to be within the *National Tube*

[35] *E. I. Dupont de Nemours & Co.*, 162 NLRB No. 49

[36] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority Member Fanning, concurring, would not rely on the absence of bargaining history on a more comprehensive basis as a reason for finding the unit appropriate.

[37] 164 NLRB No. 109.

[38] *Weyerhaeuser Timber Co*, 87 NLRB 1076 (1949).

doctrine, finding that in view of the history of industrial bargaining, the integration of processes, and the specialization of employee work assignments, "separate craft representation is not appropriate for employees in the lumber industry." [39] Appraising the instant record, however, under the *Mallinckrodt* standard to evaluate "all considerations relevant to an informed decision" of the unit issue, the Board noted the integrated operational nature of the production process and the concomitant high degree of functional coordination between the production employees and maintenance electricians. It also recognized that the pattern of bargaining in the basic lumber industry had almost been exclusively on an industrial rather than craft basis [40] and that pattern had been conducive to a substantial degree of stability in labor relations. Examining then the employees' work requirements and qualifications, the Board concluded that they were "essentially no more than specialized workmen with limited skills and training adapted to the particular process of the employer's operations." And that such specialists, unlike craftsmen, are not entitled to separate representation on a craft basis. Under all these circumstances, the Board dismissed the petition.[41]

Establishment of a multidepartmental unit of employees in the bindery and shipping departments of a book printing and distributing firm was approved by the Board in another case.[42] Evaluating the facts in the absence of a prior bargaining history, the Board found that the employees in the two departments involved were the only ones who performed functions subsequent to the printing process and that there was frequent interchange between the departments depending upon production needs. The Board found that interchange with other departments was not significant and that the separate immediate supervision and location in adjacent areas caused the employees to share an identified and common separate community of interests.

The guidance of the principles established in *Mallinckrodt* was also followed by the Board in the *Goodyear* case,[43] where the Board denied

[39] *Id.* at 1082.

[40] An election in such an industrial unit, encompassing two mills, was directed by the Board in *Walla Walla Mills,* 164 NLRB No. 146, where the woods crews cutting logs for the mill were excluded from the unit in view of the substantial difference of their location, functions, and conditions of employment

[41] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority emphasized that the dismissal in this case "should not be construed as foreclosing the severance or the initial establishment of appropriate craft units in this industry." Member Fanning, dissenting, would direct an election, since in his view the record clearly established the craft qualification and status of the employees and Board precedent established that the craft unit was clearly appropriate in the context of initial organization.

In a companion case also involving the appropriateness of a unit of maintenance electricians in the basic lumber industry, the Board (Chairman McCulloch and Members Brown and Jenkins) dismissed the petition for the same reasons as relied on in *Timber Products. Potlatch Forests,* 165 NLRB No. 89.

[42] *Doubleday & Co.,* 165 NLRB No. 41.

[43] *Goodyear Tire & Rubber Co.,* 165 NLRB No. 28.

severance of a multiplant unit of electricians from an established multiplant production and maintenance unit. The employer was engaged in the production and manufacture of a variety of products, including rubber tires and chemicals. Electricians were an integral part of an overall maintenance department of numerous classifications of craftlike employees among whom the electricians function to furnish the electrical power supply and provide the servicing and maintenance of machinery. The Board found that most of the work was performed in the production area on production machinery in close association with production and other maintenance and construction employees. Identified to some extent because of their skills, the functions the electricians perform are largely specialized and do not in all respects require the skill of craftsmen. The Board also relied on their high degree of integration with the production process which established a close community of interest with the other employees, as evidenced by the established bargaining pattern. In the Board's view the interest to be served by maintaining the established bargaining unit far outweighed the interest that might be served by affording the electricians a self-determination election.[44]

3. Truckdriver Units

The appropriateness of separate units of truckdrivers, or their inclusion within a larger unit, was considered by the Board in a number of cases decided during the year. In *Dura-Containers*,[45] the Board considered the appropriateness under its *Kalamazoo Paper Box* decision [46] of the requested severance of a unit of truckdrivers from the production and maintenance unit in a corrugated shipping container plant. The drivers, engaged principally in delivering the finished product to customers, reported to the shipping department foreman, who assigned them other work in the plant when there was no driving to be done. Finding that this in-plant work constituted a substantial part of the work assignment and that the common supervision, hours of work, and other conditions of employment created a very substantial community of interest shared with the other employees, the Board concluded they were not such a functionally distinct group with special interests distinguished from the other employees as to warrant severance. In another case,[47] the Board found the employees in the re-

[44] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority. Member Fanning, concurring, would find that the electricians do not share a community of interest so separate and distinct from that of the other employees as to warrant a finding that they constitute an appropriate craft unit entitled to a craft severance election, relying largely on the broad divergence of skills, functions, and training requirements prevailing among the electricians at the various plants of the proposed multiplant unit

[45] 164 NLRB No. 45.

[46] 136 NLRB 134 (1962), Twenty-seventh Annual Report (1962), p. 64.

[47] *Mc-Mor-Han Trucking Co*, 166 NLRB No. 44.

quested unit limited to truckdrivers enjoyed a sufficient community of interest separate and apart from the mechanics servicing the trucks to warrant separate representation. The union sought to represent the truckdrivers separately, there was no prior bargaining history, and no other union sought to represent them on a broader basis. Rejecting the employer's contention that only a unit including both the truckdrivers and mechanics of an employer engaged in over-the-road transportation of fluid milk was appropriate, the Board found that the difference in working time and conditions, method of payment, hiring qualifications, and skill and experience requirements created a sufficiently distinct community of interest to identify the truckdrivers as a functionally distinct group which may constitute a separate appropriate unit. In approving the requested unit, the Board noted "it is not the Board's function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist."

The appropriateness of a separate unit of truckdrivers was also considered in two cases involving contract logging operations in the lumber industry.[48] Although the primary function of the drivers was to drive trucks of logs to the sawmill, the Board found that the drivers also performed many other jobs at the wood show including brush burning, driving other loading equipment and bulldozers, and working in the shop. The Board also noted the integrated nature of the various job classifications at the logging location as well as the employer's preference for hiring truckdrivers with woods experience. In view of the community of interest shared with the other woods employees and the frequent transferring between job classifications, the Board found that units limited to the drivers and repairmen were inappropriate.

4. Construction Laborer Units

The Board, in the *Butler* case,[49] was for the first time presented with question of whether a proposed single unit of laborers in the construction industry is appropriate where none of the other construction employees of the employer are represented or requested to be represented. The construction laborers, who performed heavy-duty manual work at the construction site, were not required to have any special skills or training and worked on a job-to-job basis for the employer, being frequently transferred from one job to another. The

[48] *Claridge Logging Co*, 164 NLRB No. 147; *Boyden Logging*, 164 NLRB No. 148

[49] *R. B. Butler, Inc*, 160 NLRB 1595. See also the following companion cases, *Temple Associates*, 161 NLRB 1604; *Vance & Thurmond General Contractors*, 161 NLRB 1602, *B-W Construction Co.*, 161 NLRB 1600.

petitioning union was one that had traditionally represented laborers engaged in construction work throughout the area and had many collective-bargaining agreements covering employees who performed substantially the same work as that of the employees in the requested unit. The Board also noted that the employer has, at various times, followed laborers' wage scales established by area contracts and has also used a laborers' union hiring hall as a source of employees for one of his jobs. On other jobs, the employer has abided by the terms and conditions of collective-bargaining contracts covering laborers, which were followed in the area where the job was being performed.

Observing that although an overall unit is presumptively appropriate for the purposes of collective-bargaining, the Act did not compel labor organizations to seek representation in the most comprehensive grouping, but only in an appropriate unit, the Board viewed the decision before it as limited to whether a separate unit of construction laborers is an appropriate unit for collective bargaining under the Act. The Board found that in the construction industry collective bargaining for groups of employees identified by function is an established accommodation to the needs of the industry and of the employees. And the fact that construction laborers have traditionally been organized and represented by their separate union, which has negotiated collective-bargaining agreements for such employees, supports the appropriateness of a unit of such employees. In view of this functional distinctness, their substantially lower rate of pay, and their traditional representation by the petitioner in the type of unit requested, the Board held the laborers constituted "a readily identifiable and homogeneous group with a community of interests separate and apart from other employees," and the requested unit was therefore an appropriate unit under the Act.

5. Hotel Units

As a result of "much experience and better insight into the hotel-motel industry" gained since issuance of its *Arlington Hotel* decision,[50] the Board in *Holiday Inn* [51] overruled the holding of *Arlington* that all hotel-motel operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for unit purposes. The Board recognized that its experience indicated that such a degree of integration of functions and employee interests does not exist in every hotel or motel. It therefore determined to consider each case on the facts peculiar to it in order to

[50] 126 NLRB 400 (1960), Twenty-fifth Annual Report (1960), p. 42.

[51] *John Hammonds & Roy Winegardner d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant,* 160 NLRB 927.

determine the true community of interest among particular employees. Considering the functions and interests of the employees of a motel and restaurant which formed a single business enterprise for jurisdiction purposes, the Board concluded that their functions were not so integrated as to preclude a finding that the restaurant employees form a separate appropriate unit. It noted that although the motel and restaurant are under the same manager, they have separate immediate supervision, they have no employee interchange, and the functions of the restaurant employees were clearly definable and separable from those of the motel employees. The extent to which the restaurant provided club rooms and banquet facilities for other than room guests further emphasized the separation of functions. Under these circumstances, the Board found a bargaining unit limited to the restaurant employees was appropriate.

Consistent with the above holding, the Board in the *Capitol Park* case [52] found that a unit limited to "blue collar" workers in a coordinated complex of high rise and townhouse apartment units was appropriate. Relying on the reversal of *Arlington Hotel* in *Holiday Inn*, *supra*, the Board distinguished decisions requiring the inclusion of receptionists and rental clerks [53] to find that in view of the type of maintenance jobs performed by the employees, the lack of interchange with other employees dealing with the tenants and public, as well as other differences in working conditions, the "blue collar" workers shared a sufficient community of interest to warrant finding them a separate bargaining unit.

6. Single-Location Units in Multiple-Location Enterprises

The basis for finding appropriate a unit of employees at a single location of a retail chain or similar multiple-location enterprise received further articulation by the Board in several decisions during the year, including two in which courts of appeals had remanded cases for further consideration by the Board. In *Purity Food Stores*,[54] the Board found that the presumptive appropriateness of a single store as the basic appropriate unit in a retail grocery chain operation had not been overcome by evidence of centralized control of all the stores. In finding that the employees of a single store were an appropriate unit, the Board noted that it was not confronted with a multiple-facility operation so integrated that separation of one store from the others for purposes of collective bargaining would obstruct centralized control and effective operations of the chain. The store in issue was separated geographically from the others and served a different

[52] *Shannon & Luchs, Agents, Capitol Park One,* 162 NLRB No. 130.

[53] *Mensh Corp*, 159 NLRB 156 (1966).

[54] 160 NLRB 651, on remand from the First Circuit, 354 F.2d 926, 150 NLRB 1523 (1965).

trade area. It was thus found to be a distinct economic unit within the overall operations. Noting the economic independence of the store, the Board observed that, as is customary in any chain operation, employees in each store performed parallel as distinguished from integrated functions, with the success or failure of one store in no way determinative of the effectiveness of day-to-day operations at any other store. The substantial autonomy of the store, both with respect to normal operational matters and the local implementation of chainwide policy, caused the employees to be closely and distinctly related in location and function. Their common interests in relation to their employer rendered the unit inherently apt for bargaining purposes. In rejecting the contention that the autonomy of the store was diminished because its management was subordinate to central office executives, the Board found that the status of a chainstore as a distinct economic unit is not dependent upon the identity of the individual within a particular line of administration who is responsible for exercising store level authority, but rather emanates from the fact that decisions having no relevance to other stores are and must be made concerning operations of a particular store. Noting that "the impact of any labor dispute in the . . . store is not likely to be felt at Respondent's other outlets which serve different markets," the Board expressed the view that to regard the "administrative structure as defeating the appropriateness of the single-store unit would artificially disadvantage the organizational interests of these and other chainstore employees, simply because their employer operates a chain rather than a single-store enterprise." Having thus considered all relevant factors including the employer's evidence and contentions concerning the impact of centralized control, and the effect upon its management control of its operations of the creation of a single-store unit, the Board continued to adhere to its initial determination that all full-time and part-time employees at the single store constituted an appropriae bargaining unit.[55]

Another remanded case in which the Board, applying the principles in *Purity Food Stores*, also reaffirmed its initial unit determination upon similar considerations was *Davis Cafeteria*.[56] In explicating the basis for its determination that separate units of employees at each of two cafeterias located in the same county and within the same administrative district of the employer were appropriate for collective-bargaining purposes, the Board noted the degree of functional integration between the central office and all the employees in the chain

[55] For court review of this decision see *infra*, p 144

[56] 160 NLRB 1141, on remand from the Fifth Circuit, 358 F 2d 98, 145 NLRB 82 (1963)

as evidenced by central office record and payroll maintenance and operating policy decisions. It nevertheless found that the existing functional integration was not of a degree adequate to defeat the separate identity of the two cafeterias in view of the substantial autonomy of each cafeteria and the operational freedom of the local management. The Board concluded that the two cafeterias were each a distinct self-contained economic unit and their geographic separation from the others, lack of employee interchange and bargaining history, and the fact that no labor organization sought to represent the employees on a broader basis rendered separate units of employees at each of them an appropriate unit for bargaining purposes. Rejecting, therefore, the contention that to find appropriate single-cafeteria units would segmentize and fragmentize into single units a completely and totally integrated cafeteria chain operation, the Board affirmed its prior decision, expressing the view that it fully conforms with the provisions of the Act and assures to employees their fullest freedom in exercising their rights guaranteed under the Act. However, in *Caribbean Restaurants*,[57] the Board found a single-restaurant unit inappropriate, in view of what it found to be the highly integrated nature of the chain operation under which the degree of centralized control exercised left the individual restaurant managers with very little control over the operation of their restaurants. It therefore concluded that the single restaurant requested had lost its individual identity and did not constitute a distinct self-contained economic unit whose employees could constitute an appropriate unit.

The issue of appropriateness of a single-location unit was also presented in the context of an established history of bargaining on a multiple-location basis. *John's Bargain Stores* [58] involved a request to sever a unit of warehouse employees from a broader bargaining unit which when established encompassed not only the warehouse, but the five retail outlets then operated by the employer which the warehouse served. The number of retail outlets serviced from the warehouse had since increased to 50. The Board noted that it was abundantly clear that the warehouse employees, engaged in different tasks in a different location and under separate supervision, do enjoy a separate community of interest distinct from the employees in the retail outlets with whom they have no interchange. Absent the bargaining history, the unit requested would be appropriate as a separate warehouse unit under established precedent; and the Board found that, under the circumstances of the case, the bargaining history, consisting of only the first contract negotiated after recognition upon a State agency conducted card check, was not sufficient to tip the scales toward

[57] 162 NLRB No. 60.
[58] 160 NLRB 1519

finding that the unit sought was not appropriate. In considering the insufficiency of the bargaining history the Board also found the relationship was established when only a small portion of the present complement of employees was employed and that the addition of subsequently acquired stores to the existing unit had resulted in a threefold increase in the size of the unit. It rejected an attempted analogy to the context of multiemployer bargaining where the Board's determinations have evaluated the intention of the parties to be bound by group action. Policies concerning such a unit, being founded upon consent, were held to have little bearing on an issue concerning severance from an established multiple-location unit.[59]

7. Inappropriateness of Separate Units After Merger of Operations

Unit determinations to resolve disputes concerning the representation of employees doing identical work at the same location after merger of separate operations were made by the Board in two cases where the employees had been represented in separate units prior to the merger. In *Panda Terminals* [60] the economically motivated consolidation of freight handling operations at a single facility, which had theretofore been handled at separate facilities, resulted in competing claims by each of the unions to the right to represent all the employees engaged in the combined freight handling functions. The work performed at the combined terminal was identical to that previously handled at each of the two separate facilities except that the volume was vastly increased. The Board rejected the contentions of each of the unions that the expanded operations constituted an accretion to its bargaining unit and that its current contract was, therefore, a bar to the petition. Similar contentions that the consolidation constituted merely a relocation of business with a subsequent expansion was also rejected by the Board's finding that "the consolidation of the two terminal operations . . . is comparable to an entirely new operation." Under these circumstances, the Board directed an election in a unit encompassing all the freight handlers. The same conclusion was reached in *Cutler-Hammer* [61] where, because of the merger of tool design and machine design operations, previously established separate units of designers and draftsmen engaged in each of the operations were found to be no longer appropriate. Considering the similarity of conditions of employment of the employees after the merger, including

[59] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority Member Brown, dissenting, would find the multistore bargaining history controlling and dismiss the petition.

[60] 161 NLRB 1215.

[61] 161 NLRB 1627.

the significance of dual assignment of tool designers and machine designers to the same project without regard for the cleavage in job functions previously existing, the Board found the previously established separate units for the two types of designers and draftsmen no longer appropriate, and that only a single unit encompassing all such employees was appropriate.

8. Other Unit Issues

a. Employee Status of "Guards"

The prohibition of section 9(b)(3) of the Act against Board certification of a labor organization as representative of a bargaining unit of guards, if the organization admits to membership employees other than guards,[62] required the Board again this year to determine the employee status of individuals alleged to be guards in order to resolve the appropriateness of their inclusion in a unit requested by such a nonguard labor organization. In the *American Telegraph* case,[63] the status as guards of employees engaged in furnishing protective services against industrial process interruption, fire, and unlawful entry onto premises, by means of electric, electronic, and electromagnetic devices installed and maintained by them, was resolved by the Board. Those employees who were uniformed, were armed, and had special police commissions from the local authorities were, of course, clearly guards. The employer, however, contended that those employees who monitored signals received at the central station and those responsible for new installations, periodic inspection, and maintenance and repair of equipment were also guards, since the integrated nature of the operation required all servicemen in any way associated with modern protective techniques to be classified as guards under the Act. The Board reaffirmed its agreement with established precedent[64] holding that the concept of guard under the statute is not limited to one who guards the premises of his own employer, but included those who enforce rules to protect the property of any employer or the safety of persons on the property. It concluded, however, that those employees who merely worked on the installation and maintenance of the protective equipment did not come within the statutory definition of guards

[62] Sec. 9(b)(3) reads in pertinent part as follows. "That the Board shall not . . . decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

[63] *American District Telegraph Co.*, 160 NLRB 1130.

[64] *N.L.R.B.* v *American District Telegraph Co.*, 205 F.2d 86 (C.A. 3).

as they were not engaged in enforcing rules to protect property or the safety of persons on the employer's premises. For the same reason, those employees whose work was confined to the monitoring of signals at the central stations were held not to be guards. In another case,[65] yardmen working at a petroleum storage and distribution center were found not to be guards, notwithstanding their weekend assignment to work as guards on a rotating basis. The employees in question were the only employees in the total work complement, other than clerical employees, who were not concededly guards. The time the yardmen spent on guard duties was found to be only 13 percent of their work-time, and while on guard duty the only other employees present were two other admitted guards with whom they worked. The yardmen were found not to be guards within the meaning of section 9(b)(3) since, in the Board view, they were not required to make rounds when employees were working and spent a comparatively small portion of their working time performing this function, thereby preventing their being in a position where there might be a conflict between loyalty to fellow union members and duty to employer.

b. Managerial Status of Engineers

The employer's contention that certain engineers whose representation was sought were not employees because they performed duties of a managerial or supervisory character, was presented the Board in *Westinghouse.*[66] The engineers' job duties were assigned with reference to specific customer job orders relating to the sale, installation, and service of electric generating machinery and equipment. Their work and responsibilities, performed almost entirely without supervision at customer's sites, varied with the contract requirements providing for technical supervision of the job only, or for the responsibility for the entire project work including material and labor. Although in the former circumstances the engineers cooperate with the customer in scheduling, planning, and task performance sequence, all implemented by necessary technical instructions, only in the latter situation does the engineer's duty include the purchasing of material, the hiring of necessary craftsmen and line supervisors, and the assumption of managerial detail and responsibilities. Under these circumstances, the Board found that the engineers engaged in performance of contracts calling for technical services did not function in a managerial capacity, whereas engineers assigned as leadmen on the labor contract projects did have duties and responsibilities "clearly supervisory in character" which established their supervisory status under the Act.

[65] *New England Tank Cleaning Co.*, 161 NLRB 1474
[66] *Westinghouse Electric Corp.*, 163 NLRB No. 96.

The Board, however, rejected the contention that those engineers who had functioned as lead engineers on labor contract projects should be wholly excluded from the unit. The Board noted that the record revealed that the supervisory jobs were intermittent and "not regularly and closely intermingled with their nonsupervisory work activity." And that even when so employed the engineers' right to exercise supervisory authority did not extend to other engineers but was limited rather to nonprofessional craft employees hired for the project. In accordance with the principle established in the *Great Western Sugar* case,[67] where the seasonal supervisors are included in the unit only with respect to their rank-and-file duties, the Board granted the engineers who were primarily attached to the nonsupervisory force the right to representation limited to those portions of their time they were employed in nonsupervisory engineering work. The demarcation for voting eligibility and inclusion in the unit were for those who, during the 12 months preceding the date of decision, spent 50 percent or more of their working time performing nonsupervisory duties.

c. Job Corps Units

Evolving forms of enterprises and the new employee relationships and activities which they sometimes develop presented the Board during the year with the question of the employee grouping at Job Corps centers which were appropriate units for bargaining purposes.[68] These centers, conducted by private firms under contract with the Office of Economic Opportunity, a Federal Government agency, are vocation oriented schools for resident corpsmen designed to prepare them for work and social participation. This objective is sought to be accomplished through a total environmental approach in which the corpsmen receive teaching instruction and advice and counseling from the employees, many of whom live at the center, in a manner whereby those efforts are coordinated and integrated for maximum effectiveness. In view of this coordinated and integrated program, the Board found that the duties and functions of the teachers, resident advisors, and counselors were similar and closely related, creating a community of interest shared by all those employees. It therefore found that a unit encompassing all employees in those categories was the only appropriate unit for such a center.

d. Contract Employees

In the *Manpower* case,[69] the Board was called upon to determine whether employees supplied under contract, to an employer utilizing

[67] 137 NLRB 551 (1962), Twenty-seventh Annual Report (1962), pp 75–76.
[68] *Training Corp. of America,* 162 NLRB No. 28; *Federal Electric Corp.,* 162 NLRB No. 42.
[69] *Manpower, Inc., of Shelby County,* 164 NLRB No. 37.

them in his daily operations in lieu of hiring employees on his own payroll, are to be considered employees of the contracting parties as joint employers, and, if so, whether they may constitute a separate appropriate unit. The employees, truckdrivers, were supplied pursuant to an oral agreement terminable at will by either party. The supplying party paid the drivers and had sole discretion as to their rates. The party utilizing their services paid for them in accordance with an agreed contract-rate schedule based upon the number of miles driven. Rejecting the contention that the employees were employed solely by the supplier, the Board found the parties were joint employers in that they both take part in determining matters concerning essential terms and conditions of employment, qualifications for the job, and method and means whereby the job is performed. The Board, therefore, found that all drivers employed by the joint employers constituted an appropriate unit and accordingly directed an election.

D. 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.[70] 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.[71] However, if the election was one directed by the Board,[72] the regional director may either (1) make a report on the objections, subject to

[70] Rules and Regulations, sec. 102.62(a).
[71] Rules and Regulations, secs. 102 62(b), 102.69(c).
[72] Rules and Regulations, secs. 102.62, 102 67.

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.[73]

1. Eligibility To Vote in Oilfield Employees Unit

Although the determination of the scope and composition of the unit appropriate for representation serves to define the employee categories eligible to vote in the election, the current status of the employment relationship may further define voter eligibility. Two cases in which the transitory nature of the employment and high turnover among the employees in the unit found appropriate required the Board to give special consideration to this type of voter eligibility formula involved elections to be conducted in units composed of derrickmen, motormen, and floorhands of oil drilling operations. These employees are also referred to as roughnecks. In examining the employer's mode of operations in one case [74] to determine the most appropriate formula, the Board noted the drilling rigs were currently being used to perform development work at various locations in proven oilfields covering a very large geographic area.[75] As new crews were assembled for each job at which the rig was placed the length of employment varied in accordance with the time required to complete the drilling job, an average of about 18 days. This relatively short amount of time spent on a drilling job, added to the fact that many of those employed were transients who did not seek continuous employment, caused a high turnover among the employees. During the preceding year the employer's roughnecks had worked only an average time of 34 days and almost one-half had voluntarily quit their employment before completion of the job for which they had been employed.

Finding that the employment practice in the oil well drilling industry differs substantially from that of other industries, the Board sought to devise an eligibility formula which would "protect and give full effect to the voting rights of those employees who have a reasonable expectancy of future employment" with the employer, and yet not be so broad as to "permit the question of union representation to be decided by those individuals who have no likelihood of reemployment." The Board viewed the petitioning union's eligibility proposal, which would permit all those having had 10 days' employment during the past fiscal year to vote, as being too broad, and the employer's proposal to limit voting to those employed at the time of the direction of election as too narrow. The Board resolved the issue by limiting eligibility to

[73] Rules and Regulations, secs. 102.69(c), 102.69(e).

[74] *Hondo Drilling Co. N.S L.*, 164 NLRB No. 67.

[75] The employer operated in the Permian Basin located in West Texas and East New Mexico which encompassed some 95,000 square miles.

all employees in the unit who were on the payroll preceding issuance of the direction of election, as well as those who had worked for the employer for a minimum of 10 working days during the 90-calendar-day period preceding that date. However, employees who had been terminated for cause or voluntarily quit prior to the completion of their job were excluded as the employer's practice precluded their eligibility for reemployment. The same formula was employed in a very similar companion case [76] where the only difference was somewhat greater length of employment on the job, which frequently consisted of 60 to 70 days at one location.

2. Name and Address Lists of Eligible Voters

The Board's rule announced last year in the *Excelsior Underwear* decision,[77] requiring that a list of names and addresses of all eligible voters be made available to all parties to an election in order to facilitate campaign communications and thereby assure an informed electorate, was the subject of further construction in the course of this fiscal year in a number of cases in which the alleged failure to comply with the requirements of the rule was alleged as a basis for setting aside the election. In *British Auto Parts*,[78] the Board rejected the employer's contention that the rule was invalid and ordered an election set aside upon finding that its actions in leaving it to the employees, if they chose to do so, to send their names and addresses to the Board did not constitute compliance with the rule. The employer had sent each employee a letter informing him that the Board had requested this information in order to make it available to the union and enclosed an envelope addressed to the regional director for the employee's use should he desire to forward his address. A similar result was reached in another case [79] where the employer posted a notice informing employees of its reasons for refusing to comply with the requirement and furnishing the addresses of the unions so the employees who wished to do so could communicate with them. In *Crane Packing* [80] and *Swift & Co.*,[81] the Board rejected the employers' contentions that there was no need for the list since there were ample other means of communicating with the employees involved. The Board emphasized that the rule was designed to "*insure* the opportunity of all employees to be reached by all parties" even assuming the availability of other avenues by which the parties "*might* be able to communicate with employees."

[76] *Carl B King Drilling Co*, 164 NLRB No. 68.
[77] 156 NLRB 1236 (1966), Thirty-first Annual Report (1966), pp. 61–63.
[78] *British Auto Parts*, 160 NLRB 239.
[79] *Montgomery Ward & Co.*, 160 NLRB 1188
[80] 160 NLRB 164.
[81] 163 NLRB No. 6.

It found no justification for permitting employers to decide for themselves in each case whether a "need" for the list exists.[82]

Other cases involved the late submission of the required list, and the effect to be accorded errors in the list. In two cases[83] the Board found in each instance that a delay in submission of the list beyond the due date specified in the direction of the election did not under the circumstances justify setting aside the election. In the first case, the delay was occasioned by negotiations between the parties which might have made the election unnecessary. In the second, it was by agreement of the parties that the list would be delivered at a preelection conference. In each instance, however, the list was in fact in the hands of all parties more than 10 days prior to the election. The Board found sufficient opportunity to communicate with the employees in both cases and substantial compliance with the requirements of the *Excelsior* rule. The list timely furnished by the employer in *Valley Die Cast*[84] was objected to as inadequate when some letters mailed by the union to the addresses provided were returned because of incorrect and inadequate addresses. Immediately upon being informed of the errors in the list, the employer sought to obtain from the employees correct and updated information which was then supplied to the petitioning union. The list had been clerically compiled from the employer's master file of employees' addresses and there was no evidence of negligence on the part of the employer in its preparation. The Board approved the regional director's overruling of the objection based upon the inaccuracies in the list, finding that " the employer made a full and prompt disclosure of all information available and maintained by it in accordance with its traditional and uniform business practice."

3. Authority to Define Unit Through Rulings on Challenges

The solution of challenges interposed to the ballot of an individual on the ground that he is not eligible to vote often requires a determination of unit coverage in specific terms. In two cases decided during the year, the authority of the regional director or Board to interpret and define the unit agreed upon and consented to by the parties was brought into question under specific circumstances. In one case[85] the employer and union had entered into an agreement for a consent election defining the unit as "all production and maintenance employees" and providing that the determination of the regional director as to questions of eligibility of voters would be final and binding. The ballots of two brothers of the owner of the employing company were chal-

[82] *Swift & Co , supra*

[83] *United States Consumer Products,* 164 NLRB No 158 ; *Program Aids Co ,* 163 NLRB No. 54.

[84] 160 NLRB 1881.

[85] *Mitchiyoshi Uyeda, d/b/a Udaco Mfg Co.,* 164 NLRB No. 84.

lenged on the ground they were supervisors, and later also because they were relatives of the owner. The regional director's decision sustaining the challenges on the ground of the special status of the brothers as sharing a community of interest with the employer was challenged on the ground that the agreement as to the unit was controlling upon the regional director and limited his powers by permitting no deviation from the stipulated unit. As the brothers were concededly production employees, and therefore literally within the unit, it was contended that the exclusion of their votes invalidated the certification. In rejecting this contention and sustaining the regional director's exclusion of the ballots of the brothers, the Board noted that section 9(b) of the Act grants the Board broad authority to determine the appropriate unit, and section 9(c)(4), which authorizes elections by consent agreement, specifically provides that such elections be held "in conformity with regulations and rules of decisions of the Board." The Board noted that the stipulated unit was only defined in general terms and not in terms of the specific employees. As such it defined only the composition of the unit, but did not resolve questions which might arise concerning the eligibility to vote. In exercising his authority to determine eligibility pursuant to the challenges, the regional director had the duty to investigate and determine the voting eligibility of the employees and apply Board precedent in resolving the issues. Considering the facts relating to the brothers' status, the Board sustained the ruling that they were ineligible to vote. In the other case,[86] however, the Board held that the challenged ballot of an employee could not be counted since her work classification was not embraced by any of the five classifications specifically stipulated to by the parties for inclusion in the unit. The Board noted that the stipulated unit was described only in terms of the specific classifications and had no generic description. It found that the failure of the parties to include the classification of the challenged employee "clearly indicates their intention that such a classification should *not* be a part of the unit complement." It rejected the view that since the parties had neither included nor excluded that classification, their failure to specify its unit placement requires that the Board make this determination.

4. 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

[86] *Sedgwick Furniture,* 161 NLRB 304

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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. Preelection Assistance

Participation in an election by a union to which the employer had rendered unremedied illegal assistance was held by the Board in the *Weather Seal* case [87] to be grounds for setting aside the election. In this consolidated unfair labor practice and representation proceeding, the Board found that the employer had rendered assistance to one of two unions attempting to organize its employees by soliciting some of them to assist the union, and by warning employees of the detrimental effects in the event of selection of the other union. The Board found it was clear that the assisted union appeared on the ballot and participated in the election at a time when illegal assistance had not been corrected. It concluded that, although all the events constituting unlawful assistance occurred prior to the filing of the petition, "it cannot be said that the election was fairly and properly conducted or that the results of the election represent the freely expressed desires of the employees." Although noting that the participation in the election by the assisted union was not specifically alleged as an objection, the Board concluded that since the effects of the assistance had not been remedied, it was compelled to consider the presence of that union on the ballot as sufficiently serious in the present case to require that the election be set aside and conducted again at such time as the regional director is satisfied that the effect of the unlawful assistance had been dissipated.[88]

b. Preelection Benefits

In two cases decided during the report year, the Board was called upon to rule upon objections that benefits granted by the employer to the employees prior to the election were cause for setting aside the election. In one case,[89] the employer during the course of negotiations with the incumbent union had agreed to make certain reclassifications carrying with them increased earnings not to be considered as part of the wage increase which was one of the subjects of negotiations. There-

[87] 161 NLRB 1226.

[88] Relying on *Reliance Steel Products,* 135 NLRB 730 (1962), to sustain setting aside the election as part of the remedy of an 8(a)(2) violation, the Board distinguished the court denial of enforcement of that decision (322 F.2d 49 (C.A. 5), Twenty-ninth Annual Report (1964), p. 131) insofar that in this case no certification had issued and it was the participation in the election of the assisted union, not the unfair labor practices themselves, which rendered the election invalid.

[89] *Bud Radio, Inc.,* 165 NLRB No. 25.

after the agreement reached was rejected by the employees and, notwithstanding the filing of a decertification petition, the employer and the union signed a memorandum of agreement. While the election was pending, the employer announced that the new contract would be effective retroactively should the union be recertified after the decertification election. The reclassifications were also put into effect since they were designed primarily to induce certain difficult-to-replace employees to remain with the employer. A copy of the memorandum of agreement was also sent each employee by the union. Rejecting the objections filed when the union won the election, the Board found that the employer's bulletin and the union's letter concerning the memorandum were neither misleading nor coercive, as it was merely the formal acknowledgment of the parties of the terms agreed upon well in advance of the filing of the petition. Under these circumstances, the Board found that neither the memorandum nor its publication was objectionable conduct. It also found that the reclassifications, discussed between the parties during negotiations prior to the critical period and put into effect for the sound business reason of retaining employees difficult to replace, did not affect the results of the election and would not warrant setting it aside. The other case [90] involved an initial organization attempt where the union's campaign was keyed largely on a pay-rate issue which the employer was not free to change without the approval of NASA, to whom it had contracted services which would include the pay adjustment as a reimbursable item. The employer had in fact been negotiating with NASA for a change in the pay schedule since long before the organizing campaign began, but had been unable to obtain a final resolution of the matter. Upon approval of the wage adjustment by NASA, it was announced immediately to be effective shortly thereafter. Although the announcement was only a few days before the election, the Board concluded that since sanction of the wage adjustment was not a matter within the determination or discretion of the employer, but was wholly in the control of the Government agency and was effected only after being authorized and approved by that agency, the approval of the wage adjustment could not be deemed objectionable. The Board likewise found the timing of the announcement to be unobjectionable, particularly where the union had stressed the pay issue and its resolution had been sought by the employer who could not have acted earlier.

c. *Peerless Plywood* Rules

In determining whether preelection propaganda has interfered with the results of an election the Board looks not only to the content of

[90] *North American Aviation,* 162 NLRB No 159.

the propaganda, but also to the circumstances in which it was delivered. One limit upon the circumstances under which propaganda is disseminated is the *Peerless Plywood* rule [91] restraining parties from making speeches to massed assemblies of employees on company time within 24 hours of the election, even though such speech may otherwise be nonobjectionable. The applicability of the rule in one case involved resolution of the term "massed assemblies" of employees. In *Honeywell*,[92] during the period between a split-hours election, a supervisor stopped six employees at their work stations to ask them if they had any question concerning an employer fact sheet distributed earlier. Although none raised any questions, the supervisor continued to talk to the employees and read and commented to them as a group for the 1½ hours until they were ready to go to vote. The meeting, conducted with the knowledge and acquiescence of higher management, was on company time and the payment for the hours so utilized was charged to "employee welfare." In concluding that these circumstances constituted a meeting within the prohibition of the *Peerless Plywood* rule, the Board noted that the rule was designed to absolutely bar during the 24-hour preelection period the use of company time for campaign speeches in any form, specifically including electioneering of the type involved. The Board also was of the view that the six employees constituted a massed assembly within the intent of the rule, and rejected the contention that because only a single section of the employees was involved, constituting but a small percentage of all eligible voters, the speech was not sufficient to have affected the election result. The Board concluded that strict adherence to the *Peerless Plywood* regulation must continue to be required in the interest of promoting fair elections.[93] In another case,[94] a speech and comment made to a group of employees on their lunch hour, by union representatives on the premises for reasons unrelated to the election, was found not to be a violation even though the incident occurred only 3 hours prior to the election. The speech consisted of advice to the employees as to when and where to vote and, in response to employee inquiries, discussion of benefits the union claimed the employees would receive if the union were selected. Noting the extemporaneous nature of the speech, the employees' voluntary attendance, and the fact that, starting on the employees' own time, it ran over into company time for only a few moments with no member of management present, the Board found

[91] 107 NLRB 427 (1953), Nineteenth Annual Report (1954), p. 65.

[92] *Honeywell Incorporated*, 162 NLRB No. 10.

[93] Chairman McCulloch and Members Brown and Zagoria for the majority. Members Fanning and Jenkins, dissenting, were of the view that the 6 employees of a unit of 266 eligible voters should not be viewed as coming within the "massed assembly" concept of *Peerless Plywood*, and the speech, not being otherwise coercive, should not be ground for setting aside the election.

[94] *Nebraska Consolidated Mills*, 165 NLRB No. 60.

that the conduct did not require setting aside the election. It emphasized that the *Peerless Plywood* regulation does not apply "if the employee attendance is voluntary and on the employees own time," and that any extension of the speech into company time in this case was accidental and inconsequential.

The attempted invocation of *Peerless Plywood* by a supervisory employee against union organizational activities was found in the *General Electric* case [95] to be grounds for setting aside the election. Two days before the election the plant manager had told the employees that the Board rule prohibited campaigning, whether by meetings, the distribution of campaign material, or the contact of employees, within 24 hours before the election. Finding that the manager's statement was an erroneous interpretation of the Board's law, the Board noted that "its mischief lies not so much in being a misrepresentation of some material fact having relevant bearing on terms and conditions of employment, . . . but in being an unwarranted interference with an employee's right to receive all lawful communications reasonably concerned with the election." In the Board's view, the statement erroneously construing the rule as applicable to the distribution of literature could have led to the rejection of literature attempted to be distributed by the petitioner and other employees during the important hours immediately preceding the election.

d. 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.[96]

This criterion applied to a number of cases decided by the Board in the course of the report year in which disrupting misrepresentations were alleged to have been made. Among them were *Ore-Ida Foods* [97] and *Jones & Laughlin.*[98] In the *Ore-Ida* case, an election circular was

[95] 161 NLRB 618.

[96] *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), Twenty-eighth Annual Report (1963), p. 57.

[97] 160 NLRB 1396

[98] *Indianapolis Plant, Jones & Laughlin Steel Corp*, 160 NLRB 1629.

delivered to the employees' homes the night before the election by one of the two unions involved in the election. The circular represented that in the course of negotiations with the employer concerning another unit at the same plant the employer had offered a "47 cent per hour increase in wages and benefits over the next three years." The computation, based in part upon a calculated mileage increase, was overstated since the union had overestimated the miles per month driven and overlooked the fact that the pay increase was divided between the two employees required to man the truck, rather than accruing to each. The Board set aside the election on the ground that the letter was inaccurate and misleading as to a wage offer the union had obtained for another bargaining unit at the same plant. In view of the union's failure to indicate the basis of calculation, the employees were unable to evaluate on their own the validity of the claim, and the late distribution precluded the employer or the other union from making any effective reply prior to the election. In *Jones & Laughlin*, the employer had conducted an extensive campaign in opposition to the organization of its industrial supply warehouse employees, including many speeches and the distribution of election material. In these letters he had referred to the fact that in one of its comparable warehouses the union contract called for a 40-hour week, whereas the employees here were working a 45-hour scheduled week. Concurrent statements by a supervisor asserted that the possible effects of unionization on job classifications, as well as the resolution of the overtime issue, "would be between the union and the company." In finding that the letter and speeches did not transcend the permissible bounds of campaign propaganda, the Board rejected the contention that the employer was attempting to instill fear in the employees that designating the union would result in unilateral action by the employer adversely affecting overtime benefits. In the Board's view, however, the employees were not told that the loss of overtime was the unavoidable consequence of unionization. Similarly the evidence adduced with respect to the alleged supervisory threats was found not to establish the presence of a wide-based effort to create among the employees a pervasive fear that election of the union would work adverse economic results.[99]

The union's offer to employees to waive initiation fees for those applying for membership or joining before an election was considered by the Board [1] under circumstances leading to a reconsideration of its

[99] Chairman McCulloch and Members Fanning and Jenkins for the majority. Members Brown and Zagoria, dissenting, would find that the speeches and letters warranted direction of a new election since they contained threats that if the employees selected the union, the employer would retaliate by abrogating its existing overtime policy and thereby eliminate economic benefits.

[1] *Dit-Mco, Inc.*, 163 NLRB No. 147.

decision in *Lobue Bros.*[2] In *Lobue*, the Board had held that it would set aside an election if a preelection offer of reduced initiation fees to employees who later joined the union was made contingent upon the results of the election. Although finding no basis for setting aside the election under the circumstances of the case under consideration, since *Lobue* was plainly distinguishable, the Board expressed the view that "no real distinction exists between a situation where the union offers to waive or reduce the initiation fees, but nothing is said about the election results, and one where . . . the waiver is expressly conditioned on the outcome of the election." It concluded that the employees would recognize as a practical matter that the waived or reduced initiation fee could become of value only if the union wins the election. Since the employee will not be required to pay because of the union promise if the union wins, and he would similarly be under no obligation to pay if the union lost, the Board concluded it was completely illogical to characterize as improper inducement or coercion to vote "Yes" a waiver of something that can be avoided simply by voting "No." The Board further reasoned that "an employee who did not want the union to represent him would hardly be likely to vote for the union just because there would be no initial cost involved in obtaining membership. Since an election resulting in the union's defeat would entail not only no initial cost, but also insure that no dues would have to be paid as a condition of employment, the financial inducement, if a factor at all, would be in the direction of a vote against the union, rather than for it." The Board, therefore, concluded that waiver of union initiation fees, whether contingent upon the results of an election or not, had no improper effect on the freedom of choice and did not constitute a basis for setting aside an election. It accordingly overruled *Lobue Bros.* and subsequent cases to the extent inconsistent.

Several other cases involved employer statements concerning the impact of unionization upon existing pension and retirement plans. In *Humble Oil*,[3] the Board set aside an election on the basis of the employer's description of a new retirement plan for employees which described the eligibility requirements as including representation by the incumbent union which had negotiated the plan. Although there was no publicity during the election concerning the conditioning of eligibility on continued representation by the incumbent union, the Board found it necessary to consider whether the existence of such a retirement plan was a ground for setting aside the election. Noting that it had held that an employer who maintains such a pension plan thereby violates section 8(a)(1), the Board viewed it as clear that the employees in the unit could reasonably believe that if they selected a

[2] *Lobue Bros.*, 109 NLRB 1182 (1954), Twentieth Annual Report (1955), p. 64.
[3] *Humble Oil & Refining Co.*, 160 NLRB 1088.

different union as their bargaining representative, or voted against representation, they would not be entitled to retirement benefits under the plan. It, therefore, set aside the election upon the basis of interference of the plan with the free choice of representatives. In other cases,[4] however, the Board found that setting aside an election was not required although the employer had informed the employees that if the union were selected as bargaining representative, an existing security and saving plan would be terminated with the forfeiture of all accrued benefits. The plan was a voluntary participation plan which permitted continuation of benefits after selection of a union representative providing the employee were not thereupon automatically covered by an existing multiplant bargaining agreement. The petitioning union was an incumbent at other plants of the employer and its multiplant contract contained a savings program which implicitly precluded participation in other plans. As the multiplant contract provided that any newly certified local of the union would automatically come under its coverage, the Board concluded that there was no discretion in the employer as to whether to continue or terminate the voluntary plan upon the selection of this union petitioner. The employer, therefore, was found not to have interfered with the freedom of choice of the employees by informing them of the factual contents of the plan and the past practices of the parties, and did not thereby threaten them with reprisals in the event of selection of the union.

The recurrent issue of campaign appeals to factors of race were considered by the Board in several cases during the year.[5] One such case was *Baltimore Luggage*,[6] where the employer, in an attack on the validity of a certification which it refused to recognize, alleged the union had injected improper racial considerations into the preelection campaign. In rejecting the allegations, the Board stated the rationale of its approach to racially oriented propaganda in the following words:

> . . . in *Sewell*, we did not lay down the rule that parties would be forbidden to discuss race in representation elections. Rather, we set aside an election because the campaign arguments were inflammatory in character, setting race against race—an appeal to animosity rather than to consideration of economic and social conditions and circumstances and of possible actions to deal with them. On the other hand, in *Archer Laundry Company*, 150 NLRB 1427, and *Aristocrat Linen Supply Co., Inc.*, 150 NLRB 1448, we declined to set aside elections in which racial propaganda was utilized because of the different context and differing objectives. In our view, the key to the problem lies in a recognition of the relationship between economic security and social goals. . . .

[4] *General Electric Co.*, 161 NLRB 615; 161 NLRB 614; 161 NLRB 611; 161 NLRB 612.

[5] See Thirty-first Annual Report (1966), pp. 66–67; Thirtieth Annual Report (1965), p. 52, Twenty-eighth Annual Report (1963), pp. 58–59.

[6] 162 NLRB No. 113.

In short, campaign material of this type is directed at undoing disadvantages historically imposed [generally unlawfully] upon Negroes because of their race, through an appeal to collective action of the disadvantaged. The choice of racial basis for concerted action has been made, not by the victims who organize to seek redress, but by those who use race as a basis to impose the disadvantage. The fact that those selected for disadvantage are chosen by race can hardly justify, on some "two wrongs don't make a right" theory, preventing collective action on the basis of their race to overcome the disadvantage. For to prohibit reasonable, noninflammatory appeals to the solidarity and economic interests of such a racial group, where its initial selection by others was on a racial basis, would allow an originally wrongful action to become immune to correction because of its original wrongfulness.

* * * * * * *

Traditionally, trade unions have sought to unify groups of employees by focusing group attention on common problems and to further the acceptance of union spokesmen by emphasizing the extent to which the spokesmen have identified themselves with those problems. To hold that this traditional approach may not be utilized because of the ethnic composition of the work force might itself be discriminatory. . . . While the employees to whom this appeal is addressed are the best judge of it, we do not consider the argument unreasonable or irrelevant and we further conclude that it was not intemperately presented to the electorate in this case. [Footnotes omitted.]

The petitioner's use of racial propaganda in the *Hobco* case [7] was also held not to constitute a basis for setting aside an election, where the Board had found that it was not designed to inflame racial hatred, but rather was designed to encourage racial economic betterment through concerted activity. The union's organizational campaign, among a work force composed entirely of Negroes, included speeches by civil rights leaders which endorsed the organizational efforts of the union and emphasized the need for racial self-consciousness to obtain better working conditions. The community in which the plant was located was almost all Negro, and racial identification, and its relation to the campaign, was a topic of discussion and propaganda both for and against union representation, but neither side exceeded permissible bounds.

[7] *Hobco Mfg. Co.*, 164 NLRB No. 118.

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 he 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 1967 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 Solicitation of Funds

Although limitations upon solicitation and distribution activities by employees during nonwork time in nonwork areas are usually invalid absent special circumstances, during the report year the Board

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

upheld the validity of a rule barring the solicitation and collection of funds by employees in nonworking areas of the employer's plant "during working hours." [2] In question was the application of this established rule to the solicitation and collection of funds by representatives of the union for the declared purpose of furnishing financial support to striking employees represented by a sister local at another of employer's plants. The employer did permit on-premises distribution of a notice that the contributions would be collected off premises. The Board emphasized that the legality of the rule could not be determined through a mechanical application of the standards set forth in *Walton Mfg. Co.*,[3] in view of its application in a nondiscriminatory manner since the plant opened. Striking a balance between the employer's "right to control its own property and the competing right of employees guaranteed in section 7," the Board held that the union's interest "in the specific circumstances" did not outweigh the employer's interest in controlling his property. The prior history of union acquiescence in the employer's no-solicitation of funds rule was found not to be "the touchstone in assessing the issue of legality," but was deemed a significant factor in the balancing process.

2. Statements Concerning Unionization

Substantial litigation in the past has concerned an employer's actions in posting a form of notice to employees, usually at the inception of a union organizational effort, which states in part that it is management's "sincere belief" that a union organizing campaign is a matter of serious concern to the employees and that the employer believes that the advent of the union would "operate to your serious harm." [4] In *Greensboro Hosiery Mills*,[5] the Board, in response to disagreement with its views on this issue expressed by some courts of appeals, felt constrained to set forth the factors which, in its view, should result in a determination of coercive action violative of section 8(a)(1) in such cases. Noting that "serious harm" notices of the form in issue are not unlawful *per se*, the Board stated:

> Here, as in previous cases where we have found the notice violative of law, the posting of the notice was prompted by the initiation of a union organizing

[2] *General Electric Co.*, 163 NLRB No 31

[3] 126 NLRB 697, Twenty-sixth Annual Report (1961), p 80

[4] See, e.g., *White Oak Acres*, 134 NLRB 1145; *Rea Construction Co*, 137 NLRB 1769; *Morris & Associates*, 138 NLRB 1160; *Wellington Mill Div., West Point Mfg. Co*, 141 NLRB 819; *Burlington Industries, Vinton Weaving Company Plant*, 144 NLRB 245; *Surprenant Mfg. Co*, 144 NLRB 507, *M. Lowenstein & Sons*, 150 NLRB 737, *Southwire, Inc*, 145 NLRB 1329; *Soft Water Laundry*, 143 NLRB 1283; *Owens-Corning Fiberglas Corp*, 146 NLRB 1492; *Overnite Transportation Co*, 154 NLRB 1271; *Sagamore Shirt Co., d/b/a Spruce Pine Mfg. Co*, 153 NLRB 309; *Alliance Mfg Co.*, 160 NLRB 1194, *Hesmer Foods*, 161 NLRB 485

[5] 162 NLRB No 108

effort. Our experience shows that in such a setting the employees are constantly on the alert to any suggestions, whether overt or covert, by their employer, as to the consequences which may attend their choice of a union as their collective-bargaining representative. In such a context each employee tends carefully to weigh all the pronouncements of his employer which bear on the issue in the light of his relationship with his employer and the economic power his employer possesses to translate what he says into concrete acts bearing on that relationship and which might have a direct or "serious" impact on the employees either individually or as a group. Certainly, employees in the midst of a union organizing campaign are scarcely likely to be oblivious to posted and authoritative policy pronouncements of top management, even though they purport to be merely suggestive or advisory in nature. When an employee or group of employees is told by management that not benefit but only "serious harm" can result from union organization, and without clear delineation by the employer of the source or nature of the harm the employer has in mind, it is reasonably to be expected that the employees will connect the suggestion of "serious harm" with possible action that lies within the power of the employer to take, including actions of a reprisal nature.

The threatening connotation of the statement is increased when it is represented as *management's* "sincere belief." For management's communication to the employees of its "sincere belief" is obviously designed to reinforce the "serious harm" message on which the employer is interested in having the employees focus. And where, as here, it becomes clear, through other related coercive conduct in which the employer engages, that the desired result is the defeat of the union, a result which the employer is bent to achieve, little reason is left for the employee to doubt what "serious harm" he can expect, or from what quarter. [Footnote omitted.]

Adhering therefore to its view that the "serious harm" notice acquires an illegal coercive effect when viewed in the total context of a union organizing campaign accompanied by other employer unfair labor practices reflecting a determined opposition thereto, the Board found that the posting of the notice in the context of the case before it was coercive within the meaning of section 8(a) (1) of the Act.

The Board also had occasion during the year to consider the legality of an employer's threats to shut down his business rather than to yield to union demands. In *Paranite Wire & Cable Div., Essex Wire Corp.*,[6] the employer's counsel was invited by the union representative to address the unit employees, after they had expressed strong opposition to the approval of the wage provisions in a newly negotiated contract. In his speech, counsel stated that the company might well "close the plant down and move out" rather than pay the higher wage scale which the employees demanded, citing a prior instance of such action by the company. Thereafter, the employees approved the contract. Construing the Supreme Court's statement in *Darlington Mfg. Co.*[7] that nothing

[6] 164 NLRB 48.

[7] *Textile Workers Union of America* v *Darlington Mfg Co.*, 380 U S. 263, where the Court held that an employer may, under certain circumstances, close his entire business without committing an unfair labor practice even if his action is motivated by animus towards the union.

in its decision "would justify an employer interfering with employee organizational activities by threatening to close his plant," the Board concluded that the threats in question violated 8(a)(1) even though directed at nonorganizational activity, since the activity was nonetheless protected by section 7 of the Act. The Board viewed the Supreme Court's language as drawing a distinction between unlawful threats to close a plant, and an announcement by management that a decision to close the plant had already been reached. Thus, the Board found that the Respondent's threats were coercive, in violation of 8(a)(1), under established legal principles, and the principles applicable to situations involving actual plant closures and lockouts were not relevant.

3. Employer Polls of Employees

Another decision of the Board concerning forms of employer interference with protected employee rights dealt with the permissible scope of employer polls of employees. In the *Struksnes* [8] case the Board, upon remand from the court, reviewed Board and court decision, as well as articles by scholars in the field, in order to establish standards for use as guidelines in determining whether an employer's poll of his employees to ascertain their views on unionism is lawful. The Board expressed the view that "any attempt by an employer to ascertain employee views and sympathies regarding unionism generally tends to cause fear of reprisal in the mind of the employee if he replies in favor of unionism and, therefore, tends to impinge on his Section 7 rights." Noting that its rule enunicated in the *Blue Flash* case [9] "has not operated to discourage intimidation of employees by employer polls," the Board adopted the following revision of the *Blue Flash* criteria:

> Absent unusual circumstances, the polling of employees by an employer will be violative of section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.

The Board noted that the criteria, like other "presumptive rules applied by the Board," was designed to maintain "a reasonable balance between the protection of employee rights and legitimate interests of

[8] *Struksnes Construction Co*, 165 NLRB No 102, pursuant to remand in 353 F.2d 852 (C.A.D C).

[9] In *Blue Flash Express*, 109 NLRB 591, the Board determined that an employer's illegal action "must be found in the record as a whole" and that the poll there in question was valid on the grounds that (1) the employer's sole purpose was to ascertain whether the union demanding recognition actually represented a majority of the employees, (2) the employees were so informed, (3) assurances against reprisal were given, and (4) the questioning occurred in a background free from employer hostility to union organization.

employers." [10] Reviewing the polling issue in the light of the court's opinion and remand, and also of the rule now established, the Board concluded that "in the special circumstance of this case no remedial order is warranted," although the "Respondent's conduct would probably be found unlawful if this case were now before us for an initial determination under the new rule."

4. Discharges for Engaging in Protected Activity

The rights guaranteed to employees by section 7, in the exercise of which they are protected by 8(a)(1), include the right "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." Several cases decided this past fiscal year further delineated the sphere of employee activity protected by section 7. In the *Hoffman Beverage* case,[11] the Board concluded that the refusal by employees to cross a picket line at their own plant, lawfully instituted there by nonunit employees of another plant of the employer for the purpose of protesting a shutdown at that other plant, was protected activity, wherefore the subsequent discharge of those refusing to cross the line was violative of section 8(a)(1). The Board rejected the employer's contention that the failure to cross the picket line was unprotected because in violation of the no-strike commitment in the collective-bargaining agreement. Citing the language in the *Lucas Flour* case [12] to the effect that a no-strike clause is not to be implied "beyond the area which it has been agreed will be exclusively covered by compulsory arbitration," the Board viewed the significant question in the case as one concerning the applicability of the grievance procedure in the collective-bargaining contract to the circumstances motivating the employees' refusal to cross the line. The contract provided compulsory terminal arbitration in relation to disputes "concerning the application or interpretation of any provision of this Agreement, or concerning any term or condition of employment under this Agreement." Finding that the employees refused to cross the line "because of fear of physical reprisals or out of sympathy for the . . . strikers, and not because they had a dispute of their own cognizable under the grievance-arbitration provision in their agreement," the Board concluded that refusal to cross the picket line under the circumstances here involved was not proscribed by the no-strike commitment implied from the arbitration provision. Furthermore, since the discharge of those employees violated section 8(a)(1), the subsequent

[10] The Board emphasized, however, that a poll taken while a petition for a Board election is pending would continue to be found violative of sec. 8(a)(1), since such a poll does not serve any legitimate interest of the employer that would not be better served by the forthcoming Board election

[11] 163 NLRB No. 134.

[12] *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 105.

discharge of other employees who refused to cross a picket line established by the initially discharged employees also violated 8(a)(1), since a no-strike clause, whether express or implied, does not waive the employees' right to strike against an employer's unfair labor practices.[13]

In another case decided during the past fiscal year,[14] the Board found that the circumstances under which an employer caused the arrest of a union organizer for trespassing on the store's parking lot constituted a violation of section 8(a)(1). The Board held it to be clear that the arrest constituted at least the means of enforcing a discriminatory no-solicitation policy against the union. The union representative was on the lot to speak to employees and solicit cards from them, notwithstanding posted signs stating that the lot was to be used only by customers. The Board found it was the employer's practice, however, to allow church groups and teenagers to solicit on the lot, thereby vitiating the no-solicitation policy. The Board viewed it as relevant also that the employer notified the employees of the impending arrest and caused it to occur in their presence, thereby interfering with their organizational activities.

In two cases decided last year involving another aspect of an employee's section 7 rights, the Board found violations of 8(a)(1) in instances where the employer discharged employees after outspoken attempts to make known their opinion on matters of employee concern. In the first case,[15] the employee made a lawful antiunion speech on company time. During the question period following the speech, an employee supporting the union arose solely for the purpose of presenting the union's viewpoint, was told by the employer to sit down, and then protested against this denial of an opportunity to speak by comparing the employer to Castro. The employee was then discharged for insubordination. Disagreeing with the trial examiner, who regarded the remark as tantamount to calling the employer a Communist, the Board, finding the remark "did not occur in isolation and without provocation," viewed it as an expression of the employee's frustration in being denied the opportunity to respond to the employer's antiunion remarks. The Board concluded that the protection afforded the employee should not be denied "simply because . . . in a moment of emotional stress [he] used an unfortunate figure of speech."

The second case[16] was one remanded to the Board by the Ninth

[13] Citing *Mastro Plastics Corp* v. *N.L.R.B.*, 350 U.S. 270

[14] *Priced-Less Discount Foods, d/b/a Payless*, 162 NLRB No. 75.

[15] *Boaz Spinning Co., Sub. of Standard-Coosa-Thatcher*, 165 NLRB No. 103

[16] *Tanner Motor Livery*, 166 NLRB No. 35, Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority; Member Brown dissenting; initial decision 148 NLRB 1402, Thirtieth Annual Report (1965), p. 56.

Circuit [17] to consider, in view of the 9(a) proviso,[18] the effect on the reinstatement order of the employees' failure to present their concerted protest, concerning the employer's allegedly racially discriminatory hiring policy, through their collective-bargaining representative. Upon further consideration of the case in the light of additional briefs, the Board found that it was without significance to determine whether the employees were filing a grievance under the proviso to section 9(a), or whether they were attempting to bargain individually with their employer. It concluded that "in either event, the employees were not acting in derogation of their established bargaining agent by seeking to eliminate what they deemed to be a morally unconscionable, if not an unlawful, condition of employment." Under these circumstances the Board found the employees neither intended to infringe upon or undermine the status of the union as representative, nor was that the result of their actions, and accordingly reaffirmed its order requiring reinstatement of the employees discharged for their concerted protest without their union.

In several cases last year, the Board concluded that employee activities were not protected by section 7, wherefore employer actions complained of were not prohibited by the Act. In one such case,[19] the Board affirmed the view that an employer did not violate the Act when he offered employees engaged in an unlawful strike higher wages to induce them to return to work.[20] In concluding that the employer's action did not constitute "substantial interference with a protected activity," the Board noted the offers were responsive to the unlawful strike and reasonably related to the employer's effort to terminate the strike. In a second case,[21] the employer's discharge of a union steward who instructed a fellow worker not to use a new drive-in rack at the warehouse where they worked did not interfere with the employee's exercise of protected section 7 rights, in the view of the Board. Although the employee had "honestly misinterpreted" the agreement reached by the union and management representatives, that the rack would be used the day the refusal to use it occurred, and that only an attempt would be made to have it inspected by safety engineers before

[17] *N.L.R.B.* v *Tanner Motor Livery,* 349 F 2d 1, Thirtieth Annual Report (1965), p. 134

[18] Sec. 9(a) proviso reads *"Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment"

[19] *Publicity Engravers,* 161 NLRB 221.

[20] *Mackay Radio & Telegraph Co.,* 96 NLRB 740, 743–744, *United Elastic Corp.,* 84 NLRB 768, 772–777, and fn. 12; *Fafnir Bearing Co.,* 73 NLRB 1008, 1012–13.

[21] *Stop & Shop,* 161 NLRB 75 Member Jenkins, dissenting, would affirm the trial examiner's conclusion of 8(a) (1) and (3) violations based on findings that discharge was motivated by animus toward the employee resulting from hostile relations between management and the employee 5 to 12 months prior to the incident.

then, the Board found that the unprotected direction to the fellow employee was made after the steward knew an inspection had taken place and the rack cleared as safe to use. In finding the discharge was for insubordination, as contended by the employer, the Board found it to be clear that the steward "had determined to take matters into his own hands regardless of the decision of the safety engineers concerning the rack's safety; he had apparently chosen to disregard both the authority of management and the grievance procedure of the collective-bargaining agreement." [22]

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." [23] The section provides, however, that an employer may permit employees to confer with him during working hours without loss of time or pay.

1. Forms of Support

Support or assistance to a labor organization may take many forms. During the year the Board was called upon in a number of cases to determine whether various employer actions were of a form interdicted by section 8(a)(2).

a. Recognition of Checkoff Authorization Following Union Deauthorization

The Board has made it clear that an employer violates section 8(a)(2) of the Act by continuing to deduct union membership dues from employees' wages pursuant to checkoff authorizations executed during the existence of a union-security provision of a contract, where the employees have thereafter voted in a deauthorization election to withdraw the union's authority to execute such a provision and have requested discontinuance of the checkoff.[24] In two cases decided during the year the Board amplified upon the scope of that limitation. In *Bedford Can*,[25] the Board rejected the contention that the employer was not required to honor checkoff revocations under that principle where the employees did not also resign from the union, or where the checkoff authorization was executed at a time when there was no exist-

[22] The Board refused to apply the test of "abnormally dangerous" working conditions within the meaning of section 502, since that test is objective rather than subjective, therefore does not depend on the employee's state of mind, but rather on actual conditions.

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

[24] *Penn Cork & Closures*, 156 NLRB 411, Thirty-first Annual Report (1966), pp. 75–76, enforced 376 F 2d 52 (C A 2, 1967).

[25] *Bedford Can Mfg. Corp.*, 162 NLRB No. 133.

ing union-security clause in effect. As to the former contention, the Board stated that it did "not deem such resignation to be a prerequisite to revoking a checkoff authorization." As to the latter, the Board held that checkoff authorizations "maintained by employees while the union-security clause was in effect" could be revoked regardless of their terms or the time of their initial execution. The Board concluded that both checkoff authorizations executed when a union-security contract clause became effective, and those which are permitted to renew during the existence of such a contract clause, "must be viewed as an implementation of the union-security provision." It therefore held that the employer violated section 8(a)(1) and (2) of the Act by continuing to deduct union membership dues and initiation fees after the employees' revocation of checkoff authorizations following withdrawal through a deauthorization election of the union's authority to require membership as a condition of employment.

In another case [26] involving an employer's reaction to an affirmative deauthorization vote, the Board, while noting that such a vote renders checkoff authorizations vulnerable to revocation by employees regardless of their terms, held that it "does not automatically cancel existing authorizations for the checkoff of dues or alone require an employer to cease deducting dues in the face of a contractual checkoff provision." It therefore found the employer had violated the Act where, following an affirmative deauthorization vote, it repudiated the checkoff provision of its contract with the union, not only in its application to employees who might not have wished to revoke their existing authorization, but in its application generally as a continuing contractual provision which allowed new employees voluntarily to authorize this mode of paying their dues.[27]

b. Assistance in Organizing

An employer's actions in making its facilities available to a union to enable it to reach the employees, or an employer's expression of support or preference for a union, may also constitute prohibited assistance and support under certain circumstances. In *Keller Ladders Southern*,[28] the union began its organizing campaign at the employer's new plants by in each instance first seeking the assistance of management, rather than going to the employees themselves. Although there was no finding that the employer preferred the union over any other, or that it was aware of any competing organizational activity, in response to the union's request it selected employees to talk to the union

[26] *W P. Ihrie & Sons, Div of Sunshine Biscuits*, 165 NLRB No 2

[27] Although the violation found was one of unilateral modification of an existing contract in violation of sec 8(a)(5) and (1), the case is noted here because its disposition was premised upon an application of the *Penn Cork* and *Bedford Can* principles.

[28] *Keller Ladders Southern, Subsidiary of Keller Industries*, 161 NLRB 21.

representative, which employees thereafter helped him organize the plant. It also permitted the employees to be assembled on the premises, during paid company time, where they were addressed by the union representative, outside the presence of their supervisor, on the advantages of unionism. Recognition was subsequently extended by the employer upon the basis of authorization cards,[29] and a contract executed shortly thereafter providing essentially the terms the union representative promised during the campaign to try to obtain for the employees. The Board concluded that where, as here, a union first approaches management rather than the employees for help in getting the plant organized and management furnishes the requested assistance, it is reasonable to infer "that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." [30] It therefore found that under the circumstances, including payment of the employees while talking to the union representative and permitting the meeting on company premises and paid time, the employer rendered illegal assistance to the union in violation of section 8(a)(2) of the Act.

Two other cases involved organizing assistance rendered by employers who preferred to deal with the assisted union. In one,[31] the construction employer entered into a valid prehire contract with the union covering employees to be hired on a new project, and thereafter threatened employees with discharge, layoffs, and reduction in work hours if they did not join the union. The Board found those threats to be violative of section 8(a)(2), and also found a violation of that section in the employer's subsequent execution of a union-security contract with that union upon the basis of authorization cards obtained from a majority of the employees. Although finding that the record only established that at least 7 of the 129 employees were the object of coercion to join the union, the Board rejected the contention that the question of possible coercion of the union's precontract majority "was susceptible to resolution by a simple mathematical formula." It concluded that "the character of the coercion should be more realistically measured in terms of its pervasive effect." In its view, the company's continued recourse to coercive tactics in support of the union after execution of the contract made it appear likely that the precontract coercion "was substantially more widespread" than appeared and the union's entire majority was tainted thereby. And in *Weather Seal, Inc.*,[32] the employer was found to have rendered illegal

[29] There was no employer participation in the solicitation except for one instance of an independent 8(a)(1) violation when, after the union already had a majority of cards, the sales manager conveyed to an employee the threat that the employee's wife would be discharged if she did not sign a union card

[30] Citing *N L.R B.* v *Link-Belt Co.*, 311 U.S. 584, 588.

[31] *Clement Brothers Co*, 165 NLRB No. 87.

[32] 161 NLRB 1226.

assistance by informing his employees, at a time when he knew that only one union was organizing, that a second union, incumbent at another plant of the employer's, was also organizing. The employer also solicited some of his employees to assist that second union, suggested to and permitted the employees to hold a "straw election" during working hours on whether they wished to be represented by the second union, and on the following day called that union to inform it of the first union's organizing activity.

c. Assistance Through Recognition

Under the Board's *Midwest Piping* doctrine,[33] an employer faced with conflicting claims of two or more rival unions which give rise to a real question concerning representation violates section 8(a)(2) and (1) if he recognizes or enters into a contract with one of those unions before its right to be recognized has finally been determined under the special procedures provided in the Act. In several cases decided during the year the Board was called upon to determine whether under the circumstances a real question concerning representation was raised, and an employer's refusal to recognize a union therefore justified, or its recognition therefore prohibited. In *White Front Sacramento*,[34] the employer had recognized one union as representative of an overall unit of discount department store employees including, *inter alia*, nonselling employees, with the oral understanding that janitorial employees would be included when in the direct employ of the employer but not when janitorial work was subcontracted. At the time of execution of that agreement the janitorial work was subcontracted and the employees performing it were represented by a different union. When the janitorial service subcontract was later terminated and the janitors taken into the direct employ of the employer, the employer rejected the claim of the second union for a continued recognition of their representative status based upon newly executed authorization cards. It instead recognized the union representing the overall unit as representative of the janitorial employees on the grounds that its contract covered them since they were now directly employed. The Board found that the janitorial employees were not an accretion to the existing overall unit, but could either constitute a separate appropriate unit or be appropriately included in the overall unit. It therefore held that the employer, by arrogating to itself the decision that the representative of the overall unit should be recognized as representative of the janitorial employees, violated section 8(a)(1) by infringing upon the section 7 right of the

[33] *Midwest Piping & Supply Co*, 63 NLRB 1060 (1945).
[34] 166 NLRB No 29.

employees to freely select their own bargaining representative, and violated section 8(a)(2) by assisting the union through the prohibited recognition. The Board also held, however, that the claim asserted by the recognized union under its contract was "an outstanding substantial claim to represent those janitors as part of the overall unit," wherefore it rejected the assertion that the employer's refusal to recognize the second union as representative of the janitors as a separate unit was not a refusal to bargain in violation of section 8(a)(5). In another case [35] the claim of an incumbent union at one of the employer's existing plants to represent the employees at a new plant solely on the basis that the plant constituted an accretion to the existing unit, was found by the Board to constitute a "colorable claim" by that union, notwithstanding the absence of merit to the accretion claim and the absence of any contemporaneous organizing efforts by the union among the employees at the new plant. The Board therefore held that, since the claim was "sufficient to raise a real question concerning representation" the employer did not violate section 8(a)(5) of the Act in refusing to recognize another union upon the basis of authorization cards obtained by that union from a majority of the employees at the new plant.[36]

Two other cases concerned the validity under section 8(a)(2) of employer actions where, after having consolidated the operations from two existing plants, each with a incumbent union representative, at a single new location under circumstances found to constitute a new operation, the employers recognized one of the unions as representative for all employees at the new location. In *Fruehauf Trailer Co.*,[37] the employer extended its contract with the union at one plant to cover the operations at the new facility although at the time only 5 employees from that plant were employed at the new facility where a work complement of at least 100 employees was planned.

The employer had also continued to offer to negotiate with the union incumbent at the other plant to be discontinued, with regard to "any new operation" in the area. The Board found that in view of the employer's offer to negotiate with the other union concerning new operations that union "retained a colorable claim" to representation of the employees at the new plant. Therefore the recognition of the first union during the pendency of that claim was prohibited assistance, and, in any event, it was a violation of the Act to extend the contract to cover the new operation at a time when the workforce was not

[35] *Weather Seal, supra.*

[36] Members Fanning, Brown, and Jenkins for the majority on that issue. Chairman McCulloch and Member Zagoria would find a refusal-to-bargain violation since in their view the claim, based on an erroneous allegation of accretion, and with no contemporaneous organizing attempt, was not sufficient to raise a real question concerning representation.

[37] 162 NLRB No 3.

representative of the number of employees expected to be employed.[38] And in another case,[39] where the new facility was found to be "the amalgam of two separate facilities into one," and largely staffed through transfer of employees from the plants being closed, the Board found prohibited assistance in the employer's recognition of one of the unions at a time when it did not represent a majority of the employees at the new facility.

d. Participation of Assisted Unions in Elections

During the year the Board decided two cases concerning the impact on the validity of an election in which one of the unions on the ballot is an assisted union. The Board in *Lunardi-Central*[40] held that an election and certification did not establish the union as majority representative of the employees because at the time of the election the union had been unlawfully assisted through employer solicitations of support for the union. Additionally, the Board found the election defective because the employer, although knowing that a rival union had secured a number of authorization cards from its employees, nevertheless failed to notify the regional director of the rival union activity, with the result the union was not served with a copy of the petition and various other papers in the representation proceeding, of which it apparently had no knowledge. The certification was therefore set aside. In the other case,[41] the Board concluded that the election was defective and the results did not represent the freely expressed desires of the employees, since one of the unions appearing on the ballot and participating in the election had received unlawful assistance from the employer, the effect of which had not been corrected before the election. Although noting that the assistance occurred prior to the cutoff period for objectionable conduct, and the objections did not specifically rely on the assisted union's appearance on the ballot, the Board found itself "impelled to consider the appearance of the unlawfully assisted union on the ballot as sufficiently serious in the present case to require that the election be conducted again."[42] It therefore directed that a new election be conducted when the effects

[38] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria Chairman McCulloch would rely only on the alternative basis that a representative complement of employees was not yet employed

[39] *Purolator Products,* 160 NLRB 80

[40] *Lunardi-Central Distributing Co.,* 161 NLRB 1443

[41] *Weather Seal,* 161 NLRB 1226

[42] The Board adhered to its view that an election may under certain circumstances be set aside because of illegal assistance occurring prior to the objections cutoff date *Reliance Steel Products Co.,* 135 NLRB 730, enforcement denied 322 F.2d 49 (C A 5, 1964), Twenty-ninth Annual Report (1964), pp 131–132 It noted in any event, however, that in the instant case objections were filed and no certification issued, and that "it was the participation in the election of the unlawfully assisted union, not the unfair labor practices themselves," which rendered the election invalid

of the unlawful assistance have been dissipated and a free and untrammeled election can be held.

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.[43]

1. Bargaining Lockouts

During the report year, the Board again had occasion to construe the applicability of the bargaining lockout guidelines established by the Supreme Court in the *American Shipbuilding* and *Brown* cases.[44] In accordance with a remand order from the Court of Appeals for the District of Columbia[45] the Board gave further consideration in the light of those decisions to its original decision in the *Weyerhaeuser Co.* case,[46] where it had found no violation in a lockout by members of an employer's association. Assessing the facts, which demonstrated the employers' required commitment to group action the Board concluded that "the six Employers comprising the Association had effectively established a multiemployer bargaining unit within the meaning of prior Board precedents."[47] It found the defensive lockout standards of the *Buffalo Linen*[48] case, decided prior to *American Shipbuilding*, applicable to the situation before it, and therefore held that a lockout by four members of the employer association, following a bargaining demands strike against the two other members of the association, constituted a lawful effort to preserve the integrity of the multiemployer unit.

Considering the case in the alternative also, the Board assumed, *arguendo*, that the association's structure did not comply with the requirements of a multiemployer unit but instead was merely a joint bargaining group to which the employer-members had delegated individual negotiating authority. It noted that if such were the case, "prior to *American Shipbuilding* and *Brown*, the lockouts probably

[43] 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

[44] See Thirtieth Annual Report (1965), pp 119, 121, and Thirty-first Annual Report (1966), pp 78–80

[45] *Western States Regional Council No 3, Intl Woodworkers [Weyerhaeuser Co] v N L.R B.*, 365 F 2d 934

[46] 155 NLRB 921, Thirty-first Annual Report (1966), p 78

[47] 166 NLRB No 7

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

would have been found unlawful on this record if no formal multi-employer unit existed." However, the Board noted that all six employers "advanced a common position through a single designated representative," and an impasse had been reached with "each, as well as all, of the Employers over the substance of the economic position being advanced for each" by its designated agent. Analyzing the record in the context of the Supreme Court's guidelines, the Board found that "in legal effect" each member of the joint bargaining group stood in the position of the single employer in *American Shipbuilding* and was thereby entitled to lock out its employees in furtherance of its individual bargaining position as set forth in negotiations by the group representative. "While that action had the conceded effect of supporting the bargaining position of other Association members, the record compels a finding that that action was intended to, and did, support the individual (and common) position of each of the Employers engaging in the lockout." The Board therefore found no violations of section 8(a) (1) and (3) by the lockout and ordered the complaint dismissed.[49]

Another case[50] decided after remand for reconsideration under the guidelines of the Supreme Court lockout decisions involved a lockout by a newspaper publisher of those of his employees who were represented by a union engaged in a bargaining-demands strike against the other major daily newspaper in the city. Although bargaining as separate single employer units, each employer was engaged in bargaining at the same time, with its contract having expired on the same date, and with virtually identical key demands of the union being pressed on each employer simultaneously. The strike at the other paper was over some of those key issues which the respondent employer, who had been threatened with a strike also, was determined to resist. The Board noted that both parties viewed their negotiations on the key issues as being in a state of deadlock which would be broken only by a work stoppage. The Board found that apart from the interest of the employer in supporting his fellow publisher its interest "in using economic pressure to implement its own bargaining was thus grounded upon a very real, direct, and immediate bargaining motivation in its own behalf." It therefore concluded that under the standard promulgated in *American Shipbuilding*, "the circumstances of this case show both a significant economic justification for the lockout, and a lack

[49] In joining the full Board in the dismissal of the complaint, Member Brown relied solely on the ground that the association had been established and recognized as a multi-employer unit and was accordingly lawful under *Buffalo Linen*

[50] *Evening News Assn*, 166 NLRB No. 6, Chairman McCulloch and Members Jenkins and Fanning for the majority, with Member Zagoria concurring in the result Member Brown, dissenting, would find the lockout unlawful since, in his view, the *American Shipbuilding* decision is limited to post-impasse lockouts, and does not permit an employer engaged in bargaining in a separate unit to lock out before a bargaining impasse concerning his own employees

of conduct significantly prejudicial to union (or employee) interests," and the lockout was therefore lawful and not in violation of section 8(a) (1) and (3). The Board cautioned, however, that its decision was "based on the facts of this case and is not meant to suggest either that all supportive lockouts are lawful or that all lockouts which are intended to pressure a union into accepting an employer's legitimate proposals are necesarily lawful."

In another case [51] arising from the newspaper publishing industry the Board held that an employer member of a multiemployer association, acting pursuant to a mutual agreement to shut down in the event of a work stoppage at any member's plant, did not violate 8(a) (3) and (1) by locking out its employees in the unit when unit employees of another member of the association refused to cross a picket line established at that member's plant by another union which did not bargain on a multiemployer basis. The refusal to cross the picket line was found to be unprotected activity because it was a breach of the multiemployer bargaining contract which prohibited strikes during the contract term including those occasioned by recognition of a primary picket line established by another union and the employer was privileged to take lawful defensive action against such activity. In construing the contract, which provided for no strikes until the dispute had been resolved by contract procedures, the Board relied on the rationale on *N.L.R.B.* v. *Rockaway News Supply Co.*, 345 U.S. 71, that an ambiguous contract may be construed in the light of collateral evidence, including the history of negotiations. Although recognizing that the right to strike, or not to cross the picket line, is protected by the Act, the Board, upon resort to the collateral evidence in the record, concluded that the provisions of the contract must be construed as a surrender, during the contract term, of the right to refuse to cross a primary picket line.[52]

In the *Union Carbide* case,[53] during the course of bargaining preceding a lockout the employer had advanced a number of separate and package offers, and a final offer setting forth, among other things, a proposal concerning the modification of a separate pension-insurance agreement which was a nonmandatory subject of bargaining since the pension agreement had another year to run. Rejecting the contention that the employer had unlawfully insisted to the point of impasse on union acceptance of the nonmandatory proposal and therefore its lockout in support of that demand was unlawful, the Board concluded that at the time of the deadlock the parties were far from reach-

[51] *Hearst Corp., News American Div*, 161 NLRB 1405

[52] The Board found it unnecessary to decide whether the local unions were responsible for their members' conduct and therefore themselves breached their agreements

[53] *Union Carbide Corp, Mining & Metals Div*, 165 NLRB No 26

ing agreement on the basic terms of the new contract and "the inclusion of the nonmandatory, bargaining demand in . . . [the] 'package' was not a factor in causing the impasse." The Board found that in view of all the circumstances, including the long bargaining history of the parties, the fact that the union did not object to the nonmandatory subject until the final meeting, the employer's repeated concessions, and entire course of conduct aimed at reaching a timely settlement which the proposals on the pension insurance agreement were designed to speed, the lockout "after impasse was reached on issues other than the pension-insurer matter" constituted permissible pressure in support of the employer's legitimate bargaining position.

2. Requirement of Union Membership

In two cases decided this past year, the Board evaluated the effects which the requirement of union membership imposed by a union as employer had upon the employees' section 7 rights in the circumstances presented, and the validity of contributions paid to a union under the terms of a pension plan negotiated with the employers which by its terms provided for maintenance of membership as a condition for sharing in its benefits. In the *Retail Store Employees Union* case,[54] the union-employer's advertisements for employees' in the "help wanted" columns specified "Union membership required," its "Applications for Employment" inquired of the applicant his "Union Record," and it imposed upon those selected for office and field employee positions the obligation of signing a standard membership form which, *inter alia*, authorized the RCIA to represent the employee for the purpose of collective bargaining. Under the terms of their membership, employees paid initiation fees, assessments, and dues to the employer in its capacity as a labor organization, and some office clerical employees were required to attend meetings. The Board recognized that a union-employer "may impose on its employees requirements reasonably related to the proper performance of their jobs," and therefore declined to establish a *per se* rule with respect to any particular obligation, holding that "a union-employer's requirement that its employee belong to it, pay dues, fees, and assessments to it, and attend its meetings need not, in and of itself, violate the Act." Violations of section 8(a)(1), (2), and (3) of the Act were found, however, because the union had not given assurances to its employees that their section 7 rights would not be abridged when they were required to become members, and because the requirements imposed, including the union constitution's prohibition of dual union membership, "create the impression that the employees are being required to forgo selecting any other labor

[54] *Retail Store Employees Union, Local 428*, 163 NLRB No 46

organization as their collective-bargaining agent." Thus, although the Board made it clear that the union-employer may in certain circumstances impose upon its employees various obligations of membership, it cannot, consistent with the employees' section 7 rights, do so without also affirmatively advising its employees of their right to engage in concerted activities unaffected by the membership requirement. The Board viewed the affirmative obligation imposed upon the union-employer under those circumstances as requiring positive statements that the membership requirement was only a necessary part of the employee's job, that it did not propose to represent them for bargaining or grievance purposes, that they were free to join another labor organization in the exercise of their statutory rights, and in the event a majority of them did so the union-employer would bargain with it upon request.

In a second case,[55] the Board held that the requirements of a retirement and welfare plan entered into between an employer association and the union that union membership and payments to the union be continued during a worker's nonemployment by association members or retirement in order that he remain eligible for benefits under the plan, did not under the circumstances impinge upon the rights of employees guaranteed to them by section 7 of the Act. The collective-bargaining agreement contained a valid union-security clause and the retirement and welfare plan provided for maintenance of membership as a condition for sharing in its benefits. The Board found that in view of the underlying valid union-security provision there was no problem in imposing the requirement upon employees still working in the unit. As to individuals no longer working in the unit, the Board noted that full membership dues were not imposed as a condition to maintaining eligibility under the plan, but postemployment payments were tailored to the changed work status and were in amounts imposing a substantially lessened financial liability to the union. The Board agreed with the union's characterization of its postemployment payments structure as a service fee for the union's continuous efforts in perpetuating the plan and its sustaining fund through periodic bargaining negotiations involving, among other things, the amount of the employers' contribution to the plan as well as other improvements. The Board found that in consideration of this union effort, and in view of the economic interest the eligible participants have in the perpetuation of the plan and the fund which makes it possible, it was not unreasonable for the union to require employees covered to continue making payments varying according to employment status and income, and that the service fees imposed were reasonably related to the value of the services rendered. Although recognizing that if plan participants were in fact

[55] *Coal Producers' Assn of Ill*, 165 NLRB No. 31

denied benefits because of a failure to maintain membership as required a violation of the Act might occur, the Board found that "apart from references in the plan itself which tend to suggest the possibility that such discrimination may occur—the record furnishes no adequate proof to establish that the eligibility status of individuals covered by the plan has been forfeited for any reason other than failure to make periodic payments to the Union." Dismissing the complaint, the Board emphasized that it did not reach "the further question whether employees are in fact required, pursuant to the plan, to maintain their membership in the Union, or may have their membership forfeited in a manner which would be violative of Section 8(a)(3) of the Act."

3. Partial Termination of Operations

The principles enunciated by the Supreme Court in its *Darlington* decision,[56] concerning the circumstances under which a partial termination of operations may constitute a violation of section 8(a)(3), were given close consideration by the Board in several cases this year, among them a supplemental decision to the *Darlington* case.[57] In its decision the Supreme Court held that a partial termination was violative of 8(a)(3) and (1) if "motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect." The Court had remanded the case to the Board for factfinding on this question. In its supplemental decision the Board found that the employer's actions were motivated by a desire to chill unionism. In reaching this conclusion, the Board relied on evidence establishing the strong views about unionism and the scope of the union threat to the textile interests throughout the area, which were expressed by the company president; the distribution of memoranda and materials to the managers of company plants in other communities, viewed by the Board as demonstrating "that the closing of Darlington was to be made a symbol throughout the . . . chain of what unionism would mean," and from which it was "apparent that what the mill heads were being instructed to make 'the leaders in your community understand' was that the mill might no longer be in that community if the employees chose to unionize"; the speed with which the mill was closed following unionization, despite the fact that it was undergoing extensive renovation at the time; and the haste in disposing of its physical assets, notwithstanding the disavowal of the union by a vast majority of the employees.

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[56] *N.L.R.B.* v. *Darlington Mfg. Co.*, 380 U.S. 263, see Thirtieth Annual Report (1965), p. 121.

[57] *Darlington Mfg. Co.*, 165 NLRB No. 100.

Thus concluding that the purpose to chill unionism elsewhere existed and lay, at least in part, behind the closing of the Darlington mill, the Board also concluded that the persons exercising control over that closing could reasonably have foreseen that effect, and their interest in the other plants of the single enterprise constituted a sufficiently substantial business interest in which the discouragement of unionization would give promise of reaping a benefit. It found their relationship to those other businesses to be such that employees of the latter would fear a similar closing of their mills in the event of organizational activity, that such an effect was in fact foreseen and intended, and that a number of employees were, in all likelihood, so affected. The Board therefore held the closing of the mill violative of section 8(a) (3) and (1) of the Act.

In another case [58] involving a partial closing down of operations, the employer laid off 22 employees and abandoned his sheet metal operations rather than sign a contract with the union in contravention of his religious convictions. The remaining portion of the business involved two equipment salesmen, one of them the owner's brother, and a bookkeeper whom the union, a traditional craft representative, was not interested in representing. Although finding the partial closing was "triggered by union considerations," the Board concluded that under the circumstances there was no potential economic benefit to be gained from discouraging the unionization of the sales force and, in the absence of affirmative evidence to the contrary, found no purpose to "chill unionism" in the remaining part of the business and therefore no 8(a) (3) violation.

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.[59]

[58] *A C Rochat Co*, 163 NLRB No. 49

[59] 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."

1. Demands for Initial Recognition

The Board has long held that an employer may refuse to recognize and bargain with a union upon its demand for initial recognition and may insist upon proof of the union's majority status through election procedures unless the refusal is not based upon a good-faith doubt of the union's majority. It is equally clear that in a case involving such a refusal, the General Counsel has the burden of proving the employer's lack of good faith.[60] The cases decided by the Board during the report year included a number requiring determination of whether the requisite lack of good faith doubt had been established. In one such case [61] the Board explained that:

> . . . the . . . burden-of-proof rule is designed to assure, in implementation of Board policy, that an employer who in good faith withholds recognition because of a doubt of majority, though his doubt is founded on no more than a distrust of cards, may have an election to resolve that doubt, and will not be subject to an 8(a)(5) violation simply because he is unable to substantiate a reasonable basis for his doubt. But . . . the rule . . . is only an evidentiary one which is to be read as dovetailing with, rather than altering, the long-settled substantive principle that an employer may not in the absence of a good-faith doubt refuse to recognize a majority union.

In that case the union, in support of its request for recognition, showed the employer authorization cards from all five of the employees. The employer examined them, conceded that a majority of the employees had signed cards, conversed generally about labor problems of contractors in the area, and deferred an answer on the matter of recognition pending a discussion with his partner. Recognition was subsequently refused solely on stated grounds that the employer's operations were outside the reach of the Act and the Board's jurisdiction, and only in its answer to the unfair labor practice complaint did the employer for the first time declare that it doubted the majority status of the union. In concluding "upon consideration of the entire record" that the General Counsel had sustained the burden of establishing lack of good faith, the Board viewed the assertion of doubt of majority in the answer as "an afterthought, unrelated to the Respondent's motivation as of the time it refused the Union's request for recognition." Although the employer asserted a lack of jurisdiction as a basis for refusing recognition, the Board, finding that it had jurisdiction over the employer's operations, observed that "good or bad faith is irrelevant where an employer's refusal is bottomed upon reasons other than those related to the union's majority status." [62] In thus

[60] *John P Serpa,* 155 NLRB 99, Thirty-first Annual Report (1966), pp 80–83

[61] *H & W Construction Co ,* 161 NLRB 852

[62] See also *Sands Motor Hotel,* 162 NLRB No 66, where the Board, all members participating, also held that "a good-faith doubt as to the Board's assertion of jurisdiction is not a valid defense" to a complaint alleging a refusal to bargain

holding that a violation was established in this case by the affirmative showing that the refusal to bargain was not in fact predicated on a doubt of majority but upon an entirely independent but unsupported ground as to which good faith is not available as a defense, the Board also emphasized that the determination of lack of good faith must be made in the light of "all relevant circumstances," and that "evidence of other unlawful conduct is not a *sine qua non* to such a finding." [63]

Among the other cases where a lack of good-faith doubt was held to have been established and an unlawful refusal to bargain found, was one [64] where the employer, after examining the union's proof of majority, agreed that it represented a majority of his employees, discussed some contract aspects and accepted copies of the union contracts with other employers as a basis for further negotiations at an agreed date. At that subsequent meeting the employer withdrew his recognition, stating that he was not going to have a union in the shop, and asserted that the union's majority status had no bearing on the matter. He persisted in this refusal even after all six of the employees in the unit went on strike in support of the union's demand and to protest the employer's withdrawal of recognition. And in the *Sturgeon Electric Company* case,[65] the Board found that "the heart of the proof" of the employer's bad faith lay in its actions sponsoring a rival organization at a time when it was under a statutory duty to bargain with the union requesting recognition. There, closely following receipt of the request for recognition by a union which had been designated as representative by a majority of the employees, the employer sought and obtained the signatures of some of his employees on cards designating a rival union and then signed a contract with that union. Finding the assistance rendered the rival violated section 8(a) (1) and (2), the Board also found the employer violated section 8(a) (1) and (5) in refusing to recognize the majority union upon a doubt of that union's majority status. The Board rejected the contention that the presence of the rival union on the scene raised a real question concerning representation within the meaning of the Board's *Midwest Piping* doctrine [66] which justified the refusal to recognize.

Among the cases in which the Board concluded that a lack of good faith in refusing to grant a request for recognition had not been estab-

[63] Chairman McCulloch and Member Fanning on the principal opinion Member Jenkins, concurring, "would eschew reliance on the presence or absence of a 'good-faith doubt' " as leading to unnecessary and confused reasoning, since in his view of the case "the other factors are decisive" and the employer's conduct subsequent to the demand required the result reached in the case. Member Zagoria, dissenting, was of the view that the assertion in good faith of a reason that does not in law amount to a defense "requires only that that reason be disregarded," and would therefore find the General Counsel had not carried his burden of showing a lack of good faith Member Brown did not participate

[64] *Henry Pierotti, Jr., d/b/a Pierotti Motors,* 164 NLRB No 32

[65] 166 NLRB No. 28

[66] See *supra*, p 88.

lished was one [67] in which the employer stated in response to the request that he doubted the union's majority but gave no reason therefor. In response to his inquiry as to what "other alternatives" the union offered, the union indicated it probably would go ahead with a petition for an election if he did not voluntarily extend recognition. Immediately following the meeting with the union, the employer informed his employees of the request and stated that if they wanted a union he would abide by their choice. The employer declined to have a vote taken as suggested by an employee, but rather stated that he did not want to know who was for or against the union. When the employees nevertheless marked ballots, and later informed the employer of the overwhelming vote against representation, he replied that the only fair way to settle the matter was by an election, and shortly thereafter filed a petition with the Board. In a letter written the day the petition was filed, the union reaffirmed its own expectation of filing for an election. In holding that the employer did not upon those facts violate section 8(a)(5) in refusing to recognize the union, the Board emphasized that although the employer's good- or bad-faith doubt must be established as of the time the union actually made its demand, "evidence of the parties' conduct before, during, and after their confrontation . . . certainly is relevant and material in establishing . . . motivation in refusing the accede to the Union's request for immediate recognition and bargaining." It concluded that since the employer's expressed doubt was "not accompanied by knowledge, conduct, or words inconsistent" with his expressed belief, and a free election was not rendered impossible by his actions, the requisite lack of good faith had not been established.

In another case [68] where the employer's expressed doubt of the majority status of the union was based upon "no more than a distrust of cards," the Board found that lack of good faith was not established notwithstanding some limited and minor violations of section 8(a)(1) of the Act. The employer had cooperated in obtaining an early election, and its president had assured the employees that they had nothing to fear if they wished to vote for the union and that if the union were voted in he would accept it. To the same effect is the *Union Carbide Corp.* case [69] where the employer's violations of section 8(a)(1) of the Act in interrogating employees, creating an impression of surveillance, the job transfer of a union adherent, and disparate treatment in giving a union adherent a written reprimand were rejected as a basis for establishing the employer's lack of good faith in refusing to recognize the union. The employer had been well aware of the

[67] *Converters Gravure Service,* 164 NLRB No 53
[68] *Dayton Food Fair Stores,* 165 NLRB No 12
[69] 166 NLRB No. 39.

organizing campaign and in response to the request for recognition had suggested an election to resolve the matter, and thereafter cooperated in the election proceeding.[70] The Board found that the conduct was "not of such a serious nature" as to warrant a finding that the employer "completely rejected the collective-bargaining principle or that it refused to bargain so as to gain time to undermine the Union."

2. Validity of Authorization Card Designations

Numerous cases decided by the Board during the report year required consideration of the validity of employee writings authorizing unions to represent them for purposes of collective bargaining. Among the issues raised in those cases were employer contentions challenging the validity of authorizations upon grounds of union misrepresentation as to the effect and purpose of the cards, cards challenged as stale, and others challenged because of simultaneous authorizations to different unions by the same employees. In the *Henry I. Siegel* case,[71] the employer asserted that employee designations were obtained through union misrepresentation that the union's only goal in soliciting them was to obtain an election. In holding that the union representation had not invalidated the cards,[72] the Board restated its well-defined rule.[73]

> . . There is no question but that 113 employees in the unit of 182 signed the simple and unequivocal authorization cards involved here. Given this situation, it is settled that a signed card is *not* invalidated by an employee's misconceptions of its operative effect. Misrepresentations by solicitors that the securing of a Board election was the only purpose of the cards must be established to invalidate such cards. Respondent attacks the majority finding largely upon the ground that the testimony and affidavit of [the] Union Organizer . ., who solicited many of the cards, demonstrates that a Board election was the only goal of the organizing campaign. Respondent here misconceives the test of misrepresentation applicable to such situations, for it may be conceded that the Union's goal was an election, as evidenced by its failure to demand recognition, but that is not evidence that employees were beguiled into believing that the cards were not what they appear to be but were instead only authorizations for an election Thus, while [the union organizer] clearly communicated to employees the election goal of the organizing campaign, it is equally clear that she also read the cards to solicited employees rather than abandoning or ignoring the unequivocal authorization stated on them. Accordingly, we do not find that [her] testimony or affidavit establishes that she represented to employees

[70] In both *Dayton Food Fair* and *Union Carbide* the elections were set aside because of objectionable employer conduct and a second election directed In each case a bargaining order was deemed inappropriate under the circumstances as a remedy for the 8(a)(1) violations

[71] 165 NLRB No 56

[72] The cards stated, in their entirety, in both English and Spanish, that: "I hereby designate the AMALGAMATED CLOTHING WOKERS OF AMERICA, AFL–CIO, to represent me for the purpose of collective bargaining to get better wages, hours and working conditions in my shop."

[73] Compare *Cumberland Shoe Corp.*, 144 NLRB 1268, enforced 351 F 2d 917 (C A 6).

that the only operative purpose of the authorization cards was to secure a Board election.

In one case [74] where an employee's designation of a bargaining representative was challenged as stale because made more than 1 year prior to the bargaining request, the Board concluded the card was not invalid because within an exception to its stale card rule.[75] The Board held the application, made contemporaneously with the beginning of the union campaign, to be valid since made during the same organizational campaign which led to the request, and the campaign was interrupted by the filing and processing of unfair labor practice charges. In another case [76] the Board held invalid the authorization cards of a number of employees where it was shown that they had also signed cards designating another union as representative, and the evidence adduced was insufficient to establish that those employees desired exclusive representation by the union involved in the proceeding.

3. Bargaining Conduct

The task of evaluating the attitudes, conduct, and positions of the parties to bargaining negotiations against the "good faith" standard of section 8(d)[77] required the Board's attention in a wide variety of situations. In the course of resolving the cases the Board gave further definition to the scope of conduct permitted and required by that standard.

An employer's practice of extensive communications to its employees during bargaining negotiations through letters, bulletins, and formal and informal meetings between employees and supervisors was evaluated by the Board in one case [78] in the light of the contention that it thereby evidenced its intent to bypass, disparage, and undermine the union in violation of section 8(a)(5). The Board noted that, as a matter of settled law, section 8(a)(5) does not in terms preclude an employer's noncoercive communications with employees during collective-bargaining negotiations, although it is equally clear that a campaign of noncoercive communications "may be utilized as an effective instrument for bypassing the Union and engaging in direct

[74] *Blade-Tribune Publishing Co*, 161 NLRB 1512

[75] See, in this respect, *Luckenbach Steamship Co.*, 12 NLRB 1330, and *Surpass Leather Co*, 21 NLRB 1258

[76] *Bendix-Westinghouse Automotive Air Brake Co*, 161 NLRB 789

[77] Sec. 8(d) defines the obligation to "bargain collectively," imposed by section 8(a)(5) and 8(b)(3), as follows: "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees 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, but such obligation does not compel either party to agree to a proposal or require the making of a concession"

[78] *Proctor & Gamble Mfg. Co*, 160 NLRB 334

dealing with the employees." [79] It noted, however, that the employer's conduct at the bargaining table was unambiguous, and, although negotiations had broken down due to its position on a management rights-limited arbitration proposal, its "deadlock-producing demands were legitimately maintained." Noting also that the material distributed expressed a preference for agreement, and, in referring to positions taken during negotiations, did not exceed matters previously advanced to the union in a bargaining context, the Board concluded that in their overall context the communications were "motivated solely by a desire to relate the Company's version of the breakdown in negotiations, were in no way designed to subvert employee choice of a bargaining representative," and were therefore permissible and not evidence of bad faith.

The union's obligation to exercise due diligence in enforcing its representational rights was emphasized by the Board in one case.[80] It found the union's failure after notice to signify to the employer its desire to negotiate about the transfer of employees out of the unit, precluded a finding that the employer thereby refused to bargain by withdrawing recognition from the union or unilaterally changing the terms and conditions of employment of unit employees. The employer gave the union a week's notice of its intention to transfer its porters to a utility-baggageman's classification and offered to discuss any phase of the situation with the union. The action was not precluded by the contract, although it had the effect of abolishing the unit since the utility-baggageman classification was not in the unit. In a letter the union expressed its disagreement with the proposed action as being contrary to its certification and the contract and an invasion of its statutory rights. It also filed the unfair labor practice charge but made no effort to engage in discussion of the matter with the employer. The Board held that, upon being apprised of the promotion plan with its concommitant disappearance of the unit, "it became incumbent upon the Union to enforce its bargaining rights diligently by attempting to persuade the [employer] to alter its decision if it found the decision unacceptable." As the union failed to do so and since the employer's promotions were clearly contemplated by the contract, and in the absence of discriminatory motivation, the Board found no violation of section 8(a)(5).

The circumstances of bargaining conduct sufficient to constitute an impasse in negotiations warranting unilateral action by the parties

[79] As an example of such a situation the Board cited *General Electric*, 150 NLRB 192 (Thirtieth Annual Report (1965), p 69), where it found the employer's extensive communication campaign, coupled with its fixed position at the bargaining table, effectively excluded the union from meaningful bargaining, and represented a patent attempt to bypass and undermine the union as bargaining agent

[80] *American Buslines*, 164 NLRB No 136

were further defined by the Board in several decisions. Among these was *Union Carbide Corp.*[81] where the Board found that, although the employer's "entire course of conduct during the negotiations was aimed at the single purpose of reaching a settlement on the terms of a new basic contract before the current agreement expired," the union accepted none of the individual or package proposals, did not offer any compromise solutions, and merely indicated that the various proposals were "insufficient" and below its "expectations." The Board concluded that the parties reached an impasse in their negotiations when, on the last day of the contract, the union rejected the employer's "final offer." The final offer included a proposal on revision of an unexpired pension agreement which was a nonmandatory subject of bargaining. Although the pension proposal had been offered earlier, it had not been expressly rejected until, in rejecting the final offer, the union for the first time declared its opposition to the injection of the nonmandatory issue into the basic contract negotiations. Noting that the union throughout the negotiations "had neither receded nor offered to compromise with respect to its original demands," and that on the eve of the contract expiration the parties were far from reaching agreement on the basic terms of a new contract, the Board concluded that the rejection of the final offer made the impasse in bargaining "inevitable," and the inclusion of the nonmandatory issue was not a factor in causing the impasse. Upon these considerations, among others, it therefore found the employer's subsequent lockout of the employees not unlawful.[82]

And in another case [83] involving thestandard for determination of the existence of an impasse, the Board had occasion to point out that "an impasse is no less an impasse because the parties were closer to agreement than previously, and a deadlock is still a deadlock whether produced by one or a number of significant and unresolved differences in position." There, through 4 months of negotiations, the employer had taken a strong position to obtain certain changes in working conditions which would give it greater flexibility in the assignment of its personnel, and the union had taken an equally strong opposing position. Although both parties throughout the negotiations had bargained in good faith with a sincere desire to reach agreement, progress had been imperceptible on the critical issue and each believed that, as to some of those issues, they were further apart than when they had begun negotiations. In considering whether the employer's unilateral institution of changes in conditions was a violation of section 8(a)(5), a decision turning in this instance upon the existence of an impasse,

[81] 165 NLRB No. 26.
[82] See *supra*, p. 193, for treatment of the lockout issue.
[83] *Taft Broadcasting Co., WDAF AM–FM TV*, 163 NLRB No. 55

the Board emphasized that the determination of whether an impasse exists "is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed." Applying that standard to the facts before it the Board was unable to conclude that a continuation of bargaining sessions would have culminated in an agreement. Finding, therefore, that the parties had reached an impasse, and that the changes unilaterally made by the employer were "reasonably comprehended within" its proposals which preceded impasse, the Board found no violation.

The Board also has concluded that a union's conduct in withholding members' services pending acceptance by an employer of its bargaining proposal of unilaterally established higher wage scales and welfare fund contributions was not a violation of section 8(b)(3) under existing circumstances.[84] In a departure from its established policy, the union had agreed to enter into negotiations with a "single engagement" orchestra leader for a contract covering the "sidemen" whom the latter regularly employed. Pursuant to this agreement, the employer forwarded proposals for discussion at a first meeting in which he clearly indicated his desire to bargain from "scratch" with respect to wage scales and welfare fund contributions rather than accept those imposed by the union in bylaws as minimum rates for which a member could work. Before receiving these proposals, however, the union changed its bylaws so as to require higher wage scales and welfare fund contributions for "sidemen." The parties then held their first and only meeting. No agreement was reached. It was stipulated that the union had the intention of entering into good-faith bargaining at that time, and its good faith thereafter was not questioned.

Several months later the employer was notified that the union would not permit its members to work for him unless they received the higher wages and welfare fund contributions required by the bylaws. In rejecting the contention that the changes in its bylaws was a unilateral determination and change in terms and conditions of employment violative of section 8(b)(3) of the Act, the Board found that promulgation of such bylaws was not illegal *per se*. It also concluded that the union's prerogative in management of its internal affairs gives it the authority to require its members to observe such rules, or else suffer union discipline short of impairing the offender's job tenure. Since without an operative existing contract such bylaws are neither terms and conditions of employment nor working conditions

[84] *Associated Musicians of Greater N Y, Local 802, AFM (Ben Cutler)*, 164 NLRB No 8

simply because the union offered its members' services on those terms, the Board declined to equate the union conduct to a unilateral change in working conditions made by an employer, which subverts the union's status as exclusive representative. Thus, in view of the union's stipulated good faith, and the fact that the withholding of services is consistent with a desire to reach agreement, the Board found the action taken here comparable to a total strike and within the range of protected economic weapons that are part and parcel of the system of collective bargaining that the Wagner and Taft-Hartley Acts have recognized.[85]

The evaluation of employer conduct during contract negotiations over voluntary dues checkoff provisions was before the Board in two recent cases. In the *American Oil Co.* case[86] the Board held that the employer's discontinuance of dues checkoff during the period of negotiations for a new agreement, but 1 year after expiration of the contract providing it, did not, under the circumstances, constitute a unilateral change in conditions of employment in violation of the Act. Respondent's old contract with the union made provision for monthly paycheck deductions from the salaries of unit-employees, most of whom were scientists and engineers. As the extended negotiations continued, the employer informed the union, and the unit employees also, that it would no longer make payroll deductions under the dues checkoff provisions of the expired contract. The stated purpose was to avoid any misunderstanding that the union was in any manner sponsored or maintained by the company, and because the company did not wish to render any monetary assistance or support to the union by means of dues checkoff. It subsequently advised its employees that it was still bargaining over a checkoff provision in the new agreement, although expressing the opinion that dues checkoff is inconsistent with the company's view that unionism is incompatible with the professional aspirations of engineers and scientists. Considering then the company's expressed motive for discontinuing checkoff which in the Board's view was not impermissible and was consistent with its statements at bargaining sessions to the effect that it would not agree to the checkoff because it did not want to aid the association, the Board concluded that under the circumstances there was no showing that the company refused to bargain in good faith over a checkoff provision in the new contract, and therefore dismissed the complaint.

In another case,[87] the circumstances of a company's opposition to a checkoff provision were found to constitute a failure to bargain in good faith. Contract contention between the parties centered upon the

[85] Citing *N L R B v Insurance Agents' Intl Union [Prudential Insurance Co]*, 361 U S 477

[86] 164 NLRB No. 11.

[87] *Roanoke Iron & Bridge Works*, 160 NLRB 175.

union's proposal for a voluntary checkoff provision in the contract. The employer, eschewing economic motive as reason for its disagreement, claimed that it opposed the checkoff provision on principle. Evidence in the record, however, including the employer's previous collective-bargaining experience with the union when negotiations were prolonged for almost 1 year on the checkoff issue, its relation with a union of company employees to whom it granted a checkoff to help them, and its arguments against the union in its campaign literature referring to the checkoff, clearly indicated to the Board that the company equated the checkoff with the union's survival. Under all the circumstances the Board agreed that the "principle" involved in the employer's opposition to checkoff was, in fact, "grounded in the Company's belief that if it refused the checkoff the Union would suffer and would probably again leave the scene." Although the Board noted that neither the company's hostility to checkoff, its having granted it to assist the local employees' union, or the other items, standing alone, warranted a finding of lack of good faith. It was of the opinion, however, that if a party at the bargaining table espouses a position for the purpose of destroying or even crippling the other party to the negotiations, he has not bargained in good faith as required by the Act. Since the position taken by the employer was found to have been taken for the impermissible object of harm to the union and did not represent a good-faith effort to bargain within the meaning of section 8(a)(5), a violation of that section was found.[88]

4. Data To Be Furnished for Bargaining

The statutory duty of an employer to bargain in good faith includes the duty to supply to the bargaining representative information which is "relevant and necessary" in order that it might intelligently perform its function.[89]

It is well established that information having a bearing on the wages and terms and conditions of employment of unit employees is presumptively "relevant" to the union's role as bargaining representative. However, in *White Furniture Co.*,[90] the Board pointed out that "[T]he rule is different for data about the employer's profits, or other aspects of its financial condition; the union must show a specific need in each particular case for that type of information." Applying this principle the Board held that the employer did not refuse to bargain in good

[88] Chairman McCulloch and Members Fanning and Zagoria for the majority Members Brown and Jenkins, dissenting, would not "conclude on this record that the Company's positions were taken for the purpose of injuring the Union or that bad faith was present"

[89] See, i e, *Curtiss-Wright Corp, Wright Aeronautical Div.*, 145 NLRB 152, enforced 347 F 2d 61 (C A 3), Twenty-ninth Annual Report (1964), p 76, Thirtieth Annual Report (1965), p 136

[90] 161 NLRB 444.

faith by its refusal to reveal certain requested details of profit data used in the computation of Christmas bonuses, because from the record "the Union has not established a specific need to know the requested profit data at this time." The Board noted that after the union's initial request for an increased bonus the company had supplied a substantial amount of the information sought by the union but, so far as appears from the record, no bargaining took place upon the bonus issue after the union received the information. Finding that the negotiations had not matured to the point where the bonus issue could be clearly defined, and where the Board could "judge whether bargaining about bonuses would have been obstructed because of a refusal to supply essential data," the Board dismissed the complaint.

In another case,[91] the Board found "that Respondent's admitted refusal to furnish the Union with the requested information regarding the termination of probationary employees, including the reasons for such terminations," was a violation of its bargaining obligation under section 8(a)(5) of the Act. It emphasized that the requested information affected the "terms and conditions of employment" of probationary employees in the certified unit, and that "the information sought was relevant and reasonably required not only to enable the Union to formulate proposals concerning the length of the probationary period but also to enable it to assess for such purpose whether termination should be at the employer's discretion or pursuant to some standard. . . ." The Board then noted that even if the union's "only purpose was to seek the elimination or curtailment of the probationary provisions in *future contracts*" [emphasis supplied], it's conclusion would not be altered. Since the inclusion in a contract of a probationary period and the conditions thereof are bargainable issues, "the Union is entitled to obtain the information relevant to an intelligent representation of its members in such matters."

In a third decision [92] turning on the issue of "relevance" the Board held that a list of addresses of unit employees was under the circumstances sufficiently relevant to the union's performance of its function as collective-bargaining representative to establish the union's right to request the information from the employer, in whose exclusive possession the information lay, and to impose on the employer the correlative obligation to furnish it. The Board found that the relevance of the list became "apparent from a comparison of the union's statutory duty of fair representation with the difficulties it faced in attempting to reach those to whom it owed such duty." It pointed out that, although this duty extended to nonunion unit employees also, the union was precluded from communicating with all the employees by factors such

[91] *Oliver Corp*, 162 NLRB No 68.
[92] *Standard Oil Co of Calif*, 166 NLRB No 45

as the relatively low union membership in the unit, the absence of a union-security clause, residential dispersion of the unit employees, the lack of exposure of unit employees to union bulletin boards, the apparent ineffectiveness of the steward system, and the inefficiency of handbilling by the union. "On the other hand, the possession of an address list would enable the union to poll the unit employees as to their preferences and priorities in contract negotiations, their experience and recommendations with respect to the operation of the grievance-arbitration machinery and their thoughts on the wisdom of striking over a particular issue." Noting the employer's privileged attempts in its communications and training program to persuade the employees that they did not need union representation, the Board found that the fact that the union's initial request for the list was based upon its desire to counter the employer's propaganda did not eliminate the obligation to provide the information. It recognized that the union had a legitimate interest in responding to these arguments and to communicate to the employees seeking their continued adherence and support, but that this could not be accomplished without knowledge of the names and addresses of the employees in the unit.[93]

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."[94] 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. During the year the Board issued a number of decisions of significance to the determination of the bargainable nature and scope of bargaining required on certain issues. Among those decisions were cases involving management decisions to subcontract or terminate a portion of its operations and to relocate a plant, and union demands for acceptance of an industry promotion fund provision.

a. The Subcontracting of Unit Work

The Board's *Fibreboard* doctrine,[95] holding that the subcontracting of unit work is a subject concerning which the employer is obligated

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[93] Chairman McCulloch and Member Fanning for the majority Member Zazoria, dissenting, would find on this record that the list "was not sought for bargaining purposes," but to evaluate the union to "counter the company propaganda "

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

[95] See Twenty-eighth Annual Report (1963), pp. 80–81 , Thirtieth Annual Report (1965), pp 72–77, 118– 119 , Thirty-first Annual Report (1966), pp 92–93

to bargain with the union representing its employees, was the subject of interpretation in a number of cases, among them *Central Rufina.*[96] There the Board held that the employer's unilateral decision to cease its seasonal sugarcane grinding earlier than usual and to subcontract out this unit work did not constitute a violation of section 8(a) (5) and (1) within the meaning of *Fibreboard.* The Board found that this action was taken in order to prevent the spoilage of the unprocessed crop and to avert the threatened withdrawal of bank credit secured by the crop, after mechanical difficulties with the grinding machinery amounting to a "force majeure" had seriously crippled operations. The action of the employer under the circumstances was consistent with its past practice and the past practice of the sugar industry generally. Concluding that the employer was not "seeking to gain an economic advantage at the expense of its employees or of the Union," the Board expressed the view that "the factors which led to the Respondent's decisions to subcontract and to terminate its grinding are not 'peculiarly suitable for resolution within the collective bargaining framework'; on the contrary, it seems certain that no amount of give-and-take in bargaining negotiations could have forestalled the Respondent's inevitable decision to cease operations for the season."

b. The Partial Termination of Operations

The applicability of the considerations set forth by the Supreme Court in its affirmance of the *Fibreboard* decision [97] to an employer's action in unilaterally terminating a portion of its operations was resolved by the Board in the *Ozark Trailers* case.[98] There, motivated solely by economic considerations and without animus toward the union, the employer had permanently closed down one of its plants without notifying the union of its plans or affording it an opportunity to bargain with respect to the decision or the effect thereof upon the employees. The Board found that the closed plant had been part of a highly integrated three-plant operation constituting "a single integrated, multiplant enterprise" and as a result, the closing of one plant represented "a partial closing . . . and not a complete going out of business." Given these circumstances, the Board held that the employer's failure to bargain over the effects of its decision was clearly contrary to long-established precedent and in violation of section 8(a) (5) and (1). As to the "more difficult issue" of whether the employer also violated the Act by bypassing the union and "failing to bargain over the decision to close the plant permanently," the Board

[96] 161 NLRB 696

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

[98] 161 NLRB 561

first considered the possible applicability of the Supreme Court decision in *N.L.R.B.* v. *Darlington Mfg. Co.*[99] In holding it inapposite, the Board pointed out that the Supreme Court's decision upholding the complete liquidation of a business, motivated by union animus, "cannot be relevant to the issue before us which involves . . . the partial closing of [a] business."

In considering whether the issue was appropriately resolved within the principles enunciated in *Fibreboard*, the Board observed that the employer's closing of the plant, as in the subcontracting situation, had as its necessary result the termination of employment of the employees and thus affected a "term and condition of employment." Expressing disagreement with two circuit courts of appeals' decisions which limited *Fibreboard* to questions of subcontracting and would find that actions representing basic operational changes affecting the commitment of investment funds were not bargainable,[1] the Board saw "no reason why employees should be denied the right to bargain about a decision directly affecting terms and conditions of employment which is of profound significance for them solely because that decision is also a significant one for management." The Board viewed the Supreme Court's holding in *Fibreboard*, that such limitations on absolute freedom to manage the business as are inherent in compelling bargaining on contracting out are justified by the potential gains of requiring bargaining, and concluded that as a judgment *a fortiori* it would also be true "with respect to decisions regarding the relocation or termination of a portion of the business." Although recognizing that the economic factors in some partial closing situations may be so compelling as to limit meaningful bargaining to the effects of the decision, the Board concluded that "nevertheless in other cases the effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a decision which cannot be revised."

In another case [2] where a partial closing was held not to be a violation of section 8(a)(3), because there was no purpose of "chilling" unionism, the Board also concluded in the particular situation the failure to bargain about the closing was not a violation of section 8(a)(5). It found that the source of the difficulties between the employer and the union was not an economic problem but rather the employer's religious convictions, which precluded him from dealing with the union. Viewing the religious convictions as not being "an apt subject for collective bargaining in this matter," the Board concluded that under the circumstances there was no explanation of how the parties could have

[99] *N L R B* v *Darlington Mfg Co*, 380 U S 263

[1] *N L R B* v *Adams Dairy*, 350 F.2d 108 (C A. 8), cert denied 382 U.S 1011; *N L R B* v *Royal Plating & Polishing Co*, 350 F 2d 191 (C A 3)

[2] *A C Rochat Co.*, 163 NLRB No 49

engaged in "effective bargaining" before the irreversible decision and disposition of the assets.[3]

c. Plant Removal and Relocation

The Board has held, and it is well settled, that an employer's bargaining obligation under the Act requires an employer contemplating an economically motivated relocation of his plant to afford the union an opportunity to bargain about the effects of the move upon the employees. The Board had occasion to consider the applicability of that obligation in several cases during the year, as well as to consider the bargainable nature of the relocation decision itself. In *Cooper Thermometer*,[4] the Board found that an employer violated section 8(a)(5) of the Act by limiting bargaining concerning the effects upon the employees of the economically motivated relocation of the plant to a new facility in a nearby town, to a determination of their rights under the existing collective-bargaining agreement. The employer refused to provide information concerning the job classifications and conditions of employement at the new plant and, while refusing to bargain with the union over the circumstances, such as seniority and benefit carryover, under which employees might transfer to the new plant, sought to solicit individual employees directly on the matter of placement at the new plant. Holding that the obligation to bargain over the effects of the move included the obligation to bargain over the placement of the employees in the plant at the new location, which was viewed as but a continuation of the old plant, the Board found that the employer, by refusing to bargain in this respect, had precluded an orderly transition of employees to the new plant. In view of this, and in the absence of a showing that a majority of the employees would not have transferred had the employer fulfilled its bargaining obligation, the Board found it not unreasonable, under all the circumstances, to infer that a majority would have transferred to the new location. It therefore held the employer had also violated section 8(a)(5) by refusing to bargain with the union as representative of the employees at the relocated plant.

Consistently applying these principles, the Board in *Pierce Governor*[5] found no violation where the employer notified the union of

[3] In *Schnell Tool & Die Corp*, 162 NLRB No 123, the Board relied on the reasons set forth in *Ozark Trailers* as a basis for finding a violation of sec 8(a)(5) in the economically motivated execution of a 10-year lease with option to purchase the premises and machinery at one of the two plants of the employer, without prior notice and bargaining with the certified representative See also *Royal Plating & Polishing*, 160 NLRB 990, and *Thompson Transport Co.*, 165 NLRB No. 96

[4] 160 NLRB 1902

[5] 164 NLRB No 2

the contemplated relocation of the plant to a nearby town and engaged in extensive negotiations with the union over the effects of the move on the employees. The negotiations included detailed consideration of the circumstances of transfer of employees, as well as exploration of the union's right to represent the employees at the new location. The Board noted that since there had been no failure to bargain over the effects of the relocation, there was no basis for attributing the failure of the employees to transfer to any unfair labor practices on the part of of the employer. Noting also that at no time during the negotiations did a majority of the employees have an interest in transferring to the new location, the Board found the employer did not violate the Act by refusing to bargain with the union at that plant.[6]

Two cases considered by the Board involved situations in which an employer's decision to shut down operations was reached separately from a contemporary decision to commence operations in a new location. In *McLoughlin Manufacturing Corp.*,[7] the employer, unable to continue efficient operations due to such "pressing economic and operational" demands as obsolete machinery and due to employment conditions imposed by the union contract viewed by it as onerous, notified the union of its plans to phase out and liquidate the business. Negotiations took place as to both the decision and its effect on the parties, and agreements on severance and vacation pay were reached. However, while the business was being phased out, the employer received and unilaterally accepted an offer to relocate in another State. Citing its *Ozark Trailer* [8] decision, the Board emphasized that "before an employer definitely decides to contract out, move, or relocate its business, it is obligated to bargain not only with respect to the effect of that decision but also as to the decision itself." However, the Board also acknowledged that unusual circumstances might excuse or justify unilateral action, and found that such unusual circumstances existed here. The Board found that under the circumstances the decision to relocate did not add anything to the decision to liquidate, so far as the impact on unit employees was concerned, for the parties had already bargained concerning plant closure and the permanent elimination of unit jobs. In the absence of union animus, and without a contention that any of the employees would have wished to transfer to the new plant, the Board dismissed the complaint, concluding that even if it were to find a technical violation in the employer's failure to discuss plant

[6] In *Die Supply Corp.*, 160 NLRB 1326, and *Purolator Products*, 160 NLRB 80, also, the Board found the respective employers had failed to fulfill their obligation to bargain with the union concerning the effects on the employees of a plant shutdown and relocation

[7] 164 NLRB No 23

[8] *Supra*, p 110.

relocation with the union, a remedial order would not be required to effectuate the policies of the Act.[9]

To similar effect is the decision in another case[10] where the Board found a violation of section 8(a)(5) in the employer's failure to notify and bargain with the union about its decision to close a plant, and the effects of the decision on the employees, but under the circumstances was not under a duty to notify and consult with the union concerning its decision to build a second plant. The second plant had been planned as an addition to the employer's operations rather than as a substitute for the existing plant, and its construction, long planned, had been initiated several months before the decision to close the existing plant was first considered. Finding under these circumstances that the second plant was not a "traditional runaway shop," the Board found that its construction and availability was not related to the decision to close the existing plant, where good-faith bargaining had taken place up to the time of concealment of the decision to close. It therefore found the employer had no obligation to bargain about the establishment of the new plant.

d. Industry Promotion Funds

The nonmandatory nature of industry promotion fund provisions as a subject for bargaining was reaffirmed by the Board in an unusual context in one case decided last year.[11] The Board held that a union's unlawful insistence upon an industry promotion fund provision, identical with one voluntarily incorporated into its contract with the multiemployer association, as a condition for entering into an agreement with a nonmember employer, was a violation of section 8(b)(3) of the Act, as was the refusal of the trustee of the trust funds to accept that employer's contributions to other funds because none was made to the industry promotion fund. The employer had accepted the provision under protest and subsequently tendered payments to the fund trustee for all trust funds under the agreement except the promotion fund, notwithstanding a provision prohibiting the trustee from accepting any fund payments unless all were made. Although finding the industry promotion fund provision to be valid in the context of the association contract, the Board concluded the trustee could not rely on that fact as a basis for its refusal to accept the payments from the instant employer since the union's prior unlawful insistence on including the provision in its contract with that single employer had made

[9] Chairman McCulloch and Members Fanning, Brown, Jenkins, and Zagoria Member Zagoria would also find a violation of sec. 8(a)(5) in the failure to notify the union of the relocation and bargain concerning it, but agreed that no remedial order is required under the circumstances.

[10] *McGregor Printing Corp.*, 163 NLRB No 113.

[11] *Local 80, Sheet Metal Wkrs. (Turner-Brooks)*, 161 NLRB 229.

the provision inoperative and invalid in that contract as a matter of law. The Board therefore held that the refusal by the trustees to accept the tender was an additional violation of section 8(b)(3), chargeable to the union, since the trustees of the promotion fund, notwithstanding the fact that they were all appointed by the association party to the contract and fund agreements, were viewed by the Board as "agents of the joint principals."

6. Withdrawal From a Multiemployer Bargaining Unit

The prerogative of a union to withdraw from an established multiemployer bargaining relationship under the same limitation of timely and unequivocal notice as is required of employers, and thereafter insist upon bargaining on an individual basis with each employer of the multiemployer group was firmly established by the Board last year.[12] During the report year the Board reaffirmed this principle in the *Washington Post Co.* case,[13] where it held that the employer members of a multiemployer bargaining group violated section 8(a)(5) and (1) by their refusal to bargain with the union on an individual-employer basis in response to the union's timely request. The Board also held that the union was not obligated to bargain on a multiemployer basis regarding whether it should continue to bargain on a multiemployer basis. It viewed that issue as merely a possible subject for bargaining, but found no reason why it could not be considered within the format of single-employer negotiations.

The principle of a union right of withdrawal from multiemployer bargaining correlative to the right of an employer to do so, and subject to the same limitations, was also applied in *Pacific Coast Assn. of Pulp & Paper Manufacturers.*[14] There the incumbent union, intervening in a representation proceeding initiated upon the petition of a rival union seeking to displace it, sought a unit which excluded the mills of an employer member of the multiemployer association which were within the established unit and had been covered by the expired contract. The union's position was consistent with its earlier notice to the employer of withdrawal of those mills from the contract unit.

In finding unpersuasive the argument that to accord the union the right of withdrawal as to only a portion of the multiemployer unit would be to permit it to "dictate the appropriate unit," the Board stated:

> . . . First, as we recognized in *Evening News*, a multiemployer unit depends for its existence upon the continuing consent of both parties, and not upon any

[12] *Evening News Assn.*, 154 NLRB 1494, and *Evening News Assn.*, 154 NLRB 1482, enforced 372 F 2d 569 (C A. 6); *Hearst Consolidated Publications*, 156 NLRB 210, enforced 364 F 2d 293 (C A. 2), Thirty-first Annual Report (1966), pp. 89–90, 145

[13] 165 NLRB No 118.

[14] 163 NLRB No 129.

congressional direction to the Board favoring such a unit. If either party timely and unequivocally withdraws its consent and indicates its preference for bargaining in a single employer unit—a unit which has been specifically sanctioned by Congress in Section 9 of the Act as an appropriate unit—then the Board gives effect to such a preference. Second, insofar as a union can "dictate" or remake the multiemployer unit under the rule we lay down here, so, too, can individual employers reform the multiemployer unit by withdrawing from it. . . . Third, if any or all of the employers believe that the employer with respect to whom the union has withdrawn is so vital to the multiemployer unit that multiemployer bargaining is no longer desirable, they may themselves withdraw from the multiple unit. (Here, the employers have not indicated they would withhold their consent from something less than a 47-plant unit.)

The Board noted that in permitting employer withdrawals from multiemployer bargaining it had not inquired into the motive for the withdrawal, nor found it necessary to consider whether the stability of the multiemployer unit would thereby be upset, or whether "fragmentation" was desirable under the circumstances. According the union, therefore, withdrawal rights coextensive with those of an employer similarly situated, the Board held that "a union may withdraw from a multiemployer unit with respect to one or more employers while continuing multiemployer bargaining with those employers remaining in the multiple unit." The withdrawal being timely and unequivocal, the Board excluded the two mills from the appropriate unit.

As to the union's attempt to withdraw from the unit and bargain individually for two other mills which were only a portion of that employer's operations comprehended by the unit, the Board reached a different result. Noting that it "does not permit an employer to withdraw only a part of his operation from a multiemployer unit while leaving the remainder in the multiemployer unit," the Board applied the same standard to the union's request, and denied it because not encompassing all the mills of that employer covered by the multiemployer unit.[15]

[15] Chairman McCulloch and Members Fanning and Zagoria for the majority Member Jenkins, concurring and dissenting, was of the view that since mutual consent is the basis of multiemployer bargaining, once the withdrawal of the union from multiemployer bargaining as to a portion of the unit has been permitted, the unilaterally determined change in the unit requires that the remaining employers be given the option of withdrawing from multiemployer bargaining for the remainder of the unit before a statutory obligation to bargain in the reduced unit is imposed Member Brown, dissenting, found "no cogent basis for diluting the historical 47-mill unit" which had effectively contributed to the stability of labor relations in the industry, but rather found "most persuasive reasons for not doing so," and therefore would not direct an election in any unit lesser than the historical one

E. Union Interference With Employee Rights and Employment

1. Protective Scope of the 8(b)(1)(A) Proviso

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,[16] was considered by the Board during the year in a varitey of contexts. In one case [17] the Board [18] held that a local union's adoption and implementation of a bylaw providing for a refund of a portion of membership dues to those members attending regular union business meetings did not constitute a *pro tanto* penalty upon those members who did not attend and did not thereby violate section 8(b)(1)(A).[19] It found the union's dues structure was not rendered disparate by the refund device since each member "was assessed an equal amount of dues, and each member was accorded an equal opportunity to share in the reward offered for giving of his time to necessary union affairs." The union's use of funds to reward attendance at meetings, and thereby encourage employees to take an active and responsible role in governing the union and formulating union policy, was viewed by the Board as "a legitimate device, aimed at achieving a salutary objective," and related to the area of the "Union's internal affairs" excluded from the ambit of section 8(b)(1)(A) by the proviso to that section.[20]

The question of whether union disciplinary actions against members, alleged to be prohibited by section 8(b)(4)(i)or(ii) because taken to enforce prohibited secondary objectives, were in implementation of internal rules protected by the proviso to section 8(b)(1)(A) and Board condemnation therefore precluded, was raised in several situations. In the *Local 252, Sheet Metal Workers* case,[21] the Board held that a local union's imposition of a fine upon some of its members

[16] 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 . "

[17] *Local 171, Assn of Western Pulp & Paper Wkrs. (Boise Cascade Corp.),* 165 NLRB No 97.

[18] Members Fanning, Brown, and Zagoria for the majority, Chairman McCulloch and Member Jenkins dissenting

[19] The contrary decisions in *Leece-Neville Co.,* 140 NLRB 56, and *United Packinghouse, Food & Allied Wkrs (J-M Poultry), Local 673,* 142 NLRB 768 (Twenty-eighth Annual Report (1963), p. 90), were overruled.

[20] Chairman McCulloch and Member Jenkins, dissenting, would adhere to the view that a refund provision of this nature in a union's bylaws "in reality imposed a fine or penalty" under which the employee who wishes to refrain from union activity by not attending meetings must pay for that privilege by being required to pay a greater sum than that asked of active union members.

[21] *Local 252, Sheet Metal Wkrs' Intl. Assn (Tulare-Kings Employers Council),* 166 NLRB No 63.

for having worked for a subcontractor at a construction site, when another local union was picketing the general contractor, constituted inducement of employees to refuse to perform services within the meaning of section 8(b)(4)(i). As the fines were imposed for a prohibited secondary work stoppage objective, the union by their imposition was held to have violated section 8(b)(4)(i)(B). In so holding the Board rejected the contention that the union's actions were immunized from illegality by the proviso to section 8(b)(1)(A), emphasizing that "employee inducement need not be independently unlawful if it is aimed at an objective proscribed by section 8(b)(4)(B) of the Act." It viewed the union's disciplinary actions as "more than a matter of purely internal concern," since taken to penalize members for working for a neutral employer at a construction project where another employer was being picketed.[22] The same contention of proviso protection was made in another case [23] where the Board found an 8(b)(4)(i)(B) violation in the union's imposition of fines upon members for working when another subcontractor was being picketed.

The legality under section 8(b)(4)(ii)(B) of a union's "do-not-patronize" letters sent to all its members instructing them, under penalty of disciplinary action, to stop doing business with a manufacturer with whom the union had a dispute was considered by the Board in the *Glaziers Local 1184* case.[24] The letter was found to have been aimed specifically at those members of the union who were independent contractors and to have the design and intent of coercing them to cease doing business with the manufacturer. As the actions were of the nature proscribed by section 8(b)(4)(ii), and had an objective interdicted by section 8(b)(4)(B), the Board found a violation of that section rejecting the contention that the threatened disciplinary action was an internal union matter protected by the proviso to section 8(b)(1)(A).

2. Union Discrimination in Determining Seniority

Union actions violative of section 8(b)(2) and (1)(A) of the Act, because causing or attempting to cause employer discrimination in

[22] Chairman McCulloch and Member Zagoria for the majority Member Fanning, dissenting, would find no violation since in his view, as set forth in the dissenting opinion in *Building & Construction Trades Council of New Orleans (Markwell & Hartz)*, 155 NLRB 319 (Thirty-first Annual Report (1966), p 107), the subcontractor operations related to the normal business operations of the general contractor being picketed, and the disciplinary actions or appeals to honor the picket line were therefore not unlawful inducements to secondary action

[23] *Bricklayers & Masons Local 2 (Weidman Metal Masters)*, 166 NLRB No 26 Chairman McCulloch and Members Fanning and Brown Member Brown dissenting as to the remedy

[24] *Glaziers Local 1184, Painters, Decorators & Paperhangers (Tenn Glass Co)*, 164 NLRB No 19

the employment relationship in violation of section 8(a)(3), take many forms. Two cases decided during the year involved the discriminatorily motivated resolution of employees' seniority status by local unions with a resulting loss of work to the employee when the employer acquiesced in the decision. In the *Local 282* case,[25] when an employee who had left the bargaining unit to take a management position with the employer sought to return to a job within the unit, the employer referred him to the union. Upon his application, the union executive board restored him to the unit employee seniority roster. Subsequently, however, the employee was tried upon charges filed by other union members alleging that he had acted in an antiunion fashion while outside the unit, and the union thereafter reversed its decision and informed the employer that the employee's seniority had been revoked. Finding that, in the absence of contract provisions controlling the employee's right to restoration of seniority, the union had undertaken to judge the question, the Board viewed the case as turning on whether the power asserted by the union "was exercised lawfully." Concluding that the union's revocation of the employee's seniority was based primarily upon discriminatory reasons related to the charges of alleged antiunion acts, and that it resulted in a material reduction in the amount of work available to him, the Board held the union, by revoking his seniority, violated section 8(b)(1)(A) and (2) of the Act.

A union's resistance to the dovetailing of seniority rosters upon the transfer of routes and employees from one to another of the branches of the employer's operations was held in the circumstances of the *Woodlawn Farm Dairy* case [26] to have violated section 8(b)(2) and (1)(A). The employer had transferred ice cream distribution routes from one of its branches to another branch for servicing. The employees at the latter branch were represented by a sister local to the union representing the employees at the branch from which the routes were transferred. The drivers who had serviced the routes were also transferred and bid on the routes when they were posted as new jobs in accordance with the contract. Although the contract clearly provided for dovetailing seniority in the event of consolidation, the union refused to permit it, contending that there had been no consolidation since not all departments at the other branch had been transferred. The former drivers, treated as transferred employees without seniority, were therefore not awarded the routes and were subsequently laid off. Finding that the transfer of operations was tantamount to a consolidation of two branches within the clear meaning of the contract, the Board also concluded that the local's contention that the dove-

[25] *Local 282, Teamsters (Lizza & Sons)*, 165 NLRB No. 124
[26] 162 NLRB No. 1

tailing provision was not applicable was merely a pretext designed to conceal its determination to cause the transferred employees to be denied seniority because not members of the local. The Board found the discriminatory motivation clearly evidenced by statements of the local's business agent that the seniority would have been dovetailed if they had been members, but that dovetailing would not be permitted since it was denied to members of his local on a prior occasion when they were transferred under somewhat different circumstances to the branch from which these transfers had been made, and an arbitrator under a similar contract provision had denied dovetailing of overall seniority.

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. Prohibited Objectives

a. Disruption of Business Relationships

Section 8(b)(4)(B) prohibiting pressure on "any person" is intended to prevent the disruption of business relationships by proscribed tactics. Among the cases considered by the Board under this section during the year was one involving the applicability of the "ally" doctrine under unusual circumstances, several concerning the legitimate limits of consumer or product picketing under the second proviso to section 8(b)(4)(B), and another raising issues as to the currency of the business relationship sought to be affected in order for the action to be proscribed.

Employers who have made common cause with a primary employer by knowingly doing work which would otherwise be done by the striking employees of the primary, and the work is done pursuant to an agreement with the primary designed to permit him to continue to meet his contractual obligations, are viewed as "allies" of the primary, rather than neutrals, for the purpose of identifying the "unconcerned" employer to whom protection is extended by section 8(b)(4)(B) of

the Act.[27] In the *Laundry Workers Local 259* case,[28] a union engaged in a bargaining demands strike requested verification from another employer of reports that it was performing struck work for the primary, notifying the employer that unless the union was advised to the contrary, picketing would take place. Receiving no reply and having verified that struck work was being performed, the union thereafter began picketing. Although the employer ceased performing struck work shortly before the picketing began, the union was not at that time informed but subsequently upon being informed withdraw its pickets immediately.

The Board held that the employer, by electing to perform the struck work, lost its status as a neutral, and is not to be regarded as having regained the status of a neutral subject to the full protection of section 8(b)(4)(B) "merely upon its ceasing to do business for a struck employer." Rejecting the view that pressures brought to bear on an ally are converted to proscribed secondary action even though "the picketing labor organization is not shown to have knowledge that the picketed employer's status as a primary combatant has changed," the Board held that an "ally, in order to expunge its identity with the primary dispute, is under an affirmative duty to notify the picketing union that struck work shall no longer be performed." Finding under the circumstances of this case that the union was not so informed, nor a showing made that "through exercise of ordinary diligence" it could have known of the termination of struck work, the Board found no violation of section 8(b)(4)(B).

In other aspects of that case,[29] the Board found that picketing with broadly worded nonproduct and consumer picket signs at other locations where the primary employer's products were used violated section 8(b)(4)(ii)(B) because of the union's failure to take reasonable precautions to meet the requirement that the picketing have a reasonably direct impact on the primary and "not be designed to inflict general economic injury on the business of the neutrals." At one location the signs used failed to clearly identify either a product or the primary employer, and were therefore found to be so ambiguous as to create a separate dispute with the secondary employer. In the other instance, picketing with consumer signs was conducted at a restaurant which did not use the primary employer's products in the restaurant but only it the kitchen. The union made no effort to determine whether the customers came into contact with the primary

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

[28] *Laundry, Dry Cleaning & Dye House Workers Intl , Local 259 (Calif. Laundry & Linen Supply)*, 164 NLRB No. 55

[29] *Id*

product, and the owner was informed by the union that the picketing would cease as soon as he obtained linens from a different laundry.

Consumer picketing violative of section 8(b)(4)(ii)(B) because utilized to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary by ceasing to do business with the primary, was also found by the Board to have occurred in the *U.S. Mattress* case.[30] There the union, in furtherance of its dipute with a primary employer, picketed retail stores with consumer signs requesting the public to look for the union label and not buy nonunion furniture. The Board found, however, that it did not "by the legend on its picket signs, or otherwise, define the limits of its dispute by clearly identifying the primary employer or its products so as to make readily apparent to the consuming public precisely against whom its boycott appeal was directed." That "the picketing was aimed at inducing a generalized loss of patronage by the stores" was also found to have been established by the union knowledge that some of the union-made furniture carried by the store did not bear a union label, union agent statements to the store owners that they carried too much of the products of the primary employer, and the excessive breadth of the signs aimed at all furniture, whereas the primary manufactured only bedding. In another case,[31] a union, by picketing at a construction site with informational signs advertising use of products manufactured by an employer with whom it had a primary dispute, was found under the circumstances to have "actually intended to induce the neutral employees to engage in work stoppages" and, having caused a stoppage, thereby violated section 8(b)(4)(i)(ii)(B) of the Act. In finding this prohibited intent, the Board noted that when no work stoppage occurred during the first few days of picketing when it commenced only after the employees were at work, the union "changed its times of picketing so that neutral employees would have to cross the picket line in order to enter the jobsite." Although the pickets were on one occasion called off so that the employees could begin work, picketing was shortly thereafter resumed under similar conditions. The Board found the union's claim of informational picketing directed solely to the public "cannot be reconciled with this intended inducement of employees to engage in a work stoppage."

In the *Salem Building Trades* case[32] the Board was called upon to resolve the issue of whether picketing in furtherance of a primary labor dispute, conducted at premises occupied solely by neutral employers, violates section 8(b)(4)(B) notwithstanding the absence of

[30] *Bedding, Curtain & Drapery Workers, Local 140, United Furniture Workers (U S Mattress Corp)*, 164 NLRB No 27

[31] *Glaziers' Local 558, Painters, Decorators & Paperhangers [Sharp Bros. Contracting Co]*, 165 NLRB No. 27.

[32] *Salem Building Trades Council (Cascade Employers Assn)*, 163 NLRB No 9.

a present business relationship between the employers involved. Picketing with signs advertising that buildings had been constructed under substandard conditions by the named primary took place at customer entrances to the buildings after occupied by the businesses of neutral employers. The Board, viewing the victims' neutrality as the central element of congressional concern, rejected the contention that an existing business relationship between the primary and secondary employers is "an indispensable prerequisite" to the finding of a violation of section 8(b)(4). Noting that the picketing stemmed directly from the actions of the neutrals in utilizing the services of the primary in constructing their buildings, and that the primary remained "within that class of employers to whom future construction contracts might be awarded," the Board found it apparent that at the very least the picketing had an object of forcing the neutrals to refrain from awarding future contracts to the primary. The Board further found that the nature and location of the picketing indicated that the union's conduct was also designed to serve notice on all other persons of "the retaliatory economic consequences" of retaining or otherwise doing business with the primary. In finding this latter object the Board noted that the timing and situs of the picketing, and the implication to be drawn from the picket sign that the premises picketed were then involved in the labor dispute, were all designed to affect some aspect of the neutral business operations and thereby to accomplish the objective of causing a cessation of business with the primary.

b. Union Work Preservation

The Board has long held, with court approval, that a union's strike to preserve the work of employees in the bargaining unit represented by it is primary action within the protection of the proviso to section 8(b)(4)(B),[33] notwithstanding that it may also have a secondary impact.[34] It is equally well established, however, that a similar strike to preserve the work of union members generally exceeds the legitimate interests of the union in the bargaining unit and therefore constitutes secondary activity prohibited by section 8(b)(4)(i)(ii)(B) of the Act. The Board was required to draw this line between unit work preservation and union work preservation in one case [35] in which a local union representing lithographers and photoengravers in a printing

[33] The proviso reads as follows. *"Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing"

[34] E.g., *Intl. Assn. of Heat & Frost Insulators (Houston Insulation Contractors Assn.)*, 148 NLRB 866, enforced in part *sub nom Houston Insulation Contractors Assn.*, 357 F 2d 182 (C A. 5), sustained in full 386 U.S. 664

[35] *Baltimore Lithographers & Photoengravers, Local 2–P (Alco Gravure, Div of Publication Corp.)*, 160 NLRB 1204

plant instructed its members not to handle electronically scanned positives, purchased by the employer for the platemaking process, on the grounds that preparation of the positives from color negatives was unit work. The camera work involved in the making of positives from negatives was included in the unit work, but overflow and peak load positive preparation camera work had been contracted out by custom and practice, but always to trade shops where the work was done by union members. As the employees at the plant producing the positives by electronic scanning were represented by a sister local of the union, the employer viewed the purchase of scanned positives as a substitute for purchased positives prepared by camera techniques, while the union viewed their purchase as a change in the employer's operations, amounting to the subcontracting of unit work in violation of the collective-bargaining agreement. During this period, however, the local unions involved were in constant communication with the international union concerning the use of scanned positives as an industry problem to be resolved by formulation of a uniform policy for all local unions having rotogravure employers in their jurisdiction. They also coordinated bargaining positions at several of the plants involved in furtherance of their policy that scanned positives should only be handled as initial copy for camera preparation of positives. Rejecting the union's contention that the strike was "in support of a purely localized contract dispute" and designed to protect unit work, the Board viewed the evidence of coordinated union activities and policy formulation as establishing that the strike was "not to protect unit work . . . but to enforce a general policy aimed at safeguarding the work of union members generally." It accordingly held that by striking in support of "such a general policy and such a broad object," the union violated section 8(b)(4)(i)(ii)(B) of the Act.[36]

G. Hot Cargo Agreements

During the past fiscal year, the Board had occasion to determine whether various types of contract provisions come within the purview of section 8(e). Among the provisions considered was one requiring

[36] Chairman McCulloch and Members Fanning and Zagoria for the majority Members Brown and Jenkins, dissenting, would find that the union was acting solely in support of its contract dispute with the primary employer for the legitimate primary object of safeguarding unit work for unit employees They view this finding as supported by the communications with the international union which reflect the local's fear that the use of scanned positives was a threat to unit jobs, and would consider any incidental secondary effect in the form of aid to union members outside the bargaining unit as legally insignificant.

See also *New York Lithographers & Photo-Engravers Union One-P (Alco-Gravure, Div of Publication Corp)*, 160 NLRB 1222, a companion case involving related union opposition to the use of scanned positives at another of the employer's plants, found to be violative of section 8(b)(4)(i)(ii)(B) upon similar reasoning. Chairman McCulloch and Members Fanning and Zagoria for the majority ; Members Brown and Jenkins dissenting

that demonstrators of products in retail stores be covered by the collective-bargaining agreement covering the store employees, and another requiring in effect a higher payment into the union's welfare fund for coal purchased by signatories from nonsignatories of the national contract than for purchases from signatories. In *Retail Clerks Local 1288*,[37] the Board held that, under the circumstances involved, a provision in a contract requiring demonstrators of merchandise at retail grocery markets to "be covered by all the terms of the collective-bargaining agreements" between the store owner and the union representing store employees was prohibited by section 8(e). Basic to the Board's determination that the provision was designed to achieve the unlawful secondary objective of regulating the labor policies of other employers, was its finding that the demonstrators in the stores were employed by the suppliers of products to the stores rather than by the owners of the stores, and therefore were not part of the bargaining unit represented by the union. This finding, based upon the fact that the control over demonstrators exercised by the stores was "*de minimis* and merely an incident of the fact that they are performing their duties on the store premises," made it unnecessary to determine whether the demonstrators' work was "fairly claimable" unit work. In the Board's view, even if it were, "the clauses go beyond the legitimate purpose of restricting the contracting out of such work to suppliers who observe minimum standards and require that *all* the terms of the stores' contracts, including the union-security provisions, be applied to the demonstrators." The Board found this to be an effect similar to that of union signatory clause, and that "[r]ather than being designed to aid unit employees, the clauses, we find, are aimed at assisting union members in general, a purpose not permitted by Section 8(e)."

In another case[38] involving a provision asserted to be violative of section 8(e), the Board held that a provision imposing an 80-cent per ton welfare fund contribution requirement on signatories of the UMW national agreement for coal purchased from nonsignatories was prohibited, as it was found to impose a penalty designed to achieve the unlawful secondary object of aiding "union members generally rather than members of the unit." This holding rested on the determination by the Board that "the 'unit' for which subcontracting clauses may lawfully seek to preserve work are units appropriate for collective bargaining within the meaning of Section 9 of the Act," as well as on its affirmance of the holding in a prior case involving the same clause

[37] *Retail Clerks Intl Assn, Local 1288 (Nickel's Pay-less Stores)*, 163 NLRB No 112. Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority Member Brown, dissenting, "would find that the clauses in issue were designed to preserve and protect unit standards, and hence were outside the prohibitions of Section 8(e)."

[38] *Intl Union, United Mine Workers (Dixie Mining Co.)*, 165 NLRB No. 49.

in an earlier contract that "the UMW national contract covers a multiplicity of bargaining units rather than a single industrywide unit." [39]

The Board concluded that the provision could not be considered a wage standards clause "because a penalty is imposed whenever unit work is subcontracted to nonsignatory operators without regard to the wage standards" of the employer, nor a work preservation clause "since the operators from whom [the signatory] might obtain additional coal . . . without the penalty are not limited to those within the unit. . . ." In finding that the provision was in effect an unlawful implied union signatory clause, the Board noted that its demonstrated effects had been to coerce some nonsignatories to become signatories, and to penalize signatories who purchased from nonsignatories.[40]

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 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.[41]

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

[39] *Raymond O. Lewis*, 148 NLRB 249, remanded 350 F.2d 801 (C A D C)

[40] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority Member Jenkins, dissenting, would find that "there exists a single industrywide bargaining unit for welfare fund matters" wherefore the provision, limited in terms to assuring consistent contributions to the welfare fund, operates to protect the work standards for which the union has bargained

[41] *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.

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 affirmative work assignment determinations made by the Board in 10(k) proceedings during the report year were a number in which the accepted work assignment practices in the industry were of significant weight among the factors considered by the Board in making its assignment. The line of demarcation of jurisdictions between members of the Riggers and members of the Millwrights in the uncrating, assembling, positioning, and installing of machinery on "building trades" jobs was appraised by the Board in the *Don Cartage* case.[42] The Riggers lays claim to the entire work upon the principal bases of there employer's assignment practices and the efficiency and economy resulting from avoiding the split of assignments between members of each union. The Millwrights lays claim to only that portion of the "building trades" project work which had been awarded it by the Dunlop Award, an award which was the outgrowth of an arbitral process jointly initiated by the respective Internationals of the disputing locals as a voluntary effort to adjust their longstanding jurisdictional differences. That award fixed jurisdictional boundaries along lines which take into consideration "the work tasks which historically have been considered central to each craft" and had been acquiesced in and complied with by national and local general contractors in the construction industry. It had been recently reaffirmed in basic respects and modified in some minor respects by a decision made by the Appeals Board of the National Joint Board for the Settlement of Jurisdictional Disputes, which was binding upon the disputing unions.

Upon evaluation of many of the factors relevant to the problem of "the juxtaposition of competing crafts" presented by the dispute, the Board found some of them of little or no aid in resolving the dispute. Noting that it has "always looked with favor upon the voluntary efforts by unions to adjust their jurisdictional differences," the Board concluded upon consideration of the Dunlop Award that it had attained the force of an interunion agreement, and provided a "most compelling" consideration supporting the Millwrights' limited claim. The Board also noted that it has traditionally been the practice in the construction industry for contractors to divide work among the various crafts in conformity with established jurisdictional lines, and that an unstable situation would be created were a general contractor and a specialty rigging contractor to assign identical work with the same

[42] *Millwrights Local 1102, Carpenters (Don Cartage Co.)*, 160 NLRB 1061.

function to members of different crafts. It therefore concluded that it could not give controlling weight to the "past work assignment practice [of the multiemployer association of specialty rigging contractor of which the employer was a member], to the extent that such practice is at variance with work jurisdiction allocations that have been fixed by interunion agreement and now apply to others engaged in the same work." Although recognizing that "some loss of flexibility in the making of work assignments may occur in a craft union structure," the Board assigned the work in dispute to employee members represented by the competing unions in a manner which upheld in essence the work assignment apportionment particularized in the Dunlop Award as subsequently modified. It concluded that any consequential loss of efficiency or economy would not warrant disturbing the jurisdictional divisions worked out through the cooperative efforts of the unions involved and accepted by the general contractors who regularly do business with the building trades unions.[43]

"[T]he desirability of a uniform and predictable standard that would result from the adherence to the past practice" in the area and industry was also given consideration by the Board in a number of other cases, among them *Princess Cruises Co.*[44] In that case the employer began operating a foreign flag cruise ship out of a harbor complex where the established practice was for longshoremen represented by the International Longshoremen's and Warehousemen's Union to handle passenger baggage from and to the head of the gangway and the dock area.[45] Although the employer had signed a contract with the Marine Cooks and Stewards Union recognizing it as the representative of the employees performing the disputed work, its port agent contracted for stevedoring services and terminal management with established firms who were members of a multiemployer association having contracts with the longshoremen's union covering the baggage handling. Finding the contract provisions as interpreted by arbitration to be wholly inconsistent with each other, the Board noted its prior determination[46] based upon past practice awarding the work to the longshoremen. It concluded that the absence of past practice by this

[43] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority Member Jenkins, dissenting, would award the work to the employees represented by the Riggers on the basis of efficiency and economy, rigging industry practice, and the employer's assignment. In his view the majority erroneously bases the award upon the type of project at which the work is being done, that is, whether other building trades crafts are employed on the project where the work is done, and upon the basis of an arbitration award relying on criteria different from the Board's which led to an award not supported by the record before the Board

[44] *Intl. Longshoremen's & Warehousemen's Union, Local 13 (Princess Cruises Co.)*, 161 NLRB 451

[45] The longshoremens' entitlement to this work upon the basis of past practice was recognized by the Board in *Marine Cooks & Stewards (Matson Terminals)*, 156 NLRB 753

[46] *Id.*

employer did not "compel or even support the conclusion that the Employer can make a work assignment for baggage handling that is wholly at variance with the practice" prevailing in the harbor complex, particularly where it has attempted to avail itself of the services of a member of the established industry obligated by contract to adhere to the past practice. The Board therefore assigned the disputed work to longshoremen represented by the International Longshoremen's and Warehousemen's Union.

A determination "on the basis of predominant area and industry practice" was also made in another case [47] where an electrical construction contractor's assignment to employees represented by the International Brotherhood of Electrical Workers to operate a backhoe trencher in the laying of underground conduit was disputed by the Operating Engineers' claim to have the work assigned to employees it represented. Finding that factors such as contract provisions, skills, and efficiency did not provide a basis for a determination, the Board noted that on the basis of the assignment practices of other employers "this kind of work is generally handled by members of the Operating Engineers." It accordingly relied on that area and industry practice in making the award to the employees represented by that union.

Industry and area practice and agreements were also a principal basis in one instance for the award of the work of operating a hammerhead crane on the dock in the unloading of containerized cargo from ships.[48] The new, larger hammerhead crane was capable of performing all unloading operations formerly handled by the ship's large crane and winches, as well as the smaller dockside cranes. Its operation had been assigned by the employer to employees represented by the Operating Engineers, which had been previously certified as representative in a unit including the operators of the smaller dockside cranes, rather than to longshoremen, represented by the Seafarers' International Union, who had operated the ships' crane and winches. The Board found that the Operating Engineers' certification was no longer significant, since "the substantial changes brought by the introduction of the new type of cargo ship and new type of crane could be readily likened to the establishment of an entirely new operation," in which factors of efficiency, economy, and extent of loss of employment favored the longshoremen. It noted that this crane operation was basically longshore work and that the 17 hammerhead cranes operated by the employer in other ports were all manned by longshoremen. It noted also that the dispute, since it was created by the increased use of mecha-

[47] *Intl Union of Operating Engineers, Local 49 (Egan-McKay Electrical Contractors)*, 164 NLRB No 94

[48] *United Industrial Workers, Anchorage Longshore Unit (Albin Stevedore Co)*, 162 NLRB No 96

nized equipment in longshore operations, should be viewed against the West Coast Longshore Agreement of 1961 between the unions and employers designed to promote industrial peace by lightening the impact of automation upon the employment opportunities of longshoremen. In awarding the work to employees represented by the Longshoremen the Board therefore also relied on "the consensus in the maritime industry that assignments of stevedoring work to longshoremen will in the long run be of benefit to the industry as a whole."

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 in the 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 thirty 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)[49] 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.

During the report year, the Board had occasion to reaffirm its holding in *Roman Stone Construction Co.*[50] that the term "lawfully recognized" in section 8(b)(7)(A), which refers to employer-union relationships protected against picketing pressures by that section, includes "all bargaining relationships immune from attack under Sections 8 and 9 of the Act." In *Local 8280, United Mine Workers*,[51]

[49] 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 . . ."

[50] *Intl. Hod Carriers' Building & Common Laborers' Union, Road & Heavy Construction, Local 1298 (Roman Stone Construction Co.)*, 153 NLRB 659

[51] *Local 8280, United Mine Workers (Blue Diamond Coal Co.)*, 166 NLRB No 8

the Board held that "the legality of the Employer's recognition of the incumbent union cannot be challenged in an 8(b)(7)(A) proceeding because no timely charge was filed thereon," and because the collective-bargaining agreement between the employer and the incumbent "being valid on its face and of reasonable duration, would be a bar to a representation petition." Applying this rule, the Board rejected the contention that a previously certified union which had lost its majority status due to replacements hired after an economic strike, could picket more than 6 months after the employer's recognition of, and execution of a contract with, a union selected by the replacements, and defend charges of recognitional picketing on the grounds it was protesting the employer's unfair labor practice in recognizing the incumbent, even though no timely charge was filed. And in holding in another section 8(b)(7)(A) case [52] that the majority status of the incumbent bargaining representative could not be placed in issue, the Board relied on its decision in *Roman Stone*, as well as "the fact that, in the instant case, the hearing commenced more than 6 months after execution of the subsisting collective-bargaining agreement."

In the *Dallas Building and Construction Trades Council* case,[53] the Board held that the council, composed of representatives of local building trades unions, violated section 8(b)(7)(A) by picketing certain general contractors to obtain their agreement to a contract with the council restricting subcontracting in crafts where the council's member unions had jurisdiction, to employers who had collective-bargaining agreements with the appropriate council-affiliated union. At the time of the picketing the employers had lawfully recognized various ones of the council-affiliated local unions and had current contracts with them covering many of their regular employees. In finding that the picketing had an object of seeking recognition and bargaining as the representative of employees of the general contractors, the Board noted that the council "sought a formal agreement, enforceable throughout its term," which applied to work the general contractor might do either with his own employees or by subcontract. It concluded that the subcontracting proposal would significantly affect employees of the general contractors to the extent that it regulated the subcontracting of work, a matter of interest and consequence to the employees, and would tend to erode the employers' right to operate under the terms of the agreement negotiated with the representatives of their employees.[54]

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[52] *Local 7463, United Mine Workers (Harlan Fuel Co.)*, 160 NLRB 1589.

[53] 164 NLRB No. 139. Cf *Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council (R. A. Chambers & Co.)*, 165 NLRB No. 86.

[54] The council's contention that a question concerning representation could be raised since the contracts with the locals were valid only by virtue of section 8(f) of the Act, is discussed, *infra*.

J. Prehire Agreements: Section 8(f)

Section 8(f) allows prehire agreements in the construction industry by permitting an employer "engaged primarily in the building and construction industry" to enter into a collective-bargaining agreement covering employees "engaged (or who, upon their employment, will be engaged)" in that industry. Such an agreement may be entered into only with a labor organization "of which building and construction employees are members" but is valid notwithstanding that the majority status of the union had not been established, or that union membership is required after the seventh day of employment, or that the union is required to be informed of employment opportunities and has opportunity for referral, or that it provides for priority in employment based upon specified objective criteria. Such an agreement is not, however, a bar to a petition filed pursuant to section 9 (c) or (e).

Among the cases considered by the Board in which section 8(f) was a consideration was *Bricklayers & Masons International, Local No. 3*,[55] in which the union urged in defense of a refusal-to-bargain charge that parties coming within the special prehire contract provisions of section 8(f) are free of the good-faith bargaining obligations otherwise imposed by section 8(a)(5) and 8(d) of the Act and instead bargain on a wholly voluntary basis. The Board, however, found it unnecessary to pass on that issue, noting that "the entire legislative history of Section 8(f)(1) is couched in terms of 'prehire agreements,' a reference which can have no meaning in the situation where, as here, the parties are continuing an existing bargaining relationship under which employees have previously been hired. . . . Congress envisioned its prehire provisions as applying only to the situation where the parties were attempting to establish a bargaining relationship for the first time."

The Board relied on that construction of the scope of section 8(f) in another case[56] in which a building trades council, found to have violated section 8(b)(7)(A) by picketing general contractors with a recognitional and bargaining objective, contended that the contractors' contracts with the building trades locals were prehire contracts valid only because of section 8(f) and were therefore no bar to the raising of a question concerning representation. In rejecting the contention, the Board noted that the contracts were the current ones of a successive renewal of agreements, wherefore the situation obtained was parallel to that in the *Bricklayers* case. It emphasized

[55] *Bricklayers & Masons Intl, Local 3 (Eastern Wash Builders Chapter, AGC)*, 162 NLRB No 46

[56] *Dallas Building & Construction Trades Council*, 164 NLRB No 139

that section 8(f) had no application to the contracts in issue, which "were not initial agreements, but the latest fruits of continuing bargaining relationships" going back many years.

K. Remedial Order Provisions

During the report year, the Board was confronted in a number of cases with issues concerning the nature of the remedial action appropriate to, and capable of effectuating the purposes of the Act in, the circumstances presented. Of general import was a case [57] in which the Board considered the responsibility of a bona fide purchaser of a business to remedy unfair labor practices of its predecessor of which it had knowledge at the time of purchase. Upon reexamination of its "past restrictive view of its remedial powers in this area" the Board, reversing prior decisions to the contrary, concluded that "one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct" jointly and severally with the predecessor. Although not unmindful that such a purchaser was not a party to the unfair labor practices and has no business connection with the predecessor, the Board concluded, upon balancing the equities, that where there is no real change in the employing industry so far as the victims of the unfair labor practices are concerned or in the need for remedying the violations, appropriate steps must still be taken to erase the effects of the predecessor's actions. As the successor in control of the business is in the best position to remedy the unfair labor practices most effectively, and by substituting himself in place of the perpetrator has become the beneficiary of the unremedied violations under circumstances where his potential liability to remedy can be negotiated and reflected in the terms and conditions of the purchase, the Board concluded that remedial responsibility should attach to a bona fide purchaser with notice, when the determination of such a status has been made after appropriate notice and hearing. Noting that these due process requirements had been met in the case before it where the purchaser had participated in the backpay hearing, the Board nevertheless concluded that since, at the time of the purchaser's takeover of the business, "Board law imposed no obligation upon it to take any action regarding the unremedied unfair labor practices of its predecessor," it would be inequitable to require of it the full remedial action necessary. The Board did, however, direct the purchaser to offer reinstatement to employees illegally discharged by the predecessor,

[57] *Perma Vinyl Corp*, 164 NLRB No 119

but with backpay only for losses from its refusal, if any, to reinstate them.

Other remedial order issues were of a more specific nature, concerning the design of a remedy for the particular violations found. In the *J. P. Stevens* case,[58] an employer with a "history of illegal conduct" continued to engage in extensive unfair labor practices including "a long campaign of illegal intimidation and unlawful discharge of those employees who were actively soliciting for the Union." Finding that this effort to eliminate those who might recruit others in the union was largely successful, while antiunion employees were even free to talk about the union during working hours, the Board addressed itself to the remedy required to overcome the effect of this campaign.

> In these circumstances, we believe that a simple cease-and-desist order will not suffice, for it would be unrealistic to believe that such an order could retrieve the employees' thwarted rights of self-organization or restore the Union to its previous position where it was able to make known its views and solicit membership with the help of employee members within the plant Few, if any, union supporters are left, and those who might espouse the union cause, such as reinstated employees who previously had been discharged for their union activity, would probably be afraid to promote the Union for fear that they would be discharged again The atmosphere of fear generated by the illegal threats, interrogations, and discharges in the plant undoubtedly will hinder lawful propaganda activities during nonworking time on company premises We note, furthermore, that union organizers ordinarily have no right to access to the plant and that, so far as the record shows, this Union now has no other effective means of personally contacting all of the Respondent's employees Accordingly, we have decided to grant the Charging Party's request that the Respondent be required to supply the Union, upon request made within 1 year, with the names and addresses of all employees in its North and South Carolina plants. This will enable the Union to contact all employees outside the plant and make known its views in an atmosphere relatively free of restraint and coercion. As the Respondent was responsible for the unfair labor practices in the plants and for the attendant lack of organizational opportunities, and as all the employees' names and addresses are not available from sources other than the Respondent, we think it reasonable to require it to furnish the list. [Footnotes omitted.]

A remedy in addition to the cease-and-desist order customary for 8(b)(4) violations was prescribed by the Board in a case where the union's imposition of disciplinary fines upon some of its members for working behind a picket line was found to be inducement to engage in a secondary work stoppage and therefore violative of section 8(b)(4)(i)(B).[59] To prevent diminution of the impact of its decision in effectuation of the purposes of the Act, and to preclude the union's retention of moneys exacted from employees for an unlawful object, the Board ordered the refund of the fines. In doing so, it distinguished

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[58] *J P Stevens & Co*, 163 NLRB No 24

[59] *Bricklayers & Masons Local 2 (Weidman Metal Masters)*, 166 NLRB No 26 For a discussion of the substantive violation see, *supra*, p. 118

between "economic losses which are merely an 'incident' of secondary boycotts and the imposition of a fine, which in itself constitutes the unlawful pressure." It emphasized that reimbursement was not ordered only to "compensate" the employees or even reimburse them for damages incurred, but was "directed primarily to the undoing of the Union's unlawful inducement." [60]

The significance of precontract assistance to a union, for the formulation of a remedy for the employer's illegal assistance to the incumbent during the term of the contract, was in issue before the Board in the *Arden Furniture Industries* case.[61] There the employer had threatened employees that it would move its plant if they persisted in their midcontract-term efforts to disaffiliate from the incumbent and deal with the employer as an independent union. Finding the threats to be violative of section 8(a)(2), the Board noted that they occurred during the term of an agreement, lawful on its face, the execution and maintenance of which were not under attack because the conduct surrounding the execution of the contract occurred prior to the 6-month limitation period imposed by section 10(b). The Board concluded that were it, in prescribing a remedy, to rely on conduct antedating the limitations period as affecting the execution or maintenance of the agreement, it would in effect be finding the conduct to be an unfair labor practice, a finding barred by section 10(b).[62] It therefore declined to require the employer to withdraw recognition from the incumbent union during the term of the contract. But believing that more than a routine cease-assistance remedy was required in "the special circumstances" of the case, notwithstanding that when the threats took place the employees did not have the right, because of the contract, to change their bargaining representative, the Board ordered the employer, upon expiration of the current term of the contract, to refrain from recognizing or bargaining with the union unless and until it is certified by the Board as representative.[63]

[60] Chairman McCulloch and Member Fanning for the majority Member Brown, dissenting as to the refund of fines remedy, was of the view that since the Board was without power to assess damages in favor of neutral employers for economic injury suffered by secondary action even though section 8(b)(4)(B) was enacted for their protection, it was similarly without power to make that section "the vehicle for compensating employees for economic losses they may incur as an incident of a union's unlawful pressure directed at a neutral employer"

[61] 164 NLRB No 159

[62] The Board declined to adhere to its decision in *New Orleans Laundries, Inc*, 114 NLRB 1077, to the extent it is subject to the interpretation that the Board will rely on pre-10(b) conduct to set aside a contract lawful on its face

[63] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority Member Fanning, dissenting as to the remedy, was of the view that the Board, without violating the proscription of section 10(b), could properly assess the assistance rendered the union at the time of execution of the contract as "background" evidence for purposes of formulating a remedy, and he would therefore order an immediate withdrawal of recognition notwithstanding the contract

VII

Supreme Court Rulings

During fiscal year 1967, the Supreme Court decided six cases in which the Board was directly involved. One case concerned a situation where employer discrimination in violation of section 8(a)(3) was found absent specific proof of antiunion motivation. Another concerned the legality of a union's imposition of fines upon those of its members who crossed an authorized strike picket line at their employer's place of business. Two other cases involved the power of the Board with regard to "contract questions." The remaining two cases involved the question whether the ban on hot cargo agreements imposed by section 8(e) interdicted contract clauses which were merely designed to preserve "traditional work" for the employees covered by the contract. The Board was upheld on the merits in all six cases. In addition, the Board participated as *amicus curiae* in a case involving the question whether the Board's power to remedy a union's breach of its duty of fair representation as an unfair labor practice barred concurrent court jurisdiction over this subject.

1. Establishment of Unlawful Discrimination Without Specific Proof of Antiunion Motivation

The question whether a violation of section 8(a)(3) may be found in the absence of proof of antiunion motivation was again [1] considered by the Court in *Great Dane Trailers*.[2] There the employer refused to pay striking employees vacation benefits accrued under a terminated collective-bargaining agreement, but made such payments to striker replacements, returning strikers, and nonstrikers who had been at work on a certain date during the strike. The Court found that this action, by its nature, discriminated against employees for engaging in strike activity and tended to discourage such activity in the future. In these circumstances, the Court added, "the burden is upon the

[1] See Twenty-eighth Annual Report (1962), pp. 121–122, Thirtieth Annual Report (1965), pp 119–121

[2] *N.L.R.B.* v *Great Dane Trailers*, 388 U S 26, reversing 363 F 2d 130 (C A. 5), and enforcing 150 NLRB 438 Chief Justice Warren wrote the opinion for the Court Justice Harlan wrote a dissenting opinion, in which Justice Stewart joined

employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him." Since the employer came forward with no evidence of legitimate motives for its discriminatory conduct, the Court held that the Board's unfair labor practice finding was clearly warranted.[3]

2. The Board and "Contract Questions"

In *C & C Plywood*,[4] the Court upheld the Board's authority to construe a collective-bargaining agreement, where this is necessary to resolve an unfair labor practice issue. (In that case, the employer sought to defend a unilateral change in the method of paying its employees on the ground that such adjustment was permitted under a clause of the collective-bargaining agreement providing for the payment of premium rates.) The Court acknowledged that the Board did not have general jurisdiction over alleged violations of collective-bargaining agreements, and that, by section 301 of the Labor Management Relations Act, Congress had conferred such jurisdiction on the courts. To have conferred such power on the Board, Congress feared, "would have been a step toward governmental regulation of the terms of those agreements." The Court concluded that there was no impairment of this policy in the instant case, for the Board "has not imposed its own view of what the terms and conditions of the labor agreement should be," but has merely construed the agreement "to determine that the union did not agree to give up" the statutory right to bargain collectively about the matter in question. Moreover, the Court added, the Board's action in construing the contract here was not inconsistent with the national policy favoring arbitration of contractual differences, for the collective-bargaining agreement contained no arbitration clause.

A related issue was considered by the Court in the *Acme Industrial* case.[5] The question there was whether an employer could refuse to furnish the union with information which was relevant to grievances arising from removal of plant equipment and subcontracting, on the ground that, since the collective-bargaining agreement contained a standard grievance and arbitration clause, the parties had channeled their requests for information to the arbitrator. The Court, in agreement with the Board, answered this question in the negative. The Court

[3] The Court indicated that, even had the employer come forward with such evidence, its conduct would not necessarily be privileged, for it is the Board's "duty to strike the proper balance between the asserted business justifications and the invasion of employee rights in light of the Act and its policy"

[4] *N.L.R.B.* v *C & C Plywood Corp.*, 385 U.S. 421, reversing 351 F.2d 224 (C.A. 9), and enforcing 148 NLRB 414 (Thirty-first Annual Report (1966), p. 144).

[5] *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 reversing 351 F.2d 258 (C.A. 7), and enforcing 150 NLRB 1463 (Thirty-first Annual Report (1966), p. 143)

emphasized that its conclusion was not in conflict with the cases under section 301 of the Labor Management Relations Act according great deference to arbitration,[6] for, "in assessing the Board's power to deal with unfair labor practices, provisions of the Labor Act which do not apply to the power of the courts under § 301, must be considered," e.g., section 10(a).[7] Moreover, the Court added, the Board, in enforcing the union's right under section 8(a)(5) to information essential to carrying out its statutory responsibilities, was in no way interfering with, but was indeed aiding, the arbitral process. The Board "was not making a binding construction of the labor contract," but was only acting "upon the probability that the desired information was relevant." And prompt receipt of relevant information was essential to permit the grievance procedure leading to arbitration to function properly, for it would permit unmeritorious claims to be sifted out promptly.

3. Union Imposition of Fines for Crossing Picket Line

In *Allis-Chalmers*,[8] the Court held that section 8(b)(1)(A)[9] did not bar a union from fining those of its members who crossed the union's picket line during an authorized strike against their employer, and from attempting to collect those fines through court suits. The Court noted that the "economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an affective bargaining agent. . . .'" Moreover, the Court found that the "history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines." Rather, the Court concluded, "the contrary inference is more justified in light of the repeated refrain throughout the debates . . . that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status."

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[6] See, e.g., *United Steelworkers* v *Enterprise Wheel & Car Corp.*, 363 U.S. 593.

[7] Sec. 10(a) of the National Labor Relations Act provides that the Board's power to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise."

[8] *N.L.R.B.* v *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, reversing 358 F.2d 656 (C.A. 7), and sustaining 149 NLRB 67. Justice Brennan wrote the opinion for the Court and Justice White filed a separate concurring opinion. Justice Black wrote a dissenting opinion, in which Justices Douglas, Harlan, and Stewart joined.

[9] That section makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7: *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 . . ."

4. Section 8(e) and Work-Preservation Agreements

In *National Woodwork Manufacturers*,[10] the Court affirmed the Board's holding that the inclusion of a clause in a contract, providing that the employees "will not handle" prefabricated doors at the jobsite, was not a violation of section 8(e), which bars agreements to "cease . . . from handling . . . any of the products of *any other employer*. . . ." The Court concluded that section 8(e) was merely intended to reach so-called hot cargo clauses and other similar agreements which had a "secondary objective," and not an agreement which only sought to preserve work for the employees covered by the contract, which was primary in nature. The Court pointed out that, "[a]lthough the language of § 8(e) is sweeping, it closely tracks that of § 8(b)(4)(A), and just as the latter and its successor § 8(b)(4)(B) [11] did not reach employees' activity to pressure their employer to preserve for themselves work traditionally done by them, § 8(e) does not prohibit agreements made and maintained for that purpose." Applying these principles here, the Court found that the "will not handle" clause was "primary" and thus lawful, since it merely sought to preserve for the jobsite carpenters work which they had traditionally performed.

A companion case [12] presented the question whether a union representing one group of the primary employer's employees could lawfully engage in concerted activity for the purpose of aiding a sister union, representing another group of that employer's employees, to enforce its valid work-preservation agreement. The Court sustained the Board's holding that such activity was primary and thus lawful. Since the "situation does not involve the employer in a dispute not his own, his employees' conduct in support of their fellow employees is not secondary and, therefore, not a violation of § 8(b)(4)(B)."

5. Case in Which the Board Participated as *Amicus Curiae*

In *Vaca*,[13] a State court, applying a State law standard, found that the union acted "arbitrarily, capriciously and without just or reasonable reason or cause" in refusing to process the grievance of an employee, complaining that he was wrongfully discharged, through the

[10] *National Woodwork Manufacturers Assn.* v *N.L.R.B.*, 386 U.S. 612, reversing in part 354 F 2d 594 (C A. 7), and affirming 149 NLRB 646. Justice Brennan wrote the opinion for the Court, in which Chief Justice Warren and Justices White and Fortas joined Justice Harlan concurred in a separate memorandum Justice Stewart wrote a dissenting opinion, in which Justices Black, Douglas, and Clark joined

[11] Sec 8(b)(4)(B) bars a union from exerting strike or related pressure for an object of forcing one person to cease doing business with another person

[12] *Houston Insulation Contractors Assn* v *N L R B*, 386 U S 664, reversing in part 357 F 2d 182 (C A 5), and affirming 148 NLRB 866

[13] *Vaca* v *Sipes*, 386 U S 171 Justice White wrote the opinion for the Court. Justice Fortas wrote a concurring opinion, in which Chief Justice Warren and Justice Harlan joined Justice Black filed a dissenting opinion.

contract grievance procedure's final step of arbitration. The Supreme Court agreed with the contention advanced by the union and the Board that, since the complaint in effect alleged that the union had breached its duty of fair representation, a duty imposed by the National Labor Relations Act, a Federal standard should be applied. However, the Court further held that, even if it be assumed that breach of the duty of fair representation was an unfair labor practice,[14] the *Garmon* preemption doctrine[15] was not applicable, and hence did not bar the State court suit. The Court pointed out that the duty of fair representation was judicially developed, and that the courts have been handling cases involving that subject for many years. Moreover, the Court noted, the question whether a union has breached its duty of fair representation will often be a critical issue in a section 301 suit charging an employer with a breach of contract, and the *Garmon* preemption doctrine is clearly inapplicable to suits under section 301.

Turning to the applicable Federal standard, the Court stated that a "breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." The Court concluded that this showing had not been made here, and accordingly set aside the State court's judgment against the union.

[14] See *Miranda Fuel Co.*, 140 NLRB 181.
[15] *San Diego Bldg Trades Council* v *Garmon*, 359 U S. 236.

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subjects of judicial review by the courts of appeals in 244 court decisions issued during fiscal 1967.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Court and Board Procedure

1. Standing as "Person Aggrieved"

Two cases decided by courts of appeals during the report year dealt with the standing of the parties seeking review as a "person aggrieved" within the meaning of section 10(f) of the Act. In the *United Auto Workers* case [2] the District of Columbia Circuit held that a union stood as a person aggrieved where it had prevailed before the Board in all respects on the substantive merits of the proceeding but had been denied requested relief in the form of compensation for detriment suffered from the employer's illegal refusal to bargain with it. Since the Board had overruled all exceptions and denied the union's petition for reconsideration, the court concluded that the union's compensatory remedy claim was denied by the Board on the merits, thereby eliminating "the possibility that its rejection of the Union's compensatory remedy claim reflected in any significant measure a ruling based on the fact that the Union had received all the relief it had requested of the examiner and only injected this claim on cross-exceptions to the Board." As the court could not "say either that the Union's claim is frivolous or that it is not genuinely aggrieved," it entertained the union's petition for review. In another case,[3] however, where the employer was seeking review not of an adverse order but of factual determinations made in the course of resolution of an unfair labor practice complaint against him which was ultimately dismissed; the Eighth

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

[2] *Intl Union, U.A.W.* [*Preston Products Co.*] v. *N.L.R.B.*, 373 F.2d 671.

[3] *Taft Broadcasting Co.* v. *N L.R.B.*, 65 LRRM 2272, 55 LC ¶ 11,949.

Circuit dismissed the petition "for the reason that petitioner does not have the standing of an aggrieved party."

2. Availability of Witnesses' Statements

The application to Board proceedings of the Jencks' rule concerning the availability of statements of Government witnesses for purposes of cross-examination was considered by the Ninth Circuit in one case.[4] Although certain witnesses had testified to the existence of signed statements which were never produced by the General Counsel after proper demand, the court rejected the contention that the Board erred in failing to strike the testimony of such witnesses as provided by Board Rule 102.118.[5] Noting that the General Counsel's attorneys stated at the reopened hearing that "they had thoroughly searched their records and had been unable to find any statements other than those which they had already handed over," the court held that "Where statements have been lost or destroyed in good faith the testimony of the witnesses concerned need not be struck."

Respondents further contended that the General Counsel was obligated to produce certain handwritten stenographic notebooks of a deceased field examiner containing notes relating to the statements of the Government's witnesses. The court concluded that if the notebooks "contained substantially verbatim accounts of pretrial statements orally made to a government agent by government witnesses, they should have been produced," the court expressing the view that "Any construction of the 'signed or otherwise approved or adopted' clause of Board Rule 102.118 which would not require that such statements be turned over would be invalid." Although holding that at the very least the trial examiner should have conducted an *in camera* inspection of the documents to determine their producibility the court concluded that his refusal to do so, although error, was not sufficiently prejudicial to warrant denial of enforcement in view of the remoteness of the possibility of the discovery of additional producible statements, and the failure of respondents to have the memorandum preserved for inspection by the court to provide a proper basis for review.

[4] *N.L.R.B.* v *Seine & Line Fishermen's Union of San Pedro* [*M V. Liberator*], 374 F.2d 974

[5] NLRB Rules and Regulations, as amended, 29 C F.R 102.118 reads, in part relevant here. "after a witness called by the general counsel has testified in a hearing upon a complaint under section 10(c) of the act, the respondent may move for the production of any statement of such witness in possession of the general counsel,. if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness Such motion shall be granted by the trial examiner. If the general counsel declines to furnish the statement, the testimony of the witness shall be stricken "

B. Concurrent Arbitration

In a unique situation, the Fifth Circuit consolidated for purposes of opinion two cases,[6] one a review of a Board order in a work jurisdiction dispute and the other a Federal district court decision enforcing an arbitrator's award also allocating the disputed work, but contrary to the Board determination. The Board had found that the International Typographical Union violated section 8(b)(4)(D) of the Act by refusing to abide by the Board's 10(k) determination awarding certain disputed work, claimed by that union on behalf of employees it represented, to employees represented by the Lithographers' Union.[7] While the proceeding was pending before the Board, the ITU obtained a district court order directing arbitration under its contract of the work assignment dispute, and subsequently a court order directing compliance with the arbitrator's determination that the employees represented by ITU were entitled to the work under its contract with the employer. The court of appeals held that the pendency of the Board proceeding did not preempt the jurisdiction of the district court to entertain a section 301 action to compel arbitration or enforce the award, but that once the Board determination under section 10(k) of the disputed work "is made and becomes final, then it takes precedence over the Section 301 arbitration proceedings."

The union's contention that the arbitrator's construction of the ITU contract as covering the work in dispute was binding upon the Board was rejected by the court. It held the language of the contract was "not exclusively controlling" and the Board properly considered all factors relevant to the assignment of the work in making its determination. The order of the Board was therefore enforced, and the judgment of the district court enforcing the arbitration award was vacated.

C. Representation Issues

Court review of issues resolved by the Board in representation proceedings is not directly available under the statutory scheme. It must be obtained upon review of a Board order entered in a subsequent related unfair labor practice proceeding to enforce the bargaining obligation defined in the representation case. Among the court opinions issued during the year in the course of enforcement litigation were a number involving review of the Board's resolution of issues in representation proceedings.

[6] *New Orleans Typographical Union 17 [E P. Rivas]* v. *N.L R B.*, 368 F 2d 755

[7] *New Orleans Typographical Union 17, ITU (E P. Rivas)*, 152 NLRB 587 (1965), Thirtieth Annual Report (1965), p. 106

1. Unit Issues

A number of the court cases involved review of Board determinations under section 9(c) of the unit appropriate for collective-bargaining purposes. The Seventh Circuit in the *Krieger-Ragsdale* case [8] was required to define the standard of judicial review of Board unit determinations in ruling on the respondent's contention that such findings were subject to review under the substantial evidence rule. In rejecting this contention, and sustaining the Board position that it has discretion in making unit determinations, the court defined that discretion, to be recognized by a reviewing court, in the following language:

> The discretion which the Board is entitled to exercise lies in the area of establishing, case by case, those facts which it deems generally relevant, but not conclusive, in the drawing of inferences. . . .
>
> Unit determinations fall into this category of discretionary decisions. Unit determinations are not findings of fact, but judgments upon the facts in accordance with varying guidelines of relevancy or rules of inference based upon experience and the purpose of the statute being administered. Because the exercise of discretion is a judgment and application of relevancy in a particular case, prior Board unit determinations in other cases have precedential value only in the sense that they disclose facts the Board has previously considered relevant.

Applying this standard, the court sustained the Board's determination that separate units of lithographic employees and of bindery and shipping and receiving employees were appropriate in a printing plant.

In the *Purity Food* case [9] the First Circuit, however, found itself "unable to avoid the conclusion that the Board's unit determination simply does not square with its specific findings," and denied enforcement of a Board order directing bargaining with a unit consisting of the employees of a single store of a local chain of seven stores. The court disagreed with the Board's conclusion, drawn from its factual findings,[10] that notwithstanding the integrated aspects of the chain's operations, the single store was so economically independent and possessed such autonomy within the overall operation that separation of the single store from the others for bargaining purposes would not obstruct centralized control and effective operation of the chain. Although noting that it did not "lightly disagree with the Board in matters of unit determination," the court concluded that the specific findings "disclose a small, compact, homogeneous, centralized and integrated operation." The court therefore denied enforcement of the Board's bargaining order because in its view the order was based upon

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[8] *N L R B.* v. *Krieger-Ragsdale & Co.*, 379 F 2d 517.

[9] *N.L R.B.* v. *Purity Food Stores*, 376 F.2d 497

[10] See *supra*, p 59, for a discussion of the Board decision.

a unit finding for which the Board had failed to "articulate substantial reasons." [11]

Review of unit issues in two other significant cases, however, resulted in court application of the substantial evidence test. In one instance,[12] a consent election was held with the employer reserving for subsequent litigation, if necessary, his position that the insurance debit agents voting in the election were "independent contractors." In the subsequent related unfair labor practice proceeding the Board found, upon consideration of detailed evidence of the elements of control exercised by the employer over the debit agents, that it thereby retained control over not only the result but the means whereby they accomplished their work. It therefore held the debit agents to be employees and not independent contractors. The court, however, held that all the forms of control relied on by the Board were also "consistent with an independent contractor status" and "not indicative of an existence or exercise of control directed to the 'manner and means' by which the result to be produced by the agent is to be accomplished. . . ." In view of its finding of a lack of substantial evidentiary support for some findings, and the "insignificant or equivocal nature" of others, the court denied enforcement of the Board's order.[13]

In a case [14] viewed by the court as *sui generis*, the Sixth Circuit sustained the "breadth of discretion" exercised by the Board in finding appropriate a unit of all cabdrivers employed by members of an association of independent owner-operators of taxicabs who, found to be joint employers of all the employees, through association represented the operation of the taxicabs to the public as a single integrated enterprise.[15] Finding that substantial evidence supported the factual findings of the Board as to the indicia of control through and by the association, the court found the statutory definitions of "person," "employer," and "employee" granted power to the Board to hold independent employers who have historically chosen to handle jointly their relations with their employees, to be joint employers for the purpose of defining the appropriate bargaining unit. In thus affirming the Board's bargaining order, the court also rejected the employer's contention that such a requirement of joint collective bargaining could not be imposed against the wishes of the independent employers, absent a history of such bargaining.

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[11] The Board's petition to the Supreme Court for a writ of certiorari was denied, 389 U.S 959

[12] *United Insurance Co.* v. *N L.R.B* , 371 F.2d 316 (C.A. 7).

[13] The Board's petition to the Supreme Court for a writ of certiorari was granted, 389 U.S. 815.

[14] *N.L R B* v. *Checker Cab Co* , 367 F 2d 692

[15] *Checker Cab Co & Its Members,* 141 NLRB 583 (1963), Twenty-eighth Annual Report (1963), p 37.

Court review of Board unit determinations made in the course of rulings on challenges to ballots cast by individuals whose voting eligibility was in issue was had in several cases. Among them was *Tennessee Packers*,[16] where a consent election was conducted in a stipulated appropriate unit of all employees "including truckdrivers" at the employer's plant in a named city. The court upheld the Board's action sustaining challenges to the ballots of seven employee truckdrivers who resided in other cities where they performed the local distribution of products delivered to them by the truckdrivers stationed at the plant who were included in the unit. The court agreed with the respondent that when the parties' stipulation of an appropriate bargaining unit is approved by the Board, the Board is bound by the stipulation and may not independently determine the unit. But the court concluded that the stipulated description seemed unambiguously limited geographically to employees at the plant. It further held that even if the description were viewed as ambiguous with respect to the truckdrivers, the Board's finding that there was insufficient community of interest between the out-of-town truckdrivers and those at the plant to warrant the former's inclusion in the unit was supported by the substantial evidence and properly dispositive of the challenges. In the *Midwest Television* case,[17] however, the court found the Board improperly sustained challenges to employees literally within the stipulated appropriate unit, which included all radio and television station employees who appear on a regular basis before the microphone or camera. The Board, applying community-of-interest criteria, had sustained challenges to the ballots of two employees whose appearances before the camera and microphone, although regular and therefore literally within the unit described, were found to constitute only an insignificant part of their regular duties. The court, finding the employees included in the "clear and unambiguous language" of the description, held the Board had erred in "departing from the clearly expressed intention of the parties."

2. Objections to Elections

a. Circumstances Requiring an Evidentiary Hearing

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 [18] authorize resolution of objections and challenges upon the basis of an administrative investigation unless "sub-

[16] *N.L.R.B.* v. *Tennessee Packers*, 379 F.2d 172 (C.A. 6).
[17] *N.L.R.B.* v. *Midwest Television, Station WMBD-AM-FM-TV*, 370 F.2d 287 (C.A. 7)
[18] Sec. 102.69(c).

stantial 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, continued to be made this year by courts of appeals.[19] In one such instance,[20] the Sixth Circuit emphasized that "mere disagreement with the Regional Director's reasoning and conclusions" does not raise substantial and material factual issues. In rejecting the respondent's contention that a hearing was required, the court held that it is incumbent upon the party seeking a hearing upon its objection to an election to state what evidence it would produce to establish that the conclusions of the regional director were incorrect. The court found the respondent had failed to carry that burden in its request to the Board for a hearing, wherefore the Board did not abuse its discretion in denying a hearing on the matter. In the *U.S. Rubber* case,[21] the court found the employer had carried this burden of establishing the existence of substantial and material issues of fact concerning the accuracy of certain statements made by the union in its preelection propaganda. The statements setting forth a comparison of wage rates and fringe benefits at a competitor's plant had been distributed less than 24 hours before the election, and the employer had no opportunity to respond to them. The employer's objections provided detailed particulars, supported by affidavits, in which it asserted the particulars of the statements claimed to be false. The regional director, after *ex parte* investigation, had found the difference between the union's statement and the actual circumstances to be an insignificant difference. In the court's view, the affidavits submitted by the employer raised factual issues concerning the "intricate figures, variables and details of operations" to be compared in evaluating the propaganda, which should have been resolved through a hearing.

In the *Bata Shoe* case,[22] although no hearing had in fact been held on the employer's objections to the election, the court held that the hearing requirement was satisfied when in the subsequent unfair labor practice proceeding the respondent had the opportunity to develop a record upon any relevant evidence it had available. The court observed that due process of law required only that a hearing be conducted "*at some stage*" of the administrative proceeding where there is a substantial and material issue of fact relating to the validity of the election before the objecting party's rights can be affected by the enforcement of a bargaining order. Since the employer was afforded the opportunity to present evidence and obtain a reconsideration of

[19] See Thirty-first Annual Report, pp 130–131

[20] *N.L R B* v. *Tennessee Packers, supra,* fn. 16

[21] *United States Rubber Co* v *N L R B*, 373 F.2d 602 (C A 5). See also *S H. Lynch & Co* v. *N L R B*, 377 F 2d 558 (C A 5)

[22] *N L.R.B* v. *Bata Shoe Co.*, 377 F.2d 821 (C.A 4)

the *ex parte* findings made by the regional director if the new evidence indicated them to be incomplete or erroneous, its failure to present evidence in support of its contentions did not entitle it to complain of the denial of a hearing in the representation proceeding. The court rejected the contention that a hearing after the entry of the decision in the representation proceeding was inadequate since the issue was thereby prejudged.

b. Preelection Misrepresentations

Other representation issues reviewed by the courts during the report period included several concerning objections to elections based upon alleged misrepresentation in the course of election campaigning. In one such case,[23] union campaign literature distributed 24 hours prior to the election set forth wage rates allegedly obtained by the union for comparable employment in other, unidentified, plants, and also claimed that in the course of a strike conducted by the union at another local firm "not one person lost a thing." The court rejected the Board's findings that, although there was no opportunity for the employer to reply to the statements, the impact upon the election of the claims as to the prevailing unionized industry rate was insubstantial, notwithstanding it being 10 percent overstated, since there were no employees in the described classification. It also rejected the finding that the statement concerning strike relief benefits did not affect the election because the exaggeration was readily apparent. The court, testing the statements as to whether they were (1) a substantial misrepresentation of material facts, (2) timed to prevent reply, and (3) reasonably expected to have a significant impact, found that all three criteria were met. In its view the materiality of misrepresentations concerning the vital subject of wages and the elimination of the employees' fear of being involved in a costly strike by joining a union, the timing of the statements so as to prevent reply, and their significant impact on the election required the election to be set aside.

Misrepresentations of a similar nature in another case lead to the same result. In *Bata Shoe*,[24] the court concluded that union statements concerning benefits contained in contracts covering plants represented by the union in other cities were erroneous. Finding that the misrepresentation was material since such benefits were a matter of vital concern, and that the statements had been made by a party in an authoritative position to know the truth in circumstances which prevented an affective reply before the election, the court reversed the Board's finding and denied enforcement of the Board's order. In the

[23] *Graphic Arts Finishing Co.* v *N.L.R.B.*, 380 F 2d 893 (C A 4).
[24] *Bata Shoe Co., supra,* fn 22

Lord Baltimore Press case,[25] the alleged misrepresentation consisted of the accusation that a Board representative had been bribed by the employer to dismiss charges of discriminatory discharge of a prominent union supporter. The Eighth Circuit concluded, in agreement with the employer, that the union accusation of the suppression of the charges made by it against the respondent was "a deliberate and malicious falsehood" of significance to the election. The court therefore concluded that the issue of the impact on the employees' voting of these charges could not be disposed of without a hearing. It denied enforcement of the Board order without prejudice to the renewal of a petition should a hearing establish that the allegations of bribery were without significant impact.

D. Interference With Protected Employee Rights

Courts of appeals decisions issued in the course of fiscal 1967 included a number of significance concerning employer actions viewed by the Board as constituting interference with employees' rights protected by section 7 of the Act. Of particular interest among these were decisions involving the questioning of employees by employer representatives preparing for trial of unfair labor practice charges, employer enforcement of contract provisions limiting the distribution of literature, and the access of nonemployee union organizers to employees living on the employers' premises.

1. Questioning of Employees in Preparation for Trial

In one case [26] decided during the year, the Fifth Circuit sustained a Board holding that an employer violated section 8(a)(1) by its legal counsel's interrogation of employees in preparation for the defense of the unfair practice charges. During the investigation of the charges, interviews were conducted by the attorney in the presence of a court reporter and management officials. The employee being interviewed was not advised of his right to remain silent and was not advised of the purpose of the interview. In one instance where the purpose was stated the employee made a statement, later contradicted in testimony at the hearing because "of the fear of reprisals from the presence of the company supervisor." In following the criteria set forth in *Johnnie's Poultry*,[27] the court emphasized that the employer is required to communicate to the employees the purpose of the questioning, to assure them that there would be no reprisals, and to obtain their voluntary participation. Such requirements, the court held, are "reasonable, easy

[25] *N.L.R.B.* v. *Lord Baltimore Press*, 370 F 2d 397 (C A 8).
[26] *N.L.R.B.* v. *Neuhoff Brothers Packers*, 375 F 2d 372.
[27] *N.L.R.B* v. *Johnnie's Poultry Co*, 344 F.2d 617 (C.A 8).

to meet, and in no way obstructive of a full and searching investigation."

In one of two factually similar cases,[28] the District of Columbia Circuit agreed with the Board that the employer violated section 8(a)(1) by threatening to lay off and laying off employees who refused to answer questionnaires, prepared and distributed by its attorneys, requesting information concerning statements made to Board investigators. The court noted that such "interrogation may have a chilling effect on an employee's exercise of his section 7 rights." It concluded that Board limitations imposed on employers to prevent coercion of employees in the exercise of these rights and to formulate their testimony do not "severely handicap the employer's preparation for a hearing," since the employer may "demand the statements of employees who testify and may, if circumstances warrant, obtain a continuance to meet surprise testimony." In the other case,[29] the Sixth Circuit enforced a Board finding that the employer violated section 8(a)(1) by suspending and threatening to discharge employees for refusing to answer a questionnaire relative to the unfair practice charges, even though the employees were told that their answers would not affect their jobs and the questionnaire did not go beyond the issues raised by the complaint. The court stated that the Board is best able to gauge whether the employer's threats inhibited the employees from effectively invoking or participating in Board proceedings, and found that the Board's findings were fully supported by substantial evidence.

2. Contract Limitations Upon Literature Distribution

The recurrent issue [30] of the legality of contract provisions prohibiting employee distribution of literature on company premises was the issue in two circuit court decisions issued during the past year. In the *Armco* case,[31] the District of Columbia Circuit affirmed the Board's dismissal of a complaint alleging that the union had violated section 8(b)(1)(A) by maintaining a collective-bargaining agreement containing a provision which permitted the posting of union literature on bulletin boards, but otherwise prohibited employee distribution on company property, applicable even to employees seeking to oust the union. Noting that the Board's dismissal was based upon a court of appeals decision of another court of appeals finding no violation of the Act in the maintenance of that identical contract provision, the court concluded that under the circumstances it could not hold the

[28] *Retail Clerks Int Assn.* [*Montgomery Ward*] v *N L R B.*, 373 F.2d 655.

[29] *Montgomery Ward & Co.* v. *N L.R.B*, 377 F 2d 452

[30] See Twenty-eighth Annual Report (1963), p. 64; Thirtieth Annual Report (1965), p. 130; and Thirty-first Annual Report (1966), p 71.

[31] *United Steelworkers of America* [*Armco Steel Corp.*] v. *N L.R.B*, 377 F.2d 140.

Board to have been in error in following as controlling a decision of the court of appeals of the circuit in which the relevant events occurred. In another case, however, in which a Board finding of a violation in the enforcement of such a contract provision was reviewed in the Ninth Circuit, that court denied enforcement upon authority of other courts of appeals decisions refusing to find a violation under these circumstances.[32]

3. Denial of Access to Union Organizers

In *Grossinger's*,[33] the Second Circuit agreed with the Board that the employer violated section 8(a)(1) by barring nonemployee union organizers from the employer's premises to solicit and communicate with the employees residing there. The court noted that there were no effective alternative means of communication available to the union in its organizational efforts and that Supreme Court decisions [34] require the Board "in each case to balance the necessities of the Union for direct access to employees against the employer's right of control over his own property and any detriment which might result from the admission to that property of union organizers." The court found that as against the fact that the majority of the employees live on the employer's premises and could not be reached by any means practically available to union organizers, the employer "raises only its proprietary interest." As the employer showed no detriment that would result from the admission to its property of the union's representatives under the reasonable regulations as to place, time, and number contained in the Board's order, the court enforced that order insofar as it "requires the [employer] to permit nonemployee union organizers to come on its premises in order to solicit employees."

E. Assistance to Union

Support or assistance to a labor organization may take many forms, one of which was present in a case [35] in which the Second Circuit enforced the Board's finding that an employer violated section 8(a)(1) and (2) of the Act by continuing to check off dues of employees who had resigned from the union and revoked their checkoff authorizations. The resignations followed the certification by the Board that the employees in an election had voted to rescind the union's authority

[32] *N L R.B.* v. *General Motors Corp.*, 381 F.2d 265 (1967).

[33] *N.L R.B* v. *S. & H. Grossinger's, Inc.*, 372 F.2d 26, Thirty-first Annual Report (1966), pp 33, 122

[34] Citing *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105–113 (1956); *Republic Aviation Corp.* v. *N.L.R B.*, 324 U S. 793 (1945); *N L.R B.* v. *Stowe Spinning Co.*, 336 U S 226 (1949).

[35] *N.L.R.B.* v. *Penn Cork & Closures*, 376 F 2d 52.

to negotiate a contract provision requiring union membership as a condition of employment.[36] The court approved the Board's inference that employees who authorize dues checkoffs do so under the influence of the union-security clause, as well as its interpretation of the statute as requiring that the rescission of a union-security clause as a result of an election under section 9(e)(1) of the Act [37] should also operate to rescind checkoff authorization executed by employees because of the union-security provision. It rejected the union contention that the Board was without authority to find a checkoff arrangement not illegal under section 302 of the Act to be an unfair labor practice. And in the *Modern Plastics* case,[38] the Sixth Circuit, although sustaining the Board findings of fact from which the Board had found the respondent employer had violated section 8(a)(2) by supporting and dominating an independent union representing its employees, disagreed with the conclusion of prohibited support and domination, viewing the relationship rather as one of "assistance and cooperation." Noting that the employees themselves had not complained but rather the charge had been filed by an outside union seeking to represent them, the court expressed the view that the evidence should be carefully scrutinized "where the issue of domination is not raised by the internal organization." The evidence was viewed as establishing that: the committee received no dues from its members, had no source of income, and had held no membership meetings within the past 6 months although it had met individually with the employees during that period; the members received regular wages when they attended meetings with the employer; and, although grievances were discussed at the meetings, they were frequently settled at a later time without further committee intervention. The court found these facts to be evidence of a weak labor organization which could not alone support an inference of company domination. It held the test of domination is "subjective from the standpoint of employees," and in the absence of evidence on the record that the company's influence was so used or was so considered by the employees, the Board finding could not be sustained.

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[36] *Penn Cork & Closures*, 156 NLRB 411 (1965), Thirty-first Annual Report (1966), p 75

[37] Sec 9(e)(1) reads as follows: "Upon the filing with the Board, by 30 per centum 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"

[38] *Modern Plastics Corp.* v. *N L.R.B.*, 379 F.2d 201.

F. Employer Differentiation in Employee Relationship

The applicability of section 8(a)(3), prohibiting an employer from discriminating against employees in regard to hire or in terms or conditions of employment, for the purpose of discouraging or encouraging membership in a labor organization, to a lockout in furtherance of bargaining negotiations was considered by the Third Circuit in its review of the Board decision in the *Friedland Co.* case.[39] The court sustained the Board's finding that the employer had violated section 8(a)(3) by suspending employees who were members of a local union which had struck a painting contractor association in an adjacent area, in furtherance of its bargaining demands. The employer was not a member of the struck employer association even though his agreement with a sister local of the striking local incorporated by reference the terms of other area agreements that would apply if he performed work in those areas. The court agreed that the employer's obligation to comply with the terms of the other area agreements did not make him a member of the other associations negotiating those agreements or constitute joint bargaining with that association. Approving the Board's evaluation of the employer interests in the labor dispute and its findings that the intended purpose in suspending the employees of the striking local was to bring about a settlement of the labor dispute on terms as favorable as possible to the labor association, the court agreed with the Board that the employer "had no significant employer interest to protect or advance." It therefore held that under these circumstances no significant evidence of an attempt to discourage union membership, or of other union animus, was required to sustain the finding of a violation of the statute.

G. Bargaining Obligation

1. Obligation To Recognize Within 12 Months of Valid Election

Among the cases decided during the year was one in which the Seventh Circuit affirmed the Board's interpretation of section 9(c)(3) of the Act [40] as only barring the Board from conducting another election during the 12 months following a valid election, but not relieving the employer of an otherwise valid bargaining obligation. In *Conren*,[41] the Seventh Circuit sustained the Board's finding that the employer

[39] *N.L.R.B.* v. *David Friedland Co.*, 377 F.2d 983

[40] Sec. 9(c)(3) reads 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."

[41] *Conren, Inc., d/b/a Great Scot Supermarket* v. *N.L.R.B.*, 368 F.2d 173. For discussion of Board decision see Thirty-first Annual Report (1966), p. 87.

violated section 8(a)(5) and (1) by refusing, in the context of other unfair labor practices, to recognize and bargain with a union on the basis of a demand supported by authorization cards from a majority of the unit employees, even though that union had lost an election conducted by the Board among these employees within the preceding 12 months. In rejecting the employer's contention that its refusal was protected by the limitation of section 9(c)(3), the court held that while this section limits the frequency of Board directed and conducted elections, it does not preclude the employees from effectively designating the union as their bargaining representative through other means, even though they thereby place a bargaining obligation on the employer during the 1-year period. Similarly, in another case,[42] the court sustained the Board's finding that the employer unlawfully refused to bargain by refusing to recognize the union on the basis of authorization cards obtained from a majority of the employees after the union lost a second election, but while its objections to that election, subsequently sustained and the election set aside, were still pending. In rejecting the employer's contention that it was acting in good faith because the limitation of section 9(c)(3) precluded a duty to recognize and bargain with the union, at least pending resolution of the validity of the election, the court, citing *Conren, supra*, held that since the employer's unfair labor practices had invalidated both elections lost by the union less than 12 months prior to the demand based upon authorization cards, the evidence supported the Board's finding that the employer's refusal to bargain was motivated by a desire to frustrate the employees' right to organize and bargain collectively, and was not because the union had received less than a majority in the second election.

2. Validity of Authorization Cards

In several cases decided during fiscal 1967, the courts considered questions relating to the validity 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.[43] In *Hamburg Shirt*,[44] the court held that the Board was warranted in finding that the company violated section 8(a)(5) and (1) by refusing to bargain with the union on the basis of a majority status established by signed authorization cards which the Board found contained unambiguous language designating the union as the employees' collective-bargaining representative. The company

[42] *Borden Cabinet Corp* v. *N L R.B*, 375 F 2d 891 (C A. 7), certiorari denied 389 U.S 841.

[43] See also Thirty-first Annual Report (1966), pp 136–138

[44] *N L R B.* v *Hamburg Shirt Corp*, 371 F 2d 740 (C.A D C)

defended its refusal to recognize the union on the ground that it believed that enough of the employees who had signed the cards were either misinformed or mislead about the nature of the cards they signed so that the union in fact did not have majority status. In rejecting this defense the court stated:

> . . . Union authorization cards suffice to establish the requirement of union designation unless the employer can sustain the burden of showing that the card is inherently misleading or that attendant misrepresentations demonstrate that they should not be taken to mean what they purport to say. The cards here were plain, simple and unambiguous.
>
> . . . Where an employee has signed a card which plainly designates a union as bargaining agent, the employer can prevail only with clear evidence of misrepresentation. A morass of hazy individual recollections of attendant circumstances will not suffice.

And in *Furr's*,[45] the Tenth Circuit, in sustaining the Board's finding that the employer violated the Act by refusing to bargain with the union upon demand supported by an authorization card majority, rejected the employer's contention that the cards were vitiated by misrepresentations in their solicitation. Finding no evidentiary basis for the assertion that a number of the cards were executed in reliance upon representations that the sole or principal purpose of the card was to get an election, the court held the unambiguous language of the card controlling as a valid authorization to the union to act as the employees' bargaining agent.

However, in another case,[46] the Fifth Circuit set aside the Board's finding that the company violated section 8(a) (5) and (1) by refusing to recognize the union on the basis of authorization cards. The court found that some of the cards were obtained through misrepresenting to the employees that the cards were for the purpose of obtaining a representation election and were not requests for union membership. In the court's view, "when cards are challenged because of alleged misrepresentations in their procurement, the general counsel must show that the subjective intent to authorize union representation was not vitiated by such representations." Since the General Counsel failed to probe "into the subjective intent of the challenged signers," the validity of the union's majority status was found not to have been established. And in the *Nichols* case,[47] the Board's refusal-to-bargain finding was set aside by the court when it concluded that the union was not the majority representative of the employees at the time of the alleged refusal to bargain. The court found that a number of the authorization cards used to establish the union's majority were procured by the union on the affirmative assurance to the employees that

[45] *Furr's Inc* v. *N.L R B*, 381 F 2d 562, certiorari denied 389 U S. 840.
[46] *Engineers & Fabricators* v. *N.L R B.*, 376 F 2d 482.
[47] *N L R B.* v *S E. Nichols Co*, 380 F 2d 438 (C A. 2).

there would be an election, without further clear explanation that the card could also be used to obtain recognition. In view of these misrepresentations, the court concluded that the affected cards could not be used to establish the union's majority status.

3. Bargaining Order as Remedy for Section 8(a)(1) Violations

Board orders directing employers to bargain with a union as representative of their employees notwithstanding the union's loss of an election, subsequently set aside, were sustained by the courts in two cases where the order was found necessary to remedy violations of section 8(a)(1) found to have been committed in an effort to destroy the union's majority status. In enforcing one such order,[48] the Court of Appeals for the District of Columbia Circuit expressed its disagreement with the Second Circuit decision in *N.L.R.B.* v. *Flomatic Corp.*,[49] where that court had held that a bargaining order should be used to remedy 8(a)(1) violations only where they were "glaring violations." The court emphasized that:

> . . . the choice of remedies is primarily within the province of the Board. The Board has the responsibility for deciding what relief is most "appropriate" and in the absence of a clear abuse of discretion we will not interfere. Even where the particular remedy carved out by the Board has an impact on other values protected by the National Labor Relations Act, it is the Board that has the primary duty of reconciling sometimes divergent interests. It is not judicial abdication to treat with respect the agency's determination as to the powers properly invoked in coping with a problem.

Similarly, the Seventh Circuit in *Wausau Steel*[50] sustained the Board's bargaining order based upon the employer's interference with an election by means of threats and promises of benefits which violated section 8(a)(1). In the court's view the Board's bargaining order was proper even though the employer's preelection refusal to recognize the union upon its demand was not itself unlawful under then existing circumstances. The court found that the union had obtained authorization cards from a majority of the employees before the employer refused recognition, and the employer's unlawful acts of interference were more than "minor or borderline." Under these circumstances, the interference was held to have caused the dissipation of the union's majority and, having more than a moderate unbalancing effect upon the election, constituted ample grounds for its invalidation.

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[48] *United Steelworkers [Northwest Engineering Co.]* v. *N.L.R.B.*, 376 F.2d 770

[49] 347 F 2d 74, Thirtieth Annual Report (1965), p 129

[50] *Wausau Steel Corp* v. *N L R B*, 377 F.2d 369.

4. Successor Employer Obligation To Bargain With Incumbent Union

The courts during the fiscal year decided two cases involving the obligation of successor employers to bargain with the incumbent employee representative at the newly acquired business. In one,[51] the Ninth Circuit agreed with the Board's findings that the purchaser of a retail food marketing enterprise became bound by the union recognition obligations of its predecessor. Finding the purchaser to be a "successor" employer, in view of the continuity of substantial identity in the business enterprise, it held the purchaser violated section 8(a) (5) and (1) by refusing to recognize the union which was the representative of the predecessor's employees. The court rejected the purchaser's contention that the discharge of the employees by the former owner, made at the purchaser's insistence as a condition to the sale, had resulted in a substantial change in the work force, thereby relieving him of any obligation to recognize and bargain with the union. In the court's view, since the purchaser was motivated by antiunion reasons in requiring the termination of the employees, the requirement of the Board's order that they be reinstated by him was appropriate. With such reinstatement, continuity in the identity of the work force would be presumed to follow and an order to recognize and bargain with the union as representative of the present work force was also appropriate.

In another case,[52] the court sustained the Board's findings that an employer who took over the operations, franchises, and physical assets of a motor freight line was a "successor employer," since the transaction left intact the identity of the employing enterprise, and as successor was bound by the seller's duty to recognize and bargain with the incumbent union. Having failed to recognize and bargain with the union before instituting its own scale of wages and benefits, the court found that the employer violated section 8(a) (5) and (1) even though it subsequently extended recognition *in futuro*. The court also approved the Board's order directing the successor to restore to the employees those economic benefits previously maintained by the seller and incorporated into its contract with the union, notwithstanding that the contract had expired before the sale, and the successor had made known in advance its unwillingness to maintain that level of employee benefits.

[51] *K B & J Young's Super Markets* v. *N L.R B.*, 377 F.2d 463.
[52] *Overnite Transportation Co* v *N L R B*, 372 F 2d 765 (C A. 4).

5. Unilateral Establishment of Conditions of Employment During Contract Term

The Board's jurisdiction to resolve questions of contract interpretation in the course of unfair labor practice proceedings was sustained in three courts of appeals decisions during the year. In each instance the court followed the Supreme Court decision in the *C & C Plywood* case.[53] In *Huttig Sash*,[54] the Eighth Circuit sustained the Board's findings that the employer violated section 8(a)(5) and (1) by unilaterally reducing the wages of some of the employees without complying with the notice requirements of section 8(d).[55] The employer's defense that the presence of a problem of contract interpretation and the availability of arbitration under its contract with the union deprived the Board of jurisdiction was rejected. In the court's view:

> The same need for avoiding inordinate delay in the recognition and implementation of a labor organization's rights; the same recognition that there may be more than one way to settle a labor dispute; the same emphasis upon preserving rights statutorily expressed; the obvious effectiveness of the Board remedy here; the possible need to obtain it eventually anyway; . . . the peculiar nature of the relationship between the Board and the arbitration process, and upon § 10(a) of the Act, . . . and the same desirabiilty of not rendering unavailable the Board's expertise in its traditional area, all bear upon this aspect of the jurisdictional problem and prompt us to conclude that the presence of a contract provision for both grievance procedure and arbitration does not eliminate Board jurisdiction of an unfair labor practice charge in the present context.

Rejecting a similar contention in another case,[56] the Ninth Circuit agreed with the Board's findings that the employer violated section 8(a) (5) and (1) by unilaterally reducing the contractual overtime pay rate and by attempting to have the employees sign individual agreements authorizing the reduction. The employer's position that its conduct was not an unfair labor practice but was at most a breach of the collective-bargaining agreement which might subject it to a suit under section 301 of the Act was rejected by the court. And in *M & M Oldsmobile*,[57] the Second Circuit sustained the Board's findings that the employer violated section 8(a) (5) and (1) by refusing to put into effect an agreement previously reached with the union. The employer's contention that its refusal was not an unfair labor practice

[53] *N.L.R.B.* v *C & C Plywood Corp.*, 385 U.S. 421. See p. 137, *supra*.

[54] *N.L.R.B.* v. *Huttig Sash & Door Co.*, 377 F.2d 964.

[55] Sec. 8(d), provides, in relevant part, that where a collective-bargaining agreement is in effect, the duty to bargain also means "that no party to such contract shall terminate or modify" it except upon specified notice to the other party, an offer to meet and confer, timely notification to the Federal Mediation and Conciliation Service and to the corresponding State agency, and the continuation, without resort to strike or lockout, of all terms of the existing contract for 60 days after such notice or until the contract expires, whichever is later. These last provisions were also incorporated in the parties' contract.

[56] *N.L.R.B.* v. *Tom Johnson, Inc.*, 378 F.2d 342.

[57] *N.L.R.B.* v *M & M Oldsmobile*, 377 F.2d 712.

but a breach of contract over which the courts have exclusive jurisdiction was rejected. The court stated that it was not holding that the Board has "generalized power to determine the rights of parties under all collective agreements," but only holding that where the charge is made that an employer has violated the statutory rights of employees by refusing to honor in any manner an agreement which was the product of collective bargaining, the Board can review the facts to determine whether the repudiation was justified.

6. Withdrawal From Multiemployer Bargaining

The circumstances under which an employer or a union, having been associated in bargaining in a multiemployer unit, may terminate that bargaining context and resume bargaining on an individual employer basis were considered by the courts in four cases decided during the year. In each instance the Board's position was affirmed. In *Publishers' Association of New York City*,[58] the Second Circuit sustained the Board's holding that the individual employer members of the multiemployer association violated section 8(a) (5) and (1) by refusing to negotiate on an individual-employer basis with the union which, after having bargained on a multiemployer basis for a number of years, gave timely and unequivocal notice to the employers of its withdrawal from the consensual multiemployer unit and of its desire to bargain for individual contracts. The court noted that the Board's determination that a union could withdraw under the same conditions as an employer member of the multiemployer association was in keeping with the Supreme Court observation in the *Buffalo Linen* case [59] that it would seem only fair that a union be accorded withdrawal privileges equal to an employer's, although that Court had expressly reserved the question. The court of appeals concluded that while the question was not wholly free from doubt, the Board was correct in its view that the Congress did not intend to instruct it to require an unwilling union to continue in the consensual relationship if it unequivocally withdrew its consent. In the court's view, to require the Board "to weigh and act on relative bargaining strength in the sense of the potential effectiveness of economic weapons available to each side in determining appropriateness of bargaining units," as the employers contended it should, "would seem enough of a departure from the general scheme of the Act to call for explicit statutory provisions." Upon essentially similar reasoning the Sixth Circuit, in *Detroit Newspaper Publishers*,[60] sustained the Board's finding that

[58] *Publishers' Assn of N.Y C.* v. *N L.R B* , 364 F 2d 293

[59] *N.L R B.* v *Truck Drivers Local Union No. 449 [Buffalo Linen]*, 353 U.S 87 (1957).

[60] *Detroit Newspaper Publishers Assn.* v *N.L R.B* , 372 F 2d 569.

certain newspaper publishers had violated section 8(a)(5) by refusing to bargain on a single-employer basis after the unions had given timely and unequivocal notice of their withdrawal from the multiemployer bargaining unit. The court noted, however, that, as a matter within the sound judgment of the Board, it could have with propriety inquired into the good faith of the withdrawals and whether they were harmful to either party, and, to bolster the multiemployer unit as an instrument of free collective bargaining, could have imposed conditions to withdrawals without regard to the positions of the individual parties.

In another case,[61] in which an employer withdrew from the contractor association during negotiations for a new contract, the Tenth Circuit upheld the Board's finding that the employer's withdrawal was untimely and did not relieve it of its obligation as a member of the association to bargain with the union. It accordingly held that the employer violated section 8(a)(5) and (1) by refusing to execute the collective-bargaining agreement negotiated by the association and the union and by engaging in individual bargaining with one of the employees. The court emphasized that although participation in multiemployer bargaining is voluntary, it is now well established that withdrawal therefrom can be accomplished only at an appropriate time, and that, in the absence of union consent or unusual circumstances, a withdrawal is untimely if attempted after the commencement of negotiations, as was the instant situation. And in *Southwestern Colorado Contractors*,[62] the same circuit sustained the Board's findings that the employer association and its members violated section 8(a)(5) and (1), where the employer members dissolved the association on the day the union was certified as bargaining representative, and thereafter refused to bargain on a multiemployer basis. In the court's view, even though the dissolution took place before the start of negotiations, which under normal circumstances is the appropriate time for withdrawing from a multiemployer bargaining unit, the employers had a joint bargaining obligation derived from the predissolution consent-election agreement and subsequent certification of the union which could not be thus avoided. To permit the employers "to agree to an election and then, dissatisfied with the outcome, ignore the commitments, express and implied, previously made," would be, in the words of the court, "an obvious frustration of the policies and purposes of the Labor Act."

[61] *N.L.R.B.* v. *Tulsa Sheet Metal Works*, 367 F 2d 55

[62] *N.L.R.B.* v *Southwestern Colorado Contractors Assn*, 379 F.2d 360 (C.A. 10).

7. Subjects for Bargaining

The scope of the obligation to bargain concerning certain subject matters, including the subcontracting of unit work and plant mergers and relocations, was also among the issues reviewed by the courts during the report year. In *Carmichael Floor Covering*,[63] the Ninth Circuit affirmed the Board's holding that employers were obligated to notify the union and bargain with it concerning their decision to dispense with personally employing carpet installers—represented by the union—to install floor coverings sold by them and to contract out the installation work instead. It agreed that the "plans to discontinue such employment and substitute contracting-out arrangements were . . . mandatory subjects of collective bargaining," and the employers violated section 8(a)(5) in that they "failed to undertake such bargaining." The court also sustained the Board finding that the employers' concurrent disavowal of a collective-bargaining agreement between the union and a multiemployer association of which they were members, assertedly because as a result of the contracting out they no longer had employees in the unit categories, was not permissible under the circumstances and constituted an unfair labor practice.

Another case[64] involved the bargaining obligation of a company which, about to lose its principal customer, had, without prior notification to or bargaining with the union representing some of its employees, merged its operations with those of other companies in a joint venture of greatly enlarged proportions at a new location. The court, in disagreement with the Board which had found the decision to relocate to be a bargainable subject, held that "the Company's decision, based solely on greatly changed economic conditions, to terminate its business and reinvest its capital in a different enterprise in another location as a minority partner" is not a mandatory subject of bargaining. The court agreed, however, that even under such circumstances the employer was under an obligation to notify the union of its decision in order that the union might be given the opportunity to bargain over "the rights of the employees whose employment status will be altered by the managerial decision." The court affirmed the Board's finding of a violation in the employer's failure to do so. Under somewhat different circumstances, the obligation of an employer to notify and bargain with the union concerning decisions of this nature was also affirmed by the Second Circuit in *Cooper Thermometer*,[65] where the employer refused to discuss with the union the basis upon which the employees might transfer and

[63] *N L R B* v *Carmichael Floor Covering Co*, 368 F 2d 549.
[64] *N.L.R.B.* v. *Transmarine Navigation Corp.*, 380 F.2d 933 (C.A. 9).
[65] *Cooper Thermometer Co.* v *N.L.R B.*, 376 F 2d 684.

continue to be employed when the plant was relocated at a nearby town. Although agreeing with the Board that the employer violated the Act by actions and "an attitude which, in effect, ousted the Union from any role in negotiating what might be offered to employees desiring to transfer," the court declined to sustain the Board's finding that the employer's refusal to recognize the union as bargaining representative at the new plant was also a violation of section 8(a)(5). The court noted the factors which would have influenced the employees' willingness to transfer to the new plant, including the time and distance for travel which made commuting unprofitable, as well as the employer's basic position, communicated to the union and the employees, that although it would consider applications from the employees, neither employment nor seniority and other benefits would transfer automatically. The court concluded that the record would not support a finding that a majority of the employees would have transferred to the new plant "on any basis to which collective bargaining might reasonably have been anticipated to lead." Absent this essential finding, necessary to support a premise of union entitlement to recognition at the new plant, the court declined enforcement of that portion of the Board's order requiring recognition of the union as bargaining representative at the new plant.

8. Duty To Furnish Information

The obligation of the parties to a bargaining relationship to furnish information essential to meaningful bargaining and contract administration was further delineated by courts of appeals in two decisions. In *Frontier Homes*,[66] the court sustained the Board's order directing a manufacturer of mobile homes to supply the union with its selling price lists as information essential to meaningful contract negotiations. A part of the employer's wage structure provided an employee bonus for production efficiency through distribution to the employees of any excess of the preallocated production labor allowance, set as a percentage of the selling price, over the actual labor cost. The court agreed that the bonus plan was an integral part of the wage structure which had the effect of incorporating the selling price of the trailers into the "overall compensation scheme." It held that under these circumstances "this relevant information can no longer remain confidential . . . for without it the Union is forced to use an equation with an unknown quantity in trying to evaluate the total compensation of its members."

The *Metlox* case[67] involved a company's refusal to permit the details of its records to be disclosed to the union in support of its claimed

[66] *N.L.R.B.* v. *Frontier Homes Corp*, 371 F.2d 974 (C.A. 8).
[67] *Metlox Mfg. Co.* v. *N.L.R.B*, 378 F.2d 728 (C.A. 9).

financial inability to grant a wage increase, notwithstanding the union's suggestion that the inability was due to a deliberate bleeding of corporate assets by the officers and owners. The court sustained the Board's finding that the profit and loss statements furnished by the company did not disclose sufficient information to evaluate the claimed financial inability and the refusal to furnish details "unduly restricted the Union's examination of its . . . records." The court further held that information sought by the Union as to payments to the management group "was under the circumstances not only relevant, but also 'reasonably necessary' to the Union's role as bargaining agent."

H. Union Interference With Employee Rights

1. Retaliation for Recourse to Board

The protective 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," was construed during the year in several court of appeals decisions.[68] In one,[69] the Fifth Circuit sustained Board findings holding violative of section 8(b)(1)(A), and beyond the protection of the proviso, the threat of a union official that an employee pressing his claim of discrimination in union referral before the union's executive board could be fined or deprived of work if he complained to the Labor Board about the union's actions. The court also agreed that the union violated section 8(b)(1)(A) and (2) by causing an employer to refuse the employee previously offered work because in the interim he filed charges against the union concerning the operation of its exclusive referral system.

In another case,[70] the court sustained the Board holding that the proviso to section 8(b)(1)(A) protected union action in suspending an employee from membership in the union for having filed with the Board a petition for an election to decertify the union as representative of the employees. The court distinguished cases in which a violation was found in union disciplinary action for filing charges with the Board,[71] on grounds that in those cases "the union member was asserting individual rights granted to him by law as against the union,

[68] See Thirty-first Annual Report (1966), pp. 146–147.

[69] *N.L.R.B.* v. *Millwrights & Machinery Erectors, Local No. 1510 [Mulberry Const. & Welding]*, 379 F 2d 679

[70] *Richard C. Price* v *N L.R.B*, 373 F.2d 443 (C A. 9).

[71] See, e.g, Thirtieth Annual Report (1965), pp. 83–85, and Thirty-first Annual Report (1966), pp 97–98.

whose existence was not threatened." The court affirmed the Board's view that the proviso was, however, intended to permit the union to suspend or expel a member who, as here, seeks "to attack the union's position as bargaining agent, which is . . . in a very real sense an attack on the very existence of the union."

The Board's finding of a violation in the union's suspension of a member from membership for having filed charges with the Board prior to exhaustion of internal union procedures was not sustained, however, in *Industrial Union of Shipbuilders.*[72] Holding that "in order for the right to file particular charges to be protected by section 7, the charges themselves must assert misconduct which, if proved, would constitute a deprivation of rights declared in that section," the court found no showing that such rights "incidental to organization or bargaining" were the basis of the charge filed with the Board by the employee. In directing dismissal of the complaint, the court also noted that the union rule requiring exhaustion of internal union procedures was a reasonable one, in all respects consonant with section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959.[73] It expressed the view that this requirement was a "rule" within the language and intent of the 8(b)(1)(A) proviso. The union could therefore properly require adherence to its terms without risking commission of an unfair labor practice, and the Board was obligated to respect it as expressly sanctioned by section 101(a)(4).

2. The Duty of Fair Representation

Judicial approval was expressed during the year of the Board's holding that the rights guaranteed to employees by section 7 of the Act include the right to fair representation by the bargaining representative, wherefore a union's violation of its duty of fair representation is a violation of section 8(b)(1)(A) of the Act.[74] In enforcing the Board's order in *Local 12, Rubber Workers*,[75] the Fifth Circuit held that "the duty of fair representation implicit in the exclusive-representation requirement in section 9(a) of the act comprises an indispensable element of the right of employees 'to bargain collectively through representatives of their own choosing' as guaranteed in section 7." It sustained the Board finding that by refusing for racially discriminatory reasons to process grievances concerning a racially discriminatory seniority system and segregated plant facilities the union

[72] *Industrial Union of Marine & Shipbuilding Workers [U.S. Lines Co.]* v *N.L.R.B.*, 379 F.2d 702 (C.A. 3). Board's petition for certiorari granted, 389 U.S. 1034.

[73] 20 U.S.C. 411(a)(4).

[74] See Thirtieth Annual Report (1965), pp. 82–83.

[75] *Local No. 12, United Rubber, Cork, Linoleum & Plastic Workers [Goodyear Tire & Rubber Co.]* v. *N.L.R.B.*, 368 F.2d 12. See also *N.L.R.B.* v. *Local 1367, ILA [Galveston Maritime Assn.]* 368 F.2d 1010 (C.A. 5).

"violated section 8(b)(1)(A) . . . by restraining . . . employees in the exercise of their section 7 rights." [76] In so holding, the court rejected a narrow interpretation of section 8(b)(1)(A) which would have limited its prohibition to union conduct affecting union membership, thereby rendering the employees' section 7 right to bargain collectively largely meaningless in the area of union administration of the bargaining agreement.

Adverting then to the fact that its recognition of a breach of the duty of fair representation as an unfair labor practice "will have the necessary effect of bringing such controversies within the primary jurisdiction of the Board," the court concluded that when the claim of an employee that he has not been fairly represented is based essentially on breach of contract, the courts would have jurisdiction under section 301 of the Act, concurrently with the Board's jurisdiction over the claim as an unfair labor practice. It was of the view, however, that when the claim is based squarely upon an alleged violation of the union's duty of fair representation, the jurisdiction of the Board "will apparently be exclusive, totally preempting that of the courts." Considering the impact of title VII of the Civil Rights Act of 1964, defining as "unlawful employment practices" union and employer discrimination in the area of civil rights, the court concluded that the provision of that "specific protection . . . in no way detracts from the legal and practical bases of our determination that a breach of the union's duty of fair representation constitutes a violation of section 8(b)(1)(A)."

The protection accorded an employee's section 7 right of fair representation by section 8(b)(1)(A) was also considered by the District of Columbia Court of Appeals in a case [77] in which it sustained a Board holding that a union's election campaign promise of disparate treatment which, if carried out, would have breached its duty of fair representation, constituted restraint and coercion prohibited by section 8(b)(1)(A). The union represented the employees at one of two terminals being merged into a single facility and unit, the representative of which would be determined by a Board election in which the union representing the employees of the other merging unit was also on the ballot. During the election campaign the union announced that if selected, it would oppose dovetailing of the seniority lists of the merging units and would protect the seniority of the employees in the unit it represented, which was the larger of those merging, against the claims of all other employees in the merged unit. The court agreed

[76] The court found it unnecessary to pass on the Board's findings that the union actions and inaction also violated sec. 8(b)(2) and (3).

[77] *Truck Drivers & Helpers, Local Union 568, IBT [Red Ball Motor Freight] v. N.L.R.B.*, 379 F.2d 137.

with the Board that a union's breach of its duty of fair representation would constitute a violation of section 8(b)(1)(A). It found that the union's adamant stand and publicity against the widely accepted practice of dovetailing seniority lists portended a violation of that duty, particularly where, as in the case before it, the position was taken for "the purely political motive of winning an election by a promise of preferential representation to the numerically larger number of voters." It also found that the Board could conclude that the campaign activity by the union "inevitably introduced improper influences into the election process tantamount to the restraint or coercion contemplated by Section 7."

I. Prohibited Boycotts and Boycott Agreements

Determination by the courts of the primary or secondary nature of union picketing, and the prohibited or permissible objectives therof, was made in several cases. In the *NMU* case,[78] the court affirmed the Board's finding of violations of section 8(b)(4)(i)(ii)(B) of the Act by the union's picketing of river barges owned by the primary employer while the barges were being handled by employees of other employers engaged in moving and loading them. The primary employer towed the loaded barges only between fixed points on the river, beyond which points they were handled by other towing and service companies and the employees of the cargo owners. The court found that "the barges' status as an employment situs" and therefore the primary situs of the dispute ceased when the barges were handled by others beyond the point of customary tow by the primary employer. The union's picketing beyond that point was therefore held to be prohibited secondary action because the barges had then become "the normal jobsites of secondary employees alone and the picketing was directed to and affected their normal work at such normal sites without the accompaniment or even-proximateness of primary status."

During the period a court also sustained[79] the Board's determination that a secondary union's nonpicket line appeals to induce employees of a neutral employer, at whose premises the ambulatory situs of a primary dispute was temporarily located, to support the primary union by refusing to perform work for their employer was, in the absence of on-the-scene primary picketing, prohibited secondary activity. The court rejected the union's contention that the appeals were

[78] *National Maritime Union [Farmers Union Grain Terminal Assn.]* v *N.L.R.B.*, 367 F.2d 171 (C.A. 8).

[79] *Grain Elevator, Flour & Feed Mill Workers, ILA [Continental Grain Co.]* v *N.L.R.B.*, 376 F.2d 774 (C.A.D.C.), see Thirty-first Annual Report (1966), pp. 108–109.

within the "primary activity" exception [80] to the prohibition since they resulted in no more than was permissible had a primary picket line been present; namely, an appeal to secondary employees that does not contemplate complete disruption of the operations of the neutral employer, but contemplates only cessation of those tasks of the neutral employees that aid the day-to-day operations of the primary employer. As its basis for doing so, the court concluded that the primary activities proviso did not provide an exemption from the general secondary boycott prohibition for any activities other than those specifically named in the proviso. It noted that congressional concern in adding the proviso "was on the protection of labor's traditional means of conducting labor disputes," and was not "to sanction a limited amount of impact no matter what the form of inducement." The court found the Board's holding prohibiting secondary union appeals in the absence of lawful on-the-scene primary picketing to be "highly reasonable in terms of protecting the neutral employer from potential disruption inherent in the situation" in that it assured that "clear and contemporaneous notice" would be provided outside parties by the picket line that the existing dispute was with the primary and did not involve the neutral whose employees had ceased work.

The question of whether picketing conducted by a union at a construction site, with signs publicizing the use of precut lumber prepared at wages and conditions below those established by the picketing union, constituted secondary picketing in violation of section 8(b)(4)(i)(ii)(B), or was privileged as consumer picketing protected in accordance with the *Tree Fruits* decision,[81] was considered by the Ninth Circuit in one case.[82] The court noted that "[a] mere facade of 'consumer' picketing cannot foreclose the Board from determining the true purpose of the union's conduct. What in actuality is employee-oriented conduct, or veiled coercion of the secondary employer, cannot by the simple use of the words 'consumer directed', be given statutory protection." It sustained the Board finding that the picketing had a prohibited cease-doing-business object, particularly in view of the timing of the picketing to confront the workmen reporting for work, the absence of any effort to negate the impact of the appeal on employees of the secondary, and the absence of an appeal for particular conduct

[80] The proviso to sec 8(b)(4)(B) reads as follows *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing"

[81] *N L R B* v. *Fruit & Vegetable Packers & Warehousemen, Local 760* [*Tree Fruits*], 377 U S 58, Twenty-ninth Annual Report (1964), pp 106–107, holding that sec 8(b)(4)(ii)(B) was not intended to proscribe all peaceful consumer picketing at secondary sites.

[82] *N L.R B.* v. *Millmen & Cabinet Makers Union, Local 550* [*Steiner Lumber Co.*], 367 F.2d 953.

on the part of consumers. In a somewhat similar case,[83] the Tenth Circuit rejected a union's contention that its picketing of a bank utilizing the services of a janitorial service company with which the union had a primary dispute was informational consumer picketing permissible under the *Tree Fruits* decision. The picketing was conducted during bank working hours although the employees of the primary employer were not on the premises until after the bank employees left. The signs advertised the dispute with the primary but did not mention the bank. In affirming the Board order premised upon its finding that the picketing violated section 8(b)(4)(B), the court observed that "the evil to which the 8(b)(4) amendments are directed is secondary union activity which does not encompass some direct action against the primary antagonist." It found that "the union activity was directed in time and space so as to avoid the premises of [the primary employer] and to avoid the time when its employees were rendering services upon the premises of the Bank," and that since the "primary employer cannot be reached except through the Bank when the picketing activities are so directed," the bank was at least "one of the immediate targets of the picketing."

The legality under section 8(b)(4)(A) and 8(b)(3) of the union's strike and picketing to obtain a secondary boycott contract provision, found by the Board to be illegal under section 8(e) because permitting self-help enforcement by union members, was considered by the Sixth Circuit in the *Muskegon Bricklayers* case.[84] The court, in agreement with the Board, viewed the clause, which permitted union members to refuse to work on any job on which work was being done below union standards, as "a carefully designed effort to secure a right for a bellwether craft union to refuse to work until guaranteed that there would be no nonunion-standard employers or employees in its craft or in any other craft or job on any job site on which its members were employed." It found that the clause was a secondary boycott clause violative of section 8(e) and not protected by the proviso to that section because in terms enforceable by the self-help economic sanction of the members' refusing to work. It further found that the union, by sanctioning a strike to obtain the clause, engaged in "inducement" and "encouragement" of the members, albeit in advance and not at the moment of breach, to employ the secondary boycott clause if it were in force. As the clause, enforceable not by the courts, but by economic sanctions which would violate section 8(b)(4)(B), was clearly illegal under the express language of section 8(e), absent the proviso, the

[83] *N L R B* v. *Building Service Employees Int. Union, Local 105* [*Industrial Janitorial Service*], 367 F.2d 227.

[84] *N.L R B.* v. *Muskegon Bricklayers Union No. 5* [*Greater Muskegon General Contractors Assn.*], 378 F.2d 859.

court sustained the Board's holding that the union, by striking to obtain it after all other issues were resolved, was guilty of refusing to bargain in violation of section 8(b)(3). The court declined to pass on the Board's holding that the strike to obtain the clause also violated section 8(b)(4)(A), reserving "the complex question of whether the building trades proviso nullifies the application of section 8(e) for all purposes in the construction industry."

J. Recognitional Picketing

The provisions of section 8(b)(7) limiting organizational and recognitional picketing were construed by the courts in a number of cases. Among them were two cases decided by the Tenth Circuit, one [85] of which involved issues as to the litigability of defenses attacking the validity of a decertification election, raised by the decertified union whose picketing of the employer within the following 12 months was found by the Board to be a violation of section 8(b)(7)(B) of the Act.[86] The court sustained the Board's action in refusing to permit the union to litigate in the representation proceeding allegations of employer sponsorship of the decertification petition, which could constitute an unfair labor practice if established. It held the action to be well within the Board's discretion "to define and impose the investigatory bounds" of the representation hearing authorized by section 9(c)(1). In appraising whether the union had been afforded adequate opportunity to probe the validity of the election as a defense in the unfair labor practice proceeding brought against it under section 8(b)(7)(B), the court agreed with the Board's rejection of the allegations of company unfair labor practices affecting the election as being unsustained on the record. However, although also sustaining the Board's refusal to permit relitigation in the unfair labor practice proceeding of objections to the election litigated in the representation proceeding, the court concluded the Board had improperly precluded consideration of the impact of an alleged offer of superseniority to striker replacements. The court disagreed with the Board's holding that since the offers were alleged to have been made before the petition was filed,

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[85] *N L R B.* v *Lawrence Typographical Union No. 570 [Kansas Color Press]*, 376 F.2d 643.

[86] That section provides in relevant part:

"8(b) It shall be an unfair labor practice for a labor organization or its agents—

"(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

* * * * * * *

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted. . . ."

they were irrelevant to the election as too remote in time to have influenced the employees' election choice. Noting that such an offer "is not the kind of unfair labor practice which dissipates in its coercive effects over a relatively short period of time," the court remanded the case to the Board for a hearing on the alleged offers of superseniority.

The other case [87] presented the issue of whether employees engaged in picketing in violation of section 8(b)(7)(B) thereby forfeited the protection of the Act and became vulnerable to discharge by their employer. The court, disagreeing with the Board, held that employees who picketed to protest their employer's failure to grant a wage increase shortly after the union lost a valid election, thereby violated section 8(b)(7)(B). Finding that the picketing employees constituted a labor organization, and that the picketing was in part to cause the employer "to come to terms on wages and working conditions and to obtain the recognition of those terms in writing," the court concluded that even if, as found by the Board, the employees' efforts did not have the object of establishing a "continuing relationship," they did constitute "an effort to force bargaining within the meaning of the statute." The court therefore held that the employees had violated the Act by engaging in prohibited picketing and were not entitled to invoke the protection of the Act to obtain reinstatement.

K. Remedial Order Provisions

The remedial provisions of Board orders were matters in issue in several cases decided by the courts during the report period. Significant among these decisions were those relating to the Board's burden of proof in backpay proceedings as to the discriminatees' willful loss of earnings, the Board's authority to order an employer to abide by the terms of a breached contract, and its authority to require recognition of the union at the new location of a runaway plant.

In one of two court decisions considering the allocation of the burden of proof of willful loss of earnings as an offset to backpay, the Fifth Circuit in the *Mooney Aircraft* case [88] rejected the contention that the Board had the obligation to produce each of the discriminatees at the backpay hearing and make them available to testify as to willful loss of earnings. In doing so the court declined to follow the decision to that effect by the Second Circuit in the *Mastro Plastics* case,[89] which it

[87] *National Packing Co.* v. *N.L.R.B.*, 377 F.2d 800, (C.A. 10).

[88] *N.L.R.B.* v. *Mooney Aircraft*, 366 F.2d 809

[89] *N.L.R.B.* v *Mastro Plastics Corp.*, 354 F.2d 170 (C.A. 2, 1965), certiorari denied 384 U.S. 972, see Thirty-first Annual Report (1966), pp. 149–150.

viewed as placing upon the Board "the burden of going forward—of producing the first evidence" on this issue. The court reasoned:

> We think that the Board need not produce the testimony of each and every employee First, we are not entirely convinced that the employees' knowledge about their efforts to find interim work and the financial success they encountered can realistically be imputed to the Board. More important, to require the Board to call every employee in every case would place an intolerable burden on the agency, particularly where large numbers of employees were involved and there was little basis to dispute the Board's calculations. A better rule would leave the burden on the employer, who could produce the employees' testimony whenever necessary to dispute the Board's figures, but who certainly would not find it necessary to call every employee involved. We conclude, however, that the employer should be given every opportunity to call the employees to testify on the issue of their interim earnings, and that upon the employer's request, the Board should make available any information in its possession relevant to the whereabouts of the employees. When the Board calls an employee, it must, of course, permit the employer to cross examine him on any relevant matter. [Footnote omitted.]

Finding that the employer was not denied the opportunity to call the employees as witnesses, but was rather urged to do so by the trial examiner, the court concluded the Board's failure to call each employee to testify was not fatal to its case. The same result was reached in the *Florence Printing* case,[90] where the Fourth Circuit, faced with the same issue, was "persuaded that *Mooney Aircraft* expresses the correct view and that we should follow it." It concluded that court decisions "conclusively demonstrate, [that] the defense of willful loss of earnings is an affirmative defense and the burden of proving it rests on the employer. To say that the opponent of one who has the burden of proof, nevertheless, has the burden of producing evidence for his adversary is in reality to shift the burden of proof. This we are unwilling to do. . . ."

The question of the Board's authority to require an employer to "abide by" the terms of its collective-bargaining contract was resolved in the Board's favor in the *George E. Light Boat Storage* case,[91] where the Fifth Circuit sustained the Board's finding that the employer violated its bargaining obligation by repudiating its contract with the union, granting unilateral wage increases, and dealing directly with the employees. In enforcing the provision of the Board's order requiring the employer to reactivate and abide by the contract and to pay back overtime and back welfare payments according to the provisions of the repudiated contract, the court observed that where the act of the employer constitutes both an unfair labor practice and a breach of contract, both the courts and the Board have jurisdiction. It also observed that although the concurrent jurisdiction does not necessarily

[90] *Florence Printing Co* v. *N.L.R.B.*, 376 F 2d 216.
[91] *N.L.R.B.* v *George E. Light Boat Storage*, 373 F.2d 762.

mean that the Board and the courts "have the same remedies at their disposal," neither does it mean that "remedies traditionally used by courts are unavailable to the Board." Noting that so long as the Board remedy "is reasonably related to the unfair labor practice found and will effectuate the policies of the Act, the mere fact that it coincides with a judicial remedy is irrelevant," the court concluded that under the circumstances of the case:

> . . . A simple order to bargain in good faith would not be sufficient. To allow an employer unlawfully to repudiate a collective bargaining agreement at the small cost of being required, sometime in the future, to sit down and bargain with the union would encourage such violations of the Act. For the period from the breach until a new agreement, if any, is reached pursuant to the Board's bargaining order, the employer would be at liberty to disregard the terms of the contract. The temptation to violate the Act in a situation where the employer would have everything to gain and nothing to lose could be overwhelming. [Footnote omitted.]

Board orders requiring adherence to the terms of contractual agreements were also enforced in *Huttig Sash & Door*,[92] where the employer unilaterally decreased wages during the contract term, and in the *M & M Oldsmobile* case.[93] In the latter case the court, sustaining the Board's finding that, under the circumstances, the employer could not avoid the obligation to execute the agreed contract on grounds it had not been properly ratified by the employees, enforced the Board order directing the employer to give effect retroactively to the terms of the agreement and to make the employees whole for losses they had suffered by reason of the refusal to effectuate the agreement.

During the period the propriety of a Board order directing an employer, who had surreptitiously relocated his plant to avoid bargaining with the union, to bargain with the union as representative of the employees at the new location, if it chose to remain there, was reviewed by the District of Columbia Court of Appeals in the *Garwin* case.[94] Although sustaining the Board's finding of the employer's antiunion motivation in making the move, and its holding that the move violated section 8(a) (1) and (3) of the Act as well as section 8(a)(5), the court nevertheless declined to enforce the Board's order. Noting that the Board's order did not require the employer to return to his former location, and was premised on the assumption that few if any of the former employees would be able to accept reinstatement at the new location, the court concluded that the bargaining requirement at the new location was "without relationship to redressing grievances" of the employees at the old location. Finding then that the bargaining requirement could be justified "only as being necessary to remove

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[92] *N L.R B.* v *Huttig Sash & Door Co.*, 377 F 2d 964 (C A. 8).
[93] *N L R.B* v. *M & M Oldsmobile*, 377 F 2d 712 (C A 2)
[94] *Garwin Corp* v. *N.L.R.B.*, 374 F.2d 295, see Thirtieth Annual Report (1965), p 116

from the Employer the benefits of its wrongdoing" and did not have the basic purpose of restoring the status quo by redressing injuries done employees, the court held the Board could not accomplish this end by establishing the union as representative of the workers at the new location, without an expression of their preference, thereby depriving them of the basic right of expressing their choice for representative or the rejection of any representation.

Other court decisions involved the appropriateness of remedial provisions in cases where the violation was found by the Board to be *de minimis*, where access of nonemployee organizers to the employees or to the employers' premises was provided, and where the Board order required the employer to read the notice to his illiterate employees. In the *International Woodworkers* case,[95] the court, contrary to the Board, held that the Board may not dismiss a complaint and decline to provide a remedy for a violation of the Act found to have occurred, upon grounds that the violation is *de minimis*. Affirming the Board in its finding that a violation had occurred, the court noted section 10(c) of the Act, which provides that if the Board after hearing shall be of the opinion that any person has engaged in an unfair labor practice, then the Board "shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice...." It viewed the words "shall issue" as requiring entry of an order for the violations found, pointing out that "it is one thing for a successful complainant to end up with a dismissed complaint, and quite another to secure a cease-and-desist order. With the latter, he at least does not have to start all over again if the violation continues or is renewed."

Upon review of a case in which the Board had found[96] that the employer's coercive speeches and solicitation of withdrawals from the union had probably precluded the union from obtaining majority status, the court enforced[97] order provisions requiring the mailing of the prescribed notices to each employee and the granting to the union of reasonable access to the company bulletin boards for a 3-month period. However, a provision requiring that the union be permitted to address the employees for 1 hour on company premises on company time was modified to condition the grant of such a meeting upon the company's itself employing "this same captive audience technique for its own purposes" in the future.

Court review of the Board's balancing of "the necessities of the Union for direct access to employees against the employer's right of

[95] *Intl Woodworkers of America [Long Lake Lumber Co.]* v. *N.L.R.B.*, 380 F.2d 628 (C A D C).

[96] *H W. Elson Bottling Co.*, 155 NLRB 714, see Thirty-first Annual Report (1966), pp 121–122.

[97] *N L R.B.* v. *H. W. Elson Bottling Co.*, 379 F.2d 223 (C.A. 6).

control over his own property and any detriment which might result from the admission to that property of union organizers" was also had in *Grossinger's*.[98] Sustaining the Board's finding that a large resort hotel had violated the Act by barring nonemployee union organizers from the premises while at the same time conducting its own coercive antiunion campaign among the employees during working hours, the court enforced the Board's order "in so far as it requires the Respondent to permit nonemployee union organizers to come on its premises to solicit employees." It declined, however, to enforce a provision requiring that should the employer again make antiunion speeches to its employees during working time, the union be given a similar opportunity to address the employees. The court was of the view the employer could make such an order "only if the employer is enforcing a no-solicitation rule." And in the *Laney & Duke Storage* case,[99] where the Board directed [1] the employer to read the notice disavowing its illegal actions to its employees because the record indicated that many of them were illiterate or semiliterate and would not be informed by a written notice, the court declined to enforce the provision, finding it "is unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act."

[98] *N.L R.B.* v *S & H Grossinger's*, 372 F 2d 26 (C A 2)

[99] *N.L R.B.* v. *Laney & Duke Storage Warehouse Co.*, 369 F 2d 859 (C.A 5).

[1] *Laney & Duke Storage Warehouse Co*, 151 NLRB 248, see Thirtieth Annual Report (1965), pp. 114–115.

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 1967, the Board filed 22 petitions for temporary relief under the discretionary provisions of section 10(j)—17 against employers, 2 against unions, and 3 against both employers and unions. Injunctions were granted by the courts in 12 cases and denied in 2. Of the remaining cases, one petition was dismissed by consent of the parties, two were withdrawn, six were disposed of when the respondents stipulated to refrain from the alleged unlawful conduct pending final disposition of the Board proceeding, one was dismissed because the Board had issued its Decision and Order, and three were pending at the close of the report period.[1]

Injunctions were obtained against employers in 11 cases and against a union in 1 case, and ran against both employers and unions in 2 cases. The cases against the employers variously involved alleged refusals to bargain with the labor organizations certified by the Board as representatives of the employers' employees, a lockout, prohibited assistance to unions, discriminatory discharges, and other acts of interference. An injunction was obtained against a union in a case enjoining a refusal to bargain and a strike allegedly in violation of section 8(d) of the Act. In two instances the injunctions obtained ran against both an employer and a union in situations where the employer's recognition of the union was alleged to be assistance in violation of the Act. In another case where both the employer and the

[1] See table 20 in appendix. Also, five petitions filed during fiscal 1966 were pending at the beginning of fiscal 1967.

union were charged with violations of the Act through the employer's extension of the union's contract to a newly acquired plant, an injunction was granted against the employer but denied as to the union.

1. Standard for Injunctive Relief Under Section 10(j)

The standards under which a court will accord injunctive relief under section 10(j) in advance of the Board's own resolution of the issues was an issue in one case. In the *General Electric* case, the district court, at the Board's request, enjoined [2] an employer from refusing to enter into contract-renewal negotiations with a union because the employer viewed as unacceptable and impermissible the union's asserted right to designate as nonvoting members of its negotiating committee seven individuals who normally would represent other unions in bargaining with the employer for other employees. In granting the injunction upon the grounds that the regional director had reasonable cause to believe the Act had been violated by the employer's denial of the union's right to designate the composition of its bargaining representatives, the court rejected the employer's contention that injunctive relief under section 10(j) was only available to obtain relief in cases of "flagrant" violations. It concluded that "the remedy of section 10(j) is surely appropriate and available when the impact upon the public interest is grave enough to justify swifter corrective action than the normal process of Board adjudication and court enforcement." The court found the case before it "clearly" qualified under that standard.

Upon appeal the Second Circuit Court of Appeals reversed and vacated the injunction, holding that the extraordinary remedy of injunctive relief prior the Board's hearing and decision was available only where demonstrably "necessary to preserve the status quo or to prevent any irreparable harm," neither of which were in its view present in the instant case.[3]

The Board petitioned the Supreme Court for a writ of certiorari to review the court of appeals decision and was granted a stay of the court of appeals judgment pending the certiorari proceedings. As a result of the bargaining which took place while the injunction was in effect during the interim the case was pending on certiorari, agreement was reached between the parties as to the terms of a new collective-bargaining agreement. The Supreme Court subsequently granted the petition for certiorari but, in view of the supervening execution of a contract, declined to pass on the proper construction of section 10(j). It remanded the case for the district court to determine the effect of the contract execution upon the appropriateness of injunctive relief.

[2] *McLeod* v. *General Electric Co.*, 257 F.Supp. 690 (D.C.S.N.Y.).
[3] 366 F.2d 847.

2. Other Section 10(j) Litigation

Interim relief against violations of the bargaining obligation was the remedy most frequently sought by the injunction actions. In one such case,[4] the court held that there was reasonable cause to believe that respondent had violated the Act by making the withdrawal of pending charges before the Board and court a condition precedent to further bargaining, by refusing to consider the union's counteroffer to extend the existing contracts without altering their terms, and by raising the issue of union minority status after having bargained continuously with the union for a number of years with full knowledge of such status, pending resolution of unfair labor practice proceedings which could affect its entitlement to recognition. The court granted the temporary injunction and ordered respondent to bargain with the union, but did not require execution of the union-tendered contract as requested by the union.

Another case in which other pending Board proceedings played a part was *Western Iowa Pork*,[5] where the employer refused to bargain with the certified union, contending that the charge of another union filed with the Board alleging that the employer dominated the certified union had placed a cloud on its bargaining obligation and under the circumstances it was under no duty to bargain until the charge was disposed of. The court found that the regional director had reasonable cause to believe that the employer thereby violated the Act, granted the temporary injunction, and ordered the employer to bargain.

In *Sinclair Glass*,[6] the court found there was reasonable cause to believe that the employer violated section 8(a) (1) and (2) by extension to a newly acquired plant of its contract with an incumbent union at an established plant, by recognition of the union as the representative of those employees at a time when the union did not represent a majority of them, and by interrogation of employees and coercion of the employees to join the union. That conduct was enjoined. However, the court declined to grant injunctive relief with respect to the employer's alleged refusal to bargain with the incumbent union at the newly acquired plant, on the ground that a substantial issue as to the appropriate unit had been raised and was then pending before the Board in an unfair labor practice proceeding.

Temporary injunctions were denied in two cases. In the *Pollard* case,[7] the court concluded that the regional director did not have reasonable cause to believe that the employer was guilty of an unlawful refusal to bargain with the certified representative of his employees,

[4] *Hoban* v *United Aircraft Corp*, 264 F.Supp. 645 (D C Conn.).
[5] *Meter* v. *Western Iowa Pork Co.*, 63 LRRM 2503, 54 LC ¶11,566 (D.C.Iowa)
[6] *Dick* v. *Sinclair Glass Co.*, 65 LRRM 2358, 55 LC ¶ 11,930 (D.C.Ind.).
[7] *Greene* v. *A. G. Pollard Co.*, 258 F.Supp. 475 (D.C.Mass.).

and that he had failed to show that it was just and proper for the court to grant injunctive relief. The employer had challenged the validity of an election resulting in the union's certification on the ground that a union official's statement on the night before the election, that the employer had a list of employees who were members of the union and all would be out of jobs unless the union won the election, was false, and that it had no chance to refute the statement before the election. The court concluded that in view of the First Circuit Court of Appeals decision in the *Trancoa* case [8] holding that a similiar misrepresentation rendered an election invalid, the injunction request was not supported by a reasonable cause to believe the Act had been violated and the issue should be resolved through normal Board and court procedures. And in *Union Carbide* [9] the court held, in denying an injunction, that there was not reasonable cause to believe that respondent's action in closing its plant and locking out the employees during the negotiations for a new contract was discriminatory or constituted an unlawful refusal to bargain. The court found that while the employer during the negotiations proposed a mid-term modification of a separate pension and insurance agreement, it at no time insisted upon the modification as a condition to agreement on the basic collective-bargaining issues.

Enforcement of a union's bargaining obligation was secured through 10(j) proceedings in *United Brotherhood of Carpenters*,[10] where the court enjoined the union from striking without complying with the notice provisions of section 8(d) of the Act.[11] The union was ordered to bargain with the employers without striking until expiration of a 30-day period following delivery of a notice of dispute to the Federal Mediation and Conciliation Service and the department of labor of the State.

The actions of the employers and unions in executing illegal contracts and committing other acts of restraint and coercion were enjoined by the courts in two cases. In the *Mr. Wicke* case,[12] the court enjoined the conduct of the employer and the union from executing a contract containing union-security provisions at a time when the union did not represent an uncoerced majority of the employees and from the commission of various acts of restraint and coercion. Respondents were ordered by the court to abandon their existing collective-bargain-

[8] *N L.R.B.* v. *Trancoa Chemical Corp.*, 303 F.2d 456.

[9] *Farkas* v. *Union Carbide Corp*, No. 3487 (D.C.W.Va.), decided Aug. 4, 1966 (unreported)

[10] *Madden* v *United Brotherhood of Carpenters* [*Gawley Construction Co.*], 56 LC ¶12,079 (D.C.Ill.).

[11] Sec. 8(d) conditions strike action to obtain a proposed modification or termination of a contract upon, *inter alia*, 60 days' notice of the other party to the contract, and 30 days' notice to the Federal Mediation Service and State mediation agencies

[12] *Greene* v. *Mr. Wicke Ltd. Co.*, 270 F.Supp. 1012 (D.C.Conn.).

ing agreement, and respondent employer was required to withdraw its recognition of the union as exclusive bargaining agent for the company's employees.

Similarly, in the *Cowles* case,[13] the court held that there was reasonable cause to believe that the employer and unions had violated section 8(a) (1) and (2) and 8(b)(1)(A), respectively, by the employer's recognition and execution of a collective-bargaining agreement with unions at a time when the demand of another union for recognition had raised a "question concerning representation." In addition, the employer assisted and contributed its support to the respondent unions. The court enjoined that conduct and ordered the employer to cease recognizing the unions as the exclusive bargaining representative of the employees unless and until the unions have been certified by the Board; restrained the unions from acting as the exclusive bargaining representative unless and until certified; and restrained both from performing or giving effect to the collective-bargaining agreement.

In other cases, the conduct enjoined by the courts consisted of acts of interference with protected employees' rights and discrimination in employment. In *Kansas Refined Helium*,[14] the court found that there was reasonable cause to believe that respondent violated section 8(a) (1) and (3) by unlawfully interrogating and threatening its employees and by discharging them for their union activities. It granted a temporary injunction and ordered the employer to reinstate certain employees to their former positions pending the final determination of the matter by the Board. Similarly, in the *Stewart & Stevenson* case,[15] the court found that there was reasonable cause to believe that respondent had violated section 8(a) (1) and (3) by dismissing a number of its employees because of their union activities and by other actions coercing the employees and interfering with the exercise of their rights to organize. Accordingly, respondent was enjoined from continuing to engage in these practices and ordered to offer immediate and full reinstatement to the discriminatorily discharged employees.

Among the other cases in which injunctions were sought under section 10(j) was *M & W Gear Co.*[16] There the court, by agreement of counsel, entered a restraining order prohibiting the respondent from abolishing its over-the-road trucking operations and from selling the trucks as it had threatened to do in the event the drivers designated the union as their representative—and which it did by subcontracting

[13] *Kaynard* v. *Cowles Communications, Inc*, 66 LRRM 2052, 56 LC ¶12,056 (D.C.N.Y.).

[14] *Sacks* v *George A. Angle d/b/a Kansas Refined Helium Co*, 65 LRRM 2098, 55 LC ¶11,865 (D C.Kans.).

[15] *Potter* v *Stewart & Stevenson Services*, No 66-H-73 (D.C.Tex.), decided Oct. 7, 1966 (unreported).

[16] *Jacobson* v *M & W Gear Co*, No CV 67-89D (D.C.Ill.), decided June 13, 1967 (unreported)

all work immediately following the election—and requiring it to reinstate the terminated drivers to their former positions. Subsequently, the respondent entered into a stipulation for entry of a Board order and court decree enforcing the order at which time the restraining order was dissolved by the court. And in the *Young Metal* case,[17] the court enjoined the employer from prohibiting its employees from talking about unions in the plant during nonworking time.

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),[18] or section 8(b)(7),[19] and against an employer or union charged with a violation of section 8(e),[20] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that 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.

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[17] *Cosentino* v. *Young Metal Products Co*, No. 3961 (D.C Ill.), decided Sept. 14, 1966 (unreported)

[18] 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).

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

[20] 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 fiscal 1966, the Board filed 157 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 16 cases pending at the beginning of the period, 83 cases were settled, 2 dismissed, 5 continued in an inactive status, 10 withdrawn, and 5 were pending court action at the close of the report year. During this period 68 petitions went to final order, the courts granting injunctions in 60 cases and denying them in 8 cases. Injunctions were issued in 31 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). Injunctions were granted in 15 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 4 also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in 12 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7). The remaining two cases in which injunctions were granted arose out of charges involving alleged violations of section 8(e).

Of the eight injunctions denied under section 10(l), four involved alleged secondary boycott situations under section 8(b)(4)(A) and (B), two involved alleged jurisdictional disputes under section 8(b)(4)(D), and two were predicated upon alleged violations of section 8(b)(7)(B) and (C).

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.

Three of the cases decided during the year, however, involved the application to variant factual situations of legal principles of particular consequence concerning picketing at a "reserved gate" and the "ally" doctrine. In the reserved gate case,[21] the court issued an injunction based upon its finding that there was reasonable cause to believe that respondent violated the secondary boycott provisions of the Act by its action in placing an "observer," without picket signs, at a separate gate at a project reserved for construction workers employed by secondary employers. The court found the presence of the "observer" to be tantamount to the presence of a picket and, applying established legal principles, enjoined the picketing as unlawful.

[21] *Getreu* v. *Local Union 1347, IBEW* [*Cincinnati Gas Co.*], 66 LRRM 2084 (D.C.Ohio).

In the *Local 205, Electrical Workers* case,[22] the court, in denying injunctive relief, held that there was not reasonable cause to believe that respondent's picketing at a warehouse servicing orders on product inventory of the struck employer was an illegal secondary boycott. The employer, in anticipation of the strike, had transferred a substantial part of its inventory of salable products, normally maintained at the production plant, to a warehouse operator. During the strike the warehouse personnel filled orders for the struck employer from the warehoused stock. Under these circumstances, the court concluded that the warehouse operator had allied himself with the struck employer and, therefore, could not be considered a neutral entitled to the protection of the Act. Similarly, in another "ally" case, [23] the court dismissed the petition for an injunction on the ground that the struck employer and the warehouse operator who filed the charge were allied. The court found that the warehouse operator, from the commencement of the strike, in addition to those product lines it had previously handled, had been performing warehousing work and distribution to customers on a line of products usually handled by the employees of the struck employer. The court, therefore, concluded that the union's picketing of the warehouse operator did not give rise to a basis for concluding that the Act had been violated. The court further found that the picketing was protected consumer picketing which the union had the right to engage in to peaceably publicize its dispute with the employer and to request customers not to purchase such products in support of its position.

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[22] *Hoban* v *Local 205, United Electrical, Radio & Machine Wkrs* [*General Electric Co.*], 64 LRRM 2142, 54 LC ¶ 11,640 (D C Mass.).

[23] *Brooks* v *Local 101, United Rubber, Cork, Linoleum & Plastic Wkrs.* [*Great Lakes Sugar Co*], No 29871 (D.C.Mich), decided May 12, 1967 (unreported)

X

Contempt Litigation

During fiscal 1967 petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 20 cases: 14 for civil contempt, 3 for criminal contempt, and 3 for both civil and criminal contempt. In five of these cases the petitions were withdrawn following compliance by respondents during the course of the proceedings.[1] In four cases the petitions were granted and civil contempt adjudicated,[2] while in three, the courts referred the issues to special masters for trials and recommendations.[3] One case, involving the collection of backpay, was dismissed because of the defunct condition of the corporate debtor.[4] Of the remaining nine cases, pending in various stages, seven are civil [5] and two are before panels of the court designated to try the respondents upon counts in criminal contempt.[6]

[1] *N L.R.B.* v *Ariel Offset Co.*, in contempt of the decree ordering execution of a collective-bargaining agreement in No. 30,108 (C.A 2), May 23, 1966; *N.L.R.B.* v. *Local No. 2, United Assn. of Journeymen & Apprentices of Plumbing Industry,* in contempt of 360 F.2d 428 (C.A. 2); in re *Teleservice Co. of Wyoming Valley,* in criminal contempt of the 8(a)(1) provisions of the decree of Aug. 18, 1965, and the purgation clauses of the contempt adjudication of Nov 29, 1966, in No 15,412 (C A 3); *N L.R B.* v. *Intl Brotherhood of Electrical Workers, Local 861,* in contempt of the secondary boycott provisions of the decree in No. 21,386 (C A 5), Jan 7, 1966; *N L R B* v *Red Ball Motor Freight,* in contempt of the 8(a)(1) provision of the decree in No. 17,994 (C.A.D.C.), Apr. 1, 1964, 56 LRRM 2480.

[2] *N L R B.* v *Local 254, Building Service Employees Intl. Union,* 376 F.2d 131 (C.A. 1), cert denied 389 U S 856 (see footnote 12, below), *N L R.B* v *Teleservice Co. of Wyoming Valley,* order of Nov. 29, 1966, in civil contempt of the decree of Aug. 18, 1965, in No 15,412 (C A. 3) (compliance fine of $10,000 imposed, order of June 8, 1967); *N.L.R.B.* v. *Superior Building Maintenance,* order of May 22, 1967, in civil contempt of decree of Aug. 19, 1966, in No 15,524 (C A 7); *N L.R.B.* v *Painters District Council No. 3,* order of Aug. 1, 1967, in civil contempt of decree of Sept. 27, 1966, in No. 18,557 (C A. 8).

[3] *N.L R.B* v *Cumberland Shoe Corp.* (C A. 6), referred to U S.D.C. Judge Frank Gray, Jr, order of Feb. 13, 1967, in No 16,068 (see 351 F 2d 917), *N L R B.* v. *U.M.W. and District 30, U M W.* (C.A. 6), referred to U S D.C. Judge Charles G. Neese, order of Jan. 3, 1967, in No 14,226; *N.L.R.B.* v. *My Store, Inc.* (C.A. 7), referred to local attorney, order of Dec 22, 1966, in No. 14,770 (see 345 F.2d 494).

[4] *N L.R.B.* v. *Ampruf Paint Co., Inc*, order of June 6, 1967, No. 17,603 (C.A. 9).

[5] *N.L R B.* v. *General Precision,* in contempt of decree of Oct. 28, 1965, No. 16,132 (C.A. 3) (dominated labor organization); *N.L R B.* v. *Interurban Gas Corp*, in contempt of 354 F.2d 76 (C.A. 6) (backpay); *N L R.B.* v *Tennessee Packers, Frosty Morn Div*, in contempt of 339 F 2d 203 and 344 F 2d 948 (discriminatory discharges, as found in 143 NLRB 494 and 146 NLRB 165); *N L R B.* v. *Burnett Construction Co.*, civil contempt of 350 F.2d 57 (C.A. 10) (refusal to bargain); *N.L.R.B* v. *Ambrose Distributing Co.*, in civil and criminal contempt of 358 F 2d 319 (C A. 9) (refusal to reinstate two discriminatees).

[6] *N.L.R B.* v. *Alamo Express,* in criminal contempt of decree of June 22, 1959, in No 17,594 (C A. 5), 45 LRRM 2052, and decree of July 10, 1964, in No. 21,465 (C.A. 5) (discriminatory discharge); *N L R.B.* v *Winn-Dixie Stores,* in criminal contempt of enforcement decree in 324 F.2d 502 and civil contempt provisions in 353 F.2d 76 (C.A. 5) (unlawful sponsorship of decertification petition)

Contempt was also adjudicated in four cases which had commenced prior to fiscal 1967; of these, one civil contempt adjudication resulted from the confirmation of the recommendations of a special master,[7] two civil contempt adjudications followed proceedings before the courts themselves,[8] and in one criminal contempt case which the court had referred to a United States District Court judge, as its special master, the respondents were sentenced and placed on probation, upon their pleas of guilty.[9] Two additional cases were disposed of during fiscal 1967, one by an order of dismissal upon confirmation of a master's report that the Board failed to meet its burden of proof[10] and the other by an order approving a compromise of backpay liability.[11]

Two opinions were issued which warrant comment. In *Local 254, Building Service Employees*,[12] the enforcement decree had enjoined the union, which represents employees of contract cleaners, from threatening any employer to force a cessation of business with the company with which the union was engaged in a continuing primary labor dispute. When the union, claiming that cleaning services were products which it could follow under *N.L.R.B.* v. *Fruit & Vegetable Packers, Loc. 760* [*Tree Fruits*], 377 U.S. 58, resumed its unlawful picketing of two customers to coerce them to cease doing business with the company, the court granted a preliminary injunction, and then after an evidentiary trial, a contempt adjudication, again directing the union to cease picketing any of the company's nonpublic customers. The court declined, however, to hold the union in contempt with respect to picketing the offices of the Massachusetts Department of Education, in protest of the department's award of a cleaning contract to the company. The court felt that this aspect of the contempt proceeding raised questions of statutory interpretation, not present in the basic case, which should be considered first by the Board; namely, whether a State agency which has no customers is "coerced" within the purview of section 8(b)(4)(ii) and whether that section proscribes picketing designed to elicit a public response to the actions of a Government agency with which the union may have both a primary and secondary dispute. The court made clear that its relegation of this issue to the Board was not in recognition of the union's

[7] *N.L.R.B.* v. *Lynair, Inc.*, 380 F.2d 286 (C.A. 6).

[8] *N.L.R.B.* v *Joseph Auto Co.*, order of Nov. 8, 1965, and final order of Apr. 1967, in No. 29,447 (C.A. 2); *N.L.R.B.* v *Art Lance, Jr.*, order of Apr. 20, 1966, in No. 15,433 (C.A. 3)

[9] *N.L.R.B.* v *Reinforced Steel Workers, Local 426, & Regis O'Brien, its Business Agent*, adjudication and sentence of Nov. 9, 1966, in No. 16,222 (C.A. 6) The union was fined $10,000 of which $8,000 was suspended, and the individual respondent sentenced to 30 days' imprisonment, suspended however upon condition that respondent complies with the contempt adjudication of Sept. 8, 1965, and the court's decree of Oct. 27, 1964. Both respondents were placed on probation for 1 year.

[10] *N.L.R.B.* v. *Warren Heldman*, order of Mar. 14, 1967 (C.A. 2).

[11] *N.L.R.B.* v. *Ripley Manufacturing Co.*, order of July 13, 1966, in No. 15,225 (C.A. 6).

[12] See footnote 2, above.

general claim that the court could never adjudicate contempt until the Board has first exhausted its administrative procedures.

In *Lynair*,[13] the Sixth Circuit reaffirmed the principle that an employer must bargain in good faith for a reasonable period of time after entry of a court decree requiring collective bargaining, even though the union no longer commands majority support. Rejecting the employer's contention that the enforcement decree should have specified in calendar terms the length of time for which bargaining was required, the court further ruled that the measure of a reasonable period of time is ordinarily until an agreement has been negotiated or a genuine impasse has occurred.

[13] See footnote 7, above

XI

Miscellaneous Litigation

Miscellaneous court litigation during fiscal 1967 involved Board rulings in representation proceedings and on interlocutory appeals in unfair labor practice proceedings, the availability to private litigants of the investigatory files of the Board, and the enforceability by the Board of its subpenas requiring an employer to produce lists of the names and addresses of eligible employees under the Board's *Excelsior* rule [1] requiring such a list for use for campaign purposes by parties to an election proceeding.

A. Judicial Review of Board Proceedings

Petitions filed during the past year by parties to Board proceedings seeking to invoke the equity powers of a Federal district court to restrain or compel Board action at various stages of representation or unfair labor practice proceedings were opposed by the Board primarily on the ground that the court was without jurisdiction to grant the relief sought. The plaintiffs' efforts were usually directed to establishing that the Board action was within the doctrine of *Leedom* v. *Kyne*,[2] pursuant to which the court may intervene when the Board has violated an express mandate of the Act, or that of *Fay* v. *Douds*,[3] permitting intervention upon a showing that the Board action has deprived the plaintiff of a constitutional right.

1. Board Discretion in Determining Jurisdiction

In one case decided during the year,[4] the district court refused to direct a reversal of the Board's action declining to assert jurisdiction over the operations of a New Jersey corporation's shipping terminal in the Panama Canal Zone where all the employees were Panamanian nationals. The Board, without reaching the question whether it in fact had that jurisdiction, had deemed it inappropriate to assert juris-

[1] *Excelsior Underwear*, 156 NLRB 1236, Thirty-first Annual Report (1966), pp. 61–63.
[2] 358 U S 184, discussed in Twenty-fourth Annual Report (1959), pp. 117–118
[3] 172 F 2d 720 (C A 2) (1949), Fourteenth Annual Report (1949), pp 149–150.
[4] *National Maritime Union [United Fruit Co.]* v. *N.L R.B.*, 267 F.Supp. 117 (D.C S.N.Y.).

diction in view of the then pending treaty negotiations between the United States and the Republic of Panama, and the announcement of the President of the United States that the new treaty would recognize Panama's sovereignty over the Canal Zone.[5]

In dismissing the suit for lack of subject matter jurisdiction as well as for failure to state a claim upon which relief could be granted, the court rejected the contention that the language of section 9(c)(1) of the Act,[6] being written in the mandatory "shall," constitutes a clear statutory mandate which required the Board to exercise its jurisdiction to determine whether a question concerning representation existed and, if so, to direct an election. The court noted, however, that section 9(c)(1) contained an affirmative command, and that "the meaning of affirmative statutory declarations can generally be discovered only through statutory interpretation, whereas the meaning of [statutory] prohibitions, as in *Kyne*, is apparent on the face of the statute." Considering then the amount of discretion the Board has been permitted and has exercised in processing representation petitions, and in determining whether to assert its statutory jurisdiction, the court concluded that the mandate of section 9(c)(1) was not set forth with the clarity and specificity requisite for it to serve as a standard for the exercise of jurisdiction under *Kyne*.[7]

2. Representation Proceedings

A number of the court actions seeking to prevent or compel Board action in representation proceedings were based upon contentions that the Board had violated the plaintiff's constitutional rights. One of these cases was *Greensboro Hosiery Mills*[8] where the circuit court reversed a judgment of a district court enjoining the regional director from changing the site of an election to a location away from the company's premises.[9] The regional director's action was based upon the company's refusal at his request to remove from its bulletin board a statement to employees which the regional director viewed as contain-

[5] *United Fruit Co.*, 159 NLRB 135, Thirty-first Annual Report (1966), p. 35.

[6] Sec. 9(c)(1) provides in relevant part: "Wherever a petition shall have been filed . . . the Board *shall* investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists *shall* provide for an appropriate hearing upon due notice . . . If the Board finds upon the record of such hearing that such a question of representation exists, it *shall* direct an election by secret ballot and *shall* certify the results thereof." [Emphasis supplied.]

[7] The court also rejected as a basis for its jurisdiction the contention that in declining to assert jurisdiction because of foreign affairs policy considerations, the Board had entered an area prohibited it by the Supreme Court in *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 (1963), Twenty-eighth Annual Report (1963), pp. 120–121. It noted that the Board's action was aimed at avoiding an impact upon our relations with foreign countries and therefore consistent with *McCulloch*.

[8] *Greensboro Hosiery Mills* v. *Johnston*, 65 LRRM 2299, 55 LC ¶11,927 (C.A. 4).

[9] *Greensboro Hosiery Mills* v. *Johnston*, 60 LRRM 2060, 52 LC ¶16,587 (D.C.N.C.), see Thirty-first Annual Report (1966), p. 160.

ing 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 district court considered the action as one penalizing the employer for exercise of its constitutional right of free speech, wherefore the court had jurisdiction over the Board action under *Fay* v. *Douds*.[10]

The court of appeals noted that the Act does not require the Board or the regional director to hold an election at the company plant, and therefore there was no violation of a statutory mandate within *Kyne*. It further noted that there was no violation of a clear constitutional right by the regional director's action and that, in any event, the decision in *Fay* v. *Douds* "is not, of course, binding on this circuit and we do not find it persuasive in these circumstances." Therefore, the court concluded that "In view of the language of the statute, the clear and unambiguous congressional policy behind it and the teachings of the Supreme Court," the district court was without jurisdiction to entertain the suit.

Other cases in which it was sought to base district court jurisdiction upon alleged deprivation of constitutional due process included one to enjoin a scheduled unfair labor practice hearing on refusal-to-bargain charges because counsel was denied to witnesses furnished by the employer during their interview by Board agents investigating the employer's objections to the election in the precedent representation case;[11] one to enjoin a scheduled representation election because of a violation of due process in the denial to the incumbent union of the right to introduce evidence contesting the good faith of the employer in filing the petition;[12] and one to set aside an order clarifying a certification on grounds that due process was violated by the failure to hold an evidentiary hearing before entering the order, even though no hearing was required by section 9(c) of the Act.[13] In each instance the court found the Board actions had not violated the constitutional rights of the plaintiffs and dismissed the petitions. The Second Circuit, in another case,[14] affirmed the district court's dismissal of a complaint whereby the company sought to enjoin a representation hearing under section 9(c)(1) of the Act because the provisions therein, that the hearing officer "shall not make any recommendations with respect" to the hearing, deprived the company of valuable property rights to a

[10] *Supra*, footnote 3.

[11] *Monroe Auto Equipment Co.* v *McCulloch*, 64 LRRM 2684 (D C.N.Ga.). For the Board's disposition of similar contentions, see *supra*, p. 37.

[12] *Bindery Workers Union Local No. 82* v. *McCulloch*, No 786–67 (D C.D.C.), decided Apr 12, 1967 (unreported).

[13] *Joseph Valentino* v *McCulloch*, No. 11602 (D.C.W N Y.), decided Sept. 30, 1966 (unreported).

[14] *Utica Mutual Insurance Co.* v. *Vincent*, 375 F.2d 129, affg. No. 66–CV–236 (D.C.N.Y.), decided July 29, 1966 (unreported).

full and fair hearing with respect to the appropriate unit, in violation of the due process clause of the Fifth Amendment. The circuit court agreed with the district court that the complaint raised no substantial constitutional questions and was so lacking in merit as not to require convening a three-judge court. In the court's view, the due process clause of the Fifth Amendment does not require that when there are issues of credibility a determination of fact may not be made unless the decider has either seen the witness himself, or has been furnished a report as to credibility by another who has observed the witness. It also expressed doubt that a representation hearing must be of the trial type since it is simply an investigation preliminary to an election which may or may not result in a certification. If it does and the employer refuses to bargain, he is entitled to present in an unfair labor proceeding any material evidence he was prevented from introducing at the representation hearing. The court also concluded that the company had no "property right" in the designation of the unit of its employees with which it may be required to bargain, even though the Board entitles it to be heard thereon.

3. Unfair Labor Practice Proceedings

The requirement of exhaustion of the available administrative and court review procedures under the Act as precluding recourse to the courts was enforced in a number of instances during the report period when actions were instituted to obtain court intervention in the Board's handling of an unfair labor practice proceeding. One such case was *United Aircraft Corp.*,[15] where the Court of Appeals for the District of Columbia affirmed the district court denial of an injunction which sought the withdrawal of a Board order, entered on an interlocutory appeal, which overruled the trial examiner's dismissal of certain allegations of the complaint. The suit also sought to regulate the manner of consideration of future interlocutory appeals from the examiner's rulings during the remainder of the hearing. The court stated that "It seems to us that a mere statement of the relief sought is sufficient to demonstrate want of jurisdiction in the District Court to proceed. Doing so would make the District Court an appellate tribunal over interlocutory rulings of the Board. Congress has directed the route for proceedings such as this, and no detour has been provided." It noted that since the Supreme Court decision in *Myers* v. *Bethlehem*[16] "the courts have, without exception, ruled that the exclusive review of proceedings involving unfair labor practices abides in the Circuit Courts of Appeals under section 10(e) and (f) of the National Labor

[15] *United Aircraft Corp.* v. *McCulloch*, 365 F.2d 960 (1966).
[16] *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938).

Relations Act, and that interlocutory rulings of the Board in the course of such proceedings may not be considered by federal District Courts."

In another court of appeals decision [17] the plaintiff sought a separate and prior hearing by the Board on complaint allegations that an attorney's interrogation of employees in preparation for a hearing on unfair labor practices charges had itself exceeded permissible bounds and constituted additional violations of the Act. The court emphasized that consolidation of the charges against the employer and its counsel for a joint hearing "is a matter inevitably committed to the wide discretion of the Board in its control of unfair labor practice hearings. . . . If on § 10(e), (f), review of the unfair labor practice order the scheduling or consolidation of the hearing is demonstrated to have denied due process or statutory rights, the remedy is denial of enforcement of the order or other appropriate relief by the Court of Appeals, not the over-the-shoulder supervision of District Courts."

And in the *Marlene Industries* case,[18] the district court relied on *Myers* v. *Bethlehem*, *supra*, in holding that it was without jurisdiction to enjoin the Board from proceeding further with a hearing of an unfair labor practice charge until the trial examiner who was conducting the hearing in connection therewith, and who refused to disqualify himself, was replaced. The court found that the entire matter could be reviewed by the Board and, in the event of an adverse decision there, judicial review was available before the court of appeals.

B. Production of Investigatory Files of Board

In several instances during the year, courts considered suits seeking the production of Board case-handling files. In one such case,[19] the district court ruled that it did not have jurisdiction to compel the regional director to produce records compiled during the *ex parte* investigation of the employer's objections to an election, following which the union was certified. The employer sought the file in order that its contents could be made a part of record in the subsequent unfair labor practice proceeding in which the employer sought to challenge the certification, as well as be available to the employer for preparation of its defense that the election was invalid. The court concluded that in the absence of exceptional circumstances, and since the Board's action was not in excess of its delegated powers or contrary to a specific prohibition in the Act, the court was without jurisdiction and the company's only remedy was by way of resort to the exclusive

[17] *Bokat* v. *Tidewater Equipment Co.*, 363 F.2d 667 (C.A. 5).
[18] *Marlene Industries Corp.* v. *Weil*, 64 LRRM 2401, 55 LC ¶ 11,769 (D.C.Tenn.).
[19] *Intertype Co.* v. *Penello*, 64 LRRM 2590, 55 LC ¶ 11,770 (D.C.Va.).

administrative remedies and court review under section 10(e) and (f) of the Act. And in *Braswell Motor Freight*,[20] the Fifth Circuit Court of Appeals reversed a district court order compelling the regional director to testify and produce certain documents in compliance with a subpena issued on behalf of the company and in connection with an action against it for alleged breach of contract. The documents the district court had ordered made available were intraagency memorandums concerning findings or determinations by Agency personnel as to the status of the unions as bargaining representatives of the company's employees. They were found by the court of appeals to "consist solely of communications between the Regional Director and the General Counsel's office" discussing actions to be taken by the Agency and revealing "tentative opinions as to the probable validity of various charges" filed with the Agency by the company and the unions. The court held the subpena should have been quashed because the company had failed to first exhaust its administrative remedies by requesting, as required by section 102.118 of the Board's Rules and Regulations, the consent of the General Counsel for production of the documents. The court further noted, however, that internal memorandums and correspondence of the nature here involved "discussing the course of conduct to be followed by the parties and expressing opinions as to the merits of various claims presented to the agency enjoys at least a qualified privilege which, in the absence of special circumstances, shields it from examination by the public." The court concluded that as the company had not presented sufficient justification in this case for overriding the privilege, the sound policy behind the privilege required that the subpena be quashed.

C. Production by Employer of Names and Addresses of Eligible Voters

During the report year, six district court decisions were issued in cases in which the Board sought enforcement of subpenas, or in the alternative a mandatory injunction under the court's equity powers, requiring employers to provide to the regional director a list of names and addresses of employees eligible to vote in a pending election. The court actions were one aspect of the Board's efforts to obtain compliance with its rule, announced in the *Excelsior Underwear* case,[21] which established the requirement that the names and addresses of all voters be disclosed to all parties to facilitate campaign communications with the eligible voters and thereby assure an informed electorate. Since the failure to provide the names and addresses would be grounds for setting

[20] *Davis* v. *Braswell Motor Freight Lines*, 363 F 2d 600

[21] Thirty-first Annual Report (1966), pp. 61–63.

aside the election,[22] action to obtain the lists was necessary because the employer's refusal to furnish the list, coupled with the union's unwillingness to proceed to an election without the list, would result in a stalemate preventing the holding of an election directed by the Board.

The suits by the Board were premised on the ground that the list constituted "evidence," within the meaning of section 11(1)[23] of the Act, essential to the representation proceeding and obtainable by court enforcement of a subpena under section 11(2),[24] but that in any event the rule was a valid one within the Board's rulemaking authority and, therefore, enforceable under the general equity powers of the court. In four of the six cases,[25] the courts agreed that the lists were "evidence" within the meaning of section 11(1) and enforced the subpenas. In doing so, the courts passed upon numerous contentions of the Board and the respondent employers. In addition to holding the lists to be "evidence," the courts variously found that: (1) the *Excelsior* rule was a valid and reasonable exercise of the Board's power to prescribe election procedures; (2) no constitutional rights of the employees were invaded by requiring the employer to provide the names and addresses, even assuming the employer had standing to raise such a contention; (3) no purported obligation to the employees of the employer to hold the information confidential could bar its disclosure to the Board under these circumstances; (4) it was appropriate for the Board to make the lists available to the unions in furtherance of its election proceedings; (5) furnishing to the union parties the names and addresses of the electorate would not constitute

[22] See, *supra*, pp. 67–68, for cases in which the Board considered contentions concerning the scope and validity of the rule.

[23] Sec. 11 For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. . .

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jursdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

[24] See *supra*, footnote 23.

[25] *N.L.R.B.* v. *British Auto Parts*, 266 F.Supp. 368 (D.C.Calif.); *N.L.R.B.* v. *Karl Rohlen, Pres, and Crane Packing Co.*, 274 F.Supp. 715 (D.C.N.Ill.); *N.L.R.B.* v. *Wolverine Industries Division*, 64 LRRM 2060, 54 LC ¶11,658 (D C.S.Mich.); *N.L.R B.* v. *Wyman-Gordon Co.*, 270 F.Supp. 280 (D.C.Mass).

an interference with the employees' right to refrain from organizational activity; (6) the chance of misuse of the lists of the unions with the result that employees would be "pirated" away by other employers was minimal, but could be controlled by the Board in any event; and (7) the district court has equity jurisdiction to require production of the lists even though the lists are not considered evidence, since the promulgation of the rules is in the Board's statutory authority.

In two cases,[26] however, the district court refused to enforce the subpena or require production of the lists, upon finding that the lists were not evidence, and holding that, in the alternative, the court would not exercise its discretion to require production of the lists.[27]

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[26] *N.L.R.B* v. *Montgomery Ward & Co.,* 64 LRRM 2299 (D.C.Fla.); *N.L.R.B* v. *Hanes Hosiery Division,* 63 LRRM 2513 (D.C.N.C.).

[27] The Board has perfected an appeal in the *Hanes* case. The *Montgomery Ward* decision was mooted by withdrawal of the petition.

Index of Cases Discussed

APPENDIX A

Statistical Tables for Fiscal Year 1967

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 closed, 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 trail 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 sufficient 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 dimissed 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 question 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), (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.

Representative Case

This term applies to cases hearing 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.

Representative Election

An election by secret ballot conducted by the Board among the employees in an appropriate collection-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) and 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.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases:

See "C Cases" under "Types of Cases."

Union Deauthorization Cases:

See "Other cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

SUBJECT INDEX TO ANNUAL REPORT TABLES

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Appendix A

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1967 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending July 1, 1966	9,400	4,446	1,152	366	351	1,902	1,183
Received fiscal 1967	30,425	12,296	4,807	1,053	1,092	6,971	4,206
On docket fiscal 1967	39,825	16,742	5,959	1,419	1,443	8,873	5,389
Closed fiscal 1967	29,494	11,934	4,696	1,075	1,013	6,621	4,155
Pending June 30, 1967	10,331	4,808	1,263	344	430	2,252	1,234
	Unfair labor practice cases [2]						
Pending July 1, 1966	6,658	2,905	616	204	254	1,754	925
Received fiscal 1967	17,040	5,349	1,543	468	486	6,206	2,988
On docket fiscal 1967	23,698	8,254	2,159	672	740	7,960	3,913
Closed fiscal 1967	16,360	5,198	1,494	469	417	5,865	2,917
Pending June 30, 1967	7,338	3,056	665	203	323	2,095	996
	Representation cases [3]						
Pending July 1, 1966	2,659	1,516	535	160	91	113	244
Received fiscal 1967	12,957	6,776	3,251	574	582	634	1,140
On docket fiscal 1967	15,616	8,292	3,786	734	673	747	1,384
Closed fiscal 1967	12,724	6,579	3,192	597	574	620	1,162
Pending June 30, 1967	2,892	1,713	594	137	99	127	222
	Union-shop deauthorization cases						
Pending July 1, 1966	35					35	
Received fiscal 1967	125					125	
On docket fiscal 1967	160					160	
Closed fiscal 1967	132					132	
Pending June 30, 1967	28					28	
	Amendment of certification cases						
Pending July 1, 1966	14	8	1	0	2	0	3
Received fiscal 1967	86	44	1	5	8	0	28
On docket fiscal 1967	100	52	2	5	10	0	31
Closed fiscal 1967	81	43	1	3	6	0	28
Pending June 30, 1967	19	9	1	2	4	0	3
	Unit clarification cases						
Pending July 1, 1966	34	17	0	2	4	0	11
Received fiscal 1967	217	127	12	6	16	6	50
On docket fiscal 1967	251	144	12	8	20	6	61
Closed fiscal 1967	197	114	9	6	16	4	48
Pending June 30, 1967	54	30	3	2	4	2	13

[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 1967 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA Cases						
Pending July 1, 1966	4,989	2,849	603	189	192	1,152	4
Received fiscal 1967	11,259	5,229	1,518	421	391	3,682	18
On docket fiscal 1967	16,248	8,078	2,121	610	583	4,834	22
Closed fiscal 1967	10,824	5,085	1,471	419	319	3,518	12
Pending June 30, 1967	5,424	2,993	650	191	264	1,316	10
	CB Cases						
Pending July 1, 1966	925	42	8	6	32	570	267
Received fiscal 1967	3,404	87	14	14	63	2,441	785
On docket fiscal 1967	4,329	129	22	20	95	3,011	1,052
Closed fiscal 1967	3,195	72	12	15	51	2,249	796
Pending June 30, 1967	1,134	57	10	5	44	762	256
	CC Cases						
Pending July 1, 1966	425	2	1	8	8	10	396
Received fiscal 1967	1,329	8	1	29	24	50	1,217
On docket fiscal 1967	1,754	10	2	37	32	60	1,613
Closed fiscal 1967	1,365	8	0	31	21	55	1,250
Pending June 30, 1967	389	2	2	6	11	5	363
	CD Cases						
Pending July 1, 1966	157	11	1	0	3	8	134
Received fiscal 1967	486	21	6	3	6	15	435
On docket fiscal 1967	643	32	7	3	9	23	569
Closed fiscal 1967	492	28	6	3	9	18	428
Pending June 30, 1967	151	4	1	0	0	5	141
	CE Cases						
Pending July 1, 1966	54	0	3	0	1	13	37
Received fiscal 1967	34	1	1	0	0	5	27
On docket fiscal 1967	88	1	4	0	1	18	64
Closed fiscal 1967	53	1	2	0	1	13	36
Pending June 30, 1967	35	0	2	0	0	5	28
	CP Cases						
Pending July 1, 1966	108	1	0	1	18	1	87
Received fiscal 1967	528	3	3	1	2	13	506
On docket fiscal 1967	636	4	3	2	20	14	593
Closed fiscal 1967	431	4	3	1	16	12	395
Pending June 30, 1967	205	0	0	1	4	2	198

[1] See "Glossary" for definition of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1967 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC Cases						
Pending July 1, 1966	2,303	1,516	535	160	91	1	
Received fiscal 1967	11,193	6,772	3,247	573	582	19	
On docket fiscal 1967	13,496	8,288	3,782	733	673	20	
Closed fiscal 1967	10,950	6,575	3,189	596	574	16	
Pending June 30, 1967	2,546	1,713	593	137	99	4	
	RM Cases						
Pending July 1, 1966	244						244
Received fiscal 1967	1,140						1,140
On docket fiscal 1967	1,384						1,384
Closed fiscal 1967	1,162						1,162
Pending June 30, 1967	222						222
	RD Cases						
Pending July 1, 1966	112	0	0	0	0	112	
Received fiscal 1967	624	4	4	1	0	615	
On docket fiscal 1967	736	4	4	1	0	727	
Closed fiscal 1967	612	4	3	1	0	604	
Pending June 30, 1967	124	0	1	0	0	123	

[1] See "Glossary" for definition of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1967

	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	11,259	100 0
8(a)(1)	921	8.2
8(a)(1)(2)	313	2 8
8(a)(1)(3)	5,718	50.8
8(a)(1)(4)	30	0.2
8(a)(1)(5)	2,456	21.8
8(a)(1)(2)(3)	233	2.1
8(a)(1)(2)(5)	74	0.6
8(a)(1)(3)(4)	213	1 9
8(a)(1)(3)(5)	1,159	10 3
8(a)(1)(4)(5)	2	0.0
8(a)(1)(2)(3)(4)	12	0.1
8(a)(1)(2)(3)(5)	99	0.9
8(a)(1)(3)(4)(5)	22	0 2
8(a)(1)(2)(3)(4)(5)	7	0.1
RECAPITULATION [1]		
8(a)(1) [2]	11,259	100.0
8(a)(2)	738	6 6
8(a)(3)	7,463	66 3
8(a)(4)	286	2 5
8(a)(5)	3,819	33.9
B. CHARGES FILED AGAINST UNIONS UNDER SEC 8(b)		
Subsections of Sec 8(b) Total cases	5,747	100 0
8(b)(1)	1,284	22.3
8(b)(2)	147	2.6
8(b)(3)	262	4 6
8(b)(4)	1,815	31 6
8(b)(5)	8	0 1
8(b)(6)	11	0 2
8(b)(7)	528	9.2
8(b)(1)(2)	1,478	25 7
8(b)(1)(3)	146	2 5
8(b)(1)(5)	5	0 1
8(b)(1)(6)	3	0.1
8(b)(2)(3)	3	0.1
8(b)(3)(5)	1	0 0
8(b)(3)(6)	1	0.0
8(b)(1)(2)(3)	45	0.8
8(b)(1)(2)(5)	3	0.1
8(b)(1)(2)(6)	2	0.0
8(b)(1)(3)(6)	2	0 0
8(b)(1)(2)(3)(6)	1	0.0
8(b)(1)(2)(5)(6)	2	0.0
RECAPITULATION [1]		
8(b)(1)	2,971	51.7
8(b)(2)	1,681	29.3
8(b)(3)	461	8.0
8(b)(4)	1,815	31.6
8(b)(5)	19	0 3
8(b)(6)	22	0.4
8(b)(7)	528	9.2
B1. ANALYSIS OF 8(b)(4)		
Total cases 8(b)(4)	1,815	100.0
8(b)(4)(A)	73	4 0
8(b)(4)(B)	1,131	62.3
8(b)(4)(C)	33	1.8
8(b)(4)(D)	486	26.8
8(b)(4)(A)(B)	78	4 3
8(b)(4)(B)(C)	13	0.7
8(b)(4)(A)(B)(C)	1	0 1
RECAPITULATION [1]		
8(b)(4)(A)	152	8 4
8(b)(4)(B)	1,223	67.4
8(b)(4)(C)	47	2 6
8(b)(4)(D)	486	26 8
B2 ANALYSIS OF 8(b)(7)		
Total cases 8(b)(7)	528	100 0
8(b)(7)(A)	100	18 9
8(b)(7)(B)	34	6 4
8(b)(7)(C)	373	70 7
8(b)(7)(A)(B)	4	0.8
8(b)(7)(A)(C)	15	2.8
8(b)(7)(B)(C)	1	0 2
8(b)(7)(A)(B)(C)	1	0 2
RECAPITULATION [1]		
8(b)(7)(A)	120	22.7
8(b)(7)(B)	40	7 6
8(b)(7)(C)	390	73.9
C. CHARGES FILED UNDER SEC 8(e)		
Total cases 8(e)	34	100 0
Against unions alone	33	97.1
Against employers alone	0	0 0
Against unions and employers	1	2 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 1967 [1]

Type of formal action taken	Cases in which formal actions	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 dispute	Unfair labor practices					
10(k) notice of hearing issued	76	69				69						
Complaints issued	2,597	1,945	1,442	106	115		6	5	24	101	126	20
Backpay specifications issued	81	41	37	3	0		0	0	0	1	0	0
Hearings completed, total	1,592	1,068	771	60	38	31	4	5	15	42	87	15
Initial ULP hearings	1,510	1,024	735	58	38	31	4	4	15	41	85	13
Backpay hearings	45	22	21	1	0		0	0	0	0	0	0
Other hearings	37	22	15	1	0		0	1	0	1	2	2
Decisions by trial examiners, total	1,491	981	711	63	46		3	2	13	44	86	13
Initial ULP decisions	1,403	934	673	59	46		3	1	13	40	86	13
Backpay decisions	65	28	22	3	0		0	0	0	3	0	0
Supplemental decisions	23	19	16	1	0		0	1	0	1	0	0
Decisions and orders by the Board, total	1,603	1,023	731	70	61	23	5	1	17	30	68	17
Upon consent of the parties:												
Initial decisions	160	94	46	11	21		0	0	5	2	1	8
Supplemental decisions	0	0	0	0	0		0	0	0	0	0	0
Adopting trial examiners' decisions (no exceptions filed)												
Initial ULP decisions	146	118	93	9	7		0	0	2	2	4	1
Backpay decisions	6	5	2	3	0		0	0	0	0	0	0
Contested:												
Initial ULP decisions	1,198	746	540	45	27	23	5	1	9	25	63	8
Decisions based upon stipulated record	21	18	12	0	4		0	0	1	1	0	0
Supplemental ULP decisions	36	22	19	1	2		0	0	0	0	0	0
Backpay decisions	36	20	19	1	0		0	0	0	0	0	0

[1] See "Glossary" for definition of terms

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1967 [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	2,709	2,265	2,075	91	97	2
Initial hearings	2,534	2,092	1,914	80	96	2
Hearings on objections and/or challenges	175	173	161	11	1	0
Decisions issued, total	2,425	2,065	1,878	94	90	3
By regional director	2,221	1,892	1,725	77	87	3
Elections directed	1,978	1,701	1,562	61	77	1
Dismissals on record	243	191	163	16	10	2
By Board	204	173	153	17	3	0
After transfer by regional director for initial decision	140	115	98	15	2	0
Elections directed	88	77	69	7	1	0
Dismissals on record	52	38	29	8	1	0
After review of regional director's decision	64	58	55	2	1	0
Elections directed	49	45	42	2	1	0
Dismissals on record	15	13	13	0	0	0
Decisions on objections and/or challenges, total	1,151	1,090	1,005	57	22	6
By regional director	499	445	406	23	10	6
By Board	652	645	599	34	12	0
In stipulated elections	608	604	562	31	11	0
No exceptions to regional director's report	382	379	349	23	7	0
Exceptions to regional director's report	226	225	213	8	4	0
In directed elections (after transfer by regional director)	27	26	24	1	1	0
In directed elections after review of regional director's supplemental decision	17	15	13	2	0	0

[1] See "Glossary" for definition of terms

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1967 [1]

Type of formal action taken	AC	UC
Hearings completed	16	75
Decisions issued after hearing	17	71
By regional director	12	60
By Board	5	11

[1] See "Glossary" for definition of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1967 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2] 5,339												
Notice posted	2,805	2,017	1,289	75	109	347	197	788	486	102	28	100	72
Recognition or other assistance withdrawn	76	76	53	5	4	9	5						
Employer-dominated union disestablished	50	50	32	4	0	8	6						
Employees offered reinstatement	1,184	1,184	846	35	48	154	101						
Employees placed on preferential hiring list	92	92	73	6	2	7	4						
Hiring hall rights restored	37							37	28	7	0	1	1
Objections to employment withdrawn	99							99	62	12	0	16	9
Picketing ended	606							606	520	42	8	27	9
Work stoppage ended	261							261	235	12	2	8	4
Collective bargaining begun	1,451	1,282	1,006	34	34	131	77	169	155	2	1	3	8
Backpay distributed	1,641	1,487	1,029	44	69	220	125	154	81	16	14	22	21
Reimbursement of fees, dues, and fines	94	49	35	2	3	6	3	45	32	4	0	1	8
Other conditions of employment improved	358	196	195	0	1	0	0	162	160	0	0	2	0
Other remedies	50	25	23	0	0	0	2	25	24	0	0	1	0

B. By number of employees affected													
Employees offered reinstatement, total	4,274	4,274	3,383	113	168	374	236						
Accepted	3,436	3,436	2,893	94	113	218	118						
Declined	838	838	490	19	55	156	118						
Employees placed on preferential hiring list	566	566	446	98	2	16	4						
Hiring hall rights restored	112							112	23	87	0	1	1
Objections to employment withdrawn	118							118	82	9	0	16	11
Employees receiving backpay:													
From either employee or union	13,936	13,815	9,974	235	252	587	2,767	121	72	5	15	15	14
From both employer and union	50	50	40	3	0	3	4	50	40	3	0	3	4
Employees reimbursed for fees, dues, and fines:													
From either employer or union	1,308	950	622	107	62	105	54	358	270	78	0	1	9
From both employer and union	136	136	45	0	32	0	59	136	45	0	32	0	59
C. By amounts of monetary recovery, total	$3,286,460	$3,171,220	$1,246,290	$116,290	$119,650	$598,180	$1,090,810	$115,240	$31,920	$4,810	$7,050	$22,420	$49,040
Backpay (includes all monetary payments except fees, dues, and fines)	3,248,850	3,147,570	1,237,310	115,730	118,140	590,600	1,085,790	101,280	24,640	3,610	7,050	20,830	45,150
Reimbursement of fees, dues, and fines	37,610	23,650	8,980	560	1,510	7,580	5,020	13,960	7,280	1,200	0	1,590	3,890

[1] See "Glossary" for definition of terms. Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1967 after the company and/or union had satisfied all remedial action requirements.

[2] A single case usually results in more than one remedial action; therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1967 [1]

Industrial Group [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Total, all industrial groups	30,425	17,040	11,259	3,404	1,329	486	34	528	12,957	11,193	1,140	624	125	86	217
Manufacturing	14,783	8,041	6,002	1,504	283	117	12	123	6,466	5,628	518	320	73	60	143
Ordnance and accessories	105	56	48	5	3	0	0	0	46	45	0	1	0	0	3
Food and kindred products	1,915	991	743	172	34	12	2	28	903	789	85	29	2	4	15
Tobacco manufacturers	26	17	11	6	0	0	0	0	8	8	0	0	1	0	0
Textile mill products	401	256	207	33	5	0	0	11	141	121	11	9	1	1	2
Apparel and other finished products made from fabric and similar materials	567	389	305	66	9	0	1	8	175	144	19	12	3	0	0
Lumber and wood products (except furniture)	489	217	174	28	8	2	0	5	263	225	21	17	5	3	1
Furniture and fixtures	427	250	180	52	12	4	0	2	171	150	12	9	3	1	2
Paper and allied products	591	299	219	60	6	7	0	7	270	247	12	11	3	5	14
Printing, publishing, and allied industries	928	471	355	76	14	13	0	13	444	386	38	20	4	1	8
Chemical and allied products	765	359	284	52	15	6	0	2	397	354	22	21	2	2	5
Products of petroleum and coal	257	142	109	26	6	1	0	0	107	94	6	7	0	3	5
Rubber and plastic products	550	283	226	38	14	1	0	4	256	229	12	15	6	2	3
Leather and leather products	240	134	110	22	2	0	0	0	105	100	2	3	0	1	0
Stone, clay, and glass products	740	397	256	74	38	18	0	11	322	281	23	18	4	5	12
Primary metal industries	904	537	381	138	11	3	2	2	343	292	27	24	5	4	15
Fabricated metal products (except machinery and transportation equipment)	1,399	728	557	111	31	15	3	11	653	558	64	31	8	4	6
Machinery (except electrical)	1,424	709	537	129	26	9	4	4	680	595	54	31	8	7	20
Electrical machinery, equipment, and supplies	1,149	662	507	116	19	10	0	10	462	408	32	22	3	11	11
Aircraft and parts	289	207	138	64	5	0	0	0	76	65	8	3	2	0	4
Ship and boat building and repairing	184	98	63	26	3	5	0	1	77	55	22	0	0	3	6
Automotive and other transportation equipment	724	440	321	101	11	7	0	0	271	241	15	15	2	2	9
Professional, scientific, and controlling instruments	168	88	70	14	4	0	0	0	76	57	13	6	2	1	1
Miscellaneous manufacturing	541	311	201	95	7	4	0	4	220	184	20	16	9	0	1

Mining	535	300	207	51	34	1	0	7	232	204	19	9	1	0	2
Metal mining	58	20	16	4	0	0	0	0	37	33	0	4	0	0	1
Coal mining	222	162	96	36	23	0	0	7	60	53	6	1	0	0	0
Crude petroleum and natural gas production	132	68	63	2	2	1	0	0	63	58	4	1	1	0	0
Nonmetallic mining and quarrying	123	50	32	9	9	0	0	0	72	60	9	3	0	0	1
Construction	3,349	2,607	842	678	656	294	7	130	736	663	59	14	1	1	4
Wholesale trade	2,000	833	617	123	50	5	4	34	1,142	938	126	78	13	5	7
Retail trade	3,632	1,716	1,229	193	102	11	6	175	1,875	1,561	229	85	19	2	20
Finance, insurance, and real estate	288	120	99	13	6	2	0	0	166	156	7	3	2	0	0
Transportation, communication, and other utilities	3,550	2,098	1,363	553	112	34	4	32	1,404	1,240	95	69	5	17	26
Local passenger transportation	251	133	111	18	4	0	0	0	114	95	3	16	1	1	2
Motor freight, warehousing, and transportation services	2,089	1,282	894	288	65	11	3	21	796	700	84	32	2	2	7
Water transportation	299	250	74	162	6	5	0	3	49	45	3	1	0	0	0
Other transportation	104	59	38	14	4	1	0	2	38	32	4	2	0	7	0
Communications	466	212	149	51	7	1	0	4	244	220	10	14	2	2	6
Heat, light, power, water, and sanitary services	341	162	97	20	26	16	1	2	163	148	11	4	0	5	11
Services	2,288	1,325	900	289	86	22	1	27	936	803	87	46	11	1	15
Hotel and other lodging places	386	233	181	35	13	0	0	4	148	127	14	7	1	0	4
Personal services	235	121	89	19	9	1	0	3	111	95	13	3	2	0	1
Automobile repairs, garages, and other miscellaneous repair services	397	161	116	35	7	0	0	3	232	194	20	18	3	0	1
Motion picture and other amusement and recreation services	379	295	167	95	19	5	1	8	83	71	10	2	0	1	0
Medical and other health services	62	41	24	5	7	3	0	2	20	16	2	2	1	0	0
Legal services	4	2	2	0	0	0	0	0	2	2	0	0	0	0	0
Educational services	33	26	10	4	8	2	0	2	6	6	0	0	0	0	1
Nonprofit membership organizations	75	57	37	19	1	0	0	0	17	13	3	1	1	0	0
Miscellaneous services	717	389	274	77	22	11	0	5	317	279	25	13	3	0	8

[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 1967 [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	30,425	17,040	11,259	3,404	1,329	486	34	528	12,957	11,193	1,140	624	125	86	217
New England	1,628	842	494	178	108	31	0	31	758	647	78	33	4	7	17
Maine	115	42	24	10	7	1	0	0	67	60	2	5	0	4	2
New Hampshire	99	54	28	8	10	6	0	2	45	40	2	3	0	0	0
Vermont	49	27	15	12	0	0	0	0	22	15	4	3	0	0	0
Massachusetts	906	464	248	101	73	15	0	27	431	357	56	18	2	3	6
Rhode Island	151	94	75	10	7	1	0	1	57	55	1	1	0	0	0
Connecticut	308	161	104	37	11	8	0	1	136	120	13	3	2	0	9
Middle Atlantic	5,658	3,321	2,027	789	241	120	6	138	2,256	1,943	220	93	37	11	33
New York	2,777	1,760	1,074	408	127	57	3	91	972	813	107	52	23	4	18
New Jersey	1,249	706	435	197	35	16	0	23	535	480	42	13	5	1	2
Pennsylvania	1,632	855	518	184	79	47	3	24	749	650	71	28	9	6	13
East North Central	6,531	3,760	2,480	806	225	85	4	160	2,666	2,307	222	137	22	22	61
Ohio	1,739	965	647	221	61	28	1	7	747	654	62	31	6	6	15
Indiana	826	480	373	84	8	7	0	8	332	291	21	20	3	4	7
Illinois	1,698	1,150	646	279	68	27	3	127	513	434	49	30	11	8	16
Michigan	1,719	891	619	167	73	20	0	12	816	721	57	38	2	1	9
Wisconsin	549	274	195	55	15	3	0	6	258	207	33	18	0	3	14
West North Central	2,125	1,096	758	180	97	34	1	26	997	860	79	58	15	4	13
Iowa	292	124	89	16	11	5	0	3	165	152	10	3	0	1	2
Minnesota	264	94	71	11	8	1	0	3	165	140	12	13	4	0	1
Missouri	1,025	609	411	115	49	22	0	12	397	344	22	31	11	3	5
North Dakota	37	11	8	0	2	0	0	1	24	20	4	0	0	0	2
South Dakota	42	20	16	2	0	1	0	1	22	20	2	0	0	0	0
Nebraska	174	96	66	12	9	5	1	3	77	65	9	3	0	0	1
Kansas	291	142	97	24	18	0	0	3	147	119	20	8	0	0	2
South Atlantic	3,177	1,814	1,372	235	133	39	3	32	1,341	1,209	79	53	2	4	16

Delaware	61	23	19	4	0	0	0	0	38	34	2	2	0	0	0
Maryland	384	166	113	28	18	2	1	4	215	198	9	8	0	1	2
District of Columbia	133	54	34	9	10	0	0	1	77	67	6	4	2	0	0
Virginia	330	176	148	20	6	0	1	1	152	132	16	4	0	0	2
West Virginia	325	210	125	54	20	9	0	2	115	98	8	9	0	0	0
North Carolina	383	237	220	13	2	0	1	1	143	131	5	7	0	0	3
South Carolina	177	109	98	11	0	0	0	0	66	62	3	1	0	1	1
Georgia	402	227	179	20	10	7	0	11	171	157	10	4	0	1	3
Florida	982	612	436	76	67	21	0	12	364	330	20	14	0	1	5
East South Central	1,750	1,026	772	133	76	27	1	17	706	627	58	21	0	4	14
Kentucky	360	204	129	28	26	15	0	6	154	136	14	4	0	0	2
Tennessee	678	391	308	48	23	5	0	7	276	242	25	9	0	1	10
Alabama	514	316	243	47	20	3	1	2	195	174	17	4	0	1	2
Mississippi	198	115	92	10	7	4	0	2	81	75	2	4	0	2	0
West South Central	2,537	1,522	1,028	279	119	69	0	27	979	862	55	62	0	16	20
Arkansas	251	135	113	13	4	4	0	1	115	101	4	10	0	0	1
Louisiana	448	260	169	51	24	11	0	5	184	168	9	7	0	3	1
Oklahoma	226	103	73	7	21	0	0	2	119	105	6	8	0	0	4
Texas	1,612	1,024	673	208	70	54	0	19	561	488	36	37	0	13	14
Mountain	1,430	823	602	112	53	22	2	32	586	479	82	25	9	3	9
Montana	138	84	73	7	0	1	0	3	45	31	11	3	6	0	3
Idaho	95	49	44	1	1	1	0	2	45	38	7	0	1	0	0
Wyoming	31	14	10	3	1	0	0	0	17	14	2	1	0	0	0
Colorado	459	268	195	40	22	5	1	5	186	150	26	10	2	2	1
New Mexico	183	125	73	21	12	10	0	9	55	45	8	2	0	0	3
Arizona	218	103	73	12	10	3	0	5	114	92	17	5	0	0	1
Utah	113	53	43	9	1	0	0	0	59	54	2	3	0	0	1
Nevada	193	127	91	19	6	2	1	8	65	55	9	1	0	1	0
Pacific	5,035	2,587	1,550	628	269	59	17	64	2,376	1,991	257	128	29	13	30
Washington	839	301	177	73	34	8	2	7	527	475	31	21	4	0	7
Oregon	389	194	124	33	31	4	0	2	181	110	55	16	8	3	3
California	3,509	1,946	1,153	480	199	45	15	54	1,522	1,274	165	83	16	9	16
Alaska	80	48	34	13	1	0	0	0	31	26	1	4	0	0	1
Hawaii	218	98	62	29	4	2	0	1	115	106	5	4	1	1	3
Outlying areas	554	249	176	64	8	0	0	1	292	268	10	14	7	2	4
Puerto Rico	533	239	166	64	8	0	0	1	282	259	9	14	6	2	4
Virgin Islands	21	10	10	0	0	0	0	0	10	9	1	0	1	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 1967 [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	16,360	100.0	.....	10,824	100.0	3,195	100 0	1,365	100 0	492	100 0	53	100 0	431	100.0
Agreement of the parties	4,243	26.0	100 0	2,947	27 2	610	19 1	554	40.6	0	.....	10	18 9	122	28 3
Informal settlement	4,058	24.9	95.6	2,866	26.5	566	17.7	511	37.3	0	.....	8	15 1	107	24.8
Before issuance of complaint	3,171	19.5	74.7	2,113	19.5	509	15 9	446	32 5	(2)	.....	8	15 1	95	22.0
After issuance of complaint, before opening of hearing	831	5.1	19.6	703	6.5	53	1 7	64	4.7	0	.....	0	.....	11	2 6
After hearing opened, before issuance of trial examiner's dicision	56	0 3	1.3	50	0.5	4	0 1	1	0.1	0	.....	0	.....	1	0.2
Formal settlement	185	1.1	4.4	81	0.7	44	1 4	43	3.2	0	.....	2	3 8	15	3 5
After issuance of complaint, before opening of hearing	166	1.0	3.9	66	0.6	43	1.3	40	2 9	0	.....	2	3 8	15	3.5
Stipulated decision	18	0.1	0.4	10	0 1	5	0.2	2	0.1	0	.....	0	.....	1	0 2
Consent decree	148	0.9	3 5	56	0 5	38	1.1	38	2.8	0	.....	2	3.8	14	3.3
After hearing opened	19	1.1	0.5	15	0.1	1	0 0	3	0.2	0	.....	0	.....	0	.....
Stipulated decision	1	0.0	0.0	1	0.0	0	.....	0	.....	0	.....	0	.....	0	.....
Consent decree	18	0.1	0.5	14	0.1	1	0.0	3	0.2	0	.....	0	.....	0	.....
Compliance with	877	5 4	100.0	679	6.3	87	2.7	86	6.3	0	.....	7	13.2	18	4 2
Trial examiner's decision	143	0.9	16.3	114	1.1	18	0.6	9	0.7	0	.....	0	.....	2	0 5
Board decision	454	2.8	51.8	356	3 3	41	1.3	45	3.3	0	.....	1	1 9	11	2 6

Adopting trial examiner's decision (no exceptions filed)	62	0 4	7.1	46	0.4	6	0.2	9	0.7	0	.....	0	.....	1	0.2
Contested	392	2.4	44.7	310	2.9	35	1.1	36	0.4	0	.....	1	1.9	10	2.3
Circuit court of appeals decree	241	1 5	27 5	178	1.6	26	0.8	27	2.0	0	.....	6	11 3	4	0.9
Supreme Court action	39	0 2	4.4	31	0 3	2	0.1	5	0 4	0	.....	0	.....	1	0.2
Withdrawal	6,153	37.6	100 0	4,152	38.4	1,317	41.2	499	36.6	0	.....	12	22 6	173	40 1
Before issuance of complaint	5,961	36.5	96.9	4,015	37.2	1,285	40 2	485	35.6	(2)	.....	11	20.7	165	38 3
After issuance of complaint, before opening of hearing	152	0.9	2.5	107	1.0	26	0.8	10	0.7	0	.....	1	1.9	8	1.9
After hearing opened, before trial examiner's decision	32	0 2	0.5	23	0.2	6	0.2	3	0.2	0	.....	0	.....	0	.....
After trial examiner's decision, before Board decision	5	0.0	0.1	4	0.0	0	.....	1	0.1	0	.....	0	.....	0	.....
After Board or court decision	3	0 0	0.0	3	0.0	0	.....	0	.....	0	.....	0	.....	0	.....
Dismissal	4,589	28.0	100.0	3,040	28.1	1,181	37.0	226	16.6	0	.....	24	45.3	118	27.4
Before issuance of complaint	4,301	26.3	93.7	2,812	26.1	1,134	35.5	218	16.0	(2)	.....	19	35 8	118	27 4
After issuance of complaint, before opening of hearing	23	0.1	0 5	17	0.2	5	0 2	0	.....	0	.....	1	1 9	0	.....
After hearing opened, before trial examiner's decision	8	0.0	0.2	6	0.1	0	.....	1	0.1	0	.....	1	1.9	0	.....
By trial examiner's decision	5	0.0	0.1	4	0.0	1	0 0	0	.....	0	.....	0	.....	0	.....
By Board decision	202	1.3	4.4	156	1.4	38	1.1	6	0.4	0	.....	2	3.8	0	.....
Adopting trial examiner's decision (no exceptions filed)	44	0.3	1.0	38	0.4	3	0 1	3	0.2	0	.....	0	.....	0	.....
Contested	158	1.0	3.4	118	1.0	35	1.1	3	0.2	0	.....	2	3.8	0	.....
By circuit court of appeals decree	31	0.2	0.7	27	0.2	3	0.1	0	.....	0	.....	1	1.9	0	.....
By Supreme Court action	19	0.1	0.4	18	0.7	0	.....	1	0.1	0	.....	0	.....	0	.....
10(k) actions (see table 7A for details of dispositions)	492	3.0	.....	.....	.....	.....	.....	.....	.....	492	100.0	.....	.....	.....	.....
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	6	0.0	.....	6	0.1	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.

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Table 7A.—Analysis of Method of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1967 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	492	100.0
Agreement of the parties—Informal settlement	196	39.8
Before 10(k) notice	181	36.8
After 10(k) notice, before opening of 10(k) hearing	12	2.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	3	0 6
Compliance with Board decision and determination of dispute	23	4.7
Withdrawal	200	40.7
Before 10(k) notice	174	35.4
After 10(k) notice, before opening of 10(k) hearing	21	4.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	0.4
After Board decision and determination of dispute	3	0.6
Dismissal	73	14.8
Before 10(k) notice	72	14.6
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	0	---

[1] See "Glossary" for definition of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1967 [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	16,360	100.0	10,824	100 0	3,195	100.0	1,365	100.0	492	100.0	53	100.0	431	100.0
Before issuance of complaint	13,925	85.1	8,940	82.6	2,928	91.6	1,149	84.2	492	100.0	38	71.7	378	87.7
After issuance of complaint, before opening of hearing	1,172	7 1	893	8.2	127	4.0	114	8.3	0	-------	4	7.5	34	7 9
After hearing opened, before issuance of trail examiner's decision	115	0.7	94	0.9	11	0.3	8	0.6	0	-------	1	1.9	1	0 2
After trail examiner's decision, before issuance of Board decision	153	0.9	122	1.1	19	0.6	10	0 7	0	-------	0	-------	2	0.5
After Board order adopting tril examiner's decision in absence of exceptions	109	0.7	87	0.8	9	0.3	12	0.9	0	-------	0	-------	1	0.2
After Board decision, before circuit court decree	554	3.4	432	4.0	70	2.2	39	2.9	0	-------	3	5.7	10	2.4
After circuit court decree, before Supreme Court action	273	1.7	206	1.9	29	0.9	27	2.0	0	-------	7	13.2	4	0.9
After Supreme Court Action	59	0.4	50	0.5	2	0.1	6	0.4	0	-------	0	-------	1	0.2

[1] See "Glossary" for definition of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1967 [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	12,724	100.0	10,950	100 0	1,162	100.0	612	100.0	132	100 0
Before issuance of notice of hearing	6,498	51.1	5,325	48.6	791	68 1	382	62.4	72	54.5
After issuance of notice of hearing, before close of hearing	3,803	29.9	3,462	31 6	213	18 3	128	20.9	5	3.8
After hearing closed, before issuance of decision	102	0.8	92	0 8	6	0.5	4	0.7	0	-------
After issuance of regional director's decision	2,109	16 6	1,890	17.3	124	10.7	95	15.5	55	41.7
After issuance of Board decision	212	1.6	181	1.7	28	2.4	3	0.5	0	-------

[1] See "Glossary" for definition of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed Fiscal Year 1967 [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	12,724	100 0	10,950	100 0	1,162	100.0	612	100.0	132	100.0
Certification issued, total	8,328	65.5	7,532	68 8	556	47.8	240	39.2	66	50.0
After:										
Consent election	2,867	22.5	2,554	23.4	206	17.7	107	17 5	11	8 3
Before notice of hearing	1,942	15 2	1,713	15.7	164	14.1	65	10 6	11	8.3
After notice of hearing, before hearing closed	914	7 2	833	7.6	41	3.5	40	6 6	0	-------
After hearing closed, before decision	11	0.1	8	0 1	1	0 1	2	0.3	0	-------
Stipulated election	3,640	28 6	3,337	30.5	243	20 9	60	9.8	2	1.6
Before notice of hearing	1,719	13 5	1,531	14.0	157	13 5	31	5.1	1	0.8
After notice of hearing, before hearing closed	1,883	14 8	1,769	16.1	85	7.3	29	4 7	1	0.8
After hearing closed, before decision	38	0 3	37	0.3	1	0 1	0	-------	0	-------
Expedited election	28	0 2	4	0.0	24	2 1	0	-------	0	-------
Regional director-directed election	1,665	13.1	1,524	13.9	70	6 0	71	11 6	53	40 1
Board-directed election	128	1 0	113	1.0	13	1 1	2	0 3	0	-------
By withdrawal, total	3,085	24.3	2,477	22.6	381	32 8	227	37.1	47	35.6
Before notice of hearing	1,944	15.3	1,470	13.4	302	26 0	172	28.1	42	31.8
After notice of hearing, before hearing closed	923	7.3	811	7.4	66	5.7	46	7.5	4	3.0
After hearing closed, before decision	49	0.4	45	0 4	3	0.2	1	0 2	0	-------
After regional director's decision and direction of election	159	1.2	143	1 3	8	0.7	8	1.3	1	0.8
After Board decision and direction of election	10	0.1	8	0.1	2	0.2	0	-------	0	-------
By dismissal, total	1,311	10.3	941	8.6	225	19.4	145	23.7	19	14.4
Before notice of hearing	865	6 8	607	5.6	144	12 4	114	18.6	18	13.6
After notice of hearing, before hearing closed	83	0 7	49	0.5	21	1 8	13	2.1	0	-------
After hearing closed, before decision	4	0 0	2	0.0	1	0 1	1	0.2	0	-------
By regional director's decision	285	2 2	223	2.0	46	4.0	16	2.6	1	0.8
By Board decision	74	0.6	60	0 5	13	1.1	1	0.2	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 1967

	AC	UC
Total, all	81	197
Certification amended or unit clarified	54	43
Before hearing	43	18
By regional director's decision	43	17
By Board decision	0	1
After hearing:	11	25
By regional director's decision	7	23
By Board decision	4	2
Dismissed	9	71
Before hearing	3	25
By regional director's decision	3	25
By Board decision	0	0
After hearing	6	46
By regional director's decision	5	37
By Board decision	1	9
Withdrawn	18	83
Before hearing	18	81
After hearing	0	2

Table 11.—Types of Elections Conducted in Cases Closed, Fiscal Year 1967 [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	8,183	2,830	3,494	125	1,704	30
Eligible voters	628,730	123,287	342,936	26,243	135,764	500
Valid votes	557,822	108,901	305,312	23,029	120,140	440
RC cases.						
Elections	7,496	2,559	3,290	112	1,531	4
Eligible voters	592,309	114,066	327,767	25,742	124,645	89
Valid votes	526,809	100,731	292,032	22,604	111,369	73
RM cases:						
Elections	386	159	141	11	49	26
Eligible voters	18,697	4,555	9,154	469	4,108	411
Valid votes	16,190	4,071	7,914	394	3,444	367
RD cases:						
Elections	234	103	59	2	70	0
Eligible voters	12,705	3,935	5,566	32	3,172	0
Valid votes	11,134	3,475	4,990	31	2,638	0
UD cases						
Elections	67	9	4	0	54	----
Eligible voters	5,019	731	449	0	3,839	----
Valid votes	3,689	624	376	0	2,689	----

[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 1967 [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	8,116	1,249	15 4	7,496	1,257	16 8	386	65	16 8	234	27	11 5	67	11	16 4
Objections alone or with challenges		878			814			41			23			10	
Challenges only		371			343			24			4			1	
In consent elections, total	2,821	295	10.5	2,559	272	10.6	159	15	9 4	103	8	7 8	9	2	22 2
Objections alone or with challenges		161			147			9			5			2	
Challenges only		134			125			6			3			0	
In stipulated elections, total	3,490	512	14 7	3,290	482	14.7	141	20	14 2	59	10	16.9	4	0	
Objections alone or with challenges		377			353			14			10			0	
Challenges only		135			129			6			0			0	
In expedited elections, total	30	13	43.3	4	3	75.0	26	10	38.5	0	0		0	0	
Objections alone or with challenges		10			1			9			0			0	
Challenges only		3			2			1			0			0	
In regional director-directed elections	1,650	408	24 7	1,531	383	25 0	49	18	36.7	70	7	10.0	54	9	16 7
Objections alone or with challenges		315			301			8			6			8	
Challenges only		93			82			10			1			1	
In Board-directed elections, total	125	21	16.8	112	17	15 2	11	2	18.2	2	2	100.0	0	0	
Objections alone or with challenges		15			12			1			2			0	
Challenges only		6			5			1			0			0	

[1] See "Glossary" for definition of terms

Table 11B.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1967 [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	1,369	342	1,027	722	70.3	305	29 7
RC elections	1,275	327	948	663	69.9	285	30.1
RM elections	59	10	49	36	73.5	13	26.5
RD elections	35	5	30	23	76.7	7	23.3

[1] See "Glossary" for definitions of terms.
[2] See table 11C for rerun elections held after objections were sustained In 105 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 1967 [1]

Type of case	Total rerun elections [2]		Union Certified		No union chosen		Outcome of original election revised	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent of total rerun elections
All elections	186	100.0	81	43.5	105	56.5	67	36.0
RC elections	174	100.0	79	45.4	95	54.6	65	34.9
RM elections	5	100 0	2	40.0	3	60.0	2	1.1
RD elections	7	100.0	0		7	100.0	0	

[1] See "Glossary" for definitions of terms.
[2] Includes only final rerun elections; i.e., those resulting in certification. Excluded from the table are 14 rerun elections which were conducted and subsequently set aside purusant to sustained objections. The 14 invalid rerun elections were followed by valid rerun elections which are included in the table.

Table 11D.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1967 [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	1,369	100.0	404	29.5	918	67.1	47	3.4
RC cases	1,275	100.0	389	30.5	850	66.7	36	2.8
RM cases	59	100.0	9	15.3	45	76.3	5	8.4
RD cases	35	100 0	6	17.1	23	65 8	6	17.1

[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 1967

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	67	45	67.2	22	32.8	5,019	2,841	56.6	2,178	43.4	3,689	73.5	2,267	45.2
AFL-CIO unions	47	31	66.0	16	34.0	3,924	1,912	48.7	2,012	51.3	2,838	72.3	1,527	38.9
Teamsters	13	8	61.5	5	38.5	301	193	64.1	108	35.9	235	78.1	176	58.5
Other national unions	4	3	75.0	1	25.0	568	510	89.8	58	10.2	476	83.8	424	74.6
Other local unions	3	3	100.0	0	----	226	226	100.0	0	----	140	61.9	140	61.9

[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 1967 [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	8,116	59 0	4,791	2,905	1,352	294	240	3,325	623,711	357,114	231,818	44,856	42,296	38,144	266,597
1-union elections	7,259	56 2	4,077	2,520	1,192	203	162	3,182	424,519	183,554	140,699	30,065	8,945	3,845	240,965
AFL-CIO	4,577	55.1	2,520	2,520				2,057	338,412	140,699	140,699				197,713
Teamsters	2,071	57.6	1,192		1,192			879	57,411	30,065		30,065			27,346
Other national unions	333	61.0	203			203		130	21,583	8,945			8,945		12,638
Other local unions	278	58.3	162				162	116	7,113	3,845				3,845	3,268
2-union elections	800	82.8	662	363	144	88	67	138	189,266	164,170	87,216	13,605	32,990	30,359	25,096
AFL-CIO v. AFL-CIO	199	69.3	138	138				61	27,711	13,352	13,352				14,359
AFL-CIO v. Teamsters	240	82.9	199	84	115			41	28,066	22,379	11,918	10,461			5,687
AFL-CIO v. Natl	163	87.7	143	73		70		20	50,757	48,525	17,435		31,090		2,232
AFL-CIO v. Local	125	90.4	113	68			45	12	72,958	71,453	44,511			26,942	1,505
Teamsters v Teamsters	2	100 0	2		2			0	12	12		12			0
Teamsters v. Natl	30	90.0	27		15	12		3	4,310	3,108		1,633	1,475		1,202
Teamsters v. Local	25	100.0	25		12		13	0	3,375	3,375		1,499		1,876	0
Natl v Natl	1	100.0	1			1		0	108	108			108		0
Natl v Local	6	100 0	6			5	1	0	363	363			317	46	0
Local v. Local	9	88 9	8				8	1	1,606	1,495				1,495	111
3 (or more)-union elections	57	91.2	52	22	16	3	11	5	9,926	9,390	3,903	1,186	361	3,940	536
AFL-CIO v. AFL-CIO v. AFL-CIO	8	87.5	7	7				1	1,390	1,241	1,241				149
AFL-CIO v. AFL-CIO v. Teamsters	7	57.1	4	2	2			3	445	109	48	61			336
AFL-CIO v. AFL-CIO v. Natl	6	83.3	5	5		0		1	592	541	541		0		51
AFL-CIO v. AFL-CIO v. Local	7	100.0	7	4			3	0	4,988	4,988	1,850			3,138	0
AFL-CIO v. Teamsters v. Natl	14	100.0	14	2	9	3		0	1,324	1,324	116	847	361		0
AFL-CIO v. Teamsters v. Local	7	100.0	7		3		4	0	602	602		183		419	0
AFL-CIO v. Local v. Local	2	100 0	2	1			1	0	96	96	88			8	0
Teamsters v. Local v. Local	2	100.0	2		1		1	0	103	103		55		48	0
Local v Local v. Local	1	100.0	1				1	0	20	20				20	0

AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters	1	100.0	1	1	0			0	19	19	19	0			0
AFL-CIO v. AFL-CIO v. Teamsters v. Natl	1	100.0	1	0	1	0		0	40	40	0	40	0		0
AFL-CIO v. AFL-CIO v. Teamsters v. Local	1	100.0	1	0	0		1	0	307	307	0	0		307	0

B. ELECTIONS IN RC CASES

Total RC elections	7,496	60.7	4,552	2,760	1,279	283	230	2,944	592,309	339,531	220,534	41,493	41,194	36,310	252,778
1-union elections	6,686	58.0	3,877	2,392	1,130	194	161	2,809	399,506	171,767	131,751	27,838	8,346	3,832	227,739
AFL-CIO	4,199	57.0	2,392	2,392				1,807	318,560	131,751	131,751				186,809
Teamsters	1,902	59.4	1,130		1,130			772	53,657	27,838		27,838			25,819
Other national unions	315	61.6	194			194		121	20,426	8,346			8,346		12,080
Other local unions	270	59.6	161				161	109	6,863	3,832				3,832	3,031
2-union elections	753	82.7	623	346	133	86	58	130	182,877	158,374	84,880	12,469	32,487	28,538	24,503
AFL-CIO v. AFL-CIO	187	70.1	131	131				56	26,659	12,691	12,691				13,968
AFL-CIO v. Teamsters	224	82.1	184	78	106			40	26,235	20,576	11,128	9,448			5,659
AFL-CIO v Natl	158	87.3	138	69		69		20	49,581	47,349	16,550		30,799		2,232
AFL-CIO v. Local	120	90.8	109	68			41	11	72,679	71,217	44,511			26,706	1,462
Teamsters v. Teamsters	2	100.0	2		2			0	12	12		12			0
Teamsters v. Natl	29	93.1	27		15	12		2	4,179	3,108		1,633	1,475		1,071
Teamsters v. Local	21	100.0	21		10		11	0	2,979	2,979		1,376		1,603	0
Natl v. Natl	1	100.0	1			1		0	108	108			108		0
Natl v. Local	4	100.0	4			4	0	0	105	105			105	0	0
Local v. Local	7	85.7	6				6	1	340	229				229	111
3 (or more)-union elections	57	91.2	52	22	16	3	11	5	9,926	9,390	3,903	1,186	361	3,940	536
AFL-CIO v. AFL-CIO v. AFL-CIO	8	87.5	7	7				1	1,390	1,241	1,241				149
AFL-CIO v. AFL-CIO v. Teamsters	7	57.1	4	2	2			3	445	109	48	61			336
AFL-CIO v. AFL-CIO v. Natl	6	83.3	5	5		0		1	592	541	541		0		51
AFL-CIO v. AFL-CIO v. Local	7	100.0	7	4			3	0	4,988	4,988	1,850			3,188	0
AFL-CIO v. Teamsters v. Natl	14	100.0	14	2	9	3		0	1,324	1,324	116	847	361		0
AFL-CIO v. Teamsters v. Local	7	100.0	7		3		4	0	602	602		183		419	0
AFL-CIO v. Local v. Local	2	100.0	2	1			1	0	96	96	88			8	0
Teamsters v. Local v. Local	2	100.0	2		1		1	0	103	103		55		48	0
Local v. Local v. Local	1	100.0	1				1	0	20	20				20	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters	1	100.0	1	1	0			0	19	19	19	0			0
AFL-CIO v. AFL-CIO v. Teamsters v. Natl	1	100.0	1	0	1	0		0	40	40	0	40	0		0
AFL-CIO v. AFL-CIO v. Teamsters v. Local	1	100.0	1	0	0		1	0	307	307	0	0		307	0

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1967 [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	386	44.0	170	103	50	8	9	216	18,697	9,875	5,932	1,398	777	1,768	8,822
1-union elections	356	41.0	146	91	47	7	1	210	14,558	6,155	4,316	1,261	565	13	8,403
AFL-CIO	229	39.7	91	91				138	11,335	4,316	4,316				7,019
Teamsters	110	42.7	47		47			63	2,222	1,261		1,261			961
Other national unions	12	58.3	7			7		5	803	565			565		238
Other local unions	5	20.0	1				1	4	198	13				13	185
2-union elections	30	80.0	24	12	3	1	8	6	4,139	3,720	1,616	137	212	1,755	419
AFL-CIO v. AFL-CIO	11	54.5	6	6				5	1,030	639	639				391
AFL-CIO v. Teamsters	5	80.0	4	3	1			1	465	437	423	14			28
AFL-CIO v. Natl	3	100.0	3	3		0		0	554	554	554		0		0
AFL-CIO v. Local	4	100.0	4	0			4	0	236	236	0			236	0
Teamsters v. Local	3	100.0	3		2		1	0	330	330		123		207	0
Natl. v. Local	2	100.0	2			1	1	0	258	258			212	46	0
Local v. Local	2	100.0	2				2	0	1,266	1,266				1,266	0

D. ELECTIONS IN RD CASES

Total RD elections	234	29.5	69	42	23	3	1	165	12,705	7,708	5,352	1,965	325	66	4,997
1-union elections	217	24.9	54	37	15	2	0	163	10,455	5,632	4,632	966	34	0	4,823
AFL–CIO	149	24.8	37	37				112	8,517	4,632	4,632				3,885
Teamsters	59	25.4	15		15			44	1,532	966		966			566
Other national unions	6	33.3	2			2		4	354	34			34		320
Other local unions	3	0.0	0				0	3	52	0				0	52
2-union elections	17	88.2	15	5	8	1	1	2	2,250	2,076	720	999	291	66	174
AFL–CIO v. AFL–CIO	1	100.0	1	1				0	22	22	22				0
AFL–CIO v. Teamsters	11	100.0	11	3	8			0	1,366	1,366	367	999			0
AFL–CIO v. Natl	2	100.0	2	1		1		0	622	622	331		291		0
AFL–CIO v. Local	1	0.0	0	0			0	1	43	0	0			0	43
Teamsters v. Natl	1	0.0	0		0	0		1	131	0		0	0		131
Teamsters v. Local	1	100.0	1		0		1	0	66	66		0		66	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 1967 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A ALL REPRESENTATION ELECTIONS													
Total representation elections	554,133	253,381	151,516	32,444	32,842	36,579	58,872	85,966	70,865	9,340	4,760	1,001	155,914
1-union elections	382,855	109,685	82,858	18,673	5,677	2,477	54,352	77,458	64,175	8,429	4,085	769	141,360
AFL-CIO	305,916	82,858	82,858				43,291	64,175	64,175				115,592
Teamsters	51,430	18,673		18,673			7,989	8,429		8,429			16,339
Other national unions	19,616	5,677			5,677		2,386	4,085			4,085		7,468
Other local unions	5,893	2,477				2,477	686	769				769	1,961
2-union elections	162,655	135,884	64,843	12,753	26,694	31,594	4,198	8,344	6,556	890	666	232	14,229
AFL-CIO v AFL-CIO	25,025	10,771	10,771				1,115	4,623	4,623				8,516
AFL-CIO v Teamsters	24,611	18,719	9,009	9,710			923	2,151	1,268	883			2,818
AFL-CIO v. Natl	43,851	40,890	15,701		25,189		1,034	817	471		346		1,110
AFL-CIO v. Local	60,400	58,032	29,362			28,670	1,003	389	194			195	976
Teamsters v Teamsters	10	10		10			0	0		0			0
Teamsters v Natl	3,959	2,870		1,632	1,238		15	327		7	320		747
Teamsters v Local	3,096	3,049		1,401		1,648	47	0		0		0	0
Natl. v. Natl	93	91			91		2	0			0		0
Natl. v Local	324	311			176	135	13	0			0	0	0
Local v Local	1,286	1,141				1,141	46	37				37	62
3 (or more)-union elections	8,623	7,812	3,815	1,018	471	2,508	322	164	134	21	9	0	325
AFL-CIO v AFL-CIO v. AFL-CIO	1,291	934	934				226	46	46				85
AFL-CIO v. AFL-CIO v Teamsters	413	90	54	36			12	104	83	21			207
AFL-CIO v. AFL-CIO v. Natl	559	501	389		112		11	14	5		9		33
AFL-CIO v AFL-CIO v. Local	4,140	4,096	2,064			2,032	44	0	0			0	0
AFL-CIO v Teamsters v Natl	1,222	1,212	195	658	359		10	0	0	0	0		0

AFL–CIO v Teamsters v. Local	523	521	27	250		244	2	0	0	0		0	0
AFL–CIO v Local v. Local	79	78	52			26	1	0	0			0	0
Teamsters v Local v Local	97	94		52		42	3	0		0		0	0
Local v Local v Local	16	16				16	0	0				0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. Teamsters	19	19	19	0			0	0	0	0			0
AFL–CIO v. AFL–CIO v. Teamsters v. Natl	35	22	0	22	0		13	0	0	0	0		0
AFL–CIO v. AFL–CIO v. Teamsters v. Local	229	229	81	0		148	0	0	0	0		0	0

B ELECTIONS IN RC CASES

Total RC elections	526,809	241,613	144,663	29,962	31,835	35,153	55,432	82,663	68,130	8,986	4,582	965	147,101
1-union elections	361,026	102,795	77,754	17,274	5,302	2,465	51,018	74,255	61,506	8,087	3,922	740	132,958
AFL–CIO	288,601	77,754	77,754				40,652	61,506	61,506				108,689
Teamsters	48,122	17,274		17,274			7,452	8,087		8,087			15,309
Other national unions	18,622	5,302			5,302		2,229	3,922			3,922		7,169
Other local unions	5,681	2,465				2,465	685	740				740	1,791
2-union elections	157,160	131,006	63,094	11,670	26,062	30,180	4,092	8,244	6,490	878	651	225	13,818
AFL–CIO v. AFL–CIO	24,132	10,231	10,231				1,099	4,557	4,557				8,245
AFL–CIO v. Teamsters	23,010	17,192	8,410	8,782			871	2,140	1,268	872			2,807
AFL–CIO v Natl	42,758	39,802	15,139		24,663		1,029	817	471		346		1,110
AFL–CIO v Local	60,172	57,843	29,314			28,529	999	382	194			188	948
Teamsters v Teamsters	10	10		10			0	0		0			0
Teamsters v Natl	3,842	2,870		1,632	1,238		15	311		6	305		646
Teamsters v. Local	2,747	2,702		1,246		1,456	45	0		0		0	0
Natl. v. Natl	93	91			91		2	0			0		0
Natl v. Local	100	99			70	29	1	0			0	0	0
Local v. Local	296	166				166	31	37				37	62
3 (or more)-union elections	8,623	7,812	3,815	1,018	471	2,508	322	164	134	21	9	0	325
AFL–CIO v. AFL–CIO v. AFL–CIO	1,291	934	934				226	46	46				85
AFL–CIO v. AFL–CIO v. Teamsters	413	90	54	36			12	104	83	21			207
AFL–CIO v. AFL–CIO v. Natl	559	501	389		112		11	14	5		9		33
AFL–CIO v. AFL–CIO v. Local	4,140	4,096	2,064			2,032	44	0	0			0	0
AFL–CIO v. Teamsters v Natl	1,222	1,212	195	658	359		10	0	0	0	0		0
AFL–CIO v Teamsters v Local	523	521	27	250		244	2	0	0	0		0	0
AFL–CIO v. Local v. Local	79	78	52			26	1	0	0			0	0
Teamsters v Local v. Local	97	94		52		42	3	0		0		0	0
Local v. Local v. Local	16	16				16	0	0				0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. Teamsters	19	19	19	0			0	0	0	0			0
AFL–CIO v. AFL–CIO v. Teamsters v. Natl	35	22	0	22	0		13	0	0	0	0		0
AFL–CIO v. AFL–CIO v. Teamsters v. Local	229	229	81	0		148	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 1967 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	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	16,190	6,761	3,627	1,059	686	1,389	1,760	1,920	1,561	245	96	18	5,749
1-union elections	12,711	3,706	2,556	783	355	12	1,695	1,843	1,495	234	96	18	5,467
AFL-CIO	9,835	2,556	2,556				1,220	1,495	1,495				4,564
Teamsters	1,988	783		783			331	234		234			640
Other national unions	722	355			355		143	96			96		128
Other local unions	166	12				12	1	18				18	135
2-union elections	3,479	3,055	1,071	276	331	1,377	65	77	66	11	0	0	282
AFL-CIO v. AFL-CIO	872	520	520				15	66	66				271
AFL-CIO v. Teamsters	398	360	214	146			16	11	0	11			11
AFL-CIO v Natl	516	514	289		225		2	0	0		0		0
AFL-CIO v. Local	193	189	48			141	4	0	0			0	0
Teamsters v. Local	286	285		130		155	1	0		0		0	0
Natl. v Local	224	212			106	106	12	0			0	0	0
Local v Local	990	975				975	15	0				0	0

D. ELECTIONS IN RD CASES

Total RD elections	11,134	5,007	3,226	1,423	321	37	1,680	1,383	1,174	109	82	18	3,064
1-union elections	9,118	3,184	2,548	616	20	0	1,639	1,360	1,174	108	67	11	2,935
AFL-CIO	7,480	2,548	2,548				1,419	1,174	1,174				2,339
Teamsters	1,320	616		616			206	108		108			390
Other national unions	272	20			20		14	67			67		171
Other local unions	46	0				0	0	11				11	35
2-union elections	2,016	1,823	678	807	301	37	41	23	0	1	15	7	129
AFL-CIO v. AFL-CIO	21	20	20				1	0	0				0
AFL-CIO v. Teamsters	1,203	1,167	385	782			36	0	0	0			0
AFL-CIO v. Natl	577	574	273		301		3	0	0		0		0
AFL-CIO v. Local	35	0	0			0	0	7	0			7	28
Teamsters v. Natl	117	0		0	0		0	16		1	15		101
Teamsters v. Local	63	62		25		37	1	0		0		0	0

[1] See "Glossary" for definition of terms.

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Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1967

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	8,116	4,791	2,905	1,352	294	240	3,325	623,711	554,133	339,347	222,381	41,784	37,602	37,580	214,786	357,114
New England	474	263	135	110	10	8	211	51,117	44,847	29,845	19,631	2,327	592	7,295	15,002	29,566
Maine	48	21	17	4	0	0	27	5,267	4,752	2,594	2,427	67	31	69	2,158	2,778
New Hampshire	27	15	9	6	0	0	12	1,194	1,093	518	426	77	15	0	575	650
Vermont	8	6	3	2	1	0	2	1,214	1,187	521	436	76	9	0	666	264
Massachusetts	269	156	70	76	4	6	113	34,999	30,155	22,329	13,155	1,726	334	7,114	7,826	23,073
Rhode Island	37	24	11	11	1	1	13	1,762	1,581	957	682	102	137	36	624	947
Connecticut	85	41	25	11	4	1	44	6,681	6,079	2,926	2,505	279	66	76	3,153	1,854
Middle Atlantic	1,270	755	422	221	65	47	515	110,511	96,937	66,092	39,769	6,150	4,885	15,288	30,845	73,000
New York	478	283	170	65	24	24	195	47,281	39,668	32,117	18,904	1,147	1,539	10,527	7,551	38,587
New Jersey	299	182	85	78	11	8	117	20,888	18,743	11,548	6,183	2,876	1,359	1,130	7,195	11,452
Pennsylvania	493	290	167	78	30	15	203	42,342	38,526	22,427	14,682	2,127	1,987	3,631	16,099	22,961
East North Central	1,817	1,036	616	240	69	111	781	129,768	116,574	65,383	47,744	8,593	4,720	4,326	51,191	63,892
Ohio	531	311	199	75	27	10	220	36,196	32,831	19,572	14,909	2,373	1,418	872	13,259	20,938
Indiana	230	120	68	41	11	0	110	23,101	20,912	10,860	8,768	1,015	996	81	10,052	9,460
Illinois	324	188	119	48	14	7	136	28,892	25,817	13,637	9,177	2,928	777	755	12,180	11,777
Michigan	549	306	162	47	10	87	243	28,932	25,499	13,505	10,506	1,295	479	1,225	11,994	13,403
Wisconsin	183	111	68	29	7	7	72	12,647	11,515	7,809	4,384	982	1,050	1,393	3,706	8,314
West North Central	730	497	333	148	10	6	233	32,976	29,350	17,941	12,764	3,687	368	1,122	11,409	19,762
Iowa	110	68	44	22	1	1	42	4,531	4,061	2,393	2,034	242	21	96	1,668	2,692
Minnesota	123	78	50	27	1	0	45	5,071	4,601	2,669	1,980	415	157	117	1,932	2,665
Missouri	306	220	148	64	3	5	86	16,387	14,471	9,359	6,103	2,224	126	906	5,112	10,464
North Dakota	20	17	7	10	0	0	3	312	288	162	78	84	0	0	126	187
South Dakota	17	13	10	3	0	0	4	543	520	314	244	70	0	0	206	291
Nebraska	48	29	17	12	0	0	19	2,219	1,947	1,069	654	415	0	0	878	1,372
Kansas	106	72	57	10	5	0	34	3,913	3,462	1,975	1,671	237	64	3	1,487	2,091

South Atlantic	925	529	333	144	45	7	396	85,312	76,876	43,225	28,259	5,865	5,146	3,955	33,651	45,699
Delaware	16	8	3	4	1	0	8	1,227	1,126	611	390	139	82	0	515	489
Maryland	145	72	39	24	6	3	73	15,627	13,977	10,407	5,358	957	534	3,558	3,570	11,327
District of Columbia	65	40	36	3	0	1	25	1,836	1,598	861	702	45	6	108	737	1,035
Virginia	109	64	38	18	7	1	45	9,222	8,576	5,613	2,966	450	2,123	74	2,963	6,172
West Virginia	79	63	27	10	25	1	16	5,599	5,100	2,877	1,263	292	1,137	185	2,223	3,258
North Carolina	97	51	39	12	0	0	46	14,406	12,715	5,824	4,768	1,047	0	9	6,891	5,860
South Carolina	47	21	21	0	0	0	26	6,318	5,884	2,517	2,216	62	239	0	3,367	1,405
Georgia	139	83	59	21	3	0	56	18,493	16,937	8,767	6,957	919	891	0	8,170	9,975
Florida	228	127	71	52	3	1	101	12,584	10,963	5,748	3,639	1,954	134	21	5,215	6,178
East South Central	494	269	177	75	15	2	225	51,520	47,166	24,940	20,491	2,758	1,547	144	22,226	24,015
Kentucky	98	56	32	16	6	2	42	11,058	10,183	4,997	3,711	866	278	142	5,186	3,815
Tennessee	189	110	72	36	2	0	79	19,628	18,003	10,671	8,627	1,211	831	2	7,332	11,283
Alabama	146	70	47	17	6	0	76	10,413	9,408	4,878	3,856	623	399	0	4,530	5,333
Mississippi	61	33	26	6	1	0	28	10,421	9,572	4,394	4,297	58	39	0	5,178	3,584
West South Central	704	417	307	89	12	9	287	50,014	45,708	25,513	19,491	3,516	647	1,859	20,195	25,888
Arkansas	92	53	39	14	0	0	39	9,314	8,572	4,593	3,852	741	0	0	3,979	4,411
Louisiana	117	68	42	20	5	1	49	7,657	7,028	3,954	2,522	1,055	269	108	3,074	4,081
Oklahoma	80	38	32	5	0	1	42	5,774	5,455	2,298	2,090	193	0	15	3,157	1,351
Texas	415	258	194	50	7	7	157	27,269	24,653	14,668	11,027	1,527	378	1,736	9,985	16,045
Mountain	398	219	121	87	9	2	179	15,572	13,483	7,390	4,664	2,194	445	87	6,093	8,013
Montana	33	21	5	15	1	0	12	368	318	197	98	95	4	0	121	233
Idaho	24	12	7	5	0	0	12	1,343	1,248	620	526	94	0	0	628	479
Wyoming	11	6	5	0	1	0	5	254	241	112	36	4	72	0	129	43
Colorado	135	79	47	28	4	0	56	5,625	4,898	3,112	2,167	670	275	0	1,786	3,363
New Mexico	47	27	17	9	0	1	20	1,238	1,133	580	422	135	0	23	553	622
Arizona	56	28	13	14	1	0	28	2,315	2,085	1,112	851	225	36	0	973	1,001
Utah	49	23	12	8	2	1	26	2,441	1,935	884	393	425	58	8	1,051	1,084
Nevada	43	23	15	8	0	0	20	1,988	1,625	773	171	546	0	56	852	1,188
Pacific	1,123	692	389	224	58	21	431	79,829	68,607	49,038	23,675	4,850	19,186	1,327	19,569	56,921
Washington	104	63	32	27	4	0	41	22,021	19,463	18,512	3,611	285	14,616	0	951	20,837
Oregon	108	58	33	19	4	2	50	5,751	5,108	3,047	2,363	479	177	28	2,061	3,436
California	816	499	280	166	36	17	317	49,337	41,642	25,723	17,012	3,654	3,862	1,195	15,919	30,490
Alaska	30	25	19	4	0	2	5	622	466	299	175	20	0	104	167	490
Hawaii	65	47	25	8	14	0	18	2,098	1,928	1,457	514	412	531	0	471	1,668
Outlying Areas	181	114	72	14	1	27	67	17,092	14,585	9,980	5,893	1,844	66	2,177	4,605	10,358
Puerto Rico	171	110	69	14	1	26	61	16,729	14,291	9,893	5,813	1,844	66	2,170	4,398	10,303
Virgin Islands	10	4	3	0	0	1	6	363	294	87	80	0	0	7	207	55

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1967

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	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 industrial groups	8,116	4,791	2,905	1,352	294	240	3,325	623,711	554,133	339,347	222,381	41,784	37,602	37,580	214,786	357,11[4]
Manufacturing	4,472	2,562	1,744	545	181	92	1,910	466,925	421,181	246,455	169,906	26,111	33,466	16,972	174,726	245,079
Ordnance and accessories	29	19	16	2	1	0	10	6,300	5,631	3,262	3,034	82	146	0	2,369	3,394
Food and kindred products	635	389	204	148	24	13	246	42,013	37,363	22,142	11,991	6,555	2,453	1,143	15,221	23,720
Tobacco manufacturers	8	3	2	1	0	0	5	2,039	1,782	796	781	15	0	0	986	548
Textile mill products	76	31	20	8	2	1	45	13,976	12,805	5,389	4,367	699	314	9	7,416	4,576
Apparel and other finished products, made from fabric and similar materials	92	54	47	5	2	0	38	16,168	14,450	8,009	7,128	484	291	106	6,441	9,999
Lumber and wood products (except furniture)	174	100	74	11	12	3	74	10,762	9,566	5,670	4,549	320	610	191	3,896	6,184
Furniture and fixtures	125	63	43	15	2	3	62	13,737	12,650	6,501	5,633	674	106	88	6,149	4,917
Paper and allied products	184	109	77	20	7	5	75	46,379	41,874	34,014	14,473	2,449	15,623	1,469	7,860	37,945
Printing, publishing, and allied industries	276	171	146	15	4	6	105	11,386	10,215	4,978	4,193	232	122	431	5,237	5,300
Chemicals and allied products	306	183	100	54	28	1	123	23,167	21,463	12,311	6,923	1,142	4,110	136	9,152	10,718
Products of petroleum and coal	83	54	26	23	4	1	29	3,785	3,461	2,433	996	941	323	173	1,028	2,506
Rubber and plastic products	189	98	59	27	10	2	91	18,983	16,949	8,946	6,855	1,193	753	145	8,003	8,736
Leather and leather products	57	32	25	5	0	2	25	13,205	11,671	6,875	5,328	624	124	799	4,796	7,416
Stone, clay, and glass products	222	141	85	41	10	5	81	12,943	11,989	7,377	4,651	1,471	779	476	4,612	7,578
Primary metal industries	262	163	124	18	17	4	99	24,605	22,437	14,555	10,931	601	1,770	1,253	7,882	15,957
Fabricated metal products (except machinery and transportation equipment)	484	279	197	54	17	11	205	36,802	33,494	18,226	13,547	2,499	1,299	881	15,268	18,566
Machinery (except electrical)	446	225	170	26	16	13	221	42,382	38,688	20,878	16,069	1,822	1,134	1,853	17,810	18,151
Electrical machinery, equipment, and supplies	319	159	118	15	13	13	160	74,124	66,934	37,993	29,042	1,960	510	6,481	28,941	32,391
Aircraft and parts	54	22	17	4	1	0	32	8,773	8,148	3,537	2,522	124	891	0	4,611	1,608
Ship and boat building and repairing	38	20	15	4	0	1	18	3,650	3,254	1,651	1,047	449	9	146	1,603	1,399

Miscellaneous transportation equipment	198	136	94	29	7	6	62	18,636	16,894	10,022	7,190	947	863	1,022	6,872	10,848
Professional, scientific, and controlling instruments	48	21	18	2	1	0	27	6,979	6,419	3,048	2,402	270	376	0	3,371	2,626
Miscellaneous manufacturing	167	90	67	18	3	2	77	16,131	13,044	7,842	6,254	558	860	170	5,202	9,996
Mining	129	89	40	12	31	6	40	8,628	7,564	5,427	2,131	535	1,466	61,295	2,137	6,658
Metal mining	18	12	8	1	3	0	6	2,009	1,746	1,429	1,127	16	281	5	317	1,690
Coal mining	34	28	1	0	26	1	6	2,136	1,967	1,184	108	0	1,048	28	783	1,549
Crude petroleum and natural gas production	35	22	16	1	0	5	13	2,625	2,137	1,779	506	9	2	1,262	358	2,231
Nonmetallic mining and quarrying	42	27	15	10	2	0	15	1,858	1,714	1,035	390	510	135	0	679	1,188
Construction	223	151	134	7	9	1	72	7,351	5,954	3,915	3,337	340	230	8	2,039	4,841
Wholesale trade	750	463	129	314	15	5	287	14,659	13,440	8,236	2,914	4,619	257	446	5,204	9,293
Retail trade	1,144	635	383	133	17	102	509	30,363	26,196	14,375	10,205	2,472	325	1,373	11,821	15,705
Finance, insurance, and real estate	117	97	86	7	1	3	20	3,439	3,123	2,276	2,027	117	104	28	847	2,925
Transportation, communication, and other utilities	781	482	202	250	18	12	299	70,372	57,811	46,891	24,527	4,763	1,051	16,550	10,920	58,520
Local passenger transportation	60	40	26	12	0	2	20	3,443	2,920	1,771	1,149	503	0	119	1,149	2,163
Motor freight, warehousing, and transportation services	434	270	38	224	6	2	164	9,764	8,551	5,085	943	3,877	84	181	3,466	5,821
Water transportation	19	11	6	0	2	3	8	804	668	419	235	54	100	30	249	377
Other transportation	25	16	10	4	0	2	9	1,845	1,711	871	748	97	0	26	840	1,233
Communications	130	75	68	1	3	3	55	49,933	39,464	36,394	19,501	14	722	16,157	3,070	46,935
Heat, light, power, water, and sanitary services	113	70	54	9	7	0	43	4,583	4,497	2,351	1,951	218	145	37	2,146	1,991
Services	500	312	187	84	22	19	188	21,974	18,864	11,772	7,334	2,827	703	908	7,092	14,093
Hotel and other lodging places	60	36	24	6	2	4	24	7,185	6,106	4,159	2,610	1,292	20	237	1,947	4,827
Personal services	61	40	20	20	0	0	21	2,893	2,644	1,621	1,045	534	28	14	1,023	1,937
Automobile repairs, garages, and other miscellaneous repair services	149	88	43	43	1	1	61	3,381	3,007	1,830	1,083	588	66	93	1,177	1,987
Motion picture and other amusement and recreation services	30	18	15	1	0	2	12	937	804	357	206	78	21	52	447	261
Medical and other health services	6	5	1	0	0	4	1	417	369	180	92	0	0	88	189	161
Educational services	2	1	0	0	0	1	1	191	84	70	0	5	0	65	14	180
Nonprofit membership organizations	7	6	3	1	0	2	1	376	341	218	67	19	0	132	123	351
Miscellaneous services	185	118	81	13	19	5	67	6,594	5,509	3,337	2,231	311	568	227	2,172	4,389

[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 1967 [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	611,006	7,882	100.0	.....	2,863	100.0	1,329	100 0	291	100 0	239	100 0	3,160	100.0
Under 10	10,952	1,929	24.5	24 5	629	22.0	535	40.3	54	18.6	66	27.6	645	20 4
10-19	24,315	1,725	21.9	46.4	611	21.3	354	26.6	68	23.4	53	22 2	639	20 2
20-29	22,772	949	12 0	58.4	361	12.6	141	10.6	28	9 6	27	11 3	392	12.4
30-39	20,188	591	7.5	65.9	246	8.6	79	5.9	21	7 2	19	7 9	226	7.2
40-49	18,255	415	5 3	71.2	162	5.6	43	3.2	18	6 2	14	5.9	178	5.6
50-59	16,922	313	4 0	75 2	115	4.0	28	2 1	11	3.8	8	3.3	151	4.8
60-69	14,239	222	2.8	78.0	92	3.2	21	1.6	10	3.4	4	1.7	95	3.0
70-79	12,749	172	2.2	80.2	74	2.6	12	0.9	6	2.1	2	0 8	78	2.5
80-89	13,524	161	2.0	82.2	71	2.5	19	1.4	8	2.8	3	1 3	60	1.9
90-99	10,517	112	1.4	83.6	36	1.3	14	1.1	5	1.7	3	1 3	54	1.7
100-109	10,620	102	1.3	84.9	38	1.3	6	0.5	7	2 4	0	.....	51	1.6
110-119	11,454	100	1.3	86.2	40	1.4	6	0.5	7	2.4	0	.....	47	1.5
120-129	9,794	79	1 0	87.2	27	0 9	7	0 5	1	0.3	1	0.4	43	1.4
130-139	11,811	88	1.1	88.3	26	0 9	7	0.5	4	1.4	1	0.4	50	1.6
140-149	9,209	64	0.8	89 1	26	0.9	5	0.4	1	0.3	5	2.1	27	0 9
150-159	10,469	68	0.9	90 0	33	1.2	4	0.3	4	1.4	0	.....	27	0 9
160-169	9,402	57	0.7	90.7	15	0.5	4	0.3	4	1 4	3	1.3	31	1.0
170-179	8,548	49	0.6	91.3	17	0.6	5	0.4	5	1.7	1	0 4	21	0.6
180-189	8,261	45	0.6	91.9	19	0.7	3	0.2	1	0.3	1	0.4	21	0.6
190-199	6,975	36	0.5	92.4	17	0 6	0	.....	3	1.1	0	.....	16	0.5
200-299	61,311	253	3.2	95.6	88	3.1	16	1.2	13	4.5	11	4.6	125	4.0
300-399	38,493	113	1.4	97.0	45	1.6	4	0.3	4	1.4	4	1 7	56	1.8
400-499	31,565	71	0.9	97.9	20	0.7	8	0.6	2	0.7	3	1 3	38	1.2
500-599	24,562	45	0.6	98.5	16	0.6	3	0.2	2	0.7	0	.....	24	0.7
600-799	32,187	47	0.6	99.1	16	0.6	5	0.4	1	0.3	1	0 4	24	0.7
800-999	20,307	23	0 3	99.4	7	0.2	0	.....	0	.....	3	1.3	13	0.4
1,000-1,999	44,942	35	0.4	99.8	8	0.3	0	.....	1	0 3	2	0 8	24	0 8
2,000-2,999	30,366	13	0.2	100.0	6	0.2	0	.....	1	0 3	2	0.8	4	0.1
3,000-9,999	8,822	2	0.0	100.0	1	0 0	0	.....	0	.....	1	0.4	0	.....
10,000 and over	57,475	3	0 0	100.0	1	0 0	0	.....	1	0.3	1	0.4	0	.....

B. DECERTIFICATION ELECTIONS (RD)

Total RD elections	12,705	234	100.0		42	100 0	23	100.0	3	100 0	1	100.0	165	100.0
Under 10	388	64	27.4	27.4	1	2 4	5	21.8	0		0		58	35.2
10-19	721	52	22 2	49.6	4	9.5	5	21.8	2	66.7	0		41	24.8
20-29	798	33	14.1	63.7	6	14 2	3	13.1	0		0		24	14.6
30-39	722	21	9.0	72.7	7	16 6	1	4.3	0		0		13	7.9
40-49	443	10	4.3	77.0	0		0		0		0		10	6.1
50-59	434	8	3.4	80.4	3	7.1	0		0		0		5	3 0
60-69	186	3	1.3	81.7	1	2.4	0		0		1	100.0	1	0.6
70-79	453	6	2.6	84.3	1	2 4	3	13.1	0		0		2	1.2
80-89	173	2	0 8	85.1	2	4.8	0		0		0		0	
90-99	569	6	2 6	87.7	2	4.8	1	4.3	0		0		3	1.8
100-109	0	0		87.7	0		0		0		0		0	
110-119	119	1	0.4	88.1	1	2.4	0		0		0		0	
120-129	368	3	1.3	89.4	2	4.8	0		0		0		1	0.6
130-139	131	1	0.4	89.8	0		0		0		0		1	0.6
140-149	0	0		89.8	0		0		0		0		0	
150-159	306	2	0 9	90 7	1	2.4	1	4.3	0		0		0	
160-169	495	3	1.3	92 0	1	2.4	0		0		0		2	1.2
170-199	369	2	0.8	92.8	2	4.8	0		0		0		0	
200-299	2,087	8	3.4	96.2	3	7 1	2	8.7	1	33.3	0		2	1.2
300-399	1,795	5	2.1	98.3	2	4.8	1	4.3	0		0		2	1.2
400-499	434	1	0.4	98.7	0		1	4.3	0		0		0	
500-799	1,714	3	1.3	100.0	3	7.1	0		0		0		0	
800 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 1967 [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] 14,425	100.0		9,509	100.0	2,076	100.0	1,068	100 0	384	100.0	24	100.0	341	100.0	846	100.0	177	100 0
Under 10	3,290	22.8	22.8	1,979	20.8	539	26 0	373	34.9	79	20.6	17	70.8	91	26 7	163	19 3	49	27.7
10–19	1,604	11.1	33.9	1,125	11.8	167	8 1	128	12.0	49	12.8	0		70	20.5	48	5 7	17	9.6
20–29	1,158	8 0	41.9	826	8.6	119	5.7	91	8.5	34	8.8	0		34	10.0	40	4.7	14	7.9
30–39	846	5.9	47.8	599	6 3	86	4.2	64	6.0	19	4.9	2	8 3	21	6.2	42	5.0	13	7.3
40–49	533	3 7	51.5	365	3.8	45	2.2	47	4.4	18	4 7	0		20	5.8	24	2.8	14	7 9
50–59	659	4.6	56.1	404	4.2	83	4.0	71	6.6	28	7 3	0		25	7 3	37	4.4	11	6 2
60–69	376	2.6	58.7	275	2.9	40	1 9	18	1.7	9	2.3	0		11	3.2	18	2.1	5	2.8
70–79	377	2.6	61.3	275	2.9	48	2 3	17	1.6	6	1.6	0		10	2 9	19	2 2	2	1.1
80–89	260	1 8	63 1	197	2.1	33	1.6	13	1.2	4	1.0	0		4	1 1	8	0.9	1	0.6
90–99	163	1.1	64.2	111	1.2	17	0.8	13	1.2	8	2.1	0		6	1 7	6	0.7	2	1.1
100–109	550	3.8	68.0	332	3 5	87	4 2	42	3 9	24	6 3	0		15	4.4	38	4.5	12	6.7
110–119	111	0.8	68.8	83	0.9	11	0.5	4	0 4	4	1.0	1	4 2	1	0 3	7	0.8	0	

120–129	176	1.2	70 0	125	1.3	22	1.1	7	0.7	3	0.8	0		0		18	2 1	1	0.6
130–139	105	0.7	70.7	85	0.9	7	0 3	4	0.4	2	0.5	0		2	0.6	5	0.6	0	
140–149	79	0.6	71.3	59	0.6	5	0.2	9	0.8	0		0		2	0.6	4	0 5	0	
150–159	295	2.0	73.3	191	2.0	46	2.2	11	1.0	11	2.9	0		2	0.6	27	3.2	7	4.0
160–169	72	0.5	73.8	54	0.6	7	0.3	2	0 2	3	0.8	0		0		5	0.6	1	0.6
170–179	116	0 8	74.6	82	0.9	11	0.5	11	1.0	3	0.8	0		2	0.6	5	0 6	2	1.1
180–189	67	0.5	75.1	49	0.5	11	0.5	0		0		0		0		7	0.8	0	
190–199	23	0 2	75.3	17	0.2	2	0.1	1	0.1	0		0		1	0 3	1	0 1	1	0 6
200–299	826	5 7	81 0	585	6.2	118	5.7	38	3.5	20	5.2	0		3	0.9	56	6 6	6	3 4
300–399	442	3 1	84 1	292	3.1	85	4.1	22	2.1	5	1.3	0		2	0.6	34	4 0	2	1 1
400–499	297	2.1	86.2	213	2.2	47	2 3	9	0.8	11	2.9	0		0		11	1 3	6	3.4
500–599	315	2.2	88.4	200	2.1	66	3 2	17	1.6	7	1 8	1	4.2	1	0.3	20	2.4	3	1.7
600–699	160	1.1	89.5	110	1.2	31	1.5	3	0.3	3	0.8	0		0		12	1.4	1	0.6
700–799	127	0.9	90.4	75	0.8	27	1.3	5	0 5	4	1.0	0		2	0.6	13	1.5	1	0.6
800–899	94	0.7	91.1	60	0 6	19	0.9	1	0 1	4	1.0	0		1	0 3	9	1.1	0	
900–999	52	0.4	91.5	38	0 4	6	0.3	2	0.2	2	0.5	0		1	0.3	3	0.4	0	
1,000–1,999	453	3.1	94.6	289	3.0	81	3.9	20	1.9	11	2.9	0		4	1 2	45	5.3	3	1.7
2,000–2,999	205	1.4	96 0	121	1.3	41	2.0	4	0.4	2	0 5	2	8 3	2	0.6	32	3.8	1	0.6
3,000 3,999	120	0.8	96.8	57	0.6	31	1.5	9	0.8	3	0 8	0		0		20	2 4	0	
4,000–4,999	74	0.5	97 3	40	0.4	15	0.7	3	0.3	0		0		2	0.6	14	1 7	0	
5,000–9,999	165	1.1	98 4	64	0.7	62	3.0	5	0.5	5	1 3	0		3	0.9	26	3 1	0	
10,000 and over	235	1 6	100 0	132	1.4	61	2.9	4	0.4	3	0.8	1	4 2	3	0.9	29	3 4	2	1.1

[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 2 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 1967; and Cumulative Totals, Fiscal Years 1936–67

	Fiscal year 1967									July 5, 1935–June 30, 1967	
	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	264	212	35	4	13						
On petitions for review and/or enforcement	244	197	30	4	13	100.0	100.0	100 0	100.0	3,408	100.0
Board orders affirmed in full	152	118	24	2	8	59.9	80.0	50.0	61 5	1,969	57.7
Board orders affirmed with modification	43	39	2	1	1	19.8	6.7	25.0	7.7	677	19 9
Remanded to Board	13	9	3	0	1	4.6	10.0		7.7	136	4.0
Board orders partially affirmed and partially remanded	3	2	0	0	1	1 0			7.7	43	1.3
Board orders set aside	33	29	1	1	2	14 7	3.3	25.0	15.4	583	17 1
On petitions for contempt	20	15	5	0		100.0	100.0				
Compliance after filing of petition, before court order	8	6	2	0		40.0	40 0				
Court orders holding respondent in contempt	9	6	3	0		40 0	60.0				
Court orders denying petition	3	3	0	0		20 0					
Proceedings decided by U.S. Supreme Court [3]	7	4	0	0	3	100.0			100.0	167	100 0
Board orders affirmed in full	6	3	0	0	3	75 0			100.0	104	62 3
Board orders affirmed with modification	0	0	0	0	0					13	7.7
Board orders set aside	0	0	0	0	0					28	16.8
Remanded to Board	0	0	0	0	0					7	4.2
Remanded to court of appeals	1	1	0	0	0	25.0				12	7.2
Board's request for remand or modification of enforcement order denied	0	0	0	0	0					1	0.6
Contempt cases 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 Board appeared as *amicus curiae* in two cases. *Vaca, et al.* v. *Sipes*, 386 U.S, 171, and *Corvallis Sand & Gravel Co., et al.* v. *Hoisting & Portable Engineers Local Union No 701, et al.*, 387 U S 904, certiorari denied The position supported by the Board was sustained in both cases

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1967 Compared With 5-Year Cumulative Totals, Fiscal Years 1962 Through 1966 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1967	Total fiscal years 1962–66	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1967		Cumulative fiscal years 1962–66		Fiscal year 1967		Cumulative fiscal years 1962–66		Fiscal year 1967		Cumulative fiscal years 1962–66		Fiscal year 1967		Cumulative fiscal years 1962–66		Fiscal year 1967		Cumulative fiscal years 1962–66	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	244	1,035	152	62.3	590	57.0	43	17 6	198	19.2	13	5 3	50	4.8	3	1.3	19	1.8	33	13 5	178	17 2
1. Boston, Mass	10	69	7	70.0	38	55.1	1	10.0	8	11.6	1	10.0	7	10.1	0	------	4	5 8	1	10.0	12	17.4
2. New York, N.Y	15	115	11	73 3	72	62 6	2	13.3	22	19.1	1	6.7	5	4.4	1	6.7	3	2 6	0	------	13	11.3
3. Philadelphia, Pa	11	72	7	63.6	55	76.3	0	------	3	4.2	2	18.2	4	5.6	0	------	0	------	2	18.2	10	13.9
4. Richmond, Va	23	74	15	65.2	40	54.1	5	21.7	14	18.9	0	------	3	4.0	0	------	0	------	3	13.1	17	23.0
5. New Orleans, La	40	170	21	52.5	96	56.5	12	30.0	51	30.0	4	10.0	4	2.4	0	------	1	0.5	3	7.5	18	10.6
6. Cincinnati, Ohio	25	130	12	48.0	77	59.2	8	32.0	21	16.2	0	------	2	1 5	0	------	3	2 3	5	20.0	27	20.8
7. Chicago, Ill	31	101	19	61.3	43	42.6	4	12.9	23	22.7	0	------	0	------	0	------	1	1.0	8	25 8	34	33 7
8. St Louis, Mo	17	59	4	23.5	25	42.4	7	41.2	19	32.2	1	5 9	0	------	2	11.8	0	------	3	17.6	15	25.4
9. San Francisco, Calif	29	118	23	79.2	64	54.3	1	3 5	20	16.9	1	3.5	9	7.6	0	------	2	1.7	4	13.8	23	19.5
10. Denver, Colo	20	41	15	75.0	28	68.3	1	5 0	4	9.8	2	10.0	3	7.3	0	------	0	------	2	10.0	6	14.6
Washington, D.C	23	86	18	78.3	52	60.5	2	8.7	13	15.1	1	4 3	13	15.1	0	------	5	5.8	2	8.7	3	3 5

[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 1967

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1967
		Pending in district court July 1, 1966	Filed in district court fiscal year 1967		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e), total	[1] 4	0	[1] 4	2	2	0	0	0	0	0	[1] 2
Under sec. 10(j), total	27	5	22	23	12	2	5	2	2	0	4
8(a)(1)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2); 8(b)(1)(A)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3), 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(5); 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)	5	2	3	4	3	0	1	0	0	0	1
8(a)(1)(3), 8(b)(1)(A)(2)	1	1	0	1	0	0	1	0	0	0	0
8(a)(1)(3)(5)	4	0	4	3	0	1	1	0	1	0	1
8(a)(1)(3)(4)(5)	1	1	0	1	1	0	0	0	0	0	0
8(a)(1)(5)	10	1	9	8	3	1	1	2	1	0	2
8(b)(1)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(3)	1	0	1	1	1	0	0	0	0	0	0
Under sec 10(l), total	174	16	158	169	61	8	83	10	2	5	5
8(b)(4)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(A)(B)	3	0	3	3	1	0	2	0	0	0	0
8(b)(4)(A)(B); 8(e)	1	0	1	1	0	0	0	0	0	1	0
8(b)(4)(B)	78	10	68	78	31	4	37	4	1	1	0
8(b)(4)(B)(D)	13	0	13	13	4	0	9	0	0	0	0
8(b)(4)(D)	43	1	42	42	11	2	20	6	1	2	1
8(b)(7)(A)	10	4	6	7	4	0	3	0	0	0	3
8(b)(7)(A)(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(B)	9	0	9	9	4	1	4	0	0	0	0
8(b)(7)(C)	12	1	11	12	3	1	7	0	0	1	0
8(e)	3	0	3	2	2	0	0	0	0	0	1

[1] Filed in the Fifth Circuit Court of Appeals

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1967

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	25	25	0	9	9	0	16	16	0
NLRB-initiated actions	2	2	0	2	2	0	0	0	0
To enforce subpena	2	2	0	2	2	0	0	0	0
To restrain dissipation of assets by respondent	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	0	0	0	0	0	0	0	0	0
Action by other parties	23	23	0	7	7	0	16	16	0
To restrain NLRB from	14	14	0	5	5	0	9	9	0
Proceeding in R case	8	8	0	3	3	0	5	5	0
Proceeding in unfair labor practice case	5	5	0	2	2	0	3	3	0
Proceeding in backpay case	0	0	0	0	0	0	0	0	0
Other	1	1	0	0	0	0	1	1	0
To compel NLRB to	9	9	0	2	2	0	7	7	0
Issue complaint	4	4	0	0	0	0	4	4	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	4	4	0	1	1	0	3	3	0
Other	1	1	0	1	1	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1967 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1966	0	0	0	0	0
Received fiscal 1967	10	5	5	0	0
On docket fiscal 1967	10	5	5	0	0
Closed fiscal 1967	9	4	5	0	0
Pending June 30, 1967	1	1	0	0	0

[1] See "Glossary" for definition of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1967 [1]

Action taken	Total cases closed
	9
Board would assert jurisdiction	3
Board would not assert jurisdiction	3
Unresolved because of insufficient evidence submitted	0
Dismissed	2
Withdrawn	1

[1] See "Glossary" for definition of terms

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