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THIRTY-NINTH
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR
ENDED JUNE 30

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¹ Designated August 6, 1973

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., December 16, 1974.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-ninth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1974, 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.

EDWARD B. MILLER, *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 1974

A. Summary

In fiscal year 1974, the National Labor Relations Board received a record number of 42,373 cases, exceeding the 41,077 cases of the previous year, which had been the high point.

The 42,373 cases were 1,296 more than the 41,077 of fiscal year 1973.

The National Labor Relations Board does not initiate cases. It processes unfair labor practice charges and employee representation issues brought before it.

In fiscal year 1974 the NLRB closed 41,100 cases of all types. Down 1 percent from fiscal 1973, the total closings included 27,016 cases involving unfair labor practice charges, and 14,084 affecting employee representation. (Tables 7, 8, 9, and 10 give statistics on stage and method of closing by types of cases.)

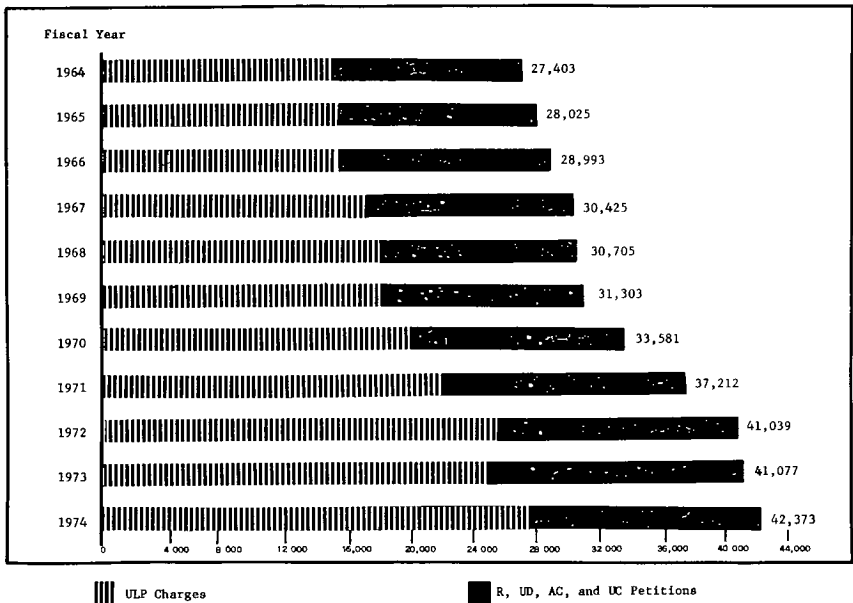
In fiscal 1974 case intake was 27,726 of unfair labor practice charges, a 4.7 percent increase from the 26,487 of the preceding year. Representation petitions rose to 14,082, a 0.4 percent increase over the 14,032 of the year before.

The two classes of cases amounted to 98.6 percent of the 1974 intake. The remaining 1.4 percent included union-shop deauthorization petitions, amendments to certification petitions (0.3 percent), and unit clarification petitions (0.6 percent). (Chart 1.)

NLRB's emphasis on voluntary disposition of cases was implemented greatly in fiscal 1974 by contributions in administration of the National Labor Relations Act by its 31 regional offices. In 1974 there were 25,574 unfair labor practice cases closed by regional offices. These closings came about primarily through voluntary settlements or adjustments by parties to the cases working with NLRB officials for voluntary withdrawal of charges, and administrative dismissals. Only 4.4 percent of the unfair labor practice cases closed went to the five-member Board for decision as contested cases. (Chart 3.)

Chart No. 1

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS



In 1974 the NLRB conducted 8,976 conclusive secret ballot elections of all types, down from the 9,472 of the previous year. The total was made up by 8,368 collective-bargaining elections, 490 decertification elections, and 118 deauthorization polls. Unions won 4,273 bargaining rights elections, or 51 percent.

In 1974 employee representation elections, 81 percent were arranged by agreement of the parties as to appropriate unit, date, and place of election.

Statistical tables of the Agency's activities in fiscal 1974 will be found in the Appendix to this report, along with a glossary of terms used in the tables and a subject index. An index of cases discussed in this report precedes the Appendix.

1. NLRB Administration

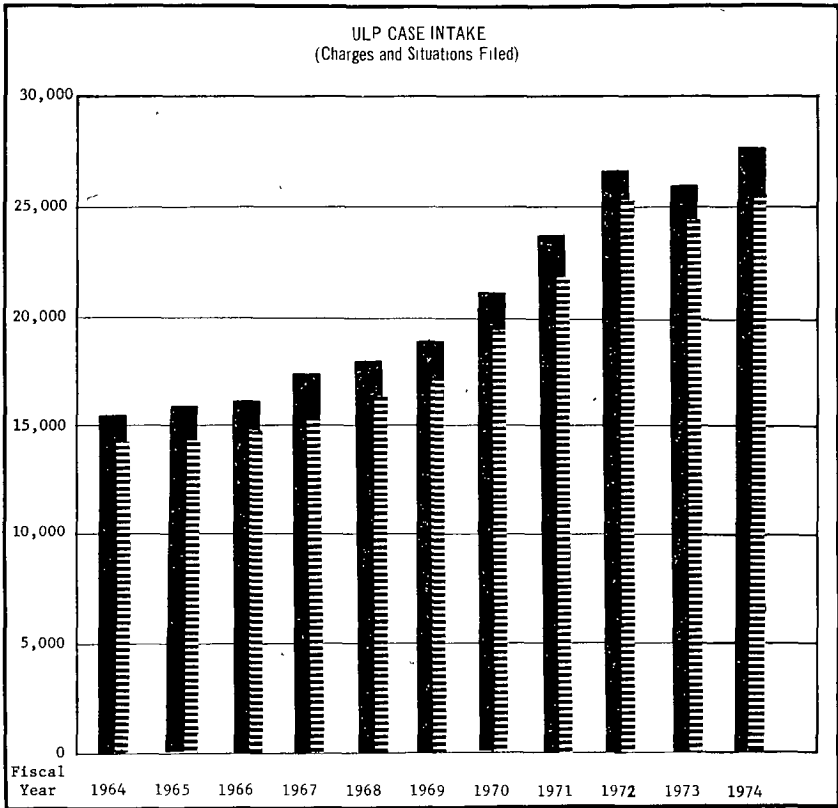
The National Labor Relations Board is an independent Federal agency created by Congress in 1935 to administer the National Labor Relations Act. The Act was amended in 1947 (Taft-Hartley Act), and in 1959 (Landrum-Griffin Act).

Board Members in fiscal 1974 were Chairman Edward B. Miller of Illinois, John H. Fanning of Rhode Island, Howard Jenkins, Jr., of Colorado, Ralph E. Kennedy of California, and John A. Penello of Maryland. Peter Nash of New York was General Counsel. The

Board Members and the General Counsel are appointed by the President with Senate consent; the Board Members to 5-year terms, and the General Counsel to a 4-year term.

The National Labor Relations Act is intended to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this aim through interpretation and enforcement of the Act.

Chart No. 2



CHARGES	15,620	15,800	15,933	17,040	17,816	18,651	21,038	23,770	26,852	26,487	27,726
SITUATIONS	13,978	14,423	14,539	15,499	16,343	17,045	19,402	22,098	25,143	24,854	26,228

In its statutory assignment, the NLRB has two primary functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union and, if so, which one; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both. The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which may be filed with it at one of its 31 regional offices or at its field offices.

The Act's unfair labor practice provisions place certain restrictions on actions of 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 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 petitions for elections, the Agency is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of elections. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the amendments to the Act, Congress increased the scope of the Agency's regulatory powers.

The NLRB has no statutory independent power of enforcement of its orders but may seek enforcement in the U.S. courts of appeals. Similarly, parties 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 on 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 administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board in the form of exceptions taken, but, if no exceptions are taken, under the statute the administrative law judges' orders become orders of the Board.

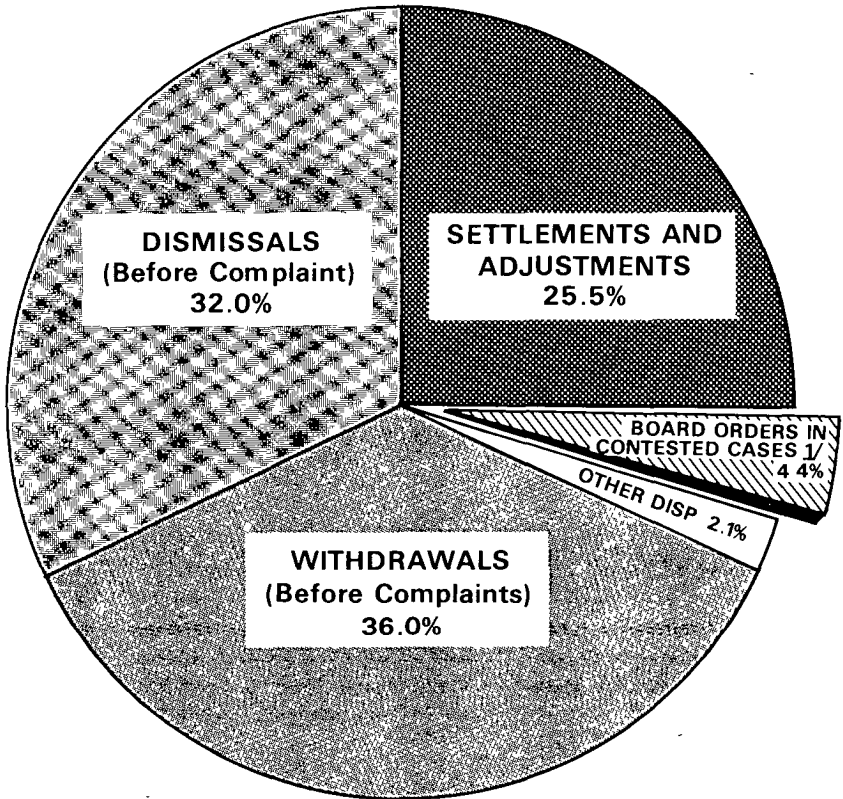
All cases coming to the Agency begin their processing in NLRB regional offices, either through filing of unfair labor practice charges, or employee representation petitions.

Chart No. 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1974

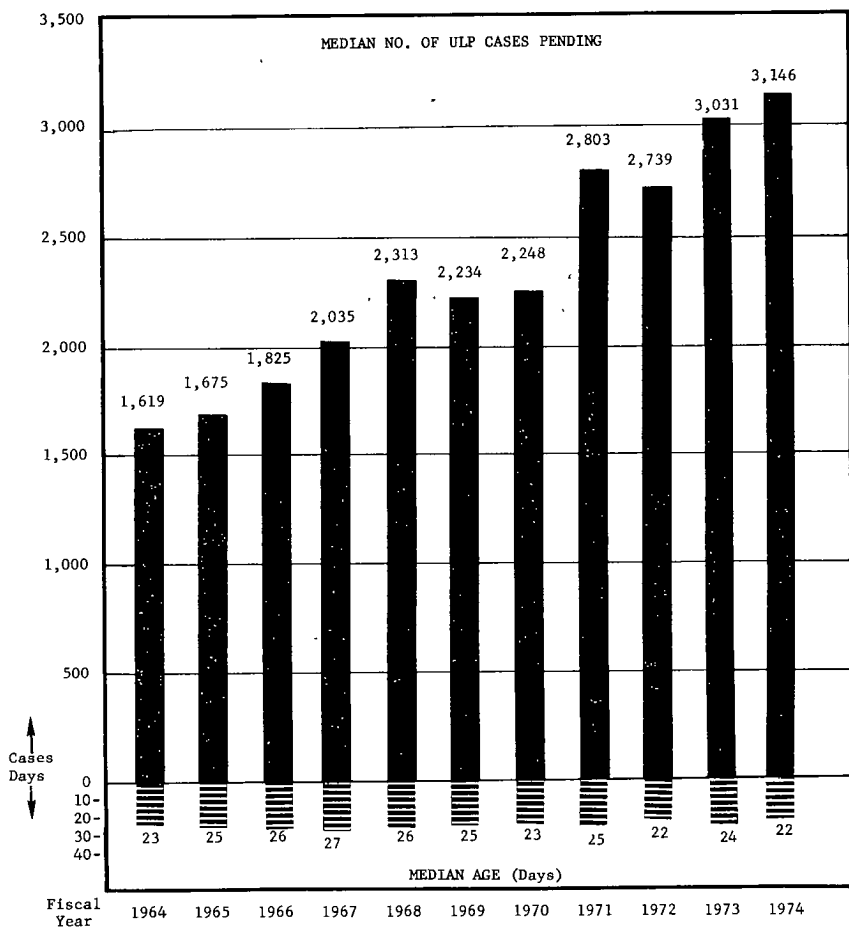


1/4 Contested cases reaching Board Members for Decisions

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. There are provisions for appeal of representation and election questions to the Board.

Chart No. 4

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



2. Case Activity Highlights

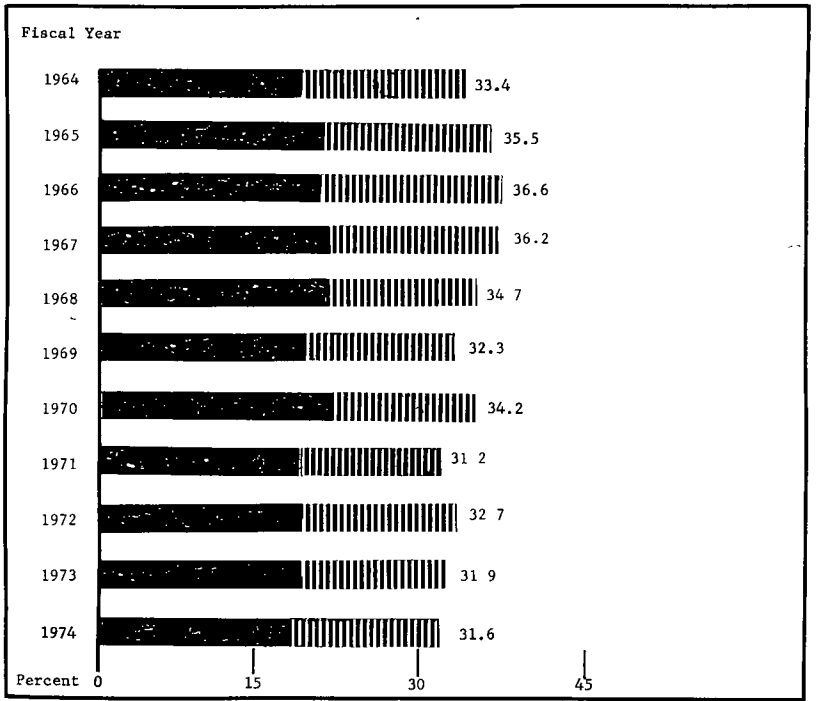
NLRB caseload in fiscal 1974 showed high numbers in intake of cases, case closures, elections conducted, and Board decisions issued, as well as increases in a number of other areas.

NLRB activity in 1974, coming from employers', employees', and labor organizations' requests for adjustments of labor disputes and answers to questions concerning employee representation, included:

- Intake—a total of 42,373 cases, of which 27,726 were unfair labor practice charges and 14,647 were representation petitions and related cases.

Chart No. 5

UNFAIR LABOR PRACTICE MERIT FACTOR



	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	17.8	19.4	19.4	20.5	20.2	18.4	20.4	17.7	18.3	18.2	17.8
CASES IN WHICH COMPLAINTS ISSUED (%)	15.6	16.1	17.2	15.7	14.5	13.9	13.8	13.5	14.4	13.7	13.8
TOTAL MERIT FACTOR (%)	33.4	35.5	36.6	36.2	34.7	32.3	34.2	31.2	32.7	31.9	31.6

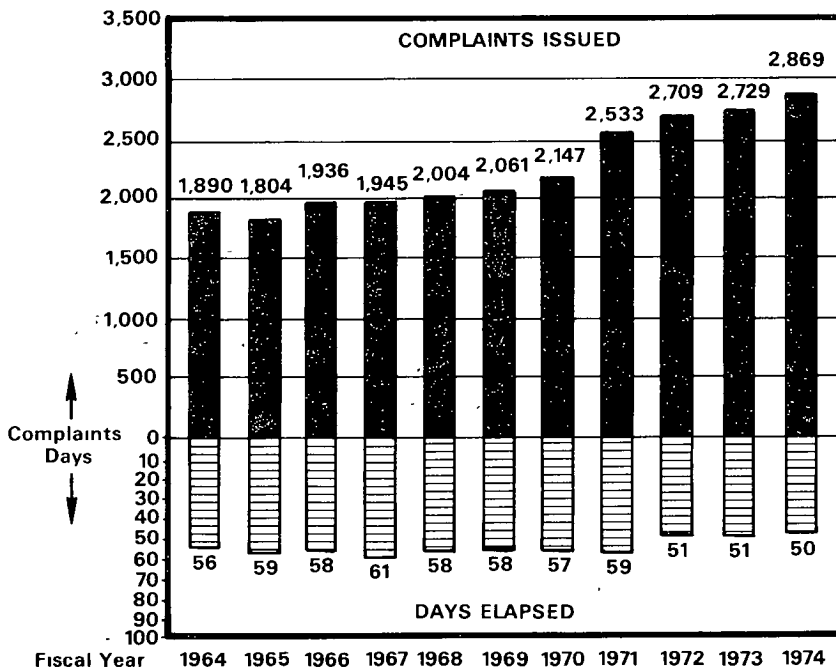
● Closed—a total of 41,100 with a record number, 27,016, involving unfair labor practice charges.

● Elections—a total of 8,976 conclusive elections of all types conducted.

● Board decisions issued—1,387 unfair labor practice decisions and 3,461 representation decisions and rulings, the latter by the Board and regional directors.

Chart No. 6

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



43

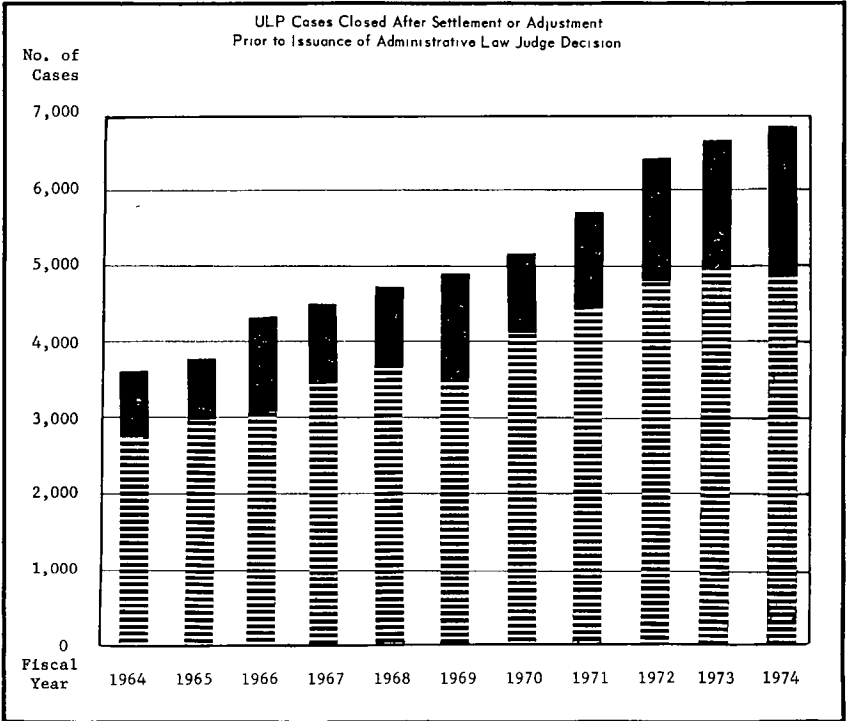
- General Counsel's office (and regional office personnel) —issued 2,869 formal complaints.
- closed 1,172 initial unfair labor practice hearings, including 55 hearings under section 10(k) of the Act (job assignment disputes).
- Regional directors issued 2,103 initial decisions in representation cases.
- Administrative law judges issued 999 initial decisions plus 71 on backpay and supplemental matters.
- There were 6,898 unfair labor practice cases settled or adjusted before issuance of administrative law judges' decisions.
- Regional offices distributed \$8,445,840 in backpay to 7,041 employees. There were 4,778 employees offered reinstatement; 2,828 accepted.
- Regional office personnel sat as hearing officers at 2,518 representation hearings—2,253 initial hearings and 265 on objections and/or challenges.

● There were 489,209 employees who cast ballots in NLRB-conducted conclusive representation elections.

● Appeals courts handed down 298 decisions related to enforcement and/or review of Board orders—86 percent affirmed the Board in whole or in part.

Chart No. 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
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
1968	3,608	1,089	4,697
1969	3,451	1,266	4,717
1970	4,054	1,174	5,228
1971	4,277	1,322	5,599
1972	4,755	1,626	6,381
1973	4,936	1,765	6,701
1974	4,778	2,120	6,898

B. Operational Highlights

1. Unfair Labor Practices

In fiscal 1974 there were 27,726 unfair labor practice cases filed with the NLRB, an increase of 1,239 from the 26,487 filed in fiscal 1973. The cases filed in 1974 were almost double the 15,620 filed 10 years before. In situations in which related charges are counted as a single unit, there was a 5.5-percent increase from fiscal 1973. (Chart 2.)

In 1974 alleged violations of the Act by employers increased to 17,978 cases, a 3.6-percent increase from the 17,361 of 1973. Charges against unions increased more than 7 percent to 9,654 in 1974 from 9,022 in 1973.

There were 94 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 80 against unions, and 14 against both unions and employers. (Tables 1 and 1A.)

Regarding 1974 charges against employers, 11,620 (or 65 percent of the 17,978 total) alleged discrimination or illegal discharge of employees. There were 5,492 refusal-to-bargain allegations in about one-third of the charges. (Table 2.)

On charges against unions in 1974 there were 5,759 alleging illegal restraint and coercion of employees, about 60 percent as compared with the 60 percent of similar filings in 1973. There were 2,630 charges against unions for illegal secondary boycotts and jurisdictional disputes, 5 percent more than the 2,495 of 1973.

There were 1,542 charges of illegal union discrimination against employees in 1974. There were 553 charges of unions picketing illegally for recognition or for organizational purposes, an increase from the 475 charges in 1973. (Table 2.)

In charges against employers in 1974, unions led by filing 59 percent. Unions filed 10,646; individuals filed 7,290 charges (41 percent); and employers filed 42 charges against other employers.

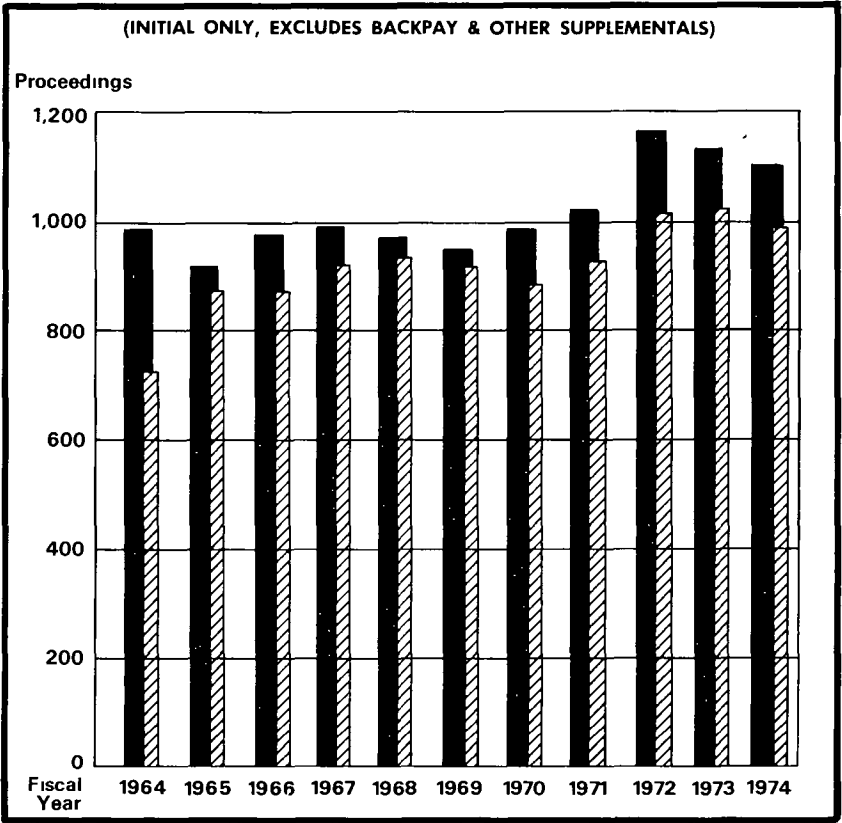
As to charges against unions, 5,146 were filed by individuals or 53.3 percent of 1974's total of 9,654. Employers filed 4,290 or 44.4 percent of the charges. Other unions filed the 218 remaining charges. There were 94 hot cargo charges against unions and/or employers (involving the Act's section 8(e)); 73 were filed by employers, 9 by individuals, and 12 by unions.

Regarding the record high 27,726 unfair labor practice charges closed in 1974, about 93.5 percent were closed by NLRB regional offices as compared with 93.1 percent in 1973. In 1974, 25.5 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 36 percent by withdrawal before complaint, and 32 percent by administrative dismissal. In 1973 the percentages were 24.8, 35, and 33.3, respectively.

Chart No. 8

ADMINISTRATIVE LAW JUDGE HEARINGS AND DECISIONS

(INITIAL ONLY, EXCLUDES BACKPAY & OTHER SUPPLEMENTALS)



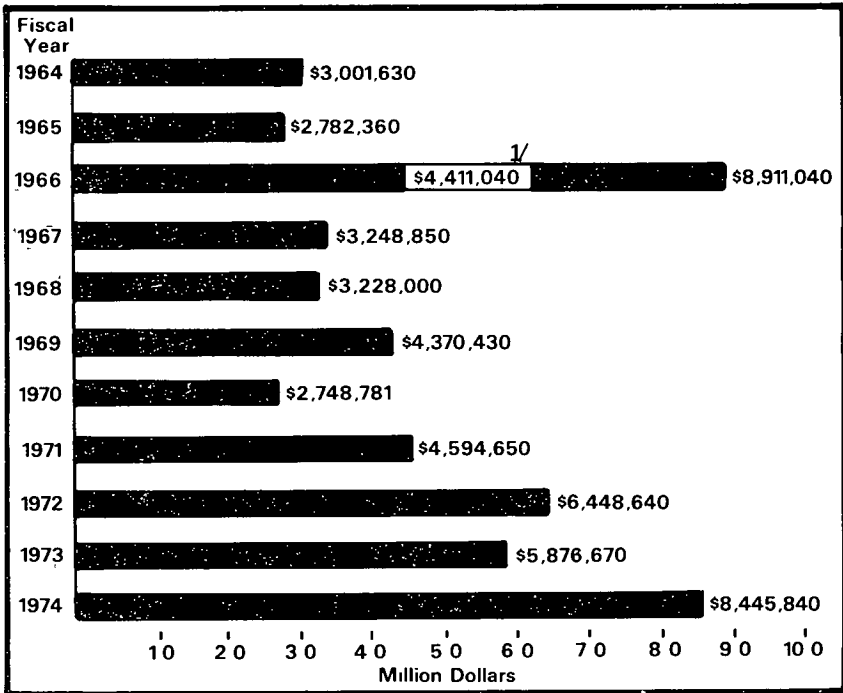
<p>Hearing Held</p> <p>Decisions Issued</p>	<p>989 917 982 993 977 951 990 1,025 1,178 1,132 1,117</p> <p>734 875 867 934 943 929 894 930 1,023 1,058 999</p>
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In an evaluation of the regional workload, the number of unfair labor practice charges found to have merit is important. The highest level of cases found to have merit was 36.6 percent in fiscal 1966. In fiscal 1974 it was 31.6 percent.

In 1974 the merit factor in charges against employers was 33.3 percent as compared to 32.6 percent in 1973. In charges against unions, the merit factor was 28.3 percent in fiscal 1974. It was 30.7 percent in fiscal 1973.

Chart No. 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



^{1/} 1966 - less the Kohler Case

Since 1962 (see Chart 5) more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 69 percent in fiscal 1974.

In 1974 there were 3,703 merit charges which caused issuance of complaints, and 4,778 precomplaint settlements or adjustments of meritorious charges. The two totaled 8,481 or 31.6 percent of the unfair labor practice cases. (Chart 5.)

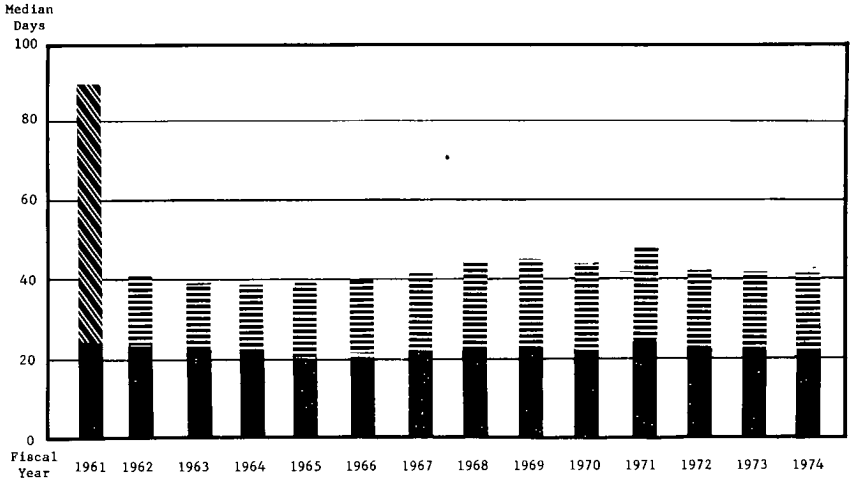
In fiscal 1974 NLRB regional offices issued 2,869 complaints, a slight gain above the 2,729 issued in fiscal 1973. (Chart 6.)

Of complaints issued 78.2 percent were against employers, 18.6 percent against unions, and 3.5 percent against both employers and unions.

In 1974 NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 50 days (51 days in 1973). The 50 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Chart No. 10

TIME REQUIRED TO PROCESS REPRESENTATION CASES
FROM FILING OF PETITION TO ISSUANCE OF DECISION



FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18
1966	21	-	19
1967	22	-	20
1968	22	-	22
1969	23	-	22
1970	23	-	20
1971	24	-	23
1972	22	-	20
1973	22	-	20
1974	22	-	20

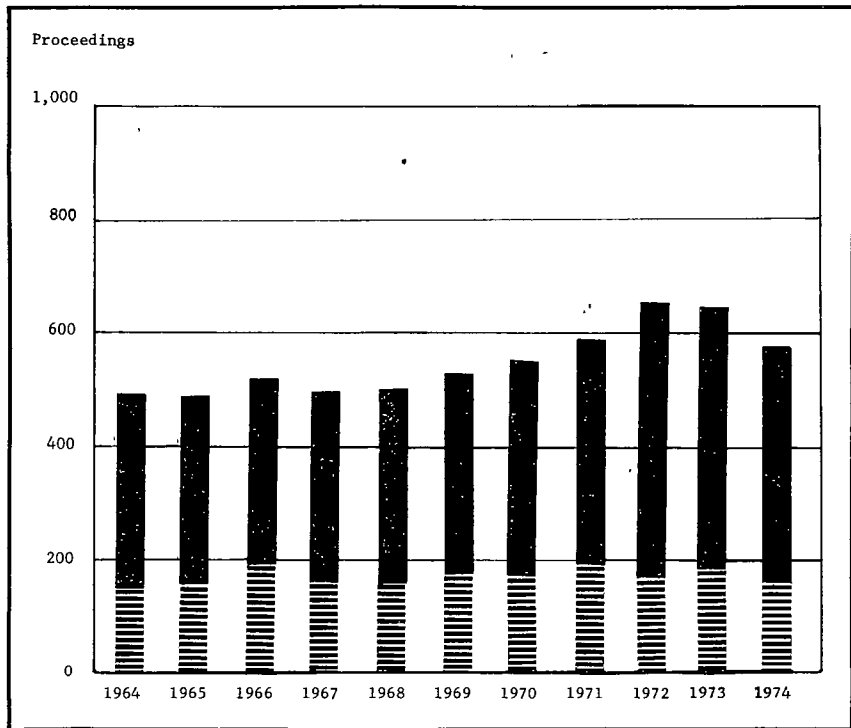
Administrative law judges in 1974 conducted 1,189 initial hearings involving 1,543 cases, compared with 1,132 hearings involving 1,561 cases in 1973. (Chart 8 and Table 3A.) Also, administrative law judges conducted 72 additional hearings in supplemental matters in 1974.

At the end of fiscal 1974 there were 9,711 unfair labor practice cases pending before the Agency, 7.9 percent more than the 9,001 cases pending at the end of fiscal 1973.

In fiscal 1974 the NLRB awarded backpay to 7,041 workers, in total amounting to \$8.4 million. The backpay was 44 percent more than in fiscal 1973. (Chart 9.)

Chart No. 11

BOARD CASE BACKLOG



Proceedings

C	344	336	323	343	352	356	382	390	486	471	417
R	142	148	190	146	144	171	171	196	171	183	159
Totals	486	484	513	489	496	527	553	586	657	654	576

During fiscal 1974 in 1,591 cases 4,778 employees were offered reinstatement, and 2,828, or 59 percent accepted. In fiscal 1973 about 72 percent of the employees accepted offered reinstatement.

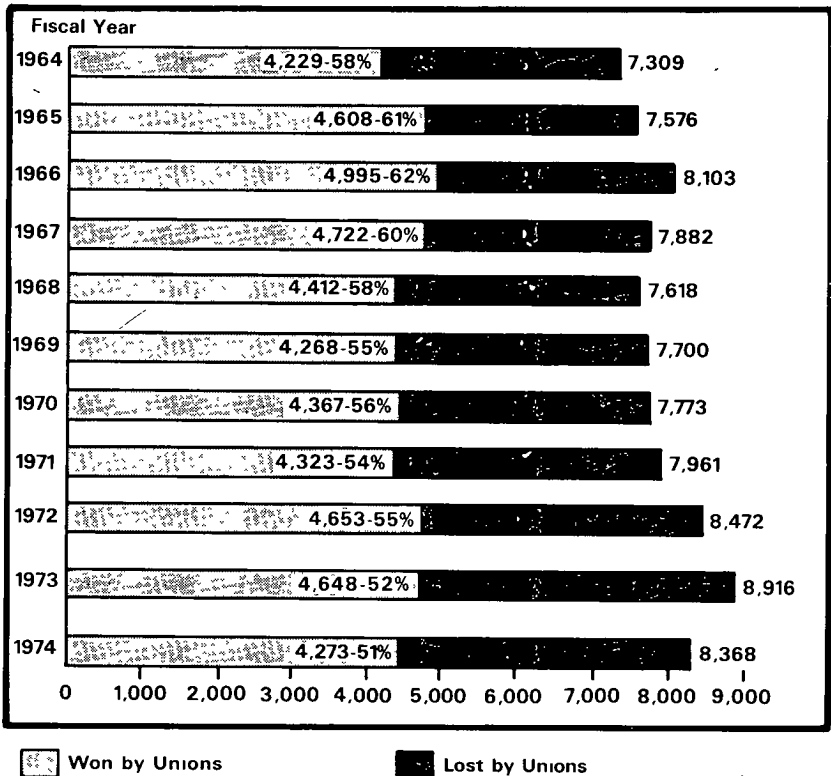
Work stoppages ended in 305 of the cases closed in fiscal 1974. Collective bargaining was begun in 1,756 cases. (Table 4.)

2. Representation Cases

In fiscal 1974 the NLRB received 14,647 representation and related case petitions. These included 12,905 collective-bargaining cases; 1,177 decertification petitions; 203 union-shop deauthorization petitions; 121 petitions for amendment of certification; and 241 petitions for unit clarification. The NLRB's total representation intake was 0.4 percent, or 57 cases, above the 14,590 of fiscal year 1973.

Chart No. 12

COLLECTIVE-BARGAINING ELECTIONS CLOSED



There were 14,084 representation cases closed in fiscal 1974, about 3.4 percent less than the 14,577 closed in fiscal 1973. Cases closed in 1974 included 12,384 collective-bargaining petitions, 1,158 petitions for elections to determine whether unions should be decertified, 192 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 350 unit clarification and amendment of certification petitions. (Chart 14 and Tables 1 and 1B.)

There were 13,734 representation and union deauthorization cases closed in fiscal 1974. About 66 percent, or 9,092 cases, were closed after elections. There were 3,493 withdrawals, 25 percent of the total number of cases, and 1,149 dismissals.

NLRB regional directors ordered elections following hearings in 1,618 cases, or 18 percent of those closed by elections. There were 30 cases which resulted in expedited elections pursuant to the Act's 8(b)

(7) (C) provisions pertaining to picketing. Board elections in 61 cases, about 7 percent of election closures, followed appeals or transfers from regional offices. (Table 10.)

3. Elections

There were 8,976 conclusive elections conducted in cases closed in fiscal 1974. An additional 254 inconclusive representation case elections were held that resulted in withdrawal or were dismissed before certification, or required a rerun or runoff election. Of the conclusive elections 8,368 (93 percent) were collective-bargaining elections. Unions won 4,273, or 51 percent of them. There also were 490 elections conducted to determine whether incumbent unions would continue to represent employees (decertification elections) and 118 to decide whether unions would continue to have authority to make union-shop agreements with employers (deauthorization polls).

Unions lost the right to make union-shop agreements in 69 of the 118 deauthorization elections, while they maintained the right in 49 other elections, which covered 3,084 employees. (Table 12.)

By voluntary agreement of parties involved 7,295 stipulated and consent elections were conducted in fiscal 1974. These were 81.3 percent of the total elections, compared with 80.5 percent in fiscal 1973. (Table 11.)

With less elections being won by unions in 1974 as compared with 1973, more employees (482,414 in 1974; 480,303 in 1973) exercised their right to vote. For all types of elections, the average number of employees voting, per establishment, was 50 (1 less than in 1973). About three-fourths of collective-bargaining elections involved 59 or fewer employees. Likewise, about 75 percent of decertification elections involved 49 or fewer employees. (Tables 11 and 17.)

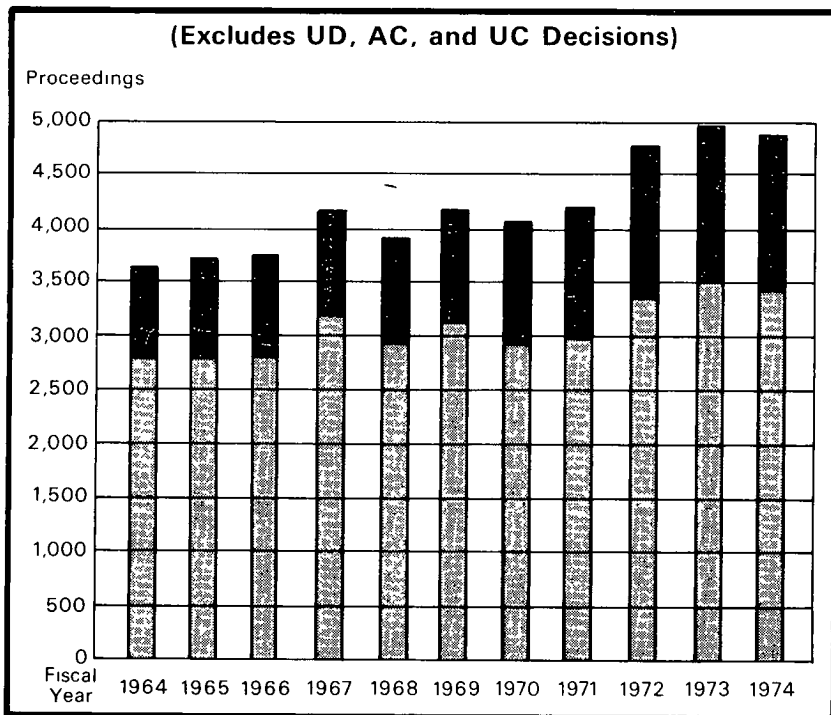
Unions won in 152 and lost in 338 decertification elections in fiscal 1974. Unions retained the right of representation of 13,227 employees in the 152 elections won. Unions lost the right of representation of 11,470 employees in the 338 cases in which they did not win. As to size of the bargaining units involved, unions won in units averaging 87 employees, and lost in units averaging 34 employees. (Table 13.)

4. Decisions Issued

There were 5,037 decisions issued by the Agency in fiscal 1974, a 2.2 percent decrease from the 5,152 decisions of fiscal 1973. Board members issued 2,438 decisions in 3,010 cases—2 less decisions than the 2,440 of 1973. Regional directors issued 2,599 decisions in 2,768 cases, a decrease of 113 from the 2,712 decisions in 1973.

Chart No. 13

DECISIONS ISSUED 1/



C	776	1,000	991	1,023	1,033	1,063	1,167	1,239	1,376	1,432	1,387
R	2,812	2,707	2,769	3,155	2,869	3,108	2,927	2,962	3,361	3,514	3,461

Totals 3,588 3,707 3,760 4,178 3,902 4,171 4,094 4,201 4,737 4,946 4,848

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

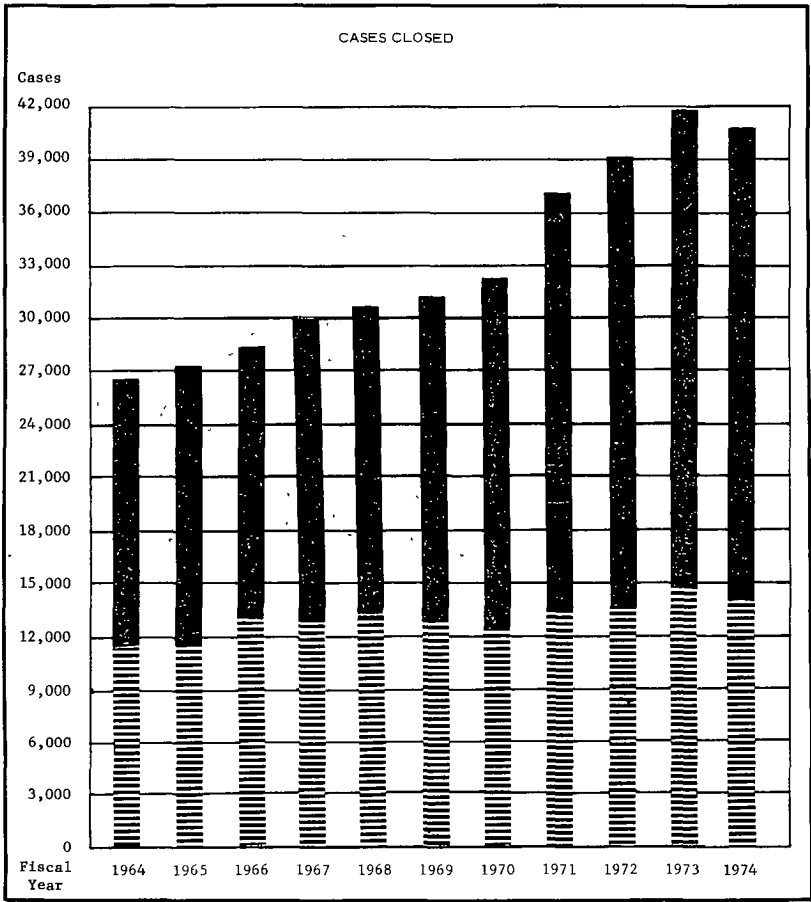
Administrative law judges issued 999 decisions and recommended orders in fiscal 1974, a 5.6-percent decrease from the 1,058 of 1973. (Chart 8.)

The administrative law judges in 1974 also issued 43 backpay decisions (40 in 1973) and 28 supplemental decisions (29 in 1973). (Table 3A.)

In 1974 Board Members and regional directors issued 4,848 decisions involving 5,571 unfair labor practice and representation cases. (Chart 13.)

The Board and regional directors issued 189 decisions in 207 cases regarding clarification of employee bargaining units, amendments to union representation certifications, and union-shop deauthorizations.

Chart No. 14



■ C CASES	15,074	15,219	15,587	16,360	17,777	18,939	19,851	23,840	25,555	26,989	27,016
▨ R, UD, AC, AND UC CASES	11,641	11,980	12,917	13,134	12,973	12,658	12,502	13,360	13,919	14,577	14,084
TOTALS	26,715	27,199	28,504	29,494	30,750	31,597	32,353	37,200	39,474	41,566	41,100

Parties contested the facts or application of the law in 1,415 of the 2,438 Board decisions.

The contested decisions follow :

Total contested Board decisions.....	1, 415
Unfair labor practice decisions.....	951
Initial (includes those based on stipulated record).....	828
Supplemental decisions.....	7
Backpay	57
Determinations in jurisdictional disputes.....	59
Representation decisions total.....	447
After transfer by regional directors for initial decisions..	112
After review of regional directors' decisions.....	44
Decisions on objections and/or challenges.....	291
Clarification of bargaining unit decisions.....	10
Amendment to certification decisions.....	6
Union deauthorization decisions.....	1

This tally left 1,023 decisions which were not contested before the Board.

A relatively small number of contested cases reach the Board members. This is accounted for by case settlements, adjustments, withdrawals, and dismissals. (Chart 3, and Tables 7 and 7A.) These processes effectively dispose of a vast bulk of charges filed with the Agency without the need of extended litigation.

A number of related cases may be covered in Board decisions. In fiscal 1974 the 828 initial contested unfair labor practice decisions were concerned with 1,165 cases. The Board found violations of the Act in 948 of the 1,165 cases. In 1973 violations were found in 903, or 77 percent of the 1,169 contested cases.

Contested decisions by the Board showed the following results :

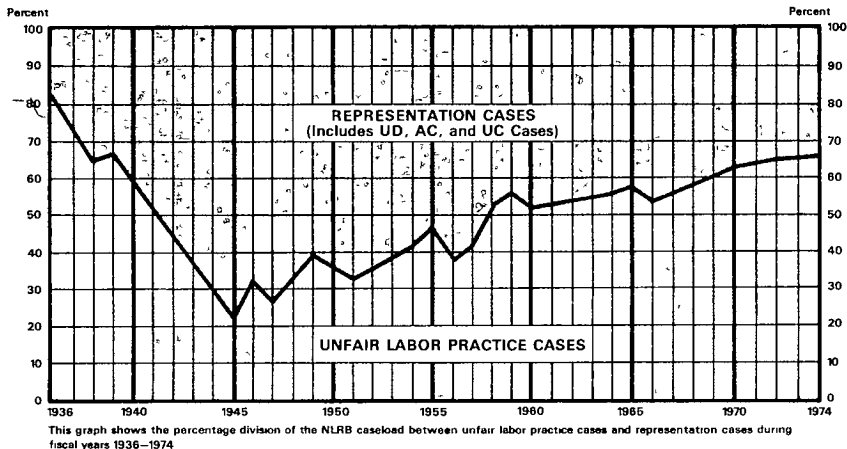
1. Employers—During fiscal 1974 the Board ruled on 846 contested unfair labor practice cases against employers, or 5 percent of the 17,307 unfair labor practice cases against employers disposed of by the Agency, and found violations in 694 cases or 82 percent, as compared with 80 percent in 1973. The Board remedies included ordering employers to reinstate 1,133 employees with or without backpay ; to give backpay without reinstatement to 4 employees ; to cease illegal assistance to or domination of labor organizations in 8 cases ; and to bargain collectively with employee representatives in 217 cases.

2. Unions—In fiscal 1974 Board rulings encompassed 319 contested unfair labor practice cases against unions. Of these 319 cases, violations were found in 254 cases, or 80 percent, as compared to 66 percent in fiscal 1973. The remedies in the 254 cases included orders to unions in 3 cases to cease picketing and give 99 employees backpay.

At the close of fiscal 1974, there were 576 decisions pending issuance by the Board—417 dealing with alleged unfair labor practices and 159 with employee representation questions. The total showed a decrease from the 654 decisions pending at the beginning of the year. (Chart 11.)

Chart No. 15

COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES



5. Court Litigation

In fiscal 1974, U.S. courts of appeals handed down 298 decisions in NLRB-related cases, 52 less decisions than in fiscal 1973. In the 298 decisions NLRB was affirmed in whole or in part in 86 percent. This was more than the 83 percent in the 350 cases of fiscal 1973.

A breakdown of appeals courts rulings in fiscal 1974 follows:

Total NLRB cases ruled on	298
Affirmed in full	230
Affirmed with modification	26
Remanded to NLRB	12
Partially affirmed and partially remanded	1
Set aside	29

In 20 contempt cases in fiscal 1974 (18 in fiscal 1973) before the appeals courts, the respondents in 11 cases complied with the NLRB orders after the contempt petition had been filed but before decisions by courts, and in 9 the courts held the respondents in contempt. (Tables 19 and 19A.)

The U.S. Supreme Court in fiscal 1974 affirmed in full two NLRB orders, two were remanded to the Board, and two were set aside. The NLRB appeared as *amicus curiae* in three cases. The position the NLRB supported was upheld in two cases.

U.S. district courts in fiscal 1974 granted 79 contested cases litigated to final orders on NLRB injunction requests filed pursuant to section 10(j) and 10(l) of the Act. This amounted to 88 percent of the contested cases, compared with 81 cases granted in fiscal 1973, or 92 percent.

The following shows NLRB injunction activity in district courts in fiscal 1974:

Granted	79
Denied	11
Withdrawn	14
Dismissed	16
Settled or placed on courts' inactive list.....	98
Awaiting action at end of fiscal year.....	33

There were 232 NLRB injunction petitions filed with the district courts in 1974, as compared with 249 in 1973. The NLRB in 1974 also filed two petitions for injunctions in appeals courts pursuant to provisions of section 10(e) of the Act, and the appeals courts ruled on one, which was granted. (See Table 20.)

In fiscal 1974 there were 63 additional cases involving miscellaneous litigation decided by appellate and district courts; the NLRB's position was upheld in 60 cases. (See Table 21.)

C. Decisional Highlights

In the course of the Board's administration of the Act during the report year, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many 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 these developments. Chapter II, "Jurisdiction of the Board," chapter III, "Effect of Concurrent Arbitration Proceedings," chapter IV, "Board Procedure," chapter V, "Representation Proceedings," and chapter VI, "Unfair Labor Practice Proceedings," 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 significant areas.

1. Jurisdiction Over Professional Groups

During the report year the Board declined to assert jurisdiction over a group of lawyers associated together in the practice of their profession. The Board concluded that the activities of the law firm were of such a nature that the potential effect of a stoppage of business result-

ing from labor strife was not sufficiently great to warrant the Board's assertion of jurisdiction over law firms as a class.¹ Noting that the trial activity engaged in by the firms was so essentially local in character as to have but minimal impact upon commerce, the Board further concluded that the firm's other activities, the rendering of advice and services directly related to the law rather than to commerce, caused it to have only an incidental connection with the flow of commerce.

2. Board Procedure

In *Bekins Moving & Storage Co. of Florida*,² the Board held that issues of alleged invidious discrimination by a labor organization of such nature as to preclude the Board from issuing a certification as exclusive representative should be considered prior to issuance of the certification, but only after the election has been held and then only if the labor organization involved has won the election. Although recognizing the mandatory terminology of the Act directing the Board to certify a union winning an election, the Board concluded that that language must be construed in harmony with the constitutional limitations imposed upon the Agency by the due process clause of the fifth amendment, which forbids participation of the Federal Government in acts sanctioning furthering, or supporting, any forms or practices of invidious discrimination. Accordingly, a precertification inquiry into such allegations when timely raised was found to be both appropriate and constitutionally required.

3. The Bargaining Obligation

In *Steel-Fab*,³ the Board held that an employer's postdemand and postelection unfair labor practices violative of section 8(a) (1) and (3) did not constitute independent violations of a bargaining obligation under section 8(a) (5) of the Act, even though they destroyed the possibility of holding a fair election, and even though a bargaining order was to be entered to remedy them. In the Board's view, a finding of a violation of section 8(a) (5) should not be premised upon an assessment of the seriousness of the employer's unfair labor practices violative of other sections of the Act, but should be based upon findings of actions taken after a bargaining obligation has arisen, either through certification or recognition. The Board emphasized that it was not departing from the teaching of the Supreme Court in *Gissel* concerning the scope of the Board's authority to enter bargaining or-

¹ *Bodle, Fogel, Julber, Reinhardt, & Rothschild*, 206 NLRB No. 60, *infra*, p. 28.

² 211 NLRB No. 7, *infra*, p. 45.

³ 212 NLRB No. 25, *infra*, p. 86.

ders as a remedy for employer unfair labor practices nor the standards therefor, but was "simply removing from the analytical process involved in applying those standards a semantic difficulty which we believe has clouded the central issue over the years."

4. Consumer Picketing

A union's picketing of retail gasoline stations operated by independent operators under a lease agreement with the gasoline refinery supplier, in furtherance of its primary dispute with the refinery, was found by the Board in the *Dow Chemical* case⁴ to be secondary pressure prohibited by section 8(b) (4) (ii) (B) since designed to persuade consumers to cease all trading with the secondary retailers, and not within the protection accorded peaceful consumer picketing employed only to persuade customers not to buy the struck product. The Board found significant legal consequences in the fact that most of the station's business consisted of the sale of the struck gasoline with only minor other sales incidental thereto. It found that under these circumstances it is likely that customers persuaded to respect the picket signs would not trade at all with the neutral party, who would then be squeezed to a position of economic duress, escapable only by ceasing to do business with the struck employer and finding a new source of supply.

5. Prohibited Coercion of Employers

Union resort to contractual procedures for the assessment of monetary damages against employers for alleged violations of work assignment provisions of the contracts was found by the Board in several contexts not to constitute threats, coercion, or restraint of those employers within the meaning of section 8(b) (4) (ii) of the Act, even though the actions might have been taken in a work-entitlement dispute context. In one such case⁵ the union resorted to a contractual grievance procedure for the assessment of monetary damages for wages lost due to the employer's failure to assign certain work to unit employees as required by the contract, and announced its intention to seek enforcement of the resulting award through court action. In finding that those actions did not constitute coercion within the meaning of section 8(b) (4) (ii) (D) the Board noted that the statutory scheme underlying section 8(b) (4) was designed to promote the amicable resolution of jurisdictional disputes while at the same time proscribing union conduct which would interfere with the employer's

⁴ *Loc 14055, United Steelworkers of America (Dow Chemical Co)*, 211 NLRB No 29, *infra*, p. 113

⁵ *Sheet Metal Workers Intl Assn, Loc. 49 (Los Alamos Construction)*, 206 NLRB No 51, *infra*, p. 112.

normal productive operations. Since the union had neither resorted to any nonjudicial acts of self-help nor disrupted the progress of work, but had limited itself to explicitly following the contract procedures agreed to by the employer, the Board concluded that its seeking of a judicial remedy via the contractual forum was not proscribed.

A similar result was reached in two other cases⁶ where the union resorted to contractual procedures to resolve disputes concerning alleged violations of a fabrication clause specifying that certain work be performed at the worksite. The contract procedures provided for a joint arbitration board whose initiation of investigation of a complaint of violation of the clause required a 3-day suspension of the work in question, and culminated in an award of damages for lost work payable to the union's pension fund. In finding no statutorily proscribed pressures, the Board noted that the union took no "extra-contractual" action, and that even application of the contractually specified short-term suspension of work on the disputed item was designed to avoid confrontation while peaceful means for resolving the disputes were invoked pursuant to the jointly agreed-upon procedure.

6. Hot Cargo Agreements

Construction industry contract provisions providing for the union's withholding of services from employers delinquent in payments to the fringe benefit trust funds established by the master contract, and providing also that employers would not subcontract to delinquent employers or, if they did, they would be liable for the accrued delinquencies which could be enforced against them by court action or the withholding of services by the union, were held permissible by the Board in decisions issued during the report year.⁷ The Board found that the agreement subscribed to by all the contracting employers "was substantially in the interest and for the protection of the employees of those employers." In finding this permissible "union standards" objective, the Board noted that the trust funds encompassed important interests of all the employees of the employers, and that all the involved employers had agreed not to do business with each other if one of them were delinquent. It found the provisions were addressed solely to the labor relations of the employers vis-a-vis their own employees, and related directly and immediately to the interest and conditions of employment of the employees in each unit of the contracting employers.

⁶ *Southern California Pipe Trades Council 16 (AGC of California)*, 207 NLRB No. 58, and *Southern California Pipe Trades Council 16 (Kimstock Div., Tridar Industries)*, 207 NLRB No. 59, *infra*, pp. 110-111, 123-124

⁷ *Int'l. Union of Operating Engineers, Loc. 12 (Griffith Co.)*, 212 NLRB No. 4, *infra*, p. 125; *Joint Council of Teamsters 42 (Merle Riphagen)*, 212 NLRB No. 5, *infra*, p. 124.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1974, are as follows:

Personnel compensation.....	\$41,188,507
Personnel benefits.....	3,762,290
Travel and transportation of persons.....	2,548,528
Transportation of things.....	82,814
Rent, communications, and utilities.....	1,888,742
Printing and reproduction.....	688,613
Other services.....	4,103,893
Supplies and materials.....	484,628
Equipment	334,915
Insurance claims and indemnities.....	54,368
	<hr/>
Subtotal, obligations and expenditures ^a	55,137,298
Transferred to other accounts.....	40,743
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Total Agency	55,178,041

^a Includes reimbursable obligations distributed as follows .

Personnel compensation.....	\$11,210
Personnel benefits.....	353
Travel and transportation of persons.....	10
	<hr/>
Total obligations and expenditures.....	11,573

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 courts² 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 limitation³ 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. Government-Related Employers

Three cases decided during the report year⁶ presented questions concerning the Board's jurisdiction over government-related em-

¹ See secs. 9(c) and 10(a) of the Act and also definitions of "commerce" and "affecting commerce" set forth in sec 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*, at 29 NLRB Ann. Rep. 52-55 (1964), and 31 NLRB Ann. Rep. 36 (1966).

² See 25 NLRB Ann. Rep. 18 (1960)

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, 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa*, 124 NLRB 261 (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. 25 NLRB Ann. Rep. 19-20 (1960). But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), as to the treatment of local public utilities.

⁶ *Mexican American Unity Council*, 207 NLRB No. 128 (Chairman Miller and Members Fanning and Penello); *Current Construction Corp.*, 209 NLRB No. 86 (Chairman Miller

ployers. In *Mexican American Unity Council*, the Board found a non-profit community development corporation funded by grants from various Federal agencies and private organizations an employer within the meaning of section 2(2) of the Act. The Board found that the employer only incidentally promoted educational and charitable objectives and that its various programs, including job training and economic development programs, were principally related to promoting and advancing commercial activities.⁷ The Board concluded that the employer's operational expenditures were sufficient to meet the jurisdictional standards for nonretail and retail enterprises and that it would effectuate the purposes of the Act to assert jurisdiction.

In *Current Construction Corp.*, the Board majority decided not to assert jurisdiction over a joint venture engaged in tree maintenance under contracts let by the Parks Department of New York City, which was itself exempt from the Board's jurisdiction under section 2(2) of the Act. The evidence established that the department by contract and in practice retained a pervasive degree of control over the employer's operations with respect to performance of work, labor relations, and "virtually all of the basic working conditions customarily found in collective-bargaining agreements."⁸ The Board majority concluded that the degree of control exercised by the department precluded the employer from effectively bargaining with any union.⁹

In *Howard University*, the Board majority found it inappropriate to assert jurisdiction because Howard's unique relationship with the Federal Government, including continuous Government subsidization, control by various Government agencies and adoption of the Federal Government's wage scales and personnel policies, precluded effective use of the collective-bargaining process by the university.¹⁰

and Members Jenkins, Kennedy, and Penello, Member Fanning dissenting); *Howard University*, 211 NLRB No 11 (Chairman Miller and Members Jenkins and Kennedy; Members Fanning and Penello dissenting)

⁷ Although the employer provided various health and social service programs for Americans of Mexican descent, the employer also had several wholly owned subsidiaries, incorporated for profit under Texas law, which invested in real estate and had controlling interests in various commercial ventures and activities

⁸ Members Jenkins, Kennedy, and Penello noted also that the services performed by the employer were intimately connected with, and were the same type as that performed by, the department's exempt operation. Chairman Miller was not persuaded that the similarity of the services performed was truly relevant to the issue of whether the Board should assert jurisdiction, but concurred in all other respects with the majority decision

⁹ Member Fanning, dissenting, would have asserted jurisdiction because, whatever the degree of control over the employer's operations possessed by the department, the employer was still capable of bargaining effectively with a labor organization over its employees' working conditions

¹⁰ Members Fanning and Penello, dissenting, would have applied in this case the same jurisdictional standard as the Board applies to Government contractors, namely, whether the university has enough authority over labor relations to enable it to satisfy its bargaining obligations under the Act. They concluded that there had been no showing that the university had so little discretion over the conduct of its labor relations as to negate the benefits of collective bargaining. They also noted that the university had engaged in

(Continued)

B. Professional Groups

In *Bodle, Fogel, Julber, Reinhardt & Rothschild*,¹¹ the Board majority declined to assert jurisdiction over law firms as a class. The Board majority found that the professionally legal, rather than commercial, nature of the work of law firms made minimal the degree of impact, if any, on interstate commerce of potential labor disputes between law firms and their employees. In addition, there were serious policy and administrative problems in establishing and administering a reasonable jurisdictional standard for law firms, as well as practical considerations involving access by employees in the law firm to confidential information concerning labor organizations other than the petitioner, which led the Board to decline to assert jurisdiction.¹²

In another case,¹³ the Board majority declined to assert jurisdiction over a Cleveland, Ohio, medical center consisting of 10 osteopaths who treated virtually all local patients. The center provided no overnight care and referred all patients in need of hospitalization to a hospital. Although the employer received a gross income of over \$700,000, most of which derived from Federal and state health care programs, the Board majority, relying on *Alameda Medical Group*,¹⁴ found that the employer's medical practice was essentially local in character and had too insubstantial an impact on commerce to warrant an assertion of jurisdiction over it.¹⁵

collective bargaining with several employee groups and that, because the Board assumes plenary jurisdiction over private sector labor relations in the District of Columbia where the university is located, the Board decision left the sought-after employees in "a permanent no-man's land"

¹¹ 206 NLRB No. 60 (Chairman Miller and Members Jenkins and Kennedy; Members Fanning and Penello dissenting).

¹² Members Fanning and Penello, dissenting, would have found that the business of law firms, which involves the sale of personal services, as well as the nature of the clients served thereby, the industries involved, and the amount of out-of-state travel by members of the law firm, established that the law firm involved in this case had more than a minimal impact on commerce. They were not persuaded that there were any practical considerations requiring rejection of jurisdiction. As lawyers may themselves organize under the protection of the Act, despite the confidential relationship between lawyer and client, Members Fanning and Penello did not see why clerical employees cannot appropriately exercise the same rights because of their relationship to the lawyers they serve. In addition, Members Fanning and Penello believed that the exemption of law firms as a class from jurisdiction under the Act could not be based, as it was, on the activities of a single medium-sized law firm. Finally, Members Fanning and Penello would have applied the indirect outflow standard for nonretail enterprises to assert jurisdiction over law firms in general and the employer in particular or, alternatively, they would have established a new dollar amount for law firms.

¹³ *Drs. A. O. Allenius & R. F. Leedy, Jr., d/b/a Cleveland Avenue Medical Center*, 209 NLRB No. 60 (Members Jenkins and Kennedy, Chairman Miller concurring separately, Members Fanning and Penello dissenting).

¹⁴ 195 NLRB 312 (1972).

¹⁵ Members Jenkins and Kennedy pointed out that the employer's medical center operation was substantially different from the operations of nursing homes, hospitals, or health care facilities over which the Board has established different jurisdictional standards. Chairman Miller concurred on the broader basis that the practice of medicine by individual

C. Private Educational Institutions

In one case decided during the report year,¹⁶ the Board majority, adopting the decision of an administrative law judge, declined to assert jurisdiction over the United Hebrew Schools of Detroit, Michigan, a nonprofit organization providing Jewish and Hebraic educational instruction at the nursery school, elementary school, high school, and college levels. Although the United Hebrew Schools had a gross annual revenue in excess of \$1 million and made purchases from out-of-state firms of \$50,000, the administrative law judge concluded that the employer, which was primarily engaged in after-school religious education, did not have the same impact on interstate commerce, and, therefore, was not subject to the same jurisdictional standard, as nonprofit educational institutions.¹⁷ He held that the General Counsel failed to introduce any evidence as to the impact on commerce of children's after-school religious education generally and thus there was no basis in the record to determine whether it would effectuate the policies or purposes of the Act for the Board to assert jurisdiction over this class of employer and, if so, what standard would be appropriate.¹⁸

Thereafter, in another case,¹⁹ the Board decided that it would not effectuate the purposes of the Act to assert jurisdiction over the Board of Jewish Education of Greater Washington, D.C. The Board of Jewish Education, a nonprofit religiously oriented institution with a total annual budget of approximately \$300,000 derived from contributions and modest tuition charges, trained teachers and provided Jewish religious training to high school students in various locations in the Greater Washington area. The faculty consisted of individuals who were otherwise employed. The Board concluded that it would not effectuate the policy of the Act to assert jurisdiction over institu-

physicians primarily with local patients is local in character and is not a commercial enterprise over which the Board ought to assert jurisdiction absent a clear congressional intent. Members Fanning and Penello, dissenting, would not have treated the employer differently than other institutions in the health care field, such as proprietary hospitals, nonproprietary and nonprofit nursing homes, and home-health care agencies. In their opinion, the employer's operations have a substantial effect on commerce.

¹⁶ *Assn. of Hebrew Teachers of Metropolitan Detroit, a/w American Fed. of Hebrew Teachers & American Fed. of Teachers (United Hebrew Schools of Metropolitan Detroit)*, 210 NLRB No. 132 (Chairman Miller and Members Jenkins and Penello; Member Fanning dissenting).

¹⁷ See *Cornell University*, 183 NLRB 329 (1970); *Shattuck School*, 189 NLRB 886 (1971); National Labor Relations Board Rules and Regulations, Series 8, as amended, sec. 103.1, "Colleges and universities."

¹⁸ Member Fanning, dissenting, would have applied the \$1 million gross revenue jurisdictional standard reestablished for employers operating educational facilities and would have found that the United Hebrew Schools satisfied that standard inasmuch as it operated the types of schools over which the Board has asserted its jurisdiction.

¹⁹ *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB No. 150 (Chairman Miller and Members Jenkins and Penello).

tions, as here, primarily religious and noncommercial in character and purpose, whose educational endeavors were limited essentially to furthering and nurturing their religious beliefs.

D. Special Educational Institutions

The Board decided three cases²⁰ involving special educational institutions. In *Epi-Hab Evansville*, the Board, relying on *Sheltered Workshops of San Diego*,²¹ decided that it would not effectuate the purposes of the Act to assert jurisdiction over a nonprofitable charitable institution which provided job training, gainful employment, industrial placement, and other aid to epileptic persons. Epileptics were referred to Epi-Hab from various agencies, including state vocational rehabilitation agencies, which subsidized Epi-Hab's training program. Individuals working for Epi-Hab were subject to layoff, discipline, and discharge for reasons other than their medical condition and they received paid vacations and at least minimum wages which were not reduced when they were prevented from working by an epileptic seizure. Companies which provided work to Epi-Hab, such as hand assembly work, also supplied the necessary raw materials. In declining to assert jurisdiction over Epi-Hab, the Board concluded that Epi-Hab's commercial activities were merely ancillary to its rehabilitative objective so that a labor dispute would have only minimal impact on commerce.

In *Ming Quong Children's Center*, the Board majority declined to assert jurisdiction over a nonprofit corporation whose purpose was to help troubled children resolve their emotional problems. In so doing, the Board majority overruled the Board's decisions in *Children's Village*,²² and *Jewish Orphans Home*²³ and reasserted its congressionally approved practice of declining to assert jurisdiction over "religious, educational, and eleemosynary employers" unless there is a showing, not present in *Ming Quong*, that the particular type or class of institution has, unlike most charitable institutions, a massive impact on interstate commerce. The Board majority concluded that the employ-

²⁰ *Epi-Hab Evansville*, 205 NLRB No. 114 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello), *Ming Quong Children's Center*, 210 NLRB No. 125 (Chairman Miller and Member Penello; Member Kennedy concurring in the result; Member Fanning dissenting); *West Oakland Home d/b/a Lincoln Child Center*, 211 NLRB No. 118 (Chairman Miller and Member Penello; Member Fanning dissenting).

²¹ 126 NLRB 961 (1960).

²² 186 NLRB 953 (1970).

²³ *Jewish Orphans Home of Southern California a/k/a Vista Del Mar Child Care Service*, 191 NLRB 32 (1971).

er's activities were noncommercial in nature and intimately connected with the charitable purposes of the institution.²⁴

Subsequently, in another case,²⁵ the Board majority,²⁶ relying on *Ming Quong, supra*, declined to assert jurisdiction over a nonprofit corporation which provided residential treatment, day treatment, and group home treatment for emotionally disturbed children in the Oakland, California, area. The employers, like Ming Quong, had no medical facilities, employed no physicians or teachers, made most of its significant purchases locally, and derived most of its revenue from various Federal and state agencies, although a portion thereof derived from private fees.

E. Other

In a case involving the District of Columbia Chapter of The American Red Cross Service,²⁷ the Board asserted jurisdiction over its blood supply operation, which service, though necessary to the 63 participating hospitals in the District of Columbia, Virginia, Maryland, and portions of West Virginia, is performed off the hospitals' premises and performed for nonexempt as well as exempt hospitals. The employer purchased its own equipment, and hired, scheduled, and supervised its 100 employees, approximately 50 of which were registered nurses, all of whom performed their work in the District of Columbia blood center and in various field centers. The Board found that the employer's operations, which grossed more than \$3 million annually, had a sufficient impact on commerce to warrant the Board asserting jurisdiction. The Board distinguished its decision in *Inter-County Blood Banks*,²⁸ where the Board declined to assert jurisdiction over an employer which maintained blood donor centers located directly inside the various hospitals to which it supplied blood, almost all of which were nonprofit hospitals exempt under the provisions of section 2(2), and the employer's operations were therefore intimately related to the hospitals' exempt operations.

²⁴ Member Fanning, dissenting, was of the opinion that the employer's operations, which provided highly professional, intensive, extended care, mental health treatment on a fee basis were not eleemosynary in character and corresponded in broad purpose to those of hospitals and nursing homes. Member Fanning would have asserted jurisdiction over the employer on the basis of the jurisdictional standard applied to nursing homes.

²⁵ *West Oakland Home d/b/a Lincoln Child Center, supra*.

²⁶ Member Fanning dissenting for the reasons stated in his dissenting opinion in *Ming Quong, supra*.

²⁷ *American Natl. Red Cross, District of Columbia Chapter*, 211 NLRB No. 77 (Members Fanning, Jenkins, and Penello).

²⁸ 165 NLRB 252 (1967).

III

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.

The Board has long held that, where an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, the Board will defer to the arbitration award if 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.² Before the *Collyer* decision,³ the Board had deferred in a number of cases⁴ where arbitration procedures were available but had not been utilized, but had declined to do so in other such cases.⁵ In the *Collyer* decision,⁶ the

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 *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).

³ *Collyer Insulated Wire*, 192 NLRB 837 (1971) See 36 NLRB Ann. Rep. 33-37 (1972).

⁴ E.g., *Jos. Schlitz Brewing Co.*, 175 NLRB 141 (1969) The case was dismissed, without retaining jurisdiction pending the outcome of arbitration, by a panel of three members, Members Brown and Zagoria did so because they would defer to arbitration; Member Jenkins would not defer but dismissed on the merits 34 NLRB Ann. Rep. 35-36 (1969); *Flintkote Co.*, 149 NLRB 1561 (1964) 30 NLRB Ann. Rep. 43 (1965) *Montgomery Ward & Co.*, 137 NLRB 418, 423 (1962); *Consolidated Aircraft Corp.*, 47 NLRB 694, 705-707 (1943).

⁵ E.g., cases discussed in 34 NLRB Ann. Rep. 34, 36 (1969); 32 NLRB Ann. Rep. 41 (1967), 30 NLRB Ann. Rep. 43 (1965)

⁶ Members Fanning and Jenkins dissented in separate opinions to the policy announced therein. Both have continued to adhere to the views expressed in their respective dissents and have dissented in many of the cases issued during the report year in which the *Collyer* doctrine has been applied. A recurrent theme of these dissents, as noted more particularly in the discussion of the various cases hereafter, is that the *Collyer* doctrine has been expanded in subsequent cases to the point where the Board has abdicated its statutory responsibilities and denied its processes to employees, labor organizations, and employers

Board established standards for deferring to contract grievance-arbitration procedures before arbitration has been had. During the report year, a number of cases have been decided which involve the application of these standards.

A. Subject Matter Appropriate for Deferral

1. Unilateral Changes in Conditions of Employment

The *Collyer* case itself involved an alleged unilateral change in conditions of employment in violation of section 8(a)(5) and (1) of the Act. During the report year, the deferral policy announced in that decision was applied in two cases involving alleged unilateral changes in conditions of employment in violation of the Act.⁷ In deciding whether or not to defer, the Board majority considered the language of the parties' collective-bargaining agreement, their contentions concerning events surrounding the execution of the contract, and their past practices.

In *Columbus & Southern Ohio Electric*, the Board majority deferred where the complaint alleged that the employer had violated section 8(a)(5) and (1) by unilaterally transferring unit work. For some years, the union had represented employees under a single collective-bargaining agreement which preserved the separate identity of two historically distinct units reflecting the organization of the employer along divisional lines. The current collective-bargaining agreement between the parties contained separate provisions applicable to each of the respective units, as well as a management rights clause and grievance-arbitration procedures. In concluding that deferral was appropriate, the Board adopted the administrative law judge's findings that the dispute between the parties arose out of claimed contractual rights under the separate divisional provisions and the management rights clause of the contract, that the grievance-arbitration provisions were specifically applicable to the issues involved, and that, therefore, it was reasonable to anticipate that interpretation of the contract would resolve the alleged unfair labor practices. Members Fanning and Jenkins dissented as they found no "discernible" basis in the contract for the employer's claimed right to unilaterally transfer unit work and deemed the employer's action a flagrant repudiation of the recently executed contract in patent violation of section 8(a)(5). The dissent further argued that the only issue remaining for determination by an arbitrator was the remedy for the

⁷ *Columbus & Southern Ohio Electric Co.*, 205 NLRB No. 33 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting), *Granite City Steel Co.*, subsidiary of *Natl. Steel Corp.*, 211 NLRB No. 135 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting).

violation and that deferral to the arbitral forum could not result in the fashioning of an effective remedy. In *Granite City Steel*, the Board adopted the decision of the administrative law judge and deferred the complaint involving an alleged violation of section 8(a)(5) and (1) resulting from the employer's unilateral discontinuance of its past practices of granting "14-hour call out pay," overtime pay, and meal tickets in certain circumstances not specifically required by its contract with the union. With respect to the "call out" pay, the parties, pursuant to the grievance-arbitration provisions of the contract, had submitted the issue to an arbitrator who had ruled that the employer's past payments of such benefits lacked contractual recognition and, therefore, did not obligate the employer to continue to make such payments. The administrative law judge concluded that the proceedings before the arbitrator were consistent with the Board's standards for deferral under *Spielberg*. With regard to the issues raised by the remaining alleged unfair labor practices, the administrative law judge noted that they were subjects which were presently being considered in the grievance process established under the contract and found that deferral to that procedure was fully warranted under *Collyer*. Members Fanning and Jenkins dissented, contending that the longstanding practices of the employer controlled the meaning of the contract and that the unilateral change of such practices raised an issue which the arbitrator was not competent to resolve.

2. Union Fines of Employer Representatives

During the previous report year, the Board, in *Houston Chronicle*,⁸ extended the principles enunciated in *Collyer* to cases involving alleged violations of section 8(b)(1)(B), which prohibits a labor organization or its agents from restraining or coercing an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances. During this report year, the Board continued to apply the *Collyer* doctrine, as refined in *Houston Chronicle*, to this section of the Act in the following related cases.

In *Washington Post*,⁹ the Board majority reversed the administrative law judge's finding that the union had violated section 8(b)(1)(B) by threatening to bring union charges or take other reprisals against three of the employer's foremen, all of whom were members of the union, because they performed acts within the scope of their supervisory authority. In so doing, the Board majority noted the

⁸ *Houston Mailers Union 86, a/w Intl. Mailers Union (Houston Chronicle Publishing Co.)*, 199 NLRB No 69 (1972). See 38 NLRB Ann Rep 38 (1973).

⁹ *Columbia Typographical Union 101, Intl Typographical Union of North America (Washington Post Co.)*, 207 NLRB No. 123 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting).

existence of provisions in the parties' collective-bargaining agreement which set forth the extent of the authority of a foreman and which prohibited the fining, disciplining, or expulsion of a foreman by the union "for any act in the performances of his duties as foreman." That agreement also contained a grievance procedure which culminated in binding arbitration covering "any controversies involving interpretation or application of the agreement. . . ." Finding the legal principles of *Houston Chronicle* fully applicable to the situation in this case, the Board majority concluded that the dispute between the parties primarily involved the extent of a foreman's authority and was capable of resolution through contract interpretation and that, in view of the union's present willingness to settle the dispute by voluntary means, deferral was appropriate. In their dissent, Members Fanning and Jenkins considered the underlying dispute as one of statutory rather than contractual dimensions, concluding that no issue of contract interpretation was presented as the collective-bargaining agreement clearly authorized the actions of the foremen. They further charged that deferral to arbitration would be futile where, as here, the union had previously disputed the authority of any arbitrator to define the scope of supervisory powers and had failed to comply with an arbitrator's award involving similar issues in the past.

In a second *Washington Post* case,¹⁰ the Board majority deferred an alleged violation of section 8(b)(1)(B) resulting from the union's fining of a journeyman designated as a supervisor by the employer, for his failure to attend a meeting during which the union investigated the discharge of a member whom the journeyman-supervisor had recommended for discharge. The collective-bargaining agreement was the same as that in the previous *Washington Post* case, *supra*, but the underlying issue involved a different provision of that contract relating solely to the authority of journeyman-supervisors. Unlike the contractual provisions with respect to foremen, the journeyman-supervisor clause was silent as to whether the union was prohibited from disciplining such supervisors. The Board majority concluded that an issue involving contract interpretation had been raised; namely, whether the limitations on the union's authority to discipline foremen were applicable to actions taken against journeyman-supervisors as well. Applying the principles of *Collyer* and *Houston Chronicle*, the Board majority deemed that such contract interpretation functions could best be performed by the parties in the course of their grievance procedure, or, if necessary, by an arbitrator skilled in such

¹⁰ *Columbia Typographical Union 101, Intl Typographical Union of North America (Washington Post Co)*, 207 NLRB No. 124 (Chairman Miller and Member Kennedy, Member Fanning dissenting)

matters. Member Fanning, as in the first *Washington Post* case, dissented, arguing that the Board had deferred issues which it was fully capable of deciding and which did not in any manner relate to the terms and conditions of the collective-bargaining agreement, and which were not resolvable through the contractual grievance procedure.

In *Byron S. Adams Printing*,¹¹ the Board majority deferred the complaint alleging that the union had violated section 8(b) (1) (B) by fining and expelling from union membership the employer's foreman and by striking to force the employer to replace him with another union member. The controversy arose out of the actions of the foreman in causing the arrest of the union's chapel chairman and for tape-recording a conversation with him without his knowledge or consent. Following the foreman's expulsion from the union upon charges brought by the chapel chairman, the union instructed its members to disregard any orders given by the foreman. The foreman's attempt to direct the employees under him resulted in a 1-day strike by the union's members. That strike was settled when the employer agreed to an arrangement whereby the foreman's orders would be relayed to a company-designated acting foreman who was a union member, who, in turn, would pass on the orders to the employees. The collective-bargaining agreement between the parties contained clauses which provided that foremen were to be members of the union in good standing and which prohibited the fining, disciplining, or expulsion of foremen by the union for acts in the performance of their duties in that capacity. The agreement also contained broad grievance-arbitration provisions. In deferring the dispute, the Board majority considered that the matters involved in the dispute were dealt with in some particularity by the contract and determined that all elements of the controversy, including the strike and its aftermath, were capable of resolution through the parties' agreed-upon grievance-arbitration machinery. As in *Houston Chronicle*, the Board majority was of the view that the parties, consistent with their agreement, should commit themselves to that process in the first instance. Member Jenkins, relying upon the dissents in previous cases, charged that the majority once again had improperly deferred issues involving public rights which existed solely by virtue of the Act and independently of any contractual obligations.

In a third *Washington Post* case,¹² a foreman had been fined by the union for his failure to appear and testify before the union's executive

¹¹ *Columbia Typographical Union 101, Intl. Typographical Union of North America (Byron S. Adams Printing)*, 207 NLRB No. 125 (Chairman Miller and Member Kennedy; Member Jenkins dissenting).

¹² *Newspaper Web Pressmen's Union 6, Intl. Printing Pressmen & Assistants Union of North America (Washington Post Co.)*, 207 NLRB No. 126 (Chairman Miller and Member Kennedy; Member Jenkins dissenting).

committee concerning his discharge of a union member, allegedly for sleeping on the job. The Board majority deferred the complaint alleging that the union had violated section 8(b)(1)(B), finding that the *Collyer* principles, as further refined in *Houston Chronicle* and the prior *Washington Post* cases, fully applied to the instant case. In so doing, the Board majority again noted the existence of provisions in the parties' collective-bargaining agreement which specifically dealt with the authority of the union to impose disciplinary measures on foremen and concluded that the issue presented could be effectively resolved through the available contractual grievance and arbitration procedure. Member Jenkins dissented for the reasons set forth in the long line of dissents from the *Collyer* to the companion *Washington Post* cases.

B. Circumstances Appropriate for Deferral

The applicability of the deferral policy announced in *Collyer* is dependent to a considerable degree on the particular facts and circumstances of each case. The following cases decided during the report year serve to illustrate this point.

In *Seng*,¹³ an employer was alleged to have violated section 8(a)(1) and (3) by discriminatory application and enforcement of a no-solicitation and no-distribution rule by permitting solicitation for other than union activities; by unjustly accusing three employees of violating the rule and reprimanding them therefor; and by a discriminatory discharge of one employee for the same reason. The disputes arose while a collective-bargaining agreement was in effect. That agreement contained a management rights clause, which vested in the employer the right to discipline employees "for cause," and grievance and arbitration provisions. Prior to the expiration of the agreement, however, the union was decertified as the collective-bargaining representative of the employees pursuant to a Board-conducted election. The Board concluded that deferral was inappropriate in such a circumstance. The Board reasoned that where a union has been decertified the primary motivation for deferral, i.e., "facilitating and fostering an *existing* collective-bargaining relationship," is lacking, and further expressed its doubt that a decertified union would vigorously pursue the grievances of the employees or that the employees would have independent status to pursue their rights under the arbitral process if the union declined to represent them.

In *Western Electric*,¹⁴ the Board declined to defer where the complaint alleged, *inter alia*, that the local union violated section 8(b)(3)

¹³ *Seng Co.*, 205 NLRB No. 36 (Chairman Miller and Members Kennedy and Penello).

¹⁴ *Communications Workers of America & New York Local 1190, CWA (Western Electric Co.)*, 204 NLRB No. 94 (Chairman Miller and Members Kennedy and Penello)

by engaging in a strike for the purpose of forcing the employer to modify an existing collective-bargaining agreement without complying with the requirements of section 8(d), and violated section 8(b)(1)(A) by coercing its members to support the strike. Following a lawful economic strike the international union and the employer executed a collective-bargaining agreement covering a nationwide unit of the employer's employees. The local union, which had been designated by the international as the representative of a unit of the employees in New York City, continued on strike to achieve terms better than those contained in the collective-bargaining agreement. The Board was unwilling to defer for several reasons. First, it viewed the local union's conduct in seeking to modify the terms of the recently executed contract as a "wholesale repudiation" of the collective-bargaining principles. Secondly, the Board was reluctant to defer where the terms of the contract did not specify a procedure for the filing of grievances by the employer. Finally, the Board considered that there was an insufficient identity between the issues arising out of the dispute which would be before an arbitrator and those raised by the alleged unfair labor practices. Thus, the Board noted that, despite the fact that the collective-bargaining agreement contained a no-strike clause, the resolution by an arbitrator of the issue of whether the local union's conduct was in violation of that contractual provision would not lay to rest the statutory issues of whether the local union had complied with the notice requirements of section 8(d) and whether the purpose of the strike was to achieve a modification of the contract.

In two other cases during the report year,¹⁵ the Board concluded that deferral was appropriate despite the alleged existence of demonstrated antiunion hostility by the employer. In *United Aircraft*, the Board majority deferred a complaint alleging that the employer had violated section 8(a)(1) and (3) by harassing stewards in the performance of their union duties and had violated section 8(a)(5) by failing to give timely notice of layoffs and by refusing to supply information necessary to the processing of certain grievances. In addition to the presently alleged misconduct, the employer had been found to have engaged in unfair labor practices in several previous cases before the Board. In further articulation of the *Collyer* principles, the Board majority stated that the determination of whether it was reasonable to assume that resort to the grievance-arbitration procedures by the parties would prove effective must be made on the basis

¹⁵ *United Aircraft Corp (Pratt & Whitney & Hamilton Standard Div)*, 204 NLRB No 133 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting); *U.S. Postal Service*, 210 NLRB No. 95 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting).

of the totality of the evidence, including the nature of the past and presently alleged misconduct, the past history of the collective-bargaining relationship, and the success of previous use of the grievance-arbitration process by the parties. Balancing these factors in the instant case, the Board majority concluded that deferral was warranted. Thus, the Board majority considered that the present alleged misconduct, in view of number of plants and the relatively few supervisors involved, was of a minor and only occasional nature and that it did not establish a pattern of continuation of the prior misconduct. Furthermore, the Board majority specifically noted that grievances of two of the alleged 8(a)(3) discriminatees had been fairly and effectively resolved through the contractual procedures, thereby demonstrating that such procedures had proven successful in the past. With respect to the issues raised by the 8(a)(1) and (5) allegations, the Board viewed them as fundamental matters of contractual interpretation which could best be resolved through the grievance-arbitration provisions of the contract. The dissent argued that the majority had abandoned its own standards set forth in *Collyer* by deferring despite a demonstrated history of employer enmity toward employee rights, an unstable bargaining relationship marked by continuous litigation between the parties, and the questionable availability of arbitration under the terms of the collective-bargaining agreement.

In *U.S. Postal Service*, the employer was alleged to have violated section 8(a)(3) and (1) by reprimanding the union's steward on several occasions and ultimately suspending him for presenting and processing employee grievances. Each of the alleged unlawful incidents concerned the steward's immediate supervisor and the postmaster of the single facility involved. The collective-bargaining agreement between the parties contained a provision recognizing the right of stewards to present grievances on behalf of the employees and a provision which set forth the right of the employer to discipline employees "for just cause" and which directed that any disciplinary action taken by the employer was subject to grievance-arbitration procedures. The Board majority adopted the administrative law judge's decision in which he found deferral appropriate under *United Aircraft*. In so finding, the administrative law judge noted the absence of any prior unfair labor practices involving either the supervisor or the postmaster and that several hundred grievances had been filed and processed during the steward's tenure. He therefore concluded that the actions taken by the supervisor and the postmaster here were not necessarily indicative of a general hostility by the employer towards the union or its stewards, or of a reluctance by the employer to utilize the grievance-arbitration procedures under the contract. The

dissenting members were of the view that the record demonstrated the employer's determination to restrict access to the grievance-arbitration machinery by its employees through the harassment of the steward, and that it established the employer's rejection of that procedure.

C. Reassertion of Jurisdiction After Deferral to Arbitration

In cases in which the Board has deferred to contractual grievance-arbitration procedures issues which have not been submitted to arbitration, the Board has customarily retained jurisdiction to permit further consideration upon a showing that the dispute either has not been promptly resolved through the grievance process or has not been promptly submitted to arbitration. Where an issue presented in an unfair labor practice case has previously been decided in an arbitration proceeding, whether following prior Board deferral or as a matter before the Board for initial consideration, the Board will give conclusive effect to the arbitration award if the proceeding appears to have been fair and regular, all parties have agreed to be bound, and the decision of the arbitration panel was not clearly repugnant to the purposes and policies of the Act—the standards for deferral set forth in *Spielberg*.¹⁶ The following cases decided during the report year involve application of these standards.

In *Medical Manors*,¹⁷ the Board reasserted jurisdiction where it had previously deferred to arbitration an alleged violation of section 8(a) (5) resulting from the employer's payment of wage rates other than those called for in the parties' collective-bargaining agreement. The union's request for reconsideration was supported by documents showing that, since the Board's initial decision to defer, the employer had insisted that arbitration was inappropriate as the union's grievances needed further elucidation and had refused to name an arbitrator therefor. Furthermore, with respect to then pending grievances relating to the wage rates, the union had been compelled to seek a contempt citation against the employer for its failure to comply with a state court order directing it to submit these grievances to the next level of the grievance-arbitration procedure. The Board, noting that in its initial consideration of this case it had found that the grievances relating to wage rates were ripe for arbitration and had deferred in reliance upon the employer's assertion that it was prepared to proceed

¹⁶ *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

¹⁷ *Medical Manors d/b/a Community Convalescent Hospital & Community Convalescent East*, 206 NLRB No 124 (Chairman Miller and Members Kennedy and Penello) See 38 NLRB Ann. Rep. 37 (1973).

to arbitration, concluded that the employer's failure to comply with the grievance-arbitration procedures represented a repudiation of its bargaining obligation. In these circumstances, the Board found it necessary to reassert jurisdiction and to determine the case on its merits.

In *Natl. Radio*,¹⁸ the Board had previously deferred to grievance-arbitration an alleged violation of section 8(a)(5) involving the employer's unilateral imposition of a rule requiring union stewards to record and report their movements within the plant while processing grievances on compensated time and an alleged violation of section 8(a)(3) by the employer's suspension and subsequent discharge of a union steward for failing to comply with that rule. Following the Board's deferral, the parties submitted the disputes to an arbitrator who rendered a decision and award finding that the steward had been discharged for just cause within the meaning of the contract because he had continued to disobey the rule rather than availing himself of the grievance machinery of the contract. In so ruling, the arbitrator specifically noted that the union had raised no independent question of the validity of the reporting requirement rule. Thereafter, the union moved the Board to reassert jurisdiction, contending that the arbitrator had failed to pass on the issue raised by the 8(a)(5) allegation and that his award was therefore repugnant to the Act and not entitled to deferral under *Spielberg*. The Board majority rejected these contentions, finding that the arbitration proceeding had clearly encompassed and resolved the underlying issues presented in the unfair labor practice case. Additionally, the Board majority noted that the union had not in fact raised an issue concerning the promulgation of the rule before the arbitrator and that the union had at no time prior to the issuance of the arbitrator's award moved the Board to reconsider the case on the grounds that such an issue had not been settled through the grievance procedure or that it had not been submitted to arbitration. Member Fanning dissented, arguing that the arbitrator had not resolved the underlying unfair labor practice issue raised by the 8(a)(5) allegation and that the majority's deferral to his award was inconsistent with the standards for reconsideration which they had previously stated they would apply.

In *Tyee Construction*,¹⁹ the Board had previously deferred an alleged violation of section 8(a)(1) based on the employer's laying off of eight employees and refusing to rehire two of them who had engaged in a wildcat strike which had been condoned by the employer.

¹⁸ *Natl. Radio Co.*, 205 NLRB No. 112 (Chairman Miller and Members Kennedy and Penello; Member Fanning dissenting). See 38 NLRB Ann. Rep. 32 (1973).

¹⁹ *Tyee Construction Co.*, 211 NLRB No. 90 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting). See 38 NLRB Ann. Rep. 34 (1973).

After the Board's initial decision, the General Counsel and the charging parties, the two employees whom the employer had refused to rehire, filed motions to reopen the record to permit further hearing concerning the union's alleged unwillingness to represent the employees in the grievance process. Although these motions were granted by the Board, prior to the commencement of the reopened hearing, the parties entered into a settlement stipulation, subject to Board approval, which provided that the employer would reinstate and grant backpay to the two charging parties and would notify the remaining six employees of their right to file grievances under the collective-bargaining agreement. The Board majority approved the settlement stipulation, dismissing the complaint with respect to the charging parties, subject to prompt compliance with the settlement provisions by the employer, and deferred the complaint with respect to the remaining six employees, retaining jurisdiction for further consideration, if necessary. Members Fanning and Jenkins, dissenting, viewed the complaint as having raised issues involving public rather than private rights and criticized the majority for having approved a settlement which lacked the effectiveness of a Board remedy which would have provided for the posting of notices, a cease-and-desist order, and court enforcement. Additionally, the dissent considered the stipulation to constitute only a partial settlement, leaving the remaining six employees with the "same empty right" which the Board had granted them more than 1 year previously. Finally, the dissent found a "deep inconsistency" in the majority's deferring to the grievance procedures when, in granting the motions to reopen the record, it had apparently found evidence sufficient to cast doubt on the ability of the union to represent the employees in that process.

Two cases during the report year illustrate the Board's application of the *Spielberg* standards in situations where arbitration proceedings have been concluded prior to the issuance of the complaint. In *Adolph Coors*,²⁰ the Board panel deferred to prior proceedings before an arbitrator and various state tribunals and dismissed a complaint alleging that the employer had violated section 8(a) (1) by discharging an employee for filing grievances and for filing a charge with the state civil rights commission. The dispute arose out of the employer's suspension of the employee, allegedly for spending excessive time away from his work station, and his subsequent discharge for failing to comply with the terms of his suspension. Following these events, the employee filed grievances under the contract and a charge with the state civil rights commission, complaining that this discharge had

²⁰ *Adolph Coors Co.*, 208 NLRB No. 94 (Chairman Miller and Members Kennedy and Penello).

been racially motivated. The grievances were submitted to an arbitrator who ruled that the discharge was properly imposed. With respect to the charge filed with the state commission, although that body ruled that the discharge was at least in part racially motivated, subsequent review of that decision by various state courts resulted in the dismissal of the charge. The Board panel concluded that these proceedings were entitled to be given conclusive effect inasmuch as the discharge had already been the subject of extensive litigation in which the arbitrator had considered, but rejected, the possibility that the discharge was based on pretextual reasons, and the state tribunals had found the discharge fully warranted, and that these proceedings appeared to have been fair and regular and had reached results which were not clearly repugnant to the Act.

In *Valley Ford Sales*,²¹ involving an employer's alleged violation of section 8(a)(5) by unilaterally rescinding its wage incentive plan, the Board deferred to a prior arbitration award in which the arbitrator had ruled that the union had waived its right to object to the employer's action on the basis of his interpretation of the management rights clause of the contract, the union's failure either to challenge previous changes in the plan by the employer or to seek negotiations over the plan in the past, and the employer's institution of other incentive plans in the past without objection from the union. The contract made no specific mention of the wage incentive plan. The General Counsel contended that the arbitrator's award was clearly repugnant to the Act and not entitled to deferral under *Spielberg* because, *inter alia*, it constituted a departure from Board precedent holding that a union's waiver of its bargaining rights must be clear and unequivocal. The Board majority, continuing to adhere to its view of the Board's precedent and its decision in *Radioear*,²² refused to apply any rigid rule with respect to a union's waiver of such rights and reiterated its view that disputes raising that issue must be determined upon a consideration of various factors, including the precise language and completeness of the contract and the past bargaining history between the parties. Emphasizing that the arbitrator had specifically considered these factors, the Board majority concluded that his decision was not clearly repugnant to the Act and that it was consistent with the *Spielberg* standards in all other respects as well. Members Fanning and Jenkins accused the majority of discarding a long line of Board and court precedent holding that a waiver of statutory rights must be clear

²¹ *Valley Ford Sales, d/b/a Friendly Ford*, 211 NLRB No. 129 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting).

²² *Radioear Corp.*, 199 NLRB No. 137 (1972) See 38 NLRB Ann. Rep 31 (1973).

and unmistakable for its own notion that such rights may be found to have been waived on the basis of "ambiguous" evidence such as that relied on by the arbitrator. In the view of the dissent, the majority had severely undercut one of the most basic statutory protections previously afforded employees, that of requiring an employer to notify and consult with the representative of his employees prior to effectuating unilateral changes.

IV

Board Procedure

A. Issues Concerning Disqualification of Unions

In *Bekins Moving & Storage Co. of Florida*,¹ the Board had to pass upon the question of the stage at which it would consider issues concerning the disqualification of a union on the ground of alleged invidious discrimination.

Chairman Miller and Members Jenkins and Kennedy held that such issues as alleged discrimination by a labor organization will be handled under the same procedure as objections to the conduct of an election, i.e., by filing a properly substantiated postelection objection to the issuance of a certification with the Regional Director within 5 days of the issuance of the tally of ballots for any election.

In the view of Chairman Miller and Member Jenkins, the Board cannot constitutionally or statutorily certify a labor organization which is shown to be engaging in discrimination on the basis of "race, alienage, national origin" or "which is shown to have a propensity to fail fairly to represent employees," and such issues should be considered by the Board prior to the issuance of a certification.

Member Kennedy, concurring, agreed that the Board is constitutionally foreclosed from issuing a certification to a union which discriminates on the basis of "race, alienage, or national origin" and that such issues should be considered in a postelection proceeding prior to certification if that union wins the election and objections are timely filed. However, unlike Chairman Miller and Member Jenkins, he would not undertake a precertification inquiry with respect to an alleged failure by a union to fairly represent employees because, in his opinion, the duty of fair representation is statutory and does not arise until a union has been certified. In Member Kennedy's view, allegations regarding a union's failure to honor its duty of fair representation must, of necessity, relate to actions following certifications. Until a labor organization has become the employees' exclusive bargaining representa-

¹ 211 NLRB No 7 (Chairman Miller and Member Jenkins, Member Kennedy concurring; Members Fanning and Penello dissenting).

tive, it is not subject to a duty to represent them fairly. Accordingly, Member Kennedy would defer any examination of an alleged failure to fairly represent until after a certification has issued.

Members Fanning and Penello dissented. In their opinion, the withholding of a certification because of alleged discrimination by a labor organization on the basis of "race, sex, or national origin" is neither required by the Constitution nor permitted by the provisions of the Act. In their view, section 9(c) (1) requires the Board to issue a certification to a labor organization that wins an election. Thereafter, the certification itself imposes the obligation upon the union fairly to represent all employees in the unit without invidious discrimination and does so without denying employees their right to choose their collective-bargaining representative. In the opinion of Members Fanning and Penello, if a labor organization maintains a discriminatory policy or does not fairly represent all employees in the bargaining unit, the unfair labor practice provisions of the Act provide suitable machinery for employees to seek elimination of such unlawful representational or membership policies and for employers to be released from the obligation of honoring invalidly issued certifications. Further, certification may be the only basis upon which other Federal statutes, aimed at discriminatory practices, can be applied to some labor organizations. They concluded that there was simply no justification for devising a precertification procedure by which "employers opposed to dealing with their employees collectively can delay and forestall the establishment of a collective-bargaining relationship."

B. Limitation of Section 10(b)

Section 10(b) of the Act precludes the issuance of a complaint based on conduct occurring more than 6 months prior to the filing of the charge with the Board and the service of a copy thereof on the person against whom the charge is made.

In *Combined Container Industries*,² herein called CCI, the supervisory personnel of CCI solicited and obtained union authorization cards from a majority of the employees and CCI recognized the union outside the 6-month 10(b) period. Counsel for the General Counsel argued that the union violated section 8(b)(1)(A) and (2) of the Act by executing a union-shop agreement during the 10(b) period at a time it did not represent an uncoerced majority of CCI's employees.

² *Paper Products & Misc Chauffeurs, Warehousemen & Helpers, Loc 27, IBT (Combined Container Industries)*, 209 NLRB No 140 (Members Fanning, Jenkins and Penello; Chairman Miller dissenting).

The Board majority found no violation and dismissed the complaint. In the opinion of the majority, there was merit in CCI's contention that the solicitation and recognition activity occurred outside the 10(b) period and therefore could not have been a basis for invalidating the contract which was executed within the 10(b) period. The majority pointed out that, under the Supreme Court's decision in *Bryan Manufacturing*,³ conduct occurring outside the 10(b) period may be used to "shed light" on events occurring within the 10(b) period only where occurrences within the 6-month limitation period in and of themselves may constitute, as a substantive matter, unfair labor practices. But, the majority observed, the sole occurrence in this case within the 10(b) period was the execution of the contract, which was innocent on its face and could be found to be an unfair labor practice only through reliance upon an earlier time-barred unfair labor practice; and this is precisely what *Bryan* forbids the Board to do, i.e., find that an unfair labor practice was committed outside the 10(b) period to establish that another unfair labor practice was committed within the 10(b) period.

The majority reasoned that in the instant case the alleged coercion of the employees by supervisors to sign authorization cards would have been an unfair labor practice if committed within the 10(b) period. And, unless this unfair labor practice was established, which it could not have been, having occurred outside the 10(b) period, the unfair labor practice of executing the contract could not be established.⁴

³ *Loc. Lodge 1424, Intl. Assn. of Machinists [Bryan Mfg. Co.] v. N.L.R.B.*, 362 U.S. 411 (1960)

⁴ Chairman Miller, dissenting, was of the opinion that there was no proof that the union represented an uncoerced majority of the employees at the time the contract was executed and that it was therefore necessary to evaluate the signature cards by examining the circumstances under which they were signed. Since, in his opinion, such an evaluation established that the union did not represent an uncoerced majority of employees at the time the contract was executed, which was within the limitations period, the execution of the contract was an unfair labor practice under the Supreme Court's reasoning in *Bryan Manufacturing Co*, *supra* at 414.

Representation Proceedings

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 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 bargaining³ and formally to certify a collective-bargaining representative on 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 with 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, by 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 re-examined 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 result thereof, provided the record of an appropriate hearing be-

¹ Secs. 8(a) (5) and 9(a).

² Sec. 9(c) (1).

³ Sec. 9(b).

fore the Board ⁴ shows that a question of representation exists. However, petitions filed in the circumstances described in the first proviso to section 8(b)(7)(C) are specifically exempted from these requirements,⁵ and the parties may waive a hearing for the purpose of a consent election.⁶

The investigation of a petition for a representation election must establish facts supplying a proper basis for the finding of the existence of a question of representation. The ultimate finding depends further on the presence or absence of certain factors, some of which are discussed in the following sections.

1. Special Circumstances Precluding Existence of Question of Representation

In a case presented in this fiscal year the full Board decided that conflicting interests in an extraordinary situation compelled dismissal of a petition which in normal circumstances might have warranted an election.⁷ Citing the rationale of *Aerojet-General Corp.*,⁸ the Board found that in the particular circumstances of the case before it—the incomplete reorganization of the employer, United Mine Workers of America, and its districts resulting from proceedings begun by the Secretary of Labor in 1964 and actions initiated by private parties in 1971 and 1972, pursuant to the Labor-Management Reporting and Disclosure Act—an election at that time would have been at cross-purposes with, and possibly have impeded, the Government-initiated procedures set in motion by those suits, and might also have interfered with possible voluntary resolutions of existing issues concerning some of the districts. Thus, the Board concluded, as both the employer's setup and the employee complement were uncertain, neither a conclusive election nor meaningful negotiations could be anticipated.

2. Employee Status

A bargaining unit may include only individuals who are "employees" within the meaning of section 2(3) of the Act. The major

⁴ Sec. 9(c)(1) provides that a hearing shall be conducted if the Board "has reasonable cause to believe that a question of representation . . . exists . . ."

⁵ That section prohibits a labor organization, which is not currently certified as the collective-bargaining representative, from engaging in recognition picketing without filing a representation petition within a reasonable period of time not exceeding 30 days. However, when such a petition has been filed the proviso directs the Board to hold an expedited election without regard to sec 9(c)(1). See also NLRB Rules and Regulations and Statements of Procedure, Series 8, as amended, sec. 101.23(b)

⁶ Sec. 9(c)(4); see also NLRB Rules and Regulations and Statements of Procedure, Series 8, as amended, sec. 101.19.

⁷ *United Mine Workers of America*, 205 NLRB No 87.

⁸ 144 NLRB 368 (1963); 29 NLRB Ann. Rep 44 (1964)

categories expressly excluded from the term "employee" are agricultural laborers, independent contractors, and supervisors. In addition, the statutory definition excludes domestic servants, or anyone employed by his parent or spouse, or persons employed by a person who is not an employer within the definition of section 2(2).

These statutory exclusions have continued to require the Board to determine whether the employment functions or relations of particular employees preclude their inclusion in a proposed bargaining unit.

During this fiscal year a Board panel majority again applied the right-of-control test in resolving the recurring issue of employee versus independent contractor status of owner-drivers and nonowner-drivers hired by and supplied to the employer by the lessors of the equipment.⁹ Under this test, an employer-employee relationship exists when the employer reserves the right to control not only the ends to be achieved, but also the means to be used in achieving such ends. However, where control is reserved only as to the result sought, an independent contractor relationship exists.¹⁰ Resolution of this issue depends on all the facts of each case, and no single factor is determinative. Applying the test to the case before it, the majority concluded that the control exercised by the employer, whether by virtue of Interstate Commerce Commission or Department of Transportation regulations or the terms of the lease agreements, related solely to results to be achieved under the leases, and that an employer-employee relationship had not been established because: (1) the owners of the leased equipment were free to make their equipment available or not each day, as they chose; (2) there was no attempt to exercise any supervision over the daily conduct of drivers by any written or oral rules of conduct; (3) except as to the Federally required safety inspections, there was no day-to-day set of requirements imposed by the employer; (4) there was no evidence of discipline of, or any attempts to discipline, either owners or drivers by the employer; (5) except for the cost of periodic safety inspections, the owners paid all the costs of operation and maintenance of their equipment; and (6) the owners were free to trip-lease their equipment if they believed it to be economical. The Board panel majority found these factors determinative and, therefore, concluded that the relationship was one of independent contractors.¹¹

⁹ *Portage Transfer Co*, 204 NLRB No. 117 (Chairman Miller and Member Penello; Member Fanning dissenting)

¹⁰ See 36 NLRB Ann. Rep. 41 (1971)

¹¹ In dissenting Member Fanning's view, the application of the right-of-control test to the facts of this case establishes the employee status of these drivers. Citing the impact of an equipment lease made pursuant to ICC regulations, the right of Portage to terminate the lease at any time for improper handling of equipment, and the unilateral setting by Portage of lessor compensation, Member Fanning disputed the import of the factors relied on by the majority.

The Board faced this issue in another case involving a somewhat similar factual situation.¹² Applying the right-of-control test in that case, a Board majority, citing *Conley Motor Express*¹³ and *Fleet Transport Co.*,¹⁴ concluded that the single owner-operators were independent contractors and that the nonowner-drivers were employees of the independent contractors rather than the employer. Finding that the controls exercised by the employer related *solely* to results to be achieved under the leases, the majority relied on the following factors: (1) the owner-operators exercised a very substantial degree of freedom in scheduling the use of their equipment; (2) the owner-operators were free to refuse loads without penalty and to select their own routes; (3) the owner-operators decided whether to hire or fire a driver, what work rules to impose on their drivers, and what rates of pay and fringe benefits the drivers would receive; (4) the owner-operators paid virtually all the costs of operation and maintenance of the equipment; (5) the owner-operators were subject to only minimal day-to-day supervision or control by the employer; (6) lessors and their drivers did not participate in employer benefits; and (7) the entrepreneurial nature of the owner-operators' *modus operandi* was reflected by the fact that they were individuals with substantial capital investments in equipment, which they purchased without any assistance from the employer and which they then utilized to produce income for themselves.¹⁵

Similarly, in *Kreitz Motor Express*¹⁶ and *Daily Express*,¹⁷ each having facts almost identical to those in *George Transfer & Rigging Co.*, *supra*, the respective Board panel majority concluded that the owner-operators in each of those two cases were independent contractors and that the nonowner-drivers were employees of the independent

¹² *George Transfer & Rigging Co.*, 208 NLRB No. 25 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting)

¹³ 197 NLRB 624 (1972)

¹⁴ 196 NLRB 436 (1972)

¹⁵ Members Fanning and Jenkins dissented. In their view, by rigorously enforcing stringent rules determining who was to drive vehicles for the employer, how those vehicles were to be driven and maintained, and specific procedures the driver had to follow in the performance of his driving function, the employer exercised detailed control and supervision over the drivers hauling freight in its name. Applying the right-of-control test to their relationship, they concluded that the employer had reserved to itself not only the right to control the ends to be achieved, but the means whereby the drivers performed their driving duties. In their opinion, it was irrelevant that some of the rules enforced by the employer emanated from the Interstate Commerce Commission, the Department of Transportation, or other Government agencies. For, they viewed the record as showing that the drivers controlled by the employer were not under the aegis of those agencies, but under the complete and operative authority of the employer, subject to losing their employment at the will of the employer. Therefore, they would have found that all drivers of tractors leased to the employer and under its control were employees within the meaning of the Act.

¹⁶ 210 NLRB No. 11 (Members Kennedy and Penello, Member Jenkins dissenting).

¹⁷ 211 NLRB No. 19 (Members Kennedy and Penello, Member Fanning dissenting for the reasons set forth in the dissent to *George Transfer & Rigging Co.*, *supra*).

contractors rather than of the employers. Finding that the controls exercised by Kreitz related solely to the results to be achieved under the leases, the majority noted that the owner-operators: (1) had the right to trip-lease; (2) exercised a substantial degree of freedom in scheduling the use of their equipment, determining what days and hours they would work, when and where to purchase fuel and have repairs made, and where to park their trailers when not in use; (3) could refuse loads without penalty and, except for passing through gateways, were free to choose their own routes; (4) decided whether to hire or fire a driver, what work rules to impose on their drivers, and what rates of pay and benefits the drivers would receive; (5) paid virtually all costs of operation and maintenance; (6) were subject to only minimal day-to-day supervision by Kreitz; (7) did not participate in benefits provided to other employees; and (8) were free to purchase whatever type of equipment they desired, Kreitz not loaning money to purchase this equipment.¹⁸

Likewise, finding that Daily controlled only the end to be achieved and that the owners were subject to typical entrepreneurial risks and profits, the majority observed that the owner-operators: (1) were free to schedule the use of their equipment; (2) retained complete control over any drivers or other employees they had and were solely responsible for their pay; (3) were responsible for the complete transportation of any load they accepted; (4) were not subject to any rules imposed by Daily in their day-to-day operations; (5) received no fringe benefits from Daily; and (6) had a substantial capital investment in equipment which was purchased without any assistance from Daily.

This issue was again presented to the Board in a case in which the employer sought to clarify the unit by specifically excluding, *inter alia*, all of the drivers on the ground that such drivers were independent contractors.¹⁹ In its application of the right-of-control test, the Board panel noted the overall effect of the degree of control over equipment and personnel required by state and Federal regulation of motor carriers; the fact that the employer frequently loaned its equipment to owner-operators in emergencies; the extensive instructions to drivers on waybills, manifests, and trip cards which ran to virtually every facet of the movement of freight; the instances where drivers were reprimanded for refusing loads; the fact that the selection of routes by drivers might not have been an entirely free one; the fact that the employer required owner-operators to pass a polygraph test prior to employment; the extensive amount of information required

¹⁸ Member Jenkins dissented for the reasons stated in the dissent in *George Transfer & Rigging Co.*, *supra*.

¹⁹ *Pilot Freight Carriers*, 208 NLRB No. 138 (Chairman Miller and Members Fanning and Jenkins).

of the owner-operators in the hiring process; and the evidence that attendance at monthly drivers' meetings appeared to be less than wholly voluntary. Based on these factors, the panel concluded that the owner-operators were employees of the employer rather than independent contractors.

3. "Supervisor" Status of Employees

The issue of whether certain employees' functions established the supervisory status of those employees, thereby precluding their inclusion in the proposed bargaining unit, has continued to arise. In one such case during the report year a Board panel majority determined that the employer's union label staff employees, who engaged in functions relating to consumer boycott and union organizational activities throughout the United States, were not supervisors within the meaning of the Act.²⁰ The Board majority found no indication of supervisory authority in the fact that the staff members sought directed picketing and handbilling activities inasmuch as such directions were routine in nature and were strictly in accord with detailed instructions and guidelines from the employer's national headquarters. While noting that on occasion the staff members were authorized to hire individuals for picketing and handbilling at targeted stores and to terminate them when the budgeted funds for the project were depleted, the Board majority found no evidence that this aspect of their job involved more than a minimal amount of their time.²¹ Further, the majority found that, as the pickets occasionally hired by the staff members were hired on a temporary or casual basis and as they were, therefore, not included in the unit, no danger of conflict of interest within the unit was presented. Citing *Adelphi University*,²² the majority noted that to the limited extent that they exercised supervisory duties, the union, if selected as their representative, would not represent them with respect to such duties.

²⁰ *Amalgamated Clothing Workers of America*, 210 NLRB No. 126 (Members Fanning, Jenkins, and Penello; Chairman Miller and Member Kennedy dissenting).

²¹ Chairman Miller and Member Kennedy, dissenting, would have found that the evidence showed that a substantial portion of the time of staff members was spent in supervising picketing and related duties. In their view, inasmuch as picketing was a major function carried out by the staff members, and as their hiring of people to perform picketing, the overseeing of picketing activities, and the authority to discharge such pickets were regular and frequent portions of their normal duties, these members possessed and exercised supervisory authority within the meaning of the Act. In their view, the statutory exclusion of supervisors turns not on the frequency, but upon the existence of a power enumerated in sec 2(11) of the Act. In this case the dissenters relied on the evidence that the supervisory functions were clearly an inherent and integral part of the job duties. Unlike the majority, Chairman Miller and Member Kennedy found unwarranted the majority's extension of the *Westinghouse Electric Corp.* 50-percent rule to individuals who regularly hire, fire, and direct employees. 163 NLRB 723 (1967)

²² 195 NLRB 639 (1972), 37 NLRB Ann. Rep. 62-64 (1972).

In another case²³ dealing with the issue of supervisory status, a panel majority of the Board included the employer's insurance salesmen in the unit, basing its conclusion on much the same rationale as that used in *Amalgamated Clothing Workers, supra*. The Board majority, again citing *Adelphi University, supra*, found that the supervision exercised by the salesmen over the telephone solicitors, who were not included in the unit, was so infrequent that it would not ally the salesmen with management "to create a more generalized conflict of interest of the type envisioned by Congress in adopting Section 2(11) of the Act." The panel majority noted that in *Adelphi* the Board had specifically declined to segregate employees whose principal duties were of the same character as those of other members of the unit merely because they exercised some supervision over non-unit employees.²⁴

B. Bars to Conduct of Election

In certain circumstances the Board, in the interest of promoting the stability of labor relations, will find that circumstances appropriately precluded the raising of a question concerning representation.

One such circumstance occurs under the Board's contract-bar rules. Under these rules, a present election among employees currently covered by a valid collective-bargaining agreement may, with certain exceptions, be barred by an outstanding contract. Generally, these rules require that, to operate as a bar, the contract must be in writing, properly executed, and binding on the parties; it must be of definite duration and in effect for no more than 3 years; and it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act. Established Board policy requires that to serve as a bar to an election, the contract must be signed by all parties before the rival petition is filed.²⁵

During the report year a Board panel considered a case in which it found that there had been more than mere delay in the consummation of a bargaining agreement since a recognition agreement, and that the recognition agreement should not bar an election at that time.²⁶

²³ *Automobile Club of Missouri*, 209 NLRB No. 89 (Members Fanning and Penello, Member Kennedy concurring in part and dissenting in part).

²⁴ Member Kennedy, relying on *Jas H Matthews & Co v NLRB*, 354 F 2d 432 (C.A. 8, 1965), viewed the proven existence of supervisory power, rather than the question of who is supervised, as determinative of an individual's supervisory status. He would have found that the Act's definitions of "employee" and "supervisor" are mutually exclusive and that, therefore, statutory supervisors, regardless of whom they supervise, may not appropriately be included in the unit.

²⁵ *Fruehauf Trailer Co.*, 87 NLRB 589 (1949)

²⁶ *Down River Forest Products*, 205 NLRB No. 1 (Chairman Miller and Members Kennedy and Penello).

In reaching its conclusion, the panel noted that the lapse of time had been accompanied by a change in the nature of the unit—from a two-division unit to a single division—resulting in a substantial reduction in the size of a unit as well, with only a small portion of it remaining. The panel considered, further, that the employer had suffered a financial setback from the storm damage done by Hurricane Agnes. Thus, the panel found that these unusual circumstances had intervened to affect the unit and the employment opportunities of the employees since they had expressed a desire for representation more than a year previously, without a bargaining contract having been concluded, and that, therefore, an election was in order.

A contract-bar case arising during this year involved a contract by which the employees were represented along racial lines at the time the petition was filed.²⁷ Citing *Pioneer Bus Co.*²⁸ as an exception to the contract-bar rules enunciated in *Appalachian Shale Products Co.*,²⁹ the Board panel found that such contract was discriminatory and reiterated that the contract-bar doctrine does not recognize racially discriminatory contracts. Rather, the panel said, in order for the contract-bar rule to be applicable, the contract must represent an appropriate unit.³⁰ As race is not a valid determinant of the appropriateness of a unit,³¹ the panel concluded that the contract did not bar an election because it did not represent an appropriate unit at the time the petition for an election was filed.

Another circumstance which will preclude the raising of a question concerning representation arises when the petition is filed within the certification year. In one such case,³² the full Board noted that although the union had been certified on February 24, 1969, the Board had subsequently issued a decision ordering the employer to bargain and providing that the initial year of certification would be deemed to begin when the employer commenced bargaining in the appropriate unit.³³ As the employer and the union conducted their first bargaining session involving this unit at its Irving plant on November 30, 1971, and as the decertification petition was filed on November 7, 1972, the Board dismissed the petition, holding that the certification year had commenced on November 30, 1971, and that, therefore, the petition was filed within the certification year, when the union had not had the full year of bargaining to which it was entitled.

²⁷ *Jno H Swisher & Son*, 209 NLRB No. 1 (Chairman Miller and Members Fanning and Jenkins).

²⁸ 140 NLRB 54 (1962).

²⁹ 121 NLRB 1160 (1958). See also *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958).

³⁰ *Appalachian Shale Products Co.*, *supra*

³¹ *Safety Cabs & New Deal Cab Co.*, 173 NLRB 17 (1968).

³² *Groendyke Transport*, 205 NLRB No. 67

³³ *Groendyke Transport*, 181 NLRB 683 (1970), *enfd.* 438 F.2d 981 (CA 5), cert. denied 404 U.S. 827 (1971)

A subsequent case involved separate units at Groendyke's Angleton, Duncan, Ardmore, and Wichita Falls terminals, also certified on February 24, 1969, and the subjects of the Board's bargaining order specifying that the certification year be deemed to begin at the commencement of bargaining in each unit.³⁴ Decertification petitions with regard to these terminals were filed on December 19, 1972, February 13, 1973, February 20, 1973, and March 9, 1973, respectively. The Board majority found that, as the record failed to show that bargaining had begun at these terminal units, the certification year had not yet started. The Board, therefore, dismissed the petitions as untimely.³⁵

The majority pointed out that it was not deciding an unfair labor practice case in the context of a representation case; and it was not deciding whether the employer had bargained in good faith. Rather, it was deciding that, under the terms of the extant Board and court orders, the relevant certification years had not begun to run, and that, therefore, the decertification petitions had to be dismissed as untimely.

C. Unit Determination Issues

1. Joint Employers of Unit Employees

The issue of whether a single business entity is the employer of the unit employees for the purpose of collective bargaining or whether this and some other business entity constitute joint employers for this purpose was presented to the Board in two cases during the year.

One such case involved a petition which sought, among other employees, all drivers in a taxicab system.³⁶ In that case, Greater Houston Transportation operated a centralized and integrated radio dispatch service for certain taxicab owners and franchisees who in turn paid it certain fees. Because of the lease-franchise arrangement, the issue arose as to whether Greater Houston Transportation actually employed any drivers or whether a joint employer relationship existed between it and the various employers who used its services. Under this lease-franchise arrangement, all franchisees executed an agreement with Greater Houston Transportation, which then charged the franchisees and

³⁴ *Groendyke Transport*, 207 NLRB No. 44 (Chairman Miller and Members Fanning, Jenkins, and Penello; Member Kennedy dissenting).

³⁵ Member Kennedy dissented on the ground the union was raising the same issues in these representation proceedings that it had unsuccessfully raised in two unfair labor practice charges which were found to lack merit, and that, therefore, the majority was deciding unfair labor practice issues in a representation case. As all the petitions were filed more than 1 year after the union's last demand for bargaining in the five units, and an equal amount of time after bargaining began at the Irving terminal, he would have found the petitions timely filed and directed elections.

³⁶ *Greater Houston Transportation Co. & all other Employers d/b/a Yellow Cab Co.*, 208 NLRB No. 121 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting).

independent companies using its services a fee for such services. In return for these fees, the franchisees and independents were privileged to use numerous benefits of the system, including the dispatch system, cabstands, advertising, various charge account customers, representation before municipal agencies, and instructions on the use of the dispatch system. In addition, Greater Houston Transportation offered its franchisees liability insurance, taxicab financing, and services such as gas pumps, mechanical maintenance facilities, and training facilities. However the franchisees and independents were not required to use such services.

Among Greater Houston Transportation's rules of operation was "Code 5," a signal addressed to the cab unit and not the individual driver, which informed the unit that one of Greater Houston Transportation's service representatives desired to speak with the unit concerning an emergency phone call, a customer's or another driver's complaint, a lost article, or nonpayment of the lease fee. If the "Code 5" involved the nonpayment of the lease fee, the driver was required to contact the office immediately or the dispatcher would cut off the unit's radio service, and the lease might be canceled. In hiring drivers to operate their cabs, franchisees had the drivers fill out a brief information form which was given to Greater Houston Transportation's service department to be checked to ascertain if the drivers owed Greater Houston any money. The franchisee, however, could still hire the driver even if Greater Houston disapproved. Further, the Board majority observed that each franchisee bargained individually with any driver he employed, maintained his own payroll records, and withheld social security and Federal tax payments from his drivers. Although Greater Houston's service representatives could investigate any complaint filed against any driver, they then would submit their findings to a board of franchisees for review of the investigation and determination as to whether a fine should be levied. The money from such fines was placed in a fund for franchise drivers.

The Board majority concluded that these facts were insufficient to establish that Greater Houston was an "employer" of any of the personnel employed by any of the franchisees or independents, and that, therefore, Greater Houston was not a joint employer of the employees sought in the petition. In reaching its conclusion, the Board majority found that whatever representations were made to the public with respect to a "single integrated operation," they could in no way affect the mixed law-and-fact issue of whether the alleged employer so conducted itself with respect to the individuals sought as to have created an employer-employee relationship. The majority also found that whatever business advantages may have been offered to franchisees by the franchisor in terms of services, they could not create the legal re-

lationship of employer-employee between employees of the franchisees and the management of the franchisor. Further, as to the "Code 5" signal, the Board majority viewed it as a central point for providing information and nonpayment of the lease fee, as a purely commercial arrangement not unlike that of a telephone company's right to cut off telephone services for failure to pay telephone bills. It observed that there was no evidence that any employee of a franchisee or of an independent could in any way be reprimanded, suspended, discharged, or otherwise disciplined by Greater Houston for failure to heed the "Code 5" signal. Finding no joint employer relationship, the Board majority found the unit sought inappropriate in the absence of a consensual agreement among the various franchises and independents to join together in a multiemployer unit.³⁷

*Greenhoot*³⁸ was another case decided during the year involving a joint employer issue. In that case Greenhoot, a real estate and property management corporation, was the agent employed to rent and manage various owners' buildings. Pursuant to such arrangement, Greenhoot collected the rentals from the tenants and deducted its fee, a fixed percentage of the building's income, from the rentals, using the remaining amount to pay other building expenses and remitting any amounts yet remaining to the building's owner. Greenhoot was authorized to hire, discharge, and pay the wages of building employees in accordance with schedules approved in advance by the building's owner. Although Greenhoot was responsible for the supervision of building employees, the owner retained the right to determine whether a building superintendent was to be employed and to approve the hiring and retention of *all* building employees. The owner was also responsible for providing various types of liability insurance including workmen's compensation.

The Board panel found that these factors sufficiently demonstrated that Greenhoot and the building owners at each building shared authority or codetermined matters governing the essential terms and conditions of employment. Therefore, Greenhoot and each of the building owners were joint employers at each of the respective build-

³⁷ In the view of Members Fanning and Jenkins, dissenting, the unit sought was appropriate because a joint employer relationship existed between Greater Houston and those employers subscribing to its services. In support of this conclusion, they noted that the cab system appeared to operate as "a single-integrated enterprise," that all drivers in the system were subject to numerous rules and regulations concerning operation of their cabs, that any driver violations of the dispatch system must be written up by the dispatcher, and that Greater Houston controls the drivers' activities through the use of the "Code 5" signal. It was obvious to Members Fanning and Jenkins that, in order to satisfy the public demand for adequate cab service and to assure the continuance of a common public image, those employers who utilized Greater Houston's services in the cab system had yielded to Greater Houston a substantial degree of control over the working conditions of their drivers and, consistent with this pattern of operations, all the employers in the cab system constituted a joint employer.

³⁸ 205 NLRB No. 37 (Chairman Miller and Members Fanning and Penello).

ings. In reaching this conclusion, the panel distinguished *Herbert Harvey*³⁹ on the basis that the problem existing in *Harvey*, the fact that the building's owner was exempt from the Board's jurisdiction, was not present in *Greenhoot*, and that, unlike the situation in *Harvey*, in *Greenhoot* each building owner in effect hired the chief engineer who conferred with the building owner on operational problems. As there was no consensual basis for finding a multiemployer unit, the Board panel in *Greenhoot* found separate units appropriate.

2. Postal Service Units

Another unit issue arising during the year involved petitions for various units of employees of the Postal Service.⁴⁰ Examining the legislative history of the Postal Reorganization Act, the full Board found that the appropriate criteria in determining unit appropriateness in the Postal Service were those applied by the Board in the private sector. Applying these criteria, the Board examined the lines of division which might be most useful to the parties in furthering their collective-bargaining relationship. The Board observed that the employer's size, collective-bargaining history, number of employees, geographic dispersion, and centralized operational organization imposed certain practical limitations on the number of bargaining units. The Board noted that the employer had specifically recognized the craft lines—occupational classifications—only on a national unit basis and that there had been established, with the participation of all petitioners involved in the instant case, a workable pattern of craft unit bargaining on a national basis. Examining the structure of the employer's administrative organization, the Board found that a unit encompassing all employees within a region, metropolitan center, metropolitan area, or district might constitute an appropriate unit. As none of the petitioners sought to represent all employees in any such division, however, the Board did not reach that question but concluded that any less-than-nationwide unit which did not encompass at least all employees within a district or sectional center was too fragmented for meaningful bargaining. While dismissing the six petitions before it because all the petitioned-for units failed to evidence the requisite community of interest, the Board was careful to point out that its decision should not be construed as an administrative fiat to adhere to the pre-existing national craft units or as precluding a finding of unit appropriateness for a unit less than national in scope.

³⁹ 159 NLRB 254 (1966).

⁴⁰ *U. S. Postal Service*, 208 NLRB No 144.

3. Hospital Units

The Board's decision in 1968 to exercise jurisdiction over proprietary hospitals and nursing homes⁴¹ continues to give rise to questions concerning the unit appropriate for bargaining in such enterprises.

In the case decided this fiscal year a Board majority, overruling *Ochsner Clinic*,⁴² found that the X-ray technicians sought did not constitute a separate appropriate unit.⁴³ Although the X-ray technicians were separately supervised, they performed their duties not only in the radiology department, but also in many other locations in the hospital where they worked with the nurses, licensed practical nurses, other technicians, and doctors to coordinate the procedures. As was the case with other technicians in the hospital, their work also brought them into contact with orderlies, clericals, and other hospital personnel, with whom they shared the same working conditions and fringe benefits. Noting also the frequent contacts of X-ray technicians with other hospital employees, the fact that they performed their work at various locations throughout the hospital, and the functional integration of their work with that of other technical employees, the Board majority concluded that the X-ray technicians did not appear to have a community of interest any more separately identifiable than that of employees in other technical departments and that to establish a separate unit for X-ray technicians in such circumstances would lead to severe fragmentation of units in the health care industry.⁴⁴

4. Hotel Units

Another issue arising during the year involved application of the principles set forth in *Holiday Inn Restaurant*,⁴⁵ where the Board announced that in hotel industry cases it would "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees" in a hotel, rather than require an overall unit in every case. In one such case,⁴⁶ a Board majority held that the unit sought—limited to service employees in the dining room and lounges and excluding kitchen and banquet employees, cashiers, and hostesses—could not be sustained on a community-of-interest basis, but that a unit limited to the employees of the kitchen, restaurant, lounge, and banquet departments was appropriate. In reaching this conclusion, the Board majority characterized the court

⁴¹ *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB 266 (1967), and *University Nursing Home*, 168 NLRB 263 (1967). 33 NLRB Ann. Rep. 29 (1968).

⁴² 192 NLRB 1059 (1971).

⁴³ *Woodland Park Hospital*, 205 NLRB No. 144 (Chairman Miller and Members Kennedy and Penello; Member Jenkins dissenting).

⁴⁴ Member Jenkins, dissenting, would have adhered to *Ochsner Clinic, supra*, and have found the unit of X-ray technicians to be appropriate.

⁴⁵ 160 NLRB 927 (1966); 32 NLRB Ann. Rep. 57 (1967).

⁴⁶ *Dunfey Family Corp. d/b/a Sheraton Moton Inn*, 210 NLRB No. 85 (Chairman Miller and Members Fanning and Jenkins; Member Kennedy dissenting).

of appeals' interpretation of the *Holiday Inn* case, *supra*, as maintaining the Board's hotelwide unit policy subject only to two exceptions—where area practices established other units as typical or where some special showing of nonintegration of function was made⁴⁷—as an inaccurate description of the Board's intent. Rather, the majority, referring to *Regency Hyatt House*,⁴⁸ pointed out that the Board said its intention was to apply to the hotel industry the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors in each case.

The kitchen, restaurant, lounge, and banquet employees all worked under the general supervision of the food and beverage director, who in turn reported directly to the general manager. The majority observed that, while there appeared to be substantial contact and interchange among the employees in the motel's four food and beverage departments, there was little such contact between the employees working on the food and beverage operations and the remainder of the motel's employees, particularly those engaged in the housekeeping and laundry areas. And while the Board majority did not find that any of the employees involved were highly skilled, it found that there was a clear difference between the functions of housekeeping and food and beverage employees, that there was separate supervision of these groups, and that each belonged to separate employer organizational departments for immediate supervision and reported to separate intermediate supervision. Thus, the majority found that a unit limited to the employees of the kitchen, restaurant, lounge, and banquet departments was appropriate.⁴⁹

5. Units Appropriate for Severance

In two cases involving severance issues, the Board applied the considerations set forth in *Mallinckrodt Chemical Works*⁵⁰ in denying severance.

In *Union Carbide*,⁵¹ a majority of the Board refused to allow severance of machinists and instrument makers from an historically es-

⁴⁷ *Westward Ho Hotel Co. v N.L.R.B.*, 437 F.2d 1110 (C.A. 9, 1971).

⁴⁸ 171 NLRB 1347 (1968).

⁴⁹ Member Kennedy dissented from the majority's failure to find that an overall unit of all operating personnel at the motel should be grouped together for collective-bargaining purposes. Citing *Holiday Inn Southwest*, 202 NLRB 781 (1973), Member Kennedy observed that as housekeepers in that case were found by the Board to be an inappropriate unit, the majority's decision in *Dunfey*, in a similar factual situation, in effect deprived housekeepers of collective bargaining. In his view, the Ninth Circuit's interpretation of the *Holiday Inn* decision, *supra*, was correct, and, absent a showing that area practices established other units as typical, or that there was nonintegration of function, the true community of interest was in a larger overall unit.

⁵⁰ 162 NLRB 387 (1966); 32 NLRB Ann. Rep. 23, 49 (1967).

⁵¹ *Union Carbide Corp., Nuclear Div.*, 205 NLRB No. 126 (Members Jenkins, Kennedy, and Penello; Chairman Miller and Member Fanning dissenting).

tablished overall unit and the stable bargaining relationship which had developed thereunder during a period of more than 26 years. While recognizing that the machinists and instrument makers were skilled craftsmen, the Board, in examining the relevant factors set forth in *Mallinckrodt, supra*, noted that the machinists and instrument makers generally had the same working conditions and fringe benefits as the other unit employees—working the same hours, punching timeclocks, wearing similar protective clothing, receiving the same vacation, holidays, and insurance coverage, and sharing the same wash and lunch and medical facilities; that several other maintenance classifications worked in the same building, utilized the same tools, and occasionally assisted each other in work; and that the sought-after employees had been represented in the larger unit for more than 26 years, an arrangement consistent with representation at the employer's other plants.

The Board majority specifically observed that the machinists had their own elected stewards; they had in the past participated, and continued to participate, in various of the committees of the intervenor, which represented the production and maintenance employees including them; they had made frequent use of the grievance procedures and had seen their grievances processed; they had the opportunity to voice their concerns to the officers of intervenor's local and international; and finally the intervenor had repeatedly represented their interest at the bargaining table. Thus, in the opinion of the majority, both in form and substance, the intervenor had not been shown to have inadequately represented the machinists and instrument makers. Relying on the foregoing factors, the majority, under the *Mallinckrodt* tests, refused to allow the petitioner to carve out the machinists and instrument makers from the established and stable bargaining relationship in the overall unit.⁵²

In another case presenting a severance issue during the year, a Board panel found that it would not be appropriate to sever licensed vocational nurses (LVN's) from the existing unit of nursing personnel (but not registered nurses), various technical personnel, clerical personnel, and maintenance and service personnel.⁵³ The petitioner in that case sought severance on the basis that the LVN's were pro-

⁵² Dissenting. Chairman Miller and Member Fanning viewed the application of *Mallinckrodt* to the facts in *Union Carbide* as supporting craft severance. In their view, the machinists, skilled journeymen craftsmen, had exercised an unusually sustained effort to maintain their identity as a separate craft group. Citing the group's many efforts to secure other representation, Chairman Miller and Member Fanning observed that the machinists had never had an opportunity to vote on the question of separate representation. While conceding that 26 years of bargaining history is a factor to be considered, Chairman Miller and Member Fanning believed that it should not outweigh the persistent effort of this craft group to maintain its separate identity and at long last to achieve an opportunity to vote on separate representation.

⁵³ *Kaiser Foundation Hospitals, et al.*, 210 NLRB No. 142 (Chairman Miller and Members Jenkins and Kennedy).

essional employees or, alternatively, a craft entitled to a separate unit. The panel was not persuaded that the LVN's were professional employees within the meaning of section 2(12) of the Act requiring that a professional employee be engaged in work which involves the consistent exercise of discretion and judgment in its performance. In this regard, the Board panel found that while the LVN's performed nursing functions such as administering treatments and charting patients and monitoring their conditions, they also performed tasks such as transporting patients, light housekeeping, and other tasks similar to those performed by nurses aides. With respect to the craft status of the LVN's, the panel, applying the *Mallinckrodt* tests, noted that the LVN's had been represented in the broader, existing unit for more than 20 years, that there was no evidence that their bargaining interests had been neglected, during such representation, and that coordination and teamwork was required in the nursing department. The Board panel, therefore, refused to allow a fragmentation of the existing unit, finding that it would be inappropriate to sever the LVN's.

6. Units Appropriate for Decertification

In companion cases involving owner-operators of dump truck equipment in the building and construction industry, the Board found the appropriate unit for the decertification elections to be the contract units, which consisted of both owner-operators and employee-drivers covered by the contract.⁵⁴ In those cases, the petitioners, who had initially asserted that they were independent contractors and not "employees," contended that, inasmuch as the Board had found them to be "employees," an election should have been conducted in a unit consisting solely of owner-operators and that employee-drivers should have been excluded on the basis that the two groups shared no real community of interest and that the community of interest among owner-operators was such that they could constitute a separate appropriate unit. While conceding that a unit limited to owner-operators constituted only a portion of the contract unit and would deviate from the Board's general rule that the unit appropriate in a decertification election must be coextensive with the unit previously certified or the unit recognized,⁵⁵ the petitioners nevertheless contended that the facts of this case constituted good and sufficient reasons for deviation from the normal rule applicable to decertification elections.

⁵⁴ *Contractor Members of AGC of California*, 209 NLRB No 61 (Chairman Miller and Members Fanning and Jenkins, Member Kennedy dissenting); *Contractor Members of AGC of California, et al*, 209 NLRB No 62 (Chairman Miller and Members Fanning and Jenkins, Member Kennedy dissenting)

⁵⁵ See *Campbell Soup Co.*, 111 NLRB 234 (1955), and *Clohecy Collision*, 176 NLRB 616 (1969)

The Board panel found that, while the owner-operators had substantial financial investments in the equipment they operated, once on the job they worked under the same conditions as the employee-drivers. The contractor established the starting, quitting, and lunch-break times and directed both groups in such matters as location of material, dumpsite, and routes to be taken. The panel found that as these facts showed the community of interest the owner-operators shared with the employee-drivers, the owner-operators' substantial financial investments in their trucking equipment and other indicia of separateness were not sufficient to warrant modification of the recognized unit. Rejecting the contention that, where a large unit is appropriate, section 8(f) of the Act otherwise requires carving out a smaller portion of that unit, the Board panel found the recognized unit appropriate for purposes of the decertification election.⁵⁶

7. Other Unit Issues

Other unit issues considered by the Board during the year involved the unit placement of undercover investigators in a unit of all security guards and, in another case, the exclusion of students from a unit sought at campus-related food service facilities.

With respect to undercover investigators,⁵⁷ the full Board found that, while they did not wear uniforms and were not closely supervised by their superiors, they were subject to the same supervisory hierarchy as the uniformed guards. Concluding that whatever minor differences might exist between the undercover investigators and the uniformed guards in attire and method of compensation did not destroy the community of interest which they otherwise shared by virtue of their common job function—the protection and security of the client's property—the Board found that the undercover investigators were properly includable in the unit sought.

Regarding the inclusion of student part-time employees in a unit of food service employees, the full Board determined that they did not share a substantial community of interest with the regular non-student employees who depended on their employment for their livelihood.⁵⁸ The Board reasoned that virtually all of the student employees were treated differently from the nonstudent employees in a number of significant ways because of their status as students, particularly

⁵⁶ In dissenting Member Kennedy's view, the owner-operators were independent contractors and not employees within the meaning of the Act, and the Board was therefore prohibited from conducting an election in a unit including them. The full rationale of his view was set forth in the original Decision and Order in these proceedings. 201 NLRB 311 (1973); 38 NLRB Ann. Rep. 54 (1973)

⁵⁷ *Defender Security & Investigation Services*, 212 NLRB No. 23.

⁵⁸ *Macke Co.*, 211 NLRB No. 17.

with respect to their work schedules, rates of pay, lack of fringe benefits, separate supervision by student managers, and other aspects of their employment relationship. Finding that the students' employment was only incidental to their academic objectives, the Board excluded the students from the unit for lack of a substantial community of interest with the regular nonstudent employees.

D. Conduct of Elections

Section 9(c)(1) of the Act provides that where a question concerning representation is found to exist pursuant to the filing of a petition, the Board shall resolve it through a secret ballot election. 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 by the Board in its Rules and Regulations and in its decisions. Elections are conducted in accordance with strict standards designed to insure that the participating employees have an opportunity to register a free and untrammelled 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. The regional director may either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for a decision, as the situation warrants. If the election was held pursuant to a consent election agreement authorizing a determination by the regional director, he will then issue a final decision.⁵⁹ If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will issue a report on objections which is subject to exceptions by the parties and decision by the Board.⁶⁰ However, if the election was originally directed by the Board,⁶¹ the regional director may either (1) make a report on the objections, subject to exceptions, with the decision to be made by the Board, or (2) issue a decision, which is then subject to limited review by the Board.⁶²

Interference With Election Choice

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 or

⁵⁹ Rules and Regulations, sec 102.62 (a).

⁶⁰ Rules and Regulations, sec. 102.62 (b) and (c).

⁶¹ Rules and Regulations, secs 102.62 and 102.67

⁶² Rules and Regulations, sec. 102.69 (c) and (a).

which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on 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.

In *Willis Shaw Frozen Express*⁶³ a majority of a Board panel, considering acts committed prior to the filing of the petition and also after the voting, as well as acts committed during the crucial period, found that the election was held in a general atmosphere of confusion, acts of violence, and threats of violence, such as might be expected to generate anxiety and fear of reprisal, and to render impossible a rational, uncoerced choice of a bargaining representative. Although certain acts were committed during the crucial period—from the date of filing of the petition to the election⁶⁴—there were acts found to have been committed prior to the filing of the petition and also after the voting. Citing *Weather Seal*,⁶⁵ the panel majority noted that not only must the prepetition conduct be considered in order to understand why the election must be set aside, but it is within the province of the Board to set aside an election in order to protect the basic values of the Act, even though all the conduct occurred before the petition was filed.

In the opinion of the majority, it was not material that fear and disorder might have been created by individual employees or nonemployees and that their conduct could not probatively be charged either to the employer or the union; the ultimate fact was that such conditions existed and that a fair election was thereby rendered impossible. The majority found that the acts complained of were directed at the union's organization campaign *in toto*, and that as the victim of the conduct the union should not be forced to a second election unless, after resolution of the challenges, it did not receive a majority of the ballots cast. Otherwise, the majority concluded, merely ordering a second election in these circumstances would assure success to the perpetrators of the conduct and thereby undermine the Act.⁶⁶

In determining whether electioneering statements or propaganda constitute misrepresentations grave enough to require a rerun election

⁶³ 209 NLRB No. 11 (Members Fanning and Jenkins; Chairman Miller dissenting).

⁶⁴ *Ideal Electric and Mfg. Co.*, 134 NLRB 1275 (1961).

⁶⁵ 161 NLRB 1226 (1966); 32 NLRB Ann Rep. 70 (1967).

⁶⁶ In the view of Chairman Miller, dissenting, under the circumstances created by the "deplorable conduct," which could not be attributable to either party, a new election should be directed regardless of the resolution of the challenges.

or a hearing, the Board has since 1962 applied the standard it enunciated in *Hollywood Ceramics*:⁶⁷ "We believe that an election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. However, the mere fact that a message is inartistically or vaguely worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside. Such ambiguities, like extravagant promises, derogatory statements about the other party, and minor distortions of some facts, frequently occur in communication between persons. But even where a misrepresentation is shown to have been substantial, the Board may still refuse to set aside the election if it finds upon consideration of all the circumstances that the statement would not be likely to have had a real impact on the election. For example, the misrepresentation might have occurred in connection with an unimportant matter so that it could only have had a *de minimis* effect. Or, it could have been so extreme as to put the employees on notice of its lack of truth under the particular circumstances so that they could not reasonably have relied on the assertion. Or, the Board may find that the employees possessed independent knowledge with which to evaluate the statements." (Footnotes omitted.)

In two cases decided by the Board during the year, the issue presented was whether the Board's documents had been misused so as to affect the results of an election. In *Dubie-Clark Co.*,⁶⁸ a Board majority held that the limits of legitimate campaign propaganda had been exceeded by a leaflet sent by the petitioner to all employees stating that the Board had found that Dubie-Clark had violated the employees' rights under law. The Board majority found that such statement was inaccurate and misleading as, in actuality, the parties had entered into an informal settlement agreement, and the majority had neither ruled upon the merits of the allegations made nor issued any decision in that case. In so concluding, the Board majority held that not only the actual physical alteration of a Board document, but any substantial mischaracterization or misuse of such a document for partisan election purposes is to be considered a serious misrepresentation. Pointing to its desire to encourage the settlement of disputes

⁶⁷ *Hollywood Ceramics Co.*, 140 NLRB 221, 224 (1962); 28 NLRB Ann. Rep. 57 (1963)

⁶⁸ 209 NLRB No. 21 (Chairman Miller and Members Fanning, Jenkins, and Kennedy, Member Penello dissenting).

voluntarily, the majority voiced its concern with the impact such a partisan message might have on the freedom of choice of the voter.⁶⁹

In *Jobbers Warehouse Service*,⁷⁰ also decided during the year, a panel majority found that the union substantially mischaracterized the effects of the disposition of a Board proceeding and the pleadings filed therein for partisan election purposes. In that case, the union's representative, referring to the complaint and answer in an unfair labor practice proceeding, strongly intimated to the employees that the answer's admission to the allegations contained in a number of the paragraphs of the complaint, as well as the fact that the answer was signed by the employer's president instead of his attorney, constituted an admission of guilt by the employer of the substantive unfair labor practice allegations in the complaint rather than merely the technical matters, such as jurisdiction, which were covered in those paragraphs. This, the union's representative said, showed that the employer's president was not telling the employees the truth when he said he was innocent of unfair labor practices. As the parties had entered into a settlement agreement in that case, and as the Board had made no finding of guilt nor had the employer's president admitted anything to that effect in either the answer or the settlement agreement, the panel majority found that the statements constituted material misrepresentations made at a time when the employer could not effectively respond. The majority, therefore, set aside the election.⁷¹

In *Bancroft Mfg. Co.*,⁷² a Board panel majority found that the racial statements made constituted neither an appeal to racial prejudice nor an attempt to inflame racial hatred, but were nothing more than the expression of a commonly held viewpoint that blacks, as a class, are particularly vulnerable in the important areas of economic security and job rights and that union representation would serve to protect and promote their best interests. The majority pointed out that in *Sewell Mfg. Co.*,⁷³ in which the Board determined that deliberate statements which overstress and exacerbate racial feelings by irrelevant, inflam-

⁶⁹ Member Penello dissented. In his opinion there was no material misrepresentation, particularly in view of the fact that the notice referred to by the leaflet, which clearly stated in large print that it was "posted pursuant to a Settlement Agreement . . .," had already been posted in the plant for 12 days, and the employees, therefore, were in a position to evaluate the petitioner's campaign literature. Member Penello further rejected the *Hollywood Ceramics* rule, *supra*, and concluded that, in any event, he would not find that the petitioner's conduct could possibly have interfered with the employees' free choice

⁷⁰ 210 NLRB No 151 (Chairman Miller and Member Fanning; Member Penello dissenting).

⁷¹ As in *Dubie-Clark*, *supra*, Member Penello dissented. He would have reversed *Hollywood Ceramics* and returned to the Board's early approach of refusing to determine the truth or falsity of campaign statements and left it to the voters to evaluate election propaganda, except in cases of deception rising to the level of actual fraud.

⁷² 210 NLRB No 90 (Members Fanning and Jenkins; Chairman Miller dissenting)

⁷³ 138 NLRB 66 (1962); 28 NLRB Ann. Rep 58-59 (1963).

matory appeals had no place in an election campaign, the Board had made it clear that it was not suggesting that any mention of race or racial issues should be eliminated from the election campaign process. It found that the union's viewpoint on the impact of future layoffs on black employees was a matter relevant to the campaign, particularly because the employees laid off during or shortly before the campaign were mostly blacks. The panel majority concluded that the union's viewpoint in this regard was reasonably based in fact and was germane to the larger issue of the advantages and disadvantages of the union as a means of promoting equality for black employees in economic security and job rights. It also found that a rumor circulating in the plant, that a procompany black employee would be given a car to help swing the black vote, was not totally unfounded, that it was not unusual for employees in such a campaign to impugn the motives of fellow employees who opposed their viewpoint, and that the conduct should not be treated differently because the incident involved employees of a racial minority.⁷⁴

E. Postcertification Issues

In one case in which revocation of certification was sought this year, a Board panel concluded that the union had committed an overt act inconsistent with its position as the exclusive bargaining representative of the employees of employer Catalytic in the certified unit.⁷⁵ In this case, the union had posted a leaflet stating its intention, in negotiations with Oxochem, to seek an increase in the number of Oxochem maintenance personnel. As this would necessarily have meant the elimination of Catalytic's employees from the Oxochem jobsite, the panel found that the union had acted inconsistently with its representation obligations to the employees in the certified unit and, therefore, granted the employer's motion to revoke the certification.

Clarification of a bargaining unit, another postcertification issue, is provided for in section 102.60(b) of the Board's Rules and Regulations. While the Board will entertain requests for clarification of units established by voluntary recognition and contract, as well as for units established by Board certification,⁷⁶ if the Board finds that the petition

⁷⁴ Chairman Miller dissented. In his view, the *Sewell Manufacturing* case, *supra*, placed the burden on the party making use of any racial message to establish that it was truthful and germane. He would have found that the union did not meet its burden of establishing that either the message with respect to predicted discharges of black employees or the allegation that a black employee was being given an automobile in order to swing the black vote was truthful or supported by any factual evidence.

⁷⁵ *Catalytic Industrial Maintenance Co.*, 209 NLRB No. 101 (Chairman Miller and Members Jenkins and Kennedy).

⁷⁶ *Brotherhood of Locomotive Firemen & Enginemen (Grand Lodge Employees' Assn.)*, 145 NLRB 1521 (1964), 29 NLRB Ann. Rep. 57 (1964). Compare *Springfield Discount, d/b/a J. C. Penney Food Dept.*, 195 NLRB 921 (1972).

raises a question concerning representation, it will deny clarification of the existing unit, thereby requiring an election to resolve the issue.⁷⁷

In *Worcester Polytechnic Institute*,⁷⁸ a Board majority clarified the existing recognized unit of guards and nonguards as certified by the Massachusetts Labor Relations Commission in 1969 when the Board had declined to take jurisdiction over private nonprofit colleges and universities. As the Board reversed that policy in 1970⁷⁹ and began to assert jurisdiction over such employers and as the Board had previously clarified established units to exclude guards,⁸⁰ the Board majority so clarified the unit.⁸¹

Petitions or motions for amendment of certification normally tend to raise less complex issues than petitions for unit clarification. Amendment of certification is intended, among other things, to permit changes in the name of the bargaining representative, not a change in the representative itself.⁸² As in the case of clarification petitions, when the filing of a petition to amend certification is found to constitute an attempt to raise a question concerning representation, it is dismissed.⁸³

In one case decided during the year, a panel of the Board, citing *Gulf Oil Corp.*,⁸⁴ refused to amend the certification to reflect affiliation of an independent union with a union whose parent organization had lost an election in the unit less than a year before the petition for amendment of certification.⁸⁵ The panel held that to grant the amendment in such circumstances would, for all practical purposes, be overturning the results of that election wherein the employees had rejected the present petitioner's parent organization, thereby subverting the policies of the Act.

⁷⁷ *Gas Service Co.*, 140 NLRB 445 (1963).

⁷⁸ 207 NLRB No. 157 (Members Fanning, Jenkins, and Penello; Member Kennedy dissenting).

⁷⁹ *Cornell University*, 183 NLRB 329 (1970); 35 NLRB Ann. Rep 26 (1970).

⁸⁰ *Libbey-Owens-Ford Glass Co.*, 169 NLRB 126 (1968); *Sonotone Corp.*, 100 NLRB 1127 (1952).

⁸¹ Member Kennedy dissented. Because the state certification and the employer's subsequent recognition and bargaining with the union had resulted from an election in which guards and nonguard employees were permitted to vote and the votes of those guards may have established the union's majority status in the election, Member Kennedy would not have issued an order to clarify this statutorily inappropriate unit, which sec. 9(b)(3) of the Act would have prohibited the Board from certifying in this first instance, but would have required the parties to utilize the Board's representation procedures.

⁸² *Missouri Beef Packers*, 175 NLRB 1100 (1969); 34 NLRB Ann. Rep 49 (1969).

⁸³ *North Electric Co.*, 165 NLRB 942 (1967).

⁸⁴ 109 NLRB 861 (1954); 20 NLRB Ann. Rep 16 (1955).

⁸⁵ *United Hydraulics Corp.*, 205 NLRB No. 20 (Chairman Miller and Members Kennedy and Penello).

VI

Unfair Labor Practices

The Board is empowered under section 10(c) 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 an unfair labor practice charge 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 1974 fiscal year which involved novel questions or set precedents that 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 on Access to Employer's Premises

A rule prohibiting employees from soliciting or distributing literature during nonworking time in a nonwork area of the employer's

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

premises is presumptively invalid. But a no-solicitation rule limited to the time an employee is actually working is presumed to be for the purpose of maintaining production and discipline and therefore valid in the absence of a discriminatory purpose, even though it restricts section 7 rights. Different standards are applicable to nonemployee union organizers who may be denied access to an employer's property completely if alternative channels of communication are available, and the employer does not discriminate against the union, because the employees' section 7 rights must be balanced against the employer's property rights.²

In *GTE Lenkurt*,³ the Board faced the question of whether a rule denying access to off-duty employees might validly be enforced against such employees who sought to enter the premises to solicit for a union or distribute union literature. A majority of the Board answered affirmatively. In its opinion, the status of off-duty employees is more nearly analogous to that of nonemployees, since they are not on the premises in the employer's interest. Determining the rights of employees on the premises in connection with their work involves a balancing of statutory rights of self-organization against the employer's interests in production or discipline, not property rights, and the statutory rights ordinarily prevail. But, the balance between the competing interests of the off-duty employees' section 7 rights and the employer's property rights is properly struck by holding that where an employer's no-access rule is nondiscriminatory it is presumptively valid. As in the case of a nonemployee, denial of access to off-duty employees is unlawful only if it is discriminatory or if it can be shown that the employees cannot otherwise be reached. The Board majority noted that employees have a right under the Act to engage in union activities during the normal period of employee association and communication and that the effect of invalidating a no-access rule would be to require the employer to make an additional channel of communication available.⁴

A related problem was posed in *Scott Hudgens*.⁵ There striking employees sought to picket a retail store located in an enclosed shopping mall owned by the respondent, who leased the store to their employer.

² *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956)

³ 204 NLRB No. 75 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins concurring in part and dissenting in part).

⁴ *McDonnell Douglas Corp.*, 194 NLRB 514 (1971), and *Diamond Shamrock Co.*, 181 NLRB 261 (1970), although distinguishable on the facts, were overruled to the extent inconsistent with the Board's holding.

Members Fanning and Jenkins were of the view that the majority erred by treating off-duty employees as strangers, by failing to adequately weigh Supreme Court holdings that the employees' right to discuss self-organization among themselves may not be restricted unless necessary for production and discipline, and by isolating workshifts from each other.

⁵ 205 NLRB No. 104 (Chairman Miller and Members Fanning and Penello)

In concluding that the respondent's threat to have the pickets arrested for trespassing violated section 8(a)(1), the Board panel noted that the employer of the picketing employees was not insulated from otherwise protected picketing merely because someone else—the respondent—was technical owner of the mall and the land surrounding it; that the respondent had not reserved his property for his exclusive use, but clearly intended to permit the public and his tenants' employees to use the mall; and that the owner of the mall having opened it to the public could not designate the pickets as an unacceptable class and exclude them from the mall solely because they chose to engage in protected concerted activity.⁶

In the Board panel's view its interpretation achieves a desirable accommodation between the respondent's property rights and the employees' section 7 rights by according employees the right to picket their employer at such a proximate location—directly in front of the employer's premises—rather than requiring them to picket at a more distant location which may well be a common situs for entrance to other places of business and thus invite secondary effects.

Nonemployee union organizers are entitled to access to an employer's premises, in the absence of discrimination, only if the union cannot reach employees through other available, reasonable channels of communication. However, when employees are housed on the employer's premises, an employer may not deny a nonemployee union organizer access to them without a legitimate business reason, unless other adequate channels of communication are demonstrably available.⁷

In a case⁸ involving crewmen aboard tankers which were in port about eight times a month for periods of 35 hours or less, the Board majority held that the employer could not deny nonemployee union organizers the right to go aboard its ships for organizational purposes. Although the union had attempted to reach the crewmen while they were off the vessels, it had not thereby assumed for itself or for the

⁶ Also see *Frank Visceglia and Vincent Visceglia, t/a Peddie Buildings*, 203 NLRB No. 27 (1973), which the Board relied on, and the discussion of that case in 38 NLRB Ann. Rep. 84 (1973); but see *N.L.R.B. v. Frank Visceglia and Vincent Visceglia, t/a Peddie Buildings*, 498 F. 2d 43 (C.A. 3), enforcement denied.

⁷ *Alaska Barite Co.*, 197 NLRB 1023 (1972).

⁸ *Sabine Towing & Transportation Co.*, 205 NLRB No. 45 (Chairman Miller and Members Fanning, Jenkins, and Penello, Member Kennedy concurring in part and dissenting in part)

Member Kennedy agreed with the administrative law judge that the General Counsel had not met his burden of proving that the union had been denied a reasonable opportunity to communicate with the crewmen, in view of testimony by two organizers that they had spoken to 71 of the 168 crewmen, unrebutted testimony by 52 crewmen about their contacts with union organizers, and undisputed testimony by an employee that an organizer stated that there were only 20 men they had not seen. Additionally, Member Kennedy disassociated himself from the majority's discussions of a "prima facie case" without providing guidelines and the General Counsel's burden of proof. In Member Kennedy's view, the General Counsel must prove that the usual channels of communication are not effective.

General Counsel the burden of proving that the alternative channels of communication were inadequate. To assign that burden to a union would not support any meritorious policy, but would only encourage recourse to the Board in questionable cases at the expense of self-help. But the Board carefully noted that a *prima facie* showing of the inadequacy of alternative channels of communication could be rebutted by an employer; and that in rebuttal it would be permissible to show what steps the union had taken and the success of its efforts. That rebuttal, however, is the employer's burden—a burden which is not met merely by demonstrating that many employees have been contacted.

2. Limitations on Employee Activity on Employer's Premises

The Board has long held that restrictions on employee solicitation, or distribution of literature, in nonwork areas when employees are not actually working are presumptively invalid. The Board also presumes that a rule limiting solicitation during the time an employee is working is for the maintenance of production and discipline and is valid, even though it is a restriction on section 7 rights. If a rule is ambiguously phrased so that it may be interpreted as prohibiting legitimate activity, it is invalid.

In *Essex International*,⁹ the Board dealt with rules against solicitation during "work time" and distribution during "working hours." The Chairman and Member Kennedy concluded that there is a clear distinction between "working hours" and "working time." In their view, the term "working hours" is the period from the beginning to the end of a workshift and includes times such as lunch and break periods. The term "working time" or "work time" connotes the time spent on actual job duties. They consider rules prohibiting solicitation during "working time" or "work time" to be valid presumptively, but the presumption can be overcome by extrinsic evidence that the rule was communicated or applied in such a way as to convey an intent to restrict or prohibit solicitation during breaktime or other periods when employees are not actively working. Chairman Miller and Member Kennedy also consider prohibitions on "working hours" to be invalid presumptively, unless the employer can show by extrinsic evidence that the rule was communicated or applied in such a way as to convey a clear intent to permit solicitation during breaktime or other periods when employees are not actively working. Chairman Miller and Member Kennedy found the no-solicitation rule, in the instant case, which prohibited soliciting during "work time" valid. They also found the no-distribution

⁹ 211 NLRB No 112 (Chairman Miller and Member Kennedy; Member Penello concurring, Members Fanning and Jenkins dissenting)

rule which prohibited distributing during "working hours" valid in the context of this case. They pointed out that their conclusion in this regard was consistent with the record evidence as to the actual understanding employees had of the no-distribution rule.

Member Penello concurred with the distinction of Chairman Miller and Member Kennedy between "working time" and "working hours," but did not concur in Chairman Miller's and Member Kennedy's apparent willingness to rely in part on the employees' subjective understanding of a rule in determining its validity. In Member Penello's view the presumption of invalidity remains applicable unless the employer affirmatively proves, by objective evidence, that it has communicated to employees a clarification which plainly limits the scope of the rule to times designated for the performance of work duties.

Members Fanning and Jenkins, dissenting, found no distinction between the two phrases, "working time" and "working hours," in this case. In their view, both rules are ambiguous and susceptible of an interpretation which implies an overly broad restrictive reach. They pointed out that such rules can easily be clarified by an employer and, if the employer does not choose to do so, it must bear the burden of the unlawfulness inherent in the ambiguity.

When read together, the opinions indicate that the five members of the Board agree that prohibition of solicitation during "working hours" is presumptively invalid. Three members of the Board agree that if the rule refers to "working time" it is presumptively valid. And three members of the Board, apparently, would apply the presumption in the absence of an affirmatively established clarification by the employer.¹⁰

Union agreement to an otherwise invalid no-distribution or no-solicitation rule cannot effectively waive the employees' rights to distribute literature relating to the employees' exercise of their section 7 rights, although the union may effectively waive its rights to distribute its own purely institutional literature.¹¹ Panels of the Board have held that a union may not waive employee rights to distribute litera-

¹⁰ Following the decision in *Essex, supra*, rules restricting employee activity during "work hours" or "working hours" were found unlawful in *John H Swisher & Son*, 211 NLRB No. 114, by a Board panel consisting of Chairman Miller (agreeing for the reasons he stated in *Essex*) and Members Fanning and Jenkins, in *Pepsi-Cola Bottling Co of Los Angeles*, 211 NLRB No. 132, by a Board panel of Chairman Miller and Members Jenkins and Kennedy (for the reasons fully set forth in *Essex*), and, in *Groendyke Transport*, 211 NLRB No. 139, by a Board panel consisting of Chairman Miller and Member Kennedy with Member Jenkins concurring (in reliance on the reasons set forth in his dissent in *Essex*). Rules restricting employee activity during "working time" were found valid and lawful in *General Motors Corp.*, 212 NLRB No. 45, by a Board panel of Members Kennedy and Penello with Member Jenkins dissenting (for the reasons stated in his dissenting opinion in *Essex*).

¹¹ See *Magnavox Co of Tennessee*, 195 NLRB 265 (1972) (Member Fanning concurring separately), 37 NLRB Ann. Rep. 89-90 (1972), aff'd 415 U.S. 322 (1974).

ture relating to the election of union officers,¹² opposition to an increase in union dues,¹³ or to literature opposing a union's conducting collective-bargaining negotiations.¹⁴

In *Prescott Industrial Products*,¹⁵ the Board majority held that an employee's attempt to ask a question following his employer's anti-union speech was protected concerted activity. The majority held that he had a right to ask the question in the face of his employer's refusal to permit him to do so, in that such action was, in effect, a protected protest or grievance against an improper prohibition of an opportunity to ask a question which he reasonably believed would aid himself and his fellow employees in exercising a free choice as to the selection or nonselection of a collective-bargaining representative. In the opinion of the majority, the protection exists regardless of the underlying merit of the grievance, unless the employee in the exercise of a protected concerted activity has acted so violently as to demonstrate his unfitness for further employment.¹⁶

3. Other Forms of Interference

Unlawful interference with employee rights under section 7, or restraint or coercion of employees in the exercise of those rights, can take many forms; unlawful restriction of employee activities is no more than one category. The following cases are representative, not exhaustive, of the types of unlawful interference considered by the Board during the year.

In *Litho Press of San Antonio*,¹⁷ a majority of the Board (Chairman Miller and Members Kennedy and Penello) concluded that showing the film "And Women Must Weep," an antiunion film purporting to depict union reaction to employees who do not support a strike, neither violated the Act nor constituted a sufficient basis for setting aside an election. All prior decisions which were inconsistent with this conclusion were overruled. Member Jenkins would not have overruled

¹² *General Motors Corp.*, 211 NLRB No 123 (Chairman Miller and Members Fanning and Penello)

¹³ *McDonnell Douglas Corp.*, 210 NLRB No 29 (Members Fanning, Jenkins, and Penello)

¹⁴ *Massey-Ferguson*, 211 NLRB No 64 (Chairman Miller and Members Jenkins and Kennedy).

¹⁵ *Prescott Industrial Products Co.*, 205 NLRB No. 15 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting in part); *NLRB v Prescott Industrial Products Co.*, 500 F.2d 6 (C.A. 8, 1974) *enfd* in part and *denied* in part

¹⁶ Chairman Miller and Member Kennedy dissented on this aspect of the case. They would have found that the employer had a right to deny the employee, a known union advocate, an opportunity to reply, on behalf of the union and on company time, to the company's lawful "captive audience" speech. They would have further found that the employer could implement that right by terminating the employee for insubordination after he had defied repeated warnings in connection therewith

¹⁷ 211 NLRB No. 143.

contrary decisions and adhered to a case-by-case approach emphasizing the circumstances in which the film is shown, particularly whether the film is shown in the context of other unfair labor practices. However, he did not consider the showing of the film, alone, to be an unfair labor practice. Member Fanning was of the view that no *per se* conclusion should be drawn as to whether showing the film always, or never, violated section 8(a) (1), and instead that such determinations must be made on a case-by-case basis in the light of the circumstances. In certain contexts, but not in all contexts, Member Fanning would continue to find "And Women Must Weep," and similar expressions, a violation of section 8(a) (1) and grounds for setting aside an election. All five members of the Board agreed, however, that in the circumstances of the case the showing of "And Women Must Weep" had not violated the Act.

In *O'Neil Moving & Storage*,¹⁸ a majority of the Board (Chairman Miller and Members Kennedy and Penello) found no 8(a) (1) violation arising out of an employer's preelection misstatement of the legal consequences of a union-shop clause, which the statement indicated the contending union might demand. The employer had, in the same statement, expressed its opposition and unwillingness to agree to such a clause. The majority found in such a statement no threat of illegal adverse employee action. The employer had asserted that, if employees selected the union, the union would insist on a union-shop clause which would force the employer to discharge employees who refused to pay union dues, fines, or assessments, whereas under the Act employees may be required to pay only dues and initiation fees as a condition of employment, and any attempt by a union to require an employer to discharge employees because they have not paid fines or assessments is unlawful. The Board majority concluded that any predicted adverse effect was remote, requiring a series of speculative assumptions: that the union would insist on a union-shop clause; that the employer would agree despite his announced opposition; that employees would refuse to pay a fine or assessment if ever imposed; that the union would unlawfully demand discharge; and that the employer would do so under a mistaken view of the law.¹⁹

¹⁸ 209 NLRB No. 82

¹⁹ Members Fanning and Jenkins dissented because they would have found an employer's misstatement of the law during an election campaign, which erroneously threatens the employees with possible dire consequences if the union wins the election, violates sec. 8(a)(1). In their view, the majority approached the issue from the wrong direction. Many, if not all, employer predictions of adverse effects from the selection of union representation have a remote impact and are contingent on a union victory. The test is not whether the consequences are remote, but whether there is a present or immediate impact on the employees. And, as a practical matter, the only contingency advanced by the employer was the selection of the union.

In a decision²⁰ further defining the scope of activity protected by section 8(a)(1), a Board majority held that the picketing involved was not protected by section 7 of the Act because the picketing employees acted in contravention of the contractual grievance procedure and sought to initiate direct negotiations with the employer over matters which properly were to be processed through the agreed-upon grievance procedure of a contract. That conclusion was held necessary to give full recognition to the 9(a) concept of exclusive representation and the national labor policy in favor of settling labor disputes through grievance-arbitration procedures.²¹

B. Employer Assistance to 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."

Under the Board's *Midwest Piping* doctrine,²² 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 *Traub's Market*,²³ which was considered by a Board panel,²⁴ Members Jenkins and Kennedy held that the employer's execution of a contract with an incumbent union when it was presented with the competing claim of a rival union evidenced by a representation petition was an unlawful abnegation of the strict neutrality required of it by the *Midwest Piping* doctrine. The majority opinion stated that there was no doubt that a real question concerning representation existed at the time the employer executed the contract for two reasons: (1) the rival union's petition was filed after the prior contract had expired when no subsequent agreement had yet been executed by the employer

²⁰ *United Parcel Service*, 205 NLRB No 163 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

²¹ The dissent of Members Fanning and Jenkins was based on a different analysis of both the facts and the law. In their view, the picketing was motivated by employee dissatisfaction with the employer's handling of grievances and its alleged failure to abide by the contract. Members Fanning and Jenkins noted that the picketing was carefully designed and timed not to interfere with the employer's business, but rather only to make the employer's officials aware of their employees' dissatisfaction. In their opinion, the evidence in this case pointed to the conclusion that the union authorized or sanctioned the picketing and the goals of the employee pickets were in no way at cross-purposes with those of the union. The dissenters discerned no attempt to negotiate separate terms, but only an attempt to persuade the employer to abide by the contract and thus was in support of, not derogation of, the contract.

²² *Midwest Piping Supply Co.*, 63 NLRB 1060 (1945).

²³ 205 NLRB No 124.

²⁴ Members Jenkins and Kennedy; Chairman Miller concurring in the result.

and the incumbent union, and the petition was therefore timely; and (2) the sole requirement necessary to raise a question concerning representation within the meaning of the *Midwest Piping* doctrine is that the claim of the rival union must not be clearly unsupportable and lacking in substance. As the rival union met the *Midwest Piping* criteria by its timely petition and not insupportable claim, the panel found that the employer had rendered unlawful assistance and support to the incumbent union by signing a contract with it at a time when a real question concerning representation existed, in violation of section 8(a)(2) and (1).²⁵

However, a mere naked claim to a representational interest in employees is not sufficient to raise a real question of representation. Where a union had requested a recognition based on a majority of valid authorization cards, and a second union filed a representation petition which it withdrew without demonstrating a showing of interest in the appropriate unit, a Board panel held that the employer did not violate section 8(a)(2) by thereafter recognizing the first union. Although the second union had notified the Board's regional director that it wished to participate in any election which might be directed and advised the employer that it was organizing the employees, no evidence was adduced that it engaged in any organizing activity after it withdrew its petition. In those circumstances, the Board panel concluded that there was no more than a naked claim and that neither employer nor union had violated the Act by entering into a bargaining relationship.²⁶

An employer may violate section 8(a)(2) by conduct short of recognizing, or entering into a contract with, a rival union. Assisting a union's organizational efforts or permitting supervisors to aid a union's organizing attempt also violates that section. However, even though employees may be supervisors within the meaning of the Act, and their conduct thus attributable to their employer, it does not follow that any and all assistance they may give to a union's organiz-

²⁵ Chairman Miller concurred, noting specifically the Board's earlier decision in *Telaugograph Corp.*, 199 NLRB No. 177 (1972), which made it clear that an adequately supported election petition raised a question of representation for all purposes and that any refusal-to-bargain charge based only upon an employer's refusal to continue negotiations with an incumbent after such a petition was filed would be dismissed as nonmeritorious. In the Chairman's opinion, in light of that decision there is no longer any possibility that an employer may rightfully claim that he is caught in a dilemma if a proper petition is filed while he is negotiating with an incumbent—that is, he may be charged with a violation of sec. 8(a)(5) if he refuses to bargain thereafter and a violation of sec. 8(a)(5) should he continue bargaining. In Chairman Miller's view, as a result of *Telaugograph* and this case, the employer, now clearly free from any duty to negotiate once a timely and adequately supported election petition is filed, *must* honor his employees' free choice options and may not lawfully foreclose their effective exercise by signing a binding contract granting exclusive recognition to one of the two competing labor organizations.

²⁶ *Robert Hall Gentilly Road Corp.*, 207 NLRB No. 113 (Chairman Miller and Members Fanning and Penello).

ing campaign places their employer in violation of section 8(a)(2) without regard to the circumstances. The Board has held²⁷ that organizing activity by professional librarians limited to a unit of professional employees, with whom they share principal duties, is not unlawful under section 8(a)(2) even though they may be supervisors within the meaning of the Act because of their supervisory responsibilities with respect to nonprofessional employees outside the unit. The Act's policy is to insulate employees' jobs from their organizational rights. The possibility that professional librarians would be coerced by the organizing efforts of other professional librarians who also, by nature of their duties, supervise only employees outside the unit, is too remote to justify limiting the section 7 rights of such employees. "[W]here an individual's principal duties are of the same nature as that of other unit employees, the exercise of supervisory authority outside the unit sought does not so ally such an employee [with management] as to create a conflict of interest."

C. Employer Discrimination in Conditions of Employment

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. Many cases arising under this section present difficult factual, but legally uncomplicated, issues as to employer motivation. Other cases, however, present substantial questions of policy and statutory construction.

1. Discharge for Strike Activity

A strike is concerted activity within the meaning of section 7 and normally the discharge of an employee for engaging in a strike would violate section 8(a)(3). But an employer may lawfully discharge employees who engage in an economic strike in violation of the terms of a valid collective-bargaining agreement.

In *Gary-Hobart Water Corp.*,²⁸ a Board majority found that the employer violated the Act when it discharged members of a clerical employees' union who engaged in a sympathy strike by refusing to cross the picket line of the employer's production and maintenance employees, since the no-strike clause in issue was limited to disputes

²⁷ *University of Chicago Library*, 205 NLRB No 44 (Members Fanning, Jenkins, and Penello).

²⁸ 210 NLRB No 87 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy concurring in part and dissenting in part).

arising under the contract. The majority pointed out that the right to strike is guaranteed by the Act and is protected by law, whether the strike be for economic reasons, for the purposes of improving working conditions, or for mutual aid and protection of employees of another union; thus, the right to engage in a sympathy strike or honor another union's picket line is also protected. The majority observed that the right may be waived by appropriate provisions in a collective-bargaining agreement, but stated that such waiver will not readily be inferred, and there must be a clear and unmistakable showing that a waiver occurred.

It was the opinion of the majority that the no-strike clause in the instant case was not comprehensive, but limited to disputes arising under the contract; and they therefore held that the clerical union had a right to strike in connection with a dispute not subject to grievance arbitration. Since the no-strike clause here was only as extensive as the grievance-arbitration procedure, and since nowhere in the contract did the clerical union waive the right to honor another union's picket line, the majority found no clear waiver. The panel noted that the strike by the clerical unit was not over a grievance which the parties were contractually bound to arbitrate, and that the dispute was between the production and maintenance unit and the employer and thus not resolvable under the clerical unit's grievance procedure.

The majority concluded that the clerical union had not waived the right of the clerical unit to observe the picket line of another union and that the action of the terminated clerical employees was not in violation of the applicable no-strike clause, and therefore held the strike to be protected concerted activity and the employer's action in discharging these employees violative of section 8(a)(1) and (3).²⁹

A strike in violation of an applicable, general no-strike clause may nevertheless be protected, but only if it is in protest of "serious" unfair labor practices.³⁰ Application of that principle was illustrated during the year when a Board majority found that a strike, which

²⁹ Chairman Miller and Member Kennedy, dissenting in relevant part, agreed with the administrative law judge that the no-strike clause in the collective-bargaining agreement was a clear and unambiguous prohibition against all strikes and that there was, therefore, no reason to resort to extrinsic evidence to determine the parties' intent. Unlike the majority, they were unable to find any basis for construing the plain words of the agreement pledging no strike or other interference with production and no interruptions of work during the term of the agreement to be in any way limited to specific kinds of strikes, stoppages, or interruptions—i.e., strikes or interruptions of work relating solely to disputes arising under the contract. The sympathy strike of the clerical employees was in the view of Chairman Miller and Member Kennedy in breach of the plain terms of their labor agreement and therefore constituted unprotected activity.

³⁰ *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 281 (1956), *Arlan's Department Store of Michigan*, 133 NLRB 802 (1961).

violated a no-strike provision, was not protected, despite the fact that it was in protest over a unilateral change in the work schedule which violated section 8(a)(5). The majority found that the employer's conduct was not of such serious nature to destroy the foundation of collective bargaining. It noted that there was no evidence of union animus or an intention by the employer to rid itself of the union, and that a contract grievance procedure had been available for peaceful resolution of the dispute.³¹

2. Discharge of Employees of a Union for Intraunion Activity

Unions have employees, and at times they have to deal with their employees as employers. Like other employers they are subject to section 8(a) of the Act and may become involved in disputes with their employees which lead to charges being filed against them with the Board in their status as employers.

In one such case, the discharge of six union employees by the president of a large local because of their unsuccessful opposition to him in an election campaign was found to be lawful. The administrative law judge had held to the contrary, based principally on the president's testimony that they had been discharged because the union membership expected loyal, unqualified, and dedicated service. But a Board panel concluded that the administrative law judge had not given proper effect to all the elements necessary to support a violation of section 8(a)(3). That section requires that discrimination be motivated by union animus and that it foreseeably encourage or discourage union membership. In this case, the interest of these employees had not been in any change in their membership status, but in changing management within the organization; nor was there any evidence that they had engaged in any concerted activity to obtain a separate and independent bargaining representative. Because there was no evidence that union membership was either encouraged or discouraged, the Board panel held that there had been no violation of section 8(a)(3).³²

³¹ *Dow Chemical Co.*, 212 NLRB No. 50 (Members Kennedy and Penello; Member Fanning dissenting in part). Member Fanning relied on his dissent in *Arlan's Department Store*, *supra*, and stated that the work schedule change resulted in a reduction of pay for most of the employees in the department affected, and that in his view few actions are more destructive of the collective-bargaining foundation than unilateral action undermining the collective-bargaining representative.

³² *Retail Clerks Union, Loc 770 Retail Clerks Intl Assn*, 208 NLRB No. 54 (Chairman Miller and Members Fanning and Jenkins) Also see *Retail Store Employees Union, Loc 876, Retail Clerks Intl. Assn.*, 212 NLRB No. 31. in which a Board panel (Chairman Miller and Members Jenkins and Penello) adopted an administrative law judge's dismissal of an 8(a)(3) allegation in similar circumstances, relying on the foregoing decision.

3. Refusal To Reinstate Striking Employees

Occasionally, the Board is presented with a case which requires it to determine the rights of employees who have been lawfully discharged, are thereafter offered and refuse reemployment during a strike, and then seek to return to work at the end of the strike. A Board panel held in *Colonial Press*,³³ where an unfair labor practice strike had been sparked by the unlawful discharge of one employee and the lawful discharge of six others, that the employer's offers of reemployment during the strike clearly condoned their earlier misconduct, which, therefore, could no longer be the true basis for its failure to reemploy them. The employer contended, however, that the fact that these persons did not accept the offers of reemployment during the strike left them in an unprotected position because they did not act affirmatively to reclaim their status as "employees" and thus remained outside the protection of the Act. The Board rejected that reasoning since it would require the employees either to become strikebreakers or to indulge in the unrealistic and artificial formality of accepting employment contingent on the end of the strike.

In the Board panel's opinion it was more consistent with reality to conclude that the employer's statements showed a clear intent to continue the employer-employee relationship and in legal effect constituted a rescission of the previous discharges. Since there was no evidence that the employees had been replaced before condonation and the rescission of the discharges, they became unfair labor practice strikers entitled to unconditional reinstatement.

D. The Employer Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to section 9(a), have a mutual obligation to bargain in good faith about wages, hours, and other terms and conditions of employment.³⁴ An employer or labor organization respectively violates section 8(a) (5) or 8(b) (3) if it does not fulfill its bargaining obligation.

1. Obligation To Recognize on Demand

Signed authorization cards can provide a valid basis for requiring an employer to bargain with a labor organization. But, the Board will

³³ 207 NLRB No 114 (Chairman Miller and Members Fanning and Penello).

³⁴ The scope of mandatory collective bargaining is set forth generally in sec. 8(d) It includes the mutual duty of the 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, neither party is compelled to agree to a proposal or to make a concession

not order bargaining based *solely* on cards or other union-proffered evidence of majority status short of a Board-conducted election. The Board will issue a bargaining order based on cards only if the employer engages in unfair labor practices which impede a fair election³⁵ or agrees, or attempts, to determine majority status by some means other than a Board-conducted election.³⁶

Absent such circumstances, the Board has held³⁷ that an employer who did no more than reject a demand for recognition and a card showing, regardless of the adequacy of the showing, has a clear right to demand that the majority be established in a secret-ballot election before he will be required to bargain. But the Board has also held³⁸ that an employer who rejects a demand for recognition and an offer by the union to prove its majority status by authenticating the signatures on authorization cards, and then learns by interrogating his employees that a majority of them unequivocally supports representation by the union, is no longer free to insist on a Board-conducted election.³⁹

In *Tennessee Shell Co.*,⁴⁰ a majority of the Board held *Linden*, rather than *Sullivan*, controlling when the employer learned in the course of interrogations that possibly 11 out of the 21 unit employees appeared to support the union, but had reason to believe that there was some question as to the allegiance of 1 or 2 out of that slender majority. As the employer had not gone on to question enough additional employees to establish by that means an unmistakable majority preference for the union, the Board majority considered the information the employer had insufficient in itself to take the case out of the *Linden Lumber* rule. Accordingly, the Board majority concluded that the employer did not violate section 8(a)(5) when it refused the union's demand for recognition,⁴¹ and the issuance of a bargaining order was not warranted.⁴²

³⁵ See 38 NLRB Ann. Rep 93 (1973)

³⁶ E g, *Nation-Wide Plastics Co*, 197 NLRB 996 (1972).

³⁷ *Linden Lumber Div, Sumner & Co*, 190 NLRB 718 (1971).

³⁸ *Sullivan Electric Co*, 199 NLRB No 97 (1972).

³⁹ Unlike the situation in *Sullivan Electric*, *supra*, the interrogation or information obtained by the employer in this case occurred *before* the demand for recognition was made. The Board majority did not find it necessary to determine what impact, if any, this difference might have in applying the *Sullivan Electric* rule.

⁴⁰ 212 NLRB No. 24 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

⁴¹ Member Kennedy dissented in *Sullivan Electric*, *supra*, and for the reasons stated in that dissent, as well as the reasons stated by Chairman Miller and Member Penello in this case, found that the employer did not violate sec. 8(a)(5).

⁴² Members Fanning and Jenkins, dissenting in part, would have found that the employer's refusal to recognize and bargain with the union violated sec. 8(a)(5) and that a bargaining order should have issued under the *Sullivan Electric* rule. In their view, when the union demanded recognition, the employer had knowledge, obtained largely through its unlawful interrogations, that the union had the support of at least 14 employees out of a total unit of 21. In the opinion of Members Fanning and Jenkins, on the basis of the

The Board during this year had occasion to consider whether an employer is bound to accept a card showing of majority status when it has agreed to an "after-acquired" clause in a collective-bargaining agreement. In the *Kroger case*,⁴³ the Board majority held that the employer operating a retail store chain in Texas did not violate section 8(a)(5) when it refused to bargain with two unions that claimed to represent different groups of employees in two stores which the employer had recently transferred from its Dallas administrative division to its Houston administrative division, and demanded a Board election for purposes of establishing eligibility status. The employer had separate contracts with both unions as representatives of employees in separate multistore units of Houston division stores, and had contractually agreed to add "after-acquired" or "additional" stores to the existing multistore units of the Houston division. The unions each had a majority of signed authorization cards. The transferred stores were found to constitute independent appropriate units. The Board held that an employer may, in light of proper evidence of majority support, short of a Board-conducted election, voluntarily recognize a union, but is not required to do so. Alternatively it may, as the employer did, seek a Board election, at least where, as the Board majority found here, the contract language was general and did not reflect a conscious waiver of the employer's right to insist upon an election. The majority found that the "additional" store clause was not tantamount to an advance agreement to honor a card majority, and that, since no method was set forth for determining majority status, there had been no voluntary agreement on legal means of resolving majority status. Thus, the Board majority held that the employer's refusal to bargain and insistence on a Board election did not result in violation of the Act.⁴⁴

decision in *Sullivan Electric, supra*, where, as here, an employer undertakes a determination which he could have insisted be made by the Board, he may not thereafter repudiate the route that he himself selected. It is sufficient that an employer engage in interrogation to the extent that it determines majority support. It is not necessary that the interrogation be the employer's sole source of knowledge. Further, they considered it irrelevant whether the interrogation occurred before or after a request for recognition.

⁴³ *Houston Div of the Kroger Co*, 208 NLRB No 122 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

⁴⁴ In their dissent, Members Fanning and Jenkins were of the view that the issue was whether the employer had contracted to recognize the unions if they represented a majority, and, if so, whether giving effect to the agreements would effectuate the Act's policies. They read the contract as agreements to recognize the unions, concluded that the only reason for not giving effect to such agreements was to protect the employees' right to select a representative, and, since the unions' majority statuses were conceded, found no reason for not requiring recognition.

2. Obligation To Bargain Where Unfair Labor Practices Preclude a Fair Election

In *Steel-Fab*,⁴⁵ a majority of the Board (Chairman Miller and Members Kennedy and Penello) held that a bargaining order was warranted to remedy the employer's numerous and egregious violations of section 8(a)(1) and (3) which had clearly dissipated the union's majority and created an atmosphere in which a free and fair election could not take place. However, the majority announced the conclusion that, upon reexamination of *Gissel*-type⁴⁶ cases, it was not necessary to predicate the bargaining order on a finding of an 8(a)(5) violation;⁴⁷ instead, the bargaining order is issued for the purpose of remedying an employer's 8(a)(1) and/or 8(a)(5) violations which have dissipated a union's majority and prevented the holding of a fair election; hence, no real purpose is served by predicating an essentially remedial order or finding a violation of section 8(a)(5).

According to the Board majority, the central issue in all these cases, as the Supreme Court's opinion in *Gissel, supra*, spells out, is the propriety of the Board's use of a bargaining order as a remedy for varying degrees of employer unfair labor practices. It saw no point in cluttering up the analysis of this central issue with the kinds of matters which the Board customarily considers in deciding whether an employer has or has not met the kinds of bargaining obligations dealt with in its typical refusal-to-bargain 8(a)(5) cases. In the majority's view, it distorts the Board's analysis to predicate bargaining orders on 8(a)(5) violations, and it is desirable for the Board to concentrate solely on a careful examination of an employer's 8(a)(1) and/or 8(a)(3) conduct and its impact upon the holding of a fair election. Therefore, the Board majority declared that henceforth, in *Gissel*-type situations, it would dispense with finding an 8(a)(5) violation and instead determine only whether or not a bargaining order is necessary as a remedial matter.

Members Fanning and Jenkins, in separate opinions, concurred in part and dissented in part from the majority's conclusion that it is unnecessary in some cases alleging violation of section 8(a)(5) to determine whether that section has been violated. They would have found that the employer did not violate section 8(a)(5) of the Act and would have provided a bargaining order dated from the union's recognition request. In Member Fanning's view, the holding was contrary to the literal language of section 8(a)(5), contrary to the holding of the Su-

⁴⁵ 212 NLRB No. 25

⁴⁶ *Gissel Packing Co.*, 395 U.S. 575 (1969), see 37 NLRB Ann. Rep. 101 (1972).

⁴⁷ Under *Gissel*, to determine whether or not a bargaining order should issue as part of the remedy, the seriousness of the employer's misconduct and its impact on the holding of a fair election (or rerun election) were evaluated

preme Court in the *Gissel* case, *supra*, and contrary to the legislative history of section 8(a)(5), and it would leave serious unfair labor practices unremedied, e.g., the nondiscriminatory but unilateral relocation of a plant or reductions in wages. It also raised a question, which could not be answered at that time, about the impact on the presumption that a union's majority once established continues until rebutted by substantial evidence. Unlike the majority, Member Fanning would find an 8(a)(5) violation in appropriate cases as of the date recognition was requested, and that any later unilateral changes also violated section 8(a)(5).

Member Jenkins largely agreed with Member Fanning's analysis, but noted he was not in complete agreement with either the view expressed by the Board majority or that of Member Fanning.⁴⁸ To remove any doubts concerning his position, he stated that in appropriate circumstances he would find 8(a)(5) violations at the time of demand, where there has been a demand for recognition or bargaining; the unilateral changes in terms and conditions of employment thereafter also violated section 8(a)(5); that, where no demand has been made but a petition has been filed, the petition is a constructive demand and the violation dates from the petition, and that if the petition has been withdrawn the same rules nonetheless apply; and that where there has been no demand or petition he would not find an 8(a)(5) violation, but would find an 8(a)(1) violation if the union has at sometime represented a majority. If, in the last case, the 8(a)(1) misconduct reaches the level suggested by *Gissel*, Member Jenkins would order bargaining as a remedy dating from the first instance of misconduct which ultimately frustrated the election process and would also find that any unilateral changes after that date violated section 8(a)(5).⁴⁹

In an earlier case during the year, a Board majority applied *Gissel* standards where an employer withdrew recognition from a certified union following the filing of a decertification petition and then engaged in unfair labor practices. The Board majority held that threats

⁴⁸ In reply to the dissents' contentions that unilateral changes in wages or working conditions after the date on which the 8(a)(5) violation is held to have occurred should automatically be found by the Board to be further violations, with no analysis as to whether such changes were made for bona fide business reasons or whether they were motivated by antiunion considerations, the Board majority pointed out that such holdings are entirely proper in a "true" 8(a)(5) situation. For, the Board has long held that, once a union is certified or recognized, any change made without negotiations with it constitutes a failure on the employer's part to fulfill his bargaining obligations. But, in the opinion of the Board majority, in the context here, such a rule rests on specious foundations because in this type of case the Board decides the so-called 8(a)(5) issue on an assessment of the seriousness of the employer's unfair labor practices, not on whether a bargaining obligation has arisen.

⁴⁹ Subsequently the Board followed *Steel-Fab*, *supra*, in *Oahu Refuse Collection Co.*, 212 NLRB No 51 (Members Kennedy and Penello, Member Fanning dissenting in part); and *Howard Creations*, 212 NLRB No 26 (Chairman Miller and Members Jenkins and Kennedy). Member Jenkins, for the reasons set forth in his dissent in *Steel-Fab*, *supra*, would also have found a violation of sec 8(a)(5).

by various supervisors of the employer involving cessation of a major item of production if the union won the election, the closing or moving of the plant, or transferring of the work to other plants brought this case within the purview of *Sinclair*, one of the four cases involved in *Gissel*, *supra*, in that the unfair labor practices committed here, in violation of section 8(a) (1), were so coercive that the results of the election were rendered unreliable; that the effects of the employer's interference with employee rights could not be expected to be remedied by the mere posting of a notice; and that a bargaining order was the only available effective remedy for such conduct.⁵⁰ The Board majority concluded that the case should be treated in the same manner as a case of initial organization where a union has had a majority at some time before an election under *Gissel* standards, since the employer had not rebutted the presumption that the incumbent retained majority support.

3. Withdrawal of Recognition From Incumbent Union

Under the Board's *Celanese* rule there is a rebuttable presumption that a union's majority continues after the first year of certification.⁵¹ An employer which withdraws recognition from an incumbent union, either certified more than a year earlier or voluntarily recognized, may rebut the presumption by an affirmative showing either that it had a reasonable basis for doubting the union's continued majority, on which it relied in good faith, or that the union did not represent a majority at the time the employer refused to bargain. However, the issue may not be raised by an employer in the context of illegal antiunion activity, or other activity aimed at creating disaffection from the union or indicating that it was seeking to gain time to undermine the union.

Those principles and their application were considered by the Board in *Automated Business Systems*, *supra*, where the Board majority concluded that the filing of a decertification petition and representations to the employer by petitioner's attorney and an employee that the petition was supported by a majority might have been sufficient to justify a reasonable good-faith doubt of the incumbent union's majority status; nor did the employer's later violations of section 8(a) (1) necessarily estop it from relying on the objective considerations on which it justified its earlier doubt.⁵²

⁵⁰ *Automated Business Systems, a Div of Litton Business Systems, a Subsidiary of Litton Industries*, 205 NLRB No 35 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy each separately dissenting in part).

⁵¹ *Celanese Corp of America*, 95 NLRB 664 (1951)

⁵² Member Fanning would have found that the employer had not asserted its doubt of the union's majority in good faith and would have found that it had also violated sec. 8(a) (5).

The Board majority held, however, that demonstrating an objective basis for a reasonable doubt is not the equivalent of proving loss of majority. Nor is the General Counsel required to come forward with actual proof of majority support unless the employer introduces evidence rebutting the presumption of continued majority. That presumption establishes *prima facie* proof of majority and it is not overcome merely by demonstrating that there is a reasonable basis for doubting an incumbent's majority; rather there must be proof of actual loss of majority.⁵³ Although the employer sought to subpoena and introduce the cards filed with the Board in support of the decertification petition, it did not seek to prove their authenticity or that the signers had committed themselves to decertifying the incumbent. Thus, although the cards could serve as a basis for doubting the incumbent's majority, they could not, in the absence of further proof, establish that the incumbent did not represent a majority. The Board held that the respondent employer had not proved the incumbent's loss of majority, that the presumption that the incumbent continued to represent a majority had not been rebutted, and that the presumption therefore supported a finding that the incumbent represented a majority.⁵⁴

In another case, a Board panel majority found the employer had violated section 8(a)(5) of the Act when, after employees filed a decertification petition, it refused to bargain with the union, as the evidence did not establish that the union had lost its majority status, and the employer did not have a good-faith doubt of the union's majority based upon objective considerations. In the opinion of the panel majority, although the employees had filed a decertification petition, the employer's serious violations of section 8(a)(3) of the Act

⁵³ In *Automated Business Systems v NLRB.*, 497 F.2d 262 (C.A. 6, 1974), the court reversed this aspect of the Board's decision finding "that once sufficient evidence has been presented to cast a doubt on the continued majority status, the burden shifts to the General Counsel 'to prove that, on the initial date, the union in fact represented a majority of employees'" (Citations omitted.)

⁵⁴ Chairman Miller dissented from the standard of proof to be applied in determining whether or not a presumption has been rebutted, noting that he was "totally unenlightened" about whether the union represented a majority. In his view, presumption being something less than actual proof, it may be overcome by something less than actual proof. Since he would not have held that the incumbent represented a majority, he dissented from the bargaining order issued by the majority to remedy the unfair labor practices, which might, in fact, be an unjustified penalty against the employees, who had evinced their dissatisfaction with the incumbent by filing a decertification petition before any unfair labor practices were committed.

Member Kennedy differed with the Board majority's conclusion that the union's majority status was presumed to continue in the old contract unit. There being no proof in the record that the union represented a majority of employees in an appropriate unit, he, like the Chairman, was unwilling to issue a bargaining order in this case. In Member Kennedy's view, once it was established that the employer had an "objective basis" to justify its doubt (which was conceded by the Board majority to be present in this case), the General Counsel had the burden of proving majority status; the employer did not have the burden of proving that the union had ceased to be the majority representative

tended to produce disaffections from the union and thus removed as lawful basis for the employer's withdrawal of recognition the existence of the decertification petition or any evidence of loss of support for the union.⁵⁵

Turnover in employment, increase in the size of a unit, and inactivity of the union for certain periods of time are not objective considerations which the Board will accept as justification for a good-faith doubt of an incumbent union's majority, absent other strong evidence which may form a reasonable basis for believing that the union has lost its majority status. New employees are presumed to support a union in the same ratio as the employees they replace.⁵⁶ That same presumption applies, in the absence of any overt expression of employee disenchantment with the incumbent, even though the union may have no members in the unit it represents. They may desire the benefits of union representation without paying dues or otherwise belonging to the union.⁵⁷ Nor will an employer's speculations concerning employees' support for the union, and a conclusion based on the sum of those speculations, serve as a basis for a good-faith doubt of an incumbent union's majority status. A showing as to employee membership in, or actual financial support of, an incumbent union is not the equivalent of establishing the number of employees who continue to desire representation by that union. There is no necessary correlation between membership and the number of union supporters since no one can know how many employees who favor union bargaining do not become or remain members thereof.⁵⁸

⁵⁵ *Anvil Products*, 205 NLRB No 80 (Members Jenkins and Penello; Member Kennedy dissenting in part). Member Kennedy disagreed with the finding that the employer violated sec 8(a) (5) of the Act. In his view, a real question concerning representation was raised by the timely filing of a valid decertification petition, and there existed sufficient objective grounds for doubting the union's majority status. In support of his conclusion as to the validity of the decertification petition, Member Kennedy pointed out that no contention was made that the petition was in any way unlawfully assisted or sponsored by the employer and the significant fact that not a single independent 8(a) (1) violation was being found in this case. Moreover, the facts, as Member Kennedy viewed them, did not establish that the unfair labor practices, which he considered limited, had an impact upon the employees' free choice in an election.

⁵⁶ *King Radio Corp.*, 208 NLRB No 82 (Members Fanning, Jenkins, and Penello)

⁵⁷ *Harpeth Steel*, 208 NLRB No 84 (Members Fanning, Jenkins, and Penello; Chairman Miller dissenting in part). Chairman Miller disagreed with the Board majority's finding of an 8(a) (5) violation on the basis of facts which he considered sufficient to sustain a good-faith doubt, including the fact that only 7 of some 20 to 25 unit employees had signed checkoff authorizations, the union's statement to the employer that at one earlier period it had had no members in the unit, and the union's failure after the employer's expressed doubt to offer any further proof of majority support.

⁵⁸ *Oron Corp.*, 210 NLRB No 71 (Members Jenkins and Penello; Member Kennedy dissenting). In Member Kennedy's opinion, the employer's withdrawal of recognition in this case occurred under circumstances which clearly established an objective basis for its belief that the union had lost its majority status. Member Kennedy pointed out that the union admitted that when recognition was withdrawn there were only 16 or 17 members in the bargaining unit of 44 employees. In his view this admission was dispositive of the case for, at the very least, resignations or cancellations of checkoff raised doubts of continued majority. Since less than a majority of the employees in the unit were members of the union, Member Kennedy would have found that the employer was under no obligation to continue to bargain with the union and would have dismissed the complaint.

In *George Braun Packing Co.*,⁵⁹ the Board majority dismissed the complaint, which alleged violations of section 8(a)(5), because the evidence was sufficient to meet the standards established in the *U.S. Gypsum* case⁶⁰ with respect to processing proper employer petitions.⁶¹

4. Successor Employer Bargaining Obligation

During the report year, the Board continued to define the circumstances in which a successor employer will be required to bargain prior to establishing initial terms and conditions of employment. In *N.L.R.B. v. Burns Intl. Security Services*,⁶² the Supreme Court stated that successor employers are free to unilaterally establish the terms on which they will hire employees of a predecessor, unless "it is perfectly clear that the new employer plans to retain all of the employees in the unit . . ." In such cases, the successor must consult with the employees' bargaining representative before establishing initial terms of employment.

The application of *Burns* to conditional offers of employment was discussed in *Spruce Up Corp.*⁶³ Spruce Up operated 19 of the 27 barber shops at Fort Bragg, North Carolina. The remaining eight shops were divided between two other concessionaires, Roscoe and Fisher. Spruce Up employees were represented by a local of the Journeymen Barbers Union in a 19-shop unit; Roscoe and Fisher employees were unrepresented.

On February 6, 1970, the union learned that Cicero Fowler had been awarded a contract to operate all 27 barber shops on base. A request for recognition and bargaining was refused. When asked about his intentions regarding the hiring of barbers, Fowler replied that "all the barbers who are working will work." He further indicated that a commission schedule different from the one utilized by Spruce Up would be implemented. On February 27, Fowler distributed form letters to all barbers setting forth the rates of commission he intended to pay and requested that any barber interested in working at those rates sign and return the letter.

When Fowler commenced operations on March 3, picket lines were established. Eighteen former Spruce Up employees crossed the lines and worked at the new rates. Strike replacements soon outnumbered

⁵⁹ 210 NLRB No. 146 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting)

⁶⁰ *U.S. Gypsum Co.*, 157 NLRB 652 (1966)

⁶¹ In the view of Members Fanning and Jenkins, the question of whether or not an employer has reasonable grounds for filing an employer petition is an administrative determination based only upon an employer's *prima facie* showing and is not litigable at any stage of the representation proceeding. It does not determine an employer's obligation to bargain and is not dispositive of a related refusal-to-bargain charge.

⁶² 406 U.S. 272, 294-295 (1972)

⁶³ 209 NLRB No. 19

former Spruce Up employees, but by April 14 and at all times thereafter a majority of the employees working for Fowler in the 19 former Spruce Up shops were barbers who had previously worked for Spruce Up.

The case generated four separate opinions with Members Fanning, Kennedy, and Penello each choosing to set forth his views. Chairman Miller and Member Jenkins, with Member Kennedy concurring, held that Fowler's unilateral establishment of initial terms of employment did not violate section 8(a)(5). In their opinion, it was not "perfectly clear that the new employer [planned] to retain all of the employees in the unit" because it was impossible to forecast exactly how many former Spruce Up employees would accept Fowler's terms. The majority concluded that the Supreme Court's caveat should be restricted to circumstances in which the new employer (1) "has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours, or conditions of employment," or (2) "has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment."

Members Fanning and Penello, in dissent, argued that it is the successor's intention to hire—not his unilateral determination of the terms under which he will hire or the fact that some employees may refuse the offer of employment—which is crucial. In their opinion, so long as a successor intends to hire his predecessor's employees, he must bargain with the union prior to establishing his initial terms and conditions of employment.

A second issue in dispute was whether Fowler was a successor. Member Kennedy argued that Fowler did not qualify as a successor because there had been no continuity in the employing industry.⁶⁴ He noted that (1) nearly half of Fowler's employees never worked for Spruce Up so that there were substantial differences in the employee complement, and (2) there was a major alteration in the scope of the unit from 19 to 27 shops. Chairman Miller and Member Jenkins concluded that the unit expansion did not "destroy the basic continuity of the employing industry," because, had Spruce Up itself acquired the additional eight shops, they would have been considered an accretion to the extant unit. Members Fanning and Penello also reasoned that the additional shops merely amounted to an "expansion of the bargaining unit during the certification year" and did not destroy the validity of the union's certification.

The question of whether and at what point Fowler subsequently incurred a bargaining obligation also split the Board. Members Fan-

⁶⁴ See *John Wiley & Sons v Livingston*, 376 U S 543, 551 (1964).

ning and Penello argued that Fowler had a duty to bargain as early as March 3, because at all times "a legally significant portion" of his employment force consisted of employees who had previously been employed in the bargaining unit. Chairman Miller and Members Jenkins and Kennedy disagreed. In their view, a predecessor's employees must constitute a majority rather than a "legally significant portion" of the successor's work force before a bargaining obligation is incurred. Chairman Miller and Member Jenkins measured majority status in the preexisting (i.e., 19-shop) unit,⁶⁵ and found that such status creates a presumption of continuing majority status, whereas Member Kennedy utilized the expanded (i.e., 27-shop) unit to determine majority status.

Yet another issue faced by the Board in *Spruce Up* was the treatment to be afforded to those former Spruce Up employees who struck on March 3, but who nevertheless made an unconditional offer to return to work of May 28. Chairman Miller and Member Jenkins concluded that between April 14 (the date on which they found a bargaining obligation to have arisen) and May 28 the strikers' loss of work could have been caused by either Fowler's lawful establishment of initial terms or his unlawful refusal to bargain. In their view, however, after the employees' May 28 offer, all further loss of work was caused by Fowler's unlawful continuing refusal to recognize the employees' bargaining agent. Accordingly, Chairman Miller and Member Jenkins ordered reinstatement and backpay commencing on May 28 and directed that any persons hired on or after that date be dismissed in order to fill such positions.⁶⁶

Members Fanning and Penello also agreed that the strikers were entitled to reinstatement, but would have required dismissal of all replacements hired after March 3. Moreover, Member Fanning would have calculated backpay on the basis of Fowler's commission structure, whereas Member Penello would have utilized the commission structure of either Fowler or Spruce Up depending upon which rate resulted in the higher backpay to the individual employees.

A final issue involved in *Spruce Up*—whether an employer will be found in violation of section 8(a)(5) in the absence of a specific demand for recognition by the union once majority support has been acquired—played a significant role in a second case decided during the report period, *Collinge Enterprises d/b/a Jerry's Finer Foods*.⁶⁷

⁶⁵ They determined that majority status in the preexisting unit was acquired by the union on April 14.

⁶⁶ In Member Kennedy's view, Fowler never incurred a bargaining obligation and therefore should not have been ordered to offer reinstatement and backpay.

⁶⁷ 210 NLRB No. 8 (Chairman Miller, Members Fanning, Jenkins, and Kennedy; Member Penello dissenting in part and concurring in part)

The significant facts in *Jerry's Finer Foods* paralleled those in *Spruce Up* and the Board Members generally adhered to their *Spruce Up* positions. A successor employer offered employment to all of his predecessor's employees, contingent upon their willingness to accept substantially lower wage rates. As in *Spruce Up*, a Board majority consisting of Chairman Miller and Members Jenkins and Kennedy found no unfair labor practice in the employer's unilateral establishment of initial terms. As before, they held that the tentative nature of the offers of employment precluded application of the *Burns* caveat. Member Fanning agreed with the result but, as set forth below, for a different reason.

In *Spruce Up*, Chairman Miller and Member Jenkins indicated that a union which has finally acquired majority support need not repeat a prior request for bargaining if the evidence suggests that it would be futile to do so. In their view, so long as the employer is on notice of the union's desire to represent the employees and there has been no intervening disclaimer made, the union's initial request is "continuing" in nature. In this regard, they noted that the union had requested recognition 3 days before it represented a majority and had by its continued picketing indicated it was still claiming to represent the employees in the certified unit on and after April 14.

Member Kennedy argued in his separate *Spruce Up* opinion that the evidence there would not sustain any such futility finding, and that in any event the net effect of Chairman Miller's and Member Jenkins' position would be to place the burden on the employer (1) to determine precisely when and if a union had acquired majority support, and (2), once that is determined, to seek out the union and offer to bargain. In Member Kennedy's view, the union itself must calculate its own majority support and then make a specific demand for recognition.

In *Jerry's Finer Foods, supra*, Member Fanning, contrary to Chairman Miller and Member Jenkins and in accordance with his view in *Spruce Up, supra*, stated that he did not find that the offers of employment were conditional and did not reveal an intent to hire the predecessor's employees. However, in his view, a specific request of the union to bargain about the establishment of initial terms is necessary. Accordingly, as no such request was made, he concluded that there was no violation of the bargaining obligation. Member Penello, on the other hand, found a violation premised upon his view that under *Burns* the obligation is on the employer to consult with the union in circumstances where it is perfectly clear that he intends to retain all of his predecessor's employees and that therefore a union request is not necessary in this situation.

*Anita Shops d/b/a Arden's*⁶⁸ involved a unique application of the *Spruce Up* decision. Four days before a successor employer was scheduled to commence operations, it wrote a letter to the union representing the predecessor's employees indicating that the former employees would be hired "consistent with the level of personnel which our client determines is needed to man said store." The letter further advised that the successor intended to install its own set of wages, hours, and working conditions but offered to negotiate an agreement with the union "at the earliest mutually convenient opportunity." The union did not receive the letter until the day the successor commenced operations, and no communication was ever made directly to the employees. Each employee of the predecessor was offered employment at the new rates.

The Board was thus faced with a situation in which there was no advance notice to employees of new terms, but also no advance commitment as to their employment. Chairman Miller and Member Kennedy, with Member Jenkins concurring in the result, concluded that, since the successor had never adopted any of the predecessor's terms and conditions of employment, it was entitled to establish its own initial terms. In reaching this result, the majority was influenced by the successor's clearly expressed willingness to bargain immediately and the absence of any evidence indicating union animus or hostility.

In a concurring opinion, Member Fanning adhered to his *Spruce Up* position that, since the successor intended to retain all of the predecessor's employees, an obligation to bargain upon demand about the establishment of initial terms existed. However, as in *Jerry's Finer Foods*, *supra*, he concluded that there was no violation since the union had failed to demand bargaining until well after the successor commenced operations in spite of the successor's expressed willingness to negotiate. In a separate dissent, Member Penello reaffirmed his *Spruce Up* position and concluded that the successor's unilateral action violated section 8(a) (5) in view of its intention to retain all of the predecessor's employees.⁶⁹ Moreover, Member Penello doubted the successor's sincerity in offering to bargain in view of the fact that its offer was mailed so late that the union was unable to effectively respond prior to the effectuation of the changes.

⁶⁸ 211 NLRB No. 74.

⁶⁹ Member Penello also noted his view that under the Supreme Court's *Burns* opinion, *supra*, the successor could manifest its "intention to retain" either to the employees or the union.

5. Subject Matter for Bargaining

The appropriateness of resolving unit scope issues through collective bargaining was considered in *Newspaper Production Co.*⁷⁰ For nearly 50 years, the employer had recognized the union as collective-bargaining representative of its photoengravers. In early June 1969, pursuant to a card check, the union was recognized as representing the general production workers as well. When the existing contract with the photoengravers expired shortly thereafter, the employer wanted separate contracts for the two groups of employees; the union wanted one contract for all employees it represented. When impasse was reached on this and other issues, the employees struck.

A Board majority consisting of Chairman Miller and Members Kennedy and Penello concluded that either unit was appropriate and that neither party violated the Act by insisting upon its unit contention to impasse. The employer's position, in essence, amounted to a demand to continue bargaining within the historical established unit. Accordingly, it fell within the Board's policy that neither an employer nor a union need agree to a merger or alteration of established appropriate bargaining units.⁷¹

The union's position was tantamount to insisting upon adding the general production workers to the existing photoengravers' unit, which combined unit could also be appropriate. Thus, the Board majority noted that the parties had previously anticipated a possible expansion of the existing unit through collective bargaining by including in the expired photoengravers' contract a provision for additional employees who became affiliated with the union. In addition, the Board majority observed that the union's demand was not in derogation of a Board certification,⁷² nor did it involve a merger of two preexisting units.⁷³ Accordingly, the Board majority concluded that the union's demand for an appropriate unit of the kind envisaged in past contracts was no more violative of its bargaining obligation than was the employer's insistence upon retention of the existing unit.⁷⁴

⁷⁰ 205 NLRB No. 113.

⁷¹ Cf. *Shell Oil Co.*, 194 NLRB 988, 995 (1972); 37 NLRB Ann Rep 107 (1972).

⁷² See *Doubs v Intl. Longshoremen's Assn. (New York Shipping Assn)*, 241 F.2d 278, 282-283 (C.A. 2, 1957).

⁷³ See *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB No. 55 (1973), enfd 490 F.2d 1383 (C.A. 6, 1974).

⁷⁴ Members Fanning and Jenkins, in dissent, argued that the employer's failure to recognize the union for the combined unit violated sec 8(a)(5). In their view, since the employer had failed to exercise its option of petitioning the Board for a determination of the appropriate unit, once it had ascertained that the union represented a majority, it was obligated to recognize the union as the collective-bargaining representative of the unit consisting of photoengravers and general production workers and it could not impose a condition upon its recognition of the union in an appropriate unit by insisting upon two separate contracts.

In a second decision, *Federal-Mogul Corp., Bower Roller Bearing Div.*,⁷⁵ the Board discussed the bargaining obligations which arise when previously unrepresented employees are added to an existing bargaining unit pursuant to an *Armour-Globe* election.⁷⁶ For many years the union had been the certified representative of the employer's production and maintenance employees. In April 1971, a majority of the employer's setup men, who were never included, but were specifically excluded, voted in an *Armour-Globe* election to join the preexisting unit. The Board accordingly issued a certification of results certifying that the union "may bargain" for the setup men "as part of the group of employees which it currently represents."

As a result of the election, the employer notified the union that henceforth the setup men would automatically derive their benefits exclusively from the collective-bargaining agreement then in effect for the production and maintenance employees, and that any preelection benefits inconsistent therewith would be withdrawn. The union argued that the preelection benefits be restored to the setup men and that all existing benefits should remain in effect unless and until altered through negotiations.

A Board majority consisting of Chairman Miller and Members Fanning and Jenkins held that, as the applicable current contract covering the production and maintenance employees specifically excluded setup men, no "bargain" could be said to have been consciously made by the parties for the latter employees; that when the union became certified as their newly designated exclusive agent the employer became obligated to engage in good-faith bargaining as to the appropriate contractual terms to be applied to this new addition to the previous unit; and that the employer's automatic application of the existing contract to the setup men violated section 8(a)(5). In their view, were the Board to require unilateral application of the existing contract to the setup men as the employer wished, they would, in effect, be compelling both parties to agree to specific contractual provisions in clear violation of the Supreme Court's holding in *H. K. Porter*.⁷⁷ In the opinion of the Board majority, the result reached would promote bargaining stability by assuring the predictability of the number of individuals drawing benefits and the cost of those benefits under a contract during its term, and would avoid the adverse impact on the fairness of the Board's election processes which would occur where two unions were involved in the election and one of them, the incum-

⁷⁵ 209 NLRB No. 51.

⁷⁶ *Globe Machine & Stamping Co.*; 3 NLRB 294 (1937); *Armour & Co.*, 119 NLRB 623 (1957); NLRB Field Manual, sec 11090.2c(1).

⁷⁷ *H. K. Porter Co. v N.L.R.B.*, 397 U.S. 99 (1970)

bent union, could hold out to the employees definite benefits extant in the present contract.⁷⁸

In yet a third case decided during the report year, *Walter Pape*,⁷⁹ a Board panel considered the obligation of an employer to inform a newly certified union during a contract negotiations that a managerial decision to terminate a portion of its operations had been reached and that negotiations for that purpose were in progress. Five days before it terminated the operations, the employer finally informed the union that, since an agreement had been reached providing for a 5-year operation of the distribution routes by another company, all unit employees would be laid off.

Members Jenkins and Penello held that the employer violated section 8(a) (5). In their view, the employer's entire course of conduct evidenced bad faith and an intention to keep the union "on a string" until a deal for the distribution routes was consummated. At the very least, they concluded, "Respondent should have advised the Union that the termination of the routes was under active consideration and was imminent." They found that this constituted bad-faith bargaining and also that the employer failed to bargain with the union over the effects of the transfer in violation of the Act.⁸⁰

6. Other Bargaining Issues

In *Retail Associates*,⁸¹ the Board established guidelines governing withdrawal of a participant engaged in multiemployer bargaining.

⁷⁸ Dissenting Members Kennedy and Penello argued that, since the setup men under the Board's certification were to be represented "as part of" the production and maintenance unit, their benefits and working conditions should be derived from the contract applicable to that unit. In their view, when a majority of the employer's setup men elected to abandon more than 30 years of unrepresented status in favor of union representation, the vote of these employees in the *Armour-Globe* election reflected more than a desire for union representation in general; it reflected, in addition, a desire for representation by a specific union in a specific preexisting bargaining unit. Members Kennedy and Penello pointed out that by requiring fresh bargaining and a separate contract for the setup men the Board majority was effectively imposing a double certification on a single unit. In their opinion, different bargaining obligations flow from the fundamental differences between a regular election and a *Globe* election, making the Supreme Court's decision in *H. K. Porter* distinguishable, since a *Globe* election takes place after the parties have satisfied their bargaining obligations, and the issue is not who shall be the employees' representative, but rather who shall be represented.

⁷⁹ 205 NLRB No. 84 (Members Jenkins and Penello, Member Kennedy dissenting).

⁸⁰ In dissenting, Member Kennedy expressed the view that the employer's decision to withdraw from part of its business by disposing of it to an independent entrepreneur was at the "core of entrepreneurial control" and therefore was not the type of decision which must first be negotiated with a union. *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203 (1964). In Member Kennedy's opinion, his position was supported by the decisions of the courts of appeals as well as the Board's decision in *General Motors Corp.*, 191 NLRB 951 (1971), *enfd. sub nom. Intl. Union, United Automobile Workers, Loc. 864 v. N.L.R.B.*, 470 F.2d 422 (C.A.D.C. 1972); (Members Fanning and Brown dissenting). Accordingly, if the employer was not required to bargain about the decision itself, it could hardly be required to furnish the union information about the progress of its negotiations to implement the decision.

⁸¹ 120 NLRB 388, 393-395 (1958).

Once negotiations had actually begun, withdrawal could only be effected on the basis of "mutual consent" or when "unusual circumstances" were present. Thus, an employer's withdrawal after bargaining has commenced is effective only if acquiesced in by the union or if justified by "unusual circumstances."

During the report year, a Board panel consisting of Members Fanning, Kennedy, and Penello considered whether an impasse in negotiations, standing alone, constituted such an "unusual circumstance." They held that it did not.⁸² The panel noted that in many cases where "unusual circumstances" have been found to exist the employer had been faced with dire economic circumstances which threatened its continuation as a viable business entity. An impasse in bargaining, on the other hand, is merely a deadlock or hiatus in negotiations and does not, in and of itself, threaten the continued viability of the multiemployer association. Accordingly, the panel concluded in this case that the impasse did not rise to the level of an "unusual circumstance."

The obligation of an employer to recognize and bargain with a successor union was considered by the Board in *Independent Drug Store Owners of Santa Clara County*.⁸³ Prior to early 1972, the employer recognized the Pharmaceutical Clerks Association (PCA) as the collective-bargaining representative of its employees. During February and March 1972, a resolution was adopted by the PCA membership which (1) transferred PCA's operations to Local 428 of the Retail Store Employees Union (hereafter Local 428), (2) urged PCA membership to join Local 428, and (3) provided for the dissolution of PCA. The employer thereafter refused to recognize Local 428 as either the exclusive representative of its employees or as a party to the contract which it had negotiated with PCA.

A Board majority consisting of Chairman Miller and Members Kennedy and Penello held that the employer's refusal to recognize Local 428 did not violate section 8(a)(5). All three members of the majority relied heavily on the rationale of *Gulf Oil Corp.*,⁸⁴ and Chairman Miller also relied in part and Member Penello solely on *American Bridge Div., U.S. Steel Corp. v. N.L.R.B.*⁸⁵ The majority concluded that the PCA-Local 428 transaction was more than a mere change in name and actually constituted the wholesale substitution of one labor organization for another, thereby raising a question concerning representation. Moreover, the majority felt that a 1972 PCA

⁸² *Hi-Way Billboards*, 206 NLRB No. 1.

⁸³ 211 NLRB No. 85.

⁸⁴ 135 NLRB 184 (1962), 27 NLRB Ann. Rep. 47 (1962).

⁸⁵ 457 F.2d 660 (C.A. 3, 1972). Both *Gulf Oil* and *American Bridge* involved requests for Board amendment of existing certifications.

poll could not be relied on in 1973 as proof of majority support for Local 428. Accordingly, until such time as Local 428 could establish its majority status through a Board-conducted election, the employer could lawfully refuse to recognize or bargain with it.⁸⁶

In *Nedco Construction Corp.*⁸⁷ a Board panel consisting of Members Fanning, Kennedy, and Penello considered whether an employer's refusal to implement a collective-bargaining agreement in its entirety constituted a violation of section 8(a)(5). A series of agreements executed by the employer obligated him to pay, *inter alia*, retroactive wages and fringe benefits. The employer implemented each provision in the agreements save those relating to retroactive wage payments.

Members Fanning and Penello found that the employer's refusal constituted a "repudiation" of the agreements amounting to a "renunciation of the most basic collective-bargaining principles, the acceptance and implementation of the bargain reached during negotiations." Such conduct, they concluded, violated section 8(a)(5).⁸⁸

The effect of an unprotected strike on an employer's duty to bargain was discussed by a Board panel in *Arundel Corp.*⁸⁹ The parties' contract contained a midterm reopener clause. The clause provided that if the parties failed to reach agreement on the reopened matters by July 1, 1973, either party was permitted "all legal or economic recourse in support of its demand notwithstanding any provisions in this agreement to the contrary."⁹⁰

The union reopened the contract and a bargaining session was held on June 27. Since the parties were unable to reach agreement, it was stipulated that the deadline then set for July 1 would be postponed until the date of their next meeting. The parties met on July 6 but were again unsuccessful in resolving their differences. The deadline was once more postponed—this time until July 23. In view of the deadline postponement, the contract's no-strike clause remained in

⁸⁶ In dissenting, Members Fanning and Jenkins expressed the view that, since the employee vote to merge PCA into the Retail Clerks was democratic and comported with Board standards, the employer thereafter had an obligation to bargain with the new union. They noted that the employer was fully informed of the employee vote in favor of Local 428 early in March 1972 and at that time made no claim that it had not been fairly conducted. In the opinion of Members Fanning and Jenkins, the decision of the Board majority, in effect, sanctioned the employer's conduct in attempting to pick and choose its employees' bargaining representative—its employees' wishes notwithstanding.

⁸⁷ 206 NLRB No 17.

⁸⁸ Dissenting Member Kennedy viewed the employer's conduct as at the most a breach of contract which could only be remedied in other forums. Relying upon the legislative history of the Taft-Hartley amendments to the Act, Member Kennedy concluded that Congress did not intend that the Board police collective-bargaining agreements, but rather specifically intended the Board to refrain from entertaining breach-of-contract claims. Such disputes, he reasoned, should be settled in arbitration or through the courts pursuant to sec. 301 of the Labor Management Relations Act.

⁸⁹ 210 NLRB No 93 (Members Kennedy and Penello; Member Jenkins dissenting).

⁹⁰ This clause had the effect of temporarily suspending the contract's no-strike, no-lockout provisions.

effect. On July 11 the union struck. The employer argued that the strike was unlawful under the contract and refused to engage in further bargaining so long as it continued. The union then charged the employer with an unlawful refusal to bargain.

A panel majority consisting of Members Kennedy and Penello determined that the commencement of the strike on July 11 was a violation of the parties' no-strike agreement, and that the strike was therefore unprotected. They further concluded that the strike did not automatically become a lawful economic strike or an unfair labor practice strike when the employer refused to bargain on and after July 23. In their view, the general rule of law that one party to a contract need not perform if the other party refuses in a material respect to do so is equally applicable to labor agreements. Accordingly, since the strike was at all times an unprotected activity, the employer was under no obligation to meet or bargain with the union for its duration.⁹¹

E. Union Interference With Employee Rights

Even as section 8(a) of the Act imposes certain restrictions on employers, section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is analogous to section 8(a)(1), makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their section 7 rights, which generally guarantee them freedom of choice with respect to collective activities. However, an important proviso to section 8(b)(1)(A) recognizes the basic right of a labor organization to prescribe its own rules for acquisition and retention of membership.

1. Duty of Fair Representation

The actions of labor organizations in enforcement of union rules establishing conditions of employment for their members, and in fairly representing all employees in dealing with employers, were considered by the Board in several cases during the report year.

⁹¹ Dissenting Member Jenkins agreed the strike was unprotected at its inception, but asserted that the prohibition on the union's right to strike was simply a commitment to take no strike action until July 23 which was lifted on that date and that, with the removal of this disability, the strike assumed the status of a protected activity. Member Jenkins drew a sharp distinction between *unlawful* strike activity, for example, in violation of sec 8(d) of the Act and *unprotected* strike activity by virtue of the restrictions of the contract. In the former situation, the employer need not bargain; in the latter, the employer must bargain once the restriction has been lifted and the strike activity assumes protected status. In Member Jenkins' view, with the removal of the no-strike ban on July 23, it could no longer be said that the union was refusing to meet its contractual obligations and therefore the employer's continued refusal to bargain violated sec 8(a)(5).

In *W. J. Siebenoller*,⁹² the Board found that the union violated the Act by filing charges with a joint trade board against a painting contractor in order to cause the contractor not to hire more black apprentices. Another violation of the Act by the union was found in its attempt to cause the contractor to discriminate against a black employee on the basis of irrelevant, invidious, and unfair considerations of race.⁹³ No merit was found in the union's argument that a breach of the duty of fair representation is not an unfair labor practice.⁹⁴ An additional finding of a violation was based on the union's act of fining three employees because of their failure to support the union's discriminatory efforts and because of their testimony on behalf of the contractor at the trade board hearing.⁹⁵ In making the latter finding, the Board noted that the charges which resulted in the fines were brought 2 weeks after the trade board hearing, notwithstanding the fact that the evidence which served as the basis of the charges had been in the union's possession for months. Moreover, the Board noted that the charges upon which the fines were based were time-barred by the union's own procedural rules.

In *Owens-Illinois*,⁹⁶ a union was found by a majority of the Board to have violated section 8(b) (1) (A) of the Act by maintaining locals whose memberships were determined solely by sex, by separately processing grievances of male and female unit members, and by refusing to process grievances because of the unit members' sex.⁹⁷ The rationale of Chairman Miller and Members Fanning and Jenkins was that separate but equal treatment on the basis of sex is as self-contradictory as separate but equal treatment on the basis of race, citing *Brown v.*

⁹² *Intl Brotherhood of Painters & Allied Trades, Loc 1066 (W J Siebenoller, Jr, Paint Co)*, 205 NLRB No 110.

⁹³ Citing *Miranda Fuel Co*, 120 NLRB 181 (1962), in which then Chairman McCulloch and Member Fanning dissented on the ground that sec 8(b)(1)(A) was limited in scope and, however worthy the objective, it exceeded the reach of that section, 28 NLRB Ann Rep 29, 84 (1963)

⁹⁴ In agreeing with the findings of his colleagues, Member Fanning, rather than relying upon the rationale of *Miranda*, *supra*, predicated his position on his view that the union's conduct encouraged union membership unlawfully because advocacy and enforcement of a racially discriminatory hiring policy, unlike other union policies, cannot further a union's performance of its statutory representation function.

⁹⁵ Chairman Miller found that the union discriminated in the discipline meted out to these employees and that meted out to other members for violation of the same internal rules because of their failure to support the union business representative's efforts to force the contractor not to hire a black apprentice and for their testimony in support of the contractor at the trade board hearing

⁹⁶ *Locs 106 & 245 Glass Bottle Blowers Assn (Owens-Illinois)*, 210 NLRB No 131

⁹⁷ Member Jenkins, dissenting in part, would have found that the union locals violated sec 8(b)(2) because the discrimination based on the sex of the employees caused or attempted to cause the employer to discriminate against its employees in violation of sec 8(a)(3). In Member Jenkins' view, the employer, by entering into the collective-bargaining agreement, which included grievance provisions which discriminated on the basis of sex, further discriminated against employees, and therefore the union locals' failure to investigate and process grievances in a nondiscriminatory manner also violated sec 8(b)(2)

Board of Education,⁹⁸ for, in both areas separation in and of itself connotes and creates inequalities.⁹⁹

Concurring in the result reached by the majority, Member Penello based his findings of violations on his view that here there was an actual nexus between the discriminatory conduct and interference with, and restraint of, employees in the exercise of rights protected under the Act;¹ i.e., there was a direct relationship between the separate processing of grievances of male unit members and female unit members and refusing to process grievances because of the unit members' sex and interference with the employees' section 7 right to have a voice in the processing of grievances whose outcome could ultimately affect employee terms and conditions of employment. Similarly, Member Penello observed, there was a nexus in the circumstances of this case between the existence of separate locals whose membership was determined solely on the basis of sex and interference with employees' section 7 rights, for if there were not separate locals there would have been no separate processing of grievances in the first place.

Member Kennedy, concurring in part and dissenting in part, agreed that the union locals violated section 8(b)(1)(A), but only because they separately processed the grievances of men and women based upon the sex of the employees. However, Member Kennedy was not persuaded that the maintenance of separate locals for men and women warranted an 8(b)(1)(A) finding² because the contract involved applied equally to all employees and made no distinction based on sex or local membership; all jobs were open to both sexes; and there was no evidence of any distinction having been made in the employment relationship based on sex other than the grievance handling involved in this case. Member Kennedy did not perceive the maintenance of separate locals to be a violation of the Act. In his view, to so hold would be to usurp the functions of the Equal Employment Opportunity Commission.³

⁹⁸ 347 U.S. 483 (1954).

⁹⁹ Chairman Miller viewed the violation herein as arising out of the union locals' failure fairly to represent the employees in that separate, but allegedly equal, representation is not fair representation as that term is defined in *Miranda, supra*, and *Loc. 12, United Rubber, Cork, Linoleum & Plastic Workers of America (Business League of Gadsden)*, 150 NLRB 312 (1964), *enfd* 368 F.2d 12 (CA 5, 1966), *cert denied* 389 U.S. 837 (1967). The Chairman observed that, although a majority of the Board, including the Chairman, held, in *Jubilee Mfg Co*, 202 NLRB 272 (1973), that employer discrimination on account of sex does not *per se* violate sec 8(a)(1), there was no union respondent and thus no issue of fair representation posed in that case. He pointed out that as the Board said in *Miranda, supra* at 185, ". . . labor organizations, because they do represent employees, have statutory obligations to employees which employers do not"

¹ It was on this basis that Member Penello distinguished the instant case from *Jubilee, supra*

² Member Kennedy would also not find such conduct violative of sec 8(b)(2).

³ In Member Kennedy's opinion, the decision of the majority in the instant case is contrary to the decision in *Jubilee, supra*, which held that discrimination based on race, color, religion, sex, or national origin standing alone is not inherently destructive of

A union was found to have violated section 8(b)(1)(A) of the Act in *Pacific Maritime Assn.*⁴ by refusing to register and dispatch six women because of their sex. The administrative law judge, whose opinion Chairman Miller and Members Kennedy and Penello upheld without comment, noted that the union, by denying the women the use of the dispatch facilities upon the irrelevant, invidious, and unfair consideration of their sex, breached its duty of fair representation. Member Fanning, without relying on the rationale of *Miranda, supra*, for reasons stated in his concurring opinion in *Great Western Unifreight System*,⁵ concurred in the result for reasons stated in *Intl. Union of Operating Engineers, Loc. 18 (Ohio Contractors Assn.)*, 204 NLRB No. 112 (1973), and his separate opinion in *W. J. Siebenoller, Jr., Paint Co.*, 205 NLRB No. 110. Member Jenkins, in his concurring opinion, agreed with the majority's result. However, in addition to relying upon the rationale of *Miranda, supra*, he also found a nexus between the union's conduct and interference with, and restraint of, employees in the exercise of rights protected under the Act which, in his opinion, would further support the 8(b)(1)(A) finding.⁶

A union's negligent failure to process a grievance in a timely manner was found not to violate section 8(b)(1)(A) by a panel of the Board in *Great Western Unifreight System*.⁷ In that case, Chairman Miller and Member Penello refused to equate the union's negligence with irrelevant, invidious, or unfair considerations which the Board in *Miranda* characterized as "arbitrary conduct." Absent an allegation showing something more than negligence alone, Chairman Miller and Member Penello concluded that the negligent conduct of the union did not constitute by itself a breach of the duty of fair representation in violation of section 8(b)(1)(A).⁸

In *Uniroyal*,⁹ a union was found by a panel majority of Members Jenkins and Kennedy to have violated section 8(b)(1)(A) by filing and processing a grievance of an employee with a desire to "bump"

employees' sec 7 rights and there must be actual evidence, as opposed to speculation, of a nexus between the alleged discriminatory conduct and the interference with, or restraint of, employees in the exercise of those rights protected by the Act.

⁴ 209 NLRB No. 88.

⁵ *General Truck Drivers, Chauffeurs & Helpers Union, Loc. 692, IBT (Great Western Unifreight System)*, 209 NLRB No. 52.

⁶ Cf. *Jubilee Mfg Co.*, 202 NLRB 272 (1973), cited by Member Jenkins.

⁷ *General Truck Drivers, Chauffeurs & Helpers Union, Loc. 692, IBT (Great Western Unifreight System)*, 209 NLRB No. 52 (Chairman Miller and Member Penello, Member Fanning concurring).

⁸ In agreeing with the dismissal of the complaint, Member Fanning examined the union's conduct in light of the test provided by the language of sec 8(b)(1)(A) rather than by the criteria suggested by *Miranda, supra*, which, in his opinion, are less precise. Member Fanning concluded that the union had not restrained or coerced the employee in the exercise of his sec 7 rights.

⁹ *United Rubber, Cork, Linoleum & Plastic Workers of America, Loc. 374 (Uniroyal)*. 205 NLRB No. 28 (Members Jenkins and Kennedy, Chairman Miller dissenting).

another employee for protected union activities the other employee had engaged in while he was serving as president of the union. The panel majority pointed out that the grievance was disposed of on the basis of a contractual "clarification" with respect to seniority reached by the union and the employer, and, but for the clarification, the employee would not have been permitted to bump into the other employee's division. In view of open hostility against the other employee harbored by certain union officials, Members Jenkins and Kennedy found that the union's filing and processing of the employee's grievance was motivated by a desire to "get" the other employee for engaging in protected union activities, in violation of section 8(b)(1)(A).¹⁰

In *Sargent Electric Co.*¹¹ a Board panel found that a union had violated section 8(b)(1)(A) by refusing to make a fair, impartial investigation or by refusing to press a grievance concerning the discharge of a union member who had complained to his international union about his local's violations of the union's bylaws, constitution, and working agreement; the discharge was for engaging in protected union-related activities which had evoked the displeasure of the union's members on the job. By its conduct, the panel observed, the union unlawfully refused to accord the member fair and proper representation.¹²

A union's demand that a member return from a 5-month leave of absence as a new employee was found not to be an arbitrary, irrelevant, invidious, or unfair act by a Board panel in *West Winds*.¹³ In finding that the union's conduct was not inherently unreasonable, the panel noted that the relevant collective-bargaining agreement was silent as to the granting of leaves of absence. The panel further noted that the union had a legitimate concern in protecting the relative seniority and job security of employees who remained on the job. Accordingly, the panel dismissed the 8(b)(1)(A) complaint.

¹⁰ Chairman Miller, dissenting, would have found that the union was merely reconciling conflicting claims within its own ranks in a complex seniority dispute, in a manner which, in his view, was not so arbitrary, invidious, or unfair as to serve as the basis for an 8(b)(1)(A) finding.

¹¹ 209 NLRB No 94 (Chairman Miller and Members Fanning and Penello)

¹² Member Fanning agreed for the reasons stated in his concurring opinion in *General Truck Drivers, Chauffeurs & Helpers Loc. 692, IBT (Great Western Unifreight System)*, *supra*, that the union's refusal to properly process the grievance for the member because of his union-related activities was unjustifiable and beyond the normal discretion accorded a union in its representative function. Accordingly, Member Fanning found that the member was restrained and coerced within the meaning of sec 8(b)(1)(A) in his right to enjoy the mutual aid and protection of his elected representative guaranteed him under sec 7

¹³ *Intl Assn of Machinists & Aerospace Workers, San Francisco Lodge 68 (West Winds)*, 205 NLRB No. 26 (Members Fanning, Kennedy, and Penello)

2. Union Fines

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, continued to pose questions for the Board this year as in prior years. Several cases involving disciplinary action by unions against their members for violating internal union rules required the Board once more to reconcile unions' statutory rights to prescribe their own rules respecting "the acquisition or retention of membership" with the public policy of protecting unobstructed access to the Board. Two cases decided by the Board during the report year involved union members who were fined by their union for soliciting authorization cards for a rival union.

In the first case, *McDonnell Douglas Corp.*,¹⁴ a panel majority of Chairman Miller and Member Kennedy found that an international union and one of its locals violated section 8(b)(1)(A) of the Act by causing a fine to be levied against a union member because he solicited authorization cards for a rival labor organization. In so concluding, the panel majority cited, *inter alia*, *Blackhawk Tanning*¹⁵ and *U.S. Steel*.¹⁶ Member Jenkins dissented.¹⁷

In the second case, *United States Shoe Corp.*,¹⁸ a panel majority of Members Kennedy and Penello, with Member Fanning dissenting, found that a union violated section 8(b)(1)(A) of the Act by fining three members because they had signed and solicited fellow employees to sign authorization cards for a rival union. In so holding, the panel majority stated that the mere fact that the employees' activity may have been premature because of the principle of contract bar was not a sufficient reason to permit the union to deny them their right to invoke Board processes, by means of punitive fines.¹⁹

F. Coercion of Employers in Selection of Representatives

Section 8(b)(1)(B) of the Act makes it an unfair labor practice for a union to coerce or restrain an employer in the selection of its repre-

¹⁴ *District Lodge 837, Intl Assn of Machinists & Aerospace Workers (McDonnell Douglas Corp.)*, 206 NLRB No. 79 (Chairman Miller and Member Kennedy, Member Jenkins dissenting).

¹⁵ *Intl. Molders and Allied Workers Union, Loc 125 (Blackhawk Tanning Co)*, 178 NLRB 208 (1969). (Members Fanning and Jenkins dissenting); 35 NLRB Ann. Rep. 23, 62 (1970).

¹⁶ *Tri-Rivers Marine Engineers Union (U.S. Steel Corp.)*, 189 NLRB 838 (1971).

¹⁷ For reasons set forth in his and Member Fanning's dissent in *U.S. Steel, supra*, Member Jenkins would have dismissed the 8(b)(1)(A) complaint.

¹⁸ *Independent Shoe Workers of Cincinnati, Ohio (United States Shoe Corp.)*, 208 NLRB No. 64 (Members Kennedy and Penello, Member Fanning dissenting).

¹⁹ Member Fanning, dissenting, would have dismissed the complaint for reasons set forth in his dissent in *Blackhawk Tanning, supra*

sentatives for the purposes of collective bargaining or the adjustment of grievances. During the past fiscal year, the Board decided some cases which involved this section of the Act.

In one case, *Asbestos Workers, Loc. 19*,²⁰ a Board panel decided that a union did not violate section 8(b) (1) (B) by fining an individual who was the employer's president and supervisor and who owned 98 percent of the employer's stock. In view of its determination that the owner of the employer was an individual entrepreneur, the panel did not consider the owner to be an employee selected for supervisory functions. Since the panel concluded that the union's conduct would not tend to subvert any loyalty between the employer and its supervisor, who were, in fact, the same person, the complaint was dismissed.

In the other case, *Carpenters, Loc. 751*,²¹ a Board panel found that a union violated section 8(b) (1) (B) of the Act by illegally coercing a general contractor in the selection of its representatives. The union's illegal conduct occurred when it summoned a supervisor-member who was employed by the general contractor to appear at a meeting of the union's executive board and questioned him about the installation of nonunion cabinets. In finding that such conduct restrained the supervisor in representing his employer, the Board panel noted that after the meeting the supervisor called his employer and told him that he had been cited by the union and that he would not install the next group of cabinets. The fact that the union did not discipline the supervisor-member was found not to be determinative since the supervisor could reasonably have concluded that further action by the union would be forthcoming if the supervisor continued to install or direct others to install nonunion cabinets.

G. Union Causation of Employer Discrimination

Section 8(b) (2) of the Act prohibits labor organizations from causing, or attempting to cause, employers to discriminate against employees in violation of section 8(a) (3), or to discriminate against one to whom union membership has been denied or terminated for reasons other than failure to tender dues and initiation fees. Section 8(a) (3) outlaws discrimination in employment which encourages or discourages union membership, except insofar as it permits the making of union-security agreements under specified conditions. By virtue of section 8(f), union-security agreements covering employees "in the building and construction industry" are permitted under lesser restric-

²⁰ *Intl. Assn. of Heat & Frost Insulators & Asbestos Workers, Loc. 19 (Insulation Industries)*, 211 NLRB No. 86 (Members Jenkins, Kennedy, and Penello)

²¹ *United Brotherhood of Carpenters & Joiners of America, Loc. 751 (Imperial Cabinet Shop)*, 204 NLRB No. 154 (Chairman Miller and Members Fanning and Jenkins)

tions. Cases decided by the Board during the report year involved conduct of unions which resulted in an employee being discharged for failure to pay dues, an employee being discharged for lack of experience, and employees being discharged because of a lack of seniority.

In *Hershey Foods*,²² a Board panel majority found that a union violated section 8(b) (2) of the Act by causing an employer to discharge an employee who resigned from the union at the start of a strike, but continued to tender his dues. The dues were rejected by the union solely because the employee declined to agree to a union demand that he be included as a member on its rolls. The panel majority found the employee to be a "financial core" union member who was not required to be a "full" union member in order to retain employment pursuant to a union-security clause.²³

In *Ashley, Hickham*,²⁴ a Board panel held that a union's conduct in demanding that an experienced steward be placed on a potentially troublesome jobsite did not violate section 8(b) (2) of the Act. In dismissing the complaint, the panel found that the union was motivated by a legitimate and valid concern despite its awareness that its conduct would cause the layoff of the charging party.

A union was found by a Board panel to have violated section 8(b) (2) of the Act in *Pitt Processing*²⁵ when it placed a member at the bottom of the seniority list because of his nonparticipation in a strike and thereby caused him to be laid off.

An 8(b) (2) complaint was dismissed by a Board panel majority in *Hough, Div., Intl. Harvester Co.*²⁶ The complaint alleged discrimination arising from the fact that 10 employees at the employer's Chicago facility were given less seniority than their fellow employees who were UAW members when the employer transferred its employees to another location. The panel majority noted that four different unions, which represented all of the employees concerned, had negotiated transfer rights for their respective unit employees, that UAW obtained an agreement which provided portable seniority for transferring employees, but that the other unions specifically waived portable seniority. Thus, the panel majority observed, the 10 non-UAW unit transferees never had any vested seniority rights at the time

²² *Hershey Foods Corp.*, 207 NLRB No. 141 (Members Fanning and Jenkins; Chairman Miller dissenting).

²³ Chairman Miller, dissenting, would have dismissed the complaint since, in his view, the employee was not denied union membership for either of the reasons prohibited by the proviso of section 8(b) (2), but, instead, because he did not seek or desire to be a member.

²⁴ *Ashley, Hickham-Uhr Co.*, 210 NLRB No. 1 (Chairman Miller and Members Fanning and Penello).

²⁵ *Intl Union, United Automobile, Aerospace & Agricultural Implement Workers of America (Pitt Processing Co)*, 208 NLRB No. 107 (Chairman Miller and Members Jenkins and Kennedy).

²⁶ 209 NLRB No. 54 (Members Fanning and Penello; Member Kennedy dissenting)

of the transfer which could later be unlawfully denied them by either the union or employer.²⁷

H. Union Bargaining Obligation

A labor organization no less than an employer has a duty imposed by the Act to bargain in good faith about wages, hours, and other terms and conditions of employment. If it does not fulfill this bargaining obligation it violates section 8(b)(3). Several cases involving this section of the Act were decided by the Board during the past fiscal year.

In one case, *Eastpoint Seafood*,²⁸ a Board panel found that a union violated section 8(b)(3) of the Act by admittedly refusing to bargain and sign a written agreement because it was barred from doing so by article XX, the "no raid" provision of the AFL-CIO constitution. Despite a disclaimer which had been filed by the union, the panel held that, prior to the disclaimer, the union was under an obligation to bargain and to sign a contract which it had reached. However, in view of the union's decision to conform its organizing activities with article XX and because of the union's disclaimer, the panel found that no useful purpose would be served by entering a cease-and-desist order which would only be operative in the future. As a remedy, the panel rescinded the union's certification as bargaining representative of the employees involved.

In another case, *Western Electric*,²⁹ an 8(b)(3) violation was found by a Board panel based upon stipulated facts which established that an object of a strike by a union's local was to secure modification of an agreement which had been negotiated by the employer and the union's international. The stipulated evidence was insufficient to find an 8(b)(3) violation as to the international union, the panel added.

In a third case, *Associated General Contractors of Illinois*,³⁰ a Board panel affirmed an administrative law judge's finding of an 8(b)(3) violation. The finding was based on a union's insistence upon a non-mandatory subject of bargaining as a precondition for entering into a collective-bargaining agreement. Thus, the union refused to bargain

²⁷ Member Kennedy, dissenting, noted that equal treatment of employees in establishing a new seniority date was agreed to by both the employer and the union for all transferring employees. In his view, the fact that 10 employees were treated in a disparate manner solely because they had not been represented by UAW was discrimination in violation of sec. 8(b)(2) of the Act

²⁸ *Amalgamated Meat Cutters & Butcher Workmen of North America, Loc. 158 (Eastpoint Seafood Co)*, 208 NLRB No 2 (Members Fanning, Jenkins, and Penello)

²⁹ *Communications Workers of America & New York Loc. 1190, CWA (Western Electric Co)*, 204 NLRB No 94 (Chairman Miller and Members Kennedy and Penello).

³⁰ *North Central Illinois Laborers' District Council (AGC of Illinois)*, 212 NLRB No 3 (Members Jenkins, Kennedy, and Penello)

until the other party agreed not to protest, before the Construction Industry Stabilization Committee, any collective-bargaining agreement ultimately agreed upon by the parties. In finding the violation, the administrative law judge noted that although the agreement which the union sought might have some effect on wages, this fact, nonetheless, did not convert an agreement not to protest, a nonmandatory matter, into a mandatory subject of bargaining. In addition, the administrative law judge observed that such an agreement would contravene Federal Wage Stabilization policy. Finally, under policies and procedures of the CISC, the administrative law judge noted, the other party has a legal right to protest the terms of a contract, a right similar to the right to institute a lawsuit or to file an unfair labor practice charge.

I. Prohibited Strikes and Boycotts

The statutory 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 any industry affecting commerce; and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, when in the case of either clause, for any of the objects proscribed by subparagraphs (A), (B), (C), or (D). Provisos to the section exempt from its prohibitions "publicity, other than picketing," and "primary strike or primary picketing."

1. Enforcement of Contractual Assessments

Three cases decided by the Board during the report year involved complaints which alleged violations of section 8(b)(4)(ii)(B) of the Act arising out of a union's enforcement of contractual assessments.

In *Associated General Contractors of California*,³¹ a Board majority dismissed an 8(b)(4)(ii)(B) and 8(e) complaint which arose from the unions' actions of (1) sending a telegram to a plumbing subcontractor which advised him to stop work pending investigation of an alleged violation of the fabrication clause of the plumbing industry bargaining agreement to which they were parties, and (2) proceeding against the subcontractor before the joint arbitration board established by the agreement, which board assessed damages against the subcontractor payable to the pipe trades retirement fund. The ma-

³¹ *Southern California Pipe Trades District Council 16*; and *United Assn of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, Loc 494 (AGC of California)*, 207 NLRB No 58 (Chairman Miller and Members Fanning and Jenkins, Member Kennedy dissenting)

majority noted that the matter presented was simply one in which the unions had sought to enforce certain provisions of their bargaining agreement against a party to that agreement through the peaceful means provided by the agreement and by no other means. In finding a lack of statutorily proscribed threats, coercion, or restraint, the Board majority observed that the ultimate monetary penalty which the contractor subsequently paid to the unions' retirement fund was pursuant to a contractually fair procedure which was found by the majority to be a reasonable and peaceful method of resolving the dispute.

In conclusion, the majority found that the unions in resorting to use of the applicable contractual provisions in the situation here did not violate section 8(b) (4) (ii) (B) and that the contract as so applied did not violate section 8(e).³²

In a related case, *Kimstock*,³³ the Board majority found that the particular unions did not violate section 8(b) (4) (ii) (B), and the contract involved as so applied did not violate section 8(e) where the joint arbitration board, as provided for in a paragraph of the plumbing industry bargaining agreement, assessed damages against two member plumbing subcontractors for breach of contract by permitting nonunit employees to install either fiberglass shower stalls or fiberglass tub-shower units. The Board majority pointed out that the conclusion that the plumbing contractors had breached their agreement with the unions was reached in the manner contemplated by the agreement—by a decision of the joint board; that the joint board's assessment against the plumbing contractors was as set forth in a paragraph of the plumbing industry bargaining agreement; that there was no disruption of the contractors' operations; and that, consequently, in these instances the unions had merely sought by peaceful means to enforce their bargaining agreement against employers party to that agreement.

According to the majority, this same provision and similar monetary assessments for breach thereof came before the Board in *AGC of California, supra*, where it was found that in resorting to the same para-

³² Member Kennedy, dissenting, would have found the unions' conduct towards the subcontractor—a neutral—was economic coercion and restraint, intended to effect a cessation of business with manufacturers of prepped sinks, as proscribed by sec 8(b) (4) (ii) (B), and, as that conduct occurred in the unions' application of the contract to work not historically and traditionally done by the unions, the contract as so applied violated sec 8(e). In Member Kennedy's opinion, threats, coercion, or restraint do not become statutorily permissible by camouflaging them in contract language. He considered the assessment or fine to constitute coercion or restraint. In Member Kennedy's view, the Board held in *Intl Union of Operating Engineers, Loc Union 12 (Acco Construction Equipment)*, 204 NLRB No 115, that such fines as were levied here, despite the fact that they were provided in the collective-bargaining agreement, are coercive within the meaning of sec 8(b) (4) (ii) (B). He would therefore find that the fine was unlawful.

³³ *Southern California Pipe Trades District Council 16; Plumbers & Steamfitters Loc 582 (Kimstock Div., Tridair Industries)*, 207 NLRB No 59 (Chairman Miller and Members Fanning, Jenkins, and Penello, Member Kennedy concurring in part and dissenting in part)

graph of the plumbing industry agreement with respect to certain covered fabrication work the unions did not violate section 8(b) (4) (ii) (B) and that the contract so applied did not violate section 8(e) of the Act: the same conclusion was reached here for substantially the same reasons.

The Board majority observed that the unions sought to resolve disputes with the plumbing subcontractors only by invoking the peaceful and jointly agreed-upon means established by their collective-bargaining agreement; and that a contractual agreement such as this for reasonable compensation for a breach of contract determined by contractually fair procedures was a proper and lawful method of resolving a dispute. It therefore concluded that the unions' application of the contract here did not constitute statutorily proscribed threats, coercion, or restraint.³⁴

*Los Alamos Constructors*³⁵ involved a union which, in response to an employer's adverse award of disputed work, filed a grievance with a local adjustment board and announced its intention to enforce an award it obtained by initiating a section 301 suit. A Board panel noted that there was no other evidence of any conduct on the union's part which might be considered coercive. In finding that this conduct did not constitute a violation of section 8(b) (4) (ii) (D) of the Act, the panel observed that the union's conduct was in accord with the union's collective-bargaining agreement with the employer and that the union totally refrained from any nonjudicial acts of self-help. The panel concluded that the union's seeking of a judicial remedy via the contractual forum was not coercive within the meaning of section 8(b) (4) (ii) (D) and that the complaint should be dismissed in its entirety.

2. Other Issues

One case decided during the report year involved an issue of whether a union's dispute was with a primary employer or with a neutral or secondary employer. In *Bow & Arrow Manor*,³⁶ a Board panel concluded that a union violated section 8(b) (4) (A) by inducing and encouraging individuals employed by two orchestras (Herman and Bruce) to cease work for their employers at The Manor restaurant-lounge and by threatening and coercing the orchestra leaders, as employers and independent contractors, and the restaurant-lounge with the object of forcing the leaders and restaurant-lounge

³⁴ Member Kennedy dissented on this aspect of the case for the reasons which he fully explicated in his dissent in *AGC of California*

³⁵ *Sheet Metal Workers' Intl Assn Loc 49 (Los Alamos Construction)*, 206 NLRB No 51 (Chairman Miller and Members Fanning and Penello)

³⁶ *Associated Musicians of Greater Newark, Loc 16, AFM (Bow & Arrow Manor t/a The Manor)*, 206 NLRB No 53 (Chairman Miller and Members Kennedy and Penello)

to enter into a contract with the union containing a clause barred by section 8(e). The panel also found that by this same conduct the union also violated section 8(b)(4)(B). For, it seemed clear to the panel that the union put pressure on employees of Herman and Bruce, and also on Herman and Bruce themselves as employers and independent contractors, with an object of causing them to cease doing business with The Manor restaurant-lounge which was a clear violation of section 8(b)(4)(B).

J. Consumer Picketing

The Board has consistently held that consumer picketing in front of a secondary establishment constitutes restraint and coercion within the meaning of section 8(b)(4)(ii), and violates section 8(b)(4)(ii)(B) when an object is forcing or requiring any person to cease selling or handling the products of any other producer or processor.

One case decided during the fiscal year involved the application of the *Tree Fruits*³⁷ decision in which the Supreme Court held that the Act does not proscribe all peaceful consumer picketing at secondary sites, but only picketing used to persuade customers of the secondary employer to cease trading with him in order to force him to cease dealing with, or to put pressure upon, the primary employer. In the Court's opinion there is a substantial difference between such conduct and peaceful picketing at the secondary site directed only at the struck product. In the latter case, the union's appeal to the public is confined to its dispute with the primary employer, since the public is not asked to withhold its patronage from the secondary employer, but only to boycott the primary employer's goods. On the other hand, a union appeal to the public at the secondary site not to trade at all with the secondary employer goes beyond the goods of the primary employer, and seeks the public's assistance in forcing the secondary employer to cooperate with the union in its primary dispute.³⁸

In *Dow Chemical*,³⁹ a Board majority found that the union violated section 8(b)(4)(ii)(B) of the Act by picketing six independent gasoline stations in furtherance of a dispute with the supplier of the gasoline. Because most of the stations' business was gasoline sales, the majority held the one-product picketing of gasoline was tantamount to inducing customers not to patronize the neutral gasoline station oper-

³⁷ *N.L.R.B. v. Fruit & Vegetable Packers & Warehousemen, Loc. 760 (Tree Fruits)*, 377 U.S. 58 (1964); 29 NLRB Ann. Rep. 106, 107 (1964)

³⁸ *Id.* at 63 and 64.

³⁹ *Loc. 14055, United Steelworkers of America (Dow Chemical Co.)*, 211 NLRB No. 59 (Chairman Miller and Members Kennedy and Penello; Members Fanning and Jenkins dissenting)

ators at all, with an illegal object of having the station owners curtail or cease business with their supplier.⁴⁰

K. Jurisdictional Dispute Proceedings

Section 8(b) (4) (D) of the Act 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 charge 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.

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

1. Existence of Dispute

In order to proceed with a determination under section 10(k), the Board must find (1) that there is reasonable cause to believe that the union charged with having violated section 8(b) (4) (D) has induced or encouraged employees to strike or refuse to perform services in order to obtain a work assignment within the meaning of section 8(b) (4); and (2) that a dispute within the meaning of section 10(k) currently exists. In several cases decided during the past fiscal year,

⁴⁰ Members Fanning and Jenkins, dissenting, viewed the consumer product picketing as a lawful appeal for public support in a primary dispute. In reaching this conclusion, they stated that it was their opinion that primary picketing does not become less lawful because it reaches a major and possibly decisive portion of the employer’s business.

the Board found that no reasonable cause existed to believe that employees were unlawfully encouraged to strike, or that no dispute existed. Accordingly, the Board ordered that the notices of hearing issued in the cases be quashed.

*American Plant Protection*⁴¹ involved union members who provided guard services pursuant to an oral contract until their employer, U.S. Lines, changed piers. A panel majority of Members Fanning and Jenkins held that picketing by the union was merely a demand for continued employment pursuant to the employees' oral contract and did not involve conduct proscribed by section 8(b)(4)(D) of the Act. Accordingly, the notice of hearing in the case was quashed.⁴²

*Metropolitan Printing*⁴³ involved members of the Typographers Union who were employed by a newspaper publisher which assigned composition work for a weekly supplement to a subcontractor which employed members of the Pressmen's Union. All parties agreed that if the work was properly transferred to the subcontractor it should be done by employees represented by Pressmen and that if it were done in the publisher's shop it should be done by employees represented by Typographers. A Board majority found that the dispute involved the transfer of alleged unit work from one employer to another, rather than the assignment of work from one group to another. In these circumstances, the majority found that the dispute was not a traditional dispute between two groups of employees cognizable under section 10(k) of the Act. Therefore the notice of hearing was quashed.⁴⁴

*Georgia-Pacific*⁴⁵ involved a union's renunciation of its claim at one construction site to a type of work which had caused a jurisdictional dispute. The Board majority found that competing claims to the disputed work no longer existed and therefore quashed the notice of

⁴¹ *Los Angeles & Long Beach Harbor Watchmen & Guards, Intl Longshoremen's Warehousemen's Union Loc. 26 (American Plant Protection)*, 210 NLRB No. 79 (Members Fanning and Jenkins, Chairman Miller dissenting)

⁴² Chairman Miller, dissenting, stated that, in his view, the union's picketing went far beyond the realm of work preservation or contractual enforcement. The Chairman would have found that the union's picketing was designed to gain work being performed by members of another union who were employed by a different guard service subcontractor at the new location. In these circumstances, he would have found that a jurisdictional dispute existed and would have determined the merits of the dispute.

⁴³ *Chicago Web Printing Pressmen's Union 7, I P P & A U. (Metropolitan Printing Co.)*, 209 NLRB No. 53 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting).

⁴⁴ Chairman Miller and Member Kennedy, dissenting, stated that, in their view, the Pressmen converted the dispute into a jurisdictional one by threatening to strike. In the event the publisher allowed the matter to proceed to arbitration. In their opinion, it was immaterial that the Typographers did not seek to perform the disputed work at the subcontractor's facilities since the controlling factor, from their viewpoint, was that typographers expected to do work in the publisher's composing room. Accordingly, they would have determined the dispute on its merits.

⁴⁵ *General Bldg Laborers' Loc Union 66 (Georgia-Pacific Corp.)*, 209 NLRB No. 84 (Members Fanning, Jenkins, and Penello; Chairman Miller and Member Kennedy dissenting)

hearing. The majority noted that, if it was to determine the dispute and make an award of work in this case, the award would be limited to the particular jobsite. But the union had disclaimed the work and there was no evidence that it had acted inconsistently with the disclaimer. The majority observed that the union's disclaimer was not rendered ineffective by its retention of the right to seek to have the work assigned to its members at future jobsites, since there was no evidence that it would use illegal means to obtain the assignment.⁴⁶

2. Existence of Agreed-Upon Method

Section 10(k) specifically precludes the Board from determining a dispute which gave rise to 8(b)(4)(D) charges if the parties to the dispute, within 10 days, submit to the Board "satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." This limitation is intended to afford the parties an opportunity to settle jurisdictional disputes among themselves without Government intervention whenever possible. To give full scope to the statutory objective, the Board ordered that the notice of hearing be quashed in several cases decided during the past fiscal year after finding that the parties had agreed to resolve jurisdictional disputes through the procedures of the National Joint Board for the Settlement of Jurisdictional Disputes.

In *Godwin Bevers*,⁴⁷ a Board majority of Chairman Miller and Members Fanning and Penello quashed a notice of hearing after finding that the Carpenters was a party to a voluntary agreed-upon method of adjusting jurisdictional disputes with the Bricklayers. In so concluding, the majority noted that both unions are members of the AFL-CIO's Building and Construction Trades Department and are therefore required to honor the department's constitution which provides for Joint Board settlement of jurisdictional disputes. The majority further added that there was no evidence that the Carpenters had withdrawn from the Joint Board.⁴⁸

In a similar case, *F. W. Owens & Associates*,⁴⁹ a Board majority stated that, in the absence of contrary evidence, it would continue to

⁴⁶ Chairman Miller and Member Kennedy, dissenting, noted that the union stated that it was not disclaiming similar work at other locations for which the employer of union members was bidding. Thus, in their opinion, the underlying dispute still existed and would, in all probability, arise once again at a different location. Accordingly, Chairman Miller and Member Kennedy would have determined the dispute on its merits.

⁴⁷ *Carpenters District Council of Denver (Godwin Bevers Co.)*, 205 NLRB No. 22

⁴⁸ Member Kennedy, dissenting, took the position that the Carpenters has been in a "noncompliance" status with the Joint Board and does not recognize the jurisdiction of, nor has representation on, nor subscribes to decisions of, the Joint Board. Because, in his view, the Carpenters did not subscribe to any voluntary method of adjustment of jurisdictional disputes, Member Kennedy would have heard and determined the existing dispute under sec. 10(k) of the Act.

⁴⁹ *Loc. 70, Intl. Assn. of Bridge, Structural & Ornamental Iron Workers (F. W. Owens & Associates)*, 205 NLRB No. 156 (Chairman Miller and Members Fanning and Penello; Member Kennedy dissenting).

presume that Carpenters and Laborers are members of the Building and Construction Trades Department, AFL-CIO, are therefore signatories to the agreement creating the National Joint Board for the Settlement of Jurisdictional Disputes, and are, consequently, bound by its determination. After concluding that a valid withdrawal was not established and that the unions' asserted status of noncompliance was immaterial for purpose of the proceeding, the majority quashed the notice of hearing. For reasons set forth in his dissent in *Godwin Bevers, supra*, and in *V & C Brickcleaning*,⁵⁰ Member Kennedy again dissented and would have found that the Board was obligated to determine the dispute pursuant to the mandate of section 10(k) of the Act.

3. Determination of Dispute

During the past fiscal year, the Board issued numerous "affirmative" work assignment determinations, including the three discussed below, in accordance with the policy and criteria set forth in *Jones Construction Co.*,⁵¹ wherein it was stated that "[t]he Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business. This list of factors is not meant to be exclusive, but is by way of illustration."

In two cases decided during the past fiscal year the Board resolved jurisdictional disputes involving the packing and unpacking of containers used in overseas shipping. *California Cartage*⁵² involved an award of such work by the full Board to longshoremen at dockside terminals and to teamsters at a container freight facility located away from the docks. In finding that the Teamsters engaged in jurisdictional picketing, the Board noted that the picketing teamsters were not trying to regain contract work which was to be performed at the location of their employment during the term of an existing contract.⁵³ Instead, they were picketing an employer which had decided to perform the disputed work with its own employees rather than those of a subcontractor. The Board also rejected the Teamsters argument that the contractual agreement by which the longshoremen were authorized to

⁵⁰ *Loc 423, Laborers (V & C Brickcleaning Co.)*, 203 NLRB No. 176 (1973).

⁵¹ *Intl Assn of Machinists, Lodge 1743 (J A Jones Construction Co)*, 135 NLRB 1402, 1410 (1962); 27 NLRB Ann. Rep 178 (1962)

⁵² *Intl Longshoremen's & Warehousemen's Union, Locs. 13 & 63 (California Cartage Co)*, 208 NLRB No 129.

⁵³ *Cf. Longshoremen's Loc. 8 (Waterway Terminals Co.)*, 185 NLRB 186 (1970); 36 NLRB Ann. Rep 85 (1971). In view of his dissent in *Waterway Terminals*, Chairman Miller found it unnecessary to distinguish that case from the case under consideration.

perform disputed work was violative of section 8(e) of the Act. As put by the Board, the legality of the agreement is a matter for the Board and the courts to decide and is not a matter which may be pleaded as a defense to conduct which is otherwise violative of section 8(b) (4) (D) of the Act. The Board further noted that the Teamsters and Longshoremen's claims were in open opposition to one another, before concluding that there was reasonable cause to believe that there had been violations of section 8(b) (4) (D) by both unions so that the disputes were properly before the Board for determination.

The second containerization case, *Pacific Maritime Assn.*,⁵⁴ also involved picketing teamsters who sought to obtain work, related to packing and moving cargo containers, which was being performed by longshoremen at container freight stations located on the docks. In finding that the case was properly before it for a determination of the dispute, a Board panel rejected Teamsters arguments similar to those which had been made in *California Cartage, supra*. In awarding the work to the longshoremen, the panel relied particularly on a 1938 certification of the ILWU as collective-bargaining representative for a multiemployer unit of employees engaged in "longshore work in the Pacific Coast ports of the United States" for employers which were predecessors to the picketed employer. As to the factor of economy and efficiency of operations, the panel noted that, among other things, the employer's preference in assignment permits it greater economy and an available and versatile work force which is necessary to its operations. Furthermore, it was noted, the practical effect of awarding the work of loading and unloading containers to teamsters would be to require the employer to pay for double handling of the containers. Also, employers of the teamsters were found not to possess the equipment to do the work in the safest way.

Two other cases decided during the fiscal year involved an issue of whether area practice in work assignments was to be given more significance than employer practice. In *Carpenters, Loc. 171*,⁵⁵ a Board panel awarded work to an employer's employees who were represented by Carpenters, notwithstanding the employer's prior assignment of the work to employees represented by Laborers. The panel found that the employer's assignment was in conflict with well-defined area practice and was affirmatively supported only by a showing of economy in the lower wage scale for laborers than for carpenters, a factor which the panel did not regard as determinative. In previous

⁵⁴ *Brotherhood of Teamsters & Auto Truck Drivers, Loc. 85, IBT (Pacific Maritime Assn.)*, 208 NLRB No 136 (Members Fanning, Kennedy, and Penello).

⁵⁵ *United Brotherhood of Carpenters & Joiners, Loc 171 (Builders Assn. of Eastern Ohio & Western Pennsylvania)*, 207 NLRB No 57 (Chairman Miller and Members Fanning and Jenkins).

cases involving similarly postured disputes in the construction industry, the Board had indicated its reluctance to disturb area practice in making jurisdictional awards, absent some compelling reason. The panel observed that to do so in the present case solely on the basis of the employer's assignment could invite controversy in an area where effective guidelines had already been established.

In the second case, *Laborers, Loc. 703*,⁵⁶ a Board panel awarded work to an employer's employees who were electrical workers, notwithstanding a contention by laborers that the same work had been performed by them traditionally and exclusively. The weight of this argument, in the panel's view, was overcome by consideration of the employer's past practice. In another location in the same State, before the job in question, the employer had successfully completed a similar job using electrical workers without experiencing work disputes. In addition, the employer's practice for the past 27 years had been to assign work similar to that in dispute to electrical workers. Laborers had never been used by the employer to perform such work. Also, the panel noted, laborers could only do part of the work in dispute so that it was more economical and efficient to assign the work to electrical workers.

L. Union Requirement of Excessive Fees

Section 8(b) (5) makes it an unfair labor practice for a union to charge employees covered by a valid union-security agreement a membership fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section further provides that "In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

One case decided during the past year, *WBEN, Inc.*,⁵⁷ involved a union which increased its initiation fee from \$100 to \$250 for all employees covered by its contract, irrespective of whether they were full-time, part-time, or temporary. In finding that such conduct was violative of section 8(b) (5) of the Act, a Board panel noted that the union's president admitted that his hostility toward part-time employees was at least one consideration which motivated the increase. The panel concluded that the increased fee was excessive and was intended for all members, not just those employed on a part-time basis, in order to

⁵⁶ *Laborers Intl. Union, Loc 703 (B & F Highline)*, 210 NLRB No. 23 (Chairman Miller and Members Jenkins and Kennedy).

⁵⁷ *American Fed of Television & Radio Artists (WBEN, Inc)*, 208 NLRB No. 59 (Members Jenkins, Kennedy, and Penello).

restrain the employer from hiring part-time employees and to discourage nonmembers of the union from seeking part-time employment with the employer.

M. Payment for Services Not Performed

Section 8(b) (6) forbids a labor organization or its agents "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in nature of an exaction for services which are not performed or not to be performed." In one case decided during the past fiscal year, *Special Sections*,⁵⁸ a Board panel found that a union violated section 8(b) (6) of the Act by causing an employer to pay money or other things of value, in the nature of an exaction. The landmark Supreme Court decisions in the companion cases of *American Newspaper Publishers*⁵⁹ and *Gamble Enterprises*⁶⁰ were distinguished from the instant one in that in each of the cited cases the respective unions and employers had long-established collective-bargaining and contractual relationships, and in both cases the services offered by the unions were of the specialized "relevant" type which they had traditionally provided.⁶¹ In the present case there was no established collective-bargaining relationship, the employer had no use for the specialized skill of a member of the particular union, and, on the very few occasions when it needed somewhat related work, it was accomplished by a relatively unskilled employee who belonged to another unit. In the circumstances, the panel found that the union's demand did not, in the words of the Court in the *Gamble* case, constitute "a bona fide offer of competent performance of relevant services."⁶²

N. Recognitional Picketing

Section 8(b) (7) of the Act makes it an unfair labor practice for a labor organization which is not the certified employee representative to picket or threaten to picket for an object of recognition or organization in the situations delineated in subparagraphs (A), (B), and (C). Such picketing is prohibited 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

⁵⁸ *Metallic Lathers Union of New York, Loc 46 (Special Sections)*, 207 NLRB No. 111 (Chairman Miller and Members Kennedy and Penello).

⁵⁹ *American Newspaper Publishers Assn. v. N.L.R.B.*, 345 U S 100 (1953).

⁶⁰ *N.L.R.B. v. Gamble Enterprises*, 345 U S. 117 (1953).

⁶¹ *Id.* at 124.

⁶² *Ibid.*

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."

1. Challenge to Validity of Election

Two cases decided by the Board during the report year involved subparagraph (B) of section 8(b)(7). In the first case, *Carpet Control*,⁶³ a union was charged with violating section 8(b)(7)(B) by picketing for recognition where a "valid" election had been conducted within the preceding 12 months because of a pending 8(b)(7)(C) charge which the employer filed along with its RM petition, an expedited election had been held, and the union had not been given an opportunity to litigate its contention that the election was invalid. Concluding that the union should have been allowed to introduce evidence challenging the validity of the expedited election, a Board panel remanded the proceeding for further hearing. In reaching this result, the panel noted that an essential element of an 8(b)(7)(B) violation is the conduct of a "valid" election within the year preceding the picketing.

The second case, *Children's Rehabilitation Center*,⁶⁴ involved a question of whether unfair labor practice charges against an employer which were dismissed could be relitigated as a defense to an 8(b)(7)(B) charge. An expedited election had been directed under section 8(b)(7)(C) following the regional directors' dismissal of 8(a)(1), (3), and (5) charges led by the union, and the dismissal had been sustained by the General Counsel on appeal.

A Board majority observed that the disposition of unfair labor practice charges and the issuance of complaints are matters vested by section 3(d) within the exclusive province of the General Counsel, and the Board may not review or reexamine the administrative determinations made by him in this area. Hence, the majority found that there was no alternative, in the circumstances of the case, but to respect the General Counsel's dismissal of the union's 8(a)(1), (3), and (5) charges and the General Counsel's acts of directing and conducting the expedited election pursuant to provisions of section 8(b)(7)(C) of the Act. Accordingly, the majority held that such election, which the union lost, was valid under the Act and it followed that the union's

⁶³ *Loc 86, Brotherhood of Painters, Decorators & Paper Hangers (Carpet Control)*, 209 NLRB No 142 (Members Fanning, Kennedy, and Penello)

⁶⁴ *Service Employees Intl Union, Loc 227 (Children's Rehabilitation Center)*, 211 NLRB No 120 (Chairman Miller and Members Kennedy and Penello, Member Fanning dissenting)

picketing to force recognition or bargaining within 12 months after that election violated section 8(b)(7)(B).⁶⁵

2. Other Issues

Two other cases decided by the Board during the past fiscal year involved subparagraph (C) of section 8(b)(7) of the Act. In *Dunbar Armored Express*,⁶⁶ a panel of Chairman Miller and Member Kennedy, with Member Jenkins concurring in the result, found that the inability of a nonguard union to obtain certification as representative of a unit of guards did not constitute a defense to an alleged 8(b)(7)(C) violation. Due to its policy of admitting employees other than guards to membership, and because of the restrictions contained in section 9(b)(3), the union's petition did not raise a question of representation, in the opinion of Chairman Miller and Member Kennedy. Notwithstanding the absence of any legislative history regarding whether a petition which does not raise a question concerning representation can serve as a bar to the finding of a violation under section 8(b)(7)(C), as their consideration of section 8(b)(7)(A) and (B) led Chairman Miller and Member Kennedy to the determination that those two sections preclude recognition picketing when a question concerning representation cannot be properly raised in the circumstances set forth in each section, they concluded that a petition which does not raise a valid question concerning representation does not preclude the finding of a violation under section 8(b)(7)(C).

Chairman Miller and Member Kennedy found analogous a situation in which a union has lost an election held pursuant to section 9(c) of the Act, but continues to picket. In such a situation, they noted, the losing union would be unable to file a petition which raised a question concerning representation and thereby obtain Board certification through an election. Accordingly, when the union continues to picket in such circumstances, a violation of the Act would be found. Chairman Miller and Member Kennedy further stated that the case under

⁶⁵ Member Fanning, dissenting, believed that the union should have been given the opportunity to contest the validity of the expedited election and he would have remanded the proceeding to take evidence on its validity. Member Fanning noted that it is axiomatic that finding a violation of sec 8(b)(7)(B) is premised upon a valid election. He pointed out that if the regional director erred in directing an election, or if the election as held was invalid for other reasons, the picketing in this case could not have violated sec 8(b)(7)(B). Thus, Member Fanning observed, the validity of the election which triggered the 8(b)(7)(B) charge was a central element in the proceeding. He did not think the Board's inquiry into the validity of the election would be in derogation of the General Counsel's powers under sec 3(d) to investigate charges and issue complaints. Member Fanning stated that any Board inquiry could not, of course, cause the General Counsel to reconsider any decision he may have made of any charges, but an inquiry would enable the Board to determine whether the election was valid, the issue squarely before the Board.

⁶⁶ *Drivers, Chauffeurs & Helpers Loc. 639, IBT (Dunbar Armored Express)*, 211 NLRB No. 78

consideration was distinguishable from *Vila-Barr*,⁶⁷ which allowed picketing for a one-man unit, since, in *Vila-Barr*, Board policy, and not a union's choice, barred the union from utilization of the Board's election processes.

A Board panel dismissed a complaint in *Levitz Furniture*⁶⁸ which alleged that the union violated section 8(b)(7)(C) of the Act by picketing an employer for more than 30 days, without a representation petition being filed, for the purpose of requiring the employer to recognize the union or to require the employer's employees to select the union as their representative. In reaching this result, the panel agreed with the union that its act of offering handbills to all who entered the employer's premises did not constitute picketing. While the union's activity was described by some as "informational picketing," the mere utterance of those words, in the panel's opinion, did not transform handbilling into picketing. In dismissing the complaint, the panel noted that usual handbilling procedures were followed at all times by the union and concluded that no signal was intended by the union's conduct.

O. Hot Cargo Clauses

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer or to cease doing business with any other person. It also provides that any contract "entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void." Exempted by its provisos, however, are agreements between unions and employers in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work," and certain agreements in the "apparel and clothing industry."

During the past fiscal year, two cases decided by the Board involved clauses which provided monetary penalties for work not performed under contract. In one case, *Associated General Contractors of California*,⁶⁹ a Board majority dismissed a complaint alleging an 8(e) violation. The 8(e) allegation was based on a clause in an agreement be-

⁶⁷ *Teamsters Loc 115 (Vila-Barr Co)*, 157 NLRB 588 (1966)

⁶⁸ *Teamsters, Loc 688, IBT (Levitz Furniture Co of Missouri)*, 205 NLRB No 133 (Chairman Miller and Members Fanning and Penello)

⁶⁹ *Southern California Pipe Trades District Council 16 and United Assn of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, Loc 494 (AGC of California)*, 207 NLRB No 58 (Chairman Miller and Members Fanning and Jenkins, Member Kennedy dissenting).

tween Plumbers and a contractor which provided that the contractor was to pay the union's retirement fund a monetary penalty for using prefabricated materials. The contractor was ordered by a joint arbitration board to pay the Plumbers after the contractor began work using sinks which arrived at the worksite completely set up for use, except that drains and sink lines had to be attached. In finding that the clause in question did not violate the Act's ban on hot cargo agreements, the three-member Board majority noted that the clause merely provided a means for compensation of a breach of contract by a fair procedure which was a reasonable and peaceful method of resolving disputes. The majority further noted that the Plumbers did not seek to enforce its bargaining agreement against the contractor by any other means than the peaceful means provided by the bargaining agreement.⁷⁰

In the other case, *Kimstock*,⁷¹ a Board majority noted that the case under consideration involved the same alleged "hot cargo" provision and a similar monetary assessment made for a breach thereof as were considered in *AGC of California, supra*, and, accordingly, for substantially the same reasons set forth in that case, found that the contract as so applied did not violate section 8(e) of the Act.⁷²

Two other cases decided by the Board during the past fiscal year involved the legality of fringe benefit fund payment clauses. In *Merle Riphagen*,⁷³ a Board majority dismissed an 8(e) complaint finding that a union did not violate section 8(e) of the Act by entering into and enforcing an agreement with various employer associations and individual contractors whereby general contractors obligated themselves to be financially responsible for the delinquencies of their subcontractors in payments to the union's trust funds. Members Fanning and Penello noted that in a previous case,⁷⁴ which involved a substantially similar clause, the Board had not passed on the legality of such clauses because of the absence of sufficient extrinsic evidence of the manner in which the union enforced such clauses. In the case

⁷⁰ Member Kennedy, dissenting, would have found that the Plumbers conduct amounted to coercion and restraint, intended to effect a cessation of business with manufacturers of preplped sinks, and that, in the Plumbers application of its contract to work not historically and traditionally done by its members, the contract as so applied violated the Act's prohibition against hot cargo agreements

⁷¹ *Southern California Pipe Trades District Council 16; Plumbers & Steamfitters Loc 582 (Kimstock Div Tridair Industries)*, 207 NLRB No 59 (Chairman Miller and Members Fanning, Jenkins, and Penello, Member Kennedy dissenting)

⁷² Member Kennedy, dissenting for reasons set forth in *AGC of California*, stated again that he would not have deferred to the use of contract provisions to resolve hot cargo issues. He concluded that, in his view, the Plumbers violated sec. 8(e) of the Act by applying contractual provisions in an attempt to obtain new work not traditionally done by its members

⁷³ *Joint Council of Teamsters 42, IBT (Merle Riphagen)*, 212 NLRB No 5 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting)

⁷⁴ *General Teamsters, Loc 982 (Associated Independent Owner-Operators)*, 181 NLRB 515 (1970)

under consideration, Members Fanning and Penello concluded that, in light of insufficient evidence to warrant the conclusion that neutrals or uninvolved persons were affected by the clause, the 8(e) complaint should be dismissed. Member Jenkins concurred in dismissing the 8(e) allegations on the grounds that the fringe benefit provisions constituted permissible work standard clauses.⁷⁵

In a related case, *Griffith Co.*,⁷⁶ a Board majority dismissed a complaint which alleged that the union violated section 8(e) by entering into and maintaining provisions in its master labor agreement whereby contracting employers agreed not to subcontract work to any subcontractor whose name appeared on a monthly list of employees delinquent in their payments to fringe benefit trust funds jointly maintained and administered by the union and signatory employers. In reaching this result, Members Fanning and Penello concluded that, even accepting the failure of the record to support finding a single, industrywide bargaining unit, the union was nonetheless engaged in primary conduct, since the provision related directly and immediately to the interests and conditions of employment of the employees in each separate unit. Member Jenkins concurred in the dismissal of the 8(e) allegation for reasons stated by him in *Merle Riphagen*, *supra*.⁷⁷

Another hot cargo case decided during the past fiscal year involved the proviso to section 8(e) which exempts from its proscription an agreement in the construction industry with respect to work "to be done at the site of the construction." The clause in question related to postwarranty equipment maintenance on a construction site. A Board majority found, in *Acco Construction*,⁷⁸ that a union violated section 8(e) of the Act by entering into collective-bargaining agreements with various contractors' associations which prohibited contractor-members from doing business with nonunion employers whose

⁷⁵ Contrary to the majority, Chairman Miller and Member Kennedy would have found that the fringe benefit provisions were violative of sec 8(e) of the Act since, in their view, neutrals or uninvolved persons were affected by the clause. Thus, in their view, the prime contractor and subcontractor involved were independent contractors with separate and distinct bargaining and unit work. Moreover they noted any legitimate interest the union might have had as to who the prime contractor does business with was eliminated by the fact that the prime contractor retained no employees performing any work covered by the fringe benefit clauses. In addition, they stated, the union applied the fringe benefit clauses in order to reach jobsites and unit work so distant in time, distance, and contractual relationship from the pressured contractors that the union's application of the contract to the contractors emboldened them in disputes unknown to them and so far removed that the contract could not be construed as protecting the work preservation interest of the coerced contractor's employees.

⁷⁶ *Intl Union of Operating Engineers, Loc 12 (Griffith Co)*, 212 NLRB No 4 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting).

⁷⁷ Dissenting, Chairman Miller and Member Kennedy would have found the alleged 8(e) violation for reasons set forth in their dissent in *Merle Riphagen*, *supra*.

⁷⁸ *Intl Union of Operating Engineers, Loc 12 (Acco Construction Equipment)*, 204 NLRB No 115.

repairmen serviced the contractor's construction equipment on the jobsite. In finding the violation, the majority relied on the fact that, since the repair of the machines involved work which could be done on or off the site, the repair was not "work to be done at the site of the construction . . ." within the meaning of the construction industry proviso to section 8(e).⁷⁹

One other hot cargo case decided by the Board during the past fiscal year involved a clause which related to containerized freight work. In *California Cartage*⁸⁰ the full Board ruled that the Longshoremen's international union, four of its locals, and an employers' association violated section 8(e) of the Act by entering into an agreement requiring shipping companies to cease subcontracting container packing work to employers who did not employ longshoremen and to establish, if necessary, their own container freight stations on or adjacent to the docks within the work jurisdiction of the Longshoremen. In so holding, the Board noted that the union's claim to container packing work was not limited to work generated by members of the employers' association involved, but, instead, extended broadly to all containers entering or leaving Pacific coast docks. The Act does not permit a restrictive contract or a refusal to handle containers to put pressure on nonmembers of the employers' association to cease doing business with companies which do not employ union members, the Board concluded. Furthermore, with respect to the union's claim of work preservation, the Board stated that *National Woodwork*⁸¹ cannot be applied so broadly as to encompass all efforts by unions to enlarge the work opportunities of a bargaining unit adversely affected by technological advances.

P. Prehire Contracts

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 has not been established, or that union membership is required after the seventh day of employment, or that

⁷⁹ Member Fanning, dissenting would have found the agreement in question to be legal since, in his view, the on-site work of repairing heavy construction equipment is covered by the proviso to sec 8(e)

⁸⁰ *Intl Longshoremen's & Warehousemen's Union, Locs 13 & 63 (California Cartage Co)*, 208 NLRB No 130

⁸¹ *Natl Woodwork Manufacturers Assn v NLRB*, 386 U S 612 (1967)

the union is required to be informed of employment opportunities and has opportunity for referral, or that it provides for priority in employment based on specified objective criteria. Such an agreement is not, however, a bar to a petition filed pursuant to section 9(c) or (e).

Two cases decided during the past fiscal year involved prehire contracts. In one case, *Forest City*,⁸² a Board panel held that an employer and union unlawfully entered into a collective-bargaining contract containing an illegal union-security requirement at a time when there was not a representative complement of employees. The panel found that the employer was engaged in manufacturing at its precast plant rather than in the building and construction industry, and that its employees were not employees in the building and construction industry, but were manufacturing employees. Since it found the employer was not engaged in the building and construction industry in the sense used in section 8(f) of the Act, the panel concluded that the employer's contract with the union was not a valid prehire agreement under section 8(f) of the Act.

In the other case, *Fenix & Scisson*,⁸³ a Board panel found that an employer and two unions violated the Act by entering into collective-bargaining contracts covering employees at one of the employer's construction projects after the employer withdrew recognition of a third union which held a valid prehire agreement under section 8(f), covering the same employees. The panel noted that, as section 8(f) is applicable to agreements entered into in the building and construction industry after the start of the project involved, the absence of a representative complement when the agreement was executed with the third union was of no significance. Also, the panel observed that since that union had secured applications for membership from all or substantially all of the employees on the first day of work, and had a valid agreement which required those employees hired thereafter to become and remain members of the union, and since the evidence showed an intent on the part of the union to administer and enforce the agreement, that union was the duly designated bargaining representative of the employees involved.

Q. Remedial Order Provisions

During the report year, the Board was confronted in a number of cases with the task of designing a remedy appropriate to the circumstances presented by the violations found and capable of effectuating the purposes of the Act.

⁸² *Forest City/Dillon-Tecon Pacific*, 209 NLRB No. 141 (Chairman Miller and Members Fanning and Jenkins)

⁸³ *Fenix & Scisson*, 207 NLRB No. 104 (Members Fanning, Kennedy, and Penello)

In *Gasoline Retailers Assn. of Chicago*,⁸⁴ the Board held that a union violated section 8(b)(1)(A) and (B) and 8(b)(3) as a part of a widespread pattern of unlawful activities in organizing gasoline service station industry employees throughout the Chicago area. The Board's remedial order directed the union to stop collections and to repay 82 service station employers initiation fees, dues, assessments, and health and welfare payments unlawfully collected, with 6-percent interest. The Board further directed the union to notify those whose health and welfare payments were current that they would no longer be covered after a 30-day period so that they could obtain substitute coverage if desired, and, to avoid any inequities during this hiatus, ordered the union to make contributions on behalf of the covered employees and to continue to process any pending claims or claims filed during that period.

However, the Board, although sympathetic to the administrative law judge's concern for parties not named in the complaint, declined to retain continuing jurisdiction, as recommended by him, for the purpose of entertaining *ad hoc* applications for supplemental relief at the foot of the order and for granting summary relief thereon as warranted. It is the Board's general policy to have all alleged violations litigated in one proceeding and in the instant case there was not an adequate reason to depart from that rule. Moreover, in view of section 10(e), the Board had serious doubts about its authority to add, from time to time, employers not named in the complaint to the foot of an order which is not before a court of appeals for enforcement.

The full Board in *Gateway Service Co.*⁸⁵ ordered an employer to reimburse 21 discriminatees in the amounts stated in a backpay specification notwithstanding the employer's assertion that some matters alleged in the specification were not within its knowledge because of a transfer of stock and assets of the employer. In rejecting this contention, the Board stated that a mere change of stock ownership does not absolve a continuing corporation of responsibility under the Act. Moreover, the number of hours employees worked for the employer is, or should be, a matter within the knowledge of a corporation, the Board added.

*Wichita Eagle & Beacon*⁸⁶ involved an allegation that an employer had violated section 8(a)(1) of the Act by the conduct of an employee, an alleged supervisor, who filed a decertification petition. A Board

⁸⁴ *Truck Drivers, Loc 705, IBT (Gasoline Retailers Assn of Metropolitan Chicago)*, 210 NLRB No 58, with Chairman Miller not participating

⁸⁵ 209 NLRB No 178

⁸⁶ *Wichita Eagle & Beacon Publishing Co.*, 206 NLRB No 16 (Chairman Miller and Member Penello Member Fanning dissenting)

panel majority dismissed the complaint without passing on the administrative law judge's findings as to the employee's alleged supervisory status. The majority concluded that the conduct alleged to be attributable to the employer could not have had a sufficient impact upon unit employees to warrant a finding that the employer unlawfully interfered with their rights under the Act. In this regard, the panel majority took note that the petition was withdrawn 10 days after its filing and that the employer continued to bargain with the union for an initial contract during the brief time the petition was pending. The majority observed that any impact that the filing of the petition might have had upon the employees, therefore, had been substantially remedied by the employer's conduct in continuing to bargain with the union and in expressly informing the union that it would continue to recognize the union until such time as it was proven that the union was no longer the employees' bargaining representative; furthermore, any vestige of adverse effect the filing of the petition might have had was removed when the petition was withdrawn 3 days later. The majority concluded, citing the *Jimmy Wakely Show* case,⁸⁷ that the conduct involved was so minimal and isolated that it did not warrant a finding of a violation or issuance of a remedial order.⁸⁸

⁸⁷ *American Fed. of Musicians, Loc 76 (Jimmy Wakely Show)*, 202 NLRB 620 (1973).

⁸⁸ Member Fanning, dissenting, did not consider the alleged conduct as minimal or isolated. In his view, the fact that the employer knew of the conduct in question, but made no attempt to divorce itself from such activities and the fact that this conduct occurred in a background of unfair labor practice litigation and involved an employer which had always been strongly opposed to organization of its employees, added to the substantial and obvious impact which the conduct had on unit employees.

VII

Supreme Court Litigation

During fiscal year 1974, the Supreme Court decided six cases involving review of Board orders. The Board filed *amicus* briefs in three additional cases presenting preemption issues.

A. Successor Employer's Obligation To Remedy the Predecessor Employer's Unfair Labor Practices

In *Golden State Bottling Co.*,¹ a unanimous Court,² sustaining the Board's *Perma Vinyl*³ doctrine, held that a successor employer, which acquires a business with knowledge of an outstanding Board order requiring its predecessor to reinstate with backpay an unlawfully discharged employee, may properly be required to assume the reinstatement obligation and to share, jointly and severally with the predecessor, the backpay liability. The Court pointed out that "[t]he Board's decisional process in the *Perma Vinyl* line of cases has involved striking a balance between the conflicting legitimate interests of the bona fide successor, the public, and the affected employee" (414 U.S. at 181). The Court approved the Board's striking of the balance in favor of the wrongfully discharged employee. It explained that:

When a new employer . . . has acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor's business operations, those employees who have been retained will understandably view their job situations as essentially unaltered. Under these circumstances, the employees may well perceive the successor's failure to remedy the predecessor employer's unfair labor practices arising out of an unlawful discharge as a continuation of the predecessor's labor policies. To the extent that the employees' legitimate expectation is that the unfair labor practices will be remedied, a successor's

¹ *Golden State Bottling Co v NLRB*, 414 U S 168, affg 467 F 2d 164 (C A 9 1972), enfg 187 NLRB 1017 (1971)

² Justice Brennan delivered the opinion of the court

³ *Perma Vinyl Corp*, 164 NLRB 968 (1967)

failure to do so may result in labor unrest as the employees engage in collective activity to force remedial action. Similarly, if the employees identify the new employer's labor policies with those of the predecessor but do not take collective action, the successor may benefit from the unfair labor practices due to a continuing deterrent effect on union activities. . . .

* * * * *

Avoidance of labor strife, prevention of a deterrent effect on the exercise of rights guaranteed employees by § 7 of the Act . . . and protection for the victimized employee—all important policies subserved by the National Labor Relations Act . . . are achieved at a relatively minimal cost to the bona fide successor. . . . [414 U.S. at 184–185.]

The Court also rejected the predecessor's contention that its back-pay liability should have been terminated as of the date it ceased operating the business. The Court approved the Board's position enunciated in *Perma Vinyl* that:

“With respect to the offending employer himself, it must be obvious that it cannot be in the public interest to permit the violator of the Act to shed all responsibility for remedying his own unfair labor practices by simply disposing of the business. If he has unlawfully discharged employees before transferring ownership to another, he should at least be required to make whole the discharges for any loss of pay suffered by reason of the discharges until such time as they secure substantially equivalent employmen with another employer.” . . . [414 U.S. at 186–187, quoting from 164 NLRB at 970.]

B. Waiver of Union Initiation Fees

In *Savair Mfg. Co.*,⁴ the Court⁵ held that a union's offer to waive its initiation fee for employees who sign authorization cards prior to a representation election is an impermissible campaign tactic and constitutes grounds for setting aside the election. In the Court's view, such a waiver offer constituted a “promise [of] a special benefit to those who sign up for a union” (414 U.S. at 279), and allowed “the union to buy endorsements and paint a false portrait of employee support during its election campaign” (*id.* at 277). The Court therefore upheld the Sixth Circuit's denial of enforcement of a Board bargaining order predicated on an election tainted by such an offer.

⁴ *NLRB v Savair Mfg. Co.*, 414 U.S. 270, affg 470 F.2d 305 (C.A. 6, 1972), denying enforcement of 194 NLRB 298 (1971).

⁵ Justice Douglas delivered the opinion of the Court. Justice White, joined by Justices Brennan and Blackmun, dissented.

C. Union Waiver of Employees' Section 7 Right To Distribute Union Literature

In a different kind of "waiver" case, *Magnavox*,⁶ the Court upheld the Board's position that a union representative may not waive the employees' section 7 right to distribute union literature on company property. Accordingly, the Court agreed that the company violated section 8(a)(1) of the Act by enforcing a longstanding rule, acquiesced in by the union, which prohibited employees from distributing union literature on company property even during nonwork time in nonwork areas.

In explaining why such a waiver was invalid, the Court stated:

The union may, of course, reach an agreement as to wages and other employment benefits and waive the right to strike during the time of the agreement as the *quid pro quo* for the employer's acceptance of the grievance and arbitration procedure. . . . Such agreements, however, rest on "the premise of fair representation" and presuppose that the selection of the bargaining representative "remains free." . . . [A] different rule should obtain where the rights of the employees to exercise their choice of a bargaining representative is involved—whether to have no bargaining representative, or to retain the present one, or to obtain a new one. When the right to such a choice is at issue, it is difficult to assume that the incumbent union has no self-interest of its own to serve by perpetuating itself as the bargaining representative. [415 U.S. at 325.]

The Court added that if the right of in-plant literature distribution of employees opposing the union could not be waived neither could that of employees supporting the union. "For employees supporting the union have as secure § 7 rights as those in opposition" (*id.* at 326).

D. Coverage of "Managerial Employees"

In *Bell Aerospace*,⁸ the Court⁹ held that Congress intended to exclude from the protection of the Act all true "managerial employ-

⁶ *NLRB v Magnavox Co of Tennessee*, 415 U.S. 322, reversing 474 F.2d 1269 (C.A. 6, 1973), denying enforcement of 195 NLRB 265 (1972).

⁷ Justice Douglas delivered the opinion of the Court. Justice Stewart joined by Justices Powell and Rehnquist, concurred in part and dissented in part.

⁸ *NLRB v Bell Aerospace Co, Div of Textron*, 416 U.S. 267, affg in part and reversing in part 475 F.2d 485 (C.A. 2, 1973), denying enforcement to and remanding 190 NLRB 431 (1971), 197 NLRB 209 (1972).

⁹ Justice Powell delivered the opinion of the Court. Justice White, joined by Justices Brennan, Stewart, and Marshall, dissented in part.

ees”¹⁰—not just those in positions susceptible to conflicts of interest in labor relations, as the Board had held. Summarizing the legislative history of the 1947 Taft-Hartley amendments to the Act, the Court stated:

The House wanted to include certain persons within the definition of “supervisors,” such as strawbosses, whom the Senate believed should be protected by the Act. As to those persons, the Senate’s view prevailed. There were other persons, however, whom both the House and the Senate believed were plainly outside the Act. The House wanted to make the exclusion of certain of these persons explicit. In the conference agreement, representatives from both the House and Senate agreed that a specific provision was unnecessary since the Board had long regarded such persons as outside the Act. Among those mentioned as impliedly excluded were persons working in “labor relations, personnel and employment departments,” and “confidential employees.” . . . The legislative history strongly suggests that there also were other employees, much higher in the managerial structure, who were likewise regarded as so clearly outside the Act that no specific exclusionary provision was thought necessary. . . . We think the inference is plain that “managerial employees” were paramount among this impliedly excluded group. [416 U.S. at 283.]

However, the Court unanimously reversed the court of appeals insofar as it had required the Board, on remand, to determine whether the company’s buyers were “managerial employees,” or employees covered by the Act, through a rulemaking proceeding. The Court held that:

the Board is not precluded from announcing new principles in an adjudicative proceeding and . . . the choice between rulemaking and adjudication lies in the first instance within the Board’s discretion. Although there may be situations where the Board’s reliance on adjudication would amount to an abuse of discretion or a violation of the Act, nothing in the present case would justify such a conclusion. Indeed, there is ample indication that adjudication is especially appropriate in the instant context. As the Court of Appeals noted, “[t]here must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and hundreds of thousands of the latter.” . . . Moreover, duties of buyers vary widely depending on the company or industry. [416 U.S. at 294.]

¹⁰ “Managerial employees” are those “who are in a position to formulate, determine, and effectuate management policies” *Ford Motor Co*; 66 NLRB 1317, 1322 (1946)

E. Power of Court of Appeals To Order Additional Remedies

In *Heck's*,¹¹ the Court¹² held that the court of appeals had overstepped its reviewing function in modifying the Board's order so as to require the employer to reimburse the union and the Board for litigation expenses, and the union for excess organizational expenses. The Court agreed with the court of appeals that there were "facial inconsistencies" between the Board's decision in this case (which had refused such remedies), and its *Tiidee*¹³ decision (which had awarded litigation expenses). However, the Court explained that:

when a reviewing court concludes that an agency invested with broad discretion to fashion remedies has apparently abused that discretion by omitting a remedy justified in the court's view by the factual circumstances, remand to the agency for reconsideration, and not enlargement of the agency order, is ordinarily the reviewing court's proper course. Application of that general principle in this case best respects the congressional scheme investing the Board and not the courts with broad powers to fashion remedies that will effectuate national labor policy. [U.S. at 94 S. Ct. 2080.]

Accordingly, the Court reversed the judgment of the court of appeals and directed it to remand the case to the Board for further proceedings.

F. Union Discipline of Supervisor-Members for Performing Rank-and-File Struck Work

In *Florida Power*,¹⁴ the Court,¹⁵ in disagreement with the Board, held that a union does not violate section 8(b)(1)(B) of the Act by disciplining supervisor-members for crossing a picket line and performing rank-and-file struck work during a lawful economic strike against the employer. The Court found, from its reading of the language and legislative history of section 8(b)(1)(B), that the provision was intended to proscribe a union's discipline of one of its

¹¹ *NLRB v Food Store Employees Union, Loc 347* [*Heck's*] U.S. 94 S. Ct. 2074 reversing and remanding 476 F.2d 546 (C.A.D.C. 1973), remanding 191 NLRB 886 (1971)

¹² Justice Brennan delivered the opinion for a unanimous Court

¹³ *Tiidee Products*, 194 NLRB 1234 (1972)

¹⁴ *Florida Power & Light Co v Intl Brotherhood of Electrical Workers, Loc 641, et al*, 417 U.S. 790 94 S. Ct. 2737, affg 487 F.2d 114; (C.A.D.C. 1973), denying enforcement of 192 NLRB 85 (1971) (*Illinois Bell*), and 193 NLRB 30 (1971) (*Florida Power*)

¹⁵ Justice Stewart delivered the opinion of the Court. Justice White joined by the Chief Justice and Justices Blackmun and Rehnquist dissented

members who is a supervisor “only when that discipline may adversely affect the supervisor’s conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer” (417 U.S. 790, 94 S. Ct. at 2745). The union discipline here did not violate section 8(b)(1)(B) for the supervisors “were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines during an economic strike to engage in rank and file struck work” (*id.*).

The Court agreed with the Board that the Act reflects congressional concern that employers not be deprived of the loyalty of their supervisory personnel. But, in its view, Congress met that concern by :

providing the employer with an option. On the one hand, he is at liberty to demand absolute loyalty from his supervisory personnel by insisting, on pain of discharge, that they neither participate in, nor retain membership in, a labor union. . . . Alternatively, an employer who wishes to do so can permit his supervisors to join or retain their membership in labor unions, resolving such conflicts as arise through the traditional procedures of collective bargaining. [417 U.S. 790, 94 S. Ct. at 2748–49.]

G. Preemption Issues

The Board filed *amicus* briefs in three cases involving preemption issues :

In *Windward Shipping*,¹⁶ the Court ¹⁷ held, contrary to the Board’s position, that the Texas courts had jurisdiction to enjoin picketing of foreign-flag ships by American unions, in protest of substandard wages paid to the foreign crews who manned the vessels. In concluding that this activity was not “in commerce” within the meaning of the National Labor Relations Act, the Court explained :

At the very least, the picketers must have hoped to exert sufficient pressure so that foreign vessels would be forced to raise their operating costs to levels comparable to those of American Shippers, either because of lost cargo resulting from the longshoremen’s refusal to load or unload the vessels, or because of wage increases awarded as a virtual self-imposed tariff to regain entry to American ports. Such a large scale increase in operating costs would have more than a negligible impact on the “maritime operations” of these foreign ships, and the effect would be by no

¹⁶ *Windward Shipping (London), Ltd v American Radio Assn, AFL-CIO*, 415 U S 104, reversing 482 SW 2d 675

¹⁷ Justice Rehnquist delivered the opinion of the Court. Justice Brennan, joined by Justices Douglas and Marshall, dissented

means limited to costs incurred while in American ports. [415 U.S. at 114.]

In *Arnold*,¹⁸ the Court¹⁹ held, in accord with the Board's position, that a court suit under section 301 of the Labor Management Relations Act to enjoin a jurisdictional dispute strike allegedly in breach of a no-strike clause in the collective agreement was not preempted even though the unions' activity arguably was also a violation of section 8(b)(4)(D) of the National Labor Relations Act. The Court explained that:

When an activity is either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA, the preemption doctrine developed in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), and its progeny, teaches that ordinarily "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *Id.*, at 245. When, however, the activity in question also constitutes a breach of a collective-bargaining agreement, the Board's authority "is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." *Smith v. Evening News Assn.*, *supra*, 371 U.S. at 197. . . .

Indeed, Board policy is to refrain from exercising jurisdiction in respect of disputed conduct arguably both an unfair labor practice and a contract violation when, as in this case, the parties have voluntarily established by contract a binding settlement procedure. . . .

Furthermore, when the particular contract violation also involves an arguable violation of § 8(b)(4)(i)(D) of the NLRA concerning jurisdictional disputes, as in this case, the Board has recognized added policy justifications for deferring to the contractual dispute settlement mechanism agreed upon by the parties. [U.S. at , 94 S. Ct. 2072.]

In *Beasley*,²⁰ the Court²¹ held, in accord with the Board's position, that the National Labor Relations Act barred a supervisor from recovering damages against the employer under a state right-to-work law because the employer had discharged him for his union membership. Rejecting the supervisor's contention that the suit was not

¹⁸ *William E Arnold Co v Carpenters District Council of Jacksonville*, U S , 94 S Ct 2069, reversing and remanding 279 So 2d 300

¹⁹ Justice Brennan delivered the opinion for a unanimous Court

²⁰ *Beasley v Food Fair of North Carolina*, U S , 94 S Ct 2023 affg. 282 N C 530, 193 S E 2d 911

²¹ Justice Brennan delivered the opinion for a unanimous Court

barred by section 14(a) of the National Labor Relations Act ²² because the right-to-work law was not a law relating to collective bargaining, the Court stated:

the second clause of § 14(a) relieving the employer of obligations under “any law, either National or local, relating to collective-bargaining” applies to any law that requires an employer “to accord to the front line of management the anomalous status of employees.” . . . Enforcement against [the company] in this case of [the North Carolina law] would plainly put pressure on [the company] “to accord to the front line of management the anomalous status of employees,” and would therefore flout the national policy against compulsion upon employers from either federal or state agencies to treat supervisors as employees. [U.S. at , 94 S. Ct. 2028.]

²² Sec 14(a) provides that

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining

VIII

Enforcement Litigation

A. Board and Court Procedure

In *Shell Chemical*,¹ the Board had quashed the notice of hearing issued in jurisdictional dispute proceedings under section 10(k) of the Act, having found that no “jurisdictional dispute” cognizable under that section existed. On the company’s petition to review that action, the Fifth Circuit held that the Board’s order was not a “final order” subject to judicial review under section 10(f) of the Act. The court noted that the term “final order” repeatedly had been held to refer solely to a Board order entered after proceedings under section 10 (b) and (c) of the Act either dismissing a complaint or directing a remedy for an unfair labor practice found. Accordingly, the court further noted, section 10(f) had been held not to afford appellate jurisdiction to review such actions as a refusal by the Board to issue a certification or a refusal by the General Counsel to issue a complaint. The court also observed that the legislative history affords some support for its view, in that when section 10(k) was added to the Act Congress did not amend section 10 (e) and (f) and, in fact, rejected a proposal which would have had that effect—namely, a provision calling for the appointment of arbitrators of these disputes, whose awards would have been considered “final orders” of the Board. Finally, the court noted that the Supreme Court’s decision in *Plasterers*² pointed out that the 10(k) proceeding to award the work in a jurisdictional dispute precedes the issuance of a complaint and that the function of a notice of hearing in that proceeding is merely to set in motion the machinery for determining whether a complaint under section 8(b) (4) (D) should issue. Accordingly, the court concluded, contrary to a recent Ninth Circuit decision,³ that quashing a notice of hearing under section 10(k) “is not adjudicatory in nature or final as defined by section 10(f).”

¹ *Shell Chemical Co v NLRB*, 495 F 2d 1116

² *NLRB v Plasterers Loc Union 79, Operative Plasterers’ and Cement Masons’ Intl Assn*, 404 US 116 (1971)

³ *Waterway Terminals Co v NLRB*, 467 F 2d 1011 (CA 9, 1972)

In one case,⁴ the Fourth Circuit rejected an employer's claim that a conflict of interest occurred when a Board attorney represented the Board in a representation case and the General Counsel in an unfair labor practice with which it had been consolidated for hearing. In the unfair labor practice case, the complaint alleged that one Quinn had been discharged because of protected prounion activity, while the company asserted that Quinn had been discharged for threatening fellow employees and this alleged activity was the basis for one of the company's main objections to the election. The company suggested that the Board's attorney resisted the introduction of evidence tending to show questionable conduct by Quinn in order to enhance the chances of establishing a discriminatory discharge, thus breaching his duty in the representation case to maintain neutrality and to insure a complete record.⁵ The court noted that the Board's practice of consolidating an unfair labor practice case with a representation case for hearing is well recognized and that any conflict of interest arising from the dual role played by the Board's attorney "may be more apparent than real." The court held that a denial of due process cannot be established by a theoretical conflict, at least where the company was adequately represented by competent counsel, and that the record here was insufficient to establish participation by the Board's counsel that would destroy the fairness of the hearing.

In another case,⁶ the Seventh Circuit held that a conflict of interest was created by the dual role played by a Board attorney who acted as the hearing officer in a jurisdictional dispute proceeding under section 10(k) and then prosecuted the 8(b)(4)(D) unfair labor practice proceeding against the union which contested the work award made in the prior proceeding. Holding that the Administrative Procedure Act⁷ applied to 10(k) proceedings, the court found that section 554 of that act, which precludes the commingling of judicial and prosecutorial functions in administrative adjudications, barred the procedures employed by the Board in this case. In doing so, the court rejected the view of the District of Columbia Circuit⁸ that 10(k) determinations are not final orders and therefore not adjudications within the meaning of the Administrative Procedure Act. The court also rejected the argument that any asserted conflict was nonexistent because the Board agent did not undertake his prosecutorial duties until some time after he presided at the 10(k) hearing. In the court's

⁴ *Barrus Construction Co v N.L.R.B.*, 483 F 2d 191

⁵ See Board Field Manual, sec 114244, Board Rules and Regulations, Series S, sec 101 20(c) (29 C F R § 101.20(c))

⁶ *Loc 174, IBEW v. N L R B.*, 486 F 2d 863.

⁷ 5 U S C 551, *et seq*

⁸ *Bricklayers, Masons and Plasterers Intl Union v N L R B.*, 475 F 2d 1316 (C A D C, 1973)

view the proscribed conflict still existed since there was the potential that a hearing officer's knowledge that he might subsequently adopt a prosecutorial stance would influence his evidentiary decisions at the hearing.⁹

In *KFC Natl. Management Corp. v. N.L.R.B.*,¹⁰ the Second Circuit reviewed the Board's representation case procedure of referring requests for review of regional directors' decisions for disposition by a panel composed of one Board member and staff attorney assistants representing two other Board members. Noting that Board action could be taken only by the vote of two members, the court ruled that the procedures employed failed to accord administrative due process and were invalid under the Act, since both the statute and the legislative history directed that only "the Board" could rule on such matters. In reaching its conclusion, the court rejected the Board's contention that the procedure constituted a proper delegation of authority under accepted principles of administrative law. The court noted that section 3(b) of the Act defines a quorum of the Board as "three members" with "two members" constituting a quorum of that group and that neither the Act nor the legislative history gives any indication that Board members could invest their subordinates with power to decide such questions. The court took care to point out, however, that its decision did not weaken the well-established presumption of administrative regularity that attaches to agency actions, but observed that the presumption was not inviolate and, where, as in this case, a *prima facie* demonstration of irregularity had been made a matter of record, judicial inquiry is appropriate. The court also made clear that Board members could continue to rely on their assistants for case summaries, legal memoranda, draft opinions, and other assistance in reaching decisions.

Under the Act, the Board does not initiate its own proceedings, for Congress has made implementation of the Act dependent upon the initiative of individual persons.¹¹ Where an unfair labor practice charge filed by an individual does not allege precisely the violation which the General Counsel alleges in his complaint, the question arises whether the complaint is so related to the charge that the Board is still proceeding, not on its own volition, but pursuant to the charge. In one case,¹² the Fifth Circuit found a sufficient relationship where the charge alleged only the discriminatory layoff of five employees because of union activities and the complaint alleged only that the employer had threatened to layoff employees because of union activi-

⁹ The Supreme Court granted the company's petition for certiorari on May 13, 1974

¹⁰ 497 F 2d 298

¹¹ *N L R B v. Scriveners, A/b/a AA Electric Co.*, 405 U.S. 117 (1972)

¹² *N L R B v. Rex Disposables, Div. of DII Industries*, 494 F 2d 588

ties, had coercively interrogated employees concerning their union activities, and had engaged in surveillance of union meetings. In so finding, the court noted that in making a thorough probe of an employer's motivation in laying off employees as alleged in the charge the General Counsel would inquire not only as to whether the employer had threatened to punish employees for union activity, but also as to whether he had engaged in interrogation of employees or surveillance of union meetings, since identification of union supporters would be a necessary step toward discriminatory treatment of particular employees. Accordingly, the court found the discovery of the unfair labor practices alleged in the complaint was prompted by the charge, even though the specific conduct alleged in the charge was not made the subject of a complaint. In another case,¹³ a divided court found a sufficient relationship where the charge alleged that the company had violated section 8(a) (3) and (1) of the Act by discriminatorily laying off employees at its terminal in Chicago, Illinois, while the complaint alleged discriminatory layoffs, not only at that terminal but also at terminals in Atlanta, Georgia, and Jackson, Mississippi. The court noted that all the violations were of the "same class and character" and occurred within a period of 1 or 2 months. The court also observed that all the employees were members of various locals of the International Brotherhood of Teamsters and that, viewed in the context of the company's past relationship with that union, it was clear that the company's conduct at each terminal was part of an overall plan to resist organization by the Teamsters.

B. Deferral to Other Means of Adjustment

During the past year, three circuit courts affirmed the Board's *Collyer*¹⁴ policy of prearbitral deferral to contractual dispute resolution. In one case,¹⁵ where an employer recalled certain employees from layoff at lower wages and fringes than they had previously enjoyed, the Ninth Circuit agreed with the Board that the dispute whether the employees were covered by the existing collective-bargaining agreement involved interpretation of a contract rather than a determination as to whether a contract existed, and ruled that the Board had not abused its discretion by deferring resolution of the dispute to the contractual grievance-arbitration provisions. Similarly, in *Enterprise Publishing Co. v. N.L.R.B.*,¹⁶ the First Circuit affirmed the Board's view that the question whether three employees had validly resigned

¹³ *N.L.R.B. v. Braswell Motor Freight Lines*, 486 F.2d 743 (C.A. 7)

¹⁴ *Collyer Insulated Wire*, 192 NLRB 837 (1971)

¹⁵ *Provision House Workers Union Loc 274 v. N.L.R.B.*, 493 F.2d 1249

¹⁶ 493 F.2d 1024

their union membership during a hiatus between contracts or were still members and hence subject to a maintenance of membership agreement initially raised questions of fact and contract which must be resolved before the issue "rises to a statutory level."

The court further noted that, since the Board retains jurisdiction and will not defer to an arbitrator's decision which is repugnant to the Act, no prejudice will result from allowing an arbitrator "to clear up the factual and contractual underbrush. . . ." Rejecting a contention that the arbitration could not be a fair one, the court observed that while "the employees involved in this dispute [were] opposed by their own bargaining agent . . . the Company's interest in the matter is similar to the employees' so that they are not, in fact, without representation." The court further noted that even if the company's position should change, leaving the employees without a proper voice, the Board, having retained jurisdiction, is in a position to insure a fair proceeding.

The District of Columbia Circuit considered and approved both the Board's *Collyer* prearbitral and its *Spielberg*¹⁷ postarbitral deferral policies in the past year. In *Associated Press v. N.L.R.B.*,¹⁸ the court, fully embracing the *Spielberg* policy of deferring to arbitral awards which are procedurally fair and not "repugnant to the policies of the Act," held that the Board properly deferred to an arbitrator's decision that the attempted revocations of dues-checkoff authorizations by numerous employees during a strike were invalid. The court also held that the Board properly advanced the Federal labor policy favoring settlement of disputes through arbitration by refraining from ruling on the validity of certain other attempted checkoff revocations, even though neither party had yet sought arbitration regarding those revocations. In *Loc. Union 2188, IBEW [Western Electric Co.] v. N.L.R.B.*,¹⁹ the underlying dispute concerned the impact which the employer's exercise of its admitted right to restructure its organization—that is, changing from two "managerial groups" to three such groups—would have on the employees' seniority rights. The court concluded, in agreement with the Board, that this dispute was within the scope of the contractual grievance and arbitration processes and that the results of arbitration would likely be dispositive of the unfair labor practice issue. The court further noted that the employer had expressed its willingness to arbitrate, that there was no suggestion of union animus, and that the collective-bargaining relationship of the parties indicated that arbitration would be fruitful. In holding that these factors warranted deferral, the court observed that it reads the *Collyer* doctrine

¹⁷ *Spielberg Mfg Co.*, 112 NLRB 1080 (1955)

¹⁸ 492 F 2d 662

¹⁹ 494 F 2d 1087

as a “balancing rule,” which requires deferral only where a balance between the statutory policy favoring “final adjustment by a method agreed upon by the parties” and the policy expressed in “granting the Board power to remedy unfair labor practices” favors such deferral.

Finally, in *Loc. Union 715, IBEW [Malrite of Wisconsin] v. N.L.R.B.*,²⁰ the court accepted the Board’s view that the employer’s failure to comply with an adverse arbitral award did not require the Board to decline deferral under the *Spielberg* policy and to consider the case on its merits. The court observed that although “the arbitration process has foundered . . . it has not proven inadequate. The union may yet obtain compliance with the award by means of a suit for its enforcement. As long as the remedy of judicial enforcement is available, the force of the *Spielberg* doctrine is not diminished by one party’s disregard for the arbitral award.”

C. Representation Proceeding Issues

In a case²¹ with a lengthy history before the Board, a divided court affirmed the Board in finding “equally appropriate” either a single-plant unit or a unit formed by adding that plant to an existing unit of several company plants and hence held that the Board was warranted in requiring the employer to bargain in the larger unit after employees represented in the single-plant unit had voted, in a unit clarification election, to be incorporated in the larger unit. In so finding the Board, Chairman Miller dissenting, based its determination that an enlarged multiplant unit was appropriate primarily on two factors: first, the history of bargaining between the company and the union demonstrated a pattern of successful bargaining in a unit of widely scattered plants which were not functionally or operationally integrated, and, second, the new plant did not differ significantly from those plants which over the years had been successfully integrated into the multiplant unit. In affirming the Board’s finding, the court noted that for the past 40 years the company has bargained on a multiplant basis, enlarging the unit as the company acquired new plants, and that the larger unit found appropriate by the Board was virtually employer-wide. The court further noted that the new plant was closer to the home office than many of the other plants in the unit and that all the subject plants were engaged in manufacturing and fabricating glass products. Finally, the court noted that while the new plant was only one which fabricated mirrors the Board could reasonably infer that the inclusion of these employees would not introduce a significant new element of

²⁰ 494 F 2d 1136

²¹ *Libbey-Owens-Ford Co v N L R B*, 495 F 2d 1195 (CA 3)

diversity, since the unit already included work requiring different levels of skills.

In *Allied Electric Products*,²² the Board announced a policy prohibiting parties from reproducing the Board's official ballot in campaign literature unless it was "completely unaltered in form and context and clearly marked sample on its face." In *Regency Electronics v. N.L.R.B.*,²³ the court approved the application of this policy in setting aside an election because of the employer's eleventh-hour distribution of a flyer which included an accurate facsimile of a Board ballot with an "x" in the "No" square and a large red heart superimposed on the same square. The flyer also included the sentence "This is only a sample ballot prepared by the Company" and an appeal for votes. The court, in rejecting the company's argument that the flyer did not violate the *Allied Electric* policy since the ballot, in context, was so clearly identified as propaganda, noted the Board's subsequent decision in *Rebmar*,²⁴ which, in the court's view, had ruled out "the utilization of official Board documents in connection with a partisan communication, even though that message may on the whole be innocuous."

In *Florida Mining & Materials Corp. v. N.L.R.B.*,²⁵ where the local union was placed under a trusteeship the day before the election, the Fifth Circuit refused to impute to the union an affirmative duty to disclose that fact and therefore upheld the Board's certification. Initially, the court accepted the Board's finding that the union "was able to represent these employees while in trusteeship and that any statements prior to the imposition of the trusteeship which indicated that the union could adequately represent these employees could not be considered material misrepresentations." Acknowledging the "serious consequences" of a trusteeship, the court noted that the membership still retains its vote on contract terms and strikes and that a trusteeship "is designed to be temporary in nature, ceasing when the local's affairs have been sufficiently straightened out to allow it to return to a great degree of self-government." Finally, the court agreed with the Board that a rule imposing upon parties an affirmative duty to disclose significant information would create "administrative difficulties" and also lead to a new category of election objections filed by "recalcitrant employers" who were seeking only "to further delay implementation of the desires of the employees."

²² 109 NLRB 1270 (1954)

²³ 84 LRRM 2891 (C A 7)

²⁴ 173 NLRB 1434 (1968)

²⁵ 481 F 2d 65

D. Unfair Labor Practices

1. Employer Interference With Employee Rights

a. Right to Union Representation in Investigatory Proceedings

Three circuits rejected the Board's position that section 8(a) (1) of the Act precludes an employer from requiring an employee to attend, without union representation, investigatory interviews which the employee reasonably fears will result in disciplinary action. In *Weingarten*,²⁶ the Fifth Circuit held that the company had not violated section 8(a) (1) of the Act by refusing the request of an employee for the presence of her union representative at an investigatory interview relating to suspected theft of company property by her, and by insisting that she participate in the interview without that representative. The court, relying in part on its prior decision in *Texaco*,²⁷ held that "an investigatory interview would be a premature stage at which to invoke a requirement of union representation in the absence of some showing that the purpose of the interview was not merely to elicit facts concerning employee conduct but to impose disciplinary measures upon the employee so that grievance hearings later on would merely put the seal on the employer's prejudgment." The Fourth Circuit, in *Quality*,²⁸ upheld both the discharge of an employee for insisting that her union representative be present at such an investigatory interview and the discharge of employee union representatives who attempted to attend the interview when asked. Relying on its reading of prior precedent, the court concluded that conducting such an interview without the presence of a union representative was a "management prerogative." Finally, the Seventh Circuit, in *Mobil*,²⁹ held that employees have no statutory right to representation at factfinding interviews conducted by management during an investigation of suspected theft of company property. The court conceded that "in a literal sense it may be true, as the Board argues, that if a Union representative attends an interview with an employee, the two are engaged in 'concerted activity,' and also that their purpose is 'mutual aid or protection.'" In the court's view, however, "the basic thrust of § 7 is to enable employees to organize and to apply economic pressure against their employers in appropriate situations. . . . [E]conomic pressure may properly be applied to compel employers to follow acceptable investigatory procedures, or to determine the consequences of various kinds of misconduct,

²⁶ *N L R B v J Weingarten, Inc*, 485 F 2d 1135

²⁷ *Texaco, Houston Producing Div v N L R B*, 408 F 2d 142 (C A 5, 1969).

²⁸ *N L R B v Quality Mfg. Co*, 481 F 2d 1018

²⁹ *Mobil Oil Corp. v N.L.R.B.*, 482 F 2d 842

but economic pressure should not be a component of the fact-finding process itself.”³⁰

b. Forms of Protected Activity

In *Food Fair Stores v. N.L.R.B.*,³¹ employees engaged in an unauthorized walkout which lasted less than 24 hours, and under the collective-bargaining agreement employees participating in an unauthorized walkout lasting less than 24 hours were subject to “reasonable discipline short of discharge,” but, after 24 hours, they could be discharged “immediately,” without recourse to other provisions in the agreement. The court found that the employees had walked out in furtherance of their own economic objectives, had acted contrary to the union’s wishes, and had failed to use the available grievance machinery. In the court’s view, the walkout “weakened” the union’s status as bargaining representative and “impaired” the orderly resolution of labor disputes, and hence was unprotected even if the walkout did not violate the no-strike clause. The court also held that the walkout did breach the agreement’s no-strike clause and was unprotected for that reason as well. The court found that the 24-hour clause regulated permissible discipline but did not create an exception to the agreement’s ban on strikes. It found “unpersuasive” the Board’s interpretation of the 24-hour clause as preserving the employees’ right to strike free from discharge during the first 24 hours of the walkout.³²

In another case,³³ the court upheld the Board’s finding that an employee walkout, triggered by the employer’s discharge of a supervisor, was protected concerted activity. The court held that to be protected under section 7 a walkout must be aimed at resolving a dispute over employment conditions and be “reasonable relative to the circumstances involved.” In finding that the employees’ walkout in this case met those requirements, the court noted that the employees had been subjected to expanded workloads with each increase in the minimum wage and had wanted to walk out when the employer suggested that they simply omit certain tasks in order to complete their assignments on time. The employees were persuaded not to walk out on that occasion by their immediate supervisor, who supported their workload grievance, and later walked out when the company subsequently fired that supervisor with a comment that the work was not getting done. The court concluded that the walkout was “primarily

³⁰ The Supreme Court granted the Board’s petitions for certiorari in *Quality* and *Mobil* on April 29, 1974.

³¹ 491 F 2d 388 (C A 3)

³² The Board’s construction of a virtually identical 24-hour clause was upheld in *Wagoner Transportation Co v N L R B*, 424 F 2d 628 (C A 6, 1970)

³³ *N L R B v Okla-Inn, d/b/a Holiday Inn of Henryette*, 488 F 2d 498 (C A 10).

due to poor work conditions” and that the “supervisory dismissal was merely the last straw in a brooding atmosphere created by [the employer’s] unfairly increasing the workload to the point where assignments could not conscientiously be accomplished.”

In *Peddie Buildings*,³¹ the Third Circuit held that, assuming *arguendo* that property rights must be balanced against employee rights under section 7 of the Act in the particular situation involved, substantial evidence did not support the Board’s finding that employees on strike at one warehouse were entitled to picket at another warehouse which the strikers’ employer leased in Peddie’s industrial park. While Peddie barred the strikers from picketing on its property, they were permitted to picket on a public road at the only entrance to the industrial park through which their fellow employees working at the warehouse on Peddie’s property and all suppliers and customers of their employer there would have to pass. The court also declined to pass on a question raised in an *amicus* brief regarding the impact of *Tanner*³⁵ and related Supreme Court decisions, remarking that “the direction which the law will take in this area is unclear.

2. Employer Assistance to Labor Organizations

Two courts considered the application of the Board’s *Midwest Piping* doctrine,³⁶ which imposes a duty of neutrality upon an employer faced with competing union claims giving rise to a question concerning representation. In *Suburban Transit*,³⁷ involving two business operations of the same employer, the Third Circuit rejected the Board’s finding that the company had violated the Act by entering into two collective-bargaining agreements. The incumbent union had represented the company’s employees at one of the operations involved for 30 years and had negotiated a series of collective-bargaining agreements. On the expiration date of the current contract, the employees, by a large margin, rejected the proposed terms of a new contract and, several weeks later, a second ratification meeting called by the incumbent union ended in “chaos.” In the meantime, the chairman of the incumbent’s bargaining committee had obtained from a rival union authorization cards and a decertification petition which he gave to a fellow employee, who obtained sufficient signatures to support representation and decertification petitions. Although notified that the petitions had been filed, the company executed a new contract with the incumbent union after the incumbent presented a contract

³¹ *NLRB v Frank Visceglia and Vincent Visceglia, t/a Peddie Buildings*, 498 F 2d 43

³² *Lloyd Corp., Ltd v Tanner*, 407 U S 551 (1972)

³³ *Midwest Piping & Supply Co.* 63 NLRB 1060 (1945)

³⁷ *Suburban Transit Corp & H A M L Corp v NLRB*, 499 F 2d 78

ratification petition signed by 50 of the company's 66 employees. In protest of the company's action, the employees participated in a strike. On these facts, the Board found in 203 NLRB No. 69 that the petition raised a real question concerning representation and, hence, that "the bare-boned facts fall squarely within the Board's *Midwest Piping* doctrine . . . establish[ing] a *prima facie* case of a violation of Section 8(a)(2) and (1)." The Board noted its disagreement with the court's *Swift* decision³⁸ where the Third Circuit held that the mere filing of a representation petition by a competing union does not create a "real" question of representation. The court, in a tersely worded opinion denying enforcement, felt "constrained to follow *Swift*."

Shortly afterward the same rival union began soliciting the previously unrepresented employees at the company's other operation. The incumbent union at the first operation learned of the campaign from company supervisors and, with authorization cards reproduced on company office equipment, that union began soliciting support on company property with the help of several employees who apparently had been relieved of their regularly assigned duties. Later that day the union demanded and received recognition after tendering cards signed by 40 of the 55 employees, and, working into the early morning hours of the following day, the parties negotiated a bargaining agreement. The rival union filed a representation petition hours later. The Board found that, while this was not a "straight *Midwest Piping* case," the company's haste in cooperating with the favored union in order to freeze out its rival is "just the kind of assistance the law prohibits." A divided court denied enforcement for, in the court's view, hasty recognition and negotiation of a contract, even if designed to prevent a rival union from attaining representational status, is not unlawful if the favored union in fact represents a majority of the employees "without coercion or unlawful assistance on the part of the employer." The court reasoned that "it is the policy of the Act to foster" such cooperation. Then, noting the Board's concession that the evidence of direct assistance was "not particularly strong," the court found that the aid or support given was merely "fortuitous" or even beneficial to both unions. The dissenting judge challenged the statement that the Act fostered the "frantic efforts" of the company and the favored union and noted the possible "devastating" impact such conduct had on "employee freedom of choice."

In *Hudson Berlind*³⁹ a company had purchased from different enterprises two separately represented warehouses which it then merged and consolidated in a new third facility. The court agreed with the

³⁸ *N L R B v Swift & Co*, 294 F 2d 285 (C A 3, 1961)

³⁹ *N L R B v Hudson Berlind Corp*, 494 F 2d 1200 (C A 2)

Board that the company violated the Act by executing a collective-bargaining agreement with the union representing 31 employees at the larger of the two acquired facilities at a time when none of the employees in either unit had been offered a transfer and the union representing the smaller unit had not been informed of the company's merger plans. After the transfer was completed, all 10 of the employees from the smaller unit were at the new facility, along with 21 of the employees from the other unit and 10 new employees. The company did "not quarrel with the principle of *Midwest Piping*" and the court approved the Board's determination that the new facility constituted a new bargaining unit—not merely an accretion to, or relocation of, an existing unit—and held that there existed a real question concerning representation at the time the contract was executed, because "it was not clear how many employees would choose to transfer from the older units to the new one." In response to the company's contention that it could assume that after the transfer most of its employees at the new warehouse would be represented by the contracting union, the court stated that the "numerical superiority [of the union] was not sufficiently predominant to remove any real question concerning representation."

3. Employer Discrimination Against Employees

In *Inter-Collegiate Press, Graphic Arts Div. v. N.L.R.B.*,⁴⁰ the Eighth Circuit was asked to review the Board's dismissing a complaint which alleged that the employer violated section 8(a)(3) and (1) of the Act by using temporary replacements during a lawful bargaining lockout. The court rejected the union's contention that, even in the absence of union animus, the use of such replacements constituted a *per se* violation of the Act.⁴¹ The court held that the legality of the employer's conduct should be determined by the principles set out by the Supreme Court in *Great Dane*,⁴² noting three factors which rendered the impact from the employer's use of temporary replacements on its employees comparatively slight: first, the replacements were expressly hired only for the duration of the labor dispute and a definite date was given for their termination even if the dispute was not resolved; second, the contract terms proposed by the employer provided greater benefits than the expired contract and the employees were free to return to work at the new rates; and third, the employer has already agreed to continue in effect the union-security clause from the old contract. Finally, the court found that substantial evidence on the

⁴⁰ 486 F 2d 837.

⁴¹ The union relied on the Board's earlier decision in *Inland Trucking Co.*, 179 NLRB 350 (1969), enf'd 440 F 2d 562 (C A 7), cert denied 404 U S 858 (1971)

⁴² *N L R B v Great Dane Trailers*, 388 U.S. 26, 34 (1967)

record as a whole supported the Board's conclusion that the business justifications urged by the employer for the use of temporary replacements were legitimate and substantial.

In *Bel-Air Mart*,⁴³ the court affirmed the Board's finding that the employer violated section 8(a) (3) and (1) of the Act by discharging a security guard because he attended union meetings with nonguard employees. The employer contended that a security guard was either an agent of management under section 2(13) of the Act or a supervisor within the meaning of section 2(11). This construction is bolstered, the employer argued, by the legislative history of section 2(11) wherein the House version classified guards as supervisors. The company further contended that section 9(b) (3) of the Act—which prohibits the Board's finding appropriate a unit which includes guards together with other employees or certifying, as the representative of a unit of guards, a union which represents other employees—recognized the distinction between guards and other workers and contemplated that guards, like confidential secretaries, were not entitled to the protection of the Act. The court ruled that section 2(13) of the Act did not make guards agents of management and that the conference reports on section 2(11) adopted the Senate version of the definition of supervisor, which expressly excluded guards. Thus, the court found that guards were employees within the meaning of section 2(3) and, therefore, entitled to the protection of the Act. The court held that section 9(b) (3) was intended not to abridge these rights but only to limit the authority to the Board to certify units which, in effect, mixed guards with nonguard employees.

4. Employer Bargaining Obligation

a. Obligation To Bargain Upon Request

In *N.L.R.B. v. Gissel Packing Co.*,⁴⁴ the Supreme Court sustained the Board's authority to require an employer to recognize and bargain with a union that based its claim to representative status solely on the possession of authorization cards, where the employer had engaged in independent unfair labor practices that tended to preclude the holding of a fair election. The Court found it unnecessary to decide whether a bargaining order based on some showing of employee support other than a certification in a Board election "is ever appropriate in cases where there is no interference with the election processes."⁴⁵ That issue

⁴³ *N.L.R.B. v. Bel-Air Mart*, 497 F 2d 322 (C A 4)

⁴⁴ 395 U S 575 (1969).

⁴⁵ *Id* at 595

was presented to the District of Columbia Circuit in a case⁴⁶ in which the union had demanded recognition based on designations signed by a majority of the unit employees and, when recognition was refused on the ground that the employer doubted the validity of the union's claim, a majority of the unit employees struck. The Board refused to enter a bargaining order, noting that the employer had never agreed to any voluntary means of resolving a union's claim of majority status and that judging whether the picket line showing gave the employer sufficient "independent knowledge" of majority status to warrant a bargaining order would require the Board to reenter the "thicket" of assessing employer "good faith," an inquiry which the Board had assured the Court in *Gissel* it "had 'virtually abandoned . . . altogether.'" In reversing, the court held that while such evidence of a majority support may not require a bargaining order, it does "create a sufficient probability of majority support as to require an employer asserting a doubt of majority status to resolve the possibility through a petition for an election, if he is to avoid both any duty to bargain and any inquiry into the actuality of his doubt." The court remanded the case with direction that the Board reconsider its decision, suggesting as options that the Board might adopt either a test under which an employer's "independent knowledge" of a union's majority status would in appropriate circumstances preclude his asserting a good-faith doubt as to that status or a *per se* rule "that an employer must, when presented with an authorization card majority, either recognize the union or, within a reasonable time, petition for a certification election."⁴⁷

b. Successor Bargaining Obligation

The successorship doctrine, which imposes on a successor employer the obligation to bargain with the existing bargaining representative of his employees, was the subject of two court decisions. The Seventh Circuit in *Zim's Foodliner*⁴⁸ held that, where one retail store that was formerly part of a chain operation was taken over by a successor who hired most of the employees who had formerly worked at that one location, the successor must bargain with the union that represented all of the chain employees at the various locations. The court also held that the change from a large multistore unit to a single-store unit did not affect the continuity of the employing industry to an extent that it defeated the application of the successorship principle. Finally, the court held that the successor's bargaining obligation is based on the

⁴⁶ *Truck Drivers Union Loc 413, IBT [Linden Lumber Div, Summer & Co] v NLRB*, 487 F 2d 1099

⁴⁷ On April 22, 1974, the Supreme Court granted certiorari

⁴⁸ *Zim's Foodliner v NLRB*, 495 F 2d 1131

presumption that the union has a continuing majority, and that the fact that the majority was never determined by means of an election was irrelevant. The Fifth Circuit reached a similar result in another case,⁴⁹ holding that the successor's bargaining obligation survived a change from multiemployer bargaining to single-employer bargaining in a single-store unit and that the successor could not defend his refusal to bargain on the ground that the union had not been recently certified.

c. Bargaining Conduct

In *Oil, Chemical & Atomic Workers Intl. Union v. N.L.R.B.*,⁵⁰ the court held, in agreement with the Board, that the company did not breach its duty to bargain in good faith with the union when it refused to bargain with a single representative to reach a single uniform agreement as to modification of companywide benefit plans. The union represented 19 separate bargaining units of company employees, while other employees covered by the benefit plans were either represented by other unions or unrepresented. The benefit plans were not written into the local collective-bargaining agreements and could be modified at any time. The company had always submitted proposed modification to local bargaining representatives and received proposals from them, but it had never agreed to any union proposal, in whole or in part. When the union demanded that the company bargain about the benefit plans with a single representative, the company responded that it would bargain only in the separate units recognized as appropriate. In urging that the company's position constituted an unlawful refusal to bargain, the union recognized the general principle that, unless bargaining units are consolidated by agreements of the parties or by the Board, a party may not be forced to bargain on other than a unit basis. The union contended, however, that the record established that local bargaining on these companywide benefit plans had not been "meaningful," as evidenced by the union's lack of success in negotiating changes. The union argued further that the parties' duty to bargain in good faith, as set forth in section 8(d), includes the duty to "meet at reasonable times" and that to satisfy that requirement the parties, or the Board if necessary, should look to the nature of the issue in dispute, the interests of the participants, and the extent to which bargaining has been "meaningful," and set a time and place for negotiations which would put the employer across the bargaining table from the proper group of local units. The court noted that the Board and the courts had applied the quoted language from section 8(d) only to cases in which the charged party has refused to meet at a reasonable

⁴⁹ *N.L.R.B. v. Foodway of El Paso*, 496 F.2d 117.

⁵⁰ 486 F.2d 1266 (C.A.D.C.).

time and place, and held that, in the absence of some indication of congressional intent, that phrase cannot be turned into a rule governing participation in multiunit negotiations.

The obligation to meet and bargain in good faith, as set forth in section 8(d) of the Act, does not require either party to discuss or agree to any modification of the terms of an existing bargaining agreement "if such modification is to become effective before such terms and conditions of employment can be reopened under the contract." The rights and duties under these circumstances were considered by the Sixth Circuit in a case⁵¹ in which the company sought to modify the current contract in several respects. The union agreed to "listen" but insisted that the meetings not be considered negotiations. At several meetings the company asserted that it was not competitive, because its profit margin was less than 1 percent of sales. When the union representatives demanded information whereby this assertion could be substantiated, the company refused. The company then presented its proposals for changing the agreement; the union immediately rejected most of these proposals but indicated that it would consider others at a later date. The company then made the same presentation directly to the employees, asserting that the union was unwilling to make any changes until the contract expired, and that it would be necessary for the company and the employees to reach a "partnership solution" for the company's problems. The court held that the company's assertions as to its competitive position were the sort of statements which it was obligated to support by providing the union with relevant information⁵² and that, if the company and the union had entered into negotiations, the fact that neither was obligated to do so would not have relieved the company of its obligation to provide that information. The court held, however, that neither of the parties "was willing to commit itself to genuine negotiations" and that the company was not obligated to provide the information relevant to its position at a time when the union was only willing to "listen." Although the court therefore rejected the Board's finding that the company violated the Act by refusing information, it affirmed the Board's finding that the company's taking its case directly to the employees "was subversive of the mode of collective bargaining . . . ordained" by the Act.

5. Union Interference With Employee Rights

In *District Lodge 99*,⁵³ the First Circuit rejected the Board's finding that the union violated section 8(b) (1) (A) by suspending employees

⁵¹ *NLRB v. Goodyear Aerospace Corp.*, 497 F.2d 747

⁵² *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956)

⁵³ *NLRB v. District Lodge 99 and Lodge 2199, IAM*, 489 F.2d 769

from any and all union activities for 5 years for crossing a duly authorized picket line after they resigned from the union. Noting that the Board had treated the suspensions as the equivalent of barring the employees from membership for 5 years, the court held that, while section 7 may protect an employee from union control enforced by the courts or employers, the proviso to section 8(b)(1)(A) reserves to the union the power of granting or withholding union membership and that power extends over such employees as those in this case who resigned from union membership. The court took care to point out, however, that in view of the "variations and subtleties [which] may occur in this area" it was deciding nothing but the bare question whether a union may bar membership to employees who have engaged in strikebreaking after having resigned from the union.

6. Union Coercion of Employer in Selection of Representatives

Section 8(b)(1)(B) makes it an unfair labor practice for a union "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The District of Columbia Circuit upheld a Board decision extending the reach of this section to picketing aimed solely at replacing a ship's officers with members of the picketing union even though that union represented no rank-and-file employees aboard the ship and thus was in no way discontented with the manner in which the representatives adjusted grievances.⁵⁴

The dispute arose on the *Floridan*, which under a prior owner had been navigated by a master and three mates who were members of one union, while her engineering officers were represented by another union, and her crew by a third. In 1970 the vessel's new owners returned her to service following a layup, and, to save money, filled the four deck officer vacancies with members of the union which represented the engineering officers. The old deck officers' union picketed the docks with signs stating that the company was "unfair" to the former officers, and stevedores observed the picket lines. The court majority agreed with the Board that the picketing union's actions were "within the literal purview of the statutory language," since the purpose of the picketing was to pressure the company to fire the new master and mates and rehire the former officers, and the new officers were representatives of the company for the adjustment of grievances.

⁵⁴ *Intl Organization of Masters, Mates & Pilots, Intl Marine Du, IIA, et al [Marine Marketing Intl Corp] v. NLRB*, 486 F 2d 1271 (CA D.C.). cert denied 416 U.S. 957

While agreeing with the union that section 14(a) may permit supervisors to resort to self-help, the court pointed out that because the union admits statutory employees to membership it is "a labor organization" under section 2(5) of the Act and could "not have it both ways"—that is, it could not accept the protection of section 8(a) of the Act while at the same time ignoring the restrictions of section 8(b). The court suggested that, although Congress may have intended the exemption of supervisor unions from section 8(b) as a "*quid pro quo*" for having deprived them of the protections of section 8(a), the legislative history is not clear enough to allow such unions, if they also admit employees, to avoid section 8(b) simply because the workers for whom the union acts are all supervisors. The court saw it as immaterial that the company's motive in choosing one union's members over the others was financial concern rather than dissatisfaction with the skills or loyalties of the officers, or that the union's motive in picketing was solely to protect its members who were supervisors. The court also rejected the contention that section 8(b)(1)(B) was not intended to reach coercion unrelated to the processing of grievances, holding that the employer "has an interest in being free from coercion from labor organizations in the selection of its grievance adjusters, no matter what its reasons for choosing one union over the other." The dissenting judge would hold that a union may engage in self-help to protect its supervisor members even if it admits rank-and-file employees to membership, so long as it does not at the same time represent the rank-and-file of the supervisors' employer.

7. Union Causation of Employer Discrimination

In *N.L.R.B. v. Intl. Longshoremen's Assn., Loc. 1581*,⁵⁵ the Fifth Circuit approved the Board's finding that the union violated section 8(b)(2) and (1)(A) by maintaining with the employer a job referral system based on the employees' citizenship and family residence and by causing the employer to transfer an employee, who was an alien and whose family resided in Mexico, to a less desirable position pursuant to this policy. Analogizing discrimination based on citizenship to discrimination based on race, which the court had deemed violative of section 8(b)(2) and (1)(A) in an earlier decision,⁵⁶ the court held that the Board properly determined that to transfer an employee because he was an alien constituted impermissible discrimination. The court also approved the Board's further finding that union-caused discrimination based on arbitrary or invidious considerations such as

⁵⁵ 489 F 2d 635

⁵⁶ *NLRB v. Loc 1367, I.L.A.*, 368 F 2d 1010 (C A 5 1966) cert denied 389 US 837 (1967)

alienage impermissibly encourages union membership or activity because of the intimidating effect such conduct is likely to have on the employees. In this connection, the Fifth Circuit expressly relied on the Board's *Miranda Fuel* doctrine.⁵⁷

8. Secondary Boycotts and Strikes

In *George Koch Sons*.⁵⁸ the Fourth Circuit sustained the Board's so-called "right of control" doctrine for determining *prima facie* whether an employer subjected to alleged secondary boycott action by a union is a neutral employer entitled to the protection of section 8(b) (4) (B) of the Act. *George Koch Sons* had contracted with General Electric to act as the general contractor in the construction of a plant addition and to prefabricate certain piping systems for the job. Koch subcontracted the installation of these and other piping systems to Phillips, whose contract with the union representing its employees provided that all pipe used on the job be cut and threaded by Phillips' employees "on the job or in [Phillips'] shop." Koch, which had no contract with the union, cut and threaded the pipe in its prefabricated systems at its factory, using its own employees; the union, relying on its contract with Phillips, would not permit Phillips' employees to install Koch's prefabrications. The court approved the Board's finding that the union's action was unlawful secondary conduct because Phillips had no "past, present or future authority to award such work" and there was no evidence that Phillips had played any part in the decision of either Koch or General Electric to assign such work to Koch's employees. In affirming the Board, the court rejected the view espoused by some other circuits that the Board's control doctrine was substantially undercut, if not overruled, by the Supreme Court's decision in *National Woodwork*.⁵⁹ The court went on to find that not only Phillips, but also Koch and General Electric were neutrals, because neither Koch nor General Electric was "in privity" with the union, which did not represent the employees of either. The Board had not passed on this issue.

9. Recognitional Picketing

In *Shell Chemical Co. v. N.L.R.B.*⁶⁰ the Fifth Circuit upheld the Board's dismissal of a section 8(b) (7) complaint on the grounds that

⁵⁷ *Miranda Fuel Co.*, 140 NLRB 181 (1962), enforcement denied 326 F 2d 172 (CA 2, 1963)

⁵⁸ *George Koch Sons v. N.L.R.B.*, 490 F 2d 323

⁵⁹ *National Woodwork Manufacturers Assn v. N.L.R.B.*, 386 US 612 (1967) See, for example, *Western Monolithics Concrete Products v. N.L.R.B.*, 446 F 2d 522 (CA 9, 1971)

⁶⁰ 495 F 2d 1116

the picketing conducted at the company's plant did not have a recognitional object but was merely to obtain employment of a laid-off employee. In so concluding, the court expressly accepted the Board's rationale, first explained in *Fanelli Ford*,⁶¹ that picketing to obtain reinstatement of a discharged employee does not necessarily have a recognitional object. Further, while the court declined to hold that picketing may never be viewed as recognitional where reinstatement of the employees would not give the union a "dominant voice" in the unit, the court viewed this circumstance as an evidentiary factor in determining whether the object of the picketing is recognitional.

10. Hot Cargo Agreements

Section 8(e) makes it an unfair labor practice for a union and "any employer" to enter into an agreement whereby the latter agrees to cease doing business with another "person." The term "employer" is defined in section 2(2) of the Act to exclude railroads and airlines subject to the Railway Labor Act. In *Marriott Corp. v. N.L.R.B.*,⁶² the Ninth Circuit affirmed the Board's ruling that section 8(e) was violated by an agreement between Lufthansa German Airlines and the International Association of Machinists in which the airline agreed not to subcontract its food catering at certain airports in the United States to nonunion caterers. In its opinion, the court affirmed the Board's view that section 8(e) was intended by Congress to have the same scope as section 8(b)(4)(B), which bans secondary activities, and the latter provision protects "any person"—including nonstatutory employers—from secondary pressures.

In *Sheet Metal Workers*,⁶³ the Board had found that the union had violated section 8(b)(4)(B) by stating to an employer that the union's members would not handle certain sheet metal products unless they bore a union label, and that the union would strike if the company attempted to use such products. The Board found that the union's object was secondary, because the union was addressing itself, not to the particular employer's labor relations, but rather to those of the manufacturers of the unlabeled products. The Board then relied on this 8(b)(4)(B) finding of secondary pressure in finding that the union's application and enforcement of certain area standards clauses in its contract with the employer had violated section 8(e). The union petitioned for review only with respect to the Board's 8(e) finding, and the court remanded the case to the Board. The court held that a

⁶¹ *Loc 259, UAW (Fanelli Ford Sales)*, 133 NLRB 1468 (1961)

⁶² 491 F.2d 367, petition for certiorari pending

⁶³ *Sheet Metal Workers Loc 223 [Continental Air Filters] v. NLRB*, 498 F.2d 687 (C.A.D.C.)

finding that the union had exerted secondary pressure in violation of section 8(b)(4)(B) did not necessarily establish that the union's application of contract clauses, which on their face are lawful union standards clauses, in reality had a secondary objective which would violate section 8(e). The court reasoned that an 8(e) violation requires an element not present in section 8(b)(4)—namely, that there be an *agreement* between the parties that would violate the Act. Thus, merely showing that one party applied the agreement in a secondary fashion would not be enough to establish an 8(e) violation. The court then held that the work preservation analysis mandated by *National Woodwork Manufacturers*⁶⁴ required that the Board look, not only at the union's application of the contract, but also at the circumstances surrounding the execution of the contract to determine whether (1) the two parties understood and acquiesced in a secondary object or (2) in view of the economic history and circumstances of the industry, locality, and the parties, secondary consequences would probably flow from the clause. On remand the Board is required to apply these factors in an 8(e) context and determine the scope of the relevant bargaining unit, whether the disputed work is fairly claimable by the bargaining unit represented by the union, and whether the union had a valid work preservation claim.

In *Vantage Steamship*,⁶⁵ the Second Circuit applied the work preservation test of *National Woodwork* in order to determine whether the National Maritime Union violated section 8(e) by enforcing its ship-sale clause.

The clause in question provided that, if the contracting employer sold any of his ships to an American-flag operator who was not already under contract with the union, the ship would be sold with a crew provided by the union and the employer would obtain from the purchaser an undertaking to abide by all the terms and conditions of the union's contract. The case arose when the contracting employer, Commerce, attempted to sell its last remaining ship to Vantage, a company under contract with a rival union, the Seafarers. Commerce was unable to secure an undertaking from Vantage to honor the union's contract, and the union successfully enjoined the sale.

The court of appeals assumed, without deciding, that the sale of a ship constituted "doing business" within the meaning of section 8(e). And, although conceding that the issue was close, the court sustained the Board's conclusion that the union's enforcement of the ship-sale clause violated that section of the Act. The court noted that the union's action took place in the context of its longstanding rivalry with the

⁶⁴ *National Woodwork Manufacturers Assn v NLRB*, 386 U.S. 612 (1967); 32 NLRB Ann. Rep. 139 (1967).

⁶⁵ *NLRB v Natl Maritime Union of America [Vantage Steamship]*, 486 F.2d 907

Seafarers and represented an attempt to alter the traditional practice of the maritime industry of permitting newly acquired vessels to be manned by whichever union was under contract with the purchaser. The court further found that, inasmuch as the union's practice was to remove all seamen from a ship whenever the ship is sold, the beneficiaries of the clause would be not the seamen actually employed by Commerce but the union as a whole. The court also recognized that the Board had suggested, without deciding, that the seamen who might be referred to Commerce in the future from the union's hiring hall were in some sense Commerce's employees and hence properly includable in the relevant bargaining unit, but concluded that, where the suggested bargaining unit is many times larger than the actual work force of the primary employer and the vast majority of the workers in the unit have had no contact at all with the employer, the bargaining unit is not a valid yardstick for the permissible scope of a work preservation clause.

11. Remedial Order Provisions

In two cases, the courts denied enforcement of bargaining orders issued by the Board to remedy withdrawals of recognition from an incumbent union. In *Anvil Products*,⁶⁶ the court affirmed the Board's finding that the employer violated section 8(a) (3) and (1) of the Act by refusing to fully reinstate returning economic strikers but rejected the Board's further finding that these violations "tended" to produce disaffections from an incumbent union and hence precluded the employer's relying on a decertification petition circulated by employees as providing an objective basis for the employer's action. The court noted that the decertification petition was not the product of employer instigation and concluded that the 8(a) (3) violations were not flagrant and did not directly affect a large segment of the unit. The court recognized that some unfair labor practices tend to dissipate a union's majority support, but concluded that the Board had not adequately considered the "extensiveness or actual effect of the § 8(a) (3) violations on the majority status of the union" and remanded the case to the Board for such findings.

In *Automated Business Systems*,⁶⁷ the employer had properly refused to bargain with a union after the filing of a decertification petition but had subsequently engaged in unfair labor practices which invalidated a representation election and precluded the holding of a fair rerun election. The Board held that evidence which would justify

⁶⁶ *N L R B v Anvil Products*, 496 F 2d 94 (C A 5)

⁶⁷ *Automated Business Systems v N L R B*, 497 F 2d 262 (C A 6)

a reasonable doubt of continued majority status was insufficient to rebut the presumption of continuing majority accorded a certified representative. The Board further found that the company had not "establish[ed] . . . affirmative proof of loss of majority," and, evaluating the unfair labor practices under the *Gissel* standard,⁶⁸ concluded that they were so coercive that a bargaining order was the "only available effective remedy" for them. The court agreed that the employer's preelection conduct violated section 8(a)(1) of the Act and that the guidelines established in *Gissel* could be applied, but held that, once the employer established grounds for a good-faith doubt of majority status, the burden shifted to the General Counsel to establish the existence of actual majority support. The court also held that it was error for the Board to reject the employer's offer to prove that the threats of plant closure did not influence the employees to whom they were directed, for, in the court's view, the "limited nature of the activities makes it difficult to say that the employees' testimony would not have some bearing on the determination of the impact of the § 8(a)(1) violations." The court therefore remanded the case to the Board for further hearing.

⁶⁸ *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969).

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. Injunctive 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 1974, the Board filed 17 petitions for temporary relief under the discretionary provisions of section 10(j), 12 against employers, 3 against unions, and 2 against both employer and union.¹ Injunctions were granted by the courts in nine cases and denied in one. Of the remaining cases, three were settled prior to court action, one was dismissed, and four were pending at the close of the report period.²

Injunctions were obtained against employers in six cases, against unions in two cases, and ran against both employer and union in one case. The cases against the employers variously involved alleged refusals to bargain with labor organizations representing their employees, refusals to reinstate employees, unlawful assistance to union, threats, and other alleged violations of section 8(a)(1). The cases against the unions involved allegations of refusal to bargain with employers, violence, threatening reprisals, and harassment by engaging in strikes and picketing. The only case where the injunction was directed against both employer and union involved the employer's recognition of a union alleged to have been assisted in violation of the Act.

¹ In addition, one petition filed during fiscal 1973 was pending at the beginning of fiscal 1974

² See Table 20 in Appendix

Much of the 10(j) litigation during the year turned on the propriety of affirmative relief, e.g., orders directing an employer to recognize and bargain with a union designated or selected by its employees as their collective-bargaining representative, or to reinstate employees who were allegedly discriminatorily discharged, pending Board disposition of the unfair labor practice case.

In *Pilot Freight Carriers*,³ the Board requested such affirmative relief, in addition to prohibitory relief against future coercive conduct and discriminatory discharges violative of section 8(a) (1) and (3) of the Act. Previously, the same district court had enjoined the Teamsters and four of its local unions from striking the employer to enforce an arbitration award which would have extended their collective-bargaining contract to four newly established Florida terminals. After the injunction was affirmed by a court of appeals,⁴ one of the local unions conducted an organizational campaign at the employer's Jacksonville terminal. The district court found reasonable cause to believe that the union obtained signed authorization cards from a majority of the truckdriver and dockworker employees in an appropriate bargaining unit, and requested recognition from the employer, whereupon the employer and its dock contractor refused to recognize the union, discriminatorily discharged the two leading employee-organizers, and engaged in other coercive conduct, including interrogation, threats of reprisal, and promises of benefit. The employees then struck in protest against the employers' unfair labor practices and refusal to bargain, whereupon the employers unlawfully solicited the employees to abandon the strike. The district court found reasonable cause to believe that the employers had violated section 8(a) (1) and (3) of the Act and were unlawfully refusing to recognize the union, and that prohibitory injunctive relief was equitably necessary in order to prevent dissipation of employee support for the union which would render any future Board order ineffectual. However, the district court concluded that affirmative relief in the form of an interim bargaining order was inappropriate except with respect to an incumbent union, and that the existence of substantial issues of fact also mitigated against affirmative relief, including reinstatement of the alleged discriminatees.⁵

A similar result was reached by the district court in *Trading Port*.⁵ In *Trading Port*, the union, in the course of a campaign to organize the employer's wholesale grocery distribution warehouse, apparently obtained signed authorization cards from a majority of warehouse employees and demanded, but was refused, recognition. The court

³ *Boire v Pilot Freight Carriers & BRR of Florida*, 86 LRRM 2462 (D.C., Fla.)

⁴ 479 F.2d 778 (C.A. 5, 1973), Ann. Rep. 167-168. (1973).

⁵ *Seeler v Trading Port*, Civil Docket 74-CV-115, June 24, 1974 (D.C. N.Y.)

found reasonable cause to believe that the employer thereupon engaged in extensive unfair labor practices, including interrogation of employees concerning union activities, and threats of plant closure and discharge. The employees then struck in protest against the unfair labor practices, but subsequently abandoned the strike; however, the employer "permanently" laid off 20 of the strikers. The Board requested temporary injunctive relief, including reinstatement of the strikers and an order directing the employer to recognize and bargain with the union. The court concluded that prohibitory injunctive relief against future 8(a) (1) and (3) conduct was warranted "to protect the Board's jurisdiction, and to preserve the Section 7 rights of the employees," and further directed that the laid-off strikers be placed on a preferential hiring list in order of their seniority. The court declined to order their immediate reinstatement because, in its view, the evidence was sharply conflicting as to whether the employer had refused to recall them for discriminatory reasons, and whether the employer had an established practice of recalling employees in order of seniority, and also because the evidence indicated that since the strike the employer had reduced the size of its work force for valid economic reasons. The court concluded that it would be inequitable, in advance of an administrative law judge's resolution of these questions, to direct reinstatement of the strikers and thereby cause the layoff of other employees. The court further concluded that a bargaining order was not warranted either to preserve the status quo or to prevent irreparable harm.

In *Queen Mary*,⁶ the district court refused to enjoin the employer from engaging in bad faith or "surface" bargaining with the union, the certified representative of its employees, from otherwise interfering with section 7 rights of its employees, and from refusing to reinstate employees who had struck in protest of the employer's alleged unfair labor practices. The court held that surface bargaining cases, which turn on questions of motive, do not lend themselves to injunctive relief, that a bargaining order would be tantamount to directing the employer to accede to the union's demands with respect to the major issues in the negotiations, that an ultimate Board order would provide an adequate remedy both with respect to reinstatement and bargaining, and that the regional director had failed to establish that the employer engaged in other unfair labor practices which would warrant an injunction.

⁶*Johansen v Queen Mary Restaurants Corp & Q M Foods*, 86 LRRM 2813 (DC Calif)

B. Injunctive Litigation Under Section 10(1)

Section 10(1) 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),⁷ or section 8(b) (7),⁸ and against an employer or union charged with a violation of section 8(e),⁹ whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b) (7), however, a district court injunction may not be sought if a charge under section 8(a) (2) of the Act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(1) 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(1) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1974, the Board filed 215 petitions for injunctions under section 10(1). Of the total caseload, comprised of this number together with the 18 cases pending at the beginning of the period, 83 cases were settled, 15 dismissed, 12 continued in an inactive status, 14 withdrawn, and 29 were pending court action at the close of the report year. During this period, 80 petitions went to final order, the courts granting injunctions in 70 cases and denying them in 10 cases. Injunctions were issued in 42 cases involving alleged secondary boycott action proscribed by section 8(b) (4) (B). Injunctions were granted

⁷ 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) not only to prohibit 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, see 8(e).

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

⁹ 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 12 cases involving jurisdictional disputes in violation of section 8(b) (4) (D), of which 3 also involved proscribed activities under section 8(b) (4) (B). Injunctions were issued in 15 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b) (7). The remaining case in which an injunction was granted arose out of charges involving alleged violations of section 8(c).

Of the 10 injunctions denied under section 10(1), 7 involved alleged secondary boycott situations under section 8(b) (4) (B), 1 involved alleged jurisdictional disputes under section 8(b) (4) (D), and 2 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.

However, five cases decided during the year, all of which were reviewed by courts of appeals, are noteworthy. Four of these cases involved interpretation of the standards for injunctive relief in a 10(1) proceeding; namely, that the Board demonstrate "reasonable cause to believe" that an unfair labor practice is being committed and, if so, that the district court grant "just and proper relief." The fifth case involved contentions by unions and their agents that they were entitled to a jury trial in a criminal contempt proceeding involving charged violations of 10(1) injunctions.

In *Ronco Delivery*,¹⁰ the court of appeals reversed the judgment of the district court, which denied a temporary injunction on the ground that the regional director did not have reasonable cause to believe that the union engaged in a secondary boycott when it struck a milk distributor in furtherance of its demands that the distributor cease permitting nonunion deliverymen to pick up and deliver dairy products from its dock. The district court found on the basis of testimony by union members that the union's sole motive was to preserve the integrity of its collective-bargaining agreement with the distributor and to preserve the jobs of its members. The court added that, even if the regional director had reasonable cause to believe that a violation was being committed, the propriety of injunctive relief must be determined by the same standard applicable to discretionary injunction proceedings under section 10(j) of the Act, i.e., "whether the purposes of

¹⁰ *Wilson v. Milk Drivers & Dairy Employees Union Loc 471*, 361 F Supp 1151 (D C Minn.), reversed 491 F.2d 200 (C.A. 8).

the [Act] will be frustrated unless temporary injunctive relief be granted." The court of appeals reversed, finding that the regional director had adduced evidence demonstrating reasonable cause to believe that the union's primary object was not to preserve work properly claimable for the distributor's employees but to increase the field of dairy transportation for the union's members generally. The court held that the district court, by attempting to resolve the different inferences and conclusions which might be drawn from the conflicting evidence in the case, had invaded the factfinding function reserved by Congress to the Board. The court of appeals further concluded that injunctive relief was just and proper, noting that the distributor had suffered a substantial loss of sales as a result of the union's actions, and that Congress intended the charged unfair labor practices covered by section 10(1) to be enjoined whenever a district court has been shown reasonable cause to believe in their existence "and finds that the threatened harm or disruption can best be avoided through an injunction."

In *Consolidated Express*,¹¹ a district court adhered to a standard similar to that enunciated by the court of appeals in *Ronco Delivery*. In *Consolidated Express*, the district court enjoined the Longshoremen's Union and a shipping association from giving effect to contract provisions which imposed a tax on the handling of cargo containers to be stuffed or to be stripped by teamsters or nonunion personnel at container freight stations away from waterfront areas, and which the regional director contended to be an unlawful hot cargo agreement. Upon consideration of sharply conflicting testimony concerning past practices, i.e., whether or not longshoremen traditionally performed the work in question, the court found that the regional director had demonstrated the requisite reasonable cause, because the factual disputes could reasonably be resolved in favor of the charging party if the Board believed the regional director's principal witness. The court concluded that "[i]t is not the function of this court to ultimately resolve these sharp clashes of factual differences, or to make credibility determinations that will bind the parties in subsequent proceedings." The district court enjoined maintenance of the contract provisions, and was affirmed, without opinion, by the court of appeals.

Hazantown, Inc.,¹² unlike *Ronco Delivery* and *Consolidated Express*, essentially involved only issues of law. In *Hazantown*, the district court found reasonable cause to believe that the union was engaging in unlawful recognitional picketing when it picketed a jobber

¹¹ *Balicer v Intl Longshoremen's Assn*, 364 F Supp 205 (D C N J), aff'd 491 F.2d 748 (C A 3)

¹² *Danielson v Joint Board of Coat, Suit & Allied Garment Workers Union*, 367 F Supp 486 (D C N Y) reversed 494 F 2d 1230 (C A 2)

in the garment industry for a so-called "jobbers agreement" which would prohibit him from contracting out work to nonunion shops. Although the union disavowed any interest in representing the jobber's own unrepresented employees who did not perform manufacturing work, the regional director contended that the picketing was recognitional because the agreement, if executed, could substantially affect the terms and conditions of employment of the jobber's employees, and because the agreement would in effect make the jobber a coemployer of the workers in the contractors' shops. The district court expressed its own view that "this kind of picketing in the garment industry comes within the policy exemption provided by the Congress in Section 8(e)," which exempts such agreements and union pressure to obtain them from the hot cargo and secondary boycott provisions of the Act, but concluded that injunctive relief was warranted because the propositions of law advanced by the regional director could not be characterized as "insubstantial or frivolous." The court of appeals reversed the injunction. In a lengthy analysis, the court of appeals agreed with the district court's view that the picketing was lawful. However, in disagreement with other circuits, the court of appeals held that while "on an issue of law, the district court should be hospitable to the views of the [regional director], however novel. . . it should not issue an injunction under § 10(1). . . when, after full study, the district court is convinced that the [regional director's] legal position is wrong, as [the district court] properly was here." Subsequently, in *Associated General Contractors of Connecticut*,¹³ a district court, citing *Hazantown*, refused to enjoin charged secondary boycott conduct in a case in which the regional director premised his theory of a violation on the Board's "right of control doctrine," which had been rejected by several courts of appeals. The district court concluded that the regional director was relying on an erroneous theory of law "which is unlikely to be accepted by the court of appeals for this circuit."

In *Bullen Corp. & Boley Construction Co.*,¹⁴ the district court found, upon undisputed evidence, that the regional director had reasonable cause to believe that several building trades unions, acting in furtherance of their dispute with two nonunion contractors, engaged in a secondary boycott by picketing four construction sites, and orally inducing employees of union contractors to refuse to work at the sites, for an object of forcing the union firms to cease doing business with the nonunion firms. The unions picketed at various entrances to the

¹³ *Danielson v Electrical Workers, Loc. 501*, 86 LRRM 3117 (D C Conn).

¹⁴ *Potter v Houston Gulf Coast Bldg Trades Council*, 363 F Supp 1 (D C Tex, 1972), *affd in part and reversed in part* 482 F 2d 837 (C A 5)

jobsites, including entrances which had been marked and set aside for the exclusive use of the nonunion contractors' employees. Although the district court did not find such "reserve gate" picketing to be unlawful, the court concluded that the unlawful conduct had "become so enmeshed with the legal picketing that, as a practical matter, it will be necessary to enjoin all picketing in order to remove the taint of coercion from the employees as well as from the jobsites." The court further directed the unions to inform the employees of the union subcontractors on the jobsites, whom they represented, that the unions had no objection to their returning to work, and expected them to man their jobs when requested by their employers. The unions appealed from the injunction insofar as the district court enjoined picketing at the reserved gates and directed the unions to give notices to the neutral employees. The court of appeals concluded that the notice requirement "constituted a proper exercise of the court's discretion and is affirmed." However, the court of appeals concluded that the district court abused its discretion by enjoining lawful picketing. The court of appeals concluded that a total ban on picketing might be warranted in a context of flagrant violence or if subsequent events demonstrated that lesser relief was inadequate, e.g., if "the primary picketing operates as nothing more than a signal to neutral employees to remain on strike," but that neither factor was present in the case.

In *California Newspapers d/b/a Independent Journal*,¹⁵ the district court found and adjudicated four unions and five of their officials in civil contempt of court, and three of the unions and three officials in criminal contempt, by reason of their having engaged in extensive secondary boycott conduct, including attempts to prevent truck deliveries into the county in which the primary employer, a newspaper, was operated, all in violation of two outstanding 10(1) injunctions. Although two of the unions had not been parties to the injunction proceedings and were not named in the injunction orders, the district court found upon circumstantial evidence that these unions had full notice and knowledge of the orders and had acted in concert and participation with the named unions in violating the orders. With respect to the criminal contempt, the court fined each of the convicted unions in the sum of \$25,000, payment of \$15,000 of that amount to be suspended for 1 year and remitted to the union upon a determination by the court that the union had not engaged in any further violations of the injunction orders; and placed the officials on probation for a period of 1 year, subject to imprisonment for not more than 6 months if they engaged in further violations. The court of appeals affirmed

¹⁵ *Hoffman v San Francisco Typographical Union 21*, 78 LRRM 2309 (D.C. Calif., 1971), aff'd 492 F 2d 929 (C A 9)

the adjudications in civil and criminal contempt, finding that the "voluminous" evidence justified the district court's findings. The court of appeals rejected arguments that the unions and their officials were improperly denied a jury trial in the criminal contempt proceeding. The court held that: (1) 18 U.S.C. § 3692, which provides for a jury trial "[i]n all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any cases involving or growing out of a labor dispute," is the codification of a similar provision formerly in the Norris-LaGuardia Act and is therefore inapplicable to contempt proceedings involving injunctions granted pursuant to the National Labor Relations Act; and (2) that the penalties imposed were not so severe as to be constitutionally prohibited in the absence of a jury trial.

X

Contempt Litigation

During fiscal 1974, petitions for adjudication in contempt for non-compliance with decrees enforcing Board orders were filed in 25 cases, 24 seeking civil contempt and one both civil and criminal contempt. In three of these, petitions were granted and civil contempt adjudicated,¹ while in the combined case a civil contempt remedy was accorded but the court declined for the present to initiate criminal contempt proceedings.² Five were discontinued upon full compliance.³ In seven cases, the courts referred the issues to special masters for trials and recommendations, three to U.S. district judges, two to U.S. magistrates,⁴ and two to other experienced triers.⁵ Two cases await referral

¹ *NLRB v United Assn of Journeymen, Plumbers, Loc 13, AFL-CIO*, order of Apr 24, 1974, No 73-2550, in civil contempt of judgment of Nov 12, 1973 (CA 2); *NLRB v United Assn of Journeymen, Plumbers, Loc 13*, order of Apr 24, 1974, No 73-2598 (CA 2) in civil contempt of judgment of Dec 5, 1973 (CA 2); *NLRB v Farmer's Co-Operative Gin Assn*, order of Apr 17, 1974, as modified May 6, 1974, in Nos 20,565 and 20,613, 500 F2d 768 (CA DC). In civil contempt of 389 F2d 553 (CA DC, 1968), affg master's report in 83 LRRM 2430 (CA DC, 1973)

² *NLRB v. Farmer's Co-Operative Gin Assn*, order of Apr. 17, 1974, 86 LRRM 2110, in civil and criminal contempt of 389 F2d 553 (CA DC, 1968)

³ Upon obtaining protective order and recognition of wage earner's priority by assignee for benefit of creditors, application withdrawn in *NLRB v Coating Services of New England*, order of Mar 4, 1974, in No 74-1074 (CA 1), upon payment of backpay in *NLRB v Senco Inc, et al*, in civil contempt of supplemental judgment of July 23, 1973, in No 7584 (CA 1), upon entry of order of Feb 14, 1974, against the company and the union fully remedying the unlawful contract between them and requiring recognition of the lawful collective-bargaining agent in *NLRB v Twin County Transit Mix and Loc 282, Intl Brotherhood of Teamsters*, in civil contempt of consent judgment of Oct 24, 1968, in No 32,856 (CA 2), upon obtaining protective order and stipulation for deferred payments in full, guaranteed by stockholders and directors in *NLRB v Hickman Garment Co*, in civil contempt of 471 F2d 610 (CA 6, 1972), upon execution of collective-bargaining agreement and payment of Board's costs in *NLRB v. KPWH d/b/a Pump Room Restaurant*, in civil contempt of judgment of Mar 15, 1973, in No 73-1350 (CA 9)

⁴ *NLRB v Cayuga Crushed Stone*, in civil contempt of bargaining provisions of 474 F2d 1380 (CA 2, 1973), referred to US District Judge Edmund Port (DC, NY); *NLRB v United Brotherhood of Teamsters, Loc 327*, in civil contempt of 8(b)(1)(A) provisions of 432 F2d 933 (CA 6, 1970), and consent judgment of Jan 18, 1972, in No 19,947 (CA 6), referred to US District Judge L Clure Morton (DC Tenn); *NLRB v George A Angle d/b/a Kansas Refined Helium Co*, in civil contempt of reinstatement provisions of 445 F2d 237 (CA DC, 1971) referred to Senior US District Judge Arthur J. Stanley, Jr (DC Kans), *NLRB v Clinton Packing Co*, in civil contempt of the 8(a) (1) and (3) provisions for judgment of June 26, 1970, consolidated with 8(a)(5) provisions of judgment of Dec 7, 1972, in Nos 72-1084 and 20,341 (CA 8), referred to US Magistrate Calvin K Hamilton (DC Mo)

⁵ *NLRB v J. P Stevens*, in further contempt of the 8(a)(1) and (3) provisions of 380 F2d 292 (CA 2, 1967), 388 F2d 896 (CA 2, 1967), and 464 F2d 1326 (CA 2,

to a special master.⁶ Of the remaining seven cases, six remain before the courts in various stages of litigation,⁷ while the seventh is pending before the court on the Board's motion for summary judgment.⁸

With respect to cases which were commenced prior to fiscal 1974, but were disposed of during this period, contempt was adjudicated in four civil proceedings,⁹ while other cases were discontinued: two upon an order providing for a Board-conducted election after all the effects of prior unfair labor practices were dissipated,¹⁰ one upon an order requiring reposting of the Board's notice and recitification of improper reinstatement,¹¹ the fourth upon the bona fide reinstatement of discriminatees and execution of a collective-bargaining agreement,¹² and the fifth upon the judgment debtor's resort to chapter XIII of the bankruptcy laws.¹³ In one case which involved the reinstatement of

1972) referred to the dean of the University of Virginia Law School, *NLRB v. J. P. Stevens & Co.*, in contempt of the 8(a)(5) provisions of 417 F.2d 533 (CA 5, 1969) referred to an administrative law judge

⁶*NLRB v S E Nichols of Ohio*, in civil contempt of the reinstatement provisions of 472 F.2d 1228 (CA 6, 1972), *NLRB v United Textile Workers of America*, in civil contempt of the 8(b)(1)(A) provisions of the judgment of Dec. 11, 1973, in No 73-2197 (CA 6).

⁷*NLRB v. Lane Tool and Mfg.*, in civil contempt of the posting and backpay provisions of the judgment of Nov 10, 1972, and the supplemental judgment of Oct 2, 1973, in No 73-2061 (CA 3); *NLRB v Palomar Corp.*, in civil contempt of the backpay provisions of 465 F.2d 731 (CA 5, 1972) (protective order entered Feb 20, 1974); *NLRB v Regal Cab Co.*, in civil contempt of the backpay provisions of the judgment of Nov 7, 1973, in No 73-1893 (CA 7) (protective order entered June 4, 1974), *NLRB v Inter-Polymer Industries*, in civil contempt of the bargaining provision of 480 F.2d 631 (CA 9, 1973), *NLRB v Edward F. Schultz, et al.*, in civil contempt of the bargaining provisions of the judgment of Feb 26, 1974, in No 73-1241 (CA 10), *NLRB v. John Zink Co.*, in civil contempt of the bargaining provisions of the judgment of July 19, 1973, in No 74-1254 (CA 10)

⁸*NLRB v Irving N Rothkin d/b/a Irv's Market*, in civil contempt of the reinstatement provisions of the judgment of June 16, 1971, and the backpay provisions of the supplemental judgment of Oct 30, 1972, 480 F.2d 615 (CA 6, 1973)

⁹*NLRB v Loc 15, Bricklayers, Masons and Plasterers Intl Union and its agent Carl C Pisciotta* Civil contempt adjudicated Dec 6, 1973, in Nos 71-1638 and 72-1158 (CA 3), upon adoption of the report of U S Magistrate Tullio G Leomporra, as special master, *NLRB v Loc Union No 25, Intl Assn of Bridge, Structural and Ornamental Ironworkers, AFL-CIO* Civil contempt adjudicated Nov 20, 1973, in No. 20.189 (CA 3), upon adoption of the report of U S District Judge Thomas P Thornton, as special master, *NLRB v Loc No 80, Sheet Metal Workers' Intl Assn, AFL-CIO* Civil contempt adjudicated upon adoption of the report of U S District Judge Thornton, 491 F.2d 1017 (CA 6); *NLRB v Loc. 98, United Assn. of Journcymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U S and Canada, AFL-CIO* Civil contempt adjudicated Feb 6, 1974, in Nos 71-1413 and 72-1044, 86 LRRM 2755 (CA 6), upon adoption of report of U.S. District Judge Thornton, as special master

¹⁰*NLRB v Amalgamated Loc 355 and Russell Motors* in civil contempt of judgment of Jan 6, 1964, Jan 11, 1966, and Mar 28, 1966, in Nos 28,451, 30,236, and 30,405 (CA 2), against the union and No 32,200 against the company Abated while pending before special master, by court order of Jan 23, 1974

¹¹*NLRB v. Mallock Truck Body and Trailer Corp.*, in civil contempt of 454 F.2d 1172 (CA 6, 1972) Abated by order of Nov 9, 1973

¹²*NLRB v. Remmuth*, in civil contempt of judgment of Dec 6, 1972, in Nos 72-1445 and 72-1579 (CA 6) Abated while pending before special master, by order of Dec 7, 1973

¹³*NLRB v United Marine Services and H O Golding* in civil contempt of backpay provisions of judgment of Apr. 3, 1969, in No 21,315 (CA 9) Abated Aug. 1, 1973

unfair labor practice strikers, the petition was dismissed upon confirmation of the special master's adverse report.¹⁴

A few orders which were issued during this period are particularly noteworthy. In an earlier proceeding in *N.L.R.B. v. Nickey Chevrolet Sales*, the court had found the company in contempt for discharging one of its employees in violation of an outstanding judgment which enjoined the company from discriminating against any employee.¹⁵ To purge itself, the court directed the company to reinstate him with backpay. Although the Board had not itself ordered this employee's reinstatement, it nevertheless conducted backpay proceedings and, disagreeing in part with the administrative law judge, fixed his backpay in a second supplemental decision and order (195 NLRB 395 (1972)). The Seventh Circuit declined to enforce the second supplemental order, holding that the Act did not authorize the Board to conduct backpay proceedings if it had not issued the initial reinstatement order. Nevertheless, in the interest of judicial and administrative economy, it analogized the administrative law judge's and Board's findings to those of a special master, held that the administrative law judge's findings with which the Board disagreed were clearly erroneous and that the Board's findings were not clearly erroneous, and thereupon ordered the company to purge itself by paying the backpay as computed by the Board.¹⁶

In *Plumbers, Loc. 98 v. N.L.R.B.*,¹⁷ the underlying decree limited the cease-doing-business object to the primary employer. During the civil contempt proceedings, the dispute between the union and the primary employer was settled. Nevertheless, the Court retained jurisdiction and, on the basis of the record, expanded the cease-and-desist order by enjoining unlawful secondary boycott activity not only with respect to the primary employer but any other person as well.

In an apparent recession from its earlier holding in *N.L.R.B. v. Nelson Mfg. Co.*, 363 F.2d 829 (C.A. 6, 1966), that reprisal against a discriminatee for accepting backpay due under the court's judgment was not contempt but a separate unfair labor practice, the Sixth Circuit in its order of November 20, 1973, in *Loc. 25, Ironworkers*,¹⁸ sustained the Board's contention that coercion of employees to return union reimbursement checks paid out pursuant to its judgment was contempt of that judgment.

¹⁴ *N.L.R.B. v. Dixie Color Printing Corp.*, in civil contempt of reinstatement provisions of 371 F.2d 347 (C.A.D.C. 1966) *Per Curiam* order approving the report was entered June 11, 1974.

¹⁵ 76 LRRM 2849 (C.A. 7, 1971)

¹⁶ 493 F.2d 103 (C.A. 7)

¹⁷ 86 LRRM 2755 See fn. 9, above

¹⁸ See fn. 9, above

XI

Special and Miscellaneous Litigation

A. Judicial Intervention in Board Proceedings

In *Intl. Ladies' Garment Workers' Union Loc. 415-475 [Arosa Knitting Corp.] v. N.L.R.B.*,¹ the union, as charging party, sought to review the regional director's withdrawal of a complaint and acceptance of a unilateral informal settlement agreement. The court rejected the argument that these actions were taken pursuant to the General Counsel's prosecutory authority under section 3(d), and therefore not judicially reviewable.² Rather, the court found that such actions are more adjudicatory than prosecutorial in nature, and therefore reviewable because "where the General Counsel acting for the Board withdraws a complaint on the basis of the conflicting interests of the parties and thus partially or wholly remedies the underlying dispute," his actions "cannot meaningfully be distinguished from other types of Board action traditionally held to be within the review provisions of Section 10(f)." ³ However, the court also rejected the union's argument that the settlement agreement could not be accepted without an evidentiary hearing. Adhering to the rationale set forth in *Textile Workers Union of America v. N.L.R.B.*⁴ that a party presenting detailed and substantial objections to a proposed settlement agreement is entitled to either a hearing on those objections or a statement on the record for acceptance of the agreement notwithstanding the objections, the court found that the union in this case had not raised any issues of fact warranting a hearing and that adequate reasons had been given for accepting the settlement agreement.⁵

¹ 86 LRRM 2851 (C A D C)

² See *Vaca v Sipes*, 386 U S 171, 182 (1967)

³ Accord, *Leeds & Northrup Co. v. N L R B.*, 357 F 2d 527, 533 (C A. 3, 1966). See 31 NLRB Ann Rep. 161-162 (1966)

⁴ 294 F 2d 738 (C A.D C., 1961).

⁵ Compare *Leeds & Northrup Co. v. N L R B.*, *supra*.

In *Natl. Maritime Union of America v. N.L.R.B.*,⁶ the union sought an order compelling the Board to assert jurisdiction over the union's petition for an election among employees of Contract Services, Inc., a Delaware corporation doing business in the Panama Canal Zone. The Board had declined to assert jurisdiction, despite the fact that it had statutory jurisdiction over the employer, because "the entire matter of the scope and effect of this country's presence in that zone is a matter undergoing international negotiations," and to assert jurisdiction for the first time "would be to risk a negative impact on negotiations."⁷ The court dismissed the complaint for lack of subject matter jurisdiction.⁸ In so doing, the court rejected the union's contention that the Board's refusal to process its petition violated section 9(c) (1) of the Act, observing that, although section 9(c) (1) says that the Board "shall direct an election" if it finds that a question of representation exists, that language has never been considered mandatory by the Board, the courts, or Congress, and that there are numerous instances in which the Board, with court approval, has declined to process representation petitions, notwithstanding the fact that each of the steps prescribed by the "shall" clauses of section 9(c) (1) are mandatory. The court also rejected the union's contention that the Board's refusal to process the petition was unconstitutional, finding that the union had been afforded a full hearing before the Board, and that "the alleged constitutional deprivation amounts to nothing more than disagreement with the manner in which the Board has exercised its judgment⁹ in the discretionary area of representation proceedings."⁹

Several proceedings have been spawned by the Fifth Circuit's decision in *Templeton v. Dixie Color Printing Co.*¹⁰ and *Algie Surratt v. N.L.R.B.*,¹¹ holding that the Board's refusal to process an employee decertification petition solely because of the pendency of unfair labor practice charges against the employer violated the "shall investigate" clause of section 9(c) (1). In both *Tommy J. Grissom, et al. v. N.L.R.B.*,¹² and *Acme Employees Assn. Industrial Union v. N.L.R.B.*,¹³ where the Board had conducted an investigation and had determined that no question of representation existed because of the nature of the unfair labor practice charges then pending against the employers, the courts dismissed complaints seeking to compel the Board to conduct

⁶ 375 F Supp 421 (D C Pa), appeal pending, C A 3, Docket 74-1613

⁷ *Contract Services*, 202 NLRB 862 865 (1973)

⁸ Accord, *Natl. Maritime Union of America v. NLRB*, 267 F Supp 117 (D C N Y, 1967).

⁹ 375 F Supp at 437

¹⁰ 444 F 2d 1064 (C A 5, 1971) petition for rehearing denied 444 F 2d at 1070 See 36 NLRB Ann. Rep 129 (1971)

¹¹ 463 F 2d 378 (C A 5, 1972) See 37 NLRB Ann. Rep 199 (1972)

¹² 497 F 2d 43 (C A 5).

¹³ 85 LRRM 2530 (D C Tex), appeal pending C A 5, Docket 74-1764

elections, finding that the Board had complied with the mandate of section 9(c)(1). In *Cantor Bros. v. Johansen*,¹⁴ the court dismissed a similar complaint filed by an employer, noting that he was the target of unfair labor practice charges then pending before the Board, which the Board had investigated and found to preclude the raising of a real question concerning representation, and therefore that he was not entitled to the relief obtained by the employees in *Templeton* and *Surratt*. And, in *Macomb Block & Supply v. Gottfried*,¹⁵ the court dismissed an attempt by the employer to compel the Board to conduct an expedited election under section 8(b)(7)(C), rejecting the employer's contention that the Board's 60-day notice-posting requirement prior to the holding of the election should be set aside.

In *Natl. Alliance of Postal & Federal Employees v. E.T. Klassen*,¹⁶ plaintiff, a postal labor union, brought suit against the General Counsel of the Board and the Postmaster General challenging their interpretation and application of the Postal Reorganization Act of 1970 (PRA),¹⁷ an act which transferred all the powers of the old Post Office Department to a new Postal Service, and gave the Board jurisdiction over labor relations in the new Postal Services as of July 1, 1971. In an earlier proceeding,¹⁸ plaintiff had challenged the constitutionality of that portion of the PRA which provided that during a specified "transitional bargaining period" the Postmaster General could negotiate agreements with those unions which had previously been certified by the Labor Department under Executive Order 10988¹⁹ as the representatives of the postal employees in seven national bargaining units. However, the court there had held that it was not an invidious discrimination for Congress to accord the right of exclusive recognition to the seven so-called national craft unions during the transitional period, and to, in essence, defer resolution of which bargaining units were appropriate until the postal reorganization had been completed and the question could be resolved by the Board. Thereafter, the contracts which had been negotiated during the transitional period expired, and, since the Board had not yet acted upon representation petitions filed in 1971 and 1973 by plaintiff in various local units, the Postmaster General entered into new contracts with the national craft unions, to be effective from July 21, 1973, to July 21, 1975. Plaintiff sought to reconvene the three-judge court which had been con-

¹⁴ 85 LRRM 2068 (D.C. Calif.).

¹⁵ 86 LRRM 2352 (D.C. Mich.).

¹⁶ 369 F.Supp. 747 (D.C. D.C.).

¹⁷ 39 U.S.C. § 1201, *et seq.*

¹⁸ *Natl. Postal Union, et al v. Blount, et al*, 341 F.Supp. 370 (D.C.D.C.), *affd. sub nom Natl. Assn. of Letter Carriers v. Natl. Alliance of Postal and Federal Employees*, 409 U.S. 808 (1972).

¹⁹ 27 F.R. 551 (1962).

vened in *Blount, supra*, and argued that the PRA could not constitutionally permit recognition of the national craft unions beyond the expiration of the interim contract without Board-conducted elections, since to do so would deprive postal employees of their right to choose their own bargaining representatives and would also invidiously discriminate against National Alliance and its members. Plaintiff also argued that by continuing to recognize the national craft unions beyond the expiration of the interim contract, and by negotiating the new contract during the pendency of the representation petitions filed in 1971 and 1973 the Postmaster General was violating section 8(a)(2) of the NLRA, and sought a mandatory injunction compelling the General Counsel to issue a complaint to that effect. The court held that plaintiff had not been discriminated against, since the PRA permitted it to file representation petitions with the Board, which it had done, and thus to compete with the national craft unions under the usual Board procedures.²⁰ The court also dismissed for lack of subject matter jurisdiction plaintiff's attempt to compel the General Counsel to issue a complaint.

B. Board Intervention in Court Proceedings

In *Buckley v. AFTRA*,²¹ the Board, appearing as an *amicus curiae*, urged the Second Circuit to reverse the holding of the Southern District of New York²² insofar as it held that William F. Buckley, Jr., and M. Stanton Evans could not be required by AFTRA to pay union dues and fees. The district court had agreed with the argument posed by Buckley and Evans that the imposition of such dues and fees created an unconstitutional chilling effect and prior restraint upon their First Amendment rights to appear on the air as commentators on national affairs. The Second Circuit reversed, holding that in permitting unions to exact dues from nonmembers Congress had acted for the legitimate purpose of enabling bargaining representatives to fulfill their statutory responsibility of representing all employees in the bargaining unit, and had also chosen a reasonable means to achieve this purpose. The court also held that the district court had no jurisdiction over the other questions posed by Buckley and Evans, namely, whether AFTRA's requirements of compulsory union membership and compulsory compliance with union regulations also violated their constitutional rights, since such contentions alleged acts which were

²⁰ The Board later dismissed the representation petitions filed by plaintiff because none of them sought to represent employees in an appropriate unit, i.e., a unit encompassing at least all employees within a region, metropolitan area, or district. 208 NLRB No. 144

²¹ 496 F.2d 305

²² 354 F.Supp. 823 (D.C.N.Y., 1973)

arguably unfair labor practices under the National Labor Relations Act and were therefore for the Board to resolve.

In *New York Shipping Assn. v. Federal Maritime Commission and United States of America*,²³ the Board, appearing as *amicus curiae*, urged the Second Circuit to overturn an order of the Federal Maritime Commission (FMC) that an agreement between the Shipping Association and the International Longshoremen's Association, AFL-CIO, was within the terms of section 5 of the Shipping Act²⁴ and therefore required to be submitted to the Commission for approval. The agreement was similar to one entered into by the parties in 1968, when the union had acceded to mechanization in exchange for extensive fringe benefits designed to compensate for lost work opportunities on the waterfront. However, the 1968 plan had met with collection difficulties and disagreement among association members as to the proper allocation of costs among competing modes of cargo movement. Therefore, the union in 1971 had demanded that it be permitted to participate in the negotiation of the new assessment formula, and the parties thereafter agreed upon a new assessment formula which, for the first time, was incorporated into the collective-bargaining agreement. The Board argued that regulation by the FMC of the assessment formula contained in the parties' collective-bargaining agreement would amount to an unwarranted intrusion into the process of collective bargaining which the NLRA was designed to foster, and thus that the agreement should be exempt from the coverage of the Shipping Act.²⁵

The Second Circuit disagreed, however, finding that "the Commission was correct in concluding that its regulation of the assessment formula would have a minimal impact on the collective bargaining process, while exempting the agreement from Shipping Act regulation would expose certain classes of shippers and carriers to potentially massive, inequitable cost increases."²⁶ and therefore that the Shipping Act problems clearly predominated over the labor interests raised by the formula. However, the court did caution that the labor interests in the agreement "demand the Commission's continuing attention," and that "[i]n determining whether to approve the agreement, the Commission must be particularly sensitive to aspects of the assessment scheme that have relatively more impact on the collective bargaining process and relatively less on competitive conditions in the

²³ 495 F 2d 1215, petitions for certiorari filed, Dockets 73-1990, 73-1984

²⁴ 46 U S C § 814.

²⁵ In *United Stevedoring Corp v Boston Shipping Assn*, Docket 70-3 (Aug 25, 1972), the FMC held for the first time that an agreement could be exempt from the coverage of the Shipping Act if (1) it was the result of good-faith bargaining; (2) the matter involved was a mandatory subject of bargaining; (3) the result of the collective bargaining does not impose terms on entities outside of the bargaining group, and (4) the union acted alone rather than at the behest of or in conjunction with nonlabor groups

²⁶ 495 F 2d at 1222

industry.”²⁷ In this respect, the court observed that “[t]he more vital portions of the agreement, so far as the union is concerned, are the provisions relating to the means by which the assessment obligations are to be collected,” and that the “allocation formula would seem to be of primary concern to the FMC, while the enforcement mechanism would appear to have substantially less potential effect on competitive conditions.”²⁸

C. Freedom of Information Act Issues

Litigation concerning the Board’s compliance with the Freedom of Information Act²⁹ has dropped sharply since the Supreme Court’s denial of certiorari in *Sears, Roebuck & Co. v. N.L.R.B.*,³⁰ wherein the court of appeals refused to enjoin Board proceedings pending litigation of the merits of a request for documents under the Information Act.³¹

In *Sears, Roebuck & Co. v. N.L.R.B.*,³² the court of appeals affirmed the order of the court below³³ that advice and appeals memoranda are subject to production under the Freedom of Information Act. And in *Kent Corp. v. N.L.R.B.*,³⁴ a district court found that the Information Act compels production of those portions of the final reports compiled after an investigation of charges by the regional office which bear notations evidencing the regional director’s decision as to whether or not to issue a complaint, together with the corresponding paragraphs, sentences, or recommendations which are incorporated therein by reference. The court rejected the Board’s argument that such material was exempt from disclosure under Exemptions 5 and 7 of the Information Act, but did find that “conclusions and opinions and confidences with respect to the investigation are not due to be revealed. It is merely the factual basis on which the decision was based which must be revealed to the plaintiff.”³⁵

In *Automobile Club of Missouri v. N.L.R.B.*,³⁶ the Court of Appeals for the District of Columbia affirmed without opinion an order of the

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ 5 U S C § 552, *et seq*

³⁰ 473 F 2d 91 (C A D C , 1972), cert denied 415 U S 950 (1974) See 38 NLRB Ann Rep. 182-183 (1973)

³¹ See also *Hartford Fire Ins. Co v N L R B.*, 85 LRRM 2750 (D C D C , 1974) , *Safeway Stores v. N L R B.*, 84 LRRM 2536 (D C D C , 1973) , *Carrollton Motor Inn v. N L R B* , 84 LRRM 2385 (D C D C , 1973) And see *Renegotiation Board v Bannerkraft Clothing Co* , 415 U S 1 (1974)

³² 480 F 2d 1195 (C A D C) cert granted May 28, 1974, Docket 73-1233

³³ 346 F Supp 751 (D C D C 1972) See 38 NLRB Ann Rep. 182-183 (1973).

³⁴ 86 LRRM 2801 (D C Ala), stay pending appeal granted May 2, 1974, appeal pending, C A. 5, Docket 74-1710

³⁵ 86 LRRM at 2804

³⁶ 495 F 2d 1074

court below³⁷ that the Information Act required the Board to make a subject-matter index of all regional directors' decisions issued pursuant to the Board's delegation of authority to them under Section 3(b) of the Act. The Board decided not to seek certiorari in the case and is currently preparing an index pursuant to the court's order.

Finally, in *Wellman Industries v. N.L.R.B.*,³⁸ the Fourth Circuit affirmed the decision of the court below³⁹ that affidavits obtained during the investigation of a representation proceeding are not subject to production under the Information Act. The court rejected the "balancing of the equities" approach which the lower court had taken,⁴⁰ but found that such affidavits fall within Exemption 7 of the Information Act. In so doing, the court rejected the company's contention that, because representation proceedings are nonadversary in nature and only culminate in enforcement proceedings in an indirect manner, investigatory files compiled during such proceedings are not "compiled for law enforcement purposes" as required by Exemption 7. Rather, the court found, "[w]hether or not resulting in an unfair labor practice charge, the Board's purpose here was to protect and vindicate rights set out in Section 7. Though procedures vary, if aimed at enforcement of the NLRA we think they are 'for law enforcement purposes.'" ⁴¹

³⁷ 84 LRRM 2423 (D.C.D.C., 1973). See 38 NLRB Ann. Rep. 184-185 (1973).

³⁸ 490 F.2d 427, petition for certiorari filed May 28, 1974, Docket 73-1785.

³⁹ 82 LRRM 2857 (D.C.S.C., 1973).

⁴⁰ 490 F.2d at 429.

⁴¹ *Id.* at 430.

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APPENDIX

Statistical Tables for Fiscal Year 1974

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 N.W., 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 specially 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 amount 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 representative 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 on 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 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 an administrative law judge 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 administrative law judge in his decision; as ordered by the Board in its decision and order; or as decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge voluntarily. (See also "Withdrawn Cases.") Cases may also be dismissed by the administrative law judge, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the regional director.

Election, Directed

Board-Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director-Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the regional ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b) (1) (A) or (2) or 8(a) (1) and (2) or (3), where, for instance, such moneys were collected pursuant to an illegal hiring hall arrangement or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the case of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursements 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(e) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the 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. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Case." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purposes of hearing.

Representation Case

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms). All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representative 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 in violation of 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 OD cases (See "Jurisdictional Disputes" in this glossary.)

- CE:** A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).
- CP:** A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(7) (A), (B), or (C), or any combination thereof.

R Cases (representation cases)

- A case number which contains the first letter designation **R**, in combination with another letter, i e., **RC**, **RD**, **RM**, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) of the Act.
- RC:** A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.
- RM:** A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.
- RD:** A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this

Other Cases

- AC:** (Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.
- AO:** (Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, **AO** or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards, over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)
- UC:** (Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classifications of employees should or should not be included within a presently existing bargaining unit.
- UD:** (Union Deauthorization cases): A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "O Cases" under "Types of Cases."

Union Deauthorizing Cases

See "Other cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

SUBJECT INDEX TO ANNUAL REPORT TABLES

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1974 ¹

	Total	Identification of filing party					Employers
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	
All cases							
Pending July 1, 1973	12,308	5,088	1,450	380	355	3,444	1,591
Received fiscal 1974	42,873	14,659	5,908	1,256	1,113	13,870	5,567
On docket fiscal 1974	54,681	19,747	7,358	1,636	1,468	17,314	7,158
Closed fiscal 1974	41,100	14,131	5,738	1,160	1,072	13,544	5,455
Pending June 30, 1974	13,581	5,616	1,620	476	396	3,770	1,703
Unfair labor practice cases ²							
Pending July 1, 1973	9,001	3,300	721	248	195	3,176	1,861
Received fiscal 1974	27,726	7,676	2,102	577	521	12,445	4,405
On docket fiscal 1974	36,727	10,976	2,823	825	716	15,621	5,766
Closed fiscal 1974	27,016	7,381	2,061	547	500	12,160	4,367
Pending June 30, 1974	9,711	3,595	762	278	216	3,461	1,399
Representation cases ³							
Pending July 1, 1973	3,173	1,759	717	124	155	227	191
Received fiscal 1974	14,082	6,848	3,766	660	577	1,217	1,014
On docket fiscal 1974	17,255	8,607	4,483	784	732	1,444	1,205
Closed fiscal 1974	13,542	6,617	3,637	595	557	1,188	948
Pending June 30, 1974	3,713	1,990	846	189	175	256	257
Union-shop deauthorization cases							
Pending July 1, 1973	41					41	
Received fiscal 1974	203					203	
On docket fiscal 1974	244					244	
Closed fiscal 1974	192					192	
Pending June 30, 1974	52					52	
Amendment of certification cases							
Pending July 1, 1973	26	8	10	5	3	0	0
Received fiscal 1974	121	60	25	7	9	1	19
On docket fiscal 1974	147	68	35	12	12	1	19
Closed fiscal 1974	116	57	25	7	9	1	17
Pending June 30, 1974	31	11	10	5	3	0	2
Unit clarification cases							
Pending July 1, 1973	67	21	2	3	2	0	39
Received fiscal 1974	241	75	15	12	6	4	129
On docket fiscal 1974	308	96	17	15	8	4	168
Closed fiscal 1974	234	76	15	11	6	3	123
Pending June 30, 1974	74	20	2	4	2	1	45

¹ See Glossary for definitions of terms. Advisory opinion (AO) cases not included. See table 22.² See table 1A for totals by type of cases.³ See table 1B for totals by type of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1974 ¹

	Total	Identification of filing party					Employers
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	
CA cases							
Pending July 1, 1973	6,281	3,266	713	241	162	1,879	20
Received fiscal 1974	17,978	7,576	2,081	531	458	7,290	42
On docket fiscal 1974	24,259	10,842	2,794	772	620	9,169	62
Closed fiscal 1974	17,307	7,288	2,041	500	442	6,984	52
Pending June 30, 1974	6,952	3,554	753	272	178	2,185	10
CB cases							
Pending July 1, 1973	1,780	26	7	5	7	1,266	469
Received fiscal 1974	6,471	75	18	9	31	5,058	1,280
On docket fiscal 1974	8,251	101	25	14	38	6,324	1,749
Closed fiscal 1974	6,483	69	16	9	29	5,094	1,266
Pending June 30, 1974	1,768	32	9	5	9	1,230	483
CC cases							
Pending July 1, 1973	592	2	0	2	7	12	569
Received fiscal 1974	2,026	6	1	26	18	51	1,924
On docket fiscal 1974	2,618	8	1	28	25	63	2,493
Closed fiscal 1974	1,994	5	1	27	13	43	1,905
Pending June 30, 1974	624	3	0	1	12	20	588
CD cases							
Pending July 1, 1973	189	5	0	0	2	6	176
Received fiscal 1974	604	14	1	4	2	20	563
On docket fiscal 1974	793	19	1	4	4	26	739
Closed fiscal 1974	622	15	1	4	3	17	582
Pending June 30, 1974	171	4	0	0	1	9	157
CE cases							
Pending July 1, 1973	85	1	0	0	17	12	55
Received fiscal 1974	94	2	1	0	9	9	73
On docket fiscal 1974	179	3	1	0	26	21	128
Closed fiscal 1974	90	2	1	0	11	7	69
Pending June 30, 1974	89	1	0	0	15	14	59
CP cases							
Pending July 1, 1973	74	0	1	0	0	1	72
Received fiscal 1974	553	3	0	7	3	17	523
On docket fiscal 1974	627	3	1	7	3	18	595
Closed fiscal 1974	520	2	1	7	2	15	493
Pending June 30, 1974	107	1	0	0	1	3	102

¹ See Glossary for definitions of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1974¹

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
RC cases							
Pending July 1, 1973.....	2,756	1,759	717	124	155	1	-----
Received fiscal 1974.....	11,891	6,841	3,761	660	575	54	-----
On docket fiscal 1974.....	14,647	8,600	4,478	784	730	55	-----
Closed fiscal 1974.....	11,436	6,611	3,632	595	557	41	-----
Pending June 30, 1974.....	3,211	1,989	846	189	173	14	-----
RM cases							
Pending July 1, 1973.....	191	-----	-----	-----	-----	-----	191
Received fiscal 1974.....	1,014	-----	-----	-----	-----	-----	1,014
On docket fiscal 1974.....	1,205	-----	-----	-----	-----	-----	1,205
Closed fiscal 1974.....	948	-----	-----	-----	-----	-----	948
Pending June 30, 1974.....	257	-----	-----	-----	-----	-----	257
RD cases							
Pending July 1, 1973.....	226	0	0	0	0	226	-----
Received fiscal 1974.....	1,177	7	5	0	2	1,163	-----
On docket fiscal 1974.....	1,403	7	5	0	2	1,389	-----
Closed fiscal 1974.....	1,158	6	5	0	0	1,147	-----
Pending June 30, 1974.....	245	1	0	0	2	242	-----

¹ See Glossary for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1974

		Number of cases showing specific allegations	Percent of total cases			Number of cases showing specific allegations	Percent of total cases	
A. Charges filed against employers under sec 8(a)				Recapitulation ¹				
Subsections of sec. 8(a)				8(b)(1)	5,759	59.7		
Total cases.....		17,978	100.0	8(b)(2)	1,542	16.0		
8(a)(1)	2,131	11.9	8(b)(3)	738	7.6			
8(a)(1)(2)	397	2.2	8(b)(4)	2,630	27.2			
8(a)(1)(3)	9,283	51.6	8(b)(5)	19	0.2			
8(a)(1)(4)	83	0.5	8(b)(6)	25	0.3			
8(a)(1)(5)	3,614	20.1	8(b)(7)	553	5.7			
8(a)(1)(2)(3)	244	1.4	B1. Analysis of 8(b)(4)					
8(a)(1)(2)(4)	5	0.0	Total cases 8(b)(4) ..		2,630	100.0		
8(a)(1)(2)(5)	111	0.6	8(b)(4)(A)	70	2.7			
8(a)(1)(3)(4)	330	1.8	8(b)(4)(B)	1,902	72.3			
8(a)(1)(3)(5)	1,551	8.6	8(b)(4)(C)	7	0.3			
8(a)(1)(4)(5)	6	0.0	8(b)(4)(D)	604	23.0			
8(a)(1)(2)(3)(4)	13	0.1	8(b)(4)(A)(B)	32	1.2			
8(a)(1)(2)(3)(5)	133	0.7	8(b)(4)(A)(C)	1	0.0			
8(a)(1)(2)(4)(5)	11	0.1	8(b)(4)(A)(C)	1	0.0			
8(a)(1)(3)(4)(5)	46	0.3	8(b)(4)(B)(C)	1	0.0			
8(a)(1)(2)(3)(4)(5)	20	0.1	8(b)(4)(A)(B)(C)	13	0.5			
Recapitulation ¹				Recapitulation ¹				
8(a)(1) ²	17,978	100.0	8(b)(4)(A)	116	4.4			
8(a)(2)	934	5.2	8(b)(4)(B)	1,948	74.1			
8(a)(3)	11,620	64.6	8(b)(4)(C)	22	0.8			
8(a)(4)	514	2.9	8(b)(4)(D)	604	23.0			
8(a)(5)	5,492	30.5	B2 Analysis of 8(b)(7)					
B Charges filed against unions under sec 8(b)				Total cases 8(b)(7) ..		553	100.0	
Subsections of sec 8(b)				8(b)(7)(A)	110	19.9		
Total cases.....		9,654	100.0	8(b)(7)(B)	27	4.9		
8(b)(1)	4,239	43.9	8(b)(7)(C)	400	72.3			
8(b)(2)	199	2.1	8(b)(7)(A)(B)	1	0.2			
8(b)(3)	463	4.8	8(b)(7)(A)(C)	3	0.5			
8(b)(4)	2,630	27.2	8(b)(7)(B)(C)	1	0.2			
8(b)(5)	5	0.1	8(b)(7)(A)(B)(C)	11	2.0			
8(b)(6)	12	0.1	Recapitulation ¹					
8(b)(7)	553	5.7	8(b)(7)(A)	125	22.6			
8(b)(1)(2)	1,260	13.1	8(b)(7)(B)	40	7.2			
8(b)(1)(3)	197	2.0	8(b)(7)(C)	415	75.0			
8(b)(1)(5)	5	0.1	C. Charges filed under sec. 8(e)					
8(b)(1)(6)	2	0.0	Total cases 8(e)		94	100.0		
8(b)(2)(3)	24	0.2	Against unions alone	80	85.1			
8(b)(2)(5)	1	0.0	Against employers alone	0				
8(b)(2)(6)	5	0.1	Against unions and employers	14	14.9			
8(b)(3)(6)	2	0.0						
8(b)(1)(2)(3)	45	0.5						
8(b)(1)(2)(5)	5	0.1						
8(b)(1)(3)(5)	1	0.0						
8(b)(1)(3)(6)	3	0.0						
8(b)(2)(3)(6)	1	0.0						
8(b)(1)(2)(3)(5)	2	0.0						

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 Sec. 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 1974 ¹

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices					
10(k) notices of hearings issued.....	123	95				95			72			
Complaints issued.....	3,703	2,869	2,130	271	156		15	2	42	92	114	47
Backpay specifications issued.....	86	60	48	9	0		0	0	0	1	2	0
Hearings completed, total.....	1,715	1,244	881	126	41	55	4	0	13	37	74	13
Initial ULP hearings.....	1,616	1,172	834	113	40	55	4	0	12	33	68	13
Backpay hearings.....	52	37	24	8	0		0	0	0	1	4	0
Other hearings.....	47	35	23	5	1		0	0	1	3	2	0
Decisions by administrative law judges, total.....	1,519	1,070	773	124	36		2	1	12	38	71	13
Initial ULP decisions.....	1,397	999	726	109	36		2	1	12	33	68	12
Backpay decisions.....	80	43	28	12	0		0	0	0	2	1	0
Supplemental decisions.....	42	28	19	3	0		0	0	0	3	2	1
Decisions and orders by the Board, total.....	1,909	1,387	954	159	61	59	6	1	16	34	67	30
Upon consent of parties.....												
Initial decisions.....	210	137	81	21	16		0	0	3	6	1	9
Supplemental decisions.....	9	5	2	1	0		0	0	0	0	2	0
Adopting administrative law judge's decisions (no exceptions filed).....												
Initial ULP decisions.....	354	285	224	32	9		0	0	1	4	14	1
Backpay decisions.....	10	9	6	3	0		0	0	0	0	0	0
Contested.....												
Initial ULP decisions.....	1,105	857	576	88	34	59	4	1	10	22	44	19
Decisions based on stipulated record.....	36	30	16	7	1		2	0	2	1	0	1
Supplemental ULP decisions.....	8	7	7	0	0		0	0	0	0	0	0
Backpay decisions.....	87	57	42	7	1		0	0	0	1	6	0

¹ See Glossary for definitions of terms

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1974 ¹

Types of formal actions 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	2,781	2,518	2,269	104	145	11
Initial hearings	2,502	2,253	2,019	94	140	9
Hearings on objections and/or challenges	279	265	250	10	5	2
Decisions issued, total	2,422	2,259	2,034	84	141	3
By regional directors	2,242	2,103	1,899	73	131	3
Elections directed	1,947	1,825	1,646	62	117	3
Dismissals on record	295	278	253	11	14	0
By Board	180	156	135	11	10	0
After transfer by regional directors for initial decision	126	112	92	11	9	0
Elections directed	71	65	54	7	4	0
Dismissals on record	55	47	38	4	5	0
After review of regional directors' decisions	54	44	43	0	1	0
Elections directed	30	27	27	0	0	0
Dismissals on record	24	17	16	0	1	0
Decisions on objections and/or challenges, total	1,240	1,202	1,098	67	37	9
By regional directors	340	327	305	15	7	5
By Board	900	875	793	52	30	4
In stipulated elections	844	822	748	47	27	3
No exceptions to regional directors' reports	600	584	539	26	19	3
Exceptions to regional directors' reports	244	238	209	21	8	0
In directed elections (after transfer by regional directors)	41	38	33	4	1	1
In directed elections after review of regional directors' supplemental decisions	15	15	12	1	2	

¹ See Glossary for definitions of terms

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1974¹

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	98	16	65
Decisions issued after hearing	87	14	62
By regional directors	75	11	54
By Board	12	3	8
After transfer by regional directors for initial decision	10	2	8
After review of regional directors' decisions	2	1	0

¹ See Glossary for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1974¹

Action taken	Total all	Remedial action taken by—																		
		Employer						Union												
		Total	Pursuant to—					Total	Pursuant to—			Order of—								
			Agreement of parties		Recommen- dation of admini- strative law judge	Order of—			Agreement of parties		Recommen- dation of admini- strative law judge	Order of—								
			Informal settle- ment	Formal settle- ment		Board	Court		Informal settle- ment	Formal settle- ment		Board	Court							
A. By number of cases involved.....	2 8,003																			
Notice posted.....	3,958	2,639	1,709	129	4	531	266	1,319	929	136	22	134	98							
Recognition or other assistance withdrawn.....	66	66	47	5	0	9	5													
Employer-dominated union dis- established.....	25	25	17	2	0	4	2													
Employees offered reinstatement.....	1,591	1,501	1,008	62	2	317	202													
Employees placed on preferential hiring list.....	109	109	82	8	0	9	10													
Hiring hall rights restored.....	77							77	65	2	0	6	4							
Objections to employment withdrawn.....	119							119	89	9	0	11	10							
Picketing ended.....	756							756	698	36	0	12	10							
Work stoppage ended.....	305							305	293	1	0	5	6							
Collective bargaining begun.....	1,756	1,603	1,304	42	2	119	136	153	141	1	0	8	3							
Backpay distributed.....	2,155	1,988	1,394	95	2	295	202	167	123	13	0	17	14							
Reimbursement of fees, dues, and fines.....	119	63	40	1	0	13	9	56	42	0	0	8	6							
Other conditions of employment improved.....	1,689	946	926	1	0	7	12	723	693	6	0	14	10							
Other remedies.....	33	22	13	0	0	1	8	11	9	0	0	0	2							

B. By number of employees affected														
Employees offered reinstatement, total	4,778	4,778	3,102	554	16	511	595							
Accepted	2,828	2,828	1,911	330	16	275	296							
Declined	1,950	1,950	1,191	224	0	236	299							
Employees placed on preferential hiring list	333	333	284	17	0	3	29							
Hiring hall rights restored	38							38	26	2	0	8	2	
Objections to employment withdrawn	100							100	75	6	0	11	8	
Employees receiving backpay														
From either employer or union	7,035	6,704	3,868	816	27	821	1,262	241	121	92	0	19	9	
From both employer and union	6	6	6	0	0	0	0	6	6	0	0	0	0	
Employees reimbursed for fees, dues, and fines														
From either employer or union	3,700	1,998	739	20	0	1,099	140	1,702	1,524	6	0	27	145	
From both employer and union	171	171	43	0	95	0	33	171	43	0	95	0	33	
C By amounts of monetary recovery, total	\$8,541,930	\$8,205,840	\$4,204,550	\$717,690	\$12,030	\$342,990	\$2,928,580	\$336,090	\$223,940	\$27,570	0	\$42,270	\$42,310	
Backpay (includes all monetary payments except fees, dues, and fines)	8,445,840	8,156,100	4,174,590	713,890	12,030	334,320	2,921,270	289,740	199,140	27,400	0	35,010	28,190	
Reimbursement of fees, dues, and fines	96,090	49,740	29,960	3,800	0	8,670	7,310	46,350	24,800	170	0	7,260	14,120	

¹ See Glossary for definitions of terms. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1974 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 of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1974¹

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
Food and kindred products.....	2,048	1,272	822	377	40	16	12	5	742	645	41	56	5	20	9
Tobacco manufacturers.....	23	13	9	3	1	0	0	0	10	9	0	1	0	0	
Textile mill products.....	571	408	328	54	14	1	0	11	160	143	11	6	2	1	
Apparel and other finished products made from fabric and similar materials.....	528	364	263	76	10	1	2	12	162	143	16	3	2	0	
Lumber and wood products (except furniture).....	665	381	307	56	12	5	0	1	279	243	14	22	1	0	
Furniture and fixtures.....	511	315	249	56	8	0	0	2	191	171	8	12	3	1	
Paper and allied products.....	603	397	272	106	14	3	0	2	195	174	6	15	1	1	
Printing, publishing, and allied products.....	1,429	889	639	195	22	27	0	6	496	386	38	72	12	5	
Chemicals and allied products.....	873	527	360	104	53	3	5	2	325	281	18	26	7	4	
Petroleum refining and related industries.....	303	202	129	36	28	4	0	5	95	77	9	9	1	1	
Rubber and miscellaneous plastic products.....	848	534	404	115	13	0	0	2	300	268	11	21	8	2	
Leather and leather products.....	152	99	76	22	1	0	0	0	52	46	4	2	1	0	
Stone, clay, glass, and concrete products.....	914	569	368	128	49	12	3	9	333	278	24	31	7	2	
Primary metal industries.....	1,347	1,001	640	322	21	15	0	3	333	296	12	25	5	2	
Fabricated metal products (except machinery and transportation equipment).....	1,779	1,141	774	310	37	12	0	8	617	523	36	58	8	4	
Machinery (except electrical).....	1,725	1,097	798	268	21	3	1	6	597	523	26	48	10	7	
Electrical and electronic machinery, equipment, and supplies.....	1,270	845	615	199	21	9	0	1	406	372	12	22	6	7	
Aircraft and parts.....	290	235	138	97	0	0	0	0	51	45	4	2	1	0	
Ship and boat building and repairing.....	148	112	66	43	3	0	0	0	32	31	1	0	1	0	
Automotive and other transportation equipment.....	1,239	900	606	278	10	3	0	3	326	293	7	26	3	2	
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks.....	294	183	141	35	4	1	1	1	105	93	3	9	2	0	
Miscellaneous manufacturing industries.....	1,101	734	444	234	25	5	9	17	350	305	19	26	7	2	
Manufacturing.....	18,661	12,218	8,448	3,114	407	120	33	96	6,157	5,345	320	492	93	61	
															132

Metal mining.....	57	39	28	11	0	0	0	0	17	14	0	3	0	1	0
Coal mining.....	222	189	101	49	34	3	1	1	31	27	1	3	0	0	2
Oil and gas extraction.....	52	29	26	2	0	0	0	1	22	16	4	2	0	0	1
Mining and quarrying of nonmetallic minerals (except fuels).....	129	78	50	15	11	1	0	1	50	46	1	3	0	0	1
Mining.....	460	335	205	77	45	4	1	3	120	103	6	11	0	1	4
Construction.....	4,367	3,778	1,263	902	982	327	29	275	578	475	76	27	7	1	3
Wholesale trade.....	2,608	1,358	942	258	104	24	1	29	1,223	960	117	146	16	3	8
Retail trade.....	4,700	2,668	1,991	476	99	16	6	80	1,952	1,520	237	195	37	23	20
Finance, insurance, and real estate.....	526	263	185	41	28	1	0	8	262	231	15	16	0	1	0
U S Postal Service.....	766	746	616	127	1	2	0	0	20	18	1	1	0	0	0
Local and suburban transit and inter-urban highway passenger transportation.....	338	223	158	58	7	0	0	0	109	87	10	12	6	0	0
Motor freight transportation and warehousing.....	3,066	2,048	1,304	534	152	21	9	28	988	851	79	58	7	3	20
Water transportation.....	290	239	101	117	11	4	2	4	50	44	2	4	0	0	1
Other transportation.....	115	71	43	20	5	0	0	3	44	36	4	4	0	0	0
Communication.....	911	520	375	112	20	12	1	0	380	333	16	31	3	2	6
Electric, gas, and sanitary services.....	690	441	295	96	31	17	0	2	220	186	13	21	0	17	12
Transportation, communication, and other utilities.....	5,410	3,542	2,276	937	226	54	12	37	1,791	1,537	124	130	16	22	39
Hotels, rooming houses, camps, and other lodging places.....	691	435	340	73	15	1	2	4	249	227	15	7	4	0	3
Personal services.....	291	188	131	47	7	1	0	2	98	67	9	22	3	0	2
Automotive repair, services, and garages.....	383	177	125	42	4	4	0	2	201	171	8	22	5	0	0
Motion pictures.....	434	320	182	97	23	8	6	4	106	90	6	10	1	2	5
Health services.....	1,032	549	445	69	21	10	0	4	461	380	37	44	11	5	6
Educational services.....	277	138	100	24	9	3	1	1	133	120	9	4	1	1	4
Membership organizations.....	168	140	102	35	1	0	2	0	23	17	1	5	0	1	4
Business services.....	1,315	727	529	129	40	23	1	5	573	509	30	34	7	0	8
Miscellaneous repair services.....	122	52	37	11	0	3	0	1	67	58	1	8	2	0	1
Legal services.....	7	4	3	0	0	0	0	1	3	3	0	0	0	0	0
Miscellaneous services.....	152	86	57	12	13	3	0	1	64	59	2	3	0	0	2
Services.....	4,872	2,816	2,051	539	133	56	12	25	1,978	1,701	118	159	34	9	35
Public finance, taxation, and monetary policy.....	3	2	1	0	1	0	0	0	1	1	0	0	0	0	0
Public administration.....	3	2	1	0	1	0	0	0	1	1	0	0	0	0	0
Total, all industrial groups.....	42,373	27,726	17,978	6,471	2,026	604	94	553	14,082	11,891	1,014	1,177	203	121	241

¹ See Glossary for definitions of terms.

² Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, 1972.

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1974 ¹

Division and State ²	All cases	Unfair labor practice cases							Representation cases				Union deau- thorization cases	Amend- ment of certifi- cation cases	Unit clarifi- cation cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine.....	106	55	47	6	2	0	0	0	49	45	1	3	0	2	0
New Hampshire.....	110	58	40	7	7	4	0	0	49	40	7	2	2	0	1
Vermont.....	14	4	4	0	0	0	0	0	10	10	0	0	0	0	0
Massachusetts.....	1,246	851	504	208	81	49	0	9	375	343	16	16	7	2	11
Rhode Island.....	147	97	55	22	12	4	0	4	47	40	2	5	0	0	3
Connecticut.....	369	212	116	54	24	13	2	3	144	114	16	14	4	2	7
New England.....	1,992	1,277	766	297	126	70	2	16	674	592	42	40	13	6	22
New York.....	3,571	2,349	1,250	793	178	56	13	59	1,188	1,045	76	67	19	3	12
New Jersey.....	1,421	902	528	296	38	20	1	19	503	436	29	38	9	1	6
Pennsylvania.....	2,810	1,871	1,099	434	202	79	5	52	896	790	41	65	12	7	24
Middle Atlantic.....	7,802	5,122	2,877	1,523	418	155	19	130	2,587	2,271	146	170	40	11	42
Ohio.....	2,571	1,799	1,185	434	113	43	2	22	728	639	41	48	16	10	18
Indiana.....	1,746	1,340	873	369	72	13	1	12	392	334	22	36	5	5	4
Illinois.....	2,728	2,021	1,255	624	93	25	1	23	678	559	53	66	14	7	8
Michigan.....	2,074	1,259	875	266	90	19	1	8	769	659	37	73	17	18	11
Wisconsin.....	946	548	406	97	28	5	2	10	369	277	42	50	6	13	10
East North Central.....	10,065	6,967	4,594	1,790	396	105	7	75	2,936	2,468	195	273	58	53	51
Iowa.....	424	206	140	37	14	6	2	7	213	195	5	13	0	1	4
Minnesota.....	553	243	157	31	29	9	5	12	296	238	29	29	6	2	6
Missouri.....	1,468	1,031	671	227	89	23	1	20	414	347	25	42	11	5	7
North Dakota.....	107	46	37	5	2	1	0	1	61	51	4	6	0	0	0
South Dakota.....	81	43	32	3	4	1	0	3	33	33	3	2	0	0	0
Nebraska.....	178	100	78	16	4	1	0	1	77	69	5	3	0	0	1
Kansas.....	301	185	132	32	12	3	0	6	113	95	11	7	0	0	3
West North Central.....	3,112	1,854	1,247	351	154	44	8	50	1,212	1,028	82	102	17	8	21
Delaware.....	97	48	27	7	10	1	0	3	48	43	2	3	0	0	1
Maryland.....	555	354	247	92	9	4	0	2	193	170	10	13	1	0	7
District of Columbia.....	157	91	65	16	4	1	3	2	61	57	3	1	1	0	4
Virginia.....	477	311	249	53	4	1	1	3	153	137	4	12	2	6	5

West Virginia.....	451	390	172	93	47	11	2	5	107	84	8	15	4	9	1
North Carolina.....	516	372	330	36	5	0	0	1	140	125	5	10	0	1	3
South Carolina.....	186	117	95	19	2	1	0	0	69	57	6	8	0	0	0
Georgia.....	544	325	272	39	12	0	2	0	218	200	8	8	0	1	2
Florida.....	939	649	436	130	52	11	0	20	288	263	6	19	0	1	1
South Atlantic.....	3,922	2,597	1,833	485	145	30	8	36	1,275	1,136	52	87	8	18	24
Kentucky.....	644	465	291	117	30	12	3	12	174	149	6	19	2	2	1
Tennessee.....	749	469	359	104	13	7	0	6	249	224	10	15	0	6	1
Alabama.....	515	342	260	38	22	0	0	2	170	136	3	9	0	0	3
Mississippi.....	287	160	129	13	12	0	0	3	71	68	3	2	0	0	4
East South Central.....	2,145	1,456	1,039	292	77	22	3	23	664	595	24	45	2	10	13
Arkansas.....	261	156	132	16	6	1	0	1	105	89	5	11	0	0	2
Louisiana.....	597	356	247	72	37	16	2	14	203	164	0	13	2	2	0
Oklahoma.....	338	222	171	38	8	0	0	4	131	110	4	17	1	1	5
Texas.....	1,459	955	713	199	52	14	1	16	434	347	35	52	3	4	1
West South Central.....	2,655	1,761	1,293	325	103	32	3	35	873	730	50	93	6	7	8
Montana.....	291	118	85	13	7	0	0	7	79	53	16	10	4	0	0
Idaho.....	152	82	52	11	2	0	0	0	71	53	4	10	0	0	0
Wyoming.....	70	35	22	3	2	0	0	0	34	23	4	2	0	0	1
Colorado.....	586	384	254	72	31	8	0	7	103	162	26	14	5	0	0
New Mexico.....	254	175	123	15	20	0	12	7	78	16	8	9	0	0	0
Arizona.....	511	340	225	50	43	8	2	14	177	155	7	6	0	0	0
Utah.....	141	62	47	9	4	2	0	0	77	73	3	1	0	0	0
Nevada.....	289	213	133	57	15	5	1	2	75	61	5	0	0	0	2
Mountain.....	2,297	1,410	951	248	125	29	15	42	780	646	71	63	11	0	6
Washington.....	1,049	640	446	133	38	6	0	17	391	288	70	53	3	1	14
Oregon.....	570	310	149	70	74	14	2	254	177	177	42	35	2	1	35
California.....	5,847	3,864	2,459	857	327	93	26	1,111	1,926	1,509	224	193	28	1	28
Alaska.....	170	87	57	21	7	0	0	81	81	70	5	6	0	0	0
Hawaii.....	293	164	100	36	23	3	1	1	120	108	1	11	1	1	6
Guam.....	4	1	0	1	0	0	0	0	3	3	0	0	0	0	0
Pacific.....	7,933	5,066	3,193	1,118	469	117	29	140	2,775	2,135	342	298	35	5	52
Puerto Rico.....	521	212	151	42	13	0	0	6	295	280	9	6	4	3	2
Virgin Islands.....	19	4	4	0	0	0	0	0	11	10	1	0	0	0	0
Outlying areas.....	540	216	155	42	13	0	0	6	306	290	10	6	13	3	2
Total, all states and areas.....	42,373	27,736	17,978	6,471	2,026	604	94	533	14,982	11,891	1,014	1,177	203	121	241

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 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1974¹

Standard Federal regions 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
Connecticut.....	369	212	116	54	24	13	2	3	144	114	16	14	4	2	7
Maine.....	106	55	47	6	2	0	0	0	49	45	1	3	0	2	0
Massachusetts.....	1,246	851	504	208	81	49	0	9	375	343	16	16	7	2	11
New Hampshire.....	110	58	40	7	7	4	0	0	49	40	7	2	2	0	1
Rhode Island.....	147	97	55	22	12	4	0	4	47	40	2	5	0	0	3
Vermont.....	14	4	4	0	0	0	0	0	10	10	0	0	0	0	0
Region I.....	1,992	1,277	766	297	126	70	2	16	674	592	42	40	13	6	22
Delaware.....	97	48	27	7	10	1	0	3	48	43	2	3	0	0	1
New Jersey.....	1,421	902	528	296	38	20	1	19	503	436	29	38	9	1	6
New York.....	3,571	2,349	1,250	793	178	56	13	59	1,188	1,045	76	67	19	3	12
Puerto Rico.....	521	212	151	42	13	0	0	6	295	280	9	6	9	3	2
Virgin Islands.....	19	4	4	0	0	0	0	0	11	10	1	0	4	0	0
Region II.....	5,629	3,515	1,960	1,138	239	77	14	87	2,045	1,814	117	114	41	7	21
District of Columbia.....	157	91	65	16	4	1	3	2	61	57	3	1	1	0	4
Maryland.....	555	354	247	92	9	4	0	2	193	170	10	13	1	0	7
Pennsylvania.....	2,810	1,871	1,099	434	202	79	5	52	896	790	41	65	12	7	24
Virginia.....	477	311	249	53	4	1	3	153	137	4	12	2	2	6	5
West Virginia.....	451	330	172	93	47	11	2	5	107	84	8	15	4	9	1
Region III.....	4,450	2,957	1,832	688	266	96	11	64	1,410	1,238	66	106	20	22	41
Alabama.....	515	342	260	58	22	0	0	2	170	156	5	9	0	0	3
Florida.....	930	649	436	130	52	11	0	20	288	263	6	19	0	1	1
Georgia.....	544	325	272	39	12	0	2	0	216	200	8	8	0	0	2
Kentucky.....	644	465	291	117	30	12	3	12	174	149	6	19	2	2	1
Mississippi.....	237	160	129	13	12	3	0	3	71	66	3	2	0	2	4
North Carolina.....	516	372	330	36	5	0	0	1	140	125	5	10	0	1	3
South Carolina.....	186	117	95	19	2	1	0	0	69	57	6	6	0	0	0
Tennessee.....	749	489	359	104	13	7	0	6	249	224	10	15	0	6	5

	4,330	2,919	2,172	516	148	34	5	44	1,377	1,240	49	88	2	13	19
Region IV.....															
Illinois.....	2,728	2,021	1,255	624	63	25	1	23	678	559	53	66	14	7	19
Indiana.....	1,746	1,340	873	269	72	13	1	12	392	384	22	36	5	5	8
Michigan.....	2,074	1,259	875	266	90	19	1	8	769	659	37	73	17	18	11
Minnesota.....	2,553	243	157	31	23	5	2	22	236	238	29	29	6	2	6
Ohio.....	2,571	1,799	1,185	434	113	43	2	12	738	639	41	48	16	10	18
Wisconsin.....	946	548	408	97	28	5	2	10	389	277	42	50	6	13	10
Region V.....															
Arkansas.....	10,618	7,210	4,751	1,821	425	114	12	87	3,232	2,706	224	302	04	55	57
Louisiana.....	261	156	132	16	6	1	0	1	105	89	5	11	0	0	0
Mississippi.....	597	388	247	72	37	16	2	14	203	184	6	6	2	2	2
New Mexico.....	254	175	123	18	20	0	0	14	78	62	8	8	1	0	0
Oklahoma.....	358	222	171	38	8	1	0	4	131	110	4	17	3	1	1
Texas.....	1,439	995	713	199	52	14	1	16	434	347	35	52	1	4	5
Region VI.....															
Iowa.....	2,909	1,936	1,366	343	123	32	3	49	951	792	58	101	7	7	8
Kansas.....	424	206	140	37	14	6	2	7	213	195	5	13	0	1	4
Missouri.....	301	185	132	32	12	3	0	6	113	95	11	7	0	0	3
Nebraska.....	1,468	1,031	671	227	89	23	1	20	414	347	25	42	11	5	7
Region VII.....															
Colorado.....	2,371	1,522	1,021	312	119	33	3	34	817	706	46	65	11	6	15
Montana.....	586	384	254	72	31	8	12	7	195	161	20	14	5	0	2
North Dakota.....	201	118	85	13	7	6	0	7	79	53	16	10	4	0	0
South Dakota.....	107	46	37	5	2	1	0	1	61	51	4	6	0	0	0
Utah.....	81	43	32	3	4	1	0	3	38	33	3	2	0	0	0
Wyoming.....	141	62	47	9	4	2	0	0	77	73	3	1	0	0	2
Region VIII.....															
Arizona.....	70	35	22	11	2	0	0	0	34	28	4	2	0	0	1
California.....	1,186	688	477	113	50	18	12	18	484	399	50	35	9	0	5
Hawaii.....	511	340	225	50	43	8	2	12	171	155	7	9	0	0	0
Nevada.....	3,864	2,450	857	327	327	93	26	111	1,926	1,509	224	193	28	1	28
Guam.....	283	164	100	36	23	3	1	0	120	108	1	11	1	2	6
Nevada.....	4	1	0	1	0	0	0	0	3	3	0	0	0	0	0
Region IX.....															
Alaska.....	289	213	133	57	15	5	1	2	75	61	5	9	0	0	1
Idaho.....	6,944	4,582	2,908	1,001	408	109	30	126	2,295	1,836	237	222	29	3	35
Oregon.....	170	87	57	21	7	1	0	1	81	70	5	6	1	0	1
Washington.....	155	83	62	18	3	0	0	0	70	53	8	10	1	0	0
Region X.....															
Total, all Federal regions.....	1,049	640	446	133	98	6	2	10	254	177	42	35	2	1	14
	1,944	1,120	705	242	122	21	2	28	797	598	125	104	7	2	18
	42,373	27,726	17,978	6,471	2,026	604	94	553	14,082	11,891	1,014	1,177	203	121	241

1 See Glossary for definitions of terms.

2 The states are grouped according to the 10 Standard Federal Administrative regions.

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1974¹

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Per- cent of total closed	Per- cent of total method	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed
Total number of cases closed.....	27,016	100.0	-----	17,307	100.0	6,483	100.0	1,994	100.0	622	100.0	90	100.0	520	100.0
Agreement of the parties.....	6,646	24.6	100.0	4,327	25.0	1,250	19.2	887	44.5	4	0.6	17	18.8	161	31.0
Informal settlement.....	6,351	23.5	95.6	4,183	24.2	1,182	18.2	820	41.1	4	0.6	13	14.4	149	28.7
Before issuance of complaint.....	4,526	16.7	68.2	2,982	17.3	764	11.8	649	32.5	(*)	-----	10	11.1	121	23.3
After issuance of complaint, before opening of hearing.....	1,636	6.1	24.6	1,089	6.3	351	5.4	164	8.2	2	0.3	3	3.3	27	5.2
After hearing opened, before issuance of administrative law judge's deci- sion.....	189	0.7	2.8	112	0.6	67	1.0	7	0.4	2	0.3	0	-----	1	0.2
Formal settlement.....	295	1.1	4.4	144	0.8	68	1.0	67	3.4	0	-----	4	4.4	12	2.3
After issuance of complaint, before opening of hearing.....	237	0.9	3.5	112	0.6	60	0.9	53	2.7	0	-----	1	1.1	11	2.1
Stipulated decision.....	68	0.3	1.0	30	0.2	14	0.2	23	1.2	0	-----	0	-----	1	0.2
Consent decree.....	169	0.6	2.5	82	0.4	46	0.7	30	1.5	0	-----	1	1.1	10	1.9
After hearing opened.....	58	0.2	0.9	32	0.2	8	0.1	14	0.7	0	-----	3	3.3	1	0.2
Stipulated decision.....	2	0.0	0.0	1	0.0	1	0.0	0	-----	0	-----	0	-----	0	-----
Consent decree.....	56	0.2	0.9	31	0.2	7	0.1	14	0.7	0	-----	3	3.3	1	0.2
Compliance with.....	1,105	4.1	100.0	872	5.1	167	2.6	44	2.2	5	0.8	7	7.8	10	1.9
Administrative law judge's decision.....	28	0.1	2.5	2	0.0	26	0.4	0	-----	0	-----	0	-----	0	-----
Board decision.....	709	2.6	64.2	570	3.3	91	1.4	30	1.5	3	0.5	6	6.7	9	1.7

Adopting administrative law Judge's decision (no exceptions filed)	168	0.6	15.2	141	0.8	17	0.3	9	0.5	0	0	0	1	0.2
Contested	541	2.0	49.0	429	2.5	74	1.1	21	1.0	3	0.5	6	6.7	1.5
Circuit court of appeals decree	335	1.3	30.3	271	1.6	46	0.7	14	0.7	2	0.3	1	1.1	0.2
Supreme Court action	33	0.1	3.0	29	0.2	4	0.1	0	0	0	0	0	0	0
Withdrawal	9,746	36.1	100.0	6,332	36.6	2,410	37.2	735	36.9	4	0.6	34	37.8	44.4
Before issuance of complaint	9,482	35.1	97.2	6,150	35.7	2,369	36.6	715	35.9	(*)		32	35.6	41.5
After issuance of complaint, before opening of hearing	233	0.9	2.4	161	0.9	39	0.6	17	0.9	3	0.5	2	2.2	2.1
After hearing opened, before administrative law Judge's decision	18	0.1	0.2	8	0.0	2	0.0	3	0.1	1	0.1	0	0	0.8
After administrative law Judge's decision, before Board decision	8	0.0	0.1	8	0.0	0	0	0	0	0	0	0	0	0
After Board or court decision	5	0.0	0.1	5	0.0	0	0	0	0	0	0	0	0	0
Dismissal	8,906	33.0	100.0	5,768	33.3	2,656	41.0	328	16.4	4	0.6	32	35.6	22.7
Before issuance of complaint	8,546	31.7	96.0	5,494	31.7	2,600	40.2	312	15.5	(*)		25	27.8	22.1
After issuance of complaint, before opening of hearing	34	0.1	0.4	27	0.2	6	0.1	1	0.1	0	0	0	0	0
After hearing opened, before administrative law Judge's decision	2	0.0	0.0	1	0.0	0	0	1	0.1	0	0	0	0	0
By administrative law Judge's decision	2	0.0	0.0	1	0.0	1	0.0	0	0	0	0	0	0	0
By Board decision	288	1.1	3.3	212	1.2	48	0.7	14	0.7	4	0.6	7	7.8	0.6
Adopting administrative law Judge's decision (no exceptions filed)	59	0.2	0.7	48	0.3	9	0.1	2	0.1	0	0	0	0	0
Contested	229	0.9	2.6	164	0.9	39	0.6	12	0.6	4	0.6	7	7.8	0.6
By circuit court of appeals decree	30	0.1	0.3	29	0.2	1	0.0	0	0	0	0	0	0	0
By Supreme Court action	4	0.0	0.0	4	0.0	0	0	0	0	0	0	0	0	0
10(k) actions (see table 7A for details of dispositions)	605	2.2								605	97.4			
Otherwise (compliance with order of administrative law Judge or Board not achieved—firm went out of business)	8	0.0		8	0.0	0		0		0		0		0

¹ See table 8 for summary of disposition by stage. See Glossary for definitions of terms.

² CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See table 7A.

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1974¹

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint.....	605	100.0
Agreement of the parties—informal settlement.....	224	37.0
Before 10(k) notice.....	193	31.9
After 10(k) notice, before opening of 10(k) hearing.....	31	5.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	-----
Compliance with Board decision and determination of dispute.....	28	4.6
Withdrawal.....	251	41.5
Before 10(k) notice.....	217	35.9
After 10(k) notice, before opening of 10(k) hearing.....	13	2.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	1	0.2
After Board decision and determination of dispute.....	20	3.3
Dismissal.....	102	16.9
Before 10(k) notice.....	82	13.6
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.....	19	3.1

¹ See Glossary for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1974¹

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.....	27,016	100.0	17,307	100.0	6,483	100.0	1,994	100.0	622	100.0	90	100.0	520	100.0
Before issuance of complaint.....	23,159	85.8	14,626	84.5	5,733	88.5	1,676	84.1	605	97.3	67	74.5	452	86.9
After issuance of complaint, before opening of hearing.....	2,140	7.9	1,389	8.0	456	7.0	235	11.8	5	0.8	6	6.7	49	9.4
After hearing opened, before issuance of administrative law judge's decision.....	268	1.0	154	0.9	77	1.2	25	1.2	3	0.5	3	3.3	6	1.2
After administrative law judge's decision, before issuance of Board decision.....	38	0.1	11	0.1	27	0.4	0	0	0	0	0	0	0	0
After Board order adopting administrative law judge's decision in absence of exceptions.....	227	0.8	189	1.1	26	0.4	11	0.5	0	0	0	0	1	0.2
After Board decision, before circuit court decree.....	779	2.9	602	3.5	113	1.7	33	1.7	7	1.1	13	14.4	11	2.1
After circuit court decree, before Supreme Court action.....	367	1.4	302	1.7	47	0.7	14	0.7	2	0.3	1	1.1	1	0.2
After Supreme Court action.....	38	0.1	34	0.2	4	0.1	0	0	0	0	0	0	0	0

¹ See Glossary for definitions of terms

Table 9:—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1974 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.....	13,542	100.0	11,436	100.0	948	100.0	1,158	100.0	192	100.0
Before issuance of notice of hearing.....	5,373	39.7	4,148	36.3	572	60.3	653	56.4	123	64.0
After issuance of notice before close of hearing.....	5,852	43.2	5,225	45.7	278	29.3	349	30.1	8	4.2
After hearing closed before issuance of decision.....	96	0.7	85	0.7	4	0.4	7	0.6	0	-----
After issuance of regional director's decision.....	2,079	15.4	1,856	16.2	83	8.8	140	12.1	61	31.8
After issuance of Board decision.....	142	1.0	122	1.1	11	1.2	9	0.8	0	-----

¹ See Glossary for definitions of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1974 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.....	13,542	100.0	11,436	100.0	948	100.0	1,158	100.0	192	100.0
Certification issued, total.....	8,984	66.3	8,037	70.3	445	46.9	502	43.4	168	56.2
After:										
Consent election.....	1,314	9.6	1,136	9.9	80	8.4	98	8.5	26	13.5
Before notice of hearing.....	762	5.6	652	5.7	51	5.4	59	5.1	25	13.0
After notice of hearing, before hearing closed.....	546	4.0	479	4.2	29	3.0	38	3.3	1	0.5
After hearing closed, before decision.....	6	0.0	5	0.0	0	0.0	1	0.1	0	0.0
Stipulated election.....	6,020	44.5	5,445	47.6	272	28.7	303	26.2	23	12.0
Before notice of hearing.....	2,227	16.4	1,941	17.0	145	15.3	141	12.2	21	11.0
After notice of hearing, before hearing closed.....	3,770	27.9	3,482	30.4	126	13.3	162	14.0	2	1.0
After hearing closed, before decision.....	23	0.2	22	0.2	1	0.1	0	0.0	0	0.0
Expedited election.....	30	0.2	2	0.0	28	3.0	0	0.0	0	0.0
Regional director-directed election.....	1,559	11.5	1,403	12.4	59	6.2	97	8.4	59	30.7
Board-directed election.....	61	0.5	51	0.4	6	0.6	4	0.3	0	0.0
By withdrawal, total.....	3,423	25.3	2,689	23.5	344	36.3	390	33.7	70	36.5
Before notice of hearing.....	1,799	13.2	1,297	11.3	237	25.0	265	22.9	64	33.4
After notice of hearing, before hearing closed.....	1,379	10.2	1,174	10.3	97	10.3	108	9.3	5	2.6
After hearing closed, before decision.....	53	0.4	47	0.4	3	0.3	3	0.3	0	0.0
After regional director's decision and direction of election.....	170	1.3	149	1.3	7	0.7	14	1.2	1	0.5
After Board decision and direction of election.....	22	0.2	22	0.2	0	0.0	0	0.0	0	0.0
By dismissal, total.....	1,135	8.4	710	6.2	159	16.8	266	22.9	14	7.3
Before notice of hearing.....	555	4.1	256	2.2	111	11.8	188	16.2	13	6.8
After notice of hearing, before hearing closed.....	157	1.2	90	0.8	26	2.7	41	3.5	0	0.0
After hearing closed, before decision.....	14	0.1	11	0.1	0	0.0	3	0.3	0	0.0
By regional director's decision.....	350	2.6	304	2.7	17	1.8	29	2.5	1	0.5
By Board decision.....	59	0.4	49	0.4	5	0.5	5	0.4	0	0.0

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 1974

	AC	UC
Total, all.....	116	234
Certification amended or unit clarified.....	48	28
Before hearing.....	44	6
By regional director's decision.....	44	6
By Board decision.....	0	0
After hearing.....	4	22
By regional director's decision.....	2	19
By Board decision.....	2	3
Dismissed.....	21	99
Before hearing.....	13	43
By regional director's decision.....	13	43
By Board decision.....	0	0
After hearing.....	8	56
By regional director's decision.....	6	48
By Board decision.....	2	8
Withdrawn.....	47	107
Before hearing.....	47	106
After hearing.....	0	1

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1974¹

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.....	8,976	1,315	5,080	45	1,604	32
Eligible voters.....	553,676	37,554	396,489	5,095	113,657	881
Valid votes.....	489,209	32,434	353,729	4,436	97,848	762
RC cases						
Elections.....	7,994	1,119	5,445	38	1,388	4
Eligible voters.....	506,047	31,745	368,259	4,586	101,309	148
Valid votes.....	449,758	27,692	329,603	3,995	88,372	136
RM cases						
Elections.....	374	69	222	4	51	28
Eligible voters.....	13,587	1,725	9,065	107	1,957	733
Valid votes.....	11,387	1,503	7,632	89	1,537	626
RD cases						
Elections.....	490	97	293	3	97	0
Eligible voters.....	24,697	2,487	18,128	402	3,680	0
Valid votes.....	21,269	2,053	15,661	392	3,163	0
UD cases						
Elections.....	118	30	20	0	68	-----
Eligible voters.....	9,345	1,597	1,037	0	6,711	-----
Valid votes.....	6,795	1,186	833	0	4,776	-----

¹ See Glossary for definitions of terms

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1974

Type of Election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification ¹	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types.....	9, 112	81	173	8, 858	8, 231	75	162	7, 994	383	5	4	374	498	1	7	490
Rerun required.....			133				123				3				7	
Runoff required.....			40				39				1				0	
Consent elections.....	1, 301	8	8	1, 285	1, 132	6	7	1, 119	71	2	0	69	98	0	1	97
Rerun required.....			6				5				0				1	
Runoff required.....			2				2				0				0	
Stipulated elections.....	6, 133	49	124	5, 960	5, 609	48	116	5, 445	225	0	3	222	299	1	5	293
Rerun required.....			97				90				2				5	
Runoff required.....			27				26				1				0	
Regional director-directed.....	1, 599	23	40	1, 536	1, 447	21	38	1, 388	54	2	1	51	98	0	1	97
Rerun required.....			30				28				1				1	
Runoff required.....			10				10				0				0	
Board-directed.....	47	1	1	45	39	0	1	38	5	1	0	4	3	0	0	3
Rerun required.....			0				0				0				0	
Runoff required.....			1				1				0				0	
Expedited—See 8(b)(7)(C)....	32	0	0	32	4	0	0	4	28	0	0	28	0	0	0	0
Rerun required.....			0				0				0				0	
Runoff required.....			0				0				0				0	

¹ The total of representation elections resulting in certification excludes elections held in UD cases, which are included in the totals in table 11

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled on in Cases Closed, Fiscal Year 1974

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections ¹		Total challenges ²	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections.....	9,112	698	7.7	379	4.2	195	2.1	893	9.8	574	6.3
By type of case.....											
In RC cases.....	8,231	635	7.7	347	4.2	172	2.1	807	9.8	519	6.3
In RM cases.....	383	38	9.9	18	4.7	14	3.7	52	13.6	32	8.4
In RD cases.....	498	25	5.0	14	2.8	9	1.8	34	6.8	23	4.6
By type of election.....											
Consent elections.....	1,301	47	3.7	24	1.9	11	0.8	58	4.5	35	2.7
Stipulated elections.....	6,133	455	7.4	250	4.2	145	2.4	600	9.8	404	6.6
Expedited elections.....	32	6	18.8	0		0		6	18.8	0	
Regional director-directed elections.....	1,599	189	11.8	89	5.6	37	2.3	226	14.1	126	7.9
Board-directed elections.....	47	1	2.1	7	14.8	2	4.3	3	6.4	9	19.1

¹ Number of elections in which objections were ruled on, regardless of number of allegations in each election

² Number of elections in which challenges were ruled on, regardless of individual ballots challenged in each election

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1974¹

	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 representation elections.....	1,111	100 0	441	39 7	640	57 6	30	2 7
By type of case								
RC cases.....	1,011	100 0	424	41 9	563	55 7	24	2 4
RM cases.....	62	100 0	10	16 1	47	75 8	5	8 1
RD cases.....	38	100 0	7	18 4	30	79 0	1	2 6
By type of election								
Consent elections.....	72	100 0	31	43 1	39	54 1	2	2 8
Stipulated elections.....	757	100 0	278	36 7	461	60 9	18	2 4
Expedited elections.....	7	100 0	0		7	100 0	0	
Regional director-directed elections.....	271	100 0	131	48 3	130	48 0	10	3 7
Board-directed elections.....	4	100 0	1	25 0	3	75 0	0	

¹ See Glossary for definitions of terms

² Objections filed by more than one party in the same cases are counted as one

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1974¹

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained ²	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections.....	1,111	218	893	711	79 6	182	20 4
By type of case							
RC cases.....	1,011	204	807	644	79 8	163	20 2
RM cases.....	62	10	52	41	78 8	11	21 2
RD cases.....	38	4	34	26	76 5	8	23 5
By type of election							
Consent elections.....	72	14	58	46	79 3	12	20 7
Stipulated elections.....	757	157	600	473	78 8	127	21 2
Expedited elections.....	7	1	6	1	66 7	2	33 3
Regional director-directed elections.....	271	45	226	185	81 9	41	18 1
Board-directed elections.....	4	1	3	3	100 0	0	

¹ See Glossary for definitions of terms

² See table 11E for rerun elections held after objections were sustained. In 49 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1974¹

	Total rerun elections ²		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections.....	130	100 0	40	30 8	90	69 2	56	43 1
By type of case								
RC cases.....	120	100 0	34	28 3	86	71 7	51	42 5
RM cases.....	3	100 0	1	33 3	2	66 7	2	66 7
RD cases.....	7	100 0	5	71 4	2	28 6	3	42 9
By type of election								
Consent elections.....	6	100 0	3	50 0	3	50 0	3	50 0
Stipulated elections.....	96	100 0	29	30 2	67	69 8	44	45 8
Expedited elections.....	0		0		0		0	
Regional director-directed elections.....	28	100 0	8	28 6	20	71 4	9	32 1
Board-directed elections.....	0		0		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 3 rerun elections which were conducted and subsequently set aside pursuant to sustained objections. The three invalid rerun elections were followed by valid rerun elections which are included in the table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1974

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	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total.....	118	69	58.5	49	41.5	9,345	6,261	67.0	3,084	33.0	6,795	72.7	4,698	50.3
AFL-CIO unions.....	67	37	55.2	30	44.8	5,196	3,129	60.2	2,067	39.8	3,855	74.2	2,364	45.5
Teamsters.....	40	25	62.5	15	37.5	1,609	947	58.9	662	41.1	1,191	74.0	844	52.5
Other national unions.....	3	1	33.3	2	66.7	380	256	67.4	124	32.6	300	78.9	189	49.7
Other local unions.....	8	6	75.0	2	25.0	2,160	1,929	89.3	231	10.7	1,449	67.1	1,301	60.2

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 1974¹

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															
AFL-CIO.....	4,887	47.1	2,302	2,302	-----	-----	-----	2,585	324,321	106,155	106,155	-----	-----	-----	218,166
Teamsters.....	2,047	48.2	1,276	-----	1,276	-----	-----	1,371	85,011	30,356	-----	30,356	-----	-----	54,655
Other national unions.....	481	51.6	248	-----	-----	248	-----	233	43,801	14,147	-----	-----	14,147	-----	29,654
Other local unions.....	244	57.4	140	-----	-----	-----	140	104	14,674	4,456	-----	-----	-----	4,456	10,218
1-union elections.....	8,259	48.0	3,966	2,302	1,276	248	140	4,293	467,807	155,114	106,155	30,356	14,147	4,456	312,693
AFL-CIO v. AFL-CIO.....	145	67.6	98	98	-----	-----	-----	47	17,224	6,280	6,280	-----	-----	-----	10,944
AFL-CIO v. Teamsters.....	194	74.2	144	66	78	-----	-----	50	22,135	12,674	5,798	6,876	-----	-----	9,461
AFL-CIO v. national.....	41	75.6	31	15	-----	16	-----	10	4,580	2,738	1,237	-----	1,501	-----	1,842
AFL-CIO v. local.....	98	83.7	82	43	-----	-----	39	16	15,717	13,100	7,517	-----	-----	5,583	2,617
Teamsters v. national.....	15	66.7	10	-----	4	6	-----	5	2,617	1,442	-----	636	806	-----	1,175
Teamsters v. local.....	46	91.3	42	-----	23	-----	19	4	4,322	3,731	-----	1,961	-----	1,770	591
Teamsters v. Teamsters.....	4	100.0	4	-----	4	-----	-----	0	373	373	-----	373	-----	-----	0
National v. local.....	13	92.3	12	-----	-----	5	7	1	1,115	1,063	-----	-----	669	394	52
National v. national.....	4	100.0	4	-----	-----	4	-----	0	382	382	-----	-----	382	-----	0
Local v. local.....	17	82.4	14	-----	-----	-----	14	3	2,543	1,603	-----	-----	-----	1,603	940
2-union elections.....	577	76.4	441	222	109	31	79	136	71,008	43,386	20,832	9,846	3,358	9,350	27,622
AFL-CIO v. AFL-CIO v. AFL-CIO.....	3	33.3	1	1	-----	-----	-----	2	239	53	53	-----	-----	-----	186
AFL-CIO v. AFL-CIO v. Teamsters.....	1	100.0	1	-----	0	-----	-----	0	61	61	61	0	-----	-----	0
AFL-CIO v. national.....	2	50.0	1	0	-----	1	-----	1	581	206	0	-----	206	-----	375
AFL-CIO v. local.....	3	100.0	3	2	-----	-----	1	0	160	160	153	-----	-----	7	0
AFL-CIO v. Teamsters v. Teamsters.....	1	100.0	1	1	0	-----	-----	0	36	36	36	0	-----	-----	0
AFL-CIO v. Teamsters v. national.....	1	0.0	0	0	0	-----	0	1	190	0	0	0	0	-----	190
AFL-CIO v. Teamsters v. local.....	4	100.0	4	2	2	-----	0	0	360	360	324	36	-----	0	0
AFL-CIO v. national v. local.....	1	100.0	1	0	-----	1	0	0	2,075	2,075	0	-----	2,075	0	0
AFL-CIO v. local v. local.....	3	100.0	3	2	-----	-----	1	0	484	484	464	-----	-----	20	0

	2	100.0	2	0	0	1	0	105	105	0	0	105	0
	1	100.0	1	0	0	1	0	1,225	1,225	0	0	1,225	0
	22	81.8	18	9	2	5	4	5,516	4,765	36	2,281	1,357	751
Total representation elections.	8,858	50.0	4,425	2,533	1,387	224	4,433	544,331	203,265	128,078	40,238	15,163	341,066
B. Elections in RC cases													
AFL-CIO	4,387	48.9	2,151	2,151	1,193	286	2,246	301,226	96,295	96,295	26,382	13,730	204,931
Teamsters	2,366	50.4	1,193	1,193	72	47	1,173	75,887	26,382	26,382	13,730	4,200	49,505
Other national unions	456	51.8	236	236	13	10	220	42,972	13,730	13,730	4,200	29,242	9,697
Other local unions	222	60.4	134	134	3	15	88	13,897	4,200	4,200	1,091	4,200	9,697
1-union elections.	7,441	49.9	3,714	2,151	1,193	286	3,727	483,982	140,607	96,295	26,382	13,730	293,375
AFL-CIO v AFL-CIO	138	65.9	91	91	72	47	16,897	5,953	5,953	5,953	1,451	1,451	10,944
AFL-CIO v Teamsters	175	72.6	127	55	14	48	20,648	11,286	5,318	5,968	1,451	5,518	9,362
AFL-CIO v National	37	73.0	27	14	40	13	4,435	2,593	1,142	1,142	515	791	1,842
AFL-CIO v local	92	83.7	77	40	3	37	13,989	11,391	5,873	5,873	1,771	1,770	2,598
Teamsters v National	12	66.7	8	0	3	4	2,451	1,306	515	515	0	0	1,145
Teamsters v local	45	91.1	41	22	3	19	4,132	3,541	226	226	669	364	591
Teamsters v National v local	3	100.0	3	3	0	1	1,085	1,033	0	0	351	351	52
National v local	12	91.7	11	3	5	6	1,351	351	0	0	351	351	52
National v National	3	100.0	3	3	0	0	2,493	1,553	0	0	1,553	1,553	940
Local v local	16	81.3	13	13	3	3	0	0	0	0	0	0	0
2-union elections.	533	75.2	401	300	100	26	132	66,707	30,233	18,286	8,480	3,262	27,474
AFL-CIO v AFL-CIO v AFL-CIO	3	33.3	1	1	0	2	230	53	53	53	0	0	186
AFL-CIO v AFL-CIO v Teamsters	1	100.0	1	1	0	0	61	61	61	0	0	236	0
AFL-CIO v AFL-CIO v National	2	50.0	1	0	1	1	581	0	0	0	0	0	375
AFL-CIO v AFL-CIO v local	2	100.0	2	1	1	1	0	25	25	18	7	7	0
AFL-CIO v Teamsters v Teamsters	1	100.0	1	1	0	0	36	36	36	0	0	0	0
AFL-CIO v Teamsters v National	1	0.0	0	0	0	0	100	0	0	0	0	0	190
AFL-CIO v Teamsters v local	3	100.0	3	1	1	0	337	337	324	13	0	0	0
AFL-CIO v National v National	1	100.0	1	0	0	0	2,075	2,075	0	0	2,075	0	0
AFL-CIO v National v local	3	100.0	3	2	2	1	0	484	464	0	0	28	0
AFL-CIO v local v local	2	100.0	2	0	0	0	0	164	164	0	0	103	0
Teamsters v local v local	1	100.0	1	0	0	2	0	1,225	1,225	0	0	1,225	0
National v local v local	1	100.0	1	1	2	5	0	5,358	4,607	956	13	2,281	1,957
(3 or more)-union elections.	20	80.0	16	8	1	2	0	5,358	4,607	956	13	2,281	1,957
Total RC elections.	7,994	51.7	4,131	2,359	1,294	264	3,863	506,047	184,447	115,537	34,875	19,273	321,600

Footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1974¹—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															
AFL-CIO.....	207	34 8	72	72				135	9,175	3,221	3,221				5,954
Teamsters.....	131	34.4	45		45			86	2,992	1,357		1,357			1,635
Other national unions.....	6	66.7	4			4		2	82	41			41		41
Other local unions.....	12	33 3	4				4	8	404	68				68	336
1-union elections.....	356	35 1	125	72	45	4	4	231	12,653	4,687	3,221	1,357	41	68	7,966
AFL-CIO v. AFL-CIO.....	6	100 0	6	6				0	306	306	306				0
AFL-CIO v. Teamsters.....	3	100 0	3	3	0			0	20	20	20	0			0
AFL-CIO v. national.....	2	100 0	2	0		0		0	17	17	0		17		0
AFL-CIO v. local.....	2	100 0	2	1		1	0	0	171	171	150			21	0
Teamsters v. national.....	2	50 0	1		0	1		1	45	15		0	15		30
Teamsters v. local.....	1	100 0	1		1		0	0	190	190		190		0	0
Local v. local.....	1	100 0	1				1	0	50	50				50	0
2-union elections.....	17	94 1	16	10	1	3	2	1	799	769	476	190	32	71	30
AFL-CIO v. AFL-CIO v. local.....	1	100 0	1	1			0	0	135	135	135			0	0
3(or more)-union elections.....	1	100 0	1	1	0	0	0	0	135	135	135	0	0	0	0
Total RM elections.....	374	38.0	142	83	46	7	6	232	13,587	5,591	3,832	1,547	73	139	7,996

D. Elections in RD cases

AFL-CIO.....	283	27 9	79	79				204	13,920	6,639	6,639				7,281
Teamsters.....	150	25.3	38		38			112	6,132	2,617		2,617			3,515
Other national unions.....	19	42 1	8			8		11	747	376			376		371
Other local unions.....	10	20 0	2				2	8	373	188				188	185
1-union elections.....	462	27 5	127	79	38	8	2	335	21,172	9,820	6,639	2,617	376	188	11,352
AFL-CIO v AFL-CIO.....	1	100 0	1	1				0	21	21	21				0
AFL-CIO v Teamsters.....	16	87 5	14	8	6			2	1,467	1,368	460	908			99
AFL-CIO v national.....	2	100 0	2	1		1		0	128	128	95		33		0
AFL-CIO v local.....	4	75 0	3	2			1	1	1,557	1,538	1,494			44	19
Teamsters v national.....	1	100 0	1		1	0		0	121	121		121	0		0
Teamsters v Teamsters.....	1	100 0	1		1			0	147	147		147			0
National v local.....	1	100 0	1			0	1	0	30	30			0	30	0
National v national.....	1	100 0	1			1		0	31	31			31		0
2-union elections.....	27	88 9	24	12	8	2	2	3	3,502	3,384	2,070	1,176	64	74	118
AFL-CIO v Teamsters v local.....	1	100 0	1	0	1		0	0	23	23	0	23		0	0
3(or more)-union elections.....	1	100 0	1	0	1	0	0	0	23	23	0	23	0	0	0
Total RD elections.....	490	31 0	152	91	47	10	4	338	24,697	13,227	8,709	3,816	440	282	11,470

¹ See Glossary for definitions 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 1 election in a single case, or several cases may have been involved in 1 election unit

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1974¹

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost					Total votes for no union	
		Votes for unions					Votes for unions						
		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													
AFL-CIO.....	288,075	61,561	61,561				31,731	66,445	66,445				128,338
Teamsters.....	76,136	18,669		18,669			8,311	16,729		16,729			32,427
Other national unions.....	39,427	8,016			8,016		4,216	9,909			9,909		17,286
Other local unions.....	12,634	2,739				2,739	920	3,078				3,078	5,897
1-union elections.....	416,272	90,985	61,561	18,669	8,016	2,739	45,178	96,161	66,445	16,729	9,909	3,078	183,948
AFL-CIO v. AFL-CIO.....	14,866	4,496	4,496				742	3,380	3,380				6,248
AFL-CIO v. Teamsters.....	19,311	10,250	4,881	5,369			905	3,138	1,561	1,577			5,018
AFL-CIO v. national.....	4,238	2,362	940		1,422		143	707	306		401		1,026
AFL-CIO v. local.....	13,773	11,048	6,186			4,862	462	947	579			368	1,316
Teamsters v. national.....	1,920	1,071		371	700		149	106		35	71		594
Teamsters v. local.....	3,458	2,838		1,536		1,302	142	190		58		132	288
Teamsters v. Teamsters.....	322	253		253			69	0		0			0
National v. local.....	1,006	969			442	527	2	13			5	8	22
National v. national.....	308	303			303		5	0			0		0
Local v. local.....	1,861	1,263				1,263	55	221				221	322
2-union elections.....	61,063	34,853	16,503	7,529	2,867	7,954	2,674	8,702	5,826	1,670	477	729	14,834
AFL-CIO v. AFL-CIO v. AFL-CIO.....	218	30	30				22	65	65				101
AFL-CIO v. AFL-CIO v. Teamsters.....	55	43	43	0			12	0	C	0			0
AFL-CIO v. AFL-CIO v. national.....	553	184	59		125		11	166	166		0		192
AFL-CIO v. AFL-CIO v. local.....	149	145	101			44	4	0	0			0	0
AFL-CIO v. Teamsters v. Teamsters.....	35	32	30	2			3	0	0	0			0
AFL-CIO v. Teamsters v. national.....	164	0	0	0	0		0	65	29	36	0		99
AFL-CIO v. Teamsters v. local.....	341	341	179	34		128	0	0	0	0			0
AFL-CIO v. national v. local.....	1,885	1,875	218		991	666	10	0	0		0		0
AFL-CIO v. local v. local.....	437	432	313			119	5	0	0				0
Teamsters v. local v. local.....	87	87		13		74	0	0	0	0			0
National v. local v. local.....	1,155	1,130			110	1,020	25	0		0	0		0
(3 or more) union elections.....	5,079	4,299	973	49	1,226	2,051	92	296	260	36	0	0	392
Total representation elections.....	482,414	130,137	79,037	26,247	12,109	12,744	47,944	105,159	72,531	18,435	10,386	3,807	199,174

B. Elections in RC cases

AFL-CIO.....	268,503	56,008	56,008	16,275	7,804	2,586	28,761	63,407	63,407	15,563	9,786	2,987	120,327
Teamsters.....	68,405	16,275	16,275	4,802	1,318	737	7,367	15,563	3,380	1,566	401	368	29,200
Other national unions.....	38,664	7,804	7,804	284	665	147	4,054	9,786	3,060	32	69	132	17,020
Other local unions.....	11,955	2,586	2,586	1,483	439	66	862	2,987	573	0	5	8	5,520
1-union elections.....	387,527	82,673	56,008	16,275	7,804	2,586	41,044	91,743	63,407	15,563	9,786	2,987	172,067
AFL-CIO v AFL-CIO.....	14,581	4,216	4,216	4,802	1,318	737	890	3,380	3,380	1,566	401	368	6,248
AFL-CIO v Teamsters.....	17,964	9,000	4,198	4,802	1,318	737	890	3,380	1,560	1,566	401	368	4,948
AFL-CIO v national.....	4,104	2,229	911	284	665	147	424	707	306	32	69	132	1,026
AFL-CIO v local.....	12,197	9,528	5,145	1,483	439	66	147	101	573	0	5	8	1,304
Teamsters v national.....	1,772	949	284	126	279	5	142	190	0	0	0	0	575
Teamsters v local.....	3,399	2,779	1,483	1,26	439	66	142	190	0	0	0	0	288
Teamsters v Teamsters.....	192	126	126	0	0	0	2	13	0	0	0	0	0
National v local.....	980	943	179	0	439	66	2	13	0	0	0	0	22
National v national.....	284	279	279	0	279	5	53	0	0	0	0	0	0
Local v local.....	1,827	1,231	1,231	0	1,231	53	53	221	221	0	0	221	322
2-union elections.....	57,300	31,280	14,470	6,695	2,701	7,414	2,608	8,679	5,819	1,656	475	729	14,733
AFL-CIO v AFL-CIO v AFL-CIO.....	218	30	30	0	125	4	22	65	65	0	0	0	101
AFL-CIO v AFL-CIO v Teamsters.....	43	43	43	0	0	0	12	0	0	0	0	0	0
AFL-CIO v AFL-CIO v national.....	553	184	59	0	125	4	11	166	166	0	0	0	102
AFL-CIO v AFL-CIO v local.....	24	20	16	2	0	0	3	0	0	0	0	0	0
AFL-CIO v Teamsters v Teamsters.....	164	32	30	0	0	0	4	0	0	0	0	0	0
AFL-CIO v Teamsters v national.....	318	918	179	11	0	128	0	65	29	36	0	0	99
AFL-CIO v Teamsters v local.....	1,838	1,875	218	11	991	666	10	0	0	0	0	0	0
AFL-CIO v national v local.....	1,835	1,875	218	11	991	666	10	0	0	0	0	0	0
AFL-CIO v local v local.....	487	482	313	13	110	174	5	0	0	0	0	0	0
Teamsters v local v local.....	87	87	87	13	110	174	25	0	0	0	0	0	0
National v local v local.....	1,155	1,130	888	26	1,226	2,011	92	296	260	36	0	0	392
(3 or more) union elections.....	4,931	4,151	888	26	1,226	2,011	92	296	260	36	0	0	392
Total RC elections.....	449,758	118,104	71,366	22,990	11,731	12,011	43,744	100,718	69,486	17,253	10,281	3,716	187,192

See footnote at end of table.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1974 ¹—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Total votes for no union	Valid votes cast in elections lost					Total votes for no union
		Votes for unions						Votes for unions					
		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													
AFL-CIO.....	7,637	1,831	1,831				961	1,215	1,215				3,630
Teamsters.....	2,598	859		859			338	367		367			1,034
Other national unions.....	75	27			27		13	6			6		29
Other local unions.....	376	51				51	11	52				52	262
1-union elections.....	10,686	2,768	1,831	859	27	51	1,323	1,640	1,215	367	6	52	4,955
AFL-CIO v. AFL-CIO.....	267	264	264				3	0	0				0
AFL-CIO v. Teamsters.....	19	19	18	1			0	0	0	0			0
AFL-CIO v. national.....	17	17	4		13		0	0	0		0		0
AFL-CIO v. local.....	141	140	96			44	1	0	0			0	0
Teamsters v. national.....	39	15		5	10		0	5		3	2		19
Teamsters v. local.....	59	59		53			0	0		0		0	0
Local v. local.....	34	32				32	2	0		0		0	0
2-union elections.....	576	546	382	59	23	82	6	5	0	3	2	0	19
AFL-CIO v. AFL-CIO v. local.....	125	125	85			40	0	0	0			0	0
3 (or more) union elections.....	125	125	85	0	0	40	0	0	0	0	0	0	0
Total RM elections.....	11,387	3,439	2,298	918	50	173	1,329	1,645	1,215	370	8	52	4,974

D. Elections in RD cases

AFL-CIO.....	11,935	3,722	3,722	1,535	185	102	2,009	1,823	1,823	799	117	39	4,381
Teamsters.....	5,133	1,535	1,535	185	102	606	799	799	799	117	39	2,193	
Other national unions.....	688	185	185	102	47	149	117	117	117	39	39	237	
Other local unions.....	303	102	102	47	39	47	39	39	39	117	39	115	
1-union elections.....	18,059	5,544	3,722	1,535	185	102	2,811	2,778	1,823	799	117	39	6,926
AFL-CIO v. AFL-CIO.....	18	16	16	16	16	2	2	0	0	0	0	0	0
AFL-CIO v. Teamsters.....	1,328	1,231	665	566	91	15	15	12	1	11	0	0	70
AFL-CIO v. national.....	117	116	25	25	435	1	1	0	0	0	0	0	0
AFL-CIO v. local.....	1,435	1,380	945	82	25	37	37	6	6	0	0	0	12
Teamsters v. national.....	109	107	107	82	25	2	2	0	0	0	0	0	0
Teamsters v. Teamsters.....	130	127	127	127	3	3	3	0	0	0	0	0	0
National v. local.....	26	26	26	127	3	0	0	0	0	0	0	0	0
National v. national.....	24	24	24	24	24	0	0	0	0	0	0	0	0
2-union elections.....	3,187	3,027	1,651	775	143	458	60	18	7	11	0	0	82
AFL-CIO v. Teamsters v. local.....	23	23	0	23	0	0	0	0	0	0	0	0	0
3-(or more) union elections.....	23	23	0	23	0	0	0	0	0	0	0	0	0
Total RD elections.....	21,269	8,594	5,373	2,833	328	560	2,871	2,796	1,830	810	117	39	7,008

¹ See Glossary for definitions of terms

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1974

Division and State †	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine.....	36	15	8	5	0	2	21	2,099	1,888	773	555	107	83	28	1,115	443
New Hampshire.....	35	19	11	7	0	1	16	1,817	1,640	833	288	108	418	19	807	458
Vermont.....	7	5	5	0	0	0	2	115	98	63	53	10	0	0	35	88
Massachusetts.....	257	134	67	50	9	8	123	11,744	10,575	5,171	3,185	1,116	308	562	5,404	3,757
Rhode Island.....	32	17	7	9	0	1	15	2,319	2,115	953	706	142	54	51	1,162	423
Connecticut.....	90	46	26	17	3	0	44	5,493	4,950	2,225	1,688	253	276	8	2,725	2,418
New England.....	457	236	124	88	12	12	221	23,587	21,266	10,018	6,475	1,736	1,139	668	11,248	7,587
New York.....	518	265	163	63	19	20	253	25,813	22,430	11,444	7,112	1,710	630	1,992	10,986	10,666
New Jersey.....	307	164	76	56	8	24	143	17,521	14,567	8,630	4,764	2,753	191	922	5,937	9,834
Pennsylvania.....	550	267	135	106	13	13	283	33,190	29,846	16,851	8,683	3,589	2,473	2,106	12,995	15,739
Middle Atlantic.....	1,375	696	374	225	40	57	679	76,524	66,843	36,925	20,559	8,052	3,294	5,020	29,918	36,239
Ohio.....	522	253	143	79	23	8	269	29,695	26,852	12,526	6,607	2,150	2,825	944	14,326	10,494
Indiana.....	275	129	65	50	12	2	146	18,787	16,683	7,504	4,411	1,006	1,702	385	9,179	5,432
Illinois.....	421	192	108	59	13	12	229	23,163	20,318	9,743	5,902	1,890	1,525	926	10,575	7,807
Michigan.....	528	277	125	75	71	6	251	22,113	19,381	9,402	4,636	1,389	2,703	374	9,979	7,988
Wisconsin.....	226	133	82	41	5	5	93	11,437	10,428	5,261	3,542	564	865	290	5,167	4,881
East North Central.....	1,972	984	523	304	124	33	988	105,195	93,662	44,436	25,098	6,799	9,620	2,919	40,226	36,602
Iowa.....	137	72	45	21	4	2	65	8,314	7,544	4,358	3,029	454	428	447	3,186	4,306
Minnesota.....	208	109	58	47	4	0	99	10,065	8,983	4,300	2,535	1,523	194	48	4,683	3,824
Missouri.....	273	147	78	62	5	2	126	13,947	12,683	6,286	3,880	2,109	63	234	6,397	5,704
North Dakota.....	34	14	7	5	0	2	20	1,167	938	467	288	141	0	38	471	373
South Dakota.....	22	10	6	4	0	0	12	726	659	326	272	54	0	0	333	295
Nebraska.....	66	34	24	9	0	1	32	2,253	1,984	1,024	866	82	0	76	960	1,519
Kansas.....	80	45	30	12	1	2	35	5,576	4,988	2,277	1,866	349	13	49	2,711	1,751
West North Central.....	820	431	248	160	14	9	389	42,040	37,779	19,038	12,736	4,712	698	892	18,741	17,772
Delaware.....	17	8	5	2	0	1	9	1,126	998	577	336	184	0	57	421	772
Maryland.....	145	64	34	27	1	2	81	11,514	9,671	3,902	2,995	805	25	77	5,769	2,610
District of Columbia.....	35	26	18	4	0	2	9	1,812	1,317	950	586	205	46	113	367	1,491
Virginia.....	95	49	36	9	1	3	46	10,265	9,318	4,597	4,068	201	211	87	4,721	3,679
West Virginia.....	72	35	20	12	2	1	37	5,636	5,100	2,428	2,100	174	146	8	2,672	1,670
North Carolina.....	116	50	30	17	0	3	67	29,637	26,235	9,547	8,968	372	23	179	16,688	2,880
South Carolina.....	40	16	16	0	0	0	24	8,250	7,354	2,973	2,701	249	0	0	4,381	3,823
Georgia.....	162	61	37	19	3	2	101	15,428	13,708	5,981	4,435	1,176	165	205	7,727	3,758
Florida.....	193	87	60	26	0	1	106	11,806	10,428	5,111	3,505	1,554	14	38	5,317	5,399
South Atlantic.....	875	396	256	116	9	15	479	95,342	84,129	36,066	29,752	4,920	630	764	48,063	22,690

Kentucky.....	129	61	35	18	7	1	68	12,785	11,832	5,720	3,226	1,327	955	212	6,112	5,702
Tennessee.....	193	86	38	41	3	4	107	22,901	20,801	10,775	5,264	4,470	836	205	10,026	8,926
Alabama.....	126	57	41	13	3	0	69	9,881	9,142	4,338	3,778	399	161	0	4,804	3,961
Mississippi.....	61	28	22	6	0	0	33	8,819	7,980	3,803	3,689	114	0	0	4,177	3,570
East South Central.....	509	232	136	78	13	5	277	54,386	49,755	24,636	15,957	6,310	1,952	417	25,119	22,159
Arkansas.....	74	41	32	8	1	0	33	8,876	8,009	3,909	3,240	367	301	1	4,100	3,320
Louisiana.....	108	47	26	15	3	3	61	7,557	6,817	3,492	2,222	522	666	82	3,325	3,246
Oklahoma.....	101	45	33	9	2	1	56	8,131	7,502	3,506	2,253	603	638	12	3,996	3,592
Texas.....	316	157	117	26	10	4	159	24,660	21,582	10,495	8,103	1,349	830	213	11,087	10,037
West South Central.....	599	290	208	58	16	8	309	49,224	43,910	21,402	15,818	2,841	2,435	808	22,508	20,195
Montana.....	48	27	15	10	0	2	21	1,099	936	524	369	131	0	24	412	521
Idaho.....	39	21	18	3	0	0	18	1,304	1,105	527	336	191	0	0	578	346
Wyoming.....	17	9	8	0	1	0	8	934	807	429	341	48	40	0	378	265
Colorado.....	126	67	48	14	3	2	59	7,044	6,148	3,066	2,612	204	116	74	3,082	3,419
New Mexico.....	58	25	20	4	1	0	33	2,853	2,566	1,116	988	118	10	0	1,450	676
Arizona.....	111	61	45	15	1	0	50	3,990	3,526	1,933	1,504	268	133	28	1,593	2,207
Utah.....	52	26	16	9	0	1	26	2,357	2,089	953	522	372	0	59	1,136	944
Nevada.....	40	24	14	8	1	1	16	721	605	327	221	87	14	5	278	397
Mountain.....	491	260	184	63	7	6	231	20,302	17,782	8,875	6,893	1,479	313	190	8,907	8,775
Washington.....	226	123	73	44	2	4	103	6,211	5,375	2,792	1,733	892	95	72	2,583	3,416
Oregon.....	159	83	56	22	2	3	78	6,076	5,280	2,625	1,709	631	134	151	2,655	2,341
California.....	1,077	531	290	195	33	13	548	43,535	38,006	18,371	10,908	5,271	1,493	699	19,635	16,878
Alaska.....	34	18	7	6	1	4	16	808	650	389	171	85	16	117	261	437
Hawaii.....	72	37	20	10	3	4	35	3,476	2,650	1,123	751	189	149	34	1,527	985
Pacific.....	1,568	792	446	277	41	28	776	60,106	51,961	25,300	15,272	7,068	1,887	1,073	26,661	24,037
Puerto Rico.....	186	104	31	17	5	51	82	17,384	15,151	8,486	2,900	750	527	4,300	6,665	7,042
Virgin Islands.....	6	4	3	1	0	0	2	241	176	114	108	6	0	0	62	167
Outlying areas.....	192	108	34	18	5	51	84	17,625	15,327	8,600	3,008	765	527	4,300	6,727	7,209
Total, all States and areas.....	8,858	4,425	2,533	1,387	281	224	4,433	544,331	482,414	235,296	151,568	44,682	22,495	16,551	247,118	203,285

¹ The States are grouped according to the method used by the Bureau of the Census, U S Department of Commerce

Table 15B.—Standard Federal Administrative Regional Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1974

Standard Federal Regions ¹	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Connecticut.....	90	46	26	17	3	0	44	5,493	4,950	2,225	1,688	253	276	8	2,725	2,418
Maine.....	56	15	8	5	0	2	21	2,099	1,888	773	555	107	83	28	1,115	443
Massachusetts.....	257	134	67	50	9	8	123	11,744	10,575	5,171	3,185	1,116	308	562	5,404	3,757
New Hampshire.....	35	19	11	7	0	1	16	1,817	1,640	833	288	108	418	19	807	458
Rhode Island.....	32	17	7	9	0	1	15	2,919	2,115	953	706	142	54	51	1,162	423
Vermont.....	7	5	5	0	0	0	2	115	98	63	53	10	0	0	35	88
Region I.....	457	236	124	88	12	12	221	23,587	21,266	10,018	6,475	1,736	1,139	668	11,248	7,587
Delaware.....	17	8	5	2	0	1	9	1,126	998	577	336	184	0	57	421	772
New Jersey.....	307	164	76	56	8	24	143	17,521	14,567	8,630	4,764	2,753	191	922	5,937	9,834
New York.....	518	265	163	63	19	20	253	25,813	22,430	11,444	7,112	1,710	630	1,992	10,986	10,685
Puerto Rico.....	188	104	31	17	5	51	82	17,384	15,151	8,486	2,900	759	527	4,300	6,665	7,042
Virgin Islands.....	6	4	3	1	0	0	2	241	176	114	108	6	0	0	62	167
Region II.....	1,034	545	278	139	32	96	489	62,085	53,322	29,251	15,220	5,412	1,348	7,271	24,071	28,481
District of Columbia.....	35	26	18	4	2	2	9	1,812	1,317	950	586	205	46	113	367	1,491
Maryland.....	145	64	34	27	1	2	81	11,514	9,671	3,902	2,995	805	25	77	5,769	2,610
Pennsylvania.....	550	267	135	106	13	13	283	33,190	29,846	16,851	8,683	3,589	2,473	2,106	12,995	15,739
Virginia.....	95	49	36	9	1	3	46	10,265	9,318	4,597	4,098	201	211	4,721	3,679	
West Virginia.....	72	35	20	12	2	1	37	5,636	5,100	2,428	2,100	174	146	8	2,672	1,670
Region III.....	897	441	243	158	19	21	456	62,417	55,252	28,728	18,462	4,974	2,901	2,391	26,524	25,189
Alabama.....	126	57	41	13	3	0	69	9,881	9,142	4,338	3,778	399	161	0	4,804	3,961
Florida.....	193	87	60	26	0	1	106	11,806	10,428	5,111	3,981	1,554	14	38	5,317	5,399
Georgia.....	162	61	37	19	3	2	101	15,426	13,708	5,981	4,435	1,176	165	205	7,727	3,758
Kentucky.....	129	61	35	18	7	1	68	12,785	11,832	5,720	3,226	1,327	955	212	6,112	5,702
Mississippi.....	61	28	22	6	0	0	33	8,819	7,980	3,803	3,689	114	0	0	4,177	3,570
North Carolina.....	116	50	30	17	0	3	66	29,507	26,235	9,547	8,996	372	0	179	16,688	2,458
South Carolina.....	40	16	16	0	0	0	24	8,250	7,354	2,973	2,701	249	23	0	4,381	853
Tennessee.....	193	86	38	41	3	4	107	22,901	20,801	10,775	5,264	4,470	836	205	10,026	8,926
Region IV.....	1,020	446	279	140	16	11	574	110,375	107,480	48,248	35,594	9,661	2,154	839	59,232	34,627
Illinois.....	421	192	108	59	13	12	229	23,163	20,318	9,743	5,902	1,390	1,525	926	10,575	7,807
Indiana.....	275	129	65	50	12	2	146	18,787	16,683	7,504	4,411	1,066	1,702	385	9,179	5,432
Michigan.....	528	277	125	75	71	6	251	22,113	19,381	9,402	4,636	1,689	2,703	374	9,979	7,988
Minnesota.....	208	109	58	47	4	0	99	10,055	8,983	4,300	2,535	1,523	194	48	4,683	3,824
Ohio.....	522	253	143	79	23	8	269	29,695	26,852	12,526	6,607	2,150	2,825	944	14,326	10,494
Wisconsin.....	226	133	82	41	5	5	93	11,437	10,428	5,261	3,542	564	865	290	5,167	4,881
Region V.....	2,180	1,093	581	351	128	33	1,087	115,250	102,645	48,736	27,633	8,322	9,814	2,967	53,909	40,426

Arkansas.....	74	41	32	8	1	0	33	8,875	3,909	3,240	367	301	1	4,100	3,320
Louisiana.....	108	47	26	15	3	3	61	7,557	3,492	2,222	522	666	82	3,325	3,246
New Mexico.....	58	25	20	4	1	1	38	2,566	1,116	988	118	10	0	1,450	676
Oklahoma.....	101	45	33	9	2	0	56	8,131	3,508	2,253	603	638	12	3,996	3,992
Texas.....	316	157	117	26	10	4	199	24,060	21,582	10,495	1,849	830	218	11,687	10,637
Region VI.....	687	315	228	62	17	8	342	52,077	46,476	22,518	2,959	2,445	308	23,958	20,871
Iowa.....	137	72	45	21	4	2	65	7,544	4,358	3,070	454	428	447	3,186	4,206
Kansas.....	80	45	30	12	1	2	36	3,970	1,936	1,860	340	33	49	2,711	1,751
Missouri.....	273	147	78	62	5	2	120	12,083	6,256	3,890	2,106	63	234	6,367	1,704
Nebraska.....	66	34	24	9	0	1	32	2,253	1,084	1,024	86	0	76	960	1,516
Region VII.....	556	298	177	104	10	7	258	30,092	27,199	13,945	2,994	504	806	13,254	13,280
Colorado.....	126	67	48	14	3	2	59	7,044	3,066	2,612	284	116	74	3,082	3,419
Montana.....	27	17	10	10	0	2	21	1,009	524	360	131	0	24	412	651
North Dakota.....	34	14	7	5	0	2	20	938	467	288	141	0	38	471	373
South Dakota.....	22	10	6	4	0	0	12	1,726	659	326	54	0	0	333	205
Texas.....	52	26	16	0	0	1	26	2,357	2,089	953	522	372	59	1,136	944
Wyoming.....	17	9	8	0	1	0	8	934	807	429	48	40	0	1,378	265
Region VIII.....	299	153	100	42	4	7	146	13,327	11,577	5,765	1,010	156	195	5,812	5,817
Arizona.....	111	61	45	15	1	0	50	3,900	1,933	1,504	268	133	28	1,593	2,207
California.....	1,077	531	290	195	33	13	546	38,006	18,371	10,908	5,271	1,403	699	19,635	16,878
Hawaii.....	72	37	20	10	3	4	35	2,650	1,123	1,149	189	34	34	1,527	965
Nevada.....	40	24	14	8	1	1	16	2,605	1,327	221	87	14	5	2,278	397
Region IX.....	1,300	653	369	228	38	18	647	51,722	44,787	21,754	5,815	1,780	766	23,033	20,447
Alaska.....	34	18	7	6	1	4	16	808	650	171	85	16	117	261	497
Idaho.....	39	21	18	3	0	0	16	1,304	1,105	336	191	0	0	578	346
Oregon.....	159	83	56	22	2	3	76	6,076	2,625	1,709	631	134	151	2,655	2,341
Washington.....	226	123	73	44	2	4	103	5,375	2,792	1,733	892	95	72	2,583	3,416
Region X.....	458	245	154	75	5	11	213	14,399	12,410	6,333	3,049	245	340	6,077	6,540
Total, all Federal regions.....	8,858	4,425	2,533	1,387	281	224	4,433	544,331	482,414	235,206	44,682	22,495	16,551	247,118	203,265

¹ The States are grouped according to the 10 standard Federal administrative regions

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1974

Industrial group	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL-CIO union	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Food and kindred products.....	509	254	124	109	5	16	255	30,924	26,852	14,196	7,985	3,924	502	1,695	12,656	13,680
Tobacco manufactures.....	6	1	1	0	0	0	5	9,653	8,732	2,956	2,892	64	0	0	5,776	19
Textile mill products.....	100	33	25	5	1	2	67	21,219	19,638	7,874	5,427	2,144	8	295	11,764	3,546
Apparel and other finished products made from fabric and similar materials.....	111	48	40	4	1	3	63	14,310	13,020	6,412	5,287	245	38	842	6,608	5,479
Lumber and wood products (except furniture).....	216	102	73	26	2	1	114	13,631	12,387	5,827	4,803	776	213	35	6,560	3,887
Furniture and fixtures.....	141	67	45	16	4	2	74	18,325	16,067	7,575	6,135	855	480	105	8,492	6,486
Paper and allied products.....	162	77	53	19	4	1	85	11,998	10,939	5,548	4,110	1,051	358	29	5,391	4,793
Printing, publishing, and allied products.....	320	159	138	13	2	6	161	12,877	11,776	6,119	5,366	392	91	270	5,142	5,142
Chemicals and allied products.....	225	113	55	50	5	3	112	18,998	17,287	8,907	4,782	3,030	811	284	8,380	7,625
Petroleum refining and related industries.....	116	65	35	24	3	3	51	5,835	5,146	2,991	1,637	543	115	696	2,155	3,590
Rubber and miscellaneous plastic products.....	235	104	59	29	11	5	131	19,994	17,730	8,150	5,846	1,117	1,093	94	9,580	5,721
Leather and leather products.....	34	13	9	3	1	0	21	9,025	7,847	3,060	2,653	80	108	219	4,787	1,118
Stone, clay, glass, and concrete products.....	224	116	68	37	2	9	108	16,420	14,578	7,660	5,360	1,492	139	669	6,918	6,883
Primary metal industries.....	232	116	63	33	15	5	116	18,424	17,088	8,778	5,904	1,131	1,327	416	8,310	8,106
Fabricated metal products (except machinery and transportation equipment).....	447	226	149	42	23	12	221	30,737	27,622	13,827	9,536	2,302	1,410	579	13,795	13,332
Machinery (except electrical).....	444	199	118	41	33	7	245	41,227	37,236	18,295	10,160	1,976	5,009	1,150	18,941	14,723
Electrical and electronic machinery, equipment, and supplies.....	262	115	71	22	19	3	147	38,765	35,527	15,595	10,923	1,239	2,725	708	19,932	12,030
Aircraft and parts.....	221	114	45	25	39	5	107	25,221	23,014	11,515	4,828	2,449	3,603	635	11,499	9,940
Ship and boat building and repairing.....	23	9	7	2	0	0	14	1,739	1,557	674	1,402	133	0	139	883	317
Automotive and other transportation equipment.....	52	23	13	7	3	0	29	4,446	3,937	1,956	1,250	140	566	0	1,981	1,057
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks.....	66	28	18	7	2	1	38	7,771	7,186	3,409	2,362	151	434	462	3,777	1,721

Miscellaneous manufacturing industries.....	156 ¹	77	37	31	8	1	79	10,725	9,378	4,419	2,840	1,108	447	24	4,959	4,022
Manufacturing.....	4,302	2,059	1,246	545	183	85	2,243	382,264	344,544	165,743	110,488	26,342	19,567	9,346	178,801	133,217
Metal mining.....	17	11	8	0	3	0	6	694	643	356	303	2	51	0	287	384
Coal mining.....	14	8	2	0	4	2	6	775	703	464	110	0	332	22	239	449
Oil and gas extraction.....	18	12	7	0	0	5	6	554	421	279	147	3	0	129	142	393
Mining and quarrying of nonmetallic minerals (except fuels).....	43	23	13	6	1	3	20	1,217	1,111	630	450	94	5	81	481	553
Mining.....	92	54	30	6	8	10	38	3,240	2,878	1,729	1,010	99	388	232	1,149	1,779
Construction.....	245	125	85	26	7	7	120	5,397	4,361	2,230	1,549	280	166	235	2,131	2,398
Wholesale trade.....	803	395	98	273	13	11	408	21,165	18,624	8,857	3,564	4,700	265	328	9,787	7,825
Retail trade.....	1,161	557	379	137	18	23	604	38,167	32,311	15,358	10,258	3,645	596	859	16,953	14,667
Finance, insurance, and real estate.....	183	97	87	8	1	1	86	7,515	6,720	2,851	1,784	653	99	315	3,869	1,810
U S Postal Service.....	8	4	3	1	0	0	4	360	306	160	73	87	0	0	146	185
Local and suburban transit and interurban highway passenger transportation.....	41	20	6	12	0	2	21	2,980	2,187	1,328	512	510	0	306	859	1,471
Transportation services.....	529	281	35	221	13	12	248	14,129	12,201	6,627	1,313	4,891	127	296	5,574	7,785
Water transportation.....	23	15	9	5	1	0	8	688	571	373	168	101	78	26	198	456
Pipes lines, except natural gas.....	26	17	6	9	0	2	9	801	698	326	198	104	0	24	372	263
Communication.....	249	136	125	9	1	1	113	9,991	8,692	4,356	3,902	142	4	308	4,336	3,772
Electric, gas, and sanitary services.....	171	100	80	16	0	4	71	8,612	7,885	4,035	3,227	528	33	247	3,850	3,666
Transportation, communication, and other utilities.....	1,039	569	261	272	15	21	470	37,201	32,234	17,045	9,320	6,276	242	1,207	15,189	17,413
Hotels, rooming houses, camps, and other lodging places.....	110	54	42	2	3	7	56	5,278	4,232	1,863	1,472	206	36	149	2,369	2,396
Personal services.....	52	27	11	14	0	2	25	1,500	1,337	684	409	241	0	34	653	632
Automotive repair, services, and garages.....	136	70	16	51	2	1	66	2,808	2,501	1,112	304	621	170	17	1,389	1,017
Amusement and recreation services (except motion pictures).....	42	22	17	3	0	2	20	1,023	873	428	309	54	0	65	445	460
Health services.....	248	151	113	10	1	27	97	15,088	11,997	6,412	5,208	378	3	823	5,585	8,682
Educational services.....	86	47	32	2	1	12	39	10,331	8,473	4,517	2,841	187	38	1,451	3,956	3,897
Membership organizations.....	12	8	5	1	0	2	4	363	324	183	137	33	0	13	141	182
Business services.....	305	164	95	31	26	12	141	11,651	9,810	5,681	2,556	789	883	1,453	4,129	6,298
Miscellaneous repair services.....	34	22	13	5	3	1	12	980	889	443	286	91	42	24	446	407
Services.....	1,025	565	344	119	36	66	460	49,022	40,436	21,323	13,522	2,600	1,172	4,029	19,113	23,971
Total, all industrial groups.....	8,858	4,425	2,533	1,387	281	224	4,433	544,331	482,414	235,296	151,568	44,682	22,495	16,551	247,118	203,265

¹ Source Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington 1972

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1974¹

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumula- tive 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		
Total RC and RM elections.....	519,694	8,368	100.0	-----	2,442	100.0	1,340	100.0	271	100.0	220	100.0	4,095	100.0
Under 10.....	11,784	2,107	25.2	25.2	648	26.5	561	42.0	70	25.8	36	16.3	792	19.3
10 to 19.....	25,783	1,854	22.2	47.4	573	23.4	348	26.1	47	17.4	47	21.3	889	20.6
20 to 29.....	24,418	1,017	12.2	59.6	310	12.6	156	11.7	35	13.0	31	14.0	485	11.8
30 to 39.....	22,091	646	7.7	67.3	180	7.4	76	5.8	21	7.7	20	9.0	349	8.5
40 to 49.....	20,397	464	5.5	72.8	131	5.4	38	2.8	13	4.8	15	6.8	267	6.5
50 to 59.....	17,064	315	3.8	76.6	95	3.9	26	1.9	4	1.5	13	5.9	177	4.3
60 to 69.....	16,764	262	3.1	79.7	77	3.2	30	2.2	9	3.3	7	3.2	139	3.4
70 to 79.....	17,429	236	2.8	82.5	65	2.8	21	1.6	4	5.2	5	2.7	130	3.2
80 to 89.....	14,077	167	2.0	84.5	56	2.3	6	0.4	5	1.8	5	2.3	95	2.3
90 to 99.....	12,520	133	1.6	86.1	32	1.3	10	0.4	7	2.6	6	2.7	76	1.9
100 to 109.....	11,32	112	1.3	87.4	35	1.4	6	0.4	3	1.1	3	1.4	65	1.6
110 to 119.....	10,639	93	1.1	88.5	25	1.0	5	0.4	7	2.6	5	2.3	50	1.2
120 to 129.....	10,787	75	0.9	90.4	17	0.7	7	0.5	4	1.5	4	1.8	56	1.4
130 to 139.....	10,063	53	0.6	91.7	17	0.7	4	0.3	2	0.7	3	1.4	48	1.1
140 to 149.....	7,635	59	0.7	91.7	16	0.7	4	0.1	2	0.7	2	0.9	37	0.9
150 to 159.....	9,042	59	0.7	92.2	16	0.7	6	0.4	2	0.7	1	0.5	24	0.6
160 to 169.....	6,872	42	0.5	93.8	11	0.5	6	0.3	2	0.7	3	1.4	29	0.7
170 to 179.....	8,705	50	0.6	94.3	8	0.3	5	0.4	3	1.1	0	0	23	0.6
180 to 189.....	7,184	39	0.5	95.8	7	0.3	3	0.2	3	1.1	0	0	26	0.6
190 to 199.....	7,108	37	0.4	96.3	7	0.3	8	0.6	8	3.0	1	0.5	23	0.6
200 to 209.....	52,045	216	2.6	96.3	49	2.0	8	0.6	8	3.0	3	1.4	148	3.6
200 to 299.....	38,313	111	1.3	97.6	27	1.1	5	0.4	2	0.7	1	0.5	78	1.9
300 to 399.....	38,313	111	1.3	98.5	12	0.5	2	0.1	1	0.4	1	0.5	49	1.2
400 to 499.....	28,685	65	0.9	99.3	10	0.4	3	0.2	2	0.7	0	0	14	0.3
500 to 599.....	15,145	28	0.3	99.3	7	0.3	2	0.1	0	0	1	0.5	29	0.7
600 to 799.....	27,219	40	0.5	99.3	4	0.2	3	0.2	2	0.7	2	0.9	13	0.3
800 to 999.....	18,630	21	0.3	99.6	4	0.2	0	0	1	0.4	2	0.9	27	0.7
1,000 to 1,999.....	42,774	33	0.4	100.0	3	0.1	0	0	1	0.4	0	0	2	0.0
2,000 to 2,999.....	7,075	3	0.0	100.0	0	0	0	0	0	0	0	0	2	0.0
3,000 to 9,999.....	17,644	3	0.0	100.0	0	0	0	0	0	0	0	0	3	0.0

A Certification Elections (RC and RM)

B. Decertification elections (RD)

Total RD elections	24,697	490	100.0	91	100.0	47	100.0	10	100.0	4	100.0	338	100.0
Under 10	673	118	24.1	1	1.1	5	10.6	0	20.0	1	25.0	111	32.7
10 to 19	1,404	100	44.5	10	11.0	0	19.2	2	30.0	0	0	79	23.3
20 to 29	1,998	83	61.4	14	15.4	12	23.6	3	30.0	0	0	54	16.0
30 to 39	1,524	44	70.1	16	17.7	5	10.6	2	20.0	1	25.0	20	5.9
40 to 49	1,321	28	57.7	7	7.7	2	4.3	0	0	1	25.0	18	5.3
50 to 59	1,035	17	76.3	6	6.6	4	2.1	1	10.0	0	0	9	2.7
60 to 69	1,998	21	83.3	5	5.5	4	8.5	0	0	0	0	12	3.6
70 to 79	677	13	86.0	4	4.4	0	0	0	0	0	0	9	2.7
80 to 89	977	7	88.2	4	4.4	0	0	0	0	0	0	4	1.2
90 to 99	977	7	88.2	4	4.4	0	0	0	0	0	0	3	0.9
100 to 109	577	2	80.1	0	0	0	0	2	20.0	0	0	0	0.3
110 to 119	577	2	80.1	0	4.4	0	2.1	0	0	0	0	0	0
120 to 129	121	1	81.3	0	0	1	0	0	0	0	0	0	0
130 to 139	130	1	81.3	1	1.1	0	2.1	0	0	0	0	3	0.9
140 to 149	715	5	92.5	1	1.1	0	0	0	0	0	0	3	0.9
150 to 159	615	4	96.3	1	1.1	0	0	0	0	0	0	1	0.3
160 to 169	434	1	93.3	0	0	0	0	0	0	0	0	1	0.3
170 to 199	1,645	9	95.3	2	2.2	1	2.1	0	0	1	25.0	5	1.5
200 to 299	2,981	12	97.7	7	7.7	3	6.4	0	0	0	0	2	0.6
300 to 399	2,204	6	98.9	2	2.2	2	4.3	0	0	0	0	2	0.6
400 to 499	1,756	3	99.5	1	1.1	0	0	0	0	0	0	2	0.6
500 to 799	2,221	2	100.0	1	1.1	1	2.1	0	0	0	0	0	0

¹ See Glossary for definitions of terms

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1974¹

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CP		CA-CB combinations		Other C combinations	
				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.....	24,802	100.0	-----	15,933	100.0	4,829	100.0	1,611	100.0	434	100.0	75	100.0	472	100.0	1,222	100.0	226	100.0
Under 10.....	6,475	26.1	26.1	3,935	24.6	1,233	25.5	576	35.6	124	28.5	41	54.6	204	43.3	287	23.2	75	33.5
10-19.....	2,377	9.6	35.7	1,640	10.3	303	6.3	214	13.3	57	13.1	4	5.3	81	17.2	45	3.7	33	14.6
20-29.....	1,819	7.3	43.0	1,259	7.9	253	5.2	129	8.0	37	8.5	2	2.7	47	10.0	74	6.1	18	8.0
30-39.....	1,287	5.2	48.2	890	5.6	200	4.1	83	5.2	27	6.2	1	1.3	30	6.4	45	3.7	11	4.9
40-49.....	887	3.6	51.8	622	3.9	119	2.5	60	3.7	19	4.4	6	8.0	14	3.0	39	3.2	8	3.5
50-59.....	939	3.8	55.6	608	3.8	161	3.3	72	4.5	26	6.0	4	5.3	13	3.8	39	3.2	11	4.9
60-69.....	596	2.4	58.0	427	2.7	85	1.8	33	2.0	7	1.6	2	2.7	10	2.1	24	2.0	8	3.5
70-79.....	557	2.2	60.2	394	2.5	83	1.7	25	1.6	12	2.8	1	1.3	8	1.7	27	2.2	7	3.1
80-89.....	441	1.8	62.0	319	2.0	66	1.4	24	1.5	2	0.5	0	-----	6	1.3	19	1.6	5	2.2
90-99.....	238	1.0	63.0	188	1.1	47	1.0	9	0.6	4	0.9	0	-----	5	1.1	5	0.4	0	-----
100-109.....	908	3.7	66.7	525	3.3	237	4.9	54	3.4	11	2.5	0	-----	10	2.1	64	5.2	7	3.1
110-119.....	175	0.7	67.4	141	0.9	30	0.4	5	0.3	4	0.9	0	-----	0	-----	5	0.4	0	-----
120-129.....	355	1.4	68.8	256	1.6	65	1.3	12	0.7	3	0.7	0	-----	3	0.6	13	1.1	3	1.3
130-139.....	158	0.6	69.4	120	0.8	20	0.4	7	0.4	1	0.2	0	-----	3	0.6	7	0.6	0	-----
140-149.....	126	0.5	69.9	102	0.6	17	0.4	7	0.4	3	0.7	0	-----	0	-----	1	0.1	0	-----
150-159.....	462	1.9	71.8	287	1.8	129	2.5	17	1.1	10	2.3	0	-----	0	-----	25	2.0	3	1.3
160-169.....	96	0.4	72.2	78	0.5	10	0.2	2	0.1	2	0.5	0	-----	1	0.2	4	0.3	1	0.4
170-179.....	144	0.6	72.8	99	0.6	28	0.6	6	0.4	2	0.5	0	-----	1	0.2	8	0.7	0	-----
180-189.....	138	0.6	73.4	103	0.6	26	0.5	6	0.4	1	0.2	0	-----	1	0.2	0	-----	1	0.4
190-199.....	89	0.2	73.6	92	0.1	10	0.2	2	0.1	1	0.2	0	-----	0	-----	3	0.2	1	0.4
200-299.....	1,323	5.3	78.9	831	5.2	308	6.3	57	3.5	21	4.8	2	2.7	5	1.1	98	8.0	6	2.7
300-399.....	866	3.5	82.4	566	3.6	202	4.2	27	1.7	7	1.6	0	-----	2	0.4	60	4.9	2	0.9
400-499.....	518	2.1	84.5	329	2.1	108	2.2	27	1.7	5	1.2	0	-----	4	0.8	40	3.3	5	2.2
500-599.....	494	2.0	86.5	279	1.8	143	3.0	21	1.3	9	2.1	2	2.7	1	0.2	38	3.1	1	0.4
600-699.....	271	1.1	87.6	176	1.1	65	1.3	9	0.6	3	0.7	0	-----	0	-----	18	1.5	0	-----
700-799.....	182	0.7	88.3	109	0.7	46	1.0	10	0.6	6	1.4	0	-----	1	0.2	8	0.7	2	0.9
800-899.....	168	0.7	89.0	95	0.6	46	1.0	7	0.4	6	1.4	0	-----	0	-----	14	1.1	0	-----
900-999.....	103	0.4	89.4	72	0.5	39	0.8	4	0.2	0	-----	0	-----	0	-----	8	0.7	0	-----
1,000-1,999.....	895	3.6	93.0	515	3.2	251	5.2	50	3.1	12	2.8	0	-----	2	0.4	60	4.9	5	2.2
2,000-2,999.....	376	1.5	94.5	212	1.3	114	2.4	14	0.9	3	0.7	0	-----	3	0.6	29	2.4	1	0.4
3,000-3,999.....	288	1.2	95.7	160	1.0	94	1.9	7	0.4	2	0.5	0	-----	0	-----	23	1.9	2	0.9
4,000-4,999.....	165	0.7	96.4	85	0.5	63	1.3	3	0.2	0	-----	0	-----	0	-----	13	1.1	1	0.4
5,000-9,999.....	381	1.5	97.9	197	1.2	132	2.7	8	0.5	0	-----	8	10.7	1	0.2	34	2.8	1	0.4
Above 9,999.....	555	2.1	100.0	312	2.0	140	2.9	30	1.9	7	1.6	2	2.7	11	2.3	45	3.7	8	3.5

¹ See Glossary for definitions of terms² 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 1974, and Cumulative Totals, Fiscal Years 1936–1974

	Fiscal year 1974									July 5, 1935– June 30, 1974	
	Number of proceedings ¹					Percentages				Number	Percent
	Total	V employers only	V unions only	V. both employers and unions	Board dis- missal ²	Versus employers only	V unions only	V both employers and unions	Board dis- missal		
Proceedings decided by U S courts of appeals.....	318	262	50	2	4						
On petitions for review and/or enforcement.....	298	250	42	2	4	100 0	100 0	100 0	100 0	5,697	100 0
Board orders affirmed in full.....	230	190	35	2	3	76 0	83 3	100 0	75 0	3,544	62 2
Board orders affirmed with modifications.....	26	24	2	0	0	9 6	4 8			983	17 2
Remanded to Board.....	12	10	1	0	1	4 0	2 4		25 0	245	4 3
Board orders partially affirmed and partially remanded.....	1	1	0	0	0	0 4				78	1 4
Board orders set aside.....	29	25	4	0	0	10 0	9 5			847	14 9
On petitions for contempt.....	20	12	8	0	0	100 0	100 0				
Compliance after filing of petition, before court order.....	11	9	2	0	0	75 0	25 0				
Court orders holding respondent in contempt.....	9	3	6	0	0	25 0	75 0				
Court orders denying petition.....	0	0	0	0	0						
Proceedings decided by U S Supreme Court ³	6	5	1	0	0	100 0	100 0			206	100 0
Board orders affirmed in full.....	2	2	0	0	0	40 0				122	59 2
Board orders affirmed with modification.....	0	0	0	0	0					15	7 2
Board orders set aside.....	2	1	1	0	0	20 0	100 0			33	16 0
Remanded to Board.....	2	2	0	0	0	40 0				17	8 3
Remanded to court of appeals.....	0	0	0	0	0					16	7 8
Board's request for remand or modification of enforce- ment order denied.....	0	0	0	0	0					1	0 5
Contempt cases remanded to court of appeals.....	0	0	0	0	0					1	0 5
Contempt cases enforced.....	0	0	0	0	0					1	0 5

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 courts of appeals.

³ The Board filed *amicus* briefs in three cases, *Windward Shipping (London), Ltd., et al v American Radio Assoc., AFL-CIO, et al*, 415 U.S. 104, *William E. Arnold Co. v. Carpenters District Council of Jacksonville & Vicinity et al.*, 94 S Ct 2069 & *Beasley et al. v. Food Fair of North Carolina Inc., et al.*, 94 S Ct 2023. The Board's position was upheld in the latter two cases, but not in the first.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1974 Compared With 5-Year Cumulative Totals, Fiscal Years 1969 Through 1973¹

Circuit courts of appeals (headquarters)	Total fiscal year 1974	Total fiscal years 1969-73	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1974		Cumulative fiscal years 1969-1973		Fiscal year 1974		Cumulative fiscal years 1969-1973		Fiscal year 1974		Cumulative fiscal years 1969-1973		Fiscal year 1974		Cumulative fiscal years 1969-1973		Fiscal year 1974		Cumulative fiscal years 1969-1973	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits....	298	1,747	230	77.2	1,193	68.3	26	8.7	237	13.6	12	4.0	84	4.8	1	0.4	31	1.8	29	9.7	202	11.5
1 Boston, Mass.....	13	60	10	76.9	43	71.7	1	7.7	4	6.7	1	7.7	2	3.3	0	0.0	1	1.7	1	7.7	10	16.6
2 New York, N.Y.....	19	140	15	78.9	107	76.4	2	10.5	16	11.4	1	5.3	2	1.4	0	0.0	1	0.8	1	5.3	14	10.0
3 Philadelphia, Pa.....	21	75	17	80.9	57	76.0	0	0.0	5	6.7	1	4.8	7	9.3	0	0.0	1	1.3	3	14.3	5	6.7
4 Richmond, Va.....	12	117	9	75.0	79	67.5	3	25.0	20	17.1	0	0.0	5	4.3	0	0.0	0	0.0	0	0.0	13	11.1
5 New Orleans, La.....	43	330	33	76.8	233	70.6	4	9.3	42	12.7	1	2.3	12	3.7	0	0.0	7	2.1	5	11.6	36	10.9
6 Cincinnati, Ohio.....	53	299	42	79.3	191	63.9	2	3.8	48	16.1	4	7.5	7	2.3	0	0.0	6	2.0	5	9.4	47	15.7
7 Chicago, Ill.....	30	151	22	73.3	111	73.5	3	10.0	22	14.5	0	0.0	3	2.0	0	0.0	1	0.7	5	16.7	14	9.3
8 St. Louis, Mo.....	21	146	12	57.2	71	48.6	7	33.3	42	28.8	0	0.0	11	7.5	0	0.0	0	0.0	2	9.5	22	15.1
9 San Francisco, Calif.....	52	229	44	84.6	166	72.5	2	3.9	18	7.9	1	1.9	19	8.3	1	1.9	3	1.3	4	7.7	23	10.0
10 Denver, Colo.....	16	76	12	75.0	54	71.1	1	6.2	8	10.5	0	0.0	2	2.6	0	0.0	2	2.6	3	18.8	10	13.2
Washington, D.C.....	18	124	14	77.8	81	65.3	1	5.5	12	9.6	3	16.7	14	11.3	0	0.0	9	7.3	0	0.0	8	6.5

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 1974

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1974
		Pending in district court July 1, 1973	Filed in district court fiscal year 1974		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec 10(e), total	12	0	2	2	1	0	1	0	0	0	0
Under sec 10(j), total	18	1	17	14	9	1	3	0	1	0	4
8(a)(1)(2)(3)	2	0	2	2	1	0	1	0	0	0	0
8(a)(1)(2), 8(b)(1)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(5)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(5); 8(b)(1)(2)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)	2	0	2	1	0	0	1	0	0	0	1
8(a)(1)(3)(5)	4	1	3	3	2	0	0	0	1	0	1
8(a)(1)(5)	4	0	4	3	2	1	0	0	0	0	1
8(b)(1)	2	0	2	1	1	0	0	0	0	0	0
8(b)(3)	1	0	1	1	1	0	0	0	0	0	0
Under sec 10(l), total	233	18	215	204	70	10	83	14	15	12	29
8(b)(4)(A)	4	1	3	3	0	0	1	1	1	0	1
8(b)(4)(A)(B)	4	0	4	4	0	0	3	0	1	0	0
8(b)(4)(B)	130	10	120	114	41	7	44	9	10	3	16
8(b)(4)(B)(D)	7	2	5	6	1	0	4	1	0	0	1
8(b)(4)(B), 7(A)	2	0	2	2	1	0	1	0	0	0	0
8(b)(4)(B), 7(B)	1	0	1	0	0	0	0	0	0	0	0
8(b)(4)(B), 7(C)	4	0	4	3	0	0	2	0	0	1	1
8(b)(4)(B); 8(e)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)(D), 8(e)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(D)	36	3	33	30	10	1	13	1	2	3	6
8(b)(7)(A)	5	0	5	5	1	0	3	1	0	0	0
8(b)(7)(B)	3	0	3	3	1	1	1	0	0	0	0
8(b)(7)(C)	33	2	31	31	13	1	10	1	1	5	2
8(e)	2	0	2	1	0	0	1	0	0	0	1

¹ In courts of appeals

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1974

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.....	63	60	3	11	9	2	52	51	1
NLRB-initiated actions.....	13	13	0	0	0	0	13	13	0
To enforce subpoena.....	7	7	0	0	0	0	7	7	0
To restrain dissipation of assets by respondent.....	2	2	0	0	0	0	2	2	0
To defend Board's jurisdiction.....	4	4	0	0	0	0	4	4	0
Action by other parties.....	50	47	3	11	9	2	39	38	1
To restrain NLRB from.....	15	15	0	0	0	0	15	15	0
Proceeding in R case.....	8	8	0	0	0	0	8	8	0
Proceeding in unfair labor practice case.....	7	7	0	0	0	0	7	7	0
Proceeding in backpay case.....	0	0	0	0	0	0	0	0	0
Other.....	0	0	0	0	0	0	0	0	0
To compel NLRB to.....	31	28	3	8	6	2	23	22	1
Issue complaint.....	7	7	0	2	2	0	5	5	0
Seek injunction.....	0	0	0	0	0	0	0	0	0
Take action in R case.....	8	8	0	1	1	0	7	7	0
Comply with Freedom of Information Act.....	10	7	3	3	1	2	7	6	1
Other.....	6	6	0	2	2	0	4	4	0
Other.....	4	4	0	3	3	0	1	1	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1974¹

	Total	Number of cases				
		Identification of petitioner				
		Em- ployer	Union	Courts	State Bds	Indi- vidual
Pending July 1, 1973.....	1	0	1	0	0	0
Received fiscal 1974.....	9	6	2	0	1	0
On docket fiscal 1974.....	10	6	3	0	1	0
Closed fiscal 1974.....	7	3	3	0	1	0
Pending June 30, 1974.....	3	3	0	0	0	0

¹ See Glossary for definition of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1974¹

Action taken	Total cases closed
Total.....	7
Board would assert jurisdiction	3
Board would not assert jurisdiction	1
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	2

¹ See Glossary for definitions of terms.