FORTIETH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

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Associate General Counsel
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RICHARD J. SHAKMAN
Director
Division of Administration

[1] Took office February 18, 1975, to succeed Edward B Miller, whose term expired December 16, 1974

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1976.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Fortieth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1975, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year.

Respectfully submitted.

BETTY SOUTHARD MURPHY, *Chairman.*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, D.C.

TABLE OF CONTENTS

TABLES

CHARTS IN CHAPTER I

I

Operations in Fiscal Year 1975

A. Summary

In fiscal year 1975, a record total of 44,923 cases was received by the National Labor Relations Board, a number which exceeded by 2,550 the 42,373 cases of the previous year. The previous record had been established in the prior year.

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

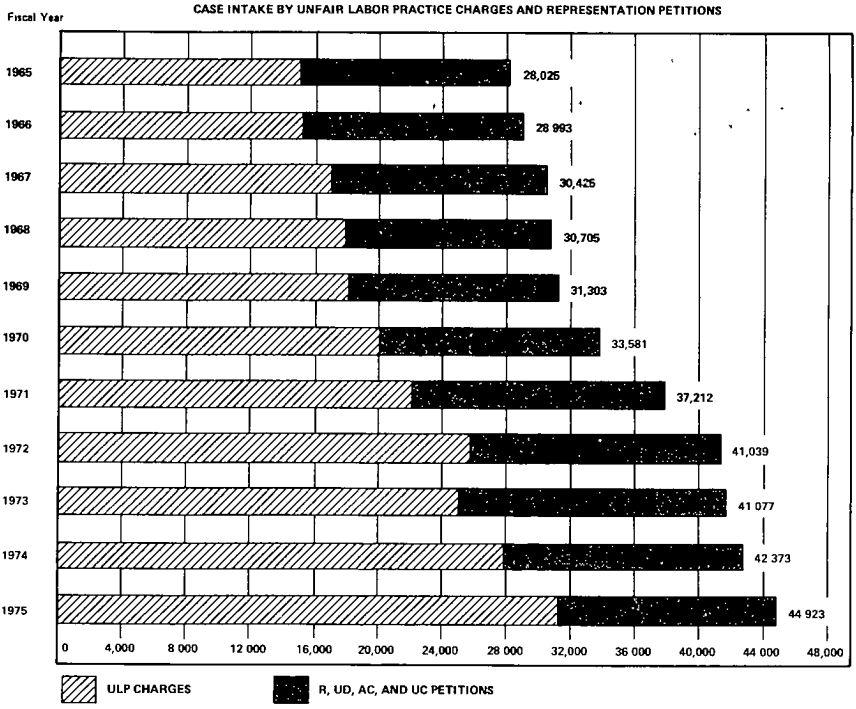
In fiscal 1975, the NLRB closed 43,707 cases of all types. Up 6 percent from fiscal 1974, the total closings included 29,808 cases involving unfair labor practice charges, and 13,899 affecting employee representation. (Tables 7, 8, 9, and 10 give statistics on stage and methods of closing by types of cases.)

Case intake was 31,253 unfair labor practice charges in fiscal 1975, a 12.7-percent increase from the 27,726 of the preceding year. Representation petitions dropped to 13,083, a 7-percent decrease from the 14,082 of the year before.

The two kinds of cases amounted to 98.7 percent of the 1975 intake. The remaining 1.3 percent included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.1 percent), and unit clarification petitions (0.7 percent). (Chart 1.)

NLRB's emphasis on voluntary disposition of cases was implemented greatly in fiscal 1975 by contributions in administration of the National Labor Relations Act by the Agency's 31 regional offices. In 1975, there were 28,387 unfair labor practice cases closed by regional offices. These closings came about primarily through voluntary settlements by adjustments by parties to the cases, working with NLRB officials for voluntary withdrawal of charges, and administrative dismissals. Only 3.8 percent of the unfair labor practice cases closed went to the five-member Board for decision as contested cases. (Chart 3.)

Chart No. 1



In 1975, the NLRB conducted 8,687 conclusive secret ballot elections of all types, down from the 8,976 of the previous year. The total was made up by 8,061 collective-bargaining elections, 516 decertification elections, and 110 deauthorization polls. Unions won 4,001 bargaining rights elections, or 50 percent.

In the 1975 employee representation elections, 79 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 1975 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), in 1959 (Landrum-Griffin Act), and in 1974.

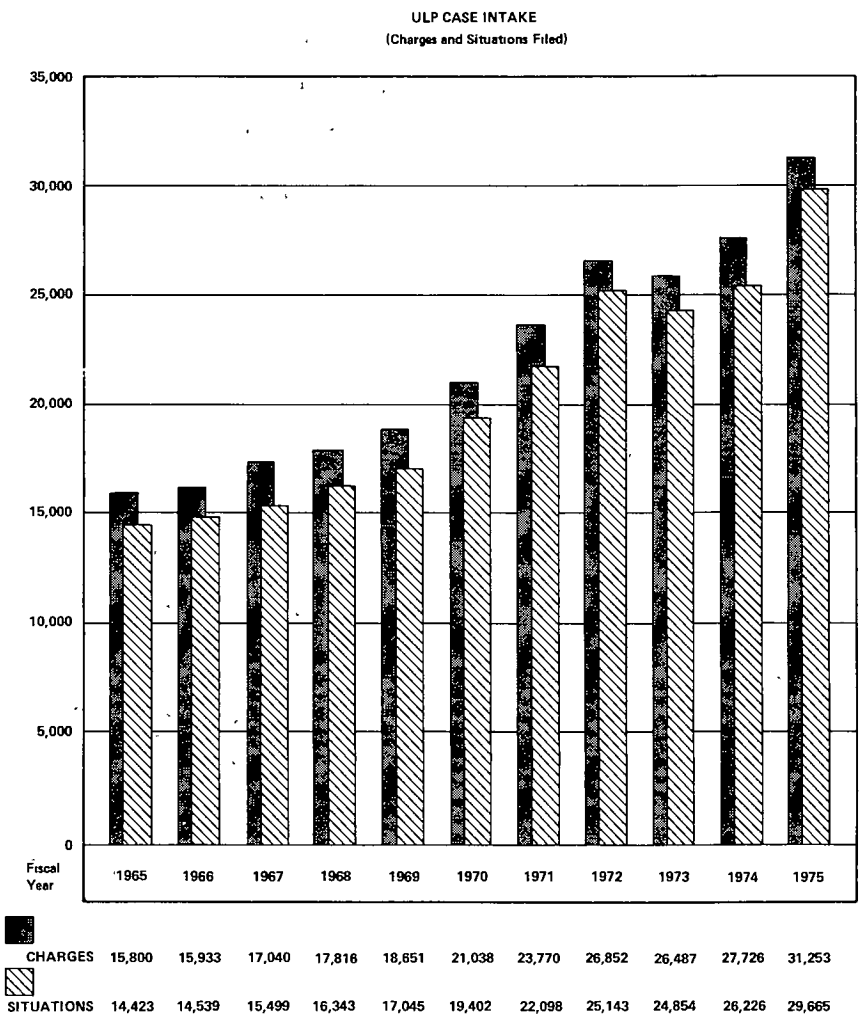
Board Members in fiscal year 1975 were Chairman Edward B. Miller of Illinois, followed by his successor Betty Southard Murphy of New Jersey, who took office as Chairman on February 18, 1975,

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 the 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



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 1 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.

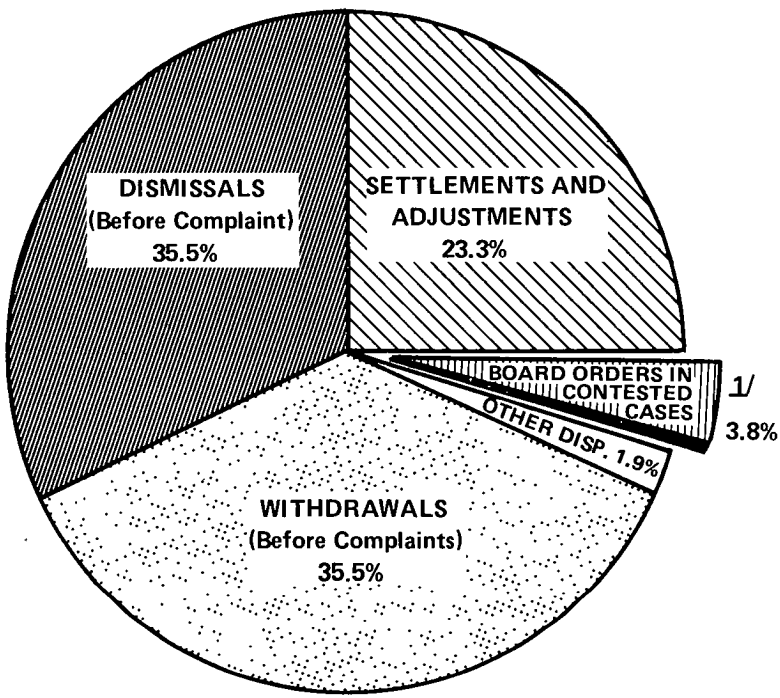
All cases coming to the Agency begin their processing in NLRB regional offices either through filing of unfair labor practice charges, or employee representation petitions.

In addition to their processing of unfair labor practice cases in the initial stages, regional directors also have the authority to investigate

Chart No. 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES
(Based on Cases Closed)

FISCAL YEAR 1975



1/ Contested cases reaching Board Members for Decisions.

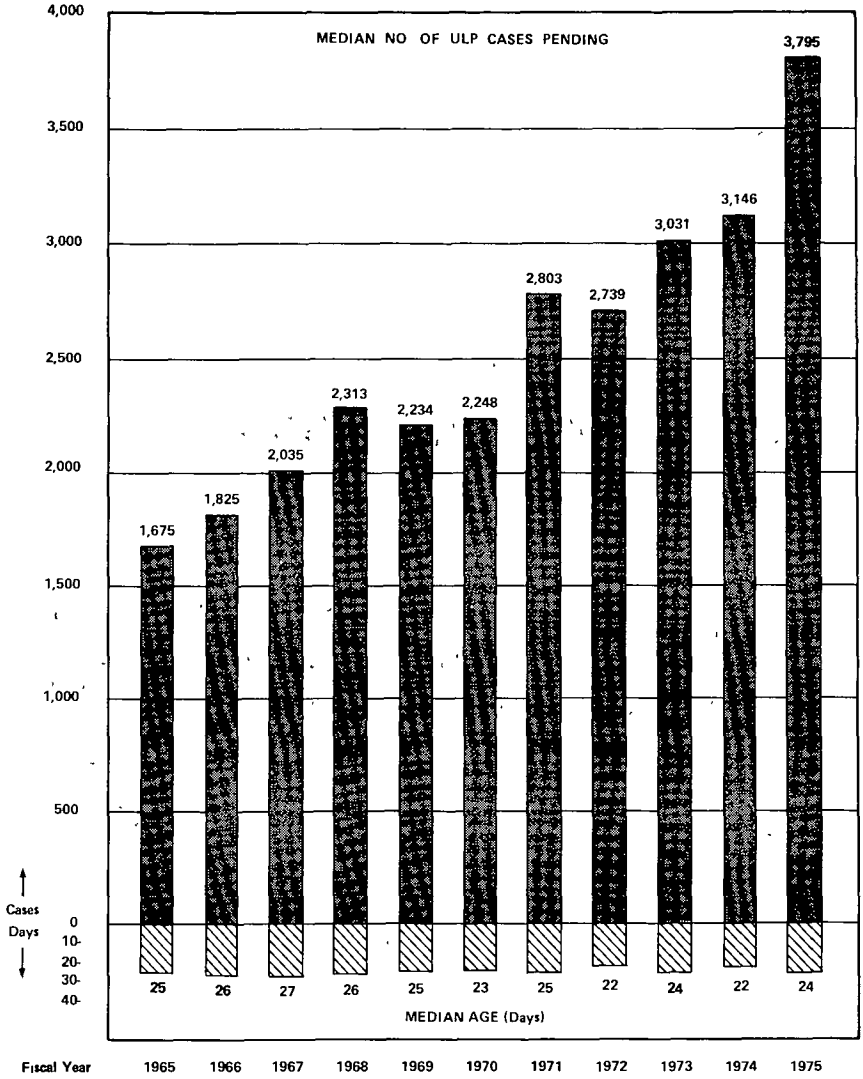
employee representation petitions, determine appropriate employee units for collective-bargaining purposes, conduct elections, and pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.

2. Case Activity Highlights

NLRB caseload in fiscal 1975 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.

Chart No. 4

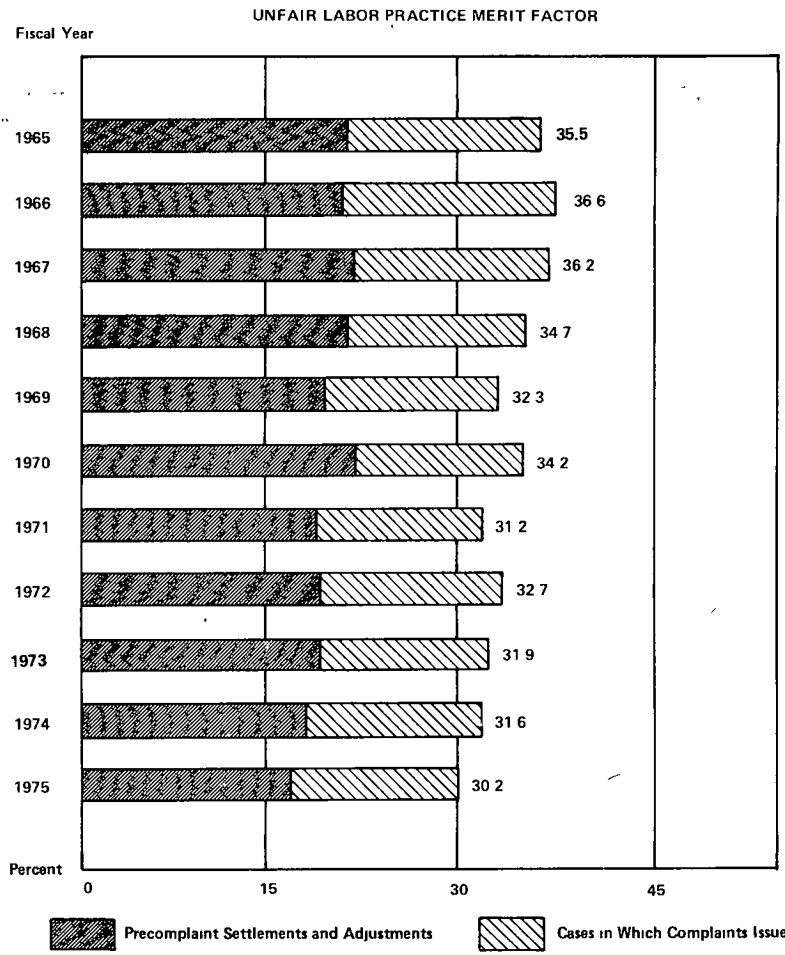
NUMBER AND AGE OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH



NLRB activity in 1975, 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 44,923 cases, of which 31,253 were unfair labor practice charges and 13,670 were representation petitions and related cases.

Chart No. 5

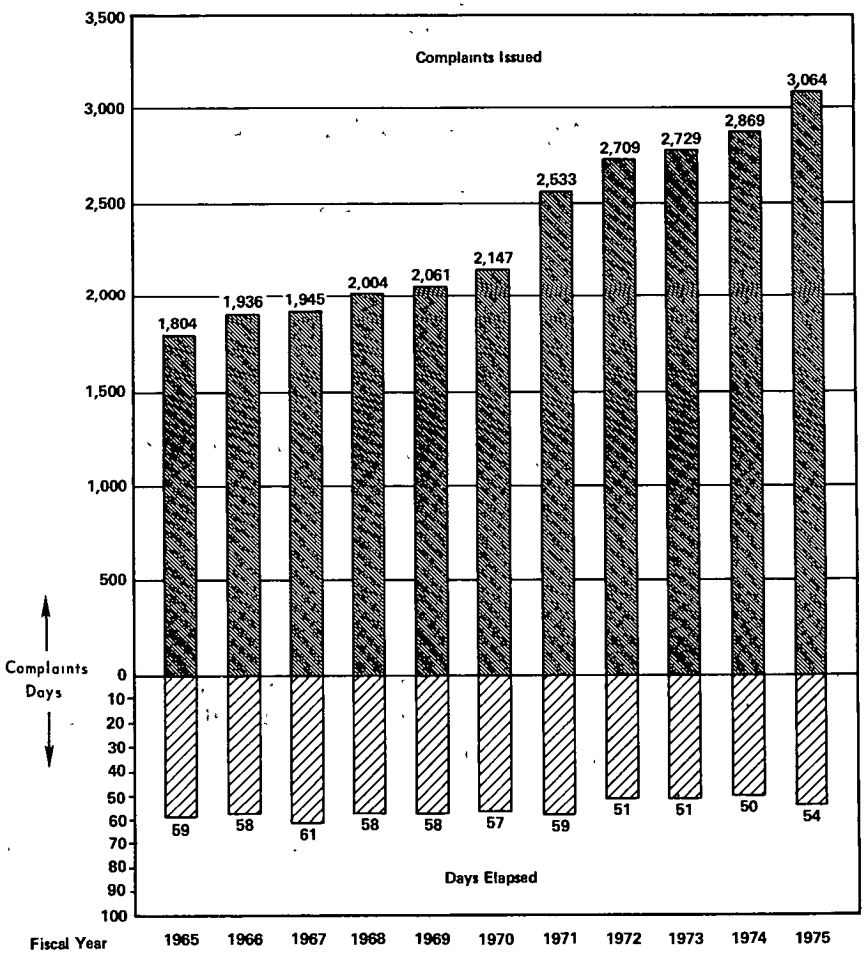


	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Precomplaint settlements and Adjustments (%)	19 4	19 4	20 5	20 2	18 4	20 4	17 7	18 3	18 2	17 8	17 1
Cases in which complaints issued (%)	16 1	17 2	15 7	14 5	13 9	13 8	13 5	14 4	13 7	13 8	13 1
Total merit factor (%)	35 5	36 6	36.2	34.7	32.3	34 2	31 2	32 7	31 9	31.6	30.2

- Closed—a total of 43,707 with a record number, 29,808, involving unfair labor practice charges.
- Elections—a total of 8,687 conclusive elections of all types conducted.
- Board decisions issued—1,302 unfair labor practice decisions and 3,631 representation decisions and rulings, the latter by the Board and regional directors.
- General Counsel's office (and regional office personnel)—issued 3,064 formal complaints, and closed 1,075 initial unfair labor practice hearings, including 69 hearings under section 10(k) of the Act (job assignment disputes).

Chart No. 6

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



- Regional directors—issued 2,243 initial decisions in representation cases.
- Administrative law judges—issued 926 initial decisions, plus 54 on backpay and supplemental matters.
- There were 6,966 unfair labor practice cases settled or adjusted before administrative law judges' decisions.
- Regional offices distributed $11,286,160 in backpay to 7,405 employees. There were 3,816 employees offered reinstatement; 2,608 accepted.
- Regional office personnel sat as hearing officers at 2,759 representation hearings—2,459 initial hearings and 300 on objections and/or challenges.
- There were 508,031 employees who cast ballots in NLRB conclusive representation elections.
- Appeals courts handed down 261 decisions related to enforcement and/or review of Board orders—85 percent affirmed the Board in whole or in part.

B. Operational Highlights

1. Unfair Labor Practices

In fiscal 1975, there were 31,253 unfair labor practice cases filed with the NLRB, an increase of 3,527 above the 27,726 filed in fiscal 1974. The cases filed in 1975 were almost double the 15,800 filed 10 years before. In situations in which related charges are counted as a single unit, there was a 13.1-percent increase from fiscal 1974. (Chart 2.)

In 1975, alleged violations of the Act by employers increased to 20,311 cases, a 13-percent increase from the 17,978 of 1974. Charges against unions increased more than 12 percent to 10,822 in 1975 from 9,654 in 1974.

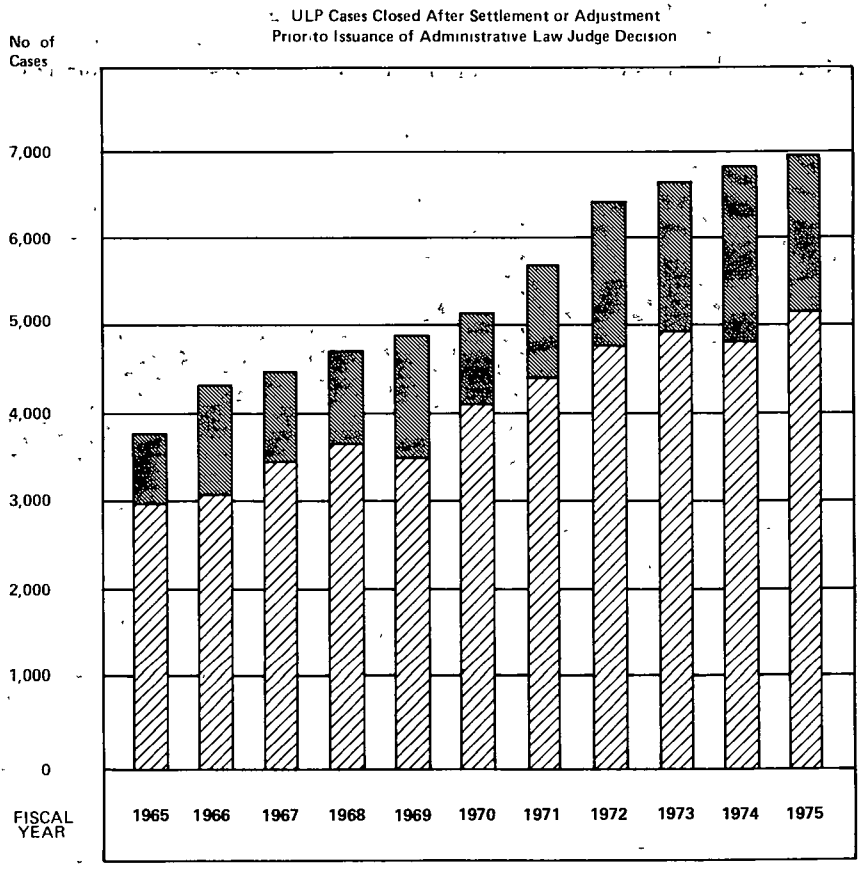
There were 120 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 113 against unions, and 7 against both unions and employers. (Tables 1 and 1A.)

Regarding 1975 charges against employers, 13,426 (or 66 percent of the 20,311 total) alleged discrimination or illegal discharge of employees. There were 5,633 refusal-to-bargain allegations in about 28 percent of the charges. (Table 2.)

On charges against unions in 1975, there were 6,832 alleging illegal restraint and coercion of employees, about 64 percent as compared with the 60 percent of similar filings in 1974. There were 2,684 charges against unions for illegal secondary boycotts and jurisdictional disputes, 2 percent more than the 2,630 of 1974.

Chart No. 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
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
1975	5,186	1,780	6,966

There were 1,781 charges of illegal union discrimination against employees in 1975. There were 503 charges of unions picketing illegally for recognition or for organizational purposes, a decrease from the 553 charges in 1974. (Table 2.)

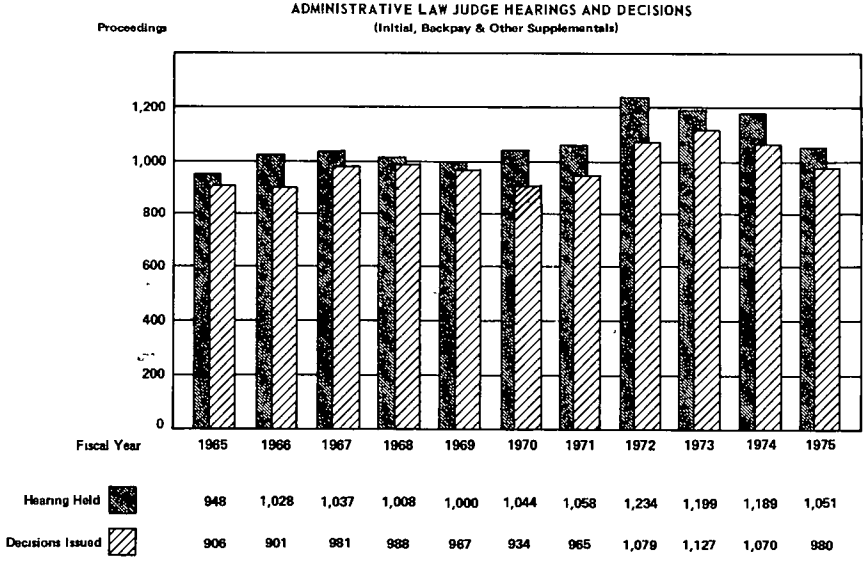
In charges against employers in 1975, unions led by filing 57 percent. Unions filed 11,563; individuals filed 8,697 charges (43 percent); and employers filed 51 charges against other employers.

As to charges against unions, 6,176 were filed by individuals or 57 percent of 1975's total of 10,822. Employers filed 4,447 or 41 percent of the charges. Other unions filed the 199 remaining charges. There were 120 hot cargo charges against unions and/or employers (involving the Act's section 8(e)); 92 were filed by employers, 12 by individuals, and 16 by unions.

Regarding the record high 29,808 unfair labor practice charges closed in 1975 about 94.3 percent were closed by NLRB regional offices as compared with 93.5 percent in 1974. In 1975, 23.3 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 35.5 percent by withdrawal before complaint, and 35.5 percent by administrative dismissal. In 1974 the percentages were 25.5 percent, 36 percent, and 32 percent, respectively.

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 1975 it was 30.2 percent.

Chart No. 8



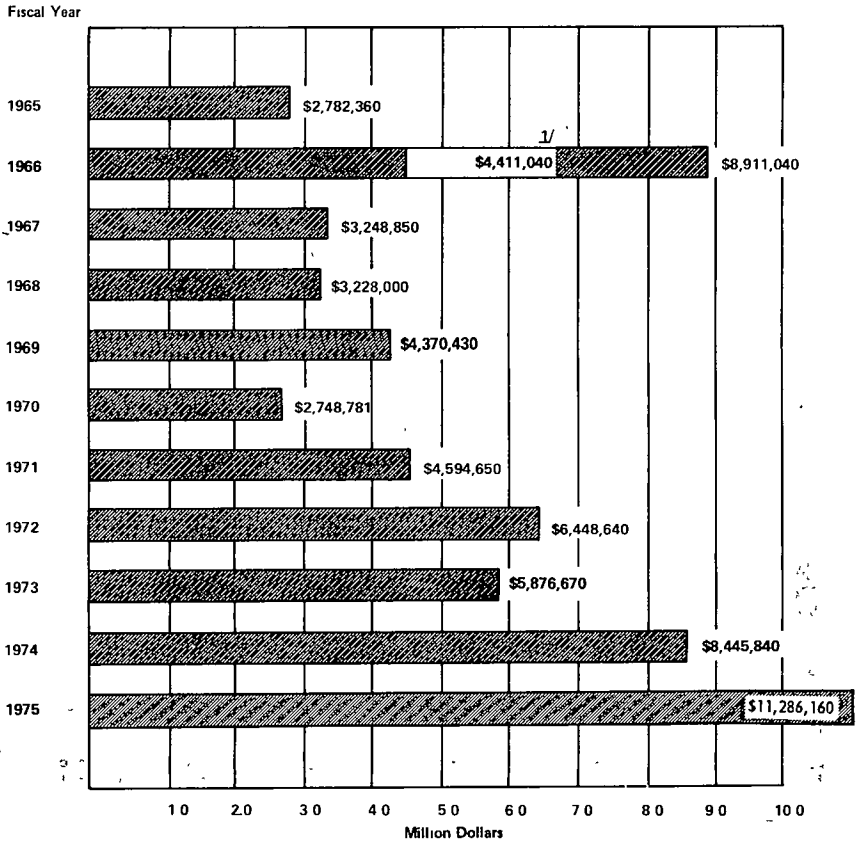
In 1975, the merit factor in charges against employers was 32.3 percent as compared to 33.3 percent in 1974. In charges against unions, the merit factor was 26.4 percent in 1975. It was 28.3 percent in 1974.

Since 1962 (see Chart 5), more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 57 percent in fiscal 1975.

In 1975, there were 3,983 merit charges which caused issuance of complaints, and 5,186 precomplaint settlements or adjustments of meritorious charges. The two totaled 9,169 or 30.2 percent of the unfair labor practice cases. (Chart 5.)

Chart No. 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/1966 - less the Kohler Case.

In fiscal year 1975, NLRB regional offices issued 3,064 complaints, a 7-percent gain over the 2,869 issued in 1974. (Chart 6.)

Of complaints issued, 79.7 percent were against employers, 17.3 percent against unions, and 3 percent against both employers and unions.

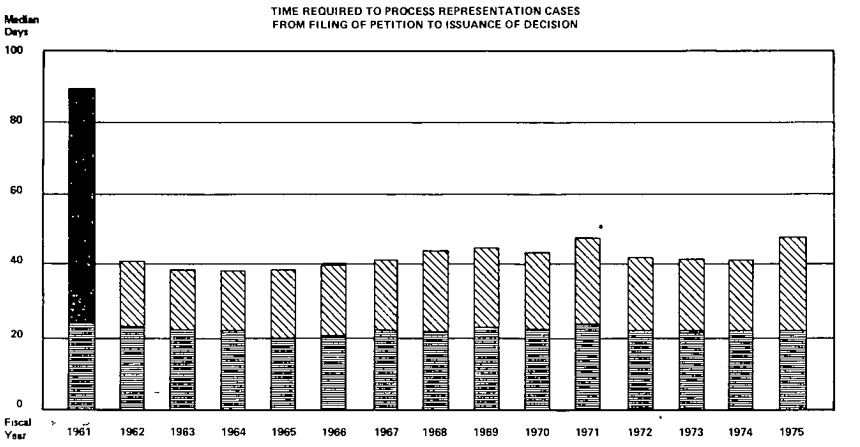
In 1975, NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 54 days (50 days in 1974). The 54 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Administrative law judges in 1975 conducted 1,006 initial hearings involving 1,358 cases, compared with 1,117 hearings involving 1,543 cases in 1974. Also, administrative law judges conducted 45 additional hearings in supplemental matters in 1975. (Chart 8 and Table 3A.)

At the end of fiscal 1975, there were 11,156 unfair labor practice cases pending before the Agency, 14.9 percent more than the 9,711 cases pending at the end of fiscal 1974.

In fiscal 1975, the NLRB awarded backpay to 7,405 workers, in total amounting to $11.3 million. The backpay was 33 percent more than in fiscal 1974. (Chart 9.)

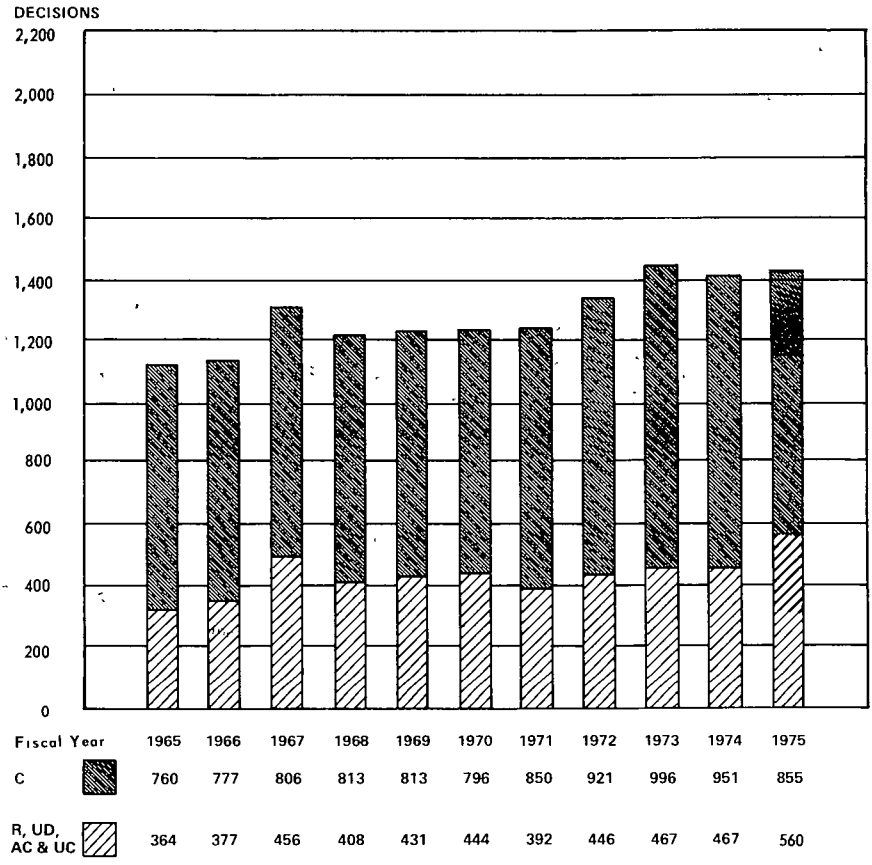
Chart No. 10



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
1975	23	–	22

Chart No. 11

CONTESTED BOARD DECISIONS ISSUED



Fiscal Year	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
C	760	777	806	813	813	796	850	921	996	951	855
R, UD, AC & UC	364	377	456	408	431	444	392	446	467	467	560

During fiscal 1975, in 1,532 cases 3,816 employees were offered reinstatement and 2,608 or 68 percent, accepted. In fiscal 1974, about 59 percent of the employees accepted offered reinstatement.

Work stoppages ended in 199 of the cases closed in fiscal 1975. Collective bargaining was begun in 1,624 cases. (Table 4.)

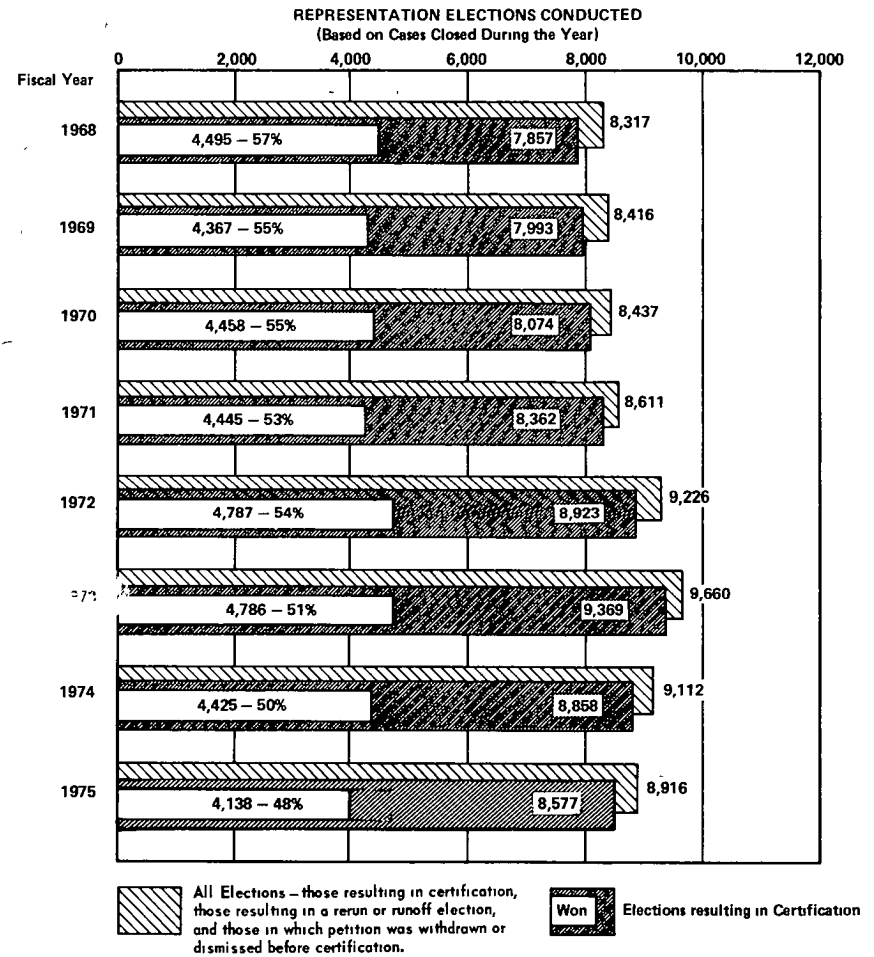
2. Representation Cases

In fiscal 1975, the NLRB received 13,670 representation and related case petitions. These included 11,917 collective-bargaining cases; 1,166 decertification petitions; 209 union-shop deauthorization petitions; 61 petitions for amendment of certification; and 317 petitions

for unit clarification. The NLRB's total representation intake was 6.6 percent or 977 cases below the 14,647 of fiscal year 1974.

There were 13,899 representation cases closed in fiscal 1975, about 1.3 percent less than the 14,084 closed in fiscal 1974. Cases closed in 1975 included 12,173 collective-bargaining petitions, 1,152 petitions for elections to determine whether unions should be decertified, 203 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 371 unit clarification and amendment of certification petitions. (Chart 14 and Tables 1 and 1B.)

Chart No. 12



There were 13,527 representation and union deauthorization cases closed in fiscal 1975. About 65 percent or 8,774 cases were closed after elections. There were 3,537 withdrawals, 26 percent of the total number of cases, and 1,216 dismissals.

NLRB regional directors ordered elections following hearings in 1,713 cases, or 19.5 percent of those closed by elections in fiscal 1975. In 1975, there were 18 cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing. Board elections in 80 cases in 1975, about 1 percent of election closures, followed appeals or transfers from regional offices. (Table 10.)

3. Elections

There were 8,687 conclusive elections conducted in cases closed in fiscal 1975. An additional 339 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 8,061 (93 percent) were collective-bargaining elections. Unions won 4,001 or 50 percent of them. There also were 516 elections conducted to determine whether incumbent unions would continue to represent employees (decertification elections), and 110 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 61 of the 110 deauthorization elections in fiscal 1975, while they maintained the right in 49 other elections, which covered 4,389 employees. (Table 12.)

By voluntary agreement of parties involved, 6,883 stipulated and consent elections were conducted in fiscal 1975. These were 79.2 percent of the total elections, compared with 81.3 percent in fiscal 1974. (Table 11.)

With less elections being won by unions in 1975 as compared with 1974, more employees, 501,996 in 1975 and 482,414 in 1974, exercised their right to vote. For all types of representation elections, the average number of employees voting, per establishment, was 48 (2 less than in 1974). About three-fourths of collective-bargaining elections involved 59 or fewer employees. Likewise, in 1975, about 75 percent of decertification elections involved 49 or fewer employees. (Tables 11 and 17.)

Unions won in 137 and lost in 379 decertification elections in fiscal 1975. Unions retained the right of representation of 9,968 employees in the 137 elections won. Unions lost the right of representation of 13,849 employees in the 379 cases in which they did not win. As to size of the bargaining units involved, unions won in units averaging 73 employees, and lost in units averaging 37 employees. (Table 13.)

4. Decisions Issued

In 1975, Board Members issued 2,359 decisions in 2,869 cases—79 less decisions than the 2,438 of 1974. Regional directors issued 2,779 decisions in 2,955 cases in fiscal 1975, an increase of 180 over the 2,599 in 1974. (Chart 13.)

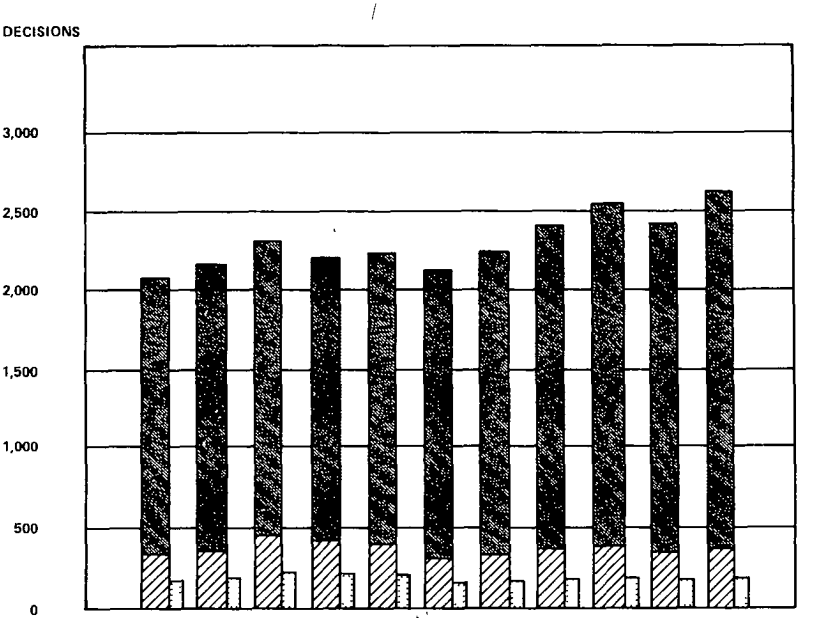
Administrative law judges issued 980 decisions and recommended orders in fiscal 1975, an 8.4-percent decrease from the 1,070 of 1974. (Chart 8.)

The administrative law judges in 1975 also issued 33 backpay decisions (43 in 1974) and 21 supplemental decisions (28 in 1974). (Table 3A.)

Parties contested the facts or application of law in 1,415 of the 2,359 Board decisions. (Chart 11.)

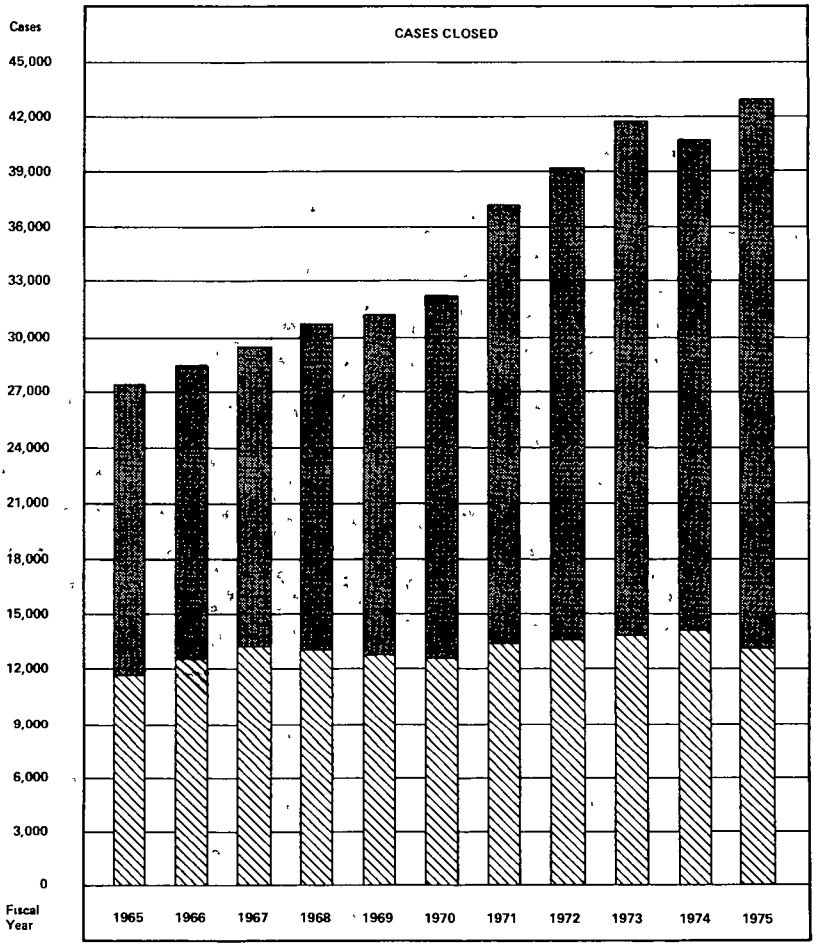
Chart No. 13

REGIONAL DIRECTOR DECISIONS ISSUED IN REPRESENTATION AND RELATED CASES



R & UD	Fiscal Year	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
	INITIAL	1749	1829	1892	1809	1876	1802	1949	2057	2165	2106	2250
	ON OBJ / CHALLS	345	368	445	422	405	308	323	354	366	332	355
AC & UC		42	161	158	178	184	205	139	159	181	161	174

Chart No. 14



	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
C CASES	15,219	15,587	16,360	17,777	18,939	19,851	23,840	25,555	26,989	27,016	29,808
, UD, AC, & UC CASES	11,980	12,917	13,134	12,973	12,658	12,502	13,360	13,919	14,577	14,084	13,899
TOTALS	27,199	28,504	29,494	30,750	31,597	32,353	37,200	39,474	41,566	41,100	43,707

The contested decisions follow:

Total contested Board decisions	1,415
Unfair labor practice decisions	855
Initial (includes those based on stipulated record)	747
Supplemental decisions	7
Backpay	34
Determinations in jurisdictional disputes	67
Representation decisions total	549
After transfer by regional directors for initial decisions	101
After review of regional directors' decisions	84
Decisions on objections and/or challenges	364
Clarification of bargaining unit decisions	7
Amendment to certification decisions	3
Union deauthorization decisions	1

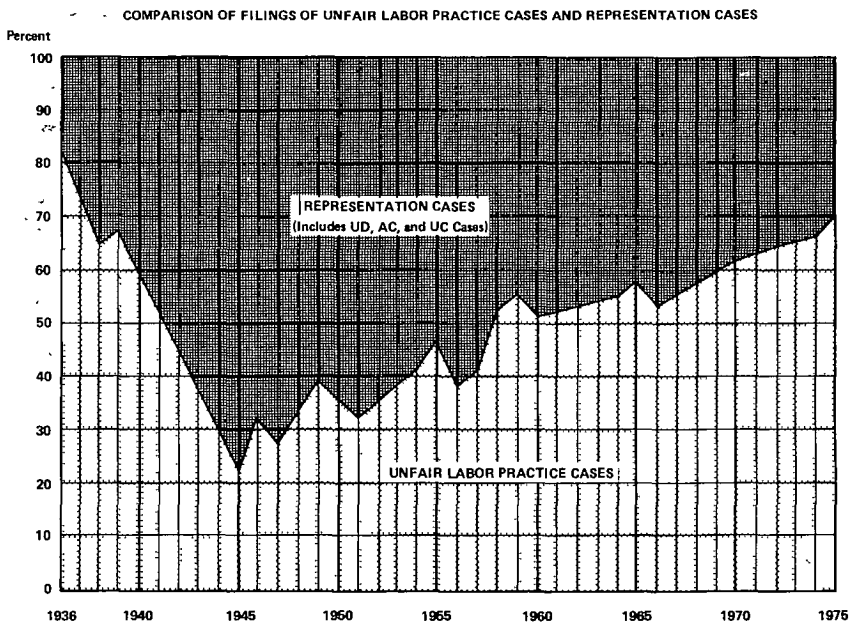
This tally left 944 decisions which were not contested before the Board. A relatively small number of contested cases reach the Board Members. This is accounted for by case settlements, adjustments, withdrawals, and dismissals. (Chart 3 and Tables 7 and 7A.) These processes effectively dispose of a vast 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 1975, the 747 initial contested unfair labor practice decisions were concerned with 1,024 cases. The Board found violations of the Act in 820 of the 1,024 cases. In 1974, violations were found in 948 or 81 percent of the 1,165 contested cases.

1. Employers—During fiscal 1975, the Board ruled on 838 contested unfair labor practice cases against employers, or 4 percent of the 19,144 unfair labor practice cases against employers disposed of by the Agency, and found violations in 701 cases or 84 percent, as compared with 82 percent in 1974. The Board remedies included ordering employers to reinstate 1,054 employees with or without backpay; to give backpay without reinstatement to 25 employees; to cease illegal assistance to or domination of labor organizations in 4 cases; and to bargain collectively with employee representatives in 185 cases.

2. Unions—In fiscal 1975, Board rulings encompassed 186 contested unfair labor practice cases against unions. Of these 186 cases, violations were found in 119 cases, or 64 percent as compared to 80 percent in fiscal 1974. The remedies in the 119 cases included orders to unions in 3 cases to cease picketing and give 95 employees backpay.

Chart No. 15



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936 – 1975

At the close of fiscal 1975, there were 730 decisions pending issuance by the Board—475 dealing with alleged unfair labor practices and 255 with employee representation questions. The total showed an increase over the 576 decisions pending at the beginning of the year.

5. Court Litigation

In fiscal 1975, U.S. courts of appeals handed down 261 decisions in NLRB-related cases, 37 less than in fiscal 1974. In the 261 decisions, NLRB was affirmed in whole or in part in 85 percent. This was less than the 86 percent in the 298 cases of fiscal 1974.

A breakdown of appeals courts rulings in fiscal 1975 follows:

Total NLRB cases ruled on	261
Affirmed in full	189
Affirmed with modification	21
Remanded to NLRB	8
Partially affirmed and partially remanded	11
Set aside	32

In 20 contempt cases in fiscal 1975 (20 in fiscal 1974) before the appeals courts, the respondents in 9 cases complied with the NLRB orders after the contempt petition had been filed but before decisions by courts, and in 11 the courts held the respondents in contempt. (Tables 19 and 19A.)

The U.S. Supreme Court in fiscal 1975 affirmed in full six NLRB orders, and affirmed one with modification. The NLRB appeared as *amicus curiae* in two cases. The Board's position was not adopted.

U.S. district courts in fiscal 1975 granted 104 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 87 percent of the contested cases, compared with 79 cases granted in fiscal 1974, or 88 percent.

The following shows NLRB injunction activity in district courts in fiscal 1975:

Granted	104
Denied	16
Withdrawn	43
Dismissed	30
Settled or placed on courts' inactive lists	160
Awaiting action at end of fiscal year	17

There were 337 NLRB injunction petitions filed with the district courts in 1975, compared with 232 in 1974. (Table 20.)

In fiscal 1975, there were 102 additional cases involving miscellaneous litigation decided by appellate and district courts; the NLRB's position was upheld in 92 cases. (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 those developments. Congressional amendments to the Act, expanding the Board's jurisdiction to include health care institutions, presented statutory construction issues of first impression in some cases. Chapter II, "Jurisdiction of the Board," Chapter III, "Effect of Concurrent Arbitration Proceedings," Chapter IV, "Board Procedure," Chapter V, "Representa-

594-380 O - 75 - 3

tion Proceedings," and Chapter VI, "Unfair Labor Practices," discuss some of the more significant decisions establishing basic principles in significant areas.

1. Health Care Institution Issues

Among the issues considered by the Board during the year which arose under the 1974 health care institution amendments to the Act were the appropriate period prior to expiration of a contract in that industry when a petition for an election could be filed, and the bargaining units appropriate for employees of such institutions. In the *Trinity Lutheran Hospital* case,[1] the Board noted that the amendment of section 8(d) to require that whenever collective bargaining involves employees of health care institutions a party desiring termination or modification of a contract must give 90 days notice to that effect to the other party—rather than the 60-day notice generally required—was designed to encourage and facilitate bargaining between the parties prior to contract termination. It therefore modified the insulated period for contracts in health care institutions, during which no petition could be filed, to 90 days to coincide with the applicable 90-day notice-of-termination period. The open period during which petitions could appropriately be filed was established to be the 30-day period more than 90 days but not over 120 days prior to the termination date of the contract.

Following oral argument on the issue of units of employees of health care institutions which would be appropriate for collective-bargaining purposes, the Board issued a series of decisions,[2] setting forth the basic criteria for such unit determinations. Recognizing that "the principal thrust of the legislative history of the health care amendments to the Act admonishes the Board to avoid undue proliferation of bargaining units in the health care industry," [3] the Board concluded, consistent with that standard, that the basic appropriate units at health care institutions would include all registered nurses as a separate unit, in view of their unique responsibilities relating to patient care,[4] whereas all other professionals would be grouped together in a separate unit.[5] Other employees found to have communities of interest en-

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[1] *Trinity Lutheran Hospital; Menorah Medical Center, St Joseph Hospital, Research Hospital & Medical Center*, 218 NLRB No 34, *infra*, p 58

[2] See *infra*, pp 58-65, for a full discussion of the decisions

[3] *Mercy Hospitals of Sacramento*, 217 NLRB No 131, *infra*, p 58

[4] *Id*

[5] *Id*

titling them to representation in separate units were all technical employees, including licensed vocational nurses,[6] and service and maintenance employees, which include all employees who are not technicals, professionals, or office clericals.[7] It was determined that business office clerical employees might also constitute a separate appropriate unit,[8] although other clericals whose duties were more closely aligned to those of the service personnel should be included in the service and maintenance unit.[9]

2. Union Discipline of Supervisor-Members

The Supreme Court decision in *Florida Power & Light* [10] was interpreted by the Board in two cases [11] where the supervisor-members working behind picket lines had performed both their supervisory work and some rank-and-file work. The Board concluded that it would "not read the Supreme Court's decision as turning on a determination of the motivation behind a union's act of discipline, but rather on a determination of the reasonable effect of that discipline on the supervisor's activities as an 8(b)(1)(B) representative." [12] Applying this construction of the decision, the Board found that discipline of a supervisor-member who performed only a minimal amount of rank-and-file work while working behind a picket line was prohibited because "it is still reasonably likely that an adverse effect may carry over to the supervisor's performance of his 8(b)(1)(B) duties when he is disciplined after having performed substantially only supervisory functions and only a minimal amount of what might arguably be called rank-and-file struck work during a work stoppage." The same rationale governed the Board's disposition of the second case, where the Board found no violation since the disciplined supervisor-members had performed much more than a minimal amount of rank-and-file work during the strike.

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[6] *Nathan & Miriam Barnert Memorial Hospital Assn d/b/a Barnert Memorial Hospital Center*, 217 NLRB No 132, *infra*, p 61

[7] *St Catherine's Hospital of Dominican Sisters of Kenosha, Wisc*, 217 NLRB No 133, *infra*, p 61

[8] *Mercy Hospitals of Sacramento, supra*

[9] *Id*

[10] *Florida Power & Light Co* v *Intl Brotherhood of Electrical Workers, Loc 641*, 417 U S 790 (1974), 39 NLRB Ann Rep 134-135 (1974)

[11] *Chicago Typographical Union 16 (Hammond Publishers)*, 216 NLRB No 149, *infra*, p 115, *Bakery & Confectionery Workers Intl Union of America, Locs 24 & 119 (Food Employers Council)*, 216 NLRB No 150, *infra*, p 117

[12] *Chicago Typographical Union 16, supra*

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended June 30, 1975, are as follows:

Personnel compensation	$43,790,480
Personnel benefits	4,146,783
Travel and transportation of persons	2,264,843
Transportation of things	64,840
Rent, communications, and utilities	5,946,066
Printing and reproduction	586,561
Other services	4,494,325
Supplies and materials	648,452
Equipment	464,984
Insurance claims and indemnities	45,145
Total Agency obligations and expenditures [13]	62,452,479

[13] Includes reimbursable obligations distributed as follows

Personnel compensation	$4,849
Personnel benefits	82
Travel and transportation of persons	501
Total obligations and expenditures	5,432

II

Jurisdiction of the Board

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

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[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 person subject to the Railway Labor Act, or any labor organization other than when acting as an employer The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Public Law 93-360, 88 Stat 395, effective August 25, 1974) Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person" are now included in the definition of "health care institution" under the new sec 2(14) of the Act "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 the Board's "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.

A. Activities Intimately Connected to Operations of Exempt Employer

Among the noteworthy cases decided during the report year, five presented questions concerning the Board's jurisdiction over Government-related employers. In *Overbrook School for the Blind* and *Pennsylvania School for the Deaf*,[6] the Board decided not to assert jurisdiction over private schools which were founded pursuant to acts of the Pennsylvania legislature to educate blind and/or deaf children. In both cases the schools were governed by boards of trustees or managers which were composed of private citizens [7] and which had power to, *inter alia*, hire and fire personnel and establish wages, working hours, and benefits. However, the Pennsylvania Department of Education set standards which the schools were required to maintain in order to receive tuition payments from the State [8] and students who were residents of the State could only attend the schools on the basis of referrals by the Department of Education. Moreover, by state law, the department was responsible for providing deaf and/or blind children with the opportunity to receive a formal education. On the basis of these facts the Board found that the schools functioned as adjuncts to the Pennsylvania public school system in providing educational opportunities to handicapped children who were residents of the Commonwealth; that the public school system, through the Department of Education, exercised "substantial and direct control" over the schools' operations; and that the thrust of the schools' activities was to "supplement the school facilities and educational program of the public school system." Accordingly, the Board found the activities of the schools to be essentially local in nature and therefore declined to assert jurisdiction.

Subsequently, in *Rural Fire Protection Co.*,[9] the Board majority declined to assert jurisdiction over an employer in the business of providing firefighting services to a municipality. According to the majority, the degree of control exercised by an exempt institution, such as a municipality, over the operations of a contractor or employer who provides services may be, but is not necessarily, determinative as to assertion of jurisdiction. Thus, even where the control exercised over the nonexempt contractor is not substantial, so that the em-

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[6] *Overbrook School for the Blind*, 213 NLRB No 82 (Chairman Miller and Members Jenkins and Kennedy), *Pennsylvania School for the Deaf*, 213 NLRB No 83 (Chairman Miller and Members Jenkins and Kennedy)

[7] In *Overbrook*, the governor of Pennsylvania was required by statute to be a "patron member" of the board of managers, but there was no requirement that any other member of the board be a public official

[8] Parents of students did not pay any tuition, 25 percent of the cost of schooling a child was paid by the student's local school district and the remainder by the Commonwealth

[9] 216 NLRB No 95 (Members Jenkins, Kennedy, and Penello, Acting Chairman Fanning dissenting).

ployer is capable of bargaining with the union over wages, hours, and other conditions of employment, the focus of necessity is nevertheless on the nature of the relationship between the purposes of the exempt institution and the services provided by the nonexempt contractor and not on the mere absence of control by the one over the other. Examination of precedent led the majority to state again that where services are intimately connected with the exempted operations of an institution the Board has found that the contractor shares the exemption, but where the services are not essential to such operations the employer is not exempt and the Board asserts jurisdiction over the contractor's activities.

The majority noted that in the instant case the employer used fire stations and equipment owned and maintained by the city and found that the firefighting service was itself an essential municipal function which the city, instead of performing directly with its own employees, delegated to the employer to perform on its behalf, making available its facilities and equipment for that purpose. Accordingly, because the services of the employer were "intimately connected" to the exempted operations of the city, the majority found that the employer shared the city's exemption from the Board's jurisdiction and, consequently, found it unnecessary to determine whether the city's degree of control over the employer's employees would constitute a separate ground for declining to assert jurisdiction.

Acting Chairman Fanning dissented on grounds that the appropriate criterion of whether to assert jurisdiction is whether the employer "possessed sufficient control over the employment conditions of its employees to enable it to bargain collectively with a union" and not the degree of connection between the services provided by the nonexempt employer and the functions of the exempt institution. Inasmuch as the employer controlled hiring, firing, benefits, and discipline of its employees and maintained supervisory authority over them, the dissent would have found that Board precedent called for the assertion of jurisdiction. The dissent further argued that a municipality's desision to contract out some of its functions to private business "should not deprive the private sector employees of benefits under the Act, nor deprive the employer and the municipality of the protection provided by the Act."

In *Bishop Randall Hospital*,[10] the Board majority found that a hospital constructed with public funds on county-owned property was not an exempt employer. The county retained title to the hospital's buildings and approximately 95 percent of its equipment. The county

[10] 217 NLRB No 185 (Members Jenkins and Penello, Member Kennedy dissenting).

commissioners levied taxes and declared bond issues to sustain a fund for maintenance, improvements, and expansion of the hospital's physical plant. Responsibility for direct oversight of the hospital's operation was vested in a five-member board of trustees selected by the county commissioners. Pursuant to a lease agreement, the hospital was operated by the Lutheran Hospitals and Homes Society of America, which had authority to hire, fire, and set policies for personnel. The majority found that the hospital was not a governmental subdivision, inasmuch as it was

> . . . neither (1) directly created by the State, so as to constitute a department or administrative arm of the state government, nor (2) administered by individuals who are responsible to public officials or to the general electorate.

The majority further found that the control exercised by the hospital's board of trustees was limited to insuring the physical condition of the hospital and its continued use as a health care facility and that such degree of control was not sufficient to render the county a joint employer, thereby exempting the hospital from the Board's jurisdiction. In reaching this conclusion, the majority relied on the record evidence that the employer had exclusive control over its personnel with respect to wages, hours of employment, and other terms and conditions of employment.

The majority was satisfied that the Lutheran Hospitals and Homes Society of America operated the hospital as an essentially private venture, with insufficient identity or relationship to the State to support the conclusion that the hospital was an exempt governmental employer under the Act. In the majority's view, the Society was not intimately connected with the operation of an exempt institution.

Member Kennedy, dissenting, contended that the operation of the hospital under the state statute was a "governmental function" and he would have found the hospital to be a "political subdivision," therefore, not an "employer" within the meaning of section 2(2) of the Act. In so finding, Member Kennedy relied on the facts that the hospital was established as a public corporation pursuant to state law, that quarterly and annual financial reports were required by law and records were required to be available for public inspection, that the trustees were appointed by the county commissioners and subject to statutory removal proceedings, and that the hospital could, through the county, levy taxes and acquire property by eminent domain.[11]

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[11] The dissent noted that, while the petition named the hospital as employer, at the hearing counsel for the employer stipulated that the Lutheran Hospitals and Homes Society of America was engaged in interstate commerce "were it to be found an Employer in this case." Member Kennedy stated that, should the Society rather than the hospital be found to be the employer, inasmuch as he would find the hospital to be an exempt institution, the Society's services were "intimately connected" with the hospital's functions and, therefore, the Board should decline to assert jurisdiction over the Society

In *BDM Services Co.*,[12] the employer was engaged in the business of providing scientific advice and engineering and technical support to the United States Army. The employer was organized in such a way that for every Army position of authority connected with the work performed by the employer there was an identical counterpart position within the employer's internal structure, thus, if the Army made changes in its organization, BDM would have to follow suit. BDM employees wore Army clothing, were required to conform to Army base regulations, used the same facilities (except the post exchange), and worked in the same buildings as Army personnel. Pursuant to the contract between the Army and the employer, the former was permitted to specify the type of people to be employed, to inspect employee credentials, and to determine the number of man-hours to be allotted for the work. However, the contract also specified that BDM was an independent contractor and not an agent of the Government, and the employer had sole charge of labor relations policy which affected its employees, including hiring and discharging employees, and deciding wages, hours, and benefits. Moreover, BDM employees were instructed not to take orders from military personnel. On the basis of these facts, the Board majority found that, while the Army played a part in the day-to-day assignments of employees, such role did not preclude the employer from entering into a collective-bargaining relationship over subjects and conditions of employment within the employer's control, which were not in direct conflict with the Army's operations, and therefore asserted jurisdiction.

Members Kennedy and Penello, dissenting, contended that the services rendered by BDM were "intimately related" to the purposes of the Army and they disagreed with the decision of the majority to assert jurisdiction in this case. Member Kennedy further dissented on the grounds that he would find the United States Army a joint employer of the employees involved and that the Board was therefore precluded from asserting jurisdiction.

Two cases decided during this report year involved issues of whether employees were exempted from the Board's jurisdiction by virtue of being subject to the Railway Labor Act.

In *Intl. Air Service Co., Ltd.*,[13] the Board panel declined to assert jurisdiction over an employer in the business of hiring commercial airline pilots, navigators, and flight engineers and subcontracting their services to various domestic and international airlines. Eighty-five percent of the employer's flight crew complement was contracted

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[12] 218 NLRB No. 180 (Chairman Murphy and Members Fanning and Jenkins, Members Kennedy and Penello dissenting)

[13] 216 NLRB No 152 (Members Jenkins, Kennedy, and Penello).

out to Japan Air Lines (JAL), an exempt employer, and it was a unit composed of certain of these employees which was sought by petitioner. Although it was the employer's responsibility to employ personnel and insure that they were qualified to perform the duties required by JAL, JAL had the right to request an employee's termination, interviewed candidates for employment by the employer, conducted physical examinations and flight evaluations of flight crews, and trained and supervised personnel assigned to it. Moreover, the employer hired (for assignments to JAL) only applicants who were acceptable to JAL, and JAL assigned flights and had exclusive authority to grant requested changes in flight schedules, vacations, and time off of crews assigned to it On the basis of these facts, the Board found that the flight crews were "involved in and intimately related to" JAL's flight services and that, consequently, the employer, with respect to the employees assigned to JAL, shared the airline's exemption from the Board's jurisdiction.

In *Pan American World Airways*,[14] the petitioner sought three separate bargaining units of (1) employees working on a project involving operation and maintenance of facilities of the Air Force in the launching of missiles and spacecraft, (2) engineers engaged in support services related to the National Aeronautics and Space Administration's manned space launch operations at the Kennedy Space Center; and (3) employees involved in a project concerning provision of medical and environmental health services to NASA and the Air Force at Cape Canaveral. The petitioner contended that the relationship between the activities of the petitioned-for employees and Pan American's carrier activity was too remote for application of the Railway Labor Act and that, therefore, the Board should assert jurisdiction. The Board panel, however, found that the employees in question worked on various projects involving ground maintenance, development of new fuels and designs for fueling systems which use them, and health and safety techniques, all of which were "sufficiently flight related as to fall within the jurisdiction of the National Mediation Board." Accordingly, and relying in part also on the fact that the NMB had asserted jurisdiction over approximately 1,400 of the employer's other employees at the same projects, the Board panel dismissed the petitions.

B. Exempt Employer as Joint Employer

Two important cases decided during this report year dealt with issues involving an exempt employer as joint employer.

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[14] 212 NLRB No 99 (Members Jenkins, Kennedy, and Penello)

The first such case was *Toledo District Nurse Assn.*,[15] in which a majority of the Board found that a nonprofit corporation organized to render community nursing services was a joint employer with the city of Toledo, Ohio, and therefore not subject to the Board's jurisdiction. The employer (TDNA) jointly with the Toledo City Board of Health had established Community Nursing Services (CNS) to render public health nursing services. TDNA continued as a separate entity with its own constitution and bylaws, but authority to administer CNS, under whose aegis all nurses employed by TDNA performed their duties, was vested in an executive director appointed jointly by the board of health and by the board of directors of TDNA. In finding the city a joint employer with TDNA, the majority relied on the facts that all CNS nurses were employed either by TDNA or by the city; when on duty all nurses identified themselves only as CNS nurses and wore an emblem with those initials; the supervisors of any nurse might be employed by either TDNA or the city; city and TDNA nurses worked together on the same assignments; and both groups of employees received the same salary and benefits and were subject to the same policy with respect to discipline and promotions.

Member Fanning dissented on grounds that even if TDNA and the city were found to be joint employers (an issue he would find unnecessary to determine) such a finding would not be dispositive because TDNA retained sufficient control over its employees to enable it to bargain effectively with a union. In support of this conclusion, the dissent cited the facts that the agreement under which TDNA operated with the city specified that TDNA would continue as a separate entity; that TDNA retained its own employees, payroll, treasury, board of trustees, personnel policies committee, supervisors, and grievance procedure; and that TDNA hired, fired, disciplined, promoted, and granted pay increases and benefits to its own employees.

Buffalo General Hospital [16] presented the similar question of whether a county was the joint employer with a private nonprofit hospital of employees working at the hospital's Community Mental Health Center. Although a contract between the county and the hospital [17] provided that the county would reimburse the center for the differences between the cost of certain services provided to county residents and funds obtained by the employer from other sources, and the employer was required to obtain county approval of personnel policies, certain salary ranges, and employee credentials and to notify the county of proposed wage modifications or pending labor negotiations, a panel of the Board found no joint employer relationship

[15] 216 NLRB No 136 (Members Jenkins, Kennedy, and Penello, Member Fanning dissenting).
[16] 218 NLRB No 167 (Chairman Murphy and Members Jenkins and Penello).
[17] This contract expired in 1974 and was not renewed.

existed. In reaching this conclusion, the panel relied on the facts that the employer exercised exclusive control over hiring, firing, and disciplining the center's employees, that in all instances where county approval with respect to labor relations matters was sought it was granted, and that all labor relations matters were handled exclusively by the employer. Moreover, the decision noted, the previous contract only required that the county be "advised" of pending labor negotiations, without giving the county any substantive control over the course of such negotiations. Accordingly, jurisdiction was asserted over the employer as a health care institution under section 2(14) of the Act.

C. Local Health Care Facilities

As a consequence of the addition of the health care amendments to the Act, three cases during the report year dealt with the issue of under what circumstances jurisdiction will not be asserted over a health care institution because its activities are purely local in nature.

Charles Circle Clinic [18] involved an outpatient clinic engaged in providing abortion and gynecological care services. The employer contended that the nature of its medical services was primarily local in character and that, therefore, the Board should not assert jurisdiction over its operations. The Board panel, however, emphasized that the legislative history of the health care amendments established that Congress intended jurisdiction to be exercised over medical care facilities whose activities, although they may be local in character, have a substantial impact on commerce. Accordingly, relying on the facts that the employer's annual gross income was estimated at approximately $668,000 and that the employer made substantial out-of-state expenditures for goods and services, the panel found the impact of the employer's operations on commerce sufficient to warrant assertion of jurisdiction.

A contrary result was reached in *Choice, Inc. & Illinois Reproductive Health Center*, [19] wherein a panel majority declined to assert jurisdiction over an abortion center. The majority found that abortion centers were not "general medical clinics in the accepted sense of the terms"; that the employers' out-of-state purchases of goods and supplies amounted to less than $50,000 annually; that there were as yet no existing jurisdictional standards applicable to abortion clinics; and that there was a lack of evidence of the aggregate impact on interstate commerce of such centers. The majority concluded that, in view of

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[18] 215 NLRB No 84 (Members Fanning, Jenkins, and Penello)
[19] 212 NLRB No 86 (Chairman Miller and Member Kennedy, Member Penello dissenting)

the recency of the Supreme Court decision legitimizing abortion,[20] the considerable public opposition to the practice, and other institutional means for achieving abortion, centers such as that operated by the employers were essentially local in character and did not have a substantial impact upon commerce.

Member Penello, dissenting, contended that there was "no meaningful distinction between a medical clinic engaged in the general practice of medicine and one, as here, which provides specialized medical services," and that public opposition to the practice of abortion should not be a basis for a conclusion that the activities of abortion clinics are local in nature. Relying, *inter alia*, on the facts that the employers' purchases of goods and supplies in interstate commerce exceeded the Board's *de minimis* standard, that the employers' projected combined gross annual revenue exceeded the Board's established standards for proprietary hospitals, and that some 15 percent of the individuals utilizing the employers' services were nonresidents of the State, the dissent concluded that the employers' activities had an impact on commerce substantial enough to warrant assertion of jurisdiction.

In Bio-Medical Applications of San Diego,[21] a panel of the Board found, contrary to the employer's contention, that jurisdiction would properly be asserted over a for-profit community hemodialysis unit. As in *Charles Circle Clinic*, *supra*, the panel found tht jurisdiction should be extended, under the health care amendments, to health care institutions which, though local in character, have a substantial impact on commerce. Accordingly, having found that in calendar year 1973 the employer's gross revenue was approximately $587,748 [22] and that more than $118,000 was expended outside the State for supplies and capital equipment, the panel concluded that the employer's annual gross income exceeded any discretionary standard the Board would apply and that, therefore, assertion of jurisdiction was warranted.

D. Custodial Care Facilities

Six cases during this report year presented questions involving assertion of jurisdiction, under the new health care amendments, over custodial care facilities.

The employer in *Lutheran Welfare Services of Illinois* [23] operated four day care centers in which a total of 350 children from low income

[20] *Roe* v *Wade*, 410 U S 113 (1973)

[21] 216 NLRB No 115 (Members Fanning, Jenkins, and Kennedy)

[22] Approximately $233,600 of this sum was derived from Medicare, $215,000 from Med-cal, a state medical program, and the remainder from patients, hospitals, and private insurance companies

[23] 216 NLRB No 96 (Acting Chairman Fanning and Members Jenkins and Penello, Member Kennedy dissenting)

families were enrolled and received both custodial care and some educational training. Funding for the centers in the amount of approximately $550,000 per year was provided by a model cities program in Chicago, which in turn received its funds from the Federal Government The Board majority found that the employer was engaged in interstate commerce, noting that the employer met every discretionary jurisdictional standard the Board had applied [24] The majority further found that the employer's "operational nexus" with the city of Chicago was not so close as to render the assertion of jurisdiction inappropriate, distinguishing *Pennsylvania Labor Relations Board (Urban League of Pittsburgh)*, 209 NLRB 152 (1974), an advisory opinion wherein the Board stated that it would decline jurisdiction over day care centers which were an adjunct to a local public school system, on the grounds that in the instant case the day care centers were not operated as such an adjunct and their purpose was to provide custodial care, as well as educational training, for children of working mothers. Member Kennedy dissented on grounds that the sound precedent established in *Pennsylvania Labor Relations Board* was controlling.

The Board majority in *Young World,*[25] a companion case to *Lutheran Welfare Services, supra,* asserted jurisdiction over an employer engaged in the operation for profit of 10 child day care centers in Michigan, finding that the employer's operations were distinguishable from those of an educational institution because the emphasis was not on a formalized educational program, but on custodial care which incorporated learning experiences for young children and there was no basis in the record for viewing the centers as an adjunct to local public school systems. The majority found it unnecessary to establish a jurisdictional standard for day care centers as a class, but noted that the employer's projected revenues for the 1973–74 fiscal year exceeded $1 million, that 50 percent of the centers' revenues was provided on a state-matching basis by the United States Department of Health, Education and Welfare, and that the employer purchased or leased out of state more than $50,000 in goods and services. Accordingly, the Board majority found that the employer was engaged in commerce to the extent that a labor dispute would substantially affect interstate commerce, that the employer met every discretionary jurisdictional standard the Board had applied, and that assertion of jurisdiction would effectuate the purposes of the Act. Member Kennedy, for the reasons set forth in his dissenting opinion in *Lutheran Welfare Services*, dissented.

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[24] The employer's *total* annual revenues approximated $5 6 million, and annual out-of-state purchases were at least $148,C00

[25] 216 NLRB No 97 (Acting Chairman Fanning and Members Jenkins and Penello, Member Kennedy dissenting)

In *Mission of Our Lady of Mercy*,[26] the Board panel, relying on the lead case of *Ming Quong Children's Center*,[27] concluded that "it would not effectuate the policies of the Act to assert jurisdiction over this type of nonprofit, noncommercial institution which is devoted primarily to the charitable work of caring for orphans," and therefore declined to assert jurisdiction. Member Kennedy concurred in the result.

The employer in *Crotched Mountain Foundation* [28] was a residential education and rehabilitation center for multihandicapped children and young adults which served approximately 185 residents, 10 to 20 exclusively medical patients, and 25 vocational education clients. The employer's gross revenue exceeded $2 million in fiscal year 1973 and was derived from tuition, contributions, gifts, and endowment income. Chairman Miller and Member Penello, relying on *Ming Quong Children's Center, supra*, concluded that it would not effectuate the policies of the Act for the Board to assert jurisdiction over the type of nonprofit institution operated by the employer, whose activities were noncommercial in nature and were intimately connected with the charitable purposes of the institution. As they found the instant case to be governed by their decision in *Ming Quong*, Chairman Miller and Member Penello found it unnecessary to determine whether the employer operated a nonprofit hospital, as found by their colleague Member Jenkins, in his concurring opinion.

Member Jenkins, concurring in the result, found that the employer was engaged in the operation of a nonprofit hospital over which the Board, at the time of that decision, was statutorily barred from asserting jurisdiction.[29] Member Jenkins' conclusion that the employer operated a hospital was based on the facts that the employer was licensed as a special hospital and belonged to the American Hospital Association; it maintained a medical staff directed by a full-time physician whose approval of an applicant's medical report was a prerequisite for admission, the hospital had some 10 to 20 medical patients; 39 residents lived in medical wards under full-time nursing care; and the employer's medical and educational services were completely integrated.

Member Fanning, dissenting, concluded, based on his dissenting opinion in *Ming Quong*, that the employer's annual gross revenue of $2,235,000 and purchases of $50,000 worth of goods out of state

[26] 212 NLRB No 131 (Chairman Miller and Member Penello, Member Kennedy concurring)

[27] 210 NLRB 899 (1974) In that case the majority concluded that "it would not effectuate the policies of the Act for the Board to assert its jurisdiction over this type of nonprofit institution whose activities are noncommercial in nature and are intimately connected with the charitable purposes of the institution" For a discussion of that case, see 39 NLRB Ann Rep 30–31 (1974)

[28] 212 NLRB No 58 (Chairman Miller and Member Penello, Member Jenkins concurring, Member Fanning dissenting)

[29] The health care amendments to the Act had not yet been enacted

indicated that the employer's operations had "a very substantial impact on interstate commerce, so as to require the Board's assertion of jurisdiction . . . ." Disagreeing with Member Jenkins' view that the employer operated a nonprofit hospital, Member Fanning noted that a relatively small proportion of admissions was on an exclusively medical basis; there was only one full-time physician on the staff; the employer did not have X-ray facilities, an emergency room, laboratory, operating room, or ambulance; the employees sought by the petitioner were in the employer's education division rather than in the medical division; the director and staff of the education division were trained in special education; and the employer's brochure described its facility as an education and rehabilitation center.

In *Lutheran Assn. for Retarded Children, a California Non-Profit Corporation d/b/a Home of Guiding Hands*,[30] and its companion case *Beverly Farm Foundation*,[31] a majority of the Board asserted jurisdiction over homes for retarded persons, finding that the employers operated health care institutions within the meaning of section 2(14) of of the Act and that, therefore, the doctrine of *Ming Quong Children's Center* was inapplicable. In finding that the employers in these two cases were health care institutions, the majority noted the broad definition of "health care institution" [32] included in the 1974 amendments to the Act and concluded that, from the legislative history of the amendments, "Congress, concerned with the disruption caused by strikes in the critically important health care field, intended that the Board's jurisdiction be extended to the entire patient-oriented health care industry."

The majority placed particular emphasis on the remark of Congressman Thompson, one of the cosponsors of the House of Representatives' bill, in the course of the House debates on the amendment, that "We mean [the definition of health care institution] also to apply to specialty health services, to private institutions caring for the mentally retarded, and the like."[33] It was clear to the majority from this that Congress specifically intended that coverage of the Act be extended to include the very type of operation involved herein—facilities providing care for the mentally retarded. The majority therefore concluded on the basis of the broad language of the legislation itself, and on congressional intent as revealed by the legislative history of the amendments, that the employers' facilities fell within the definition of a health care institution within the meaning of section 2(14).

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[30] 218 NLRB No 195 (Members Fanning, Jenkins, and Penello, Chairman Murphy and Member Kennedy dissenting).

[31] 218 NLRB No 194 (Members Fanning, Jenkins, and Penello, Chairman Murphy and Member Kennedy dissenting).

[32] See fn. 1, *supra*

[33] 120 Cong Rec H.4594 (daily ed , May 30, 1974)

The majority further found, in both cases, that the employers' gross annual revenues exceeded the $250,000 discretionary jurisdictional standard applicable to such types of health care institutions and, consequently, found that the impact of the employers' operations on commerce was sufficient to warrant assertion of jurisdiction.

Chairman Murphy and Member Kennedy, dissenting in both cases, would not find either employer to be a health care institution and would, therefore, decline to assert jurisdiction under the rationale of *Ming Quong Children's Center*. In concluding that, notwithstanding Congressman Thompson's above-quoted remark during the floor debates, Congress did not intend to include homes for the mentally retarded within the definition of "health care institution," the dissenters relied on the facts that nowhere else in the legislative history was any similar reference made to facilities for the mentally retarded, and that Senator Williams, sponsor of the legislation in the Senate, emphasized in the Senate debates that "the Labor Board should use extreme caution not to read into this act by implication—or general logical reasoning—something that is not contained in the bill, its report and the explanation thereof." [34] The dissenters further contended that the catchall clause "other institution devoted to the care of sick, infirm, or aged person" in section 2(14) applies to institutions like those enumerated previously in that section, and that Congressman Thompson's phrase, "specialty health services, to private institutions caring for the mentally retarded, and the like," should be interpreted as referring to facilities which rendered "specialty health services" rather than primarily custodial care to the mentally retarded.

E. Discretionary Jurisdictional Standards

In five cases this year the Board was presented with issues involving its standards for the exercise of its discretionary jurisdiction.

In *East Oakland Community Alliance*,[35] a majority of the Board asserted jurisdiction over a community nonprofit health clinic and established discretionary jurisdictional standards based on annual gross revenue of $100,000 for nursing homes, visiting nurses associations, and related facilities, and $250,000 for hospitals and all other types of health care institutions. The majority concluded that when the health care amendments were enacted Congress did not indicate the discretionary standards to be applied to health care institutions and that, with respect to hospitals, the $250,000 standard previously applied to proprietary hospitals was merely being extended to non-

[34] 120 Cong Rec S 12104 (daily ed , July 10, 1974).

[35] 218 NLRB No 193 (Chairman Murphy and Members Jenkins and Penello Member Fanning concurring in part and dissenting in part)

profit hospitals as well. The majority noted that it chose the $250,000 hospital standard rather than the $100,000 nursing home standard for other types of health care institutions because the former standard appeared to be, as in the case of hospitals, more representative of facilities of significant size in impact on commerce and numbers of employees.

Member Fanning concurred in the decision to assert jurisdiction over the employer and in the application of a $100,000 discretionary standard for assertion of jurisdiction over nursing homes and related facilities. He dissented, however, from the majority's decision to apply a $250,000 standard to other sectors of the health care industry on grounds that Congress, in enacting the amendments, made no distinction among various sectors of the industry. He noted that the Board had not undertaken any type of survey to determine what portion of the industry would be exempted from the amendments under the $250,000 standard, emphasizing that "the Board is under a particular obligation to 'disclose the basis of its order' limiting such coverage and to 'give clear indication that, [in doing so,] it has exercised the discretion with which Congress has empowered it.' " Finally, Member Fanning expressed concern that the standards established by the majority would invite litigation as to whether a particular health care institution would fall within the category of "nursing homes and related facilities" and therefore be subject to the less exclusionary standard. The majority, however, expressed the view that the standards would prevent such litigation, inasmuch as previously established standards were being continued and a single clear standard was being instituted for all other health care institutions.

We Transport & Town Bus Corp.[36] involved a single integrated enterprise engaged in the transportation of school children for public and parochial schools and in private contract work, including provision of transportation for factories and summer camps and school charters. Members Fanning and Jenkins agreed to assert jurisdiction on the ground that the employer's nonschool bus operations produced annual revenue of $250,000, thereby meeting the Board's discretionary jurisdictional standard for transit systems.[37] Chairman Miller concurred in the assertion of jurisdiction, but found that the amount of revenue produced by the employer's nonschool bus operation was not determinative. In his view, the only issue was whether a governmental entity, such as a public school board, had sufficient control over the private employer's labor relations policies so as to be the true employer of the employees involved, or so that the governmental entity's

[36] 215 NLRB No 91 (Chairman Miller and Members Fanning and Jenkins, Members Kennedy and Penello dissenting separately)

[37] *Charleston Transit Co*, 123 NLRB 1296 (1959)

approval or participation was required for meaningful collective bargaining. In this case, the Chairman noted, no such control was evidenced by the record and, since clearly the Board's jurisdictional standards had been met, he joined in asserting jurisdiction.

Member Kennedy dissented on grounds that the employer's primary activity was the transportation of school children in aid of local communities and the State in the field of education and that, therefore, the Board should decline to assert jurisdiction. Member Kennedy also relied on the fact that the Board had earlier declined to take jurisdiction over the employer [38] because the New York State Labor Board had already done so, concluding that as a matter of policy, to discourage forum shopping, jurisdiction should not be asserted. In response to this contention, the majority noted that apparently no proceedings were actively pending before the state board and that both parties urged the Board to assert jurisdiction.

Member Penello dissented because, although he agreed with his colleagues on the majority that the *Charleston Transit* standard [39] was applicable, contrary to them he found that the employer did not meet that standard. For, in his view, the employer's income from school charter work had to be considered as income from school bus operations, and the remaining income from sources other than school bus operations was, therefore, insufficient to satisfy the $250,000 *Charleston Transit* standard. Member Penello would have, therefore, dismissed the petition.

In *Poor Richard's Pub—A California Corporation*,[40] an unfair labor practice proceeding, at the time the alleged unfair labor practices occurred the employer was within the Board's legal jurisdiction, but did not have a sufficient volume of business to meet the Board's discretionary jurisdictional standards. By the time the charge was filed less than 3 months later, however, the employer's gross volume of business, due to expansion, exceeded the Board's discretionary standard. After a hearing on the subsequent unfair labor practice complaint, the administrative law judge recommended that the complaint be dismissed for lack of jurisdiction, relying on *Furusato Hawaii Ltd.*,[41] in which the Board declined to assert jurisdiction over an employer whose business failed to meet the standard both at the time of the alleged unfair labor practices and when the charge was filed, although the employer had argued that, because of a proposed expansion, its projected revenue would exceed the standards. In *Poor Richard's*, the Board panel, concluding that it was appropriate to assert juris-

[38] *We Transport*, 198 NLRB No 144 (1972)
[39] See fn 37, *supra*
[40] 217 NLRB No 24 (Members Fanning, Kennedy, and Penello).
[41] 192 NLRB 105 (1971)

diction, distinguished *Furusato* on grounds that in that case there was a mere expectation that the jurisdictional standard would be met within a few months, while in *Poor Richard's* the employer met the standard by the time the charge was filed.

Walters Ambulance Service [42] was an advisory opinion in which the Board was asked whether it would assert jurisdiction over an ambulance service which rendered more than $50,000 annual nonretail services to in-state employers who themselves made annual out-of-state purchases in excess of $50,000, but which were statutorily exempt from the Board's jurisdiction.[43] The Board concluded that services rendered to statutorily exempt entities whose operations were of a magnitude which would otherwise justify the assertion of jurisdiction constituted indirect outflow for jurisdictional purposes and, accordingly, advised the parties that jurisdiction would be asserted over the employer's operations with respect to disputes cognizable under sections 8, 9, and 10 of the Act.

Snowshoe Co.[44] presented the question of under what circumstances nonrecurring capital expenditures would be taken into account in determining whether or not an employer met the Board's discretionary jurisdictional standards. The employer in that case was engaged in building a resort and real estate development and had purchased more than $1 million worth of materials and services from outside the State and received over $450,000 from sales of memberships in the resort. The Board panel found that while nonrecurring capital expenditures comprised part of the $1 million worth of purchases such expenditures were not the only items of inflow and could, therefore, be included for purposes of applying the discretionary jurisdictional standard, relying on *Cemetery Service Corp.*[45] Accordingly, inasmuch as the employer's volume of business surpassed the discretionary standard for nonretail enterprises, the panel found that the exercise of jurisdiction was warranted.

F. Other Issues

In two companion cases involving the same employer [46] the Board was presented the issue of whether the Board should decline to assert jurisdiction over a home for emotionally disturbed children under *Ming Quong Children's Center, supra,* although jurisdiction had been

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[42] 213 NLRB No 60 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello).

[43] The Board's standard for a nonretail enterprise was an inflow or outflow, direct or indirect, across state lines of at least $50,000. *Siemons Mailing Service,* 122 NLRB 81, 85 (1958)

[44] 212 NLRB No 29 (Chairman Miller and Members Jenkins and Kennedy)

[45] 149 NLRB 604, 606 (1964).

[46] *Children's Baptist Home of Southern California,* 215 NLRB No 44 (Chairman Miller and Members Fanning and Penello), *Children's Baptist Home of Southern California,* 215 NLRB No 45 (Chairman Miller and Members Fanning and Penello).

exercised over the employer prior to the *Ming Quong* decision and employees had acted in reliance on assurances that their conduct was protected under the Act. In 1973, the regional director had directed an election among certain employees of the home, asserting jurisdiction in reliance on *Jewish Orphan's Home*[47] and *Children's Village*.[48] After the election, to which the employer filed objections, was held, and also after the petitioner had filed unfair labor practice charges, the Board issued its decision in *Ming Quong Children's Center, supra*, overruling *Jewish Orphan's Home* and *Children's Village*. The employer, consequently, contended that the Board should decline to assert jurisdiction over it. The Board panel, however, asserted jurisdiction, on grounds that, in the representation proceeding,[49] the employer had failed to file a timely request for review of the regional director's decision. Nor did the employer in its exceptions to the regional director's report on objections raise the matter of jurisdiction. In the unfair labor practice proceeding,[50] in which the General Counsel alleged that 13 employees were discharged for their prounion activities, the Board concluded that it would be highly inequitable, once employees had been assured by the Board that their union activities were protected, to thereafter decline to assert jurisdiction, after employees had relied on such assurances to their detriment.

Van Camp Sea Food Co.[51] presented the issue of whether jurisdiction should be asserted over an employer's operations in American Samoa. In *Star-Kist Samoa*,[52] the Board had held that American Samoa, as an unincorporated unorganized territory, was not within the jurisdiction of the Act, distinguishing between organized and unorganized territories. Subsequently, however, the Supreme Court rejected that dichotomy and found that American Samoa was a covered territory within the meaning of the Sherman Act.[53] The Board majority in *Van Camp* found that the Supreme Court holding was applicable to the word "Territory" in section 2(6) of the Act and that, therefore, the Board had statutory jurisdiction over American Samoa. The majority also noted that other aspects of labor relations in American Samoa were regulated by Federal legislation and that it would effectuate the policies of the Act to assert jurisdiction. Chairman Miller concurred, finding that under the Supreme Court decision there was no rational legal basis to decline jurisdiction and that, although greater costs and administrative difficulties might result from the assertion of jurisdic-

[47] *Jewish Orphan's Home of Southern California a/k/a Vista del Mar Child Care Service*, 191 NLRB 32 (1971).
[48] *Children's Village*, 186 NLRB 953 (1970)
[49] 215 NLRB No 45
[50] 215 NLRB No 44
[51] 212 NLRB No. 76 (Members Fanning, Jenkins, and Penello, Chairman Miller concurring, Member Kennedy dissenting)
[52] 172 NLRB 1467 (1968).
[53] *U S* v. *Standard Oil Co of California*, 404 U.S 558 (1972), rehearing denied 405 U.S. 969 (1972)

tion, there was no more legal basis for declining jurisdiction over an employer located in American Samoa than there was for declining jurisdiction over an employer in Hawaii.

Member Kennedy dissented, on grounds that, assuming the Board to have statutory jurisdiction, it would not effectuate the purposes of the Act to exercise jurisdiction. In reaching this conclusion, Member Kennedy relied on the facts that Congress expressly directed that the Fair Labor Standards Act be applied to territories, while a bill providing coverage of the Act in American Samoa had not been adopted by Congress. He further concluded that the decision to assert jurisdiction in American Samoa would require a substantial increase in the Agency's congressional appropriations and that, in view of the fact that Congress had considered and failed to approve an explicit expansion of the Board's jurisdiction, the majority's action in enlarging jurisdiction by its decision was unwise.

In *Brookhaven Memorial Hospital*,[54] a state labor relations board had, in a decision issued prior to the effective date of the health care amendments to the Act, found appropriate a bargaining unit combining professional and technical employees. After the health care amendments, which gave the Board statutory jurisdiction over the employer, became effective and while the state proceedings were pending, the employer filed representation petitions with the Board concerning the same employees involved in the state board proceedings. The Board noted that the Board will recognize the validity of state-conducted elections and certifications where the election procedure is free of irregularities and reflects the true desires of the employees. However, in *Brookhaven* the unit found appropriate by the state board apparently contained both professional and technical employees without giving the former the opportunity to vote separately, contrary to the congressional policy expressed in the Act.[55] Accordingly, the Board found that the state-conducted election was not a bar to the processing of the employer's petitions.

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[54] 214 NLRB No 159 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello)

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

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 cases [4] 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 Board established standards for deferring to contract grievance-arbitration procedures before arbitration has been had. During the

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[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.

report year, a number of cases have been decided which involve the application of these standards.

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. Several cases decided during the report year are illustrative of this point.

In one such case, which further refined the Board's accommodation between its own forum and the arbitral forum,[7] the Board majority gave full effect to the arbitrator's decision as to the layoffs of three employees, dismissing the complaint with respect thereto. It was known at the arbitration hearing in that case that there were issues of discrimination, and the union was urged by the employers to present any testimony that it had with respect to these issues. While the union apparently did present some unfair labor practice evidence with respect to one of the employees, it did not appear that the union submitted any such evidence with respect to the other two. Thus, the Board majority noted that although a forum was available, no one introduced evidence clearly relevant to the discrimination issue relating to two of the three grievants. The Board majority found this practice to be detrimental both to the arbitral process and to the Board's own process and to be a means of furthering the very multiple litigation which *Collyer* and *Spielberg* were designed to discourage.[8]

The Board majority noted that the usual and normal practice of parties to collective agreements is to submit to the arbitrator the central issue of the justness or unjustness of the discipline or discharge and that it is the normal practice of parties to submit, and of arbitrators to consider as relevant (and, in proper circumstances, controlling), evidence of unfairness or unjustness arising out of antiunion discrimination of the type which the Board considers in cases arising under section 8(a)(3) of the Act. Accordingly, the Board majority concluded that the better application of the underlying principles of *Collyer* and *Spielberg* is to give full effect to arbitration awards dealing with discipline or discharge cases, under *Spielberg*, except when unusual circumstances are shown which demonstrate that there were bona fide reasons, other than a mere desire on the part of one party to try the same set of facts before two forums, which caused the failure to

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[7] *Electronic Reproduction Service Corp., Madison Square Offset Co., Xerographic Reproduction Center*, 213 NLRB No 110 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

[8] *Spielberg Mfg Co*, 112 NLRB 1080 (1955)

introduce such evidence at the arbitration proceeding.[9] In so holding, the Board overruled its decisions in its earlier *Airco* and *Yourga* decisions.[10]

Members Fanning and Jenkins, dissenting, were of the view that the *Collyer* majority had eliminated from *Spielberg* the requirement that, for the Board to defer to an arbitrator's award, the award must have determined the same statutory issue presented to the Board. They argued further, as set forth in their dissents in *Collyer*, that arbitration is essentially alien to the determination of public rights and that arbitration of violations of the Act cannot satisfy the statute. Citing *Alexander* v. *Gardner-Denver Co*.,[11] the dissent asserted that the Supreme Court had rejected both deferral to the arbitration process prior to an award and deferral to the arbitration award after it is made for determination of statutory rights under Title VII of the Civil Rights Act of 1964. Recognizing that, as the Board majority pointed out, the Supreme Court cited and quoted *Collyer* approvingly subsequent to *Gardner-Denver* in *William E. Arnold Co.* v. *Carpenters District Council of Jacksonville & Vicinity*,[12] the dissent argued that *Arnold* involved a jurisdictional dispute, with a provision in the contract for resolving any jurisdictional dispute by arbitration and, as the suit was brought under section 301 to enforce an arbitration award, it did not involve any public interest or right as did *Gardner-Denver*.

The Board majority rejected the dissent's argument that *Gardner-Denver* invalidated both the Board's *Spielberg* and *Collyer* principles and found that in *Arnold* public issues—prohibition of section 8(b)(4)(D) against striking or picketing in furtherance of jurisdictional disputes—were, indeed, involved and that, in discussing the accommodation as among the various forums, the Supreme Court specifically endorsed the *Collyer* decision.

Two cases decided by the Board during the report year involved the failure or refusal of the arbitrator to consider the unfair labor practice issue. In *Radioear Corp.*,[13] in which an employer was alleged to have

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[9] The majority cited *Monsanto Chemical Co*., 130 NLRB 1097 (1961), wherein the arbitrator's award specifically declined to pass on issues regarded by the arbitrator as statutory rather than contractual, *Raytheon Co*., 140 NLRB 883, 885 (1963), set aside on other grounds 326 F. 2d 471 (C.A. 1, 1964), wherein both parties were in agreement that certain statutory issues should be excluded from the arbitration proceeding, and *Local Union 715, I.B.E.W. [Malrite of Wisconsin]* v. *N.L.R.B.*, 494 F. 2d 1136 (C.A.D.C., 1974), wherein certain events occurred after the arbitration proceeding, as examples of "unusual circumstances" in addition to the usual judicial rules in the event the evidence as to discrimination was shown to be newly discovered or unavailable at the time of the arbitration.

[10] *Airco Industrial Gases—Pacific, Div. of Air Reduction Co*., 195 NLRB 676 (1972) (Members Fanning and Jenkins, Member Kennedy dissenting), *Yourga Trucking*, 197 NLRB 938 (1972) (Chairman Miller and Member Penello, Member Kennedy concurring as to result). See 37 NLRB Ann. Rep. 38 (1972).

[11] 415 U.S. 36 (1974).

[12] 417 U.S. 12 (1974).

[13] 214 NLRB No. 33 (Chairman Miller and Member Penello, Member Kennedy concurring, Members Fanning and Jenkins dissenting).

violated the Act by unilaterally terminating a $30 "turkey money" bonus paid to employees at Thanksgiving and Christmas, a majority of the Board had previously deferred, in light of the parties' collective-bargaining agreement which contained a "zipper" or wrap-up clause,[14] to their contractual grievance and arbitration procedure in accordance with *Collyer*. The arbitrator issued his award, finding that by refusal of a maintenance of past benefits and no negotiations on turkey money, but specific negotiations on other benefits, it was clear the company never intended "turkey money" as a benefit of wages, but as a gift. Concluding that it was not within his authority to add on another benefit, the arbitrator denied the grievance. Though the arbitrator observed that the zipper clause referred to a waiver of collective bargaining on issues not explicit in the agreement, he specifically declined to pass on the issue which he deemed to have been before the Board, i.e., whether the employer had to bargain before discontinuing the benefit.

Noting that the arbitrator found that the zipper clause was a clear waiver of any bargaining obligation by the employer, but believed that the legality of such a clause was within the province of the Board to decide, Chairman Miller and Member Penello concluded that the waiver was not repugnant to the Act and should be given meaning and effect. They made it clear, however, that the question of the breadth of the clause and its relationship to any maintenance-of-standards clause that may have been proposed or agreed to are contract interpretation questions appropriate for resolution in the forum of arbitration, but that, because the arbitrator expressly declined to render an opinion in this matter, the Board itself must do so.

Chairman Miller and Member Penello found that there was here a conscious knowing waiver of any bargaining obligation as to nonspecified benefits such as the "turkey money" bonus. Nor did they find any repugnancy to the Act's principles in giving effect to such a waiver under the circumstances As the union had waived its rights to bargain about the subject matter, Chairman Miller and Member Penello held that the complaint should be dismissed.

Member Kennedy, concurring, stated that he did not believe that the arbitrator's award was repugnant to the purposes and policies of the Act. He would have dismissed the complaint. Accordingly, he agreed with the result reached by Chairman Miller and Member Penello.

As in the Board's initial decision in *Radioear* deferring to arbitration, Members Fanning and Jenkins dissented. They argued that no issue of contract interpretation was involved and that any decision by the

[14] 199 NLRB 1161 (1972) See 38 NLRB Ann Rep 31 (1973), and 39 NLRB Ann Rep 43 (1974)

arbitrator purporting to interpret such a catchall zipper clause as a waiver of bargaining over an established term of employment would necessarily be repugnant to the Act and of no effect under the *Spielberg* doctrine. On the merits, the dissenters would have decided the legal question by finding that the catchall zipper clause does not constitute a waiver of employees' interests in specific existing terms and conditions of employment so as to privilege the employer's termination or change of such terms and conditions without bargaining.

Similarly, in *Intl. Union of Elevator Constructors, Loc. 1, AFL–CIO (New York Elevator Mfrs. Assn.)*,[15] the arbitrator had found the dispute to be only arguably arbitrable and warned that he would not determine the unfair labor practice aspect which was the gravamen of the dispute. The Board adopted the administrative law judge's finding that it was clear that the arbitrator would not provide a determination which would accord to *Spielberg* and that, therefore, deferral to arbitration was not warranted.

In another case decided during the report year,[16] the Board majority concluded that deferral was appropriate despite the alleged existence of hostility to the union by the employer. The Board majority in *United Aircraft* noted specifically that the disputes between the parties raised by the relevant allegations of the complaint had been submitted to and resolved by arbitration, in which it was found that the company did not violate the agreement by failing to summon a shop steward at the request of an employee, but did violate the agreement by refusing to provide information relating to a grievance filed by another employee. Noting that the employer had taken affirmative action to comply with the arbitrator's award and had submitted an affidavit expressing willingness to reconvene the grievance procedure and had produced the requested information, the majority concluded that the parties' agreed-upon grievance and arbitration machinery could reasonably be relied on to function properly and to resolve the disputes fairly.

Again, Members Fanning and Jenkins dissented, citing previous Board decisions in which the employer had been found guilty of unfair labor practices and concluding that the type of misconduct involved in *United Aircraft* continued to permeate the relationship between the parties.

The dissent further noted that deferral was inappropriate here even under the majority's own *Collyer* standards for deferral given the employer's pattern of union animus and a lack of a stable bargaining relationship between the parties.

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[15] 214 NLRB No. 51 (Chairman Miller and Members Fanning and Penello).

[16] *United Aircraft Corp. (Pratt & Whitney Div., Hamilton Standard Div.)*, 213 NLRB No. 23 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting).

IV

Board Procedure

Issues Concerning Disqualification of Unions

During fiscal year 1974, a Board majority consisting of Chairman Miller and Members Jenkins and Kennedy issued a decision in *Bekins Moving & Storage Co. of Florida*,[1] which held that issues concerning the disqualification of a union on the ground of alleged invidious discrimination 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 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 with his colleagues in the majority only with regard to their finding that the Board should undertake a precertification inquiry with respect to constitutional matters such as discrimination based on race, alienage, and national origin, but disagreed as to precertification inquiries concerning an alleged failure by a union to fairly represent employees because, in his opinion, the duty of fair representation is statutory, not constitutional, and does not arise until a union has been certified. As he considered discrimination based on sex to be a breach of the statutory duty of fair representation, he would not have considered such allegations prior to certification.

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

[1] 211 NLRB No. 7

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 to fairly represent all employees in the unit without invidious discrimination. In the event that a union fails to fulfill its obligation in this regard, Members Fanning and Penello would resolve "in other proceedings under the Act" any questions that may arise concerning the union's willingness or capacity to represent all employees in the unit.

During this report year, in *Alden Press*,[2] the full Board denied the employer's preelection motion for reconsideration of its order revoking the employer's *supoenas duces tecum* that sought to compel the petitioner and its sister local to provide documents that the employer claimed it needed to prove that the petitioner was disqualified from seeking an election under section 9(c) of the Act on the grounds that it engaged in discriminatory practices on the basis of sex. Noting that the issue of disqualification of petitioner on grounds of discrimination based on sex is substantially the same as the issue involved in *Bekins, supra*, the Board was of the view that it would not effectuate the policies of the Act to permit litigation of such issues at the preelection stage of the proceedings. Members Fanning and Penello also concurred in the result, but for reasons set forth in *Bekins*.

In *Bell & Howell Co.*,[3] a Board majority consisting of Members Fanning, Kennedy, and Penello denied the employer's motion to disqualify the petitioner as collective-bargaining representative because it allegedly discriminated on the basis of sex.

In the view of Members Fanning and Penello, the disqualification of the petitioner because it allegedly discriminated on the basis of sex was neither required by the Constitution nor permitted by the Act. As stated in their dissenting opinion in *Bekins*, Members Fanning and Penello would "leave such questions as they may raise, with respect to the Petitioner's willingness or capacity to represent all employees in the bargaining unit, to be resolved in other proceedings under the Act."

Member Kennedy concurred with Members Fanning and Penello in their refusal to entertain in a precertification representation proceeding an allegation that a labor organization discriminates on the basis of sex. In his view, the Board should only view in precertification representation proceedings allegations which involve classifications determined by the Supreme Court to be inherently suspect,

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[2] 212 NLRB No 91 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello)

[3] 213 NLRB No 79 (Members Fanning and Penello, Member Kennedy concurring, Chairman Miller and Member Jenkins dissenting)

that is, race, alienage, or national origin. Although he refused to consider unlawful sex discrimination in a precertification representation proceeding, Member Kennedy would not wish to foreclose a party from raising this question after certification has issued as a possible breach of the statutory duty of fair representation.

Chairman Miller and Member Jenkins dissented. In their view, the majority erred in failing to order a hearing to obtain the relevant facts with respect to whether petitioner engaged in discrimination on the basis of sex. Such allegations, if proven, would, in their view, show that the union failed to fairly represent employees and would therefore justify taking the drastic step of declining to certify the labor organization.

In *Grants Furniture Plaza of West Palm Beach, Fla.*,[4] Chairman Miller and Members Jenkins and Kennedy certified the petitioner after it won an election despite the employer's contention that petitioner was guilty of "an established pattern and practice of discriminatory employment." In support of its contentions, the employer submitted statistical data allegedly showing an imbalance with respect to female and Spanish-surnamed members of petitioner and the demographic character of the Miami Standard Metropolitan Statistical Area. In addition, the employer submitted a copy of a Department of Justice complaint alleging that petitioner's international, through its National Master Freight Agreement and its area supplements, perpetuates prior discriminatory practices against blacks and Spanish-surnamed Americans.

In the view of Chairman Miller and Member Jenkins, mere unproven allegations of a complaint do not constitute proof, or even competent evidence, under well-established rules of evidence. As for the alleged statistical imbalance, Chairman Miller and Member Jenkins did not find the evidence offered standing alone to be sufficient to warrant the holding of a hearing in the absence of any affirmative evidence of a factual nature showing that the petitioner exercises control over the racial, sexual, or ethnic composition of those who enter the work force and, thus, those who are or may become its members. In the instant case, the employer did the hiring and thus the statistical deviation was not controlling.

Member Kennedy concurred in the result that a certification of representative should be issued in this case. However, based on his view as set forth in *Bekins* and in *Bell & Howell Co.*, he would not consider the allegations of sex discrimination therein since they were raised prior to the issuance of a certification by the Board. Member Kennedy reasoned that even if he believed that the Constitution compelled

[4] 213 NLRB No 80 (Chairman Miller and Member Jenkins, Member Kennedy concurring, Members Fanning and Penello concurring)

consideration of alleged sex discrimination by a union before certification, he would not have found that the petitioner in this case had engaged in such discrimination. In his view, statistics alone are not a reliable indication of discrimination in union membership, and the issuance of a complaint by the Department of Justice does not constitute *prima facie* evidence that such discrimination exists.

Members Fanning and Penello also concurred in the result, but for reasons set forth in their dissenting opinion in *Bekins*.

In *Grants Furniture Plaza of Stuart, Fla.*,[5] Chairman Miller and Member Jenkins found, despite the fact that the employer's objections were filed more than 3 days after the issuance of a revised tally of ballots,[6] that such objections alleging that the petitioner should be denied certification because it discriminates on the basis of sex, race, and national origin were timely filed. In reaching this conclusion, they relied on the facts that the acting regional director had specifically instructed the employer to file objections based on discrimination as "objections to certification," that the decision in *Bekins* had not issued at the time of the filing of employer's objections, and that certification was not in issue until the revised tally was released.

Noting that the objections filed were raised by the same employer against the same labor organization in *Grants Furniture Plaza of West Palm Beach, Fla., supra*, Chairman Miller and Member Jenkins overruled them for the reasons set forth in that decision. Members Fanning and Penello concurred together and Member Kennedy concurred separately for the reasons expressed in their concurring opinions in *Grants Furniture Plaza of West Palm Beach*.

In *Williams Enterprises*,[7] an unfair labor practice proceeding, the Board concluded that the disqualifying discrimination had not been established and therefore proceeded to issue a standard remedial order against an employer for committing various violations of section 8(a)(5) of the Act. There, the employer contended, under the principle of the *Mansion House* case,[8] that the union discriminates against minorities. More specifically, the employer asserted that the union's failure to supply minority employees, though requested, jeopardized the employer's compliance status under the "Washington Plan."[9] This issue was raised for the first time on the opening day of the unfair labor practice hearing. The Board considered the claim to have been timely made, but rejected it on the merits. The Board reasoned that

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[5] 213 NLRB No 81 (Chairman Miller and Member Jenkins, Member Kennedy concurring, Members Fanning and Penello concurring)

[6] Sec 102 69(h) states that objections to a revised tally must be filed within 3 days of the issuance of the revised tally

[7] 212 NLRB No 132 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello)

[8] *N L R B* v *Mansion House Center Management Corp*, 473 F 2d 471 (C A 8, 1973).

[9] This plan was issued in 1970 by the Department of Labor, pursuant to Executive Order 11246, as amended, 3 C F R 402, for the purpose of furthering minority employment in the construction industry.

the employer's evidence would show no more than that no minority employees were referred to it by the union. Such evidence, in the Board's view, did not establish a discriminatory membership or referral policy. The Board also pointed out that minority membership in the union had increased from 1.1 percent in 1970 to 12.7 percent in 1973, in substantial part as a result of minority programs initiated or supported by the union.

V

Representation Proceedings

A. Bars to the Conduct of an Election

1. Contract Bar

In certain circumstances the Board, in the interest of promoting the stability of labor relations, will find that circumstances appropriately preclude 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 turr must be consistent with the policies of the Act. Established Board policy requires that to serve as a bar to an election a contract must be signed by all parties before the rival petition is filed.[1]

In *Swift & Co.*,[2] a case considered during the report year, a Board majority held that a master agreement between the employer and the intervenor, covering seven plants represented at the local plant level by five locals, constituted a bar to the processing of an outside union's petition for an election at one of those plants. The Board majority reached this conclusion by agreeing with the interpretation of the contracting parties that the language of the master agreement making "ratification by the local unions" a condition precedent to contractual validity required ratification by majority action by the local unions rather than ratification by each local union, even though at no time had the local union representing the plant in question voted on the subject of ratification. In the Board majority's view this interpretation

[1] *Fruehauf Trailer Co* , 87 NLRB 589 (1949)

[2] 213 NLRB No 6 (Chairman Miller and Members Fanning and Jenkins, Members Kennedy and Penello dissenting)

594-380 O - 75 - 5

was not extraordinary or unreasonable,[3] both a majority of the employees and a majority of the locals had voted favorably on the ratification issue. In addition, the Board majority believed that the employer was entitled to rely on the report of the individual with whom it had negotiated that the contract which had been reached had, in effect, been ratified. Otherwise, the majority pointed out, it would be disruptive of sound collective bargaining if, when advised by a union representative with whom it had just negotiated a contract that ratification had been accomplished, an employer could not rely on that representation, but rather were required to inquire further into (a) that individual's authority to communicate the fact of ratification and (b) whether or not the reported ratification comported with all the union's internal requirements.

Members Kennedy and Penello dissented because, in their view, the master agreement required ratification by each local union before the agreement could serve as a bar to the petition therein. They observed that if the employer was entitled to rely on the report of a union representative that ratification had been accomplished then, in their opinion, their colleagues had in effect removed ratification as a prerequisite and had replaced it with a mere representation on behalf of a union to an employer.

In *Catalytic, Inc.*[4] a Board panel found that a local union was precluded from seeking to separately represent the employer's plant maintenance employees since the local's parent had been part of a multiunion relationship in negotiations with the employer with regard to its plant maintenance employees, and since the parent had not, at any time, effectuated a timely withdrawal from the established multiunion relationship. The contract in question was between the employer and 13 international unions, including the parent union. The ongoing administration of a contract was delegated by the presidents of the 13 international unions to a "General Presidents' Committee" which was comprised of one representative from each international president While it was true that the existing agreement was not signed by the parent union in question, the parent union did operate under the terms of the revised agreement. Thus, the Board panel found that the petitioning local therein was bound by the actions of its parent union with regard to the representation of the employees sought, and that therefore the contract was a bar to an election therein.

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[3] See *M & M Oldsmobile*, 156 NLRB 903, 906 (1966), enfd 377 F 2d 712 (C A 2, 1967). *General Motors Corp., Chevrolet Div (Livonia Spring & Bumper Plant)*, 151 NLRB 156, 159 (1965)

[4] 212 NLRB No 65 (Chairman Miller and Members Jenkins and Penello)

2. Timeliness of Petition

The period during the contract term when a petition may be timely filed is ordinarily calculated from the expiration date of the agreement. A petition is timely when filed not more than 90 nor less than 60 days before the terminal date of an outstanding contract.[5] Thus, a petition which is filed during the last 60 days of a valid contract will be considered untimely and will be dismissed. During this 60-day insulated period, the parties to the existing contract are free to execute a new or amended agreement without the intrusion of a rival petition, but if no agreement is reached or if the agreement which is reached does not constitute a bar itself then a petition filed after the expiration of the old valid contract will be timely and entertained. In addition, the Board's contract-bar rules do not permit the parties to an existing collective-bargaining relationship to avoid this filing period by executing an amendment or new contract term which prematurely extends the date of expiration of that contract. In the event of such premature extension, the new contract ordinarily will not bar an election.

In *Trinity Lutheran Hospital; Menorah Medical Center; St. Joseph Hospital; Research Hospital & Medical Center*,[6] the Board decided, in view of the special notice obligations imposed by the 1974 health care amendments upon health care institutions,[7] to modify the length of the insulated period for contracts in health care institutions to 90 days to coincide with the 90 days' notice provision applicable thereto. Thus, the Board announced in *Trinity* that all petitions filed more than 90 days, but not over 120 days, before the terminal date of any contract involving a health care institution would henceforth be found timely

In *Central Supply Co. of Virginia*,[8] a Board panel held that a contract between the employer and the union was not a bar to the employer's petition which was mailed 65 days prior to the expiration date of the contract, but which was not received by the regional office until 59 days prior to that date, or during the insulated period. In finding that the petition therein had been timely filed, the Board panel concluded that it would be inequitable to penalize the employer-petitioner there, who mailed the petition under circumstances where it had the right to assume the petition would be timely received at the Board's regional office in the due course of the mails.

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[5] *Leonard Wholesale Meats*, 136 NLRB 1000 (1962), 27 NLRB Ann Rep 58-59 (1962)

[6] 218 NLRB No 34 (Chairman Murphy and Members Fanning, Jenkins, Kennedy, and Penello)

[7] The pertinent amendment to sec 8(d)(4) of the Act provides, that, in labor agreements involving health care institutions, any party desiring to open such agreement must give at least 90 days' notice to the other party and 60 days' notice to the Federal Mediation and Conciliation Service before contract expiration.

[8] 217 NLRB No 108 (Members Jenkins, Kennedy, and Penello)

3. Timeliness of Showing of Interest

In *Centennial Development Co.*,[9] a Board panel found that a new contract, which was executed after the insulated period of the old contract had lapsed, barred an immediate election in an existing employerwide unit where the petitioner broadened its originally petitioned-for units from single project units to the employerwide unit, but did not present a sufficient showing of interest to support such an election prior to the execution of the new contract between the employer and the intervenor.

B. Units Appropriate for Bargaining Purposes

1. Multi- or Single-Location Units

In two cases decided by the Board during the report year, the Board found single-location communications utility units to be inappropriate. In *National Telephone Co.*,[10] the Board majority dismissed the petition seeking a unit of all telephone installers at one of the employer's branch offices. Concluding that a bargaining unit limited to a single branch was inappropriate, the majority declined to lay down any definitive rules as to appropriate units in the interconnect industry. Rather, it limited its determination to the facts of that case wherein wage increase and key personnel decisions relating to the selection, training, promotion, layoff, recall, and termination of employees were all made effectively at the divisional level. Member Fanning, dissenting, would have found the branch sought to be an appropriate unit based on the factors usually considered determinative in such cases, including local autonomy vested in the branch manager, geographical separations, meaningful local supervision, and minimal interchange, and the fact that there was no history of bargaining and no union sought to represent a broader unit. Finding that the minimum scope of any unit appropriate for collective bargaining must be divisionwide, the majority did not deem it proper to give geography controlling significance

Similarly, in *National Telecommunications*,[11] which involved a wholly owned subsidiary of National Telephone Co., a majority of the Board found that the factual considerations with regard to the appropriateness of the unit in *National Telephone* were equally applicable here. Again finding that any unit less than divisionwide in scope would be inappropriate, the majority reiterated that it was not

[9] 218 NLRB No 196 (Members Fanning, Jenkins, and Kennedy)
[10] 215 NLRB No 17 (Chairman Miller and Members Kennedy and Penello, Member Fanning dissenting)
[11] 215 NLRB No 18 (Chairman Miller and Members Kennedy and Penello, Member Fanning dissenting)

making a determination generally as to what would constitute an appropriate unit of another employer's employees in what was described as the interconnect industry. As in his dissent in the companion *National Telephone* case, Member Fanning again found all the factors that usually make a single-location unit appropriate to be present.

In another series of related cases, however, a majority of the Board found the single-location communications utility unit to be appropriate for purposes of collective bargaining. The Board majority in *Michigan Bell Telephone Co.*[12] found the employer's refusal to bargain with the union in the certified unit of all commercial department employees at one of the employer's offices to be a violation of section 8(a)(5) of the Act. In so holding, the majority rejected the employer's argument that there had been a change in its organizational structure sufficient to render the certified unit inappropriate, specifically that as of the refusal-to-bargain date the manager of the employer's commercial office had ceased to play a significant role in the hiring process. Finding that the commercial office manager still had the responsibility to effectively recommend discharges, promotions, merit increases, and overtime, to schedule vacations, to suspend employees for disciplinary reasons, to issue warnings, and to direct the work of employees, the majority concluded that the responsibility of the office management constituted participation in the determination and effectuation of labor policies. Member Kennedy dissented. In his view, the single-office unit finding in *Michigan Bell* could only result in piecemeal organizing and the fragmentation of the employer's commercial departments into numerous bargaining units which could not lend themselves to efficient stable collective bargaining.

In related companion cases,[13] the same panel majority relied on the earlier *Michigan Bell* decision in finding appropriate two other single-office units. In the first such case, the majority adopted the regional director's finding that the requested unit of all commercial department employees at another commercial office of the employer was appropriate. The determination in that case was based upon the substantial autonomy of the particular office manager, the absence of substantial interchange or contact with other commercial employees, the cohesiveness of the commercial office, the self-contained service area of the particular commercial office, the absence of any recent history of bargaining, the fact that a work stoppage at the particular commercial office would not impair the operations of the other com-

[12] 216 NLRB No 145 (Members Fanning, Jenkins, and Penello, Member Kennedy dissenting)

[13] *Michigan Bell Telephone Co*, 217 NLRB No 73 (Members Jenkins and Penello, Member Kennedy dissenting), *Michigan Bell Telephone Co*, 217 NLRB No 74 (Members Jenkins and Penello, Member Kennedy dissenting)

mercial offices of the employer to any greater degree than a work stoppage among commercial employees of another telephone company, and the fact that the commercial office sought constituted an administrative subdivision of the employer. In the second of these companion cases, finding appropriate a unit of yet another single commercial office of Michigan Bell, the majority found that the unit issue was the same as that in the earlier *Michigan Bell* case, 216 NLRB No. 145, and that there were no facts to warrant a departure from that decision. In both of these companion cases, Member Kennedy dissented for the reasons set forth in his dissent in the earlier related decision, *supra*

In *Hawaii National Bank, Honolulu*,[14] also decided during the report year, a panel majority found appropriate the requested unit of branch bank employees. The majority in *Hawaii National* adopted the regional director's conclusion that the branch bank sought functioned sufficiently as a distinct entity for its employees to constitute a separate unit for collective-bargaining purposes, and that the branch was an identifiable unit of employees with common working interests and common direct supervision, geographically remote from other employees of the employer. In a separate concurring opinion, Chairman Miller, while finding the unit petitioned for in *Hawaii National* to be an appropriate unit, stated that because of the highly integrated functional operation of banks generally he believed the Board ought to make clear that it would not apply any presumption of appropriateness of single-branch units as it does, for example, in the case of single stores in typical multistore or chain store operations.

2. Health Care Institution Units

Public Law 93–360 amended the National Labor Relations Act to eliminate the exemption from coverage of the Act previously accorded to private nonprofit hospitals Several cases issued during the report year established guidelines for units of employees appropriate for collective bargaining in the private health care field.

a. Units of Registered Nurses

In *Mercy Hospitals of Sacramento*,[15] the majority found that registered nurses, if they were sought and so desired, were entitled to be represented for purposes of collective bargaining in a separate unit. In discussing its reasons for approving nurse units, the majority concluded that registered nurses possessed, among themselves, inter-

[14] 212 NLRB No 82 (Members Fanning and Penello, Chairman Miller concurring)

[15] 217 NLRB No 131 (Chairman Murphy and Members Jenkins and Penello, Member Fanning concurring, Member Kennedy dissenting in part)

ests evidencing a greater degree of separateness than those possessed by most other professional employees in the health care industry. In the vew of the majority, those distinct interests were derived not only from the peculiar role and responsibilities of registered nurses in the health care industry, but also from an impressive history of exclusive representation and collective bargaining. If registered nurses, however, were not sought separately, but only as part of an all professional unit, or possibly as a residual professional unit, Member Fanning, as stated in his concurrence, would have included them in such units without a separate vote. While Member Kennedy believed that the "most appropriate unit" was an all professional one, he would not have precluded finding, in some circumstances, that a unit limited to registered nurses was appropriate. However, under the circumstances in *Mercy*, he noted the diversity of supervision and functions performed by the various registered nurses, and concluded that the registered nurses did not have a sufficiently distinct community of interest apart from the other professional employees to warrant their establishment as a separate unit.

In *Mercy*, the Board expressly left open the question whether, in the absence of a separate petition seeking registered nurses, it would direct an election only in an overall professional unit, including registered nurses or whether, if sought, it would find appropriate and direct an election in a unit of all professional employees, excluding registered nurses. While finding in *Dominican Santa Cruz Hospital* [16] that a unit of all professional employees excluding registered nurses might, if sought, constitute an appropriate unit, the Board observed that a unit of all professional employees including registered nurses might also be an appropriate unit.

Supervisory Status of Registered Nurses

The Board determined the supervisory status of certain classifications of registered nurses in *Trustees of Noble Hospital*.[17] There, the Board found that, while the registered nurses classified as supervisors might, to a limited extent, exercise professional judgment incidental to treatment of patients, they also possessed the traditional indicia of supervisory status. The Board majority found that, unlike the registered nurses classified as supervisors, the head nurses and assistant head nurses performed their duties and functions predominantly in the "exercise of professional judgment" incidental to their treatment of patients The activities of the head nurses were all directed toward the proper and efficient treatment of the patients in their nursing

[16] 218 NLRB No 182 (Chairman Murphy and Members Fanning, Jenkins, and Penello)

[17] 218 NLRB No 221 (Members Fanning, Jenkins, and Penello, Chairman Murphy and Member Kennedy dissenting in part)

units. Further, these head nurses did not possess any of the traditional indicia of supervisory authority cognizable under the Act. The Board also found that neither the registered nurses classified as the director or assistant director of in-service were supervisors within the meaning of the Act. Chairman Murphy and Member Kennedy dissented as to the finding that the head nurses were not supervisors within the meaning of the Act. In their view, the head nurses' duties and responsibilities extended beyond the professional direction of the employees assigned to their units and involved the exercise of supervisory authority as defined in the Act.

Similarly, in *Wing Memorial Hospital Assn.*,[18] a Board panel determined, relying on the same criteria as in *Noble*, that registered nurses classified as shift supervisors were supervisors within the meaning of the Act, but that head nurses were basically serving as team leaders of other registered nurses and auxiliary personnel and did not, unlike shift supervisors, responsibly direct the registered nurses and other nursing personnel on each shift In reaching this unit determination with respect to head nurses, the panel noted that they did not possess the authority to make effective recommendations as to hiring and did not revise schedules, authorize overtime, make transfers, or call in off-duty employees. Nor did they discipline employees beyond the stage of verbal reprimand. In addition, the panel found the registered nurse classified as operating room supervisor to be a supervisor within the meaning of the Act, even though she was serving as a team leader, because she also possessed the traditional indicia of supervisory authority. A registered nurse classified as community health center department head was also found to be a supervisor within the meaning of the Act based on her authority to hire registered nurses and other employees, ability to make effective recommendations as to discharge, and power to discipline, schedule, assign, and transfer employees

In *Western Medical Enterprises d/b/a Driftwood Convalescent Hospital*,[19] a panel majority determined that, under the circumstances in that case, the charge nurses were not supervisors within the meaning of the Act. In so finding, the panel majority observed that the charge nurses were required to adhere to established hospital procedures on patient care policy, made assignments which were routine in nature, and did not appear to have authority, on their own, to give a personal written reprimand. Member Kennedy dissented, disagreeing that the charge nurses were not supervisors and finding that, on the particular facts in *Western Medical*, the authority of the charge nurses exceeded the professional judgmental directions normally incident to the care and treatment of patients.

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[18] 217 NLRB No 172 (Members Fanning, Kennedy, and Penello)

[19] 217 NLRB No 183 (Members Jenkins and Penello, Member Kennedy dissenting)

b. Units of Other Professional Employees

As noted above, the Board did not pass, in *Mercy, supra*, on the question of whether, in the absence of a separate petition seeking registered nurses only, it would direct an election in an overall professional unit, including registered nurses. In *Dominican Santa Cruz Hospital*, also discussed above, with regard to the inclusion of registered nurses in an all professional unit, the Board did specifically find that an all professional unit excluding registered nurses was appropriate, even where no labor organization was seeking to represent the latter. The Board noted that its unit determination in that case was supported by the fact that the registered nurses, unlike most other groups of professional employees, could, if they so desired, be represented in a separate bargaining unit.

c. Units of Technical Employees

In *Barnert Memorial Hospital Center*,[20] the Board majority found appropriate for collective bargaining a unit of technical employees separate from service and maintenance employees, pointing out that the Board does not normally include technicals in a unit of service and maintenance employees. Included in the technical unit found to be appropriate therein were those kinds of employees whose specialized training, skills, education, and job requirements established a community of interest not shared by other service and maintenance employees The Board majority found that this separate community of interest was frequently evidenced by the fact that such employees were certified, registered, or licensed. However, the Board majority also found that employees might meet such standards without having been certified, registered, or licensed, and, if they did, the Board should include them in the technical unit.

Members Kennedy and Penello dissented. In their view, the granting of a separate unit of technical employees is contrary to the congressional mandate to avoid undue proliferation of bargaining units in the health care industry. Therefore, mindful of the congressional mandate in the legislative history of the 1974 health care amendments to the Act to establish broad units in this industry, they would have included the technical employees in the service and maintenance unit therein.

In *St. Catherine's Hospital of Dominican Sisters of Kenosha, Wis.*,[21] the Board found that the legislative history weighed heavily against the finding that a separate unit of licensed practical nurses was appropriate. The Board majority found the licensed practical nurses to be

[20] *Nathan & Miriam Barnert Memorial Hospital Assn d/b/a Barnert Memorial Hospital Center*, 217 NLRB No 132 (Chairman Murphy and Members Fanning and Jenkins, Members Kennedy and Penello dissenting)

[21] 217 NLRB No 133 (Chairman Murphy and Members Fanning and Jenkins, Member Kennedy dissenting, Member Penello dissenting in part)

technical employees and, therefore, included them in the unit of all technical employees. In so finding, the Board majority was seeking to avoid the undue proliferation of bargaining units which the Congress admonished the Board to prevent. In the view of the majority, licensed practical nurses fell into the same category as other technical employees. Their work involved the use of independent judgment and required the exercise of specialized training usually acquired in colleges and technical schools or through special courses.

In separate dissenting opinions, both Members Kennedy and Penello, for the reasons set forth in their dissenting opinion in *Barnert, supra*, disagreed with the direction of an election in a unit of technical employees, including licensed practical nurses.

The panel majority in *Taylor Hospital* [22] found, in accord with recent Board precedent, that the employer's technical employees, including, *inter alia*, licensed practical nurses, constituted an appropriate unit for the purposes of collective bargaining. The unit determination was based on the finding that the employees involved therein were engaged in work of a technical nature involving the use of independent judgment or requiring the exercise of specialized training, skills, education, and job requirements, evidenced by the fact that such employees were certified, registered, or licensed.

Member Penello dissented based on his view that all technical employees must be included in a broad service and maintenance unit.

In *Bay Medical Center*,[23] on the basis of bargaining history by which the parties had voluntarily established a separate unit for licensed practical nurses, the Board majority made an exception to the general rule that licensed practical nurses properly belong in a unit with other technical employees, and excluded them from the technical unit found appropriate therein. The Board majority emphasized that their exclusion of licensed practical nurses from the technical unit was restricted to the particular facts in that case They noted, in *Bay Medical*, that there was an established bargaining history among the licensed practical nurses at one of the two hospitals involved, and the contract covering such licensed practical nurses was not to expire until 1977.

Members Kennedy and Penello dissented, reiterating their view that a separate unit of technical employees is contrary to the congressional mandate to avoid undue proliferation and therefore would have required all technical employees to be included in a broad service and maintenance unit.

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[22] 218 NLRB No 179 (Members Fanning and Jenkins, Member Penello dissenting)

[23] 218 NLRB No 100 (Chairman Murphy and Members Fanning and Jenkins, Members Kennedy and Penello dissenting)

d. Units of Service and Maintenance Employees

In *Barnert, supra,* the Board majority directed an election in a separate service and maintenance unit, excluding technical employees, despite the employer's contention that the only appropriate unit included all service and maintenance employees and all technical employees. For the reasons stated in their dissenting opinion in that case, Members Kennedy and Penello would have required the technical employees to be included in the service and maintenance unit.

Likewise, in *St. Catherine's, supra,* the Board majority found appropriate a separate unit of service and maintenance employees. Included in the service and maintenance unit were all employees who were not technicals, professionals, or office clericals. Similarly, Members Kennedy and Penello dissented for reasons stated in their dissent in *Barnert, supra.*

In *Newington Children's Hospital,*[24] the Board majority directed an election in a service and maintenance unit, including hospital clerical employees, but excluding technical employees. The petitioning union had asked for an election in a service and maintenance unit, excluding technical, clerical, and professional employees. In excluding the technical employees, the Board majority found no compelling reason to require that technical employees be included in the service and maintenance unit which the petitioner sought to represent. Members Kennedy and Penello dissented for the reasons set forth in their dissenting opinion in *Barnert, supra.*

In *Duke University,*[25] the Board noted its prior decision,[26] in which it had found appropriate a unit of maintenance personnel at the Duke University campus at Durham, North Carolina, excluding the medical center maintenance employees solely because section 2(2) of the Act at that time precluded the Board from asserting jurisdiction over nonprofit hospitals such as that involved therein. Inasmuch as the 1974 health care amendments to the Act authorized the Board to assert jurisdiction over such hospitals, the Board found that the basis for the exclusion of these employees from an otherwise all-campus unit of maintenance employees had ceased to exist. In light of the Board's previous unit determination, and as the petitioner was willing to add them to the existing university maintenance unit, the Board determined, based solely on the facts in *Duke,* that the medical center maintenance employees could properly be added to the preexisting maintenance unit.

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[24] 217 NLRB No 134 (Chairman Murphy and Members Fanning and Jenkins, Members Kennedy and Penello dissenting).

[25] 217 NLRB No 136 (Chairman Murphy and Members Fanning, Jenkins, Kennedy, and Penello)

[26] *Duke University,* 200 NLRB 81 (1972)

In *Shriners Hospitals for Crippled Children*,[27] Members Kennedy and Penello found a unit of stationary engineers to be inappropriate and dismissed the petition seeking to represent them. Finding that the stationary engineers did not possess a community of interest sufficiently separate and distinct from the broader community of interest which they shared with other service and maintenance employees, and citing the legislative history of the health care amendments, Members Kennedy and Penello concluded that the only appropriate unit which encompassed stationary engineers was a broad unit consisting of all service and maintenance employees. Although in disagreement with their evaluation of the facts, Member Jenkins reached the same result as did Members Kennedy and Penello.

Chairman Murphy and Member Fanning, dissenting, found that the stationary engineers possessed an apparent, singular, homogeneous community of interest in and amongst themselves and apart from other employees to warrant their inclusion in a separate unit.

e. Units of Office Clericals

In *Mercy, supra,* the Board recognized that in the health care field, as in the industrial sphere, the distinction exists between business office clericals, who perform mainly business-type functions, and hospital clericals, whose work is more closely related to the functions performed by personnel in the service and maintenance unit Recognizing that distinction, the Board stated in *Mercy* that it would continue to find, as separately appropriate, those units of office clerical employees which consist of business office clericals.[28]

Similarly, in *St. Catherine's, supra,* the Board majority found that a unit limited to business office clericals is appropriate Member Kennedy dissented from this finding based on his view that where the petitioner sought to represent all other nonprofessional employees and the intervenor sought a "wall-to-wall" unit the legislative history precluded the Board's establishment of an inflexible rule that business office clericals must be separately represented.

In *Sisters of St. Joseph of Peace*,[29] the Board, citing *Mercy, supra,* again found that a separate unit of business office clerical employees in the health care industry is appropriate. The Board excluded from the business office clerical unit the medical records employees and the ward clerks, finding that those employees did not share a community of interest with the business office clericals, but rather with a broader unit of service and maintenance employees.

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[27] 217 NLRB No 138 (Members Kennedy and Penello, Member Jenkins concurring in the result, Chairman Murphy and Member Fanning dissenting in part)

[28] In said holding, the Board overruled *National Medical Hospitals of San Diego d/b/a Chico Community Memorial Hospital*, 215 NLRB No. 155

[29] 217 NLRB No 135 (Chairman Murphy and Members Fanning, Jenkins, Kennedy, and Penello)

f. Other Unit Issues

The Board majority, in *Mt. Airy Foundation, d/b/a Mt. Airy Psychiatric Center*,[30] held that the dichotomy between "direct" and "indirect" patient care was not sufficiently definable to provide a sound manageable basis upon which the Board could fashion appropriate units in the health care industry. The Board majority noted that if any particular fact is evident it is the fact that all employees in the health care industry, sharing as they must a genuine concern for the well-being of patients, are involved in "patient care."

The Board, in *Paramount General Hospital*,[31] considered the question of whether the registry employees [32] in question, licensed vocational nurses and nurses aides whom the employer claimed were employed on a recurrent basis and who were paid directly by the employer, belonged in a broad unit of nonprofessional employees. It was determined that the registry employees had a sufficiently distinct community of interest apart from the employees in the requested unit to justify their exclusion from the unit.

3. Status as Employees

A bargaining unit may include only individuals who are "employees" within the meaning of section 2(3) of the Act. The major categories expressly excluded from the term "employee" are agricultural laborers, independent contractors, and supervisors. In addition, the statutory definition excludes domestic servants, or any one 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.

a. Truck Owner-Operators

During this fiscal year a majority of the Board again ruled on the recurring issue of employee versus independent contractor status of owner-drivers and nonowner-drivers. In *Ace Doran Hauling & Rigging Co.*,[33] the employer had no drivers in its direct employ and operated basically through truck leases with single owner-operators, fleet

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[30] 217 NLRB No 137 (Chairman Murphy and Members Fanning and Jenkins, Member Penello concurring, Member Kennedy dissenting with respect to the separate unit finding for business office clericals)

[31] 217 NLRB No 22 (Members Fanning, Jenkins, Kennedy, and Penello)

[32] Registry employees, who were often employed by more than one registry, were sent by any of the several independent registries with which the employer did business, according to the needs of the latter, on a temporary basis

[33] 214 NLRB No 81 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting).

owner-nondrivers, and fleet owner-drivers. The relationship between the employer and the single and multiple owner-operators was based on the terms of a lease, which provided, *inter alia*, that any person hired by the owner was considered to be an employee of the owner and not an employee of the carrier, that any such driver hired by the owner was to be under the direction and control of the owner, that the owner would pay all salaries, wages, etc., and that the owner would pay for all licenses, registration fees, toll charges, decals, use permits, and axle or other types of taxes. The Board majority found that nondriving multiple owners were independent contractors and that those individuals driving their equipment under leases to the employer were employees of these independent contractors.

As to the status of the individual owner-drivers, the majority noted the following factors: (1) the owner-drivers exercised a very substantial degree of freedom in scheduling the use of their equipment, including whether they would drive themselves or hire other drivers, what routes they would take, where to have repairs made and fuel purchased, what type or make of equipment they would use, and where to park their trucks when not in use; (2) the owner-drivers were free to refuse loads without penalty; (3) the owner-drivers, if they hired other drivers, had exclusive control over the wages and working conditions of those drivers; (4) the owner-drivers paid all of the costs of maintaining their equipment, (5) the owner-drivers were not subject to any normal day-to-day supervision or control by supervisory or management officials of the employer; (6) the owners and their hired drivers did not participate in any of the employer's employee benefit programs; and (7) the entrepreneurial nature of the owner-drivers' operations established on the record showed individuals making substantial capital investments in equipment. Finding these specific facts to be determinative of the issue, the majority concluded that the owner-drivers were in fact independent contractors and that the nonowner-drivers employed by them were employees of these independent contractors rather than of the employer.

Members Fanning and Jenkins dissented. They did not agree with the conclusion that the owner-drivers who owned and leased to the employer one or two vehicles were independent contractors In their view, given the existence of the ICC regulations and the lease, which provided that equipment was leased into the carrier's "exclusive possession, control, use, and responsibility," any independence of operations by the owner-drivers was illusory at best, and whatever independence the drivers might have had was solely at the absolute sufferance of the employer. Finding that the employer exhibited a high degree of control over the owner-drivers, that the employer was the legal and operational entity responsible for the critical means

and methods whereby freight entrusted to it was moved from shipper to consignee, and that the employer was directly involved in the means as well as the results, they would have found the single owner-drivers to be employees of the employer.

The Board again faced this issue of employee versus independent contractor status of owner-drivers in *Dixie Transport Co.*[34] In that case, a panel of the Board found extensive employer control over the drivers and concluded that the drivers were employees of the employer. In so holding the Board panel relied particularly on the following facts: (1) the employer controlled the allocation of loss due to cargo damage claims; (2) the employer set the percentage of revenue to be paid to the drivers and had unilaterally altered these on occasion; (3) the employer provided and paid for a comprehensive health insurance policy for its drivers and their dependents, as well as workmen's compensation insurance; (4) the employer had instituted a practice permitting drivers a "leave of absence," during which time the driver suffered no interruption of his seniority; (5) the employer had made supplies available to drivers at its cost, payments for which were deducted from their paychecks; (6) the employer had made cash advances to drivers for personal and operating expenses and deducted payments out of their paychecks without charging for bookkeeping or interest; (7) both the previous and present managers had disciplined drivers for infractions of the employer's rules, (8) in recruiting its so-called independent contractors, the employer did not even require that they own trucks when first applying to the employer for work; and (9) the employer required that drivers paint their tractors in the standard corporation colors and provided decals displaying its corporate name and operating rights which the drivers had to attach to their tractors.

b. Agricultural Workers

A continuing rider to the Board's appropriation act requires the Board to determine "agricultural laborer" status so as to conform to the definition of the term "agriculture" in section 3(f) of the Fair Labor Standards Act.[35]

One case decided by the Board this year, *Colchester Egg Farms*,[36] involved an employer which was owned by individuals who were engaged in farming and whose employees would normally be exempt

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[34] 218 NLRB No 187 (Chairman Murphy and Members Fanning and Jenkins)

[35] Although the Board must make its own determination as to the status of any group of employees, where appropriate as a matter of policy the Board gives great weight to the interpretation of sec 3(f) by the Labor Department, in view of that agency's responsibility and experience in administering the Fair Labor Standards Act

[36] 214 NLRB No 64 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting)

under section 2(3) of the Act. The Board majority in *Colchester*, however, concluded that the employer's operations, insofar as they involved the employment of truckdrivers and a mechanic, did not constitute agriculture as that term is used in section 3(f) of the Fair Labor Standards Act. While the employer was owned by individuals who in their other operations might well have been exempt from the Act by virtue of section 2(3), the employees employed by the employer in the pickup and delivery of eggs to and from the employer, including deliveries to retail chains and other retail outlets, were found by the majority not exempt from the Act Noting that the employer had maintained a sales force for the disposal of its product and that a substantial percentage of the eggs came from contract farms and were intermingled with other eggs which the truckdrivers picked up and delivered, the majority concluded that they were employees within the meaning of the Act. In arriving at the conclusion to assert jurisdiction herein, the majority observed that it had given full effect to the Department of Labor regulations interpreting section 3(f) of the Fair Labor Standards Act. Although the majority recognized that various circuit courts of appeals had refused to accept the Department of Labor's interpretation of section 3(f) of the FLSA, it believed that sound Government policy required that the Board refrain from interpreting this legislation in a manner inconsistent with the expressed views of the agency charged with responsibility for administering that act. The majority also believed that, by following such a policy, it was giving full effect to the direction by Congress that the Board define the term "agricultural laborer" in accordance with section 3(f) of the FLSA.

Chairman Miller and Member Kennedy, dissenting, would have dismissed the petition because they believed it sought an election among agricultural laborers who were not employees within the meaning of section 2(3) of the Act and who were, therefore, not covered by the Act. The dissenters cited several court decisions adverse to the conclusion reached by the majority where the courts held that individuals performing work similar to the truckdrivers and mechanic in this case were clearly agricultural laborers under the standards prescribed by Congress. Chairman Miller and Member Kennedy urged acquiescence in the views of those court opinions.

c. Confidential and Managerial Employees

Apart from the categories excluded from the Act, or as to which statutory limitations require specific treatment, several other special categories of employees are governed by Board policy. There are established rules based on policy considerations which apply to these categories. These include confidential employees, managerial em-

ployees, plant clerical employees, office clerical employees, and technical employees.

In *Shayne Bros.*,[37] a panel of the Board noted that the Board had generally sought to exclude from employee units those employees who, while not supervisory, were so closely allied or identified with management that their interests warranted exclusion from the protection of the Act. Those employees who formulate, determine, and effectuate an employer's policies, and who exhibit sufficient discretion in the performance of their duties to indicate that they are not merely following established employer policy, had, as noted by the panel in *Shayne*, been held by the Board to be managerial employees. The panel found that the employees classified as swing men in *Shayne* did not meet the standard. They found that these swing men may have had salaries and other employment benefits different from and in some respects higher than the regular employees, but that they generally worked longer hours and had greater responsibilities than did the regular employees Likewise they found that although the swing men may have been used by the employer as a channel of communication to the other employees, that fact was not enough to warrant a finding of managerial status. Finding it clear that the job functions and work assignments of the swing men gave them a community of interest with the unit employees, the panel concluded that the only differences stemmed from their status as senior employees, and that seniority had never been a basis for exclusion from an appropriate unit.

During the year the Board had occasion to further refine its policy with respect to managerial employees in *Curtis Industries, Div. of Curtis Noll Corp* [38] There, the majority of the Board found that, based on the Supreme Court's holding in *N.L.R.B.* v. *Bell Aerospace Co., Div. of Textron*,[39] the management trainees involved were not covered by the protection of the Act The majority noted, in support of its conclusion, that all of the management trainees either advanced into management positions or left the company's employ, were recruited and hired because of their special educational backgrounds, accepted employment with a designated managerial goal in mind, remained with the employer only if they successfully completed the program, were paid a substantially higher rate of pay than regular employees in equivalent positions, and had dissimilar conditions of employment from those of regular employees The management trainees were also given the same fringe benefits as supervisors and

[37] 213 NLRB No 18 (Chairman Miller and Members Fanning and Jenkins)

[38] 218 NLRB No 222 (Chairman Murphy and Members Jenkins, Kennedy, and Penello, Member Fanning dissenting)

[39] 416 U S 267 (1974) See 37 NLRB Ann Rep 68, 69 (1972)

managerial employees rather than those enjoyed by regular employees. Inasmuch as the management trainees had been shown to have no alternatives other than to be placed in management positions ultimately or to leave the employ of the employer, the Board majority concluded that their interests were aligned with management rather than with regular employees and that, therefore, they were part of management under the Supreme Court's decision in *Bell Aerospace, supra.*

Member Fanning, in his dissent, observed that the management trainees, by their very nature, did not then occupy positions of responsibility, nor did they utilize any sort of independent discretion in the formulation or effectuation of management policy, even in the temporary capacity of an apprentice In his view, the majority was prematurely labeling management trainees, who performed exclusively as employees, as "managerial" personnel on the vague and speculative assumption that at some future date they might be performing managerial duties.

In another case decided by the Board during this report year,[40] a panel found that the central freight estimating employees sought to be represented were confidential employees and therefore excluded from participation in a representation election under the Act. Noting that the Board had in the past denied eligibility in representation elections to those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations, the panel found that the employees sought were privy to the precise labor rates to which the employer, in pursuit of its own labor policy, would be willing to agree in some future collective-bargaining agreement. As premature disclosure of this information would have obviously revealed the employer's anticipated ultimate settlement figures and thus prejudiced its bargaining strategy in any future negotiations, the panel excluded the central freight estimating employees from participation with other employees in union activities which would necessarily subject them to a critical conflict of interest and impair their trust with the employer.

4. Other Unit Issues

Other unit issues considered by the Board during the year involved a certified plantwide unit which became separated by the bargaining history which followed certification and, in another case, the effect of a 20-year history of bargaining upon multiunit bargaining for pensions.

In *Continental Can Co.*,[41] the employer and the union had departed

[40] *Pullman Standard Div of Pullman, Incorporated*, 214 NLRB No 100 (Chairman Miller and Members Kennedy and Penello)

[41] 217 NLRB No 50 (Members Fanning and Jenkins, Member Kennedy dissenting)

from the unit found appropriate by the Board previously and had themselves voluntarily established two separate units covering lithographic and nonlithographic employees. The panel majority found that the history of bargaining on the basis of the separate units of lithographic and nonlithographic employees, predicated on the dominant patterns of bargaining in the can industry, outweighed the factors of common supervision and close integration of functions which, as in the earlier decision,[42] militated against the requested lithographic production unit.

Member Kennedy, dissenting, would not have permitted the union which had been certified for a production and maintenance unit to thereafter obtain a new election in a smaller unit limited to the employees favored in its contract. In his view, the fact that the lithographic production employees had been singled out for preferential treatment in the union's negotiations and contracts covering the certified unit did not justify establishing a separate unit for them at the request of the union when it was confronted with a challenge to its representative status as bargaining representative for the certified unit; rather he viewed the disparate treatment accorded the other production and maintenance employees as in derogation of the certification

In *United Paper Workers Intl. Union, AFL–CIO, and its Local Union 1027 (Westab—Kalamazoo Div., Mead Corp.)*,[43] each of seven unions had been separately recognized as the representative of a single unit of the employer's employees for more than 20 years and each had had consecutive bargaining contracts with the employer throughout those years limited to the single unit each represented. For more than 20 years, under a practice initiated at the employer's request, each contract had contained provisions for pension benefits under a plan established in negotiations conducted on a multiunit basis between the employer and the seven unions acting through one of their number as agent commonly covering all employees in the seven units, and other employee working conditions established by separate negotiations between the employer and each unit's recognized bargaining representative. When the employer insisted that the proposals for any changes in the pension plan be held on a separate single-unit basis, the union agent rejected the employer's demands.

The panel majority did not believe that the union's conduct was incompatible with the statutory scheme of bargaining, finding instead that once "an" appropriate unit of employees established a union's representative status, parties were not so imprisoned by the unit description that they could not lawfully mutually and voluntarily

[42] *Continental Can Co.*, 171 NLRB 798 (1968)

[43] 216 NLRB No. 80 (Members Jenkins and Penello, Member Kennedy dissenting)

combine, with the consent of the other unit representatives, such unit with others for the purposes of settling some or all of the conditions of employment of mutual interest to all the represented employees involved.

Member Kennedy, dissenting, observed that a "consensual arrangement" requires the consent of all participants, and that once that consent is withdrawn the arrangement is no longer mutual and voluntary. In his view, in the context of this case such an arrangement operated in derogation of a Board certification, and the union's insistence upon the continuation of such an arrangement constituted conduct in derogation of its statutorily defined bargaining obligation.

C. Conduct of Election

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 untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. 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.[44] 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.[45] However, if the election was originally directed by the Board,[46] 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.[47]

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[44] Rules and Regulations, sec 102 62(a)
[45] Rules and Regulations, sec 102 62 (b) and (c)
[46] Rules and Regulations, secs 102 62 and 102 67
[47] Rules and Regulations, sec 102 69 (c) and (a)

1. Eligibility To Vote

The results of an election may depend on the voting eligibility of individual employees whose right to vote has been challenged by one of the parties or the Board agent. If challenged employees' votes would affect the result of the election, the Board will determine their eligibility and either count or reject their votes, as appropriate. Similarly, in determining the appropriate unit the Board will either include or exclude an individual whose unit placement is disputed.

In *Paul J. Monohon*,[48] a panel majority concluded that an employee was eligible to vote in a rerun election after an earlier election had been set aside by stipulation of the parties. The employee involved therein was ordered reinstated under the bargaining contract by a unanimous vote of a union-management committee. Although this occurred prior to the earlier election, it was still unimplemented at the time of the rerun because the employer, without adequate reason, had declined to reinstate the employee. The majority saw no reason to ignore the arbitration determination, still not acted upon, in the instant pending proceeding.

Member Kennedy dissented based on his view that, as neither the employee in question nor the union made any attempt to obtain court enforcement of the arbitration award during the 8½ months that elapsed between the award and the employee's attempt to vote in the rerun election, the possibility of his reinstatement was too remote to justify treating him as an eligible voter.

In *Banner Bedding*,[49] a panel majority created a narrow exception to the *Norris-Thermador* rule [50] which requires that agreements between parties concerning voter eligibility be expressed in writing and signed by the parties. There, a part-time employee was excluded as a result of an oral agreement reached by the parties in the presence of a Board agent prior to the execution of a stipulation for certification upon consent election. In accord with the oral agreement, the employee's name was not included on the eligibility list. He appeared at the polls, however, and was allowed to cast a ballot, subject to the challenge of the presiding Board agent. In giving effect to the oral agreement, the panel majority noted that in factual situations concerning alleged unwritten preelection eligibility agreements, the Board would continue to apply *Norris-Thermador* whenever there was any dispute whatsoever as to whether there was a firm agreement. In this

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[48] *Paul J Monohon d/b/a Paul J Monohon Associates*, 213 NLRB No 23 (Members Fanning and Penello, Member Kennedy dissenting in part)

[49] 214 NLRB No 139 (Members Jenkins and Penello, Member Kennedy dissenting)

[50] *Norris-Thermador Corp*, 119 NLRB 1301 (1958)

case, where there was unequivocal evidence that the parties agreed that the part-time employee was to be ineligible and it was not disputed that this concession removed the last obstacle to reaching the consent election agreement, the panel majority pointed out that adherence to the technical rule of *Norris-Thermador* would deny the substantive effect of that decision, which was to give Board sanction and encouragement to clearly expressed, understood, and admitted preelection agreements between the parties.

Member Kennedy dissented based on his view that his colleagues had effectively overruled *Norris-Thermador* in favor of a rule whose ambiguity would inevitably hasten the return of the disruptions which *Norris-Thermador* so effectively avoided.

2. Voting Procedure

In *Versail Mfg., Subsidiary of Philips Industries*,[51] a panel majority refused to set aside an election where an employee, who was unable to reach the polls in time to vote in the election, was not prevented from voting by the conduct of a party, or by any unfairness in the scheduling or mechanics of the election. Member Kennedy concurred in the result.

In *Mercy College*,[52] a panel majority upheld the employer's objection relating to the action of the Board agent in counting, as a "yes" vote, a ballot that contained a standard "X" in the "yes" box and a discernible "X" in the designated "no" square which had been heavily shaded over. In deeming the ballot to be spoiled and thus void, the panel majority concluded that, inasmuch as both designated squares had been marked in the manner described above, the true intent of the voter could not be ascertained with the required degree of certainty.

Member Fanning dissented based on his view that it was reasonable to conclude that the employee had clearly expressed his choice by obliterating the "X" he had placed in the "no" box.

3. Challenge of Voters

In *Amalgamated Clothing Workers of America, AFL-CIO, CLC*,[53] a Board majority, in a supplemental decision and certification of representative, refused to set aside an election conducted in a unit of label staff employees, notwithstanding the employer's contention that it should have been given the opportunity to challenge the votes of these employees based on alleged supervisory status. In finding

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[51] 212 NLRB No 85 (Members Jenkins and Penello, Member Kennedy concurring in the result)

[52] 212 NLRB No 134 (Chairman Miller and Member Jenkins, Member Fanning dissenting).

[53] 217 NLRB No 20 (Members Fanning, Jenkins, and Penello, Member Kennedy dissenting), see the Board's original decision at 210 NLRB 928 (1974)

that the votes of the label staff employees were not challengeable, the Board majority relied on the original decision on review and direction of election in this case which rejected the employer's contention that these employees were supervisors and found that a unit of all label staff employees was appropriate. In the earlier decision, a Board majority found that the employer's label staff employees, who directed picketing and handbilling activities of nonunit employees, were not supervisors within the meaning of the Act, even though they possessed the authority to hire and fire such employees because of the routine nature of their directives and the limited exercise thereof. In support of its decision, the Board majority reiterated the Board's long-established procedure and practice to deny any party to an election the opportunity to challenge the ballots of individuals in categories as to which the Board has already ruled on eligibility, and noted that his procedure has been announced many times in Board decisions,[54] as well as in the Board's Field Manual.[55]

Member Kennedy, dissenting, for the reasons stated in the dissent to the initial decision in this case, would not have certified the petitioner as the representative in the unit in which the election was conducted. He adhered to his view that the union label staff personnel were supervisors within the meaning of section 2(11) of the Act.

In *B. F. Goodrich Tire Co., Div. of B. F Goodrich Co* ,[56] a representation case election was conducted in the unit stipulated to as appropriate by the parties. There were no challenged ballots. Subsequent to the election, in an unfair labor practice proceeding, the employer raised for the first time its contention that a hearing would establish that the employees in the stipulated unit were so closely related to or aligned with management as to be managerial employees excluded from the coverage of the Act under the Supreme Court decision in *Bell Aeorspace, supra.* A Board panel granted the General Counsel's motion for summary judgment with regard to this contention. Concluding that the Board has long held, with Supreme Court approval,[57] that postelection challenges will not be considered, the panel observed that the reasons for not permitting such challenges were fully explicated by the Supreme Court in the *A. J. Tower* case, *supra,* and were fully applicable in the instant case. The panel further pointed out that the employer had full opportunity to assert that the quality control personnel therein should have been excluded from the bargaining unit at the preelection stage and that it had a further opportunity to chal-

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[54] E.g , *Atlantic Furniture Products Co* , 102 NLRB 1241 (1953), employees held eligible, *Kleinhans Co* , 115 NLRB 627, 628-629 (1956), and *Animal Trap Co of America*, 107 NLRB 1193, 1194 (1954), employees held ineligible

[55] NLRB Field Manual, sec 11328 5 (1971)

[56] 215 NLRB No 134 (Chairman Miller and Members Fanning and Jenkins)

[57] *N L R B* v *A J Tower Co* , 329 U S 324 (1946).

lenge any of such personnel whom it believed to be "managerial" at the time of the voting.

4. Service of Tally of Ballots

The Board's Rules and Regulations provide that any party may file with the regional director objections to the conduct of an election within 5 days after the tally of ballots has been furnished.[58] In a case considered by the Board in 1957, *Jacksonville Journal Co.*,[59] it was determined that the 5-day period for the filing of objections began to run when the tally was received. An issue raised during this report year was whether constructive service of a tally of ballots at the conclusion of an election would be sufficient to the purpose of determining when the 5-day period for filing objections would begin to run. This issue was resolved in *F. W Woolworth Co.*,[60] in which the Board unanimously decided that, at the conclusion of an election, where an attempt is made to serve the tally of ballots on a party or its representative and such service is refused, the party should be deemed to have been constructively served with a tally at the conclusion of the election. Thus, the Board held that the time for filing objections would therefore begin to run immediately upon such constructive service, irrespective of whether the party was later furnished with a tally through the mails or by any other means.[61]

D. Objections to Conduct of Election

1. Timeliness of Filing of Objections

In *Bechtel Incorporated*,[62] a Board panel majority decided to consider the petitioner's objections as timely filed despite the fact that the telegram containing the objections was not received at the Board's Seattle regional office until the morning following the date when the objections were due. While the panel majority did not wish to condone and certainly did not wish to encourage parties waiting until the last day possible to transmit objections, it noted that the peculiar circumstances of the case required it to construe its filing deadlines liberally. In accepting the objections, the panel majority noted that the petitioner needed a substantial part of the 5 business days allowed for

[58] Rules and Regulations, sec. 102 69(a)

[59] 117 NLRB 360.

[60] 214 NLRB No 99 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello)

[61] The Board determined, in view of precedent, to consider the objections filed in this case to be timely filed However, the Board announced that the policy enunciated in this case would be applied in all future cases. To the extent that it was inconsistent with this case, the Board overruled *Jacksonville Journal Co*, *supra*.

[62] 218 NLRB No 121 (Members Jenkins and Penello, Member Kennedy dissenting)

investigating the election which was conducted in Alaska at 15 different locations; that the telegram containing the objections was sent almost 3½ hours before the regular closing time of the regional office, and, but for the time differential, the 3½ hours would have been 5½ hours; that, prior to sending the telegram, the petitioner's attorney took the time to telephone the Board agent to inform him of the nature of the objections; and that, when informed at 4:15 p m., Seattle time, that the telegram had not yet reached the regional office, the petitioner's attorney contacted a Seattle reporting service and dictated the objections for delivery to the regional office. Considering all of the above factors, the Board panel majority concluded that, in a practical sense, the petitioner had substantially complied with the Board's Rules and Regulations.

Member Kennedy dissented based on his view that the majority's decision was an unwarranted departure from the long-established rule that objections must be filed with the regional director by close of business on the fifth working day following the service of the tally of ballots.

2. Election Propaganda

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 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.

a. Offers To Waive Initiation Fees and Dues

In *Savair Mfg. Co.*,[63] the Supreme Court [64] 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

[63] *N L R B* v *Savair Mfg Co*, 414 U S. 270 (1973), affg. 470 F 2d 305 (C A 6, 1972)

[64] Justice Douglas delivered the opinion of the Court, Justice White, joined by Justices Brennan and Blackmun, dissented

"the union to buy endorsements and paint a false portrait of employee support during its election campaign" (*id.*). 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.

In a case decided during the report year, *Coleman Co.*,[65] a Board majority found that the petitioner's preelection offer to waive initiation fees "for all present employees who make application for charter membership in your new local union" was the kind of preelection offer condemned by the Supreme Court in *Savair, supra*. In so finding, the Board majority noted that the offer did not specify when the "application for charter membership" had to be made, and thus they concluded that the offer was ambiguous and susceptible of an interpretation by the employees that it was to their benefit to make a union commitment before the election, and thereby "come in at the ground floor," to avoid paying the initiation fee.[66]

Members Fanning and Jenkins dissented. In their view, since the local was not to be formed until after the election, it was clear that the union therein had made an offer to waive initiation fees to all employees who applied for charter membership after the election and not just to employees who joined prior to the election.

The *Savair* issue was again presented to the Board in *Gibson's Discount Center, Div. of Scrivner-Boogaart.*[67] There, the Board unanimously determined that a prepetition offer to waive initiation fees, as condemned in *Savair*, was ground for a valid objection to an election.[68] In so concluding, the Board noted that since a union must have authorization cards from at least 30 percent of the employees in the bargaining unit prior to the filing of a petition,[69] most solicitations to sign authorization cards occur prior to the filing of the petition. Therefore, in the Board's view, it would severely circumscribe the doctrine of *Savair* to limit the application to postpetition waiver of initiation fees.

b. Threats of Detrimental Effects of Unionization

In *General Electric Co.*,[70] a Board panel set an election aside after determining that the employer's preelection statements with regard to its "two-source supply" policy constituted a thinly veiled threat to provide more and better job opportunities at nonunion plants than at organized plants. The policy there in question involved the assign-

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[65] 212 NLRB No. 129 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

[66] *Inland Shoe Mfg. Co.*, 211 NLRB No. 73 (1974)

[67] 214 NLRB No. 22 (Chairman Miller and Members Fanning, Jenkins, Kennedy, and Penello)

[68] In *Gibson's Discount Center*, however, the hearing officer credited the testimony of petitioner's witnesses and therefore concluded that no such illegal offers had been made. Consequently, the Board overruled the *Savair* objection.

[69] Rules and Regulations, sec. 101.18, see also sec. 9(c)(1)(A) of the Act.

[70] 215 NLRB No. 95 (Chairman Miller and Members Fanning and Penello).

ing of the production of one type of machinery to two (or more) plants simultaneously, one being a union plant and the other a nonunion plant. Such a policy enabled General Electric to have an alternative source of supply in the event of a strike at the union plant. In sustaining the objection, the panel noted that the employer's speeches were designed to convey the message that the nonunion status of the plant had been responsible for the rising employment there in the past, and that its continued nonunion status would be necessary to avoid a possible drop in employment in the future. In directing a second election, the panel observed that the employer's statements were not predictions "carefully phrased on the basis of objective fact" to describe "demonstrably probable consequences beyond the employer's control," but were implicit threats of the economic consequences that would follow unionization of the plant.[71]

In an unfair labor practice case, [72] also involving an alleged threat of retaliation, a Board panel majority concluded that a letter distributed to employees from the employer's director of industrial relations which stated, *inter alia*, that "[i]t is my sincere belief that if this union were to get in here it would not work to your benefit but to your serious harm," was not violative of section 8(a)(1) of the Act.[73] In dismissing the alleged unfair labor practice, the panel majority noted that the letter itself was not inherently threatening, that it was not related to concurrent unfair labor practices, and that, viewed in the entire context in which it appeared, the communique fell within the protection afforded by section 8(c) of the Act.

Member Jenkins dissented. In his view, in the absence of any explanation by the employer in this case of what it meant, the natural import of the statement concerning "serious harm" from unionization encompassed loss of employment from a variety of possible causes. It was not a prediction "carefully phrased on the basis of objective fact to convey the employer's belief as to demonstrably probable consequences beyond his control," as required by *Gissel*, *supra*, but "a threat of retaliation" not privileged under section 8 (c) and a violation of section 8(a)(1) of the Act.

Similarly, in another unfair labor practice case,[74] a Board majority found that an employer did not threaten employees with reprisals in violation of section 8(a)(1) of the Act when three of its agents told assembled employees not to sign cards as doing so could be "fatal." In so finding, the Board majority observed that, in the context in

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[71] See *N L R B* v *Gissel Packing Co*, 395 U S 575 (1969)

[72] *Ohmite Mfg Co, Subsidiary of North American Philips Corp*, 217 NLRB No 80 (Members Kennedy and Penello, Member Jenkins concurring in part and dissenting in part)

[73] See *Liberty Mutual Insurance Co*, 194 NLRB 1043 (1972)

[74] *Mt Ida Footwear Co, Div of Munro Co*, 217 NLRB No. 165 (Chairman Murphy and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

which they were made, the statements merely expressed the employer's position that the employees would be better served in terms of benefits by rejecting the union, and that the use of the word "fatal" was simply a reference to the possibility that unionization could lead to difficulties if the union were to strike to obtain unreasonable demands.[75]

In their dissenting opinion, Members Fanning and Jenkins, citing *Gissel, supra,* viewed the remarks by the employer's officials as a management directive to employees not to sign cards for the union unless they wished to subject themselves to the dire economic consequences which the employer implied would follow such action.

In *Peterson Builders,*[76] a Board majority found that an employer engaged in objectionable conduct when, on the day before the election, it told employees that if the union won the election bargaining would begin from scratch and it would abolish its automatic 15-year-old policy of evaluating its existing wage structure and adjusting its wage rates in conformance with the evaluation. Since a discretionary merit wage increase is a mandatory subject of bargaining, an employer, once a union has been certified as bargaining representative, can no longer continue to unilaterally exercise its discretion with respect to such increases.[77] However, in *Peterson,* the Board majority observed that the employer did not merely warn its employees that the amount of the increases would have to be submitted to the union, if it won the election, prior to implementation, but instead threatened the employees with the complete abrogation of the increases and of the annual program of evaluation which, in the view of the Board majority, was precisely the kind of unilateral abrogation of a preexisting program which is forbidden by law.[78]

Chairman Miller and Member Penello dissented as they fully agreed with the employer that its representations to the employees were "precisely congruent with its duty" to bargain under the Act. They observed that the Supreme Court's opinion in *Katz, supra,* and numerous Board decisions [79] show that, after a union is certified, discretionary increases not previously announced must be negotiated with the bargaining representative; not only is the employer free to withhold them, but indeed he must withhold them They noted that the increases involved in this case were typical, across-the-board discretionary-type increases, resulting from the employer's evaluation of competitors' wages and its own financial situation. Were the employer

[75] See *Airporter Inn Hotel,* 215 NLRB No 156, where the Board recently found a similar statement to be permissible campaign propaganda of the type which has become commonplace in Board elections

[76] 215 NLRB No 12 (Members Fanning, Jenkins, and Kennedy, Chairman Miller and Member Penello dissenting)

[77] *N L R B* v *Benne Katz, d/b/a Williamsburg Steel Products Co* , 369 U S 736 (1962)

[78] *Southeastern Michigan Gas Co* , 198 NLRB No 8 (1972), *Oneita Knitting Mills,* 205 NLRB 500 (1973)

[79] See, for example, *O'Land, Inc , d/b/a Ramada Inn South,* 206 NLRB 210 (1973), and *Hartford Fire Insurance Co* , 191 NLRB 563 (1971), enfd 456 F 2d 201 (C A 8, 1972)

to have given them to employees unilaterally, after the union was certified, Chairman Miller and Member Penello had no doubt whatever that, based on the above-cited precedents, the Board would have found the employer guilty of 8(a)(5) conduct. Since the employer's statement regarding "bargaining from scratch" did not threaten to take away existing benefits, they would not set aside the election on such an objection.

In *Stouffer Restaurant & Inn Corp.*,[80] a Board majority overruled the petitioner's objections and certified the results of the election, despite the fact that the Board in an earlier unfair labor practice proceeding had adopted the administrative law judge's 8(a)(1) findings with regard to two incidents which were also alleged in the representation case to be objectionable.[81] The Board majority observed that the 8(a)(1) violations which took place had occurred nearly 5 months before the election, that following the two incidents no other conduct was found unlawful by the Board, and that each incident involved only a single employee, each of whom was at the time maintaining a highly visible profile as a union supporter and organizer. In concluding that the 8(a)(1) conduct was too remote to affect the results of the election, the Board majority took particular note of the fact that the unlawful conduct involved only 2 of approximately 272 unit employees during the critical period, and of the substantial margin by which the union lost the election

Members Fanning and Jenkins, dissenting, stated they could not understand how so many instances of employer misconduct as were involved in this case could be discounted or explained away. They fully recognized that in the election the union was overwhelmingly defeated by almost a 2-to-1 margin, but they did not believe that anyone would advocate a "head count" policy where the number of employees directly affected by the objectionable conduct would be compared with the number of votes cast against the victimized party. Members Fanning and Jenkins observed that to do so would put a premium on misconduct of the most serious nature. They noted that, as in most cases where objectionable conduct is involved, the Board is not really in a position to measure the misconduct in terms of the extent of its impact on the voting group at large However, when, as here, several separate incidents of misconduct had occurred, it seemed only proper to Members Fanning and Jenkins to conclude that it had a substantial impact on the election.

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[80] 213 NLRB No 104 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

[81] The majority also found that, with respect to other incidents in which the Board had reversed the administrative law judge's 8(a)(1) findings in the earlier unfair labor practice proceeding, these incidents likewise did not constitute grounds for setting the election aside

c. Misrepresentations

In determining whether electioneering statements or propaganda constitute misrepresentations grave enough to require a rerun election or a hearing, the Board has since 1962 applied the standard it enunciated in *Hollywood Ceramics* [82] There the standard was thus stated at 224:

> 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 misrepresentations 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 *Pointe Enterprises*,[83] a panel majority found that statements made by the petitioner concerning its prospective procedures for conducting orderly negotiations and making contracts effective at particular times in as many as 48 shops in the city tool-and-die industry were not misrepresentations within the meaning of *Hollywood Ceramics, supra*. Finding that the representations made by the petitioner were in response to the employer's statements that particular shops might be placed in a noncompetitive situation by the organization of selected individual employers by the petitioner, implying that employees' jobs in such shops would be placed in jeopardy, the panel majority further found that the petitioner's representa-

[82] *Hollywood Ceramics Co*, 140 NLRB 221 (1962), 28 NLRB Ann Rep 57 (1963)
[83] 216 NLRB No 131 (Members Fanning and Jenkins, Member Kennedy dissenting)

tions were speculative in nature and merely reflected its hoped-for bargaining position after the election.

Member Kennedy dissented. In his view the election should have been set aside because of the petitioner's preelection statements that it would refuse to negotiate or execute a contract in the stipulated unit until such time as the petitioner had organized a great majority of tool-and-die employers in the city. Member Kennedy noted that if the petitioner honored its commitment to the employees that it would not seek a bargaining agreement until it organized 70 percent of the employees, no useful purpose would be served in issuing certification, but the employees would be deprived of the opportunity to select another bargaining agent for 12 months under section 9(c)(3) of the Act. Further, Member Kennedy observed, if the petitioner reneged on its commitment and sought a contract, then the certification would have been procured by misrepresentation.

The question of whether election campaign misrepresentations had been made and, if so, what impact such representations may have had again arose in *Ereno Lewis*,[84] in which a panel majority consisting of Members Jenkins and Kennedy adopted the acting regional director's recommendation that the election be set aside. In Member Kennedy's view, the employer's statement that the petitioner's initiation fee was $104, when in fact it was only $60, constituted a material misrepresentation on a matter that the employees could not evaluate and at a time which precluded an effective reply. Member Jenkins, while agreeing that the election should be set aside, did not believe that the employer misstated the amount of the petitioner's initiation fee. He noted that although the fee was $60 rather than $104 the union required the simultaneous payment of 3 months' dues and a death benefit fund contribution for a total of $107. As the total payment required was, in fact, $3 more than stated by the employer, Member Jenkins did not find that the employer, by attributing the entire sum to payment of the petitioner's initiation fees, rather than identifying the component amounts, engaged in conduct which could have misled employees and interfered with their free choice. However, Member Jenkins agreed with the acting regional director's conclusion that the employer's sample check representing an employee's paycheck reflecting a $113 deduction for union dues and initiation fees constituted a material misrepresentation because the employer thereby imparted to its employees the wholly erroneous impression that in the event of unionization the entire amount of the petitioner's initiation fee would be taken out of one paycheck.

[84] 217 NLRB No 45 (Members Jenkins and Kennedy, Member Penello dissenting)

Member Penello, dissenting, urged that the Board overrule *Hollywood Ceramics* and return to its policy of not inquiring into the truth or falsity of the party's campaign statements. In his view, elections should be set aside only upon a showing of deliberate deception which renders the voters unable to recognize the campaign propaganda for what it is. Member Penello did not agree either as a matter of principle or on the basis of the facts in *Ereno Lewis* that either of the statements contained in the employer's propaganda material were reasonably likely to have swayed the employees in casting their ballots in the election.

In *Medical Ancillary Services*,[85] a majority of the Board adopted without comment the administrative law judge's decision finding interference with the election by virtue of misrepresentations by the union's chief stewardess. In that case, chief stewardess Tavtigan had made statements to various employees that. (1) an employee was not being paid the disability insurance to which she was entitled because the company deliberately "screwed up" her claim; (2) the company's vice president telephoned this employee and ordered her to vote or else be discharged; (3) another employee was not paid for a day off and was given no reason for not being paid; and (4) some employees in her (Tavtigan's) department had not been paid overtime pay for overtime worked. The administrative law judge, based on credibility determinations, found these statements to be material departures from the truth, made so close to the time of the election that the company lacked a reasonable opportunity to reply, and found that these misrepresentations were likely to have a substantial impact on the election

Member Penello dissented, expressing his view that *Hollywood Ceramics* should be overruled Further, even under *Hollywood Ceramics*, Member Penello would not have set aside the election because the statements were close to the truth, were not shown to have involved important issues in the campaign or in the minds of the voters, were extremely minor in nature in any event, and were not matters which the chief stewardess, a rank-and-file employee, would have or be thought to have special knowledge of merely because she had been elected to her office.

d. Third-Party Conduct

The Board, in *Marlowe Mfg. Co.*,[86] assessed the impact of third-party conduct upon the election. A majority of the Board concluded

[85] 212 NLRB No 80 (Chairman Miller and Members Jenkins and Kennedy, Member Penello dissenting)

[86] 213 NLRB No 46 (Members Jenkins, Kennedy, and Penello, Chairman Miller and Member Fanning dissenting)

that the leaflet distributed by a group of employees known as the "ouster committee" during the early morning hours of the day on which the election was to be conducted did not impair the election results. The majority found no evidence that the employer itself engaged in any objectionable activity during the campaign and, as there was no indication that the employer was at all involved in the preparation or distribution of the leaflet, the majority did not agree that the conduct by the rank-and-file employees had destroyed the election atmosphere. In their dissent, Chairman Miller and Member Fanning, arguing that the Board does not validate elections held in an atmosphere of fear, no matter who creates that atmosphere, found that the leaflet was calculated to stimulate the fear that a union victory in the election would very likely result in the plant's closing and a consequent loss of jobs for all the voters. In their view, the leaflet was a last-minute play upon the employees' emotions, particularly fear, and was full of potential for preventing the truly free choice which the Act guarantees to employees.

e. Other Issues

Other issues decided by the Board during the report year involved the effective date of a deauthorization vote, the extent of the authority of the Board's Executive Secretary, and the effect of an employer's reorganization on the scope of the unit.

In *Lyons Apparel*,[87] a panel of the Board held that a union may not require a new employee to join and pay initiation fees and dues during the period between an affirmative deauthorization vote and the certification of the results of the election. In so holding, the panel concluded that it would be unconscionable to permit the union to exact from new employees initiation fees and dues during a period when *prima facie* the employees have withdrawn the union's right to a union-security clause. Were the Board to hold otherwise, the panel noted, a union could, by filing objections to a deauthorization election, delay the issuance of a certification of results and thus enrich itself during the interval at the expense of employees.

Another case[88] before the Board during the year involved the Executive Secretary's rejection of a company's brief as untimely and his denial of the company's subsequent motion to the Board to have the rejected brief accepted. Members Fanning and Jenkins found that the Executive Secretary acted reasonably and properly. In their view, questions relating to extensions of time do not warrant the

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[87] 218 NLRB No 177 (Chairman Murphy and Members Jenkins and Kennedy).

[88] *United Mine Workers of America, District 6 and its Loc 1638 (Consolidation Coal Co.)*, 217NLRB No 88 (Members Fanning and Jenkins, Member Penello concurring, Member Kennedy concurring in part and dissenting in part)

personal attention of Board Members, who must necessarily concern themselves with substantive issues of law and fact and procedural issues of importance. Member Penello agreed that the Board did not need to consider the company's motion for special permission of the Board to accept the late-filed brief, particularly because of the Board's unanimous decision to dismiss the allegations of the complaint. He voiced his opinion, however, that it would have been better practice for the Executive Secretary's office to have referred the company's motion to the Board Members for ruling, inasmuch as it was in the nature of an appeal from the previous ministerial action by that office. Member Kennedy disagreed with the conclusion that the motion was properly denied. In his view, there is nothing in the Act or in the Board's Rules and Regulations which authorized the Executive Secretary to rule on formal motions filed with the Board. Member Kennedy concluded that the Board was required to consider and rule upon the company's motion.

A panel of the Board in *Columbia Gas Transmission Corp* [89] considered the effect of the employers' reorganization on the established bargaining unit There the employers asserted that the established single unit no longer accorded with the employers' administrative structure or organization and that the transmission corporation and the two distribution companies were functionally separate systems. Refusing to separate the existing recognized unit into two bargaining units, Members Fanning and Jenkins noted that the employees represented by the union had continued to perform the same functions in the same locations after the reorganization that they had performed previously, that they had the same immediate supervision as they had had prior to the reorganization, and that the reorganization had had little if any direct effect on day-to-day operations.[90]

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[89] 213 NLRB No 10 (Members Fanning and Jenkins, Chairman Miller concurring)

[90] Chairman Miller, in a separate concurring opinion, agreed that the two proposed units were inappropriate.

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 persons 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 1975 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] Violations of these types are discussed in subsequent sections of this chapter

1. Discharging Employees for Engaging in Protected Activity

Section 8(a)(1) of the Act precludes an employer from discharging employees for engaging in protected concerted activity. The forms the protected concerted activity may take are numerous. The fo lowing cases decided by the Board during the past year provide a representative sample of the types of activity found by the Board to be protected.

In *Robertson Industries*,[2] a Board panel addressed the issue of whether employees were engaged in protected concerted activity when, shortly after a union filed a representation petition, they attended a union meeting during regular working hours The Board panel answered affirmatively and found the employer in violation of section 8(a)(1) when it discharged them for leaving their work stations to attend the meeting. In so doing, the panel noted that the basic purpose of the meeting was for employees to discuss with union officials various work-related problems they encountered on a day-to-day basis, and thereby seek the union's help in resolving these problems. The Board panel therefore found that, while no formal demands had yet been made on the employer, the employees were "in the initial stages of protesting the terms and conditions of employment and of seeking concessions from [their employer]." In finding such activity protected, the Board relied specifically on the Supreme Court's decision in *N.L.R.B.* v. *Washington Aluminum Co.*,[3] which found employees' peaceful concerted activity in protest of what they regarded as unsatisfactory working conditions to be protected even though no specific demands had as yet been presented to the employer.[4]

Washington Aluminum formed the basis of another Board decision to find protected a work stoppage by employees in protest of unsatisfactory working conditions. In *Union Boiler Co.*,[5] a Board panel found that employer in violation of section 8(a)(1) when it fired four employees for refusing to perform what they considered to be the hazardous overtime task of cleaning the inside of a 160-foot-high silo. The cleaning job, to be performed through the lowering of employees into the silo in a bucket, was to be accomplished in darkness, during inclement weather; the resultant lack of visibility led to problems in coordinating signals between the crane lowering the bucket and the employees sitting atop the silo. The panel found the refusal to do the work protected concerted activity since it was motivated by their

[2] 216 NLRB No 62 (Acting Chairman Fanning and Members Jenkins and Penello)

[3] 370 U S 9 (1962)

[4] The panel was careful to note that the employee meeting, taking place as it did against a backdrop of a 1-day refusal to work 3 months earlier in protest of an overly heavy workload, was not part of a pattern of intermittent and recurring partial work stoppages which might render such a meeting unprotected See *Polytech, Inc* , 195 NLRB 695 (1972)

[5] 213 NLRB No 113 (Members Jenkins, Kennedy, and Penello)

concern over the unsafe working conditions, notwithstanding the fact that the employees failed to complain expressly to management. Furthermore, it mattered not that other employees eventually did the work. At issue was not whether there was an objective basis in fact for the employees' concern for their safety, but "whether these employees left their jobs because they thought conditions were unsafe." As long as their joint motivation for leaving the job was their good-faith concern that their safety was endangered, the conduct was protected, even though one or more of the employees may have been personally motivated by their desire not to work an unscheduled overtime shift.[6]

In *Southern & Western Lumber Co., d/b/a Gray Flooring,*[7] a Board panel concluded that an employer was not justified in firing a pro-union employee in the midst of an organizational campaign upon learning that he had entered the office of his supervisor without the knowledge or permission of any management agent and copied the names and phone numbers of fellow employees from index cards found therein, said names to be given to the union for mailing purposes. Rejecting the employer's contention that the employee was lawfully fired for "pilfering from company records," the Board panel found that the employee's actions were at all times open and frank, unattended by a desire or effort to conceal what he was doing. Moreover, the panel noted that there had always been open access to the supervisor's room by employees for both social and work-related reasons, and that the index cards utilized by the employee were situated in plain view atop the supervisor's desk, indicating that management did not regard the cards as private or confidential records. For these reasons, the panel concluded that the employee's conduct at issue was not unprotected, and his discharge for engaging therein violated section 8(a)(1). The panel was careful to note, however, that it might have reached the opposite result had the employer treated the index cards as confidential or private, or at least announced to its employees a policy of treating them as such.

In *Circle Bindery,*[8] a Board panel explored the outer limits of protected concerted activity as it related to actions of an employee which were designed to injure or destroy his employer's business, or at least had that effect. Here, an employer, a nonunion bindery, hired an employee who formerly worked for a union bindery, but was now in layoff status. Upon starting work, the employee began to organize the other employees at the bindery. After working for several days, the

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[6] Even if the employee walkout had been in protest of the unscheduled overtime work, the Board would still find it protected in the absence of a plan or pattern of intermittent action See fn 4, *supra*

[7] 212 NLRB No 107 (Chairman Miller and Members Fanning and Penello)

[8] 218 NLRB No 123 (Members Fanning and Penello, Member Kennedy dissenting)

employee was disturbed to find that a unionized printing firm had been sending booklets bearing a union label on their cover to his new nonunion employer for bindery work. Mindful of the fact that the union label signified an agreement between the printing firm and the trades council with which his union was affiliated to the effect that the printing firm was to have all of its bindery work done at exclusively union shops, the employee contacted officials of the trades council concerning the remedying of the apparent breach of agreement by the printing firm in giving its bindery work to his nonunion employer. As a result, the trades council immediately demanded that the unionized printing firm withdraw its booklet binding job from the nonunion bindery; the printing firm complied. The employer's president, after having lost its booklet binding business with the unionized printing firm, and after also learning that the employee in question had earlier taken some copies of the booklet out of the plant, angrily confronted the employee and fired him. The president accused him of being a "big-mouth union man" whom he would not tolerate disrupting his organization and talking to his employees. The president also informed him that he had just been instructed to cease his booklet binding job with the unionized printer.

Members Fanning and Penello perceived dual motivations behind the discharge, both of them unlawful: The primary motivation, given the obvious impact of the president's remarks, was the organizational efforts of the employee. But, assuming *arguendo* the nonexistence of that motive, his discharge was also motivated by his lodging of a complaint with the trades council which directly resulted in his employer losing business. Members Fanning and Penello acknowledged the longstanding principle of law as set forth by the Supreme Court in *N.L.R.B.* v. *Local Union 1229, IBEW* [*Jefferson Standard Broadcasting Co.*],[9] that an employee who engages in conduct unrelated to a valid union objective, for the purposes of injuring or destroying his employer's business, is not to be accorded the protection of section 7 of the Act. However, unlike the circulated handbill of the employees in *Jefferson Standard*, which merely disparaged the employer's product without relating itself to any labor practice of the company, the action of the employee in the instant case in lodging a complaint with the trades council, while having an ultimate detrimental effect on his nonunion employer's bindery business, was clearly related to a valid union objective: namely, insuring that to as great a degree as possible booklet bindery work would be directed toward union firms paying

[9] 346 U S 464 (1953).

union scale wages and benefits.[10] This was an objective that he, as a formerly laid-off employee of a unionized bindery, and others in his position, had a vested interest in achieving. Given such a lawful objective, argued Members Fanning and Penello, it mattered not that in the process the concerted employee action in furtherance of that objective resulted in a loss of customer business. Such conduct is protected concerted activity.

Member Kennedy dissented, arguing first of all that, given the sequence of events prior to the employee's discharge, the primary motivation behind the discharge was not his organizational activity, but the employer president's realization that the employee's conduct had caused the employer to lose the business of the printing company. Member Kennedy would have further found that the conduct of the employee was within the class of conduct found unprotected by *Jefferson Standard* and that the employee was engaging in efforts during worktime to destroy his employer's business.[11]

In *Knuth Bros.*,[12] the employer, operating a nonunion printing shop, was performing shop work that it received from a dealer for Schlitz Brewing, a union-organized company. An employee contacted Schlitz and informed it that the employer was a nonunion company, and that it was performing work for Schlitz, a union shop. In this companion case, Members Fanning and Penello again found protected a communication by an employee to one of his employer's customers, even though the communication arguably caused the employer to lose business since the purpose of the employee's action was undertaken in furtherance of a legitimate union objective; i.e., obtaining information from that outside source which he thought might be helpful in organizing fellow employees.[13] The employer therefore was not justified in firing the employee even if it believed in good faith that the object of the employee's activity was to urge its customers to send their business to union shops.

Member Kennedy again dissented, finding the actions of the employee in question worked a detriment to the business of his employer and thus fell within that class of conduct deemed by *Jefferson Standard, supra*, to be unprotected. In his opinion, the employer was justified in looking upon the employee's actions as disloyal and thus had ample grounds for discharging him.

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[10] In this regard, Members Fanning and Penello likened the loss of business here with the loss of business caused by picketing found by the Board in *Edir, Inc., d/b/a Wolfie's*, 159 NLRB 686 (1966), to be protected.

[11] Member Kennedy would have distinguished *Wolfie's* as applying only to off-duty conduct by employees.

[12] 218 NLRB No 125 (Members Fanning and Penello, Member Kennedy dissenting)

[13] The employee asserted that he wanted to learn whether the employer had Schlitz' work in the plant because the employer's pressmen were represented by the union, and that he wanted to use that information in the campaign to organize the balance of the employer's employees by informing them that through selecting the union they could benefit by obtaining additional work not only from Schlitz, but from other unionized companies.

2. Other Issues

Unlawful employer interference with employee rights can take other and more subtle forms than discharging an employee for engaging in protected concerted activity. The following are examples of such interference as found by the Board.

In *Airporter Inn Hotel*,[14] a Board majority held as permissible employer campaign propaganda a letter disseminated in the course of a union campaign which, in the final paragraph, stated that employees should "refuse to sign any union authorization cards" and that they should "reject the union" if they wanted job security and the best terms and conditions of employment. The majority found the phrases "refuse to sign any union authorization cards" and "reject the union" when taken in the context of the entire letter did not constitute "instructions or directions" within the meaning of section 8(c),[15] but constituted clauses in two sentences where overall impact was argumentative in nature. According to the majority, the thrust of the final paragraph, as with the entire letter, was purely informational in nature, containing no promises of improved working conditions should the union be defeated, nor threatening any repercussions should the union be victorious, but merely expressing the employer's position that the employees would be better served in terms of benefits and job security by rejecting the union. The majority observed that such is precisely the type of campaign propaganda which has become commonplace in Board elections and which section 8(c) was designed to protect.

Members Fanning and Jenkins dissented, arguing that the statements in issue clearly amounted to an unlawful order or direction not to sign cards, especially when read in the context of the entire letter. In their view, the bulk of the letter sets forth a scenario of a "chain of deleterious economic events," triggered by an anticipatory refusal of the employer to agree to union demands and culminating in economic strike in which employees would lose their jobs if the union should win the election. Taken in this light, according to Members Fanning and Jenkins, the thrust of the advice to refuse to sign cards and "avoid a lot of unnecessary turmoil" was a threat of reprisal and thus constituted, in effect, an unlawful order or direction to employees not to sign union cards.

In *Mt. Vernon Tanker Co.*,[16] a Board panel held that the right of an employee, as set forth recently by the Supreme Court decisions of

[14] 215 NLRB No 156 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

[15] II Leg Hist 1541 (1948)

[16] 218 NLRB No. 218 (Chairman Murphy and Members Jenkins and Kennedy)

N.L.R.B. v. *J. Weingarten, Inc.*,[17] and *Intl. Ladies' Garment Workers' Union, Upper South Dept.* v. *Quality Mfg. Co.*,[18] to insist on union representation at an employer-held predisciplinary interview is applicable in a maritime labor setting. Thus, a ship captain violated section 8(a)(1) when he refused a shipboard employee permission to have a union representative present at a disciplinary interview, and punished him for his insistence on the presence of his representative. The Board did limit the right of a representative to those instances which the employee reasonably believed would result in disciplinary action.

The Board also recognized that due to the nature of the maritime environment certain concerted activity, ordinarily protected on land, would be either unsafe or in violation of a maritime-related statute if carried out on a ship at sea, and thus unprotected. However, the Board in this case perceived no threats to safety or violation of law in the employee's insistence on the presence of his union agent at a disciplinary interview.

B. Employer Assistance to Labor Organizations

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 *Mid-West Piping* doctrine,[19] an employer faced with conflicting claims of two or more rival unions which gave rise to a real question concerning representation violates section 8(a)(2) and (1) if it 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 *Kay Jay Corp d/b/a McKees Rocks Foodland*,[20] a Board panel found that an employer faced with conflicting representational claims of two rival unions violated section 8(a)(2) when it signed a collective-bargaining agreement with one of the unions based on a majority card showing by that union. The existence of the rival union claim gave rise to a question concerning representation which in turn triggered a duty of neutrality on the part of the employer which it refused to fulfill. The panel was careful to point out that a rival claim would not raise a question concerning representation if it were merely the "naked claim" of an inactive union, or a claim "clearly

[17] 420 U S 251
[18] 420 U S 276
[19] *Mid-West Piping & Supply Co*, 63 NLRB 1060 (1945)
[20] 216 NLRA No 166 (Members Jenkins, Kennedy, and Penello)

unsupportable and lacking in substance." However, here, the Board panel found the rival claim to be viable, thus giving rise to the question concerning representation since the rival union had once in the campaign produced a card majority, had agreed to go to a private election to determine which union would represent the employees, and had protested strongly when such election was not held. The strength of the rival claim was reinforced by a finding by the Board panel that the employer had not assisted it in its organizational effort.

In a related case,[21] a Board panel again emphasized the minimal standards a rival claim may meet in order to raise a question concerning representation. The claim need not be valid or strong enough to support a duty to bargain. It is enough that the rival claim is not "clearly unsupportable or specious, or otherwise not a colorable claim." Thus, in the context of this case, the panel found that the mere expressed interest of one union in representing its unit people at a new plant was enough to raise the question concerning representation and thus preclude the employer from entering into a collective-bargaining agreement with another union covering the employees formerly represented by the first union at the old plant, even though that other union had just been certified by the Board as the collective-bargaining agent for all of the employees at the new plant.

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 Striking in Violation of Contract

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.

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[21] *American Can Co*, 218 NLRB No 17 (Members Jenkins, Kennedy, and Penello)

In *Suburban Transit Corp.*,[22] a Board panel held that an employer violated section 8(a)(3) when it fired a group of employees engaging in an economic strike in protest over the renewal contract signed with an incumbent union in the face of what they thought was a real question concerning representation, even though the collective-bargaining agreement was held by the Board to be valid. The panel emphasized that the no-strike clause contained therein did not in this case constitute a waiver of the employees' section 7 right to strike. The Board panel reasoned that such waivers will not be readily inferred unless stated in "clear and unmistakable language to that effect" in the no-strike clause. It was the opinion of the panel that the no-strike clause in this case clearly did not contemplate the prohibition of the strike action taken by the employees in question. The no-strike clause was narrow in scope and prohibited only strikes authorized by the union while the derivative dispute between the employer and union was pending within various steps of the grievance procedure. However, the strike in this case was clearly not authorized by the union; nor did it arise out of a dispute between the employer and the union.

Moreover, apart from the terms of the no-strike clause, the Board panel stated a more general rule that the right of employees to engage in protected concerted activities for the purpose of changing their bargaining representatives, as was the case here, cannot be waived by the incumbent representative.[23]

A related case [24] shows how narrowly the Board has construed the scope of these no-strike clauses. A panel majority found that employees who honored the picket line of another union were engaged in protected concerted activity and therefore could not lawfully be disciplined by the employer, where the employer allegedly based his discipline on a provision in the contract which said that no employee would be required to cross a picket line established by a subordinate of the union to which the employees belonged. Refusing to treat this clause, in essence, as a prohibition against all sympathy strikes *except* those of subordinate unions, the majority found that the union, by expressly sanctioning sympathy strikes in support of subordinates, never expressly waived the right of employees to engage in a strike in support of *another* union's picket line. The panel majority also refused to draw any inferences from the negotiation history or subsequent picket line conduct which would tend to show that the parties meant to

[22] 218 NLRB No 185 (Members Fanning, Jenkins, and Penello)

[23] The Board cited the Supreme Court's recent decision of *N L R B* v *Magnavox Co of Tennessee*, 415 U S 322 (1974), which held that a union could not agree with an employer to ban employee distribution of literature in the plant since such would amount to a waiver of the employees' rights to engage in protected concerted activity to obtain a new bargaining representative

[24] *Keller-Crescent Co , Div of Mosler*, 217 NLRB No. 100 (Members Fanning and Jenkins, Member Penello concurring in part and dissenting in part)

prohibit all sympathy strikes except those in support of subordinate unions. Therefore, the majority concluded that the employer violated section 8(a)(3) when it disciplined employees for refusal to cross a picket line set up by striking employees belonging to another union.

Member Penello, dissenting on this issue, was of the view that the sympathy strike of the employees involved herein and their refusal to cross the picket line of the other union were in breach of the contract provision and therefore constituted unprotected activity. He would have found that the language of the clause expressly granted the employees the right to cross the picket line of a subordinate union of their international, but "inescapably" implied that the members were prohibited from honoring any other picket line. The construction of the clause, Member Pennello would have found, was supported by negotiation history and the conduct of union representatives during the strike in telling members who were continuing to refuse to cross the other union's picket line to "honor the contract."

The thrust of these two cases is that the approach of the Board is to construe all no-strike clauses very narrowly; unless there is language contained therein which clearly and unmistakably waives the rights of employees covered thereby to strike, the strike will be regarded as protected concerted activity for which they cannot be discharged or otherwise disciplined by their employer.

2. Other Issues

In *Colonial Haven Nursing Home*,[25] a Board panel concluded that where a strike was motivated in substantial part by an employer's unfair labor practices the employees involved did not lose their status as unfair labor practice strikers, with the attendant right to prompt reinstatement upon their unconditional offer to return to work, simply because an object of the strike may have also been to obtain recognition or to force an immediate election.

In this case, the regional director dismissed the union's representation petition on the ground that the sought-after unit did not yet contain a representative complement of employees. In response to that dismissal and in response to the employer's refusal to settle the unfair labor practice charges, as alleged by the union, the employees established a picket line which lasted for about a week longer than the 30-day maximum grace period provided in section 8(b)(7)(C) of the Act for filing a petition. The Board panel observed that even under these circumstances, where a representation petition has been dismissed, picketing to obtain recognition would not be unlawful. Although the picketing in this case went beyond the 30-day grace

[25] 218 NLRB No. 137 (Members Fanning, Jenkins, and Penello).

period, the Board panel first noted that no 8(b)(7) charge had ever been filed and then concluded that the issue had not been sufficiently litigated to warrant making any findings thereon. Even assuming *arguendo* that the union's picketing may have been unlawful under section 8(b)(7)(C), the Board panel determined that such conduct did not outweigh the employer's unfair labor practices and noted that the employer did not rely on such conduct in denying the strikers reinstatement.

In *General Cinema Corp. & its wholly owned subsidiary, Gentilly Woods Cinema,*[26] a Board panel found an employer in violation of section 8(a)(3) of the Act when it was in essence responsible for the maintenance of a racially discriminatory hiring hall, even though the discrimination was not of its own origin. Here, the employer, on the verge of opening up a new movie theatre, was individually approached by two locals of the same union, each of which demanded that the new positions be staffed with its own members. One union was predominately white with a history of discrimination against blacks, both in terms of admission to membership and job referrals. Its smaller sister local was exclusively black. The employer chose to recognize the white local and entered into a collective-bargaining agreement with an exclusive hiring hall provision. In finding the employer's actions in violation of section 8(a)(3), the Board panel held that while an exclusive hiring hall arrangement was not unlawful *per se* it became so when operated in a racially discriminatory manner "unrelated to legitimate union concerns." To the extent the employer vested the union with the power to hire in its behalf, the Board panel held it responsible for the hiring hall's discriminatory practices, especially since it knew or should have known what those practices were.

As the employer acquiesced in the discriminatory practices of the white local, it itself discriminated in the hire of employees so as to encourage membership in the white local and therefore violated section 8(a)(3).

In *Oak Apparel,*[27] a panel majority found that paid union organizers who applied for, and obtained, work with an employer in order to organize the employer's employees were "employees" as defined by section 2(3) of the Act; therefore, their later discharge for engaging in protected concerted union activities constituted a violation of section 8(a)(3). The panel majority recognized their obvious status as union organizers, given their ultimate motives for seeking employment, but saw the crucial issue as "not whether they sought . . . an employment relationship of a permanent nature," but whether they were "members of the working class generally."

[26] 214 NLRB No 147 (Members Fanning, Jenkins, and Penello).
[27] 218 NLRB No 120 (Members Jenkins and Penello, Member Kennedy dissenting)

Member Kennedy, dissenting, would have found that, given their status as paid union organizers, and their lack of interest in obtaining permanent employment with the employer, they were in reality employees of the union, not of the employer, and therefore were not "employees" as far as the employer was concerned. In his opinion, their discharge by the employer was therefore not violative of section 8(a)(3).

D. 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.[28] An employer or labor organization respectively violates section 8(a)(5) or 8(b)(3) if it does not fulfill its bargaining obligation.

1. Unilateral Changes in Conditions of Employment

In six cases decided this report year, the Board was presented with alleged violations of section 8(a)(5) involving employers' unilateral changes in employees' terms and conditions of employment.

Elm Hill Meats of Owensboro and *Hydro-Dredge Accessory Co* [29] presented issues of whether unilateral changes made prior to the issuance of a Board bargaining order were unlawful In *Elm Hill*, the employer was ordered by the Board in a prior case in August 1973 [30] to bargain with the union at one of its plants as a remedy for the employer's other unfair labor practices under *N.L.R.B.* v. *Gissel Packing Co.*[31] Prior to issuance of the Board's order the employer closed the plant, concededly without bargaining with the union about the decision to close or the effects of that decision on the employees. The issue was, therefore, whether the closing of the plant prior to issuance of the Board's bargaining order violated section 8(a)(5). The Board majority found that it did not because, under the majority view in *Steel-Fab*,[32] a *Gissel* bargaining order is issued solely to remedy

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[28] The scope of mandatory collective bargaining is set forth generally in sec 8(d) of the Act 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

[29] *Elm Hill Meats of Owensboro, Elm Hill Meats, Baltz Bros Packing Co* , 213 NLRB No 100 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting), *Hydro-Dredge Accessory Co* , 215 NLRB No 5 (Chairman Miller and Member Penello, Member Fanning concurring in part and dissenting in part)

[30] *Elm Hill Meats of Owensboro*, 205 NLRB 285

[31] 395 U S. 575 (1969)

[32] 212 NLRB No. 25 (1974); 39 NLRB Ann. Rep. 22-23, 86-87 (1974).

8(a)(1) and/or 8(a)(3) violations that have dissipated a union's majority and prevented the holding of a fair election and a finding of an 8(a)(5) violation in such a situation is unnecessary. Therefore, under *Steel-Fab*, a bargaining order in such a situation operates only *in futuro* and, accordingly, inasmuch as Elm Hill's economically motivated decision to close the plant was made at a time when no bargaining obligation existed, the employer's refusal to bargain about the decision to close or its effects did not violate section 8(a)(5) or (1) of the Act.

Members Fanning and Jenkins, who concurred in part and dissented in part in *Steel-Fab*, dissented in *Elm Hill*, on grounds that the employer's bargaining obligation was created as of the time the union had a majority and demanded recognition[33] and that, therefore, the employer was under a duty to bargain prior to the Board's issuance of its bargaining order. The dissenters also argued that the majority view would leave an employer free to engage in any sort of unilateral conduct as long as it acted with sufficient dispatch to accomplish its purpose before the Board issued a bargaining order.

In *Hydro-Dredge*, after committing a series of violations of section 8(a) (1) and (3) of the Act and failing to grant the union's subsequent demand for recognition, the employer violated section 8(a)(2) of the Act by drafting and executing a contract with an employee association. The administrative law judge found that recognition of the employee association and other subsequent unilateral changes violated section 8(a)(5) because the employer's obligation to bargain with the union arose when that labor organization demanded recognition. The panel majority, however, disagreed, on grounds that under *Steel-Fab* the obligation to bargain was prospective only. The majority further found that the unilateral changes in working conditions did not constitute independent violations of section 8(a)(1) as the General Counsel had not so alleged and because a complete remedy, including a bargaining order, was to be ordered. Member Fanning, concurring and dissenting in part, dissented from the majority's failure to find that the employer violated section 8(a) (5) and (1) on grounds that it unlawfully refused to bargain as of the date of the union's demand for recognition. Member Fanning further dissented from the majority's findings that the unilateral changes did not independently violate section 8(a)(1) on grounds that the employer was on notice that its conduct was alleged to be unlawful and there was sufficient evidence adduced at the hearing to warrant a finding of violation of section 8(a)(1).

[33] The dissent noted that an exception to this requirement exists where the employer chooses to test the union's majority by a Board election in a situation where the employer commits no misconduct *Linden Lumber Div., Summer & Co.*, 190 NLRB 718 (1971), reversed and remanded 487 F. 2d 1099 (C.A.D.C., 1973), 419 U S. 301 (1974)

In *AAA Motor Lines*,[34] the employer, after making a timely withdrawal from a multiemployer bargaining unit, submitted proposals to the union 2½ months prior to expiration of the parties' then current collective-bargaining agreement. The union, however, engaged in dilatory tactics and, in effect, refused to meet with the employer until bargaining with other employers was concluded. Consequently, the day after the contract expired the employer unilaterally instituted certain of the changes it had proposed to the union which involved matters of immediate concern to the employees. The Board panel, reversing the administrative law judge, found that under these circumstances the employer was justified in unilaterally instituting changes in the employees' terms and conditions of employment and did not thereby violate section 8(a)(5) of the Act.

The panel in *AAA Motor Lines* noted that the changes instituted by the employer were necessary to avoid losses of certain benefits to employees, a matter more fully discussed in *Ellex Transportation*.[35] In that case the employer's employees represented by the Teamsters were covered, pursuant to a collective-bargaining agreement, under that labor organization's health and welfare fund and pension fund. Prior to expiration of that contract a deauthorization petition was filed with the Board, and negotiations were suspended pending outcome of the deauthorization proceeding and subsequent decertification petition, which was filed after the contract expired. On the date the collective-bargaining agreement expired the employer ceased contributing to the health and welfare and pension funds, and, at some date thereafter, made available and implemented its own health, welfare, and pension plan. The administrative law judge found, and the Board panel agreed, that the employer was not under any obligation to bargain with the union while a question of representation was pending, and that consequently the employer's unilateral institution of health, welfare, and pension programs for its employees was not unlawful. Member Fanning, concurring, found that, when the contract expired, the employer's employees would have been without any health, welfare, or pension coverage unless the employer took some action. Inasmuch as the employer's conduct merely resulted in unit employees maintaining, in general terms, the same relative economic position they had enjoyed under the expired contract, Member Fanning concluded that the employer did not act unlawfully.

In *Leveld Wholesale*,[36] one major issue was whether the employer violated section 8(a)(5) of the Act by hiring strike replacements at a

[34] 215 NLRB No 149 (Chairman Miller and Members Fanning and Jenkins)

[35] *Ellex Transportation (Formerly Hugh Breeding)*, 217 NLRB No 120 (Members Kennedy and Penello; Member Fanning concurring).

[36] 218 NLRB No. 206 (Members Jenkins, Kennedy, and Penello).

lower wage than the strikers had received and by refusing to make contributions on behalf of the replacements to the union's fringe benefit fund. The Board panel found that the contract between the employer and the union had been terminated, relying on the fact, that, although the contract contained a reopener clause only as to wages, when the employer treated the union's proposals on other issues as a termination of the contract, the union in the course of bargaining apparently acquiesced in this interpretation and subsequently engaged in a strike which would not have been lawful had the contract remained in effect. The panel therefore found that the contractual wage provisions did not apply to the strike replacements, relying on *Imperial Outdoor Advertising*.[37] As to the employer's refusal to make benefit contributions for the replacements, the panel concluded that, inasmuch as the union was concerned with the interests of the strikers rather than their replacements, and indeed sought to have the replacements dismissed and the strikers recalled, the same considerations which justified the employer in hiring replacements at a lower wage rate should be applied to the refusal to contribute to the benefit funds. Accordingly, the panel dismissed the complaint.

In *Dow Chemical Co.*,[38] the employer unilaterally instituted a program called "Speak Out!", pursuant to which employees could submit questions, complaints, or suggestions to management through a coordinator who would preserve the employee's anonymity and elicit a response from the appropriate management official. A Board panel majority found that the purpose of the program was not to denigrate or avoid dealing with the union, and that it did not in fact have that effect. The majority noted that, insofar as adjustment of grievances was concerned, "Speak Out!" did not substantially differ from what was permitted to the employer by the contractual grievance procedure and that, therefore, the employer's failure to bargain about its institution did not violate section 8(a)(5) and (1) of the Act.[39] The majority adopted the administrative law judge's recommendation that the complaint be dismissed.

Member Fanning dissented on grounds that under the contractual grievance procedure the union waived its right to participate in the adjustment of grievances only when grievances were presented at the level of the employee's immediate supervisor and that at higher levels of grievance adjustment the union was entitled to be present. However, the "Speak Out!" program, which was conducted entirely without union participation, frequently involved adjustments at higher levels

[37] 192 NLRB 1248 (1971)

[38] 215 NLRB No 139 (Members Kennedy and Penello, Member Fanning dissenting)

[39] The panel majority emphasized, however, that it considered the employer's failure to notify or consult the union about the program self-defeating and counterproductive.

of management. Accordingly, Member Fanning would have found that, by not providing the union an opportunity to be present at "Speak Out!" adjustments, the employer violated section 8(a)(5) of the Act.

2. Successor Employers

The Board continued during this report year to define the circumstances under which an employer will be found to be a successor employer, particularly with regard to issues involving retention of the previous employer's employees.

In *United Maintenance & Mfg. Co.*,[40] at the time the employer commenced operations all the unit employees of its predecessor were on strike. The company offered employment to 21 of the 38 strikers via a form letter dated August 6, 1973, which did not specify what terms and conditions of employment were being offered. No strikers presented themselves for employment, and on August 20 the employer began hiring nonstrikers, at unilaterally instituted terms and conditions of employment. Subsequently, the employer hired some of its predecessor's employees and some new employees; from August 20 until October 5, although the number of employees varied, more than one-half the employee complement consisted of employees of the predecessor who had been on strike. The employer performed the same operations using the same facilities as its predecessor and served some of the same customers, but at all times refused to recognize and bargain with the union which had been certified within the past year as representative of its predecessor's employees. A majority of the Board, relying on the Supreme Court decision in *N.L.R.B.* v. *Burns International Security Services*,[41] found that the employer succeeded to its predecessor's bargaining obligations on and after August 28, when a majority of the employee complement consisted of former employees of the predecessor, but that the employer had no obligation to bargain over the initial terms of employment instituted on August 20. In reaching the former conclusion, the majority found that (1) it was not determinative that the union and the predecessor had no collective-bargaining agreement, inasmuch as the source of the bargaining obligation arose from the certification and the fact that a majority of the employer's substantially complete work force had been employed by the predecessor; (2) although the predecessor had not been operating for several months before the employer took over operations, a hiatus in operations is ordinarily material only where there have been substantial other changes, which did not occur in this case, and, as the hiatus resulted from the employees' strike, it did not provide a basis

[40] 214 NLRB No. 31 (Chairman Miller and Members Fanning, Jenkins, and Penello, Member Kennedy dissenting).

[41] 406 U.S. 272 (1972).

for challenging the union's majority status; (3) the employer commenced operations on a smaller scale than its predecessor and, therefore, the fact that less than a majority of the predecessor's unit employees were hired was not material, inasmuch as the relevant factor is the percentage of the new employer's work force which had previously worked for the predecessor; (4) from at least August 28 to October 5 a majority of the employer's work force had previously been employed by the predecessor in a certified unit.

With respect to its conclusion that the employer was not obligated to bargain with the union over the terms of employment instituted on August 20, the Board majority, citing *Spruce Up Corp.*[42] and *Anita Shops d/b/a Arden's,*[43] found that it would be "pure speculation" to conclude that, but for the employer's refusal to recognize the union, a sufficient number of the predecessor's employees would have accepted employment with the employer so as to establish the union's continuing majority status [44] and the employer's obligation to bargain.

Member Kennedy dissented, noting that the employer never employed more than nine of the predecessor's unit employees, and found that "there was plainly no substantial continuity of identity in the work force" after the employer began operations, citing the Supreme Court decision in *Howard Johnson Co.* v. *Detroit Local Joint Executive Board, Hotel & Restaurant Employees & Bartenders Intl. Union, AFL–CIO.*[45] In Member Kennedy's view, one of the criteria for determining the successorship obligation is whether the new employer has the same or substantially the same work force, and the majority ignored this criterion. Member Kennedy further noted that there was no evidence in the record that the union represented a majority of the employer's employees, and, therefore, the policy of the Act would not be effectuated by issuing a bargaining order.

In *Boeing Co.*,[46] the Board majority concluded that, even if the employer "intended" to hire all or substantially all of the predeces-

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[42] 209 NLRB 194 (1974), 39 NLRB Ann Rep 91–94 (1974)

[43] 211 NLRB No 74 (1974), 39 NLRB Ann Rep 95 (1974)

[44] Members Fanning and Penello were of the view that the employer was obligated to bargain with the union when it was requested to do so on and after August 13, including bargaining over *the initial terms* of employment offered by the employer Under their reading of *Burns, supra,* they would have found a successor employer obligated to bargain with the representative of the predecessor's employees as soon as it manifested an intent to look primarily to the predecessor's unit employees to fill its work force.

Members Fanning and Penello were further of the view that whether a majority of the predecessor's employees was employed by the new employer is but one factor to be considered in determining whether a bargaining obligation exists Accordingly, they did not believe that in every case there must have been an absolute majority of the predecessor's employees before a duty to bargain could be found Chairman Miller and Member Jenkins took the position that the standard for determining a new employer's bargaining obligation prior to commencing operations is (1) how many of the predecessor's employees are offered and actually accept employment with the new employer, and (2) the date from which a sufficient number of the predecessor's employees manifest their acceptance of the offer of employment and availability for work.

[45] 417 U S 249 (1974)

[46] 214 NLRB No. 32 (Chairman Miller and Members Jenkins and Kennedy; Members Fanning and Penello dissenting).

sor's employees, if that "intention" is conditioned upon lesser wage rates and benefits the possibility that the old employees will not accept employment with the new employer is a very real one and, therefore, quoting *Spruce Up, supra,* "we do not think it can fairly be said that the new employer 'plans to retain all of the employees in the unit,' as that phrase was intended by the Supreme Court." Accordingly, the majority ordered that the complaint be dismissed in its entirety. Members Fanning and Penello, dissenting, found that the employer continued the predecessor's operations, using essentially the same services, plant machinery, equipment, and job functions, and that the employer continued to perform the contract to which it succeeded in the same manner as its predecessor. The dissenters contended, quoting their separate dissents in *Spruce Up, supra,* that "[s]uccessorship does not depend on the employment of a majority of the predecessor's employees, but on whether a legally significant portion of the successor's employment force consists of employees previously employed in the bargaining unit," and that if successor status depended on an employer's own decision whether or not to populate its work force with more than half its predecessor's employees an incoming employer could "control too readily its own status under our Act." Noting that when Boeing took over operations the predecessor's employees comprised more than 39 percent of Boeing's work force, the dissent concluded that that percentage constituted a legally significant portion of the employment force and that, therefore, Boeing was obligated to recognize and bargain with the union on the date the former took over the predecessor's operations. The dissent further found, reviewing the facts of the case, that Boeing expressed its intent to retain all or substantially all the former employees. In the view of the dissent, all that is required is that the new employer "plan to retain" the predecessor's employees, and that such a plan is of necessity preliminary to actual hiring. Finally, the dissent would have found that a new employer's plan to retain employees only on lesser terms would not vitiate the bargaining obligation and that, therefore, Boeing violated section 8(a)(5) of the Act by unilaterally fixing wage rates lower than those the employees had previously enjoyed.

3. Status of Operator on Bankruptcy

In *Cagle's, Inc.*,[47] the employer assumed control of a bankrupt business under the terms of a management agreement approved by the Bankruptcy Court. The employer did not commence actual operations until almost a year after the bankrupt closed and when the

[47] 218 NLRB No. 92 (Members Jenkins, Kennedy, and Penello, Chairman Murphy and Member Fanning concurring in part and dissenting in part).

employer began operating it did so with completely different ownership and directors, a new general manager, a majority of new supervisors, and an initial work force approximately 17 percent the size of that employed by the bankrupt. The employer also changed production methods, installed new equipment, renovated the building, reduced and altered the product line, and acquired new customers. In view of these facts, a majority of the Board disagreed with the administrative law judge's conclusion that the employer was an *alter ego* of the bankrupt and therefore required to bargain with the union which had represented the bankrupt's employees. To the contrary, the majority found that generally in cases where *alter ego* status is found there is either a mere technical change in the identity of the employing industry or common ownership by two separate entities, but that in *Cagle's*, because of the substantial changes in structure, ownership, and operation of the bankrupt's business, and because of the employer's financial interest in the success of the operation, successorship, rather than *alter ego* principles, should apply. Accordingly, the majority, citing the changes noted above, as well as the low percentage of the bankrupt's employees who eventually worked for the employer and the high degree of turnover among it's employees, concluded that the employer did not unlawfully refuse to bargain.

Chairman Murphy and Member Fanning, dissenting, would have found that the employer was an *alter ego* of the bankrupt, on grounds that the employer did not purchase the business, but merely operated it under a terminable contract with the trustee in bankruptcy, who was himself the *alter ego* of the bankrupt.

4. Withdrawal of Recognition

Under the Board's *Celanese* rule,[48] there is a rebuttable presumption that a union's majority continues after the first year of recognition. An employer who 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 has 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. In four cases decided this report year, the Board found occasion to apply these principles.

[48] *Celanese Corp of America*, 95 NLRB 664 (1951).

Issues involving whether an employer had objective considerations warranting a reasonable doubt as to whether a union enjoyed a continuing majority status were considered by a Board panel in *Bartenders, Hotel, Motel & Restaurant Employers Bargaining Assn.*[49] In that case, the employer association had filed a representation petition which had been dismissed by the regional director, whose action had been upheld by a majority of the Board. Subsequently, the employer relied on the following to justify its refusal to bargain: (1) although the parties had a long history of collective bargaining, the union had never been certified as representative of the employer's employees; (2) less than a majority of the employees had signed dues-checkoff authorizations as of the time of the refusal to bargain; and (3) there was employee disaffection with the union. The Board panel majority rejected all three grounds. With respect to the first, the majority found that the union's lack of certification was irrelevant and that, since the employer had recognized the union and entered into a bargaining agreement with it, there was a rebuttable presumption that the union's majority status continued. As to the employer's second argument, the majority found, citing Board and court precedent that a showing of actual financial support of an incumbent union, at least where such support is made voluntary, is not the equivalent of establishing the number of employees who continue to desire representation by that union, and, therefore, the low number of checkoff authorizations did not establish a reasonable basis for believing that the union had lost majority support. The majority further found, citing Board and court precedent, that the fact that less than a majority of the employer's unit employees were union members did not establish that less than a majority desired union representation. Finally, the majority was of the view that the employer's evidence that 12 of 288 unit employees had complained about the union was not sufficiently indicative of employee disaffection to constitute an objective consideration warranting a refusal to bargain. Accordingly, the majority concluded, the employer offered no evidence showing the union did not in fact enjoy majority status and demonstrated no objective considerations warranting a reasonably based doubt as to the union's continuing majority status at the time of the refusal to bargain and, therefore, the refusal to bargain violated section 8(a)(5) of the Act.

Member Kennedy, dissenting, noted that the union's refusal to establish its majority via a Board-conducted election raised a strong suspicion that the union knew or suspected that it did not represent a majority of the employees and would not win such an election.

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[49] *Bartenders, Hotel, Motel & Restaurant Employers Bargaining Assn of Pocatello, Idaho & Its Employer-Members*, 213 NLRB No 74 (Members Fanning and Jenkins, Member Kennedy dissenting).

Member Kennedy further urged that the ultimate burden of proving the union's majority on the date of the refusal to bargain rested on the General Counsel, and that the employer produced sufficient evidence to cast serious doubt on the union's majority status to shift that burden back to the General Counsel.[50] Thus, the dissent was of the view that the burden was not on the employer to prove that the union did not represent a majority, but on the General Counsel to prove that it did. Member Kennedy thus concluded that the regional director erred in dismissing the employer's representation petition and that the Board erred in upholding that dismissal, inasmuch as an election would have expeditiously resolved the issue of the union's majority status.

In answer to the dissent, the majority emphasized that the employer did not know until it was stipulated at the hearing that less than a majority of unit employees were union members, and that both the Board and the courts require that the employer have a "serious doubt" of the union's majority *"at the time of the refusal to bargain"* in order to justify its conduct.

United Supermarkets,[51] presented similar issues. In that case, the employer contended that because only 7 of 13 unit employees had authorized dues checkoffs as of the date of the employer's refusal to bargain with the union, which the employer had previously recognized and with which it had executed a prior collective-bargaining agreement, the refusal to bargain was justified. The employer also contended that the figure of seven employees should be reduced to five because two employees asked how their checkoffs could be stopped. A majority of the Board, however, concluded that the fact that less than a majority of unit employees may have authorized dues checkoffs is immaterial to the issue of majority status, and that evidence that two employees asked the employer how to stop their checkoffs did not amount to a withdrawal of acceptance of the union as bargaining agent. The majority further found that, although the union instigated a 3-month hiatus in bargaining, this action did not evidence a loss of interest in representing the employees, particularly in view of the facts that during that period the union attempted to organize another group of the employer's employees and did contact a Federal mediator. The majority finally concluded that a remark made by a union negotiator that "I don't believe I had it" referred to evidence of majority status, not that status itself.

Member Kennedy, dissenting, argued that this remark, quoted by the negotiator in his testimony at the hearing, was an admission by

[50] The dissent viewed the stipulation that only 111 unit employees were dues-paying members as constituting such evidence

[51] 214 NLRB No 142 (Members Fanning, Jenkins, and Penello, Chairman Miller dissenting, Member Kennedy dissenting)

the union that it did not represent a majority of employees, and that such an admission constituted both the basis for the employer's reasonable doubt of the union's majority status and evidence that in fact such status no longer existed. Member Kennedy further found that the cancellations of dues checkoffs, at the least, raised doubts of continued majority and concluded that the majority erred in finding an unlawful refusal to bargain, emphasizing that an employer is not only not obligated to bargain with a minority union, but may not lawfully bargain unless the union represents a majority of the unit employees. Chairman Miller also dissented, in a separate opinion, on grounds that the employer had sufficient objective considerations to reasonably doubt that the union's majority status continued, but noted that, despite the employer's objective considerations, the General Counsel might prevail if he could meet the burden of proving that the union did in fact enjoy continuing majority status.

In *Guerdon Industries, Armor Mobile Homes Div.*,[52] a Board panel majority found that the employer's withdrawal of recognition, although based on objective considerations, nonetheless violated section 8(a) (5) and (1) of the Act because it was not accomplished in a context free of unfair labor practices. In that case, the employer began negotiations for a new collective-bargaining agreement with a certified union in January 1974, prior to the March 31 expiration date of the parties' then current contract. On May 1, while negotiations were still in progress, the employer's general manager announced to employees an incentive wage plan, portions of which were immediately implemented. The union was not consulted before the plan was announced to employees. Thereafter, on May 9, the employer informed the union it was filing a petition for a Board-conducted election and that, pending the Board's resolution of this issue, it would no longer bargain. The employer contended this refusal to bargain was justified because (1) the dues-checkoff figures for March, April, and May 1974 indicated that less than a majority of employees were on checkoff during those months; (2) a union representative made certain statements indicating doubt of employee support of the union; and (3) a majority of the unit employees had signed a petition, given to representatives of management after the April 29 announcements, which stated "we no longer wish to be represented by [the union]." The panel majority found, as in the cases discussed above, that the fact that less than a majority of unit employees were on dues checkoff was irrelevant and further found that the employer's contention that a union representative had admitted the union's loss of majority was not supported by credited testimony. However, the majority found that the employee petition could have constituted a sufficient reason

[52] 218 NLRB No. 69 (Members Fanning and Penello, Member Kennedy dissenting).

for the employer to have doubted the union's continued majority status.[53] Nonetheless, the majority concluded that the employer, by unilaterally announcing and implementing the wage incentive plan before it had such a reasonable doubt, committed a flagrant and egregious violation of the Act and that, consequently, inasmuch as the subsequent withdrawal of recognition did not occur in a context free of serious unfair labor practices, the refusal to bargain violated section 8(a) (5) and (1).[54]

Member Kennedy, dissenting, found that both the employer and the union were genuinely concerned about the lack of support for the union among the employees; that, had unit employees desired representation by the union, they would have joined it or otherwise supported it financially; and that the majority decision failed to effectuate the policy of the Act favoring the determination of a union's majority status by secret election. Member Kennedy further found that the employer's alleged unfair labor practice, i.e., the announcement and implementation of a wage incentive plan, was at most a technical violation inasmuch as the plan was never fully implemented, and was therefore not the kind of unfair labor practice that would seriously impede a secret election. Accordingly, the dissent concluded that the employer did not violate section 8(a)(5) by refusing to bargain further with the union unless the latter demonstrated its majority status in a Board-conducted election.

The issue of whether a showing that less than a majority of employees had authorized dues checkoffs can furnish a basis for a reasonable doubt of majority support for a union was again considered by a Board panel in *Wald Transfer & Storage Co. & Westheimer Transfer & Storage Co.*[55] In that case, employers and the union had had a collective-bargaining relationship for more than 25 years, a factor relied upon by the majority in finding that the presumption of majority support for the union continued after expiration of the parties' last collective-bargaining agreement in July 1973.

The employers had stopped implementing checkoffs after July, and in October the union submitted new checkoff cards, the number of which did not represent a majority of Wald's employees; there was no evidence in the record as to whether the cards reflected a majority of Westheimer's employees. The parties continued to bargain, however, until the bargaining session on April 11, 1974, when a new contract was about to be finalized and signed. At that meeting the

[53] Members Fanning and Penello found the petition did not in fact establish loss of majority because the signatures were not properly authenticated and it was not shown that the employees who signed the petition were actually in the unit on the date of the employer's withdrawal of recognition

[54] The majority noted, however, that had the employer's unfair labor practices not been of a nature to either affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself, the withdrawal of recognition would not have violated the Act

[55] 218 NLRB No. 73 (Members Fanning and Penello, Member Kennedy dissenting).

employers, without explanation, refused to continue bargaining and did not give the union the reason for their alleged doubts of majority status until the hearing on the consequent complaint. The majority of the Board panel, noting that the case arose in a right-to-work State, reversed the administrative law judge's finding that the employers had a reasonable basis for doubting that a majority of the employees continued to desire union representation, also noting that there was no showing that a majority of employees had agreed to checkoff at any time during the parties' bargaining history. The majority also found that the onus was not on the union to prove its status in a Board-conducted election especially under the circumstances of that case; i.e., the failure of the employers to state the basis of their alleged doubt of majority until after the charge was filed. The majority concluded that the employers' action, particularly in waiting until the final bargaining session to question the union's majority, without explaining their alleged doubt, constituted an unlawful refusal to bargain.

Member Kennedy, dissenting, expressed his view that the union's failure to obtain checkoff authorizations from a majority of unit employees was evidence of lack of union support, emphasizing that after the employers stopped implementing checkoff in July 1973 the union made no effort to collect dues until January 1974, and that in January and February dues were collected by the union only from a "very nominal number" of the employers' employees. Member Kennedy found that no purpose would have been served by the employers' seeking a Board-conducted election because the Board would have dismissed the petition, citing *Bartenders of Pocatello, supra,* and, therefore, the onus was on the union to provide for prompt resolution of the issue by seeking an election. In this connection, the dissent emphasized that the Act favors the policy of encouraging secret elections, and that the union's failure to petition for an election indicated that the union doubted it would win.

In answer to the dissent, the majority concluded that Member Kennedy confused union membership with union support, and that, in view of the majority's finding that the number of dues checkoffs in a right-to-work State is not an objective consideration warranting a reasonable doubt as to the union's status, the goal of industrial stability would not have been served by directing an election.

5. Other Issues

In *Detroit Edison Co.*,[56] a Board panel majority held that an employer violated section 8(a)(5) when it refused to furnish to an incumbent

[56] 218 NLRB No. 147 (Members Jenkins and Penello; Member Kennedy concurring in part and dissenting in part).

union copies of aptitude tests administered to employee applicants for a certain job vacancy and the test scores made by each employee who took the test, since such data was of possible relevance in connection with the processing of grievances over the reliability of the test results in disqualifying certain employees for the vacant position. As part of the remedy, the majority held that the test papers and test results had to be given directly to the union, rather than to a qualified psychologist selected by the union, as had been ordered by the administrative law judge, since the union, as bargaining agent, had exclusive authority to administer the collective-bargaining agreement on behalf of the employees it represented. The panel majority did specifically recognize the confidential nature of the tests in that it instructed the union to "see, study, and use" the test papers and results to the extent necessary to process grievances, but not to "copy the tests, or otherwise use them, for the purpose of disclosing the tests or the questions to employees who have in the past or who may in the future take these tests, or to anyone (other than the arbitrator) who may advise the employees of the contents of the tests." Member Kennedy, concurring in part and dissenting in part, would have affirmed the decision of the administrative law judge in its entirety.

In *Abex Corp.—Aerospace Div.*,[57] the Board again addressed the issue of the duty of an employer to bargain over the terms or conditions of employment for previously unrepresented, but recently *Globed,* employees. In a similar case handed down in the previous fiscal year, *Federal Mogul Corp., Bower Roller Bearing Div.*,[58] a Board majority of Chairman Miller and Members Fanning and Jenkins found that an employer violated section 8(a)(5) of the Act when it refused to bargain with the union over such employees. In the instant case, the very same result was reached by the very same majority. Six months into a collective-bargaining agreement between the employer and union covering production and maintenance employees, a group of salaried fringe employees voted in an *Armour-Globe* election[59] to become part of the production and maintenance unit and be represented by the union. Pursuant thereto, the Board issued a certification stating that the union might bargain for the new employees as part of the group of employees it currently represented. The employer refused to bargain over the terms and conditions of employment now to be applied to the newly included employees, but instead unilaterally applied the contractual terms and conditions of employ-

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[57] 215 NLRB No 114 (Chairman Miller and Members Fanning and Jenkins, Members Kennedy and Penello dissenting)

[58] 209 NLRB 343 (1974).

[59] *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937), *Armour & Co.*, 119 NLRB 623 (1957).

ment presently enjoyed by the production and maintenance employees to the new employees.

Again, the Board majority of Chairman Miller and Members Fanning and Jenkins found the duty to bargain for *Globed* employees. In so doing, it squarely followed *Federal Mogul* and adopted the rationale thereof. In view of the majority, for the Board to allow the employer to avoid the duty to bargain for the newly acquired employees and instead require unilateral application of the existing contract to these employees would be tantamount to compelling both the employer and union to agree to specific substantive contractual provisions, a power which the Supreme Court in *H. K. Porter Co.* v. *N.L.R.B.*[60] held as being beyond the authority of the Board.

Members Kennedy and Penello dissented for much the same reasons they dissented in *Federal Mogul*. They argued that, since the fringe employees 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 the opinion of Members Kennedy and Penello, when the employees herein cast their ballots for union representation in the *Armour-Globe* election, they expressed their desire to become part of a collective-bargaining unit already subject to an agreement made by its certified representative and the employer. It follows, therefore, inescapably that the contract terms which concerned all employees in the unit must have applied to the newly included employees. Members Kennedy and Penello pointed out that by requiring fresh bargaining and a separate contract for the newly included employees the Board majority was effectively imposing a double certification on a single unit. Given certain fundamental differences between a *Globe* election and a conventional representation election, the subsequent duty to bargain which ordinarily follows the latter does not accompany the former. The dissenters found *H. K. Porter* inapposite in that neither party to the collective-bargaining agreement, the employer or the union, was being compelled to agree to any substantive provision in a contract. Rather the substantive contractual provisions to be applied to the *Globed* employees had already been agreed to by the parties when they negotiated and signed the preexisting collective-bargaining agreement.

In *Connell Typesetting Co.; Spangler Printers; Pulliam-Marty Typographers; and M & M Typesetting Co.*,[61] a Board panel refused to find four employers in violation of section 8(a)(5) when they unilaterally withdrew from multiemployer negotiations. Restating the

[60] 397 U S 99 (1970).
[61] 212 NLRB No. 140 (Chairman Miller and Members Kennedy and Penello).

longstanding rule that an employer-member of a multiemployer bargaining association may not, without the union's consent, withdraw from multiemployer bargaining after the commencement of multiemployer negotiations barring "unusual circumstances," the panel found such unusual circumstances in the facts of this case and thus found the employers' withdrawal proper. Here, after the start of negotiations for a new contract, each of 23 employers out of the 36 in the multiemployer complement individually withdrew from the multiemployer unit and/or signed a separate agreement with the union. All of these actions were taken with the consent of the union. The total number of employees affected was 173 out of the original 209-man complement in the multiemployer unit. Given the union-sanctioned reduction of the size and scope of the multiemployer unit, the panel felt it unfair and harmful to the collective-bargaining process to single out four employers and force them to deal on a multiemployer basis with the union, merely because the union, which had consented to the withdrawal of so many other employers, was unwilling to consent to the withdrawal of these four employers. In these unusual circumstances, the Board found no continuing duty by the four employers to bargain on a multiemployer basis.

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 agent 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. During the past fiscal year, several cases involved this section of the Act.

In one case,[62] a Board panel considered whether a union's conduct in resorting to the courts to enforce an arbitrator's award was coercive and a restraint upon employees in the exercise of their section 7 rights and thereby violative of section 8(b)(1)(A). Although the panel decided that a disputed clause which was the basis of the arbitrator's award was violative of section 8(e) of the Act, it concluded that the union's resort to the courts was done in good faith to enforce a colorable contract right and was not the kind of tactic calculated to

[62] *Retail Clerks Union Local 770, chartered by Retail Clerks Intl Assn., AFL-CIO (Hughes Markets & Saba Prescription Pharmacy)*, 218 NLRB No 84 (Members Jenkins, Kennedy, and Penello).

restrain employees in the exercise of rights guaranteed by section 8(b)(1)(A) of the Act.

Another case,[63] decided by a Board panel, involved a premature collective-bargaining contract renewal which had the effect of negating an employee's right to revoke a dues-checkoff authorization at the expiration of the prior contract. The panel noted that the Act's section 302(c)(4) guarantees an employee two distinct rights when he executes a checkoff authorization: (1) a chance at least once a year to revoke the authorization, and (2) a chance upon termination of the contract to revoke his authorization. The panel concluded that in eliminating the statutorily guaranteed escape period by a premature contract renewal the union contravened congressional intent as expressed in section 302(c)(4) and violated section 8(b)(1)(A) of the Act by causing the employer to dishonor revocation notices of its employees which were submitted during the previously established escape period.

In a third case,[64] the full Board determined that a union violated section 8(b)(1)(A) of the Act by threatening to discipline and by imposing court-collectible fines on two former members, who had duly resigned from the union, because of their postresignation crossing of a sanctioned picket line and working during a strike.

In their concurring opinion, Members Fanning and Jenkins noted that the two individuals in the case had duly resigned from the union before crossing the picket line, they were not on notice that the union asserted any right to restrict the postresignation conduct of former members, and the lodge was estopped from asserting that its constitution prohibits postresignation strikebreaking.

Another case [65] involved a union's refusal to represent a laid-off employee in a job reassignment dispute. The union's refusal was pursuant to an election conducted by the union among member-employees at the facility at which the layoff occurred. A panel majority found that such conduct violated section 8(b)(1)(A) of the Act because of the lack of fairness in the decision-making process utilized by the union in determining its duty of representation. According to the majority, the unfairness arose from the fact that the issue of the grievant's proper seniority for layoff purposes was determined by a vote of other employees who would gain individually if they voted against the

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[63] *Atlanta Printing Specialties & Paper Products Union 527, AFL-CIO (Mead Corp.)*, 215 NLRB No. 15 (Chairman Miller and Members Fanning and Penello)

[64] *Local Lodge 1994, Intl Assn of Machinists & Aerospace Workers, AFL-CIO (O K. Tool Co)*, 215 NLRB No. 110 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins concurring in the result).

[65] *General Truck Drivers, Warehousemen, Helpers & Automotive Employees, Loc 515, IBT (Rhodes & Jamieson, Ltd)*, 217 NLRB No 95 (Members Jenkins and Kennedy, Member Penello dissenting).

grievant. *Miranda Fuel*[66] and *Vaca* v. *Sipes*[67] were cited by the majority. In the majority's view, the duty of fair representation being an affirmative duty, the obligations it encompasses cannot be avoided by delegating the authority to make decisions. Here, the union in effect delegated this authority to a group of its members who had an inherent conflict of interest. The union could not, however, according to Members Jenkins and Kennedy, abdicate the responsibility for fair treatment of the employees affected by the decision. By selecting this method for determining its action, the union underwrote the fairness of the method. In the opinion of Members Jenkins and Kennedy, the method did not meet the minimum statutory standard of fairness.

Member Penello, dissenting, stated that the General Counsel presented no basis for concluding that the union's action in relying on the wishes of the member-employees was arbitrary or constituted an abuse of discretion given the union by its collective-bargaining contract. The majority, in the opinion of Member Penello, substituted speculation for proof that the laid-off employee was deprived of his right to participate fully and fairly in the determination of the issue. Thus, Member Penello could only conclude that the union was acting out of a legitimate concern for the other unit employees and that it did not breach its duty of fair representation.

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 representatives for the purposes of collective bargaining or the adjustment of grievances. Several cases decided by the Board during the past fiscal year involved this section of the Act.

One case[68] involved a union which disciplined two supervisor-members who worked behind the union's picket line during a lawful strike. Because the two supervisor-members crossed the union picket line and performed substantially the same duties as they had done before the strike, which were principally or only supervisory functions including grievance adjusting, a Board majority found the union violated section 8(b)(1)(B) of the Act, citing *Florida Power*.[69]

Member Fanning, dissenting on the basis of his interpretation of *Florida Power*, disagreed with the majority's conclusions that the

[66] *Miranda Fuel Co*., 140 NLRB 181 (1962)

[67] 386 U.S. 171 (1967)

[68] *Chicago Typographical Union 16 (Hammond Publishers)*, 216 NRLB No 149 (Members Jenkins, Kennedy, and Penello. Member Fanning dissenting)

[69] *Florida Power & Light Co.* v. *I.B.F.W., Loc. 641*, 417 U.S. 790 (1974).

performance of minimal struck work by supervisors is not a legitimate concern of the union and that its discipline of the supervisors for performance of such work is prohibited by the Act.

In another case,[70] reconsidered in light of the Supreme Court opinion in *Florida Power*, a Board panel majority reaffirmed a previous decision [71] that the union violated the Act by fining and expelling a member who was a supervisor. In so doing, the majority interpreted *Florida Power* to mean that where a disciplined supervisor has engaged only in supervisory activities the discipline violates the Act because it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his collective-bargaining or grievance-adjusting duties.

Member Fanning, dissenting, noted that the employer was afforded an opportunity to refuse to hire union members as supervisors, the opportunity to discharge supervisors for involvement in union affairs, and the opportunity to incorporate into a contract the permissible extent of a supervisor-member's functioning during a strike, but that it had forsaken such opportunities and thus could not argue that the union was interfering with its selection of the very representative it permitted to retain union membership.

In a third case [72] involving *Florida Power*, a Board panel majority found that a union violated section 8(b)(1)(B) of the Act by threatening, charging, and trying employees who worked during a union strike. The employees involved, writers with the ability to perform in other capacities such as producing, directing, or editing, were found to be supervisors.

Member Fanning, dissenting, indicated that section 8(b)(1)(B) was designed for the sole purpose of preventing unions from forcing employers into multiemployer negotiations and from dictating to employers whom they should select to represent them in grievance adjusting or collective bargaining. In his view, the union's conduct was not proscribed by section 8(b)(1)(B) of the Act.

A *Florida Power* issue was also raised in a fourth case [73] issued by the Board during the report year. There, a Board majority in a supplemental decision and order concluded that a union violated the Act by fining a supervisor-member for failing to comply with its "no contract—no work" order and thereafter instituting action against

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[70] *New York Typographical Union 6, Intl Typographical Union, AFL-CIO (Daily Racing Form, a subsidiary of Triangle Publications)*, 216 NLRB No. 147 (Members Jenkins and Penello, Member Fanning dissenting)

[71] At 206 NLRB 294 (1973).

[72] *Writers Guild of America, West (Assn of Motion Picture & Television Producers)*, 217 NLRB No. 159 (Members Jenkins and Penello, Member Fanning dissenting).

[73] *Wisconsin River Valley District Council of United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Skippy Enterprises)*, 218 NLRB No. 157 (Chairman Murphy and Members Jenkins and Kennedy, Member Fanning dissenting, Member Penello dissenting).

the employee in an attempt to collect a fine. In their view, the case was controlled by the Board's rationale in *A. S. Horner* [74] rather than by the Court's opinion in *Florida Power*. In the former case, a supervisor-member of the union was fined for working as a supervisor with a company not having a contract with the union. The Board held this was unlawful since compliance of the supervisor with union demands would have meant quitting his job, thereby having "the effect of depriving the company of the services of its selected representatives for the purposes of collective bargaining or the adjustment of grievances." Noting that the employee in question in the instant case continued to spend more than a minimal amount of his time in supervisory functions and performed no struck work of rank-and-file employees, the majority concluded that compliance of the employee with the union's demands would have meant quitting his job and thus depriving the employee of the services of its selected representative, as in *A. S. Horner*.

Member Fanning, dissenting, viewed the situation as legally no different than that in *Florida Power* and, for reasons stated in his dissenting opinions in several other cases,[75] would have dismissed the complaint.

In a separate dissenting opinion, Member Penello would have dismissed the complaint on the basis of *Hammond Publishers, supra*, since, in his view, the supervisor-member in the instant case, unlike those in *Hammond*, performed much more than a minimal amount of rank-and-file work during the period the "no contract—no work" order was in effect.

In another case [76] involving *Florida Power*, a Board majority dismissed a complaint alleging that unions violated section 8(b)(1)(B) of the Act by threatening to discipline five member-managers for working behind a picket line in support of another union's strike. The majority concluded that because of the extent of rank-and-file work performed by the managers, more than a minimal amount, the complaint must be dismissed.

Member Fanning concurred in the result only, stating that the operative test is whether it is reasonable to conclude that the future manner in which the disciplined supervisor performs his grievance adjustment or collective-bargaining functions for his employees will be impaired by union discipline.

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[74] *New Mexico District Council of Carpenters & Joiners of America (A. S Horner)*, 177 NLRB 500 (1969), enfd 454 F 2d 1116 (C A 10, 1972).

[75] *Chicago Typographical Union 16 (Hammond Publishers)* at fn 68, *supra*, *New York Typographical Union 6 (Daily Racing Form, a subsidiary of Triangle Publications)* at fn 70, *supra*

[76] *Bakery & Confectionery Workers Intl Union of America, Locs 24 & 119 (Food Employers Council)*, 216 NLRB No. 150 (Members Jenkins, Kennedy, and Penello, Member Fanning concurring).

In still another case [77] involving *Florida Power*, a Board majority dismissed a complaint alleging the union violated section 8(b)(1)(B) by firing a supervisor-member who worked without a steward in violation of the union's bylaws. The supervisor-member engaged in more than a minimal amount of rank-and-file work during the period for which he was disciplined.

Member Fanning, concurring in the majority's result, stated that in *Florida Power* the Court held that disciplining supervisor-members can violate the Act only when it may have an adverse effect on the supervisor's conduct as a grievance adjuster or in collective bargaining. In his view, the complaint must be dismissed because the employee in question had not adjusted grievances or represented the employer in collective bargaining.

Member Kennedy, dissenting, would have found that a violation of section 8(b)(1)(B) occurred because, although the supervisor was disciplined for performing his normal responsibilities as an employee, the fine would have had an adverse carryover effect on the future performance of his duties to adjust grievances and represent the employer in collective bargaining.

In another *Florida Power* type case,[78] a Board panel majority dismissed a complaint alleging the union violated the Act by fining an employee for crossing a union picket line. The majority noted that the supervisor-member did 50-percent rank-and-file production work and 50-percent supervisory work during the strike, and, therefore, performed substantially more than a minimal amount of rank-and-file struck work during the strike.

Concurring only in the result, Member Fanning did not agree with the majority's rationale to the extent that it implied that a different result would be reached had the supervisor-member performed substantially only supervisory functions.

In one other case [79] which also involved *Florida Power*, a Board majority decided that the union did not violate the Act when it disciplined a supervisor-member for performing rank-and-file struck work after crossing the union's picket line. The majority noted that the supervisor-member was not engaged in performing the duties of, or acting in the capacity of, grievance adjuster or as a collective-bargaining representative on behalf of the employer when he crossed the picket line and performed struck work.

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[77] *United Brotherhood of Carpenters & Joiners of America, Local Union 14 (Max M Kaplan Properties)*, 217 NLRB No. 13 (Members Jenkins and Penello, Member Fanning concurring in part, Member Kennedy dissenting)

[78] *Local Union 1969, United Brotherhood of Carpenters & Joiners of America (Aurora Modular Industries)*, 217 NLRB No 82 (Members Kennedy and Penello, Member Fanning concurring)

[79] *Intl Union of Operating Engineers, Loc 9, AFL-CIO (Shelton Pipeline & Construction)*, 213 NLRB No 92 (Members Fanning, Jenkins, and Penello, Chairman Miller dissenting in part)

Chairman Miller dissented in part as to the majority's modification of the remedy recommended by the administrative law judge. He agreed with his colleagues that *Florida Power, supra,* precluded a finding that the fining of supervisors for crossing picket lines constituted an independent violation of section 8(b)(1)(B) of the Act. But, where the fining of supervisors or employees was done in furtherance of a course of conduct found to have been violative of section 8(b)(4)(i)(B), he would have granted a remedy designed to restore the status quo which would have prevailed had the union not acted illegally.

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 restrictions.

One case [80] decided during the report year involved an 8(b)(2) violation resulting from a union's act of seeking the displacement of two employees solely because of their lack of union membership. In finding the violation, a Board panel majority found the evidence did not support the conclusion that the work in question was within the jurisdiction of the union and that, in any event, as set forth in the dissents in *Brady-Hamilton Stevedore Co.*[81] and *J L Allen Co.*,[82] the existence of a jurisdictional dispute is not a valid defense to an alleged violation of section 8(a)(3) or 8(b)(2), involving discrimination by employers or unions. Chairman Miller, concurring here, although he joined in the majority opinion in *Brady-Hamilton*, found the union demand to be one for preference in employment solely on the basis of union membership, rather than bona fide jurisdictional claim by a group or class having a traditional work-related identity. For these reasons he found *Brady-Hamilton* to be inapposite

[80] *Bakery Wagon Drivers & Salesmen Loc 484, IBT (Oroweat Baking Co.)*, 214 NLRB No 131 (Members Kennedy and Penello, Chairman Miller concurring)

[81] 198 NLRB No 18 (1972)

[82] 199 NLRB 675 (1972)

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 decided by the Board during the past fiscal year involved this section of the Act.

In one case [83] a Board majority concluded that, by insisting upon a stewards provision and striking to obtain it, a union unlawfully refused to bargain in good faith. The provision created a hiring arrangement under which persons designated by the union would be hired to serve as stewards. While the majority found that the union has a legitimate interest in appointing stewards and policing contracts, it found no legitimate justification for the insisted-upon control over the hiring process. The majority concluded that the union, by insisting upon the stewards provision and striking to obtain it, refused to bargain in violation of section 8(b)(3) of the Act.

Members Jenkins and Fanning, dissenting, found no refusal to bargain in good faith. In their view, the union was attempting, through its insistence upon inclusion of the stewards clause, to secure adequate policing of its contract by union members who were more independent of the employers than their regular work force. Since it seemed obvious that a steward should be a union member, they stated any "encouragement" of union membership by the clause was undiscernible to them.

In another case [84] a Board panel found that a union violated section 8(b)(3) of the Act by refusing to work overtime for the purpose of compelling an employer to accept contract modifications without complying with strike deferral requirements of section 8(d)(4) of the Act. In so holding, the panel noted that in answering the complaint the union admitted that it withheld overtime to support certain economic demands. For the purposes of applying section 8(d)(4), the panel saw no meaningful distinction between withholding overtime "to support economic demands" and withholding overtime to terminate or modify a collective-bargaining contract.

In a third case,[85] a Board panel found a union violated section 8(b)(3) by refusing to accept and be bound by the terms of a national multiemployer-multiunion bargaining agreement. In so finding, the panel

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[83] *Local Union 798 of Nassau County, New York, Brotherhood of Painters & Allied Trades, AFL-CIO (Nassau Div of Master Painters Assn of Nassau-Suffolk Counties, et al.)*, 212 NLRB No 89 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting)

[84] *Loc 742, Intl. Union of Electrical, Radio & Machine Workers, AFL-CIO (Randall Bearings)*, 213 NLRB No 119 (Chairman Miller and Members Fanning and Penello)

[85] *Brotherhood of Teamsters & Auto Truck Drivers Loc 70, IBT (Granny Goose Foods, Nabisco, Standard Brands, Sunshine Biscuits)*, 214 NLRB No. 135 (Chairman Miller and Members Jenkins and Kennedy)

noted that the union's announced intention to withdraw from the multiemployer-multiunion bargaining unit was ineffective in light of its insistence thereafter that the employers adhere to certain of the monetary and benefit increases in the existing bargaining agreement.

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, 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. Court Suits as Proscribed Conduct

Several cases decided during the past fiscal year involved complaints which alleged violations of section 8(b)(4)(ii)(B) of the Act arising out of court suits filed by a union.

In one case,[86] a Board panel decided that the union did not violate the secondary boycott provisions of the Act by threatening to sue an employer unless it complied with a subcontracting clause of a collective-bargaining agreement by ceasing to do business with another employer, or by filing suit based on an alleged breach of contract and seeking an amount greatly in excess of lost wages or fringe benefits. In so holding, the panel found no evidence that the union's threat to sue was a groundless threat simply calculated to unlawfully harass and coerce the employer. As to the contention that the claim was excessive, the panel remarked that the final determination of damages suffered would be made in the court where the suit was pending on the basis of rules of evidence and according to the law of damages obtaining in that jurisdiction.

In another case,[87] the same Board panel concluded that a union's conduct in resorting to the courts to enforce an arbitrator's award was not the kind of illegal secondary activity prohibited by the secondary boycott provisions of the Act. In so holding, the panel

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[86] *Los Angeles Bldg & Constr Trades Council, AFL-CIO, IBEW, Loc 11 (Noble Electric)*, 217 NLRB No 139 (Members Jenkins, Kennedy, and Penello).

[87] *Retail Clerks Union Loc 770, chartered by Retail Clerks Intl Assn , AFL-CIO (Hughes Markets & Saba Prescription Pharmacy)*, 218 NLRB No 84 (Members Jenkins, Kennedy, and Penello).

noted the union's contention that its conduct was based on a lawful primary work-protection clause and further noted that the union's resort to the court system was in good faith to enforce a colorable contract right.

2. Identification of Primary Employer

The prohibition against secondary boycotts is intended to protect neutral or secondary employers from being drawn into a primary dispute between a union and another employer. Therefore, the identification of the employer with whom the union has its primary dispute frequently becomes the crucial issue in secondary boycott cases.

Several cases decided during the past fiscal year involved the Board's right-of-control doctrine. Under this doctrine, an employer is presumed to be a "neutral" if that employer, when faced with coercive demand from its union, is powerless to accede to such a demand except by bringing pressure on an independent third party. In applying this doctrine, a Board panel concluded in one case [88] that a union violated the secondary boycott provisions of the Act by coercing two subcontractors with the object of forcing them to cease doing business with their general contractor because the general contractor retained for its own employees the operation of temporary electrical power at two construction sites. The panel concluded that the union's pressure was undertaken for its effect elsewhere inasmuch as the two subcontractors were incapable of awarding to the union's members work that had been retained by the general contractor, work never theirs in the first instance. Therefore, the panel, in finding the violation, stated that the pressure was secondary in its reach, directed at employers powerless to accede, and thus neutral.

In another case [89] involving the right-of-control doctrine, a Board majority affirmed an administrative law judge's decision that a union violated the secondary boycott provisions of the Act by applying pressure to contractors and the contractors' employees to enforce a collective-bargaining provision which had the effect of terminating the employees' work on fully finished modular homes. The administrative law judge, relying on *George Koch*,[90] found that the pressured contractors were neutrals as they were incapable of acceding to the

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[88] *Intl. Brotherhood of Electrical Workers, Loc. 501, AFL-CIO (Atlas Construction Co.)*, 216 NLRB No 73 (Members Jenkins, Kennedy, and Penello).

[89] *United Brotherhood Carpenters & Joiners of America, Loc 112, and its agent, Southwest Bldg Trades Council of Montana, AFL-CIO (Summit Valley Industries)*, 217 NLRB No 129 (Members Fanning, Jenkins, and Penello. Member Kennedy concurring in part and dissenting in part)

[90] *Local Union 638, United Assn. of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industries (George Koch Sons)*, 201 NLRB 59 (1973), enfd 490 F 2d 323 (C.A 4, 1973)

union's work assignment demands. He therefore concluded that the actions taken against them and their employees had a secondary object and were unlawful.

In a concurring opinion, Member Kennedy agreed with the secondary boycott finding but would have found additionally that the union violated section 8(e) of the Act.

In a third case [91] involving the right-of-control doctrine, the Board adopted an administrative law judge's order dismissing the complaint. The case involved a protest on a construction project by employees of a subcontractor who had lost their jobs on the project. The loss of employment resulted from conduct, by the general contractor and the union that represented the general contractor's employees, which had as its purpose displacement of the subcontractor's employees. The union and the general contractor were aided by a second subcontractor. Chairman Miller and Member Penello, in a separate opinion, concurred in the view that special facts in the case spelled out a sufficient degree of control over assignment of the disputed work by the general contractor so that it could not properly be considered a "neutral," but was, instead, a primary disputant. Agreements the general contractor had signed with both subcontractors showed a joint employer relationship. Thus, the Board concluded that the union's conduct was not unlawful

In a fourth case [92] involving identification of the employer at which the union's conduct was directed, a Board panel majority upheld the dismissal of a complaint alleging that a union committed illegal secondary conduct by picketing an armed forces installation where contractors were engaged. The majority found that the union picketed to publicize a dispute it had with Government agencies without an object of forcing anyone to cease business with another. The majority further noted that the dispute, which concerned the Government agencies' requirement that union, but not nonunion, firms comply with certain affirmative action apprenticeship programs, long antedated the union's picketing.

Member Kennedy, dissenting, concluded that the union's dispute was with nonunion firms which did not employ apprentices, and that the union's picketing violated the Act since it was directed against neutrals to pressure them not to do business with the primary Government employer and to pressure employees of neutrals to withhold their services.

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[91] *Loc 363, IBT (Roslyn Americana Corp)*, 214 NLRB No 129 (Members Fanning and Jenkins, Chairman Miller and Member Penello concurring separately)

[92] *Brotherhood of Painters, Decorators & Paperhangers of America, Local Union 171, AFL-CIO (Centric Corp)*, 218 NLRB No 146 (Members Jenkins and Penello, Member Kennedy dissenting)

3. Indicia of Objective

In one case [93] presenting a situation involving picketing at common situs locations, where business was carried on by both the primary and neutral employers, the Board had occasion to determine whether a union's conformance with *Moore Dry Dock* standards [94] shielded a union's picketing activities. A Board panel majority found that the union violated the Act by unlawfully picketing two construction projects to force cessation of business by neutral subcontractors. The majority noted that the general contractor was engaged in its normal business only at its office rather than at the common situs where all the construction work was performed by the subcontractors. Thus, they concluded that the picketing was unlawful since it did not conform to the *Moore Dry Dock* requirement that it occur when the primary employer was engaged in its normal business at the situs of the dispute.

Acting Chairman Fanning, dissenting, would have found that the picketing did conform to *Moore Dry Dock* tests. He noted the situs of the dispute was the situs of the construction work undertaken by the general contractor and would have dismissed the complaint.

In another case [95] involving the *Moore Dry Dock* tests, a Board majority dismissed allegations that the union unlawfully picketed a neutral employer with the object of forcing that employer to cease doing business with a primary employer with whom the union was attempting to secure a collective-bargaining agreement. The full Board agreed that the only *Moore Dry Dock* criterion in dispute was whether the picketing was reasonably close to the situs of the dispute. The majority concluded that the union by picketing reasonably close to the situs of the primary dispute, in front of those entrances of the neutral's building where employees and business associates of the primary employer would normally enter and leave, fully met the *Moore Dry Dock* standards.

Members Kennedy and Penello, dissenting, found that the picketing did not satisfy the *Moore Dry Dock* standard that it be limited to places reasonably close to the situs of the dispute. In their view, the

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[93] *Los Angeles Bldg & Constr Trades Council, AFL-CIO (Silver View Associates)*, 216 NLRB No 55 (Members Kennedy and Penello, Acting Chairman Fanning dissenting)

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

[95] *Wire Service Guild, Loc 222, Newspaper Guild, AFL-CIO-CLC (Miami Herald Publishing Co)*, 218 NLRB No. 186 (Chairman Murphy and Members Fanning and Jenkins, Members Kennedy and Penello dissenting).

situs of the dispute was the suite of offices leased by the general contractor and the union should have requested, or responded to the neutral's request, that the union picketing be confined to the corridor closest to the leased offices inside the building.

In a third case [96] involving indicia of a union's objective in picketing, a Board panel majority dismissed a complaint alleging that a union violated the Act by picketing a general contractor to force it to cease doing business with its nonunion subcontractors. The majority observed that it is well settled that a union has the right to picket to compel an employer to execute a labor agreement containing a subcontracting clause valid under the construction industry proviso to section 8(e), as long as it does not have the additional objective of forcing an employer to cease doing business with "an existing and identified nonunion subcontractor." [97] In so holding, the majority noted that no unlawful objective could be found since it was not shown that the picketing union was aware of the existence and identity of nonunion subcontractors on the picketed site.

In the view of Member Kennedy, who dissented in part, it was immaterial that the union did not know that there were nonunion subcontractors on the job since the union was liable for reasonably foreseeable consequences of its conduct, which included the general contractor's act of terminating its contracts with nonunion subcontractors.

J. 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

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[96] *Los Angeles Bldg & Constr Trades Council (Joseph Freed & Benjamin H Werber, d/b/a B & J Investment Co)*, 214 NLRB No 86 (Members Jenkins and Penello, Member Kennedy dissenting in part)

[97] *Northeastern Indiana Bldg. & Constr. Trades Council, et al. (Centlivre Village Apartments)*, 148 NLRB 854, 858 (1964).

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.[98]

Section 10(k) further provides that pending 8(b)(4)(D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with or the parties have voluntarily adjusted the dispute. An 8(b)(4)(D) complaint issues if the party charged fails to comply with the Board's determination. A complaint may 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. Availability of Agreed-Upon Method of Adjustment

Of interest among decisions made by the Board during the report year were several in which the Board considered whether to dismiss 10(k) proceedings based on the contention that the disputing parties had contractual provisions to settle work assignment disputes voluntarily.

In one case [99] a Board majority quashed a notice of hearing, finding that all parties agreed to be bound by a determination of the Impartial Jurisdictional Disputes Board (IJDB). The IJDB was constituted by an agreement executed between the Building & Construction Trades Department, AFL–CIO, and a number of employer associations. Despite an alleged private agreement between two competing unions not to utilize the IJDB in the event of a jurisdictional dispute, the Board majority noted that the two unions were members of the Building and Construction Trades Department and were bound by article X of the department's constitution which required that jurisdictional disputes such as the present one be submitted to the IJDB.

Members Jenkins and Kennedy, dissenting, stated that any inconsistency between article X and the agreement of the two unions not to utilize the IJDB should be resolved by the department and not by the National Labor Relations Board. In view of the agreement of the two unions not to utilize the IJDB, the dissenters would have found that no "agreed-upon method" for voluntary adjustment of the present dispute existed.

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[98] *N L R.B* v. *Radio & Television Broadcast Engineers Union, Loc 1212, IBEW* [*CBS*], 364 U.S. 573 (1961), 26 NLRB Ann. Rep 152 (1961)

[99] *Sheet Metal Workers Local Union 359, a/w Sheet Metal Workers' Intl Assn , AFL–CIO* (*Elt Piping*), 217 NLRB No 164 (Chairman Murphy and Members Fanning and Penello, Members Jenkins and Kennedy dissenting).

In a similar case,[1] the same Board majority found that all parties agreed to be bound by a determination of the IJDB and, accordingly, quashed the notice of hearing. Despite an alleged private agreement between the two competing unions, the majority found no evidence that either union had withdrawn from the Building and Construction Trades Department or had formally notified the IJDB that it would not submit to the authority of that forum for the resolution of its jurisdictional disputes. Accordingly, the majority concluded, article X of the constitution of the department must control and there remained in effect a peviously established method, "agreed upon" within the meaning of section 10(k) of the Act, for resolving the jurisdictional dispute.

Member Jenkins, dissenting in part, stated that, in his view, the picketing in question was directed to the employer's failure to pay prevailing wage rates rather than to an assignment of work, and that this was not the type of controversy Congress intended the Board to resolve pursuant to section 8(b)(4)(D) and section 10(k) of the Act.

Member Kennedy also dissented, for reasons stated in the dissent in *Elt Piping, supra*, and would have proceeded to the merits of this dispute.

2. Other Issues

Of interest among jurisdictional dispute cases decided during the report year was one case[2] which involved the issue of whether a dispute existed in view of a disclaimer by one of the unions as to the work in question A Board majority quashed the notice of hearing, finding that the union had effectively renounced its claim to the work in dispute, thereby dissolving the jurisdictional dispute. In the view of the majority, the disclaimer was not impugned by the union's refusal to disclaim similar work at future jobsites, without evidence that the union intended to secure the work at other sites by proscribed means. The majority noted that there was no evidence from which it could reasonably be inferred that the union intended to secure the disputed work by unlawful means at future jobsites; indeed, the union had made it clear that it intended to submit all jurisdictional disputes to the IJDB, which the parties had voluntarily agreed to employ for the resolution of such disputes and which is the method preferred by Congress in section 10(k) of the Act.

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[1] *Construction, Production & Maintenance Laborers' Union, Loc 383 of the Laborers Intl Union of North America, AFL-CIO (Industrial Turf)*, 218 NLRB No 80 (Chairman Murphy and Members Fanning and Penello, Member Jenkins concurring and dissenting in part, Member Kennedy dissenting)

[2] *Local Union 55, Sheet Metal Workers Intl Assn , AFL-CIO (Gilbert Phillips, Inc)*, 213 NLRB No. 76 (Members Fanning, Jenkins, and Penello, Chairman Miller and Member Kennedy dissenting)

Chairman Miller and Member Kennedy, dissenting, would have found that no effective disclaimer existed since the union's disclaimer related to nothing more than one jobsite where the work was already done. Thus, they would have determined the jurisdictional dispute which, in their view, existed.

K. Requirement of Pay 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 the nature of an exaction, for services which are not performed or not to be performed."

In one case [3] decided during the past fiscal year, a Board panel found that a union violated section 8(b)(6) of the Act by forcing an employer to hire an employee and to pay him money for services which the employer did not need and which the employee did not perform or offer, in good faith, to perform. The landmark Supreme Court decisions in the companion cases of *American Newspaper Publishers* [4] and *Gamble Enterprises* [5] were distingushed from the instant one. The cited cases, the panel commented, make it clear that "relevant services" must be contemplated in return for a labor organization's demand for pay to its members to escape the sanctions of section 8(b)(6). Here, all parties, including the union, knew that the employee performed no work for the employer. Accordingly, unlike the cited cases, the panel concluded an 8(b)(6) violation existed here.

L. 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) of that section. 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 12 months; or (C) where no petition for a Board election has been filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing." This last subparagraph (C) has two provisos: The first provides that if a timely petition

[3] *Loc 456, IBT (J R Stevenson Corp.)*, 212 NLRB No 145 (Chairman Miller and Members Kennedy and Penello)

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

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

is filed the representation proceeding shall be conducted on an expedited basis; the second provides, however, that picketing for informational purposes, as set forth therein, is exempted from the prohibition of that subparagraph unless it has the effect of inducing work stoppages by employees of persons doing business with the picketed employer.[6]

1. Picketing by Union Recognized Under Section 8(f)

Several cases decided during the report year involved picketing by a union recognized under section 8(f) of the Act This section allows prehire agreements in the construction industry notwithstanding that the majority status of the union has not been established.

In one case,[7] a Board panel found a union violated section 8(b)(7)(C) of the Act by picketing to enforce a noneffective 8(f) contract without being certified as the representative of the picketed employer and without a petition for an election being filed within a reasonable time. The panel reasoned that to allow the union to picket to enforce an 8(f) agreement, which the employer chose to ignore as to nonunion jobs, would be to permit the union to do by indirection what it could not do directly. Thus, the panel noted that the union could not enforce an 8(f) agreement by means of obtaining a bargaining order and that to allow the union to force the employer to bargain with it by picketing would, in effect, nullify prior Board decisions that such contracts are voidable by either party if a union never obtains majority status.

In another case [8] involving an 8(f) agreement and a union which was not currently certified, a Board panel majority found that the union's preelection picketing was for a proscribed organizational or recognitional object and would have been violative of section 8(b)(7)(C) had it continued for more than 30 days without the filing of an election petition. The panel majority further found that the union violated section 8(b)(7)(B) by picketing after the regional director certified the results of a valid election which had been held within the preceding 12 months. The panel majority noted that, in an effort to extricate itself from an 8(f) agreement with which it was dissatisfied, the union picketed the employer to force the latter to accept new contract terms. This, the majority commented, was tantamount

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[6] The second proviso to sec 8(b)(7)(C) states "That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services"

[7] *Loc 103, Intl Assn of Bridge, Structural & Ornamental Iron Workers, AFL-CIO (Higdon Contracting Co.)*, 216 NLRB No 5 (Members Jenkins, Kennedy, and Penello)

[8] *Loc 86, Brotherhood of Painters, Decorators & Paper Hangers of America (Carpet Control)*, 216 NLRB No 190 (Members Kennedy and Penello, Member Fanning dissenting).

to a repudiation by the union of the existing 8(f) agreement and to compelling renewed recognition of it by the employer under a new agreement with different terms. The picketing, therefore, was found to have a recognitional object within the meaning of section 8(b)(7)(C), the expedited election which the union lost was found to have been properly directed, and the union's continued picketing thereafter was held unlawful.

Dissenting, Member Fanning would have found the union's picketing was for what it believed to be a breach of contract by the employer and not for a recognitional or an organizational objective because the union was already recognized, and that the picketing would not have violated section 8(b)(7)(C) had it continued for more than 30 days without the filing of a petition for an election. Since section 8(b)(7)(B) cannot be violated without a previous valid election and since an election which has been expedited is valid only if the picketing would have violated section 8(b)(7)(C), Member Fanning would have dismissed the complaint.

2. Garment Industry Exemption

Several cases decided during the report year involved the garment industry proviso to section 8(e) of the Act. Because of special organizing problems in the garment industry, Congress specifically authorized unions in that industry to engage in otherwise prohibited conduct to force jobbers to execute agreements requiring them to use only union contractors.

In one case,[9] a Board panel dismissed an 8(b)(7)(C) complaint since the union's only objective in picketing was to force a jobber in the apparel industry to execute a jobber's contract and thereby agree to send its fabrication work exclusively to union contractors. The panel stated that this objective was protected by the garment industry proviso contained in section 8(e), and was not in any way prohibited under section 8(b)(7)(C).

In a similar case,[10] a Board panel dismissed a complaint that a union violated the Act by picketing an employer for more than 30 days without filing a petition for an election, in order to force the employer to recognize or bargain with the union. Relying on the above case, the panel found that the union did not violate section 8(b)(7)(C) when it picketed the employer, a jobber in the garment industry, to force the employer to agree to use union contractors. Since the panel concluded that the union's picketing had neither a

[9] *Joint Board of Coat, Suit & Allied Garment Workers' Unions, ILGWU (Hazantown)*, 212 NLRB No 106 (Chairman Miller and Members Fanning and Jenkins)

[10] *San Francisco Joint Board ILGWU (San Francisco Shirt Works)*, 218 NLRB No 33 (Members Fanning, Jenkins, and Penello).

recognitional nor an organizational objective, the complaint was dismissed.

3. Other Issues

Other unusual cases which involved recognitional picketing issues were decided by the Board during the report year.

In one case,[11] a Board panel majority found that a union unlawfully threatened to picket and picketed an employer with the object of forcing the employer to recognize and bargain with a building and construction trades council at a time when the council was not certified as representative of the employer's employees and when the employer had lawfully recognized other unions. In so holding, the panel majority rejected the council's argument that its picketing did not have the proscribed recognitional object and was conducted only to preserve area standards of having all employers in the industry sign the council's usual and customary subcontracting agreement. In the majority's view, the union's contention had already been rejected by the Board in several prior cases.[12]

Chairman Miller, dissenting, would not have found an improper recognitional motivation. He noted that the entire evidence with respect to the council's recognitional objective was the wording of the proposed agreement itself and that, unlike the broadly worded language in *Dallas, supra*, the wording of the council's proposed subcontracting agreement was limited to "work which the contractor does not perform with his own employees, but uniformly subcontracts to other firms."

In another case,[13] a Board panel found that a union not only unlawfully picketed an employer at one location as admitted, but also committed illegal conduct by engaging in identical picketing for the same object at the employer's other locations. The panel found unpersuasive the union's argument that section 8(b)(7)(C) was violated only at the single location at which picketing lasted in excess of 30 days, when picketing at all locations was for a single recognitional object encompassing all of the employer's stores. Section 8(b)(7)(C), the panel stated, limits the union's recognitional picketing to a period not to exceed 30 days' duration and such limitation cannot be ignored simply because a single question concerning representation ranges over a number of geographical locations.

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[11] *North Central Montana Bldg & Constr Trades Council (Sletten Construction Co)*, 215 NLRB No 130 (Members Jenkins and Kennedy, Chairman Miller dissenting)

[12] *Dallas Bldg & Constr Trades Council (Dallas County Constr Employers' Assn)*, 164 NLRB 938 (1967), *Lane-Coos-Curry-Douglas Counties Bldg & Constr Trades Council (Eugene Contractors Assn)*, 165 NLRB 538 (1967)

[13] *Retail Clerks Store Employees Union Loc 1407, as chartered by Retail Clerks Intl Assn (J. M Balter Co. d/b/a Jaison's)*, 215 NLRB No 77 (Chairman Miller and Members Fanning and Penello).

M. 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." Two cases decided by the Board during the past fiscal year involved this section.

In one case,[14] a Board majority dismissed an 8(e) complaint which alleged that a union unlawfully entered into a particular provision of a collective-bargaining agreement and unlawfully threatened contractors with an object of forcing them to agree to such provision. The union contended that it was seeking only to preserve work historically and traditionally performed by its carpenter members against the advent of modular housing.

Member Kennedy, dissenting, would have found a violation of section 8(e) on the ground that the work the union sought was not work which its members had historically and traditionally performed since, in his view, fully finished modular homes are technological innovations.

In a second case,[15] a Board panel majority concluded that unions violated the Act by threatening and coercing an employer with an object of forcing it to enter into an agreement prohibited by the Act's section 8(e) concerning hot cargo provisions, and by insisting as a condition of executing a contract with the employer that it enter into an agreement that the contract cover employees in a unit currently represented by another union. The panel majority stated that the unions sought contract provisions giving them control over the employers or persons whose equipment may be used on construction work, irrespective of whether the operator of the equipment is employed by a signatory or a stranger to the agreement. The provisions constituted an agreement to cease doing business with certain other

[14] *United Brotherhood of Carpenters & Joiners of America, Loc. 112, and its agent, Southwest Bldg Trades Council of Montana (Summit Valley Industries)*, 217 NLRB No 129 (Members Fanning, Jenkins, and Penello, Member Kennedy concurring in part and dissenting in part).

[15] *Intl. Union of Operating Engineers, Locs 542, 542-A, 542-B (York County Bridge)*, 216 NLRB No. 67 (Members Jenkins and Penello, Acting Chairman Fanning dissenting)

persons, in situations not involving loss of work to employees represented by the unions, and to that extent is prohibited by section 8(e), the panel majority ruled. Acting Chairman Fanning, dissenting, would have found that the union's object in refusing to refer employees to the employer was to compel two employers, which were dual companies, to bargain for all their employees in a single unit. In his view, the evidence did not support the conclusion that an additional and unlawful object was to require the employer to sign a contract containing provisions prohibited by section 8(e).

N. 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 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).

In one case,[16] which involved prehire contracts decided during the report year, a Board panel dismissed an 8(f) complaint which alleged that a 7-day union-security agreement entered into by an employer and union was unlawful under the Act. The General Counsel had argued that, since the employer had a substantial and representative complement at the time it recognized the union, majority concepts of section 9, rather than concepts of section 8(f), applied and that therefore the employer violated the Act by executing a contract requiring employees to join the union after the seventh day of employment, such requirement exceeding the permissible bounds of section 8(a)(3) of the Act. Essentially, the General Counsel contended that section 8(f) applies only to "prehire" agreements which are signed before an employer hires a representative complement or before a union attains majority status in a bargaining unit. Disagreeing, the panel stated that the General Counsel's argument, in effect, would accord greater rights to construction trade unions before they represent any employees than to such unions who represent a majority of an

[16] *Progressive Construction Corp*, 218 NLRB No. 209 (Members Fanning, Jenkins, and Penello).

employer's employees. Such a result, the panel stated, would be incongruous and thwart the purposes for which Congress enacted section 8(f).

O. 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.

In one case,[17] a Board majority found that an employer had the right to offer illegally discharged employees reinstatement to their old jobs pending the outcome of the case before the Board. This offer resulted from a Federal district court's ruling on a Board petition for an obtained injunction against the employer which then was affirmed by a U.S. circuit court of appeals. The Board majority concluded that, since the employer offered interim employment to the employees, to their old jobs at their old rates, at the express request of the Board under its injunction request, the majority was hard-pressed to say that this was not satisfactory, equivalent, interim employment, sufficient to meet the employer's backpay liability during that period.

Members Fanning and Jenkins, dissenting, would have found that the employer was not relieved of its backpay liability for the period during which it offered temporary reinstatement to the discriminatees, and that the only valid offer by the employer to the employees would have been permanent, unconditional reinstatement to the jobs from which they had been unlawfully discharged.

In a second case,[18] the Board decided that remedies previously applied toward the employer were suitable and were not in conflict with the Board's opinion in *Tiidee Products*,[19] in which the Board ordered reimbursement to the union for certain of its litigation costs and expenses by an employer whose defense was found "patently frivolous." On appeal of the instant case, the court of appeals had enlarged the Board's remedy to include reimbursement as in *Tiidee*. The Supreme Court, however, ruled that the court of appeals improperly exercised its authority by expanding the Board order, without first allowing the Board an opportunity to clarify seeming inconsistencies between the instant case and *Tiidee*. On remand from the Supreme Court, the Board stated that in the *Tiidee* decision it did contrast that case with the instant case and remarked that it would

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[17] *Kansas Refined Helium Co , Div. of Angle Industries*, 215 NLRB No. 67 (Chairman Miller and Members Kennedy and Penello, Members Fanning and Jenkins dissenting).

[18] *Heck's, Inc.*, 215 NLRB No. 142 (Chairman Miller and Members Fanning, Jenkins, and Kennedy).

[19] 194 NLRB 1234 (1972).

continue to determine on a case-by-case basis, in light of both its experience and the facts of each case, what will best remedy misconduct found by the Board.

In a third case,[20] the General Counsel requested that a violation of section 8(a)(5) of the Act be remedied by the normal cease-and-desist order and notice-posting order, but that, since the union no longer represented the unit involved, that the union, in order to recoup its lost majority, also be authorized to use the employer's bulletin boards and to hold meetings on the employer's premises and that notices be sent to individual unit employees. Chairman Miller would grant no remedy since he had found no 8(a)(5) violation. Although Members Kennedy and Penello found an 8(a)(5) violation, they also would not grant a remedy because to issue a cease-and-desist order and an order to bargain with a union which no longer represented the employees involved would, in their view, be an exercise in futility. And to grant the requested remedy, they stated, would appear to lend support to the unionization of the employer's employees by one particular union. Members Fanning and Jenkins would have found the 8(a)(5) violation and, unlike the majority, were of the view that a remedy of the type requested by the General Counsel was proper and warranted so that the employer's violation would not go unremedied.

[20] *Malrite of Wisconsin*, 213 NLRB No. 114 (Members Kennedy and Penello, Chairman Miller concurring on separate grounds, Members Fanning and Jenkins dissenting).

VII

Supreme Court Litigation

During fiscal year 1975, the Supreme Court decided seven cases directly involving the Board. The Board filed *amicus* briefs in two additional cases which presented preemption issues.

A. Right of Employer To Insist on a Board Election Despite Union Showing of Majority by Other Means

In *Linden*,[1] the Court [2] held that an employer who has not engaged in unfair labor practices which prevent the holding of a fair election does not violate section 8(a)(5) of the Act simply because it refuses to accept evidence of the union's majority status other than the results of a Board election.[3] Thus, the Court rejected the position of the court of appeals that an employer who refuses to accept a union's recognition demand based on authorization cards must itself file an election petition with the Board in order to obviate an 8(a)(5) violation should the union's claim of majority support prove well founded. The Court stated:

> In light of the statutory scheme and the practical administrative procedural questions involved, we cannot say that the Board's decision that the union should go forward and ask for an election on the employer's refusal to recognize the authorization cards was arbitrary and capricious or an abuse of discretion. [419 U.S. at 309–310.]

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[1] *Linden Lumber Div., Summer & Co* v. *N.L.R.B.*, 419 U.S. 301, reversing 487 F. 2d 1099 (C.A. D.C., 1973), remanding 190 NLRB 718 (1971), 198 NLRB No. 123 (1972).

[2] Justice Douglas delivered the opinion of the Court, Justice Stewart filed a dissent, joined by Justices White, Marshall, and Powell.

[3] This question was expressly reserved in *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575 (1969).

B. Right of Minority Employees To Bargain Separately in Derogation of Bargaining Representative Concerning Alleged Employment Discrimination

Emporium [4] raised the issue of whether certain minority employees protesting alleged racially discriminatory employment practices were entitled to bargain separately with their employer concerning such practices in the face of their bargaining representative's concurrent efforts to resolve the matter through the contractually prescribed grievance procedure. The Court [5] upheld the Board's decision that the employees' activities in picketing their employer's store to compel such separate bargaining were not protected by section 7 of the Act because that objective was incompatible with the exclusive bargaining authority which section 9(a) of the Act vested in the employees' bargaining agent.[6]

The Court rejected the argument that Title VII of the Civil Rights Act of 1964 required a different conclusion:

> This argument confuses the employees' substantive right to be free of racial discrimination with the procedures available under the NLRA for securing these rights. Whether they are thought to depend upon Title VII or have an independent source in the NLRA [footnote omitted], they cannot be pursued at the expense of the orderly collective-bargaining process contemplated by the NLRA. . . .
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> . . . The policy of industrial self-determination as expressed in § 7 does not require fragmentation of the bargaining unit along racial or other lines in order to consist with the national labor policy against discrimination. And in the face of such fragmentation, whatever its effect on discriminatory practices, the bargaining process that the principle of exclusive representation is meant to lubricate could not endure unhampered. [420 U.S. at 69–70.]

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[4] *Emporium Capwell Co* v. *Western Addition Community Organization*, 420 U.S 50; reversing 485 F 2d 917 (C A D C , 1973), remanding 192 NLRB 173 (1971)

[5] Justice Marshall wrote the opinion of the Court, Justice Douglas dissented

[6] The Court added that, even if, as the employees contended, they were only seeking to present a grievance to their employer, within the meaning of the first proviso to sec 9(a), the proviso merely permits the employer to entertain grievances without opening itself to liability for dealing directly with employees in derogation of its duty to bargain only with the exclusive bargaining representative The proviso does not make "it an unfair labor practice for an employer to refuse to entertain such a presentation, nor can it be read to authorize resort to economic coercion." (420 U.S. at 61, fn. 12)

The Court added that, even if the discharge of the dissident employees violated section 704(a) of Title VII,[7] it did not follow that a remedy must be found under the NLRA as well. For "[u]nder the scheme of that Act, conduct which is not protected concerted activity may lawfully form the basis for the participants' discharge. That does not mean that the discharge is immune from attack on other statutory grounds in an appropriate case. If the discharges in this case are violative of §704(a) of Title VII, the remedial provisions of that title provide the means by which [the dissident employees] may recover their jobs with back pay." (420 U.S. at 72.)

C. Employees' Right to Presence of Union Representative at Investigatory Interviews

In two cases this term—*Weingarten*[8] and *Quality*[9]—the Court[10] upheld the Board's determination that section 7 of the Act gives an employee the right to insist on the presence of his union representative at an investigatory interview which he reasonably believes will result in disciplinary action. The Court concluded that the Board's holding "is a permissible construction of 'concerted activities . . . for mutual aid or protection' by the agency charged by Congress with enforcement of the Act . . . ." (420 U.S. at 260.)

Thus, the Court noted that the "action of an employee in seeking to have the assistance of his union representative at a confrontation with his employer clearly falls within the literal wording of § 7." This is true "even though the employee alone may have an immediate stake in the outcome; he seeks 'aid or protection' against a perceived threat to his employment security." For the "union representative whose participation he seeks is . . . safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly." (420 U.S. at 260–261.) Moreover, the Board's construction "plainly effectuates the most fundamental purposes of the Act. . . . Requiring a lone employee to attend an investigatory

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[7] That section makes it an unlawful employment practice for an employer to discriminate against any of his employees "because he has opposed any practice made an unlawful employment practice by this subchapter or because he had made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

[8] *N L R B.* v *J Weingarten, Inc*, 420 U S. 251, reversing and remanding 485 F 2d 1135 (C A 5, 1973), denying enforcement of 202 NLRB 446 (1973).

[9] *Intl Ladies' Garment Workers' Union, Upper South Dept* v *Quality Mfg Co*, 420 U S 276, reversing and remanding 481 F 2d 1018 (C A 4, 1973), denying enforcement of 195 NLRB 197 (1972)

[10] In both cases, Justice Brennan delivered the opinion of the Court, Chief Justice Burger filed a dissenting opinion, as did Justice Powell, joined by Justice Stewart.

interview which he reasonably believes may result in the imposition of discipline perpetuates the inequality the Act was designed to eliminate, and bars recourse to the safeguards the Act provided 'to redress the perceived imbalance of economic power between labor and management.' " (420 U.S. at 262.) Finally, the Court held that, even if some of the Board's earlier precedents may be read as reaching a contrary conclusion, they did not freeze "the development of this important aspect of the national labor law." (420 U.S. at 265–266.) "The responsibility to adapt the Act to changing patterns of industrial life is entrusted to the Board." (420 U.S. at 266.)

D. The Applicability of the APA to 10(k) Proceedings

In *ITT*,[11] a unanimous Court reversed the decision of the court of appeals that a Board jurisdictional dispute determination under section 10(k) of the Act is an "adjudication" within the meaning of the Administrative Procedure Act (APA), and thus subject to the requirements for adjudications imposed by that act. 5 U.S.C. § 551, *et seq.* Specifically, the Supreme Court held that the lower court had erred in finding that, because the 10(k) hearing officer had prosecuted the subsequent 8(b)(4)(D) case, the procedure violated section 5 of the APA, which prohibits commingling prosecutorial and adjudicatory functions in "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing."

The Court ruled that the 10(k) determination is not itself a "final disposition" within the meaning of "order" and "adjudication" in section 2(d) of the APA. When Congress defined "order" in terms of a "final disposition," it required the "final disposition" to have some determinate consequences for the party to the proceeding; the Board does not order anybody to do anything at the conclusion of the 10(k) proceeding. Nor is a 10(k) determination "agency process for the formulation of an order" within the meaning of section 2(d) of the APA. Although important practical consequences in the 8(b)(4)(D) proceeding result from the Board's determination in the 10(k) proceeding, they do not "alone make the § 10(k) proceeding related to the § 8(b)(4)(D) proceeding in a manner that would make the former 'agency process' for the formulation of the order in the latter." (419 U.S. at 445.)

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[11] *Intl Telephone & Telegraph Corp* v *Loc. 134, I B E W , AFL-CIO*, 419 U S 428, reversing and remanding 486 F. 2d 863 (C A. 7, 1973), denying enforcement of 191 NLRB 828 (1971), 197 NLRB 879 (1972).

E. Freedom of Information Act

In *Sears*, the Supreme Court [12] was faced with the question of the extent to which the Freedom of Information Act (FOIA) 5 U.S.C. § 552 requires disclosure of certain memoranda—known as "Advice" and "Appeals memoranda"—which go from the Office of the General Counsel in Washington to the regional offices and bear on whether an unfair labor practice complaint should issue. The Court accepted the Board's position that such memoranda which conclude that a complaint should issue fall within exemption 5 to the FOIA (which protects certain intra-agency memoranda against disclosure). The Court, however, affirmed the judgment of the court of appeals insofar as it required disclosure of "Advice" and "Appeals memoranda" which conclude that a complaint should *not* issue. The Court found that such memoranda are "final opinions . . . made in the adjudication of cases" within the *meaning* of section 552(a)(2)(A) of the FOIA,[13] and thus were required to be made available to the public and indexed.

The Court explained that exemption 5 of the FOIA was intended to safeguard the " 'decision making process of government agencies' " because "the 'frank discussion of legal and policy matters' in writing might be inhibited if the discussion were made public; and . . . the 'decisions' and 'policies formulated' would be the poorer as a result." (421 U.S. at 150). However, the Court added, "it is difficult to see how the quality of a decision will be affected by communications with respect to the decision occurring after the decision is finally reached . . . ." (421 U.S. at 151). Moreover, while the "public is only marginally concerned with reasons supporting a policy which an agency has rejected, or with reasons which might have supplied, but did not supply, the basis for a policy which was actually adopted on a different ground," it "is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted." (421 U.S. at 152.) Accordingly, the Court concluded that exemption 5, properly construed, "calls for 'disclosure of all "opinions and interpretations"—which embody the agency's effective law and policy, and the withholding of all papers which reflect the agency's group thinking in the process of working out its policy and determining what its law shall be.' " (421 U.S. at 153.)

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[12] *N L R B* v *Sears, Roebuck & Co*, 421 U.S 132, affg in part and reversing in part 480 F 2d 1195 (C A. D C, 1973), affg 346 F Supp 751 (D C D C, 1972) Justice White delivered the opinion of the Court, Chief Justice Burger concurred, Justice Powell did not participate

[13] The Court further ruled that documents specifically incorporated by reference in Advice and Appeals memoranda are producible unless it can be shown that they come within an exemption other than exemption 5, e g, exemption 7 which protects certain investigatory records However, the Court reversed the judgment of the court of appeals insofar as it required the General Counsel to explain the circumstances, where such memoranda merely refer to "the circumstances of the case"

F. Right to Jury Trial for Criminal Contempt

Muniz [14] raised the issues whether a labor union and a union official, adjudged in criminal contempt for violating a 10(l) injunction, were entitled to a jury trial pursuant to 18 U.S.C. § 3692,[15] and whether, in any event, the imposition of a $10,000 fine on the union entitled it to a jury trial under the Constitution. The Court,[16] upholding the lower courts, held that neither the statute nor the Constitution required a jury trial.

Respecting the statutory issue, the Court held that "in enacting the Wagner and Taft-Hartley Acts, Congress not only intended to exempt the injunctions they authorized from Norris-LaGuardia's limitations, but also intended that civil and criminal contempt proceedings enforcing those injunctions were not to afford contemnors the right to a jury trial." (95 S. Ct. at 2183.) The Court rejected the argument that Congress changed this procedure when, in 1948, it repealed section 11 of Norris-LaGuardia (the jury trial provision) and replaced it with section 3692 of Title 18, which was made applicable to contempts "in any case involving or growing out of a labor dispute." The Court found that "the Revisers' Note to § 3692 gives absolutely no indication that a substantive change in the law was contemplated" in the recodification process. (95 S. Ct. at 2189.)

Respecting the constitutional issue, the Court noted that it had previously held that, under the sixth amendment's jury trial guarantee, a punishment of more than 6 months in jail could not be ordered without making a jury trial available to the defendant. And, in so concluding, it had relied on 18 U.S.C. § 1(3), which defines petty offense as those crimes "the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both." However, the Court refused to give that definition "talismanic significance," stating:

> [W]e cannot accept the proposition that a contempt must be considered a serious crime under all circumstances where the punishment is a fine of more than $500, unaccompanied by imprisonment. It is one thing to hold that deprivation of an individual's liberty beyond a six-month term should not be imposed without the protections of a jury trial, but it is quite another to suggest that, regardless of the circumstances, a jury is required

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[14] *James R. Muniz, et al* v *Hoffman*, 95 S. Ct. 2178, affg 492 F. 2d 929 (C.A. 9, 1974)

[15] Sec. 3692 provides for a jury trial "In all cases of contempt arising under the laws of the United States, governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute."

[16] Justice White delivered the opinion of the Court, Justice Stewart filed a dissent joined by Justices Marshall and Powell, Justice Douglas filed a separate dissent.

where any fine greater than $500 is contemplated. . . . [W]e cannot say that the fine of $10,000 imposed on [the union] in this case was a deprivation of such magnitude that a jury should have been interposed to guard against bias or mistake. This union, the Government suggests, collects dues from some 13,000 persons; and although the fine is not insubstantial, it is not of such magnitude that the union was deprived of whatever right to jury trial it might have under the Sixth Amendment. [95 S. Ct. at 2190–91.]

G. Preemption Issues

1. *Connell*[17] raised the issue whether an agreement between a general contractor and a union which did not represent any of his employees, providing that the former would subcontract construction site work only to persons having a collective agreement with the union, was subject to the Federal antitrust laws. The Court,[18] rejecting the Board's position, held that it was.[19]

The Court was of the view that the union's agreement was not entitled to "a nonstatutory exemption from the anti-trust laws" because it contravenes antitrust policy to a degree not justified by congressional labor policy"; it constitutes a "direct restraint on the business market [with] substantial anticompetitive effects, both actual and potential, that would not follow naturally from the elimination of competition over wages and working conditions." (421 U.S. at 625.) Nor, in the Court's view, was the agreement privileged by the construction industry priviso to section 8(e) of the NLRA. For, the "authorization [of the proviso] extends only to agreements in the context of collective-bargaining relationships and in light of congressional references to the *Denver Building Trades* problem [341 U.S. 675 (1951)], possibly to common-situs relationships on particular jobsites as well." (421 U.S. at 633.)

Finally, the Court rejected the contention that, even if the agreement violated section 8(e) of the NLRA, the Act's remedies were exclusive. The Court held that "Congress [did not mean] to preclude antitrust suits based on the 'hot cargo' agreements that it outlawed in 1959. There is no legislative history in the 1959 Congress suggesting that labor-law remedies for § 8(e) violations were intended to be exclusive, or that Congress thought allowing antitrust remedies in

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[17] *Connell Construction Co.* v *Plumbers & Steamfitters Loc. Union 100*, 421 U S. 616, reversing in part and remanding 438 F 2d 1154 (C.A 5, 1973).

[18] Justice Powell delivered the opinion of the Court, Justice Stewart, joined by Justices Douglas, Brennan, and Marshall, dissented

[19] The Court, however, agreed that state antitrust remedies were preempted by Federal law. (421 U S at 635)

cases like the present one would be inconsistent with the remedial scheme of the NLRA." (421 U.S. at 634.)

2. *Mobile Steamship* [20] raised an issue related to that decided last term in *Windward Shipping* [21] (see 39 NLRB Ann. Rep. 135–136 (1974)). In the latter case, the Court held that picketing of foreign-flag ships by American unions, in protest of substandard wages paid to the foreign crews who manned the vessels, was not activity "in commerce" within the meaning of the NLRA and could therefore be enjoined by state courts. In *Mobile*, the Court [22] refused to distinguish *Windward Shipping* on the ground that there the plaintiffs were foreign owners of picketed vessels, whereas here the plaintiffs were American stevedoring companies whose operations were in interstate commerce and whose recourse therefore should be to file a secondary boycott charge with the Board. The Court stated:

> The effect of the picketing on the operations of the stevedores and shippers, and thence on these maritime operations, is precisely the same whether it be complained of by the foreign-ship owners or by persons seeking to service and deal with the ships. The fact that the jurisdiction of the state courts in this case is invoked by stevedores and shippers does not convert into "commerce" activities which plainly were not such in *Windward*. [Footnote omitted; [419 U.S. at 225.] [23]

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[20] *American Radio Assn., AFL–CIO* v *Mobile Steamship Assn.*, 419 U.S. 215, affg 279 So 2d 467 (Ala.)

[21] *Windward Shipping Ltd* v *American Radio Assn., AFL–CIO*, 415 U.S. 104 (1974)

[22] Justice Rehnquist delivered the opinion of the Court, Justice Stewart, joined by Justices Douglas, Brennan, and Marshall, dissented.

[23] The Court went on to reject the union's further contention that, since "the picketing was expressive conduct informing the public of the injuries they suffer at the hands of foreign ships" (419 U.S. at 229), it was constitutionally protected. The Court concluded that this argument was foreclosed by *Teamsters, Local 695* v *Vogt, Inc.*, 354 U.S. 284 (1957), holding that a State, in enforcing a valid public policy, "could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy" (419 U.S. at 230.)

VIII

Enforcement Litigation

A. Board and Court Procedure

In *Containair Systems Corp.* v. *N.L.R.B.*,[1] the Board's regional office proposed a settlement stipulation following the issuance of an unfair labor practice complaint against the union and the union agreed. The employer objected because the settlement, while providing for the entry of a broad Board order and for entry of a court judgment, did not contain an admission that the union's conduct violated the Act. The Board accepted the stipulation over the employer's objection, since it fully remedied the allegations of the complaint and the efficacy of the settlement was unaffected by the nonadmission clause. In upholding the Board's decision, the court observed that in each case where a settlement is proposed the Board must balance the risks and advantages associated with litigation of the complaint with the advantages of settlement. While a charging party's interests must be considered in this balance, the ultimate decision turns on the weighing of all the relevant factors. The court noted that the settlement here was particularly appropriate since its broad remedial provisions afforded protection against resumption of unlawful conduct by contempt proceedings and an admission-of-guilt clause served no essential purpose.

In another case,[2] the court rejected the Board's finding that the purposes of the Act would be effectuated by dismissing a complaint issued some 3 years after unfair labor practice charges had been filed. The charges, which were filed by an individual through his attorney, alleged that the charging party had been discharged because of his union activity. The General Counsel dismissed the charge and a subsequent appeal because of insufficient evidence that the employer was aware of the charging party's union activities. The charging party thereupon personally wrote a letter to the General Counsel's director of appeals castigating him for alleged misdeeds and challenging factual

[1] 89 LRRM 2685 (C.A. 2).
[2] *Mourning* v. *N.L.R.B.*, 505 F. 2d 421 (C.A.D.C.).

assertions made in the letter denying the appeal. Treating the letter as a motion for reconsideration, the office of appeals denied it as untimely filed. Subsequently, the charging party, through his attorney, filed a motion for reconsideration based on newly discovered evidence. Treating this as a second motion for reconsideration, the General Counsel reopened the appeal and issued a complaint. The Board, invoking its policy [3] against prosecuting complaints issued pursuant to a second motion for reconsideration, dismissed the complaint. Finding it unnecessary to pass on the validity of the Board's *Forrest Industries* policy, the court found that the policy had been misapplied in this case because the Board had improperly characterized the charging party's letter as a motion for reconsideration. The court predicated its decision on the grounds that the letter was an angry personal response from the charging party rather than through his attorney and did not present a thoughtful legal or factual presentation; it did not comply with the Board's procedural requirements for filing motions for reconsideration; and the court was "very hesitant to attach draconian legal consequences to the ill-considered actions of a layman."

In fiscal year 1974, the District of Columbia Circuit considered and approved the Board's *Spielberg* [4] policy of deferral to contractual arbitration awards.[5] During the past year, that court had occasion to review two cases [6] where it held that the Board had improperly applied the *Spielberg* criteria. In *Banyard*, the underlying dispute involved an employee's discharge for refusing to drive a truck which was overloaded in violation of state law. After the driver filed a grievance and unfair labor practice charges, the joint grievance committee issued a decision denying the grievance and the Board, Members Fanning and Jenkins dissenting, deferred to the award and dismissed the complaint. The court, disagreeing with the Board majority, held that deferral was inappropriate because it granted the employer a license to violate state law and was therefore void as against public policy and repugnant to the purposes of the Act. The court held that deferral was also inappropriate because the brief statement of the award, "claim of union denied," precluded a finding that the arbitral tribunal had clearly decided the statutory issues upon which deferral was based.

In *Ferguson*, an employee was discharged after refusing to drive a truck because of its allegedly unsafe operating condition. The driver's grievance was denied without opinion. The court refused to sanction deferral in these circumstances, noting that the terse nature of the award made it uncertain that there was congruence between the statu-

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[3] *Forrest Industries*, 168 NLRB 732 (1967)

[4] *Spielberg Mfg Co*, 112 NLRB 1080 (1955)

[5] *Associated Press* v *N L.R B*, 492 F 2d 662, *Local Union 715, IBEW [Malrite of Wisconsin]* v *N L R.B*, 494 F 2d 1136.

[6] *Banyard* v. *N.L.R.B.* and *Ferguson* v. *N L.R.B.*, consolidated and reported at 505 F. 2d 342.

tory issues and the contractual issues. The court observed that the statutory issue—whether Ferguson's refusal to drive the truck was protected under section 502 of the Act—required Ferguson to prove by ascertainable objective evidence that he believed the truck to be abnormally dangerous.[7] On the other hand, the arbitration panel might have decided the contractual issue—whether Ferguson was "justified" in refusing to drive the truck because it was unsafe—by applying a "safe-in-fact" standard. Since the arbitration panel failed to amplify the basis for its award, a finding that the award resolved congruent statutory and contractual issues was speculative and deferral was therefore unwarranted.

This fiscal year also saw continued use by the courts of appeals of decisions without published opinions. Such decisions are reported only in a table which states whether or not the Board's order was enforced, and the opinion may not be cited as precedent. Unpublished decisions were employed to enforce or affirm 47 Board orders, including cases upholding the Board's findings that an employer did not refuse to bargain in good faith with the union over the elimination of the company's alleged practice of sex discrimination,[8] that the major West Coast shipping association and the longshoremen's union unlawfully attempted to limit to unit employees the work of stuffing and stripping certain containerized freight,[9] that an employer lawfully excluded off-duty employees from its premises when they sought to handbill and solicit employees in a union organizational campaign,[10] and that an employer who discharges an employee for giving false testimony in a Board proceeding has the burden of establishing that the employee committed perjury.[11]

B. Representation Proceeding Issues

In *Caravelle Wood Products*,[12] the Seventh Circuit passed on the eligibility of relatives of stockholders to vote in an election among employees of a closely held corporation. In an earlier decision,[13] the court had rejected the Board's finding that eight relatives of stockholders owning 70 percent of the shares in the employer, a closed corporation, were excluded from the unit by section 2(2), which ex-

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[7] See *Gateway Coal Co* v *United Mine Workers of America*, 414 U.S. 368 (1974).

[8] *Jubilee Mfg Co.*, 202 NLRB 272 (1973), affd *sub nom United Steelworkers of America* v. *N L R B*, 504 F. 2d 271 (C A D.C.).

[9] *Intl. Longshoremen's & Warehousemen's Union, Locs. 13 & 63 (California Cartage Co)*, 208 NLRB 994 (1974), enfd *sub nom Pacific Maritime Assn* v. *N L.R B*, 515 F 2d 1017 (C.A.D.C.).

[10] *Fiberfil, Div. of Dart Industries*, 210 NLRB No 163 (1974), affd. *sub nom District 153, Intl. Assn of Machinists & Aerospace Workers, AFL-CIO* v *N L.R B*, 512 F 2d 991 (C A D.C).

[11] *Big Three Industrial Gas & Equipment Co*, 212 NLRB No. 115 (1974), enfd 512 F. 2d 1404 (C.A 5).

[12] *N.L R.B* v. *Caravelle Wood Products*, 504 F 2d 1181

[13] *N.L.R B.* v. *Caravelle Wood Products*, 466 F. 2d 675 (1972); 38 NLRB Ann. Rep 141 (1973).

cludes from "employee" status "any individual employed by his parent or spouse." The court had remanded the case for further findings and, following remand, the court accepted the Board's holding that these relatives were properly excluded from the bargaining unit under section 9(b) of the Act as lacking a sufficient "community of interest" with the other employees. The court noted that the Board had applied the criteria set out in the earlier decision [14] and relied on the "high" percentage of stock held by the parents and spouses of these employees, the substantial interrelation of the stockholders to one another, the extensive managerial and supervisory activities of all the stockholders, and the fact that 8 of about 90 employees were closely related to stockholders. The court further held that the "neutrality" [15] imposed on the Board by the Act was not violated here. The court noted that relatives were excluded "not because they may vote against the union, but because, in the Board's informed judgment, they may not share the 'common interest in the terms and conditions of employment' with the other members of the unit."

A union's right to reimburse employees for time lost while appearing as witnesses on its behalf [16] came before the Sixth Circuit in a case [17] in which the payments exceeded the employees' lost earnings. In several instances, the overpayments were insubstantial and the result of errors in calculating employee wages and mileage allowances by the union business representative. In the one instance discussed by the court, the employee, May, was paid $135, which was 50 percent more than he actually lost, because the union compensated him on the basis of lost overtime, when in fact he had not worked a full week as scheduled prior to the days he took off, and thus he would have been paid only straight time for the days lost. The court held that "the intent or absence of intent on the part of the Union to influence the employees' votes by the overpayments is not a controlling factor" and hence the overpayments to May—"who was highly respected and influential"—as well as those made to other employees, invalidated the election.

Where a party to an election objects that campaign statements by the other party contain a factual misrepresentation, the Board, with court approval, will not set aside the election unless the misrepresentation is the sort which may reasonably be expected to have a significant impact on the election, the person making the statement could reasonably be viewed as in a position to know the facts, the other party did not have an opportunity to reply, and the employees were not in a position to make their own independent evalua-

[14] 466 F. 2d at 679.

[15] *N L R B* v. *Savair Mfg. Co*, 414 U S 270 (1973) 39 NLRB Ann Rep 131 (1974).

[16] See, for example, *N L R B* v *Commercial Letter*, 496 F. 2d 35 (C.A. 8, 1974).

[17] *Plastic Masters* v *N.L.R.B.*, 512 F. 2d 449

tion of the facts.[18] This approach is a reflection of the Board's policy to leave "to the good sense of the voters the appraisal of such matters." [19] Applying this test in two cases, the Eighth Circuit affirmed the Board in one and reversed it in the other. In *Modine Mfg.*,[20] the court agreed with the Board that the union's statements concerning its dues and strike procedures were not material misrepresentations and that, even if the union misrepresented the wage rates under a union contract at another company plant by listing only the most favorable rates, there was an adequate opportunity for the employer to make an effective reply. In the other case,[21] the court held that the employer's contemporaneous general statements about losses and its tendering a belated wage increase with the explanation that it had been made possible only by a new ruling of the State Department of Public Welfare was insufficient to counter a union statement that the company had lost a lawsuit challenging the legality of a welfare freeze because the company was making "too much profit." In the court's view, the union had "invoked the aegis of a court by asserting, in effect, that an impartial judicial authority had determined that the Company was reaping high profits."

In *Henderson Trumbull*,[22] a divided panel of the Second Circuit applying the same *Hollywood Ceramics* test held that the Board should have conducted a hearing to determine the impact of the union's alleged assertion that the company had "made a profit . . . of $1,300,000" the previous year when in fact the company's gross sales were less than $1 million. The regional director's investigation revealed four employees who recalled a statement by the union's representative, Rossetti, concerning such a figure: three recalled the statement as referring to what the company "made"; one, to what the company "grossed." The regional director concluded that, even if the figure was ascribed to profit, Rossetti was simply expressing an opinion and the employees were in a position to appraise the statement. The court concluded that the regional director could not properly have made such a determination in the absence of a hearing and hence that the company's objections raised a "substantial and material issue of fact." The dissenting judge regarded the case as "a good example of judicial interference with a process which performs best with a minimum of regulation, particularly by judges."

In *Savair*,[23] the Supreme Court held that a union's offer to waive its initiation fee for employees who sign authorization cards prior to a

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[18] *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), *Modine Mfg Co*, 203 NLRB 527 (1973).
[19] *Linn* v. *United Plant Guard Workers*, 383 U.S. 53, 60 (1966).
[20] *N L R B* v *Modine Mfg. Co*, 500 F. 2d 914
[21] *LaCrescent Constant Care Center* v. *N.L R B.*, 510 F. 2d 1319.
[22] *Henderson Trumbull Supply Corp.* v *N.L.R B.*, 501 F. 2d 1224.
[23] *Supra*, fn. 15.

representation election is an impermissible campaign tactic and constitutes grounds for setting aside the election. Since *Savair*, courts of appeals have passed on the propriety of a waiver of initiation fees where the offer extended not only to those who seek membership before the election but also to those who do so within a reasonable time after the election. During the fiscal year, the Board's determination that the broader waiver is lawful [24] was accepted by the Fourth,[25] the Fifth,[26] the Sixth,[27] the Seventh,[28] and the Eighth Circuits.[29]

C. Unfair Labor Practices

1. Employer Interference With Employee Rights

In *Scott Hudgens*,[30] the Fifth Circuit upheld the Board's determination that a shopping center owner violated section 8(a)(1) of the Act by prohibiting warehouse employees, engaged in a lawful strike against their employer, from seeking support for that strike by picketing the entrances to a retail store in the center leased by their employer. The Board found that the employees were engaged in protected activity and that their employer was not insulated from the picketing because its store was in a shopping center. Accommodating the competing property rights of the shopping center owner with the section 7 rights of the employees, the Board found that the warehouse employees were within the scope of the invitation to the public to come to the shopping center and that the employees were entitled to picket directly in front of the employer's store rather than outside the shopping center where the picketing might have secondary effects. Upon review, the court utilized criteria—although applied in the context of first amendment rights—from the Supreme Court's decisions in *Amalgamated Food Employees Union Loc. 590* v. *Logan Valley Plaza* [31] and *Lloyd Corp.* v. *Tanner* [32] to determine when property rights of a shopping center owner should yield to the section 7 rights of pickets. Applying those factors, the court held that the employees were entitled to picket in front of their employer's store because it involved a labor dispute with a lessee of the center and thus was related to the normal function of the center. The court also con-

[24] *B F Goodrich Tire Co*, 209 NLRB 1175 (1974)
[25] *N L R.B* v *Stone & Thomas*, 502 F 2d 957
[26] *N L R B* v *Con-Pac*, 509 F. 2d 270
[27] *N L R B.* v *S & S Product Engineering Services*, 513 F. 2d 1311.
[28] *Altman Camera Co* v. *N.L R B*, 511 F 2d 319
[29] *N L R B* v *Wabash Transformer Corp*, 509 F. 2d 647.
[30] *Scott Hudgens* v. *N.L R B*, 501 F. 2d 161.
[31] 391 U.S 308 (1968)
[32] 407 U S 551 (1972).

cluded that alternatives to the picketing were either unavailable or inadequate.

The Eighth Circuit upheld an employer's right to discharge an employee who, during the course of an employer's lawful preelection speech, insisted on asking a question despite the employer's statement that no questions were permitted.[33] The employee was asked to sit down and, when he refused to do so, he was ejected from the meeting and later discharged. The Board found that the employee was engaged in protected concerted activity, but the court, reversing the Board, found that the employee's discharge was for insubordination and was therefore lawful. The court balanced employee rights against the interests of management and concluded that the employee's conduct exceeded the bounds of lawful protected activity, since, in the court's view, the record disclosed "a challenge and deliberate defiance repeatedly asserted before the assembled employees, at a meeting lawfully convened for the presentation of the employer's position."

The Sixth Circuit had occasion to consider the issue of employee rights in a case [34] in which, as in *Magnavox*,[35] the union and the employer had agreed to a prohibition against the distribution of literature except as provided in the contract. The Sixth Circuit observed that in *Magnavox* the Supreme Court had struck down such a ban when applied to distribution of literature concerning the selection or rejection of a bargaining representative, as effecting an improper dilution of the employees' section 7 rights. The court concluded that the election of union officials also has a "significant bearing on the character of the union as the employees' bargaining representative" and upheld the Board's findings in *General Motors* that applying a contractual ban to distribution for that purpose violated the Act.

2. Employer Assistance to Labor Organization

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, was considered by the Ninth Circuit in *Kona Surf*.[37] The company had recognized a union on the basis of a check of authorization cards signed by a majority of the unit employees, although prior to such recognition another union had filed a petition for an election, supported by authorization cards signed by a substantial number, but not a major-

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[33] *N L R B.* v. *Prescott Industrial Products Co*, 500 F 2d 6

[34] *General Motors Corp* v *N L R B*, 512 F 2d 447, enfg as modified 211 NLRB No 123, 212 NLRB No. 45 (1974)

[35] *N L R B* v *Magnavox Co of Tennessee*, 415 U S. 322 (1974); 39 Ann Rep 132 (1974)

[36] *Midwest Piping & Supply Co*, 63 NLRB 1060 (1945)

[37] *N L.R.B.* v *Inter-Island Resorts, Ltd., d/b/a Kona Surf Hotel*, 507 F. 2d 411

ity, of the employees. Its showing of interest was ultimately found sufficient to warrant the holding of an election, which was won by the union which the employer had recognized. The Board found that, as the petition raised a claim which was not clearly unsupportable, it created a real question concerning representation which should be resolved in a manner attended by the safeguards of the Board's election machinery. Accordingly, the Board held that the company had violated section 8(a) (2) and (1) of the Act by recognizing one of the two competing unions. The court noted that the Board's decision was admittedly inconsistent with numerous court decisions holding that it is not a violation of the Act for an employer to recognize one of two competing unions on the basis of a clear demonstration of majority support not obtained by coercion or other unfair labor practices, and concluded that the Board's need to preserve the integrity of its election machinery had to yield to the right of the majority of employees to select their own bargaining representative.

The Ninth Circuit also rejected the Board's finding of a violation of section 8(a)(2) in *Hertzka & Knowles*,[38] where, after a union was decertified,[39] a system of committees was created for the purpose of negotiating with the employer, an architectural firm. The formation of these committees was proposed by an employee at a meeting called by one of the firm's partners and was unanimously approved by both the employees and the partners. The committees, each having a management representative as well as several employee members, met on company time without loss of pay to discuss and formulate proposals for changes in terms and conditions of employment. The management members participated in the committee meetings and voted on some committees. The court was of the view that these circumstances showed lawful cooperation, rather than unlawful domination or interference, by the employer. The fact that the committees met on company time and property, were formed at a meeting called by the company and at which partners voted, and included management partners, was not deemed significant, since the formation of the committees and the participation of management partners therein were suggested by employees. There was no evidence that the employees were dissatisfied with this arrangement or that the presence of management partners on the committees had interfered with the assertion of employee demands; close contact between partners and associates in an architectural firm was inevitable, and the employees could easily outvote the partner on any committee. Thus, the court concluded, the record showed a cooperative arrange-

[38] *Hertzka & Knowles* v *N L R B*, 503 F 2d 625

[39] The Board set aside the decertification election because of the employer's violations of sec. 8(a)(1). These findings of violations were sustained by the court.

ment reflecting the free choice of the employees, and the committees were capable of bargaining meaningfully on behalf of the employees. Such an arrangement, in the court's view, could be found unlawful only by requiring a purely adversarial model of labor relations.[40]

3. Employer Discrimination Against Employees

Three cases decided during the fiscal year present the issue of employer discrimination against employees in rather different factual contexts. In one case,[41] the court approved the Board's conclusion that the employer violated section 8(a) (3) and (1) of the Act when it discharged a group of clerical employees because they honored a picket line set up by fellow employees who were represented in a separate local union. The central question was whether the dischargees' bargaining agreement, which contained a no-strike undertaking as part of an arbitration clause, effected a waiver of the employees' right to engage in such sympathetic activity. Initially, the Seventh Circuit endorsed the Board's policy that, absent explicit expression of the intent to limit or prohibit sympathy strikers, a no-strike clause is presumed to waive only the right to strike over disputes which the parties have made amenable to the arbitration procedure. Here, while there was a broad no-strike undertaking, the parties' agreement provided arbitration for "any and all disputes and controversies arising under or in connection with the terms or provisions hereof . . . ." This language, the court found, "indicates an intention to treat the no-strike clause as having application coextensively with that of the arbitration clause." Since the clerical employees' sympathetic conduct was plainly not a dispute or controversy "arising under or in connection with the [clerical employees'] agreement," it was "neither arbitrable nor subject to the no-strike provisions."

In a second case,[42] the Ninth Circuit upheld the Board's application of the Act's ban against discharging an employee for failure to tender an initiation fee unless that fee is "uniformly required as a condition of acquiring or retaining [union] membership." The discriminatee belonged to a bargaining unit which included employees of several crafts and was represented by a council comprised of representatives of five unions. The contract, which contained a conventional union-security clause, provided for "membership" in the council's constituent unions rather than in the council itself. The contract also permitted job transfer across union jurisdictional lines. The discriminatee's initial employment was as a laborer; he joined

[40] The Board's petition to the Supreme Court for a writ of certiorari was denied on Oct 6, 1975

[41] *Gary Hobart Water Corp.* v. *N L R B.*, 511 F. 2d 284 (C A 7)

[42] *N L.R.B* v. *Kaiser Steel Corp.*, 506 F. 2d 1057.

the Laborers and paid its initiation fee. After promotion to truck-driver, he joined the Teamsters, voluntarily paid an initiation fee, and permitted his membership in the Laborers to lapse. Thereafter, to avoid a layoff, he bumped back to his earlier job, and the Laborers promptly advised him that he would have to rejoin and pay another initiation fee. When he failed to tender the full amount, the company, at the Laborers request, discharged him. The Ninth Circuit agreed with the Board's conclusion that the second initiation fee was not "uniformly required" within the meaning of section 8(a)(3) and 8(b)(2) of the Act. Since the Laborers "had allied itself with the council in a unitary bargaining setup, it could not treat employees transferring from other unions within the bargaining unit as outsiders for the purpose of exacting another initiation fee." The court emphasized that the discriminatee's transfer "was specifically sanctioned" by the collective-bargaining agreement, while the second initiation fee was, in effect, a charge imposed on employees which would "discourage inter-unit transfers."

Finally, in *Colonial Press*,[43] the court considered the scope of the Board's "condonation" rule that where an employer knows of misconduct warranting an employee's discharge, but indicates that such misconduct will be disregarded, the employer may not thereafter rely on the same misconduct as the basis for discharging or refusing to reinstate the employee. Six employees were lawfully discharged for repeated work stoppages on company time; they immediately joined a strike which began the following day to protest the employer's concurrent 8(a)(1) and (3) violations. During the 6 months of the strike, the employer's owner and supervisors approached the dischargees on a number of occasions and indicated that the dischargees were welcome to resume their jobs if they were willing to turn their back on the strike, but none of the dischargees accepted these offers. All six applied for reinstatement when the strike ended and all were turned away. A divided court rejected the Board's finding that the employer's statements effected a condonation. Emphasizing that these men had lost their employee status by reason of their lawful discharge, the court held that there could be no finding of condonation unless there was "clear and convincing evidence" that the employer had agreed to "wipe the slate clean" and "something additional [was] done by the former employee, in response to the . . . reemployment offer, in order to reestablish the employer-employee relationship." Applying these tests, the court found that the employer's "general and ambiguous statements" about reemployment were only "preliminary invitations to renegotiate reemployment" rather than "positive acts, manifesting both forgivenesss and agreement to resume

[43] *N.L.R.B.* v *Colonial Press*, 509 F. 2d 850 (C.A. 8).

the former employment relationship." The court also found that the dischargees did not provide the requisite indication that they accepted the company's offer simply by continuing to take an active role in the strike. The dissenting judge would not have conditioned condonation upon a "formal bilateral agreement," particularly where the employer's offer is associated with an "illegal condition that [the employees] denounce the union and their protected rights under the Act."

4. The Bargaining Obligation

Shortly after the Supreme Court's approval this past year of the Board's *Linden Lumber* doctrine,[44] the District of Columbia Circuit was required to consider its applicability to a case involving a clause in the collective-bargaining agreement between a union and a grocery store chain which stated that the union "shall be the sole and exclusive bargaining agent for all employees employed" by the chain.[45] The court rejected the Board's view that this clause did not clearly and unmistakably waive the employer's right under *Linden Lumber* to insist that the union prove in a Board-conducted election its asserted majority in any new stores opened by the employer before the employer was required to recognize the union. In so concluding, the court held that the clause could "have no purpose other than to waive the employer's right to a Board ordered election." Accordingly, the court concluded that the case was not appropriate for applying the Board's rule that contracts purporting to waive statutory rights will not be given effect unless they are expressed in clear and unmistakable terms. In the court's view, under the Board's interpretation, the clause would "mean . . . nothing to the union" and hence would be a "nullity." The court, however, remanded the case to the Board to allow the Board to consider a question not specifically considered—namely, whether clauses waiving in advance the employer's right under *Linden Lumber* are inherently unlawful.

In *Hi-Way Billboards*,[46] the Fifth Circuit was required to consider whether an impasse in multiemployer negotiations, followed by execution of separate agreements between the union and two individual members of the multiemployer bargaining association, justified an untimely withdrawal by a third member of the multiemployer group. The court accepted the Board's rule that ordinarily no withdrawals are permissible once multiemployer bargaining negotiations have begun,[47] but held that the Board's refusal in these circumstances to

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[44] *Sub nom. N.L.R.B* v *Truck Drivers Union Loc. 413, et al* [*Linden Lumber Div., Summer & Co.*], 419 U.S. 301 See *supra*, p. 136

[45] *Retail Clerks Intl. Assn., Loc. 455* [*Kroger Co.*] v. *N.L.R.B.*, 510 F. 2d 802.

[46] *N.L.R.B* v. *Hi-Way Billboards*, 500 F. 2d 181.

[47] See *Retail Associates*, 120 NLRB 388 (1958).

allow the third employer-member freely to withdraw would be "unfair to the Company" since otherwise the union's execution of separate agreements would enable it "to whipsaw the remaining members of the multiemployer bargaining unit." The court's decision was consistent with an earlier holding of the Eighth Circuit in the *Fairmont Foods* case.[48] A similar conclusion was also reached during the year by the Ninth Circuit.[49]

Section 9(c)(3) of the Act provides that economic strikers who are replaced and hence not entitled to reinstatement are nevertheless eligible to vote in a representation election conducted within 12 months after commencement of the strike. In *N.L.R.B.* v. *Crimptex*,[50] the First Circuit affirmed the Board's conclusion that the principle incorporated in section 9(c)(3) is also applicable for the purpose of determining the lawfulness of an employer's withdrawal of recognition from a union on the basis of its alleged loss of majority. In *Crimptex*, the employer failed to consider striking employees as part of the unit at the time he withdrew recognition, and since the union had a majority in the unit comprised of strikers plus replacements, the employer's action was a violation of section 8(a)(5). Nor did it matter that the strike in this case was unprotected and that the strikers were therefore subject to discharge. The employer had taken no action to discharge them, and the mere fact that some were not reinstated at the conclusion of the strike because their jobs were filled, the court held was not enough to exclude them from the unit for the purpose of determining the union's majority.

In *Orion Corp.*,[51] the Seventh Circuit accepted the Board's view that after the end of the certification year the presumption of continuing majority support for the union may be rebutted only if the employer can prove by a preponderance of the evidence either that the withdrawal was premised upon a good-faith doubt of majority based upon objective considerations or that on the date of withdrawal the union, in fact, no longer had majority support. The employer argued that Board [52] and court [53] decisions indicated that once an employer produced evidence to cast "serious doubt" on continuing majority support the burden shifted to the General Counsel affirmatively to prove majority support, and that the company has adduced such evidence.

The court affirmed the Board's holding that direct and hearsay reports of some employee dissatisfaction with the union neither consti-

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[48] *Fairmont Foods Co.* v. *N L.R.B.*, 471 F. 2d 1170 (1972). See 38 NLRB Ann Rep. 154-155 (1973).
[49] See *N L.R.B* v. *Associated Shower Door Co.*, 512 F. 2d 230
[50] 517 F. 2d 501.
[51] *Orion Corp* v. *N.L R B*, 515 F 2d 81.
[52] *Stoner Rubber Co.*, 123 NLRB 1440 (1959).
[53] *Automated Business Systems* v *N L R.B*, 497 F. 2d 262 (C.A. 6, 1974).

tuted an objective basis for withdrawing recognition nor, coupled with subsequently acquired evidence that only a minority of the employees were paying union dues, established an actual loss of majority. In addition, the court expressly rejected the argument that either Board or court decisions had impugned the standards under which the Board tests the lawfulness of an employer's withdrawal of recognition from an incumbent representative.

In *Peoria Contractors*,[54] the Seventh Circuit adopted a literal reading of section 8(d) (3) and (4) in holding that the employer did not violate its bargaining obligation by locking out employees more than 60 days after receipt of the union's 8(d)(1) bargaining notice but less than 30 days after the union's belated 8(d)(3) notice. The Board had read section 8(d) more expansively to prohibit the use of economic sanctions by either party until the mediation services had been afforded a full 30-day opportunity to resolve the dispute through mediation. The Board, with court approval, had previously held that a union which initiated the bargaining process by giving the 8(d)(1) notice to open negotiations could not strike more than 60 days after the 8(d)(1) notice but less than 30 days after a belated 8(d)(3) notice to mediation services.[55] In distinguishing the earlier cases, the Seventh Circuit noted that the obligation under section 8(d)(3) to notify mediation services and the obligation under section 8(d)(4) to refrain from economic sanctions were directed only towards the "initiating" party which gave the original 8(d)(1) bargaining notice. The court reasoned that application of the 8(d)(4) restrictions to the "non-initiating" party would allow the "initiating" party to block the "non-initiating" party's use of economic sanctions indefinitely by simply failing to give the 8(d)(3) notice to mediation services.

5. Union Interference With Employee Rights

In *Kaj Kling* v. *N.L.R.B.*,[56] the Ninth Circuit rejected the Board's conclusion that a union did not violate section 8(b)(1)(A) and 8(b)(2) by demanding that an employee who was on leave of absence of 4 months be allowed to return to work only as a new hire stripped of 10 years' seniority that he had accumulated with the employer prior to his leave of absence. The Board held that the union's demand was not arbitrary, irrelevant, or invidious, but rather was motivated by a legitimate concern for other unit employees. A union may reasonably be concerned with limiting leaves of absence, the Board noted, because

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[54] *N L R B* v *Peoria Chapter of the Painting & Decorating Contractors of America*, 500 F 2d 54

[55] *Local Union 219, Retail Clerks Intl Assn (Carroll House of Belleville, et al)*, 120 NLRB 272 (1958), enfd 265 F 2d 814 (C A.D C , 1959), *Fort Smith Chair Co* , 143 NLRB 514 (1963), enfd 336 F. 2d 738 (C A.D C , 1964), cert denied 379 U.S. 838 (1964)

[56] 503 F. 2d 1044.

when an employee returns from such a leave he bumps the employee who was filling his job during his absence and may jeopardize the continued employment of an employee with less seniority who was hired during his absence. The court of appeals, in disagreement with the Board, held that the seniority reduction sought by the union in this case was in fact the result of unreasonable pressure from fellow employees and the shop steward and hence was an arbitrary exercise of union power, in violation of section 8(b) (1)(A) and (2) under the Board's *Miranda Fuel* doctrine.[57]

6. Union Coercion of Employer in Selection of Representative

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 purpose of collective bargaining or the adjustment of grievances." In *Laborers' Intl. Union of North America, AFL–CIO, Loc. 478 [Intl. Builders of Florida]* v. *N.L.R.B.*,[58] the court approved the Board's finding that the union violated this section by engaging in a work stoppage and threatening further stoppages in order to compel the employer to discharge a foreman and employ another individual in his place. The union's principal defense was that the employees objected to racially discriminatory treatment at the hands of the foreman. The court held that employees are entitled to assert their right to nondiscriminatory treatment through self-help measures protected by section 7 of the Act, but that the protest must be directed at the alleged discriminatory conduct, rather than at the identity of the supervisor. Section 8(b)(1)(B) is violated, the court held, where, as in this case, the union seeks removal of a particular supervisor, but it would not be violated merely because an employer in the independent exercise of his judgment decided that the best way to respond to the union's protest over discriminatory conduct was to replace the offending supervisor.

Prior to the Supreme Court's *Florida Power*[59] decision, the Board had held in several cases that section 8(b)(1)(B) prohibited coercive activities by a union aimed at influencing an employer's relationship with a supervisor, without regard to whether the supervisor actually adjusted grievances or engaged in collective bargaining. In the Board's view, the statute was violated because supervisors constitute a reservoir of manpower available and likely to be chosen as collective bargainers or grievance adjusters at some later date. In the *Rochester*

[57] *Miranda Fuel Co*, 140 NLRB 181 (1962).

[58] 503 F 2d 192 (C A D C.)

[59] *Florida Power & Light Co* v *Intl Brotherhood of Electrical Workers, Loc 641, et al* 417 U.S 790 (1974); 39 NLRB Ann Rep 134 (1974)

Musicians case,[60] decided prior to *Florida Power*, the Board held that the union violated section 8(b)(1)(B) by disciplining the conductor of the Rochester Philharmonic Orchestra, a member of the union, for recommending to the orchestra management that four musicians be terminated and that a fifth be placed on probation, because of professional incompetency. It was undisputed that the orchestra conductor was a supervisor, but the Board, adhering to its "reservoir" doctrine considered it unnecessary to determine whether he was a grievance adjuster or collective bargainer. The Second Circuit,[61] holding that the Supreme Court's opinion in *Florida Power* requires that there must be evidence that the supervisor presently plays a part in grievance adjustment or collective bargaining, reversed and remanded the case to the Board to take evidence on the conductor's responsibilities in this respect.

7. Secondary Boycotts and Strikes

In *Loc. 433, Carpenters* [*Bauer Construction Co.*] v. *N.L.R.B.*,[62] the court, reversing the Board, found that a strike did not have an unlawful secondary object under section 8(b)(4)(B) of the Act. The Carpenters struck the general contractor, Bauer, who had awarded the work of laying "haydite" blocks to a subcontractor employing bricklayers. The court noted that the Carpenters had a valid claim to the "haydite" block work under the unit work description in its contract with Bauer, since the blocks were a substitute for forms previously erected by carpenters for use in concrete floor construction; that the union had pressed that claim against Bauer prior to the strike; and that Bauer was obligated under the contract's "union standards" clause to ensure that subcontracted unit work was done at standards not less than those provided in the Carpenters agreement. While finding that there was some evidence of a secondary objective, the court held that there was "overwhelming evidence" that the strike was limited to pursuing the Carpenters contractual work preservation and union standards disputes with Bauer and was thus lawful primary action.

8. Jurisdictional Dispute Issues

Under section 10(k) of the Act, the Board is empowered to resolve jurisdictional disputes unless the parties to the dispute submit "satisfactory evidence that they have adjusted, or agreed upon methods

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[60] *Rochester Musicians Assn. Loc. 66, a/w American Fed. of Musicians (Civic Music Assn.)*, 207 NLRB 647 (1973)

[61] *N L R B.* v. *Rochester Musicians Assn , Loc 66, a/w American Fed. of Musicians* [*Rochester Civic Music Assn*], 514 F. 2d 988.

[62] 509 F. 2d 447 (C.A.D C)

for the voluntary adjustment of, the dispute." *Iron Workers Local Union 167 [Binswanger Glass Co.]* v. *N.L.R.B.*[63] raised the issue of whether an "Administrative Committee" was an "agreed upon method" for resolving a jurisdictional dispute between locals of Iron Workers and Glaziers concerning the employer's assignment of curtain wall work on a building. The Administrative Committee was one aspect of a series of 1961 agreements between the international unions with which these locals were affiliated and certain employer groups. In their 1961 "Blue Book" agreement, the two internationals established jurisdictional boundaries and, in section X, procedures for resolving disputes over those boundaries. In a "stipulation," this employer and other contractors agreed to assign work according to the Blue Book but declined to be bound by the section X procedures. Another 1961 agreement, executed by the two international unions and an employer association of which the employer was a member created the Administrative Committee "to process disputes over the application, interpretation and administration" of the Blue Book agreement. The Board, relying on the lack of evidence that the committee had ever resolved a jurisdictional dispute and the fact that specific machinery for resolving such disputes was provided in section X, found that the committee was "designed to deal with interpretations of contract terms and changes but not jurisdictional disputes." Disagreeing with the Board, the court found that the committee was in fact designed to resolve the dispute in question. The court noted that the committee's stated purpose was virtually the same as section X's function of resolving disputes over "the interpretation or application" of the Blue Book. That near identity of language and the contemporaneous signing of the agreements led the court to conclude that the Administrative Committee was an alternative method of adjusting jurisdictional disputes, established for employers having some objection to the section X procedures. The court thus placed considerable reliance on the "plain words" of the 1961 agreements and discounted the absence of evidence showing actual performance of a dispute adjustment function.

In another case[64] involving section 10(k), the Ninth Circuit disagreed with the Board's determination of the merits of a jurisdictional dispute. The work in dispute was the operation of barge-mounted whirly cranes loading logs into ships. Largely on the bases of past practice, superior skills, and safety and efficiency, the Board awarded this work to engineers represented by the Operating Engineers, rather

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[63] 517 F 2d 183 (C A D C)

[64] *N L.R.B* v *Intl Longshoremen's & Warehousemen's Union, Loc. 50 [Pacific Maritime Assn]*, 504 F. 2d 1209.

than to longshoremen represented by the ILWU.[65] The court found that substantial evidence supported the Board's findings that past practice, skills, safety, and efficiency favored the engineers and agreed with the Board's finding that the Longshoremen's certification did not cover the disputed whirly crane work. The court held, however, that the Board had not given adequate consideration to the Longshoremen's collective-bargaining agreement with the Pacific Maritime Association or to the "employer preference" factor often employed by the Board in resolving these disputes. The court acknowledged that the PMA–ILWU agreement specifically excluded barge-mounted whirly crane work from its coverage, but noted that the agreement contemplated the introduction of new machinery and that an arbitrator's award subsequent to the work stoppage initiating the 10(k) proceedings had recognized the Longshoremen's claim to the disputed work under the contract. The employers involved were members of PMA and thus bound to that arbitral extension of the agreement, even though under prior leases the whirly cranes came with a crew represented by Operating Engineers. The prior lease arrangements, which formed the basis for the past practice favoring engineers, did not create a collective-bargaining relationship with the Operating Engineers; accordingly, the employers were not bound by that union's contractual claim to the floating crane work nor was that union a required party to the arbitration proceedings. In addition, in the court's view, the fact that the employers changed from manned crane to "bare-boat" leases indicated their preference for using their own longshoremen rather than engineers supplied by the crane owners. The court concluded that the Board had misconstrued or disregarded the significance of the employers' preference and the applicable PMA–ILWU agreement. In remanding the case for reconsideration, the court also called upon the Board to establish and announce "rational principles governing the weight that it gives to the various factors it considers in section 10(k) hearings."

9. Hot Cargo Agreements

In *Acco Construction Equipment* v. *N.L.R.B.*,[66] the court sustained the Board's conclusion that the jobsite repair of construction equipment was not such an integral part of the construction process as to come within the construction industry jobsite proviso to section 8(e) of the Act. This proviso exempts from the broad ban of "hot cargo" contracts contained in section 8(e) contract provisions which prohibit

[65] *Intl Longshoremen's & Warehousemen's Union, Loc 50 (Brady-Hamilton Stevedore Co)*, 181 NLRB 315 (1970), 193 NLRB 266 (1971)

[66] 511 F. 2d 848 (C.A 9), enfg *Intl Union of Operating Engineers, Local Union 12 (Acco Construction Equipment)*, 204 NLRB 742 (1973).

construction industry employers from using nonunion secondary employers for "work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." The court affirmed the Board's view that equipment servicing does not come within the ambit of the proviso merely because it is done at the site of a construction project. Accepting the Board's analogy of such repair work to the delivery of products and supplies to a construction site, which Congress in the legislative history specifically excluded from the proviso,[67] the court found the analogy consistent with the purpose of the proviso to permit agreements aimed at eliminating work disruptions resulting from the traditional refusal of craft unionists to work alongside nonunion men on the same project. In the court's view, such disruptions are "likely to arise only when the nonunion laborers are in frequent and relatively close contact with the union craftsmen." Finding that the likelihood of disruptions over the equipment servicing was slight because contact between equipment repairmen and the construction craftsmen was neither very regular nor prolonged, the court found that the equipment servicing was outside the ambit of the proviso. Accordingly, the court affirmed the Board's findings that the contract provision in question, which required that such equipment servicing at the construction site be done only by union employees, violated section 8(e) and that the enforcement of it by fines levied against the contracting employer violated the secondary boycott ban of section 8(b)(4)(ii)(B).

Associated General Contractors of California v. *N.L.R.B.*[68] presented the question of whether a union violated the secondary boycott and "hot cargo" contract bans contained in section 8(b)(4)(B) and 8(e) of the Act by invoking the arbitral procedures of its contract against a signatory subcontractor. The general contractor was required by the owner of the hospital under construction to install prefabricated surgical scrub sinks and the subcontractor agreed to install them. When installation began, the union, claiming a violation of the work preservation provisions of its agreement with the subcontractor, invoked the agreement's arbitral process, which included a requirement that, upon request of the arbitration board secretary, the subcontractor suspend the work in dispute for 72 hours. The subcontractor suspended the work as requested, then resumed the installation without incident. Thereafter, the arbitration board found that he had violated the contract work preservation provisions and assessed him $600 as the "equivalent of wages and fringe benefits" denied his

[67] See *Intl Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Loc 294 (Island Dock Lumber)*, 145 NLRB 484, 491 (1963), enfd 342 F 2d 18 (C A 2, 1965)

[68] 514 F. 2d 433 (C A 9), reversing *Southern California Pipe Trades District Council 16 (Associated General Contractors of California)*, 207 NLRB 698 (1973) (Member Kennedy dissenting).

employees by the prefabrication. The Board found no violation because, in its view, the union had engaged in no more than "a careful and bona fide application of a contract" which resulted in an arbitral award "directly and reasonably related to wages lost by the employees." The court, in reversing, held that the subcontractor was a neutral in the dispute over who should do the work because he lacked the "right to control" the disputed work and, therefore, the union's actions were not directed to his labor relations as required to meet the *National Woodwork* [69] test of primary activity and that the union's objective was not work preservation but the acquisition of new work, since the fittings for the scrub sinks required precision machine work which the on-site plumbers had not done and were not qualified or equipped to do. The court further found that the work stoppage and the monetary assessment constituted coercion proscribed by section 8(b)(4)(B) because both were economic pressure on subcontractors to pressure hospital builders and sink manufacturers to change their business practices and that the union's contract with the subcontractor violated section 8(e), as applied in this case, because the subcontractor "was powerless to assign the disputed work to union members."

10. Remedial Order Provisions

In *United Steelworkers [Metco, Inc.]* v. *N.L.R.B.*,[70] the union sought review of the Board's refusal to require the employer either to pay wages to employees for the time they spent on strike protesting the employer's refusal to bargain or to reimburse the union for the costs and expenses of such strike. The court majority, without passing upon the power of the Board to order such a "make whole" remedy, held this case was not the type "which, in any event, would justify such an order." Judge Tuttle, while expressly agreeing with the holding of *Tiidee Products* [71] that the Board has power to order such a remedy, would have found that the employer's conduct in this case was not so flagrant as to require it.

In *N.L.R.B.* v. *Local Union 396, Teamsters [United Parcel Service]*,[72] the court affirmed the Board's remedial power to order arbitration of the grievances of employees who had been denied fair representation under the Act by the union when their grievances were plausible under

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[69] *National Woodwork Mfrs. Assn.* v *N L R.B.*, 386 U.S 612 (1967)

[70] 496 F 2d 1342 (C A 5).

[71] *Intl Union of Electrical, Radio & Machine Workers [Tiidee Products]* v *N L R B.*, 426 F. 2d 1243 (C.A D.C , 1970) cert denied *sub nom. Tiidee Products* v *Intl. Union of Electrical, Radio & Machine Workers*, 400 U S. 950 (1970) But see *N L R B.* v *Food Store Employees Union, Loc. 347, Amalgamated Meat Cutters [Heck's Inc]*, 417 U S. 1 (1974).

[72] 509 F. 2d 1075(C.A.9), cert. denied 421 U.S. 976.

the contract. Although the court also found that the Board's order that the union pay the fees for independent representation of the employees in such arbitration was within the Board's broad discretion as to remedies, the court, *sua sponte,* remanded the case to the Board to determine whether its order should embrace attorneys' fees, rather than fees for a paraprofessional representative, and whether or not the employees could be represented by a single representative rather than a representative for each.

IX

Injunction Litigation

Section 10(j) and (l) authorizes application of 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 1975, the Board filed 21 petitions for temporary relief under the discretionary provisions of section 10(j), 13 against employers and 8 against unions.[1] Injunctions were granted by the courts in six cases and denied in one; of the remaining cases, four were settled prior to court action, five were in an inactive status, and five were pending at the close of the report period.[2]

Injunctions were obtained against employers in two cases and against labor organizations in four cases. The cases against employers involved alleged bad-faith bargaining, together with other unilateral and coercive actions aimed at avoiding the bargaining obligation. The cases against the labor organizations involved alleged picket line violence, and strikes in support of bargaining demands where notice of the dispute had not been given to mediation authorities as required by section 8(d) of the Act.

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.

[1] In addition, four petitions filed during fiscal 1974 were pending at the beginning of fiscal 1975.

[2] See Table 20 in Appendix

In *Hartz Mountain Corp.*,[3] the Third Circuit vacated a district court's order enjoining an employer from giving effect to an existing labor agreement with an allegedly assisted union or from recognizing the union pending the Board's decision. The district court found reasonable cause to believe that the employer had unlawfully involved itself in the union's organizational activities by urging three or four employees to support it and thereafter voluntarily recognizing and contracting with it, despite the representational interest exhibited by two rival unions, one of which had demanded and been refused recognition on the basis of authorization cards just 6 months earlier. The district court considered interim injunctive relief "just and proper" to prevent erosion of support for the competing unions and the prejudice which otherwise might result to any future election ordered by the Board.

The court of appeals reversed, holding that in a 10(j) proceeding the district court must determine whether injunctive relief is " 'just and proper' in the sense of being 'in the public interest.' " The court noted that the case for an injunction was weak since the evidence of assistance was sparse and strongly contested, and, even discounting the three or four tainted cards, the union held authorization cards from a clear majority of the employees. Observing that "a fundamental objective of our national labor relations legislation" is "to protect the integrity of collective bargaining," the court concluded that the "problematic damage" to the competing unions does not outwiegh the plain public interest in avoiding the employees' loss of the fundamental benefits derived from the existing and "seemingly fair" labor contract. While the court vacated the injunction, it observed that in the absence of a prompt decision on the merits a temporary injunction once issued may become, in effect, a final disposition of the controversy. To avoid that unwanted result, and apparently to promote an "administrative sense of urgency" in cases warranting temporary injunctive relief, the court established a rule, binding in the Third Circuit, that injunctions granted under section 10(j) of the Act shall be expressly limited to 6 months' duration. If, after issuance of an administrative law judge's recommended order, further injunctive relief is warranted, upon application, the district court may continue the injunction for an additional 6 months pending Board decision. An additional 30-day extension may be granted "upon a showing that administrative action on the underlying controversy seems to be imminent."

In *Trading Port*,[4] the Board for the first time secured appellate court approval of an interim bargaining order under section 10(j) pending Board determination of a *Gissel*-type case. (*N.L.R.B.* v.

[3] *Eisenberg* v. *Hartz Mountain Corp.*, 89 LRRM 2705.

[4] *Seeler* v. *Trading Port*, 517 F. 2d 33 (C.A. 2), reversing 88 LRRM 3293 (D.C.N.Y., 1974).

Gissel Packing Co., 395 U.S. 575 (1969).) The district court found reasonable cause to believe that the employer engaged in 8(a) (1) and (3) violations of such severity that their predictable result would be to destroy the union's card majority and to render a fair election impossible. However, it declined to issue a temporary bargaining order, reasoning that since the union had never enjoyed a bargaining relationship with the employer such interim relief would upset, rather than preserve, the *status quo ante*. The court of appeals for the Second Circuit disagreed. The circuit court observed that "the status quo which deserves protection under Section 10(j) is not the illegal status which has come into being as a result of the unfair labor practices being litigated. . . . Instead, Section 10(j) was intended as a means of preserving *or restoring* the status quo as it existed before the onset of unfair labor practices." The court reasoned that, just as a cease-and-desist order may be ineffective as a final order in a *Gissel* situation, it may be insufficient as interim relief. For if the employer's serious and pervasive unfair labor practices have already succeeded in destroying the union's majority, the union's status among the employees may be so permanently damaged by the time the final Board order issues that effective representation is no longer possible. Rather than viewing a temporary bargaining order designed to prevent frustration of the purposes of the Act as being "radical relief," the court concluded that such relief was "well within the general principles applicable to statutory injunctions." Moreover, the court observed that although inferior to the election process, authorization cards can adequately reflect employee sentiment when the election process has been impeded, and there is nothing permanent about an interim bargaining order lasting only until the final Board decision. The court, however, emphasized that the issuance of a bargaining order "should not be undertaken whenever a claim of unfair labor practices is made," but only where the "election process has been rendered meaningless by the employer."

B. Injunctive Litigation Under Section 10 (l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4) (A), (B), and (C),[5]

[5] 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, sec. 8(e)

or section 8(b)(7),[6] and against an employer or union charged with a violation of section 8(e),[7] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b)(7), however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1975, the Board filed 316 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 29 cases pending at the beginning of the period, 133 cases were settled, 26 dismissed, 18 continued in an inactive status, 43 withdrawn, and 12 were pending court action at the close of the report year. During this period, 113 petitions went to final order, the courts granting injunctions in 98 cases and denying them in 15 cases. Injunctions were issued in 6 cases involving alleged coercion under section 8(b)(4)(A) to obtain a hot cargo agreement. Injunctions were also issued in 50 cases involving alleged secondary boycott action proscribed by section 8(b)(4)(B), and in 30 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 2 also involved activities proscribed under section 8(b)(4)(B). Injunctions were issued in 10 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7). The remaining four cases in which injunctions were granted arose out of charges involving alleged violations of the hot cargo clause prohibition of section 8(e).

Of the 15 injunctions denied under section 10(l), 3 involved alleged coercion under section 8(b)(4)(A) to obtain a hot cargo agreement, 6 involved alleged secondary boycott situations under section 8(b)(4)(B), 3 involved alleged jurisdictional disputes under

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

[7] 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.

section 8(b)(4)(D), and 3 were predicated upon alleged violations of section 8(b)(7)(C).

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(l) 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." One of these cases involved the "struck work ally" doctrine. Under that doctrine, an otherwise neutral employer becomes "allied" with a struck employer, and subject to direct economic pressures, when it enters into an arrangement with the struck employer to perform work which, but for the strike, would have been performed by his employees. In *Squillacote* v. *Graphic Arts Union*,[8] a printing company's lithographic and photoengraving operations were struck by a local union representing the employees of that department. During the strike, a customer of the struck employer contracted for the preparation of films and rotogravure cylinders by another printing company, whose lithographers and photoengravers were represented by a sister local of the striking union. The remainder of the work was to be performed by the struck employer. In reliance on a provision in its collective-bargaining contract whereby the second company agreed not to render production assistance to any other employer struck by any local of the international union, the sister local instructed its members, employees of the second company, to refuse to perform work for the customer. The district court denied the Board's petition for a 10(l) injunction. In its view, there was a sufficient relationship between the two printing companies to make the second company an ally of the struck employer and therefore a primary in the dispute. The court also found that the dispute between the local and the second company was a legitimate contract dispute that could be resolved under the contractual grievance-arbitration procedure. On appeal the Seventh Circuit reversed. It noted that neither the international union nor any of its locals had a dispute with the second company or the customer. Nor did the second company have any business relationship with the struck employer. Moreover, the court observed that the contract between the customer and the second printing company had developed independently and had been in negotiations long before the strike began. Thus, the court found the ally doctrine inapplicable. The court also held that when reasonable cause exists to believe that a secondary boycott is occurring section 10(l) relief is necessary to maintain the status quo even though the boycott may ultimately be

[8] *Squillacote* v. *Graphic Arts Intl Union (GAIU), Loc 277, and Graphic Arts Intl Union, AFL-CIO [Kable Printing Co]*, 513 F 2d 1017 (C A 7), reversing 381 F. Supp 551 (D.C. Wisc).

resolved by arbitration. The court rejected the argument that the matter was mooted by the completion of the particular project, since the primary labor dispute was unresolved and the customer's subsequent projects would each be vulnerable to a similar boycott.

In a related 10(l) case arising out of the same primary labor dispute,[9] the Seventh Circuit affirmed a district court's decision that the ally doctrine was inapplicable where the struck printing company permanently terminated the struck portion of its operations and then contracted out the work normally performed by the discontinued operation to two independent printing companies. The court found reasonable cause to believe that since the struck employer was permanently out of that portion of the printing business the subcontracted work was not work which "but for the strike" would have been performed by his employees. Consequently, the economic pressures exerted by the international union and one of its locals against the two subcontractors and their employees not to perform the disputed work was a secondary boycott and properly enjoinable under section 10(l) of the Act.

In *Danielson* v. *Intl. Brotherhood of Electrical Workers, Loc. 501* [*Associated General Contractors of Connecticut*],[10] the Second Circuit affirmed the district court's denial of the Board's petition for a temporary injunction under section 10(l). The distict court viewed the regional director's reliance on the union's exertion of coercive pressure on an employer who had no present right to assign the disputed work to his own employees as a *per se* application of the Board's "right of control" test. Observing that several circuit courts of appeals had rejected that test, the court concluded that the Board had relied on an incorrect legal theory. In applying this standard to the Board's peitition, the district court cited *Danielson* v. *Joint Board of Coat, Suit & Allied Garment Workers' Union, ILGWU* [*Hazantown*], 494 F. 2d 1230 (C.A. 2, 1974). The circuit court of appeals affirmed on different grounds. Without addressing itself either to the substantive legal issue or to the standard applied by the district court to the regional director's petition, the court of appeals concluded that injunctive relief would not be "just and proper" under the circumstances. The court noted the passage of time since the dispute arose, the completion of the construction projects with which the union was allegedly interfering, the ripeness of the case for decision by the Board, and the Board's failure to seek an expedited appeal. The court concluded that what it regarded as the Agency's leisurely prosecution

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[9] *Squillacote* v *Graphic Arts Intl Union (GAIU), Loc 277 and Graphic Arts Intl Union, AFL-CIO* [*Kable Printing Co*], 388 F Supp. 258 (D C Wisc), affd on June 25, 1975, Docket 75-1210 (C A 7) (unpublished).

[10] 509 F 2d 1371, affg 86 LRRM 3117 (D C Conn., 1974).

of the appeal confirmed that there was no real danger of irreparable harm to the public interest warranting the grant of an injunction.

In *Seatrain Lines*,[11] a union sought to compel arbitration of the employer's alleged breach of a contract provision which restricted the sale of any vessels built by the employer to buyers who themselves agreed to become signatory to the union's collective-bargaining agreement. The Second Circuit affirmed a district court's order enjoining the union from seeking enforcement of the clause by arbitration or any other means. The circuit court concluded that its recent decision in *N.L.R.B.* v. *Natl. Maritime Union of America* [*Commerce Tankers*], 486 F. 2d 907 (1973), cert. denied 416 U.S. 970 (1974), holding a similar clause to be violative of section 8(e) of the Act, was controlling. While acknowledging that in *Commerce Tankers* it had expressed some doubt whether the isolated sale of a single vessel constituted "doing business" within the meaning of section 8(e), the court stated that the evidence here indicated that the employer was engaged in the ongoing business of building and selling vessels. Moreover, the court observed that in *Commerce Tankers* it held that the challenged provision, although possessing "some elements of 'work preservation,' " essentially was intended "to influence the labor relations of a secondary employer." The union's work preservation argument had even more force in *Commerce Tankers*, the court reasoned, since in that case union members had previously held jobs on the transferred vessel, whereas here the ship had never before been manned. Thus, the court observed, "the Union is forced to rely almost exclusively on the argument that its agreements with various employers allow it to 'protect' a pool of jobs for its hiring hall, a position clearly rejected by the *Commerce Tankers* Court." Rejecting the union's argument that it was not interfering with the sale of the vessel, but was simply seeking damages for the contract breach, the court concluded that the damages provision in the agreement was meant to coerce compliance with the clause rather than to give the employer a reasonable alternative to compliance. Moreover, the court considered that the union's demand for arbitration constituted a "reaffirmation" of the hot cargo clause within the 6-month limitations period of section 10(b) of the Act. Finally, the court concluded that deferral to arbitration under the Board's policy announced in *Collyer Insulated Wire, A Gulf & Western Systems Co.*, 192 NLRB 837 (1971), would be inappropriate since the contract provision relied upon is unlawful on its face. Deferral is particularly inapt, the court added, in a 10(l) proceeding, where

[11] *Danielson* v. *Intl. Organization of Masters, Mates & Pilots, AFL-CIO* [*Seatrain Lines*], 89 LRRM 2564 (C.A. 2), affg. 88 LRRM 3006 (D C.N.Y.).

the regional director is mandated to seek injunctive relief upon reasonable cause to believe the Act has been violated.

In *Youngblood* v. *United Mine Workers of America [Lone Star Steel Co.]*,[12] a district court enjoined a union's picketing to obtain in collective-bargaining negotiations an agreement whereby the employer would affirm that its operations would not be "sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this agreement." The regional director contended that this clause would require the employer to "cease doing business with" those prospective purchasers or transferees of the operation who refused to be bound by the union's collective-bargaining agreement. Since the restriction would not necessarily preserve the work for the present employees, but would operate to fix the terms and conditions of employment of the successor and assure the union's continued representative status there, the clause was viewed as having a secondary thrust proscribed by section 8(e) of the Act. The district court concluded that the clause was "most probably not within the 'preserved work' doctrine." Hence, the court found reasonable cause to believe the clause was proscribed under section 8(e), and that the picketing to obtain it violated section 8(b)(4)(A). The court also found reasonable cause to believe that the union's picketing at a location owned by the employer but operated under an arm's-length contract by a second, wholly independent company with its own employees and equipment was independently violative of the secondary boycott provisions of section 8(b)(4)(B) of the Act, as the legal relationship between the two employers was "not such as to invoke the application of the 'allied doctrine.'"

[12] 89 LRRM 2314 (D C. Okla.)

X

Contempt Litigation

During fiscal 1975, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 30 [1] cases, 29 seeking civil contempt relief and 1 seeking criminal contempt sanctions. In four of these, petitions were granted and civil contempt adjudicated.[2] Six were discontinued upon full compliance.[3] In eight cases, the courts referred the issues to special masters for trials and recommendations, three to U.S. district judges, one to a U.S. magistrate,[4] and the other four to other experienced triers.[5] One case is

[1] In addition, in *N L R B.* v *Drapery Mfg Co* , 425 F. 2d 1026 (C A. 8, 1970), a writ of execution to implement the supplemental (backpay) order of Dec 6, 1973, was obtained in lieu of contempt, and protective restraining orders to enjoin the dissipation of assets were obtained to assure compliance when contempt proceeding would be instituted in *N L R B* v *Radiadores Paragon de Puerto Rico*, judgment of Apr 4, 1974, in No. 73-1400 (C A 1), and in *N L R.B* v *Felsa Knitting Mills*, order of Jan 15, 1975 (C A 2), protecting 208 NLRB 504 (1974).

[2] *N L R B* v *John Moynagh & Co & Auburn Pipe Fabricators*, order of Sept 30, 1974, in civil contempt of the backpay order of Apr 12, 1974, in No 74-1092 (C.A. 1), *N L.R B* v *Saginaw Aggregates*, order of May 27, 1975, in civil contempt of the backpay judgment of Aug 30, 1973, in No. 72-1854 (C A 6), *N L R.B* v *Merchants Delivery and Warehouse Corp* , order of Feb. 25, 1975, in civil contempt of the reinstatement and bargaining provisions of the judgment of Apr. 9, 1974, in No 74-1209 (C A 8), *N L R B* v *King Radio Corp* , order of June 13, 1975, in civil contempt of the bargaining provisions of 510 F. 2d 1154 (C A 10)

[3] Upon payment of backpay and contribution to union welfare fund in *N L R B* v *Al Monzo Construction Co* , in civil contempt of judgment of Sept. 7, 1973, in No 74-2067 (C A 3), upon payment of costs on appeal in *N L R B* v *Superior Microfilm Systems*, in civil contempt of judgment of Oct 31, 1974, in No 75-1051 (C A. 3), upon the reinstatement and making whole of two discriminatees in *N L R B* v *G & S Metal Products Co* , in civil contempt of 489 F 2d 441 (C A 6, 1973), upon execution of a collective-bargaining agreement in *N L R B.* v *J J Newberry Co.*, in civil contempt of judgment of Feb 15, 1973, in No 72-1500 (C.A 8), upon reinstatement of discriminatee and posting notices in *N L R B* v *Famet, Inc* , in civil contempt of 490 F 2d 293 (C A 9, 1973), upon payment of backpay in *N L R B.* v *New Truck Transport*, in civil contempt of supplemental judgment of Dec 17, 1973, in No 73-3062 (C A. 9)

[4] *N L R B* v *Newspaper & Mail Deliverers' Union of New York & Vicinity*, in civil contempt of the 8(b)(1)(A) and 8(b)(2) (hiring system) provisions of the July 6, 1971, March 15, 1972, March 20, 1972, and Sept 10, 1973, judgments in Nos 71-1379, 71-1968, 72-1240, and 73-2303, respectively (C A 2), referred to U S District Judge Morris E Lasker (D C N Y), *N L R B* v *Iron Workers, Loc 16, Intl Assn of Bridge, Structural & Ornamental Iron Workers, AFL-CIO*, in civil contempt of the 8(b)(1)(A) judgment of Oct 2, 1973, in No 73-2134 (C A 4), referred to U S District Judge Roszel Thomsen (D C Md), *N L R B* v *Matlock Truck Body & Trailer Corp* , in civil contempt of 495 F. 2d 671 (C A 6, 1974), referred to U S District Judge L. Clure Morton (D C Tenn.), *N L R B* v. *Kirvan Truck Lines*, in civil contempt of the reinstatement provisions of the judgment of June 19, 1974, in No. 74-1166 (C A 8), referred to U.S Magistrate Earl Cudd (D. C Minn.)

[5] The following three were referred to administrative law judges *N L R B* v. *Contempocomp Division of Linguistic Systems*, in civil contempt of the reinstatement provisions of the judgment of Apr 23, 1974, in No 74-1101 Supp (C A 1); *N L R B* v *Finesilver Mfg Co* , in civil contempt of 400 F.2d 644 (C.A 5, 1968), *N.L.R B* v. *Groendyke Transport*, in civil contempt of the bargaining provisions of 438 F 2d 981 (C A. 5, 1971). The fourth has been referred to a retired state appellate judge *N L R.B* v *ITCO, Inc* , in civil contempt of the 8(a)(3) provisions of the judgment of Oct 1, 1973, in No 75-1848 (C.A. 9)

awaiting referral to a special master.[6] Another case was withdrawn when it appeared that the company did not intend to carry out its threat to cease recognizing the union.[7] Of the remaining 10 cases, 9 are before the courts in various stages of litigation,[8] while the 10th is pending before the court on the Board's exceptions to the special master's adverse recommendations.[9]

With respect to the cases which were commenced prior to fiscal 1975, but were disposed of during the period, contempt was adjudicated in seven civil proceedings,[10] while four were discontinued: one upon payment of backpay in full and the posting of the required notice;[11] one upon the full payment of costs awarded in the enforcement litigation;[12] the third at the request of both company and union, their labor dispute having been amicably and finally adjusted;[13] and the fourth was discontinued because of the total inability of the respondent to pay backpay.[14]

Two cases which were disposed of during fiscal 1975 warrant some comment. The purgation order in *Johnson Mfg. Co. of Lubbock* [15] is

[6] *N L R B* v. *S E Nichols Shillington Corp.*, in civil contempt of the reinstatement provisions of 475 F 2d 1395 (C A 3, 1973)

[7] Motion for writ of body attachment for alleged violation of the contempt adjudication in *N L R B* v. *Metlox Mfg Co*, 83 LRRM 2346 (C.A 9, 1973), withdrawn in No 20299, Feb 5, 1975 (C.A. 9)

[8] *N L R B* v *Diamond Motors*, in civil contempt of the backpay provisions of the judgment of Jan. 31, 1975, in No 75-4019 (C A 2), *N L R B* v *Barry Industries*, in civil contempt of the backpay provisions of the judgment of Oct 5, 1973, in No 74-1318 (C A. 3), *N L R B* v *DePalma Printing Co*, in civil contempt of the bargaining provisions of the judgment of Oct 30, 1973, in No 73-1388 (C A 3) (pending before J dge Maris on behalf of the court), *N L R B* v *Ogle Protection Service*, in civil contempt of the backpay provisions of 375 F 2d 497 (C.A 6, 1967), *N.L R B* v *Robert Brandis, et al*, in civil contempt of the backpay provisions of the judgment of June 30, 1972, in No 74-1881 (C A 7), *N L R B* v *Certified Mea's*, in civil contempt of the 8(a)(1), (3), and (5) provisions of the judgment of Aug 3, 1973, 83 LRM 2992 (C A 7), *N.L.R B* v *Good Foods Mfg. & Processing Corp*, *et ano*, in civil contempt of the discovery and bargaining provisions of 492 F 2d 1302 (C A 7, 1974), *N L R B* v *George Masiakowski*, in civil contempt of the bargaining provisions of the judgment of Jan 13, 1975, in No 74-1793 (C A 7), *N.L.R B* v. *Southland Dodge*, in *criminal* contempt of the bargaining provisions of the judgment of Feb 22, 1974, in No. 75-1538 (C A. 3)

[9] *N L R B* v *Hendel Mfg Co*, in civil contempt of the bargaining provisions of 483 F.2d 350 (C A 2, 1973).

[10] *N L R B* v *Loc 294, Int Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, order of February 10, 1975, holding the union in civil contempt of the secondary boycott provisions of the judgments of Sept 7, 1972, in No 72-1437 and in 342 F 2d 18 (C A 2, 1965), and 273 F 2d 696 (C A 2, 1960) *N L R B* v *Larry Carnavale & Sons Transit Mix Corp*, *et al*, order of October 22, 1974, adopting the report of U S District Judge John R Dooling (D C N Y), holding the companies in civil contempt of the judgment of March 5, 1969, in No 33331 (C A 2) *N L R B* v *Cayuga Crushed Stone*, order o August 15, 1974, adopting the report of U S District Judge Edmund Port (D C N Y), holding the company in civil contempt of 474 F 2d 1380 (C A 2, 1973), *N L R B.* v *Johnson Mfg Co of Lubbock*, 511 F 2d 153 (C A 5), *N L R B.* v *Decaturville Sportswear Co*, *et al*, *per curiam*, filed May 23, 1975, 518 F 2d 788 adopting the report of U S District Judge Harry W Wellford (D C Tenn), which sustained the Board's allegations, in part, and holding the companies in civil contempt of 406 F 2d 886 (C A 6, 1969), *N L R B* v *United Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Loc 527*, order of Nov 18, 1974, adopting the report of U S District Judge L Clure Morton (D C Tenn), holding the union in civil contempt of 432 F. 2d 933 (C.A 6, 1970), *N L R B* v *Edward E Schultz, et ano*, order of May 13, 1975, adopting the report of its special master holding the respondents in civil contempt of the judgment of Feb 26, 1974, in No 73-1241 (C A. 10)

[11] *N L R B* v *Lane Tool & Mfg Co*, upon full payment of backpay and proper posting, in civil contempt of the judgment of Oct. 2, 1973, in No 73-2061 (C A 3)

[12] *N L R B* v *Superior Microfilm Systems*, in civil contempt of 485 F. 2d 681 (C A 3, 1973)

[13] *N L R B* v *United Textile Workers of America, AFL-CIO*, in civil contempt of the 8(b)(1)(A) judgment of Dec 11, 1973, in No 73-2194 (C A 6).

[14] *N L R B.* v *Regal Cab Co*, in civil contempt of the backpay judgment of Nov. 7, 1973, in No. 73-1973 (C A. 7).

[15] See fn. 10, above.

notable for a make-whole remedy for the union injured by the respondent employer's bad-faith bargaining. The employer in *Johnson* was found to have violated an earlier contempt order [16] directing it, *inter alia,* to bargain in good faith with the union. In the second contempt proceeding, the company was ordered to reimburse the union "for its expenses incurred by reason of the failure of the Company to comply with the adjudication of April 6, 1972, to wit: for salaries and expenses incurred by the union and bargaining committee members in attending bargaining sessions with the Company in connection with a collective bargaining agreement or merit wage increases since April 6, 1972, payments by the union to employees of Johnson Manufacturing Company who walked the picket line [to protest the Company's bad-faith bargaining] and attorney's fees and expenses." No such remedy for a union has heretofore been provided in contempt proceedings. The court characterized this make-whole remedy as "an extension of the remedy" in *N.L.R.B.* v *Schill Steel Products*, 480 F. 2d 586 (C.A. 5, 1973), a contempt proceeding in which it had directed the company to reimburse employees (rather than their union) for benefits lost as a result of the employer's refusal to execute a contract on which the parties had reached agreement. In addition to providing the make-whole remedy for the union, the *Johnson* court also, *inter alia,* ordered the company to bargain with the union in "reasonably consecutive sessions until full agreement or *bona fide* impasse is reached," required company and union representatives to file sworn reports with the court once every 15 days after the first bargaining session describing the progress of the bargaining, and directed the company not to designate as its bargaining representative the attorney who had hitherto been its bargaining representative "unless permitted by order of this Court."

In *Decaturville* [17] the court agreed that clear and convincing evidence in the record supported factual findings made by its special master (a U.S. district judge) that for discriminatory reasons the company discharged and refused to hire a number of employees and refused to reinstate a number of strikers. The court also recognized that in enforcement proceedings these acts would be actionable unfair labor practices. But it held that the "clear and convincing" evidentiary standard in civil contempt justifies the application of substantive standards more stringent than those it would apply in enforcing a Board order. Accordingly, the court adopted the special master's recommendation to dismiss the Board's petition with respect of these allegations. This appears to be contrary to the teaching of *N.L.R.B.* v.

[16] *N.L.R.B.* v. *Johnson Mfg. Co. of Lubbock*, 458 F. 2d 453 (C.A. 5, 1972).
[17] See fn. 10, above.

Warren Co., 350 U.S. 107 (1955), reversing 214 F. 2d 481 (C.A. 5,1954), and since it undermines the statutory scheme for preventing unfair labor practices at the crucial contempt stage, the Board has authorized a petition to the Supreme Court for a writ of certiorari.

XI

Special and Miscellaneous Litigation

A. Judicial Intervention in Board Proceedings

1. Representation Proceedings

On three different occasions during this fiscal year, the Fifth Circuit rejected attempts to invoke district court jurisdiction under the rationale of that court's earlier decisions in *Templeton* v. *Dixie Color Printing Co.*[1] and *Algie Surratt* v. *N.L.R.B.*[2] In both *Templeton* and *Surratt*, the court held that the Board's refusal to process an employer 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), and accordingly that remedial judicial intervention was warranted under the Supreme Court's holding in *Leedom* v. *Kyne*.[3] However, in *Tommy J. Grissom* v. *N.L.R.B.*;[4] *Acme Employees Assn. Industrial Union* v. *N.L.R.B.*;[5] and *Michael Bishop* v. *N.L.R.B.*,[6] the court distinguished *Templeton* and *Surratt* and held that, where nonfrivolous charges had been filed with the Board alleging that the employer had violated the Act by, *inter alia*, refusing to bargain with an incumbent union, the Board had sufficient operative facts before it to determine that no question of representation existed, and therefore did not violate section 9(c)(1) of the Act by refusing to process a representation petition seeking to decertify the union. The court thus adopted the Board's view that where the processing of a representation petition would be incon-

[1] 444 F. 2d 1064, petition for rehearing denied 444 F. 2d 1070 (C.A. 5, 1971). See 36 NLRB Ann Rep 129 (1971).
[2] 463 F. 2d 378 (C.A. 5, 1972). See 37 NLRB Ann. Rep. 199 (1972).
[3] 358 U.S 184 (1958).
[4] 497 F. 2d 43 (C.A. 5) See 39 NLRB Ann. Rep 174 (1974).
[5] 500 F 2d 574 (C A 5). See 39 NLRB Ann. Rep. 174 (1974).
[6] 502 F 2d 1024 (C A 5).

sistent with the issuance of a remedial order in an unfair labor practice proceeding requiring the employer to bargain with the union for a reasonable period of time the representation petition could be dismissed.

In *Intl. Assn. of Tool Craftsmen & its Loc. 20 [Union Carbide Corp.]* v. *Miller*,[7] plaintiff sought district court review of the Board's dismissal of a representation petition, alleging that the Board had violated section 9(b)(2) of the Act by refusing to hold an election in a severed craft unit solely because another unit had previously been found appropriate. The court found, however, that the Board, in reaching its decision, had not relied solely upon a prior unit determination, but instead had applied the various criteria set forth in its decision in *Mallinckrodt Chemical Works*[8] for resolving questions of craft severance. Accordingly, the court dismissed the complaint for lack of subject matter jurisdiction. A similar allegation was dismissed in *California Licensed Vocational Nurses Assn.* v. *N.L.R.B.*[9]

In *Board of Trustees of Memorial Hospital d/b/a Bishop Randall Hospital* v. *N.L.R.B.*,[10] plaintiff obtained a permanent injunction enjoining the Board from asserting jurisdiction over a hospital owned by the county of Fremont, Wyoming, but operated under a contractual arrangement by Lutheran Hospitals and Homes Society of America, a private nonprofit operation. The Board had ordered an election among the hospital's employees after finding that the Society, rather than the county of Fremont, was the "employer" within the meaning of section 2(2) of the Act,[11] and argued that the court had no jurisdiction to review this finding under the Supreme Court's holding in *Boire* v. *Greyhound Corp.*[12] The court found, however, that the sole issue presented was the legal interpretation of the term "employer," and that, under its interpretation, the county of Fremont was actually the "employer." Accordingly, the court held that the Board violated section 2(2) by ordering an election among the hospital's employees, and that the court had jurisdiction to enjoin the election.[13]

Finally, in *Monroe Auto Equipment Co.* v. *N.L.R.B.*,[14] plaintiff attempted to obtain district court review of the Board's refusal to reopen the record in a representation proceeding in which the United Auto Workers had been certified as the exclusive bargaining representative of the company's employees. The Fifth Circuit not only

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[7] 389 F. Supp 1078 (D C. Tenn), affd. 89 LRRM 2143 (C A. 6)

[8] 162 NLRB 387 (1966).

[9] 88 LRRM 3124 (D C. Calif), appeal pending C.A. 9, Docket 73-2362. See 38 NLRB Ann. Rep 179–180 (1973).

[10] 89 LRRM 2822 (D.C Wyo.), appeal pending C A. 10, Docket 75-1585.

[11] *Bishop Randall Hospital*, 217 NLRB No. 185 (1975)

[12] 376 U.S. 473 (1964).

[13] See *Leedom* v. *Kyne*, 358 U.S. 184 (1958).

[14] 511 F. 2d 611 (C.A. 5).

upheld the district court's finding that it was without jurisdiction over the subject matter of the action,[15] but also awarded double costs and attorneys fees to the Board because of the company's continuing refusal to comply with the Board's bargaining order based on the certification.[16]

2. Unfair Labor Practice Proceedings

In one extraordinary case this year, *McClain Industries* v. *N.L.R.B.*, a district court enjoined the Board from proceeding to an unfair labor practice hearing until it had granted plaintiff's request for prehearing discovery of names and addresses of persons whom the regional director intended to call as witnesses.[17] In denying the Board's motion to dismiss, the court held that section 10(b) of the Act mandates that the Board permit prehearing discovery, and that the Board's failure to do so vested the court with jurisdiction under the rationale of *Leedom* v. *Kyne*.[18] The Court of Appeals for the Sixth Circuit granted summary reversal,[19] holding that district courts lack jurisdiction to enjoin unfair labor practice proceedings, and that plaintiff's relief concerning the procedural issues it desired to present was plainly a petition to review under section 10(f) of the Act.

In *Michigan State Bldg. & Constr. Trades Council, AFL–CIO* v. *Gottfried*,[20] plaintiff sought a mandatory injunction requiring the regional director to permit Delta Engineering Corporation to withdraw charges which it had filed against the union and which Delta had sought to withdraw pursuant to a settlement agreement entered into between it and the union in the regional director's 10(l) proceeding against the union. The court, although noting that public policy favors the peaceful settlement of labor disputes, found that it had no jurisdiction to enjoin the regional director from prosecuting his complaint since the regional director had not been a formal party to the settlement agreement, and whatever delay had been occasioned was not unreasonable and indeed was justified, at least in part, by the pendency of the settlement negotiations.

There have been several attempts to enjoin Board proceedings because of the pendency of bankruptcy proceedings involving the employer. In *Airport Iron & Metal*,[21] the court held that an employer was not entitled to such a stay unless it could demonstrate that the administration of the debtor's estate would be embarrassed or delayed,

[15] 84 LRRM 2835 (D.C. Ga., 1973).
[16] 186 NLRB 90 (1970), enfd 470 F. 2d 1329 (C A 5, 1972), cert denied 412 U S 928 (1973)
[17] 381 F. Supp. 187 (D.C. Mich.).
[18] 358 U S 184 (1958).
[19] 88 LRRM 2071 (C.A. 6).
[20] 88 LRRM 2127 (D C Mich).
[21] Unreported decision dated August 20, 1974 (D.C.N.Y., Docket 74–B 825).

to the point of threatened or irreparable injury, in absence of such a stay. And in *In re Goodway Printing Co. of Washington, D.C.*,[22] the court granted the Board's request for relief from an automatic stay which, under the new Bankruptcy Rules and Official Bankruptcy Forms, effective October 1, 1973, became effective upon the filing of the petition in bankruptcy, holding, *inter alia*, that the stay was inapplicable to the Board's proceedings.

In *Illinois State Employees Council 34, AFSCME* v. *N.L.R.B.*,[23] plaintiff filed a complaint seeking to compel the General Counsel to issue a complaint against Food Management Associates, which, plaintiff alleged, had violated section 8(a) (1), (3), and (5) of the Act by refusing to bargain in good faith and by locking out and terminating certain employees. The General Counsel had found that under the Board's decision in *Peoria Chapter of Painting & Decorating Contractors* [24] the union was required to wait 30 days from the date the proper Federal and state authorities had received their 8(d)(3) notices before striking, and that, having failed to do so, its strike was unlawful and the company's discharge of the strikers was permissible. Plaintiff pointed out that the Seventh Circuit had denied enforcement of the Board's *Peoria* decision, holding that while section 8(d) requires all parties to wait 60 days, following the 8(d)(1) notice of contract termination or modification before resorting to economic action, it does not require a similar 30-day waiting period following the 8(d)(3) mediation notice where that notice is given less than 30 days from the end of the 60-day period.[25] The district court found that the Board and Seventh Circuit decisions were not necessarily in conflict, that the General Counsel did not violate his statutory duty in declining to issue a complaint, and, accordingly, that plaintiff's complaint should be dismissed for lack of subject matter jurisdiction.

B. Board Intervention in Court Proceedings

In *Shopmen's Local Union 455, Intl. Assn. of Bridge, Structural & Ornamental Iron Workers, AFL–CIO* v. *Kevin Steel Products*,[26] the Board intervened in a chapter XI bankruptcy proceeding in which the company had applied for and had been granted permission to reject its collective-bargaining agreement with the union. The Board, days prior to the bankruptcy judge's order granting permission, had issued a decision and order finding that the company had unlawfully refused to bargain in good faith with the union by refusing, upon request, to

[22] Unreported decision dated June 29, 1975 (D.C Pa., Docket 73–Bk–748).
[23] 395 F. Supp. 1011 (D.C. Ill.), appeal pending C.A 7
[24] 204 NLRB 345 (1973)
[25] 500 F. 2d 54 (C.A. 7)
[26] 381 F. Supp. 336 (D.C.N.Y.), appeal pending C.A. 2, Docket 74-2154.

sign the collective-bargaining agreement, and ordering the company, *inter alia*, to execute the agreement and make the employees whole for any loss of benefits suffered as a result of the failure to sign.[27] The Board argued in the bankruptcy proceeding that, although the literal language of the Bankruptcy Act permits the rejection of all executory contracts, that language was not intended to cover collective-bargaining agreements, and that such an interpretation would do violence to the provisions of the NLRA, which permit rejection of collective-bargaining agreements only under the very limited circumstances set forth in section 8(d), and not present here. The court agreed, and reversed the order of the bankruptcy judge.

In *Communications Workers of America* v. *Television Wisconsin*,[28] the Board intervened in a suit filed by the certified collective-bargaining representative seeking damages from the company and 10 of its employees because the employees, allegedly acting in concert with the company to destroy the union's status as collective-bargaining agent and to interfere with the union's contractual relationship with the company, resigned from the union, circulated a petition to the National Labor Relations Board for a decertification petition, and refrained from participating in the union's strike. The Board argued that all of the alleged activities were at least arguably within the scope of the NLRA and, accordingly, that the court was preempted from exercising jurisdiction under the rationale set forth in *San Diego Bldg. Trades Council* v. *Garmon*.[29] The court agreed, and dismissed the case for failure to state a claim upon which relief could be granted.[30]

In *Chief Freight Lines Co.* v. *Local Union 886, Southern Area Conference of Intl. Brotherhood of Teamsters*,[31] the Board intervened in proceedings in which the company was seeking an order enjoining the union from striking to enforce an arbitral award, compelling further arbitration, and staying that arbitration pending resolution by the Board of various unfair labor practice charges and a representation petition which presented the same issues as that involved in the section 301 proceeding, namely, whether the card recognition procedure of the company's contract with the union applied to certain of the company's employees. Although the Board took no position on the injunction issue, it argued that further arbitration proceedings should be stayed pending the Board's resolution of the issues before it. The court held that the Supreme Court's decision in *Boys Markets* v.

[27] *Kevin Steel Products*, 209 NLRB 493 (1974).

[28] 87 LRRM 2162 (D.C. Wisc.).

[29] 359 U S 236 (1959)

[30] See also *Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union 524* v. *Ralph M Smith*, 87 LRRM 2763 (Super Ct , Wash), where a state court dismissed an attempt by a union to collect fines from its members pursuant to its constitution on grounds that the Board had found the fines were unlawfully imposed 212 NLRB No 133 (1974).

[31] 514 F. 2d 572 (C.A. 10).

Retail Clerks Union, Loc. 770,[32] which permits district courts to enjoin a strike pending arbitration, constitutes a narrow exception to the general prohibition against such injunctions contained in the Norris-LaGuardia Act, and only justifies such relief where the employer is actually compelled to arbitrate. Thus, while recognizing that "[w]hichever way the Board rules, its decision would take precedence over any arbitration award," [33] the court held that the company could not obtain a *Boys Markets* injunction against the strike and at the same time be relieved of its duty to arbitrate. Accordingly, the court vacated the injunction and remanded the case to the district court with the observation that "should circumstances develop whereby the Company is prepared to arbitrate, and to be subject to a requirement to do so, the District Court may reconsider whether any equitable relief sought is justified and proper." [34]

In *Loc. 259, United Automobile Workers, UAW* v. *Kellogg Pontiac Sales Corp.*, [35] the Board again intervened in a section 301 proceeding in which the union was seeking to enforce an arbitrator's award. The arbitrator had found that an automobile dealership operating in Mount Vernon, New York, was owned by the same corporation as a previous dealership located in New York City had been, and therefore that it was bound to reinstate at Mount Vernon the employees who had been dismissed when the New York City plant closed, with backpay and contributions to the union's pension and health and welfare funds. The Board had earlier directed an election at the new plant, finding that, corporate niceties aside, the Mount Vernon operation constituted an entirely new and different entity from the New York City operation, that as a consequence the corporation running the Mount Vernon plant was at no time a real party to the contract, and therefore that the contract did not bar an election. The Board argued in the section 301 proceeding that the arbitrator's award was inconsistent with the Board's decision and therefore unenforceable under the rationale of *Carey* v. *Westinghouse Electric Corp.* [36] The court, although agreeing that insofar as the award ordered reinstatement of the New York City employees it was in conflict with the Board's decision and unenforceable, held that the rest of the award, requiring the company to reimburse the New York City employees for wages lost and to reimburse the union for lost pension and health and welfare fund contributions, should be confirmed. In so doing, the court recognized that there was a conflict in the theories underlying the Board's and the arbitrator's decisions. However, it found no con-

[32] 398 U S 235 (1970).
[33] 514 F. 2d at 581
[34] 514 F. 2d at 582
[35] 392 F. Supp. 1044 (D.C.N.Y.).
[36] 375 U.S. 261, 272 (1964).

flict in the remedies themselves, and also that if the arbitrator's decision awarding damages were not sustained the result would be to wipe out completely the rights of the former New York City employees under their collective-bargaining agreement. This result, the court found, "would be at odds with what has been held regarding the respective domains of the arbitrator and the NLRB—that is, that an arbitrator has primary authority to interpret collective bargaining agreements on questions of employment rights, wages, etc., and that the NLRB may tread upon this authority only as far as necessary to rule upon matters within the NLRB's jurisdiction, such as representation and unfair labor practices. See *N.L.R.B.* v. *Strong*, 393 U.S. 357 (1969)." [37]

And in *Loc. 1547, IBEW* v. *Loc. 959, Intl. Brotherhood of Teamsters [ITT Arctic Services]*,[38] the Board intervened in a district court suit brought by the IBEW to enforce a no-raid agreement in force between it and the Teamsters, in which IBEW sought a temporary injunction restraining the Teamsters from engaging in further election activity, a permanent injunction requiring Teamsters to withdraw a representation petition filed with the Board, and an award of damages for the alleged breach of the no-raid agreement. The Board moved to dismiss on grounds, *inter alia*, that specific enforcement of the agreement would conflict with the Board's decision and direction of election and that a damage award would operate to restrain employees' exercise of section 7 rights. The court agreed with the first argument, and denied IBEW's request for specific enforcement. It also agreed that if the "raid" occurred at the invitation of the raided union's members an award of damages might well have a chilling effect on protected section 7 activities, and thus would be inappropriate. However, it found that there might be cases in which bad-faith or predatory organizing practices are so offensive to the orderly resolution of interunion competition that damages should be available as a contractual remedy, and accordingly remanded the case to the district court in order to permit the IBEW an opportunity to prove damages.

C. Other Issues

In *N.L.R.B.* v. *G. C. Murphy Co.*,[39] the Board applied for a declaratory judgment that an ordinance of the city of Keyser, West Virginia, was invalid in that it regulated conduct falling within the exclusive jurisdiction of the Act. The ordinance in question forbade all picketing

[37] 392 F Supp. at 1051.
[38] 507 F. 2d 872 (C.A. 9).
[39] 87 LRRM 2480 (D.C. W. Va.).

except where a permit had been issued by the chief of police, which permit could only be issued under certain conditions, including (1) that the applicant be a resident of the city of Keyser, (2) that the applicant be a member of a recognized labor organization, (3) that the applicant have been last employed by the owner or operator of the place sought to be picketed, and (4) that no more than one picket permit (for one person) be issued for each public entrance to any retail business place. The court, relying upon the Supreme Court's decision in *N.L.R.B.* v. *Nash-Finch Co.*,[40] agreed with the Board that the ordinance conflicted with Federal law and was therefore violative of the supremacy clause of the Constitution, and granted the Board's complaint for declaratory judgment.

In *St. Francis Hospital* v. *Connecticut State Board of Labor Relations*,[41] plaintiff, a nonprofit hospital, sought to enjoin the Connecticut State Labor Board from conducting an election among the hospital's employees scheduled, pursuant to a stipulation between the hospital and District 1199, National Union of Hospital and Health Care Employees, which had been signed prior to the effective date of the amendments to the Act extending the coverage of the Act to nonprofit hospitals,[42] to be held on a date subsequent to the effective date of those amendments. The Board, which had been named as a nominal defendant in the suit, had pending before it a representation petition involving the same employees, and urged that the injunction be granted on grounds of preemption. The court granted the injunction, observing, "It is quite clear that the supremacy of federal law cannot be undercut by the action of private parties. Consent by the parties given at a time when the State Board could assume jurisdiction cannot have the effect of permitting the State Board to retain jurisdiction once its jurisdiction has been divested by operation of federal law." [43]

In *J. H. Rutter Rex Mfg. Co.* v. *United States*,[44] the company brought suit under the Federal Tort Claims Act,[45] claiming that it had been damaged by the unreasonable delay of the Board in computing the backpay found by the Board to be due the company's employees.[46] The Fifth Circuit affirmed the order of the district court,[47] finding that the Board's assignment of the handling of this case "clearly

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[40] 404 U.S. 138 (1971).

[41] 87 LRRM 2941 (D.C. Conn.).

[42] Act of July 26, 1974, P L 93-360, 88 Stat 395, effective Aug. 25, 1974

[43] 87 LRRM at 2944 Compare *Methodist Hospital of Brooklyn* v. *New York State Labor Relations Board*, 87 LRRM 2642 (D.C N.Y.); *Swedish Hospital in Brooklyn* v. *New York State Labor Relations Board*, 87 LRRM 2484 (D.C.N Y.).

[44] 515 F. 2d 97 (C.A. 5).

[45] 28 U S C. §§ 1346(b), 2671-80(a) (1948).

[46] See 158 NLRB 1414 (1966), enfd in part and remanded in part 399 F 2d 356 (C.A. 5, 1968), cert denied 393 U.S. 1117 (1969), reversed 396 U S 258 (1969), 194 NLRB 19 (1971), enfd. in relevant part 473 F. 2d 223 (C.A. 5, 1973), cert. denied 414 U S 822 (1973).

[47] 380 F. Supp. 412 (D.C. La., 1974).

involved public policy considerations," [48] and thus was covered by the discretionary function exemption of the Tort Claims Act [49] "even if the NLRB abused its discretion." [50]

[48] 515 F. 2d at 99.
[49] 28 U.S.C § 2680 (1948).
[50] 515 F. 2d at 99.

INDEX OF CASES DISCUSSED

APPENDIX

Statistical Tables for Fiscal Year 1975

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of Statistical Reports and Evaluations, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are 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 challeged 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 Post-election 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(l) 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(l) 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 Cases

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 CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, has committed an unfair labor practice in violation of section 8(e).

CG: A charge that a labor organization has committed unfair labor practices in violation of section 8(g).

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

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.

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.

Other Cases

AC: (Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO: (Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards, over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC: (Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classifications of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization cases): A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union 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

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1975 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending July 1, 1974	13,581	5,616	1,620	476	396	3,770	1,703
Received fiscal 1975	44,923	14,850	5,367	1,300	1,414	16,366	5,626
On docket fiscal 1975	58,504	20,466	6,987	1,776	1,810	20,136	7,329
Closed fiscal 1975	43,707	14,515	5,489	1,244	1,305	15,600	5,554
Pending June 30, 1975	14,797	5,951	1,498	532	505	4,536	1,775
Unfair labor practice cases [2]							
Pending July 1, 1974	9,711	3,595	762	278	216	3,461	1,399
Received fiscal 1975	31,253	8,343	2,184	700	551	14,885	4,590
On docket fiscal 1975	40,964	11,938	2,946	978	767	18,346	5,989
Closed fiscal 1975	29,808	7,896	2,094	633	522	14,163	4,500
Pending June 30, 1975	11,156	4,042	852	345	245	4,183	1,489
Representation cases [3]							
Pending July 1, 1974	3,713	1,990	846	189	175	256	257
Received fiscal 1975	13,083	6,367	3,157	592	832	1,255	880
On docket fiscal 1975	16,796	8,357	4,003	781	1,007	1,511	1,137
Closed fiscal 1975	13,325	6,488	3,367	598	754	1,220	898
Pending June 30, 1975	3,471	1,869	636	183	253	291	239
Union-shop deauthorization cases							
Pending July 1, 1974	52					52	
Received fiscal 1975	209					209	
On docket fiscal 1975	261					261	
Closed fiscal 1975	203					203	
Pending June 30, 1975	58					58	
Amendment of certification cases							
Pending July 1, 1974	31	11	10	5	3	0	2
Received fiscal 1975	61	30	8	2	11	1	9
On docket fiscal 1975	92	41	18	7	14	1	11
Closed fiscal 1975	66	29	13	3	10	0	11
Pending June 30, 1975	26	12	5	4	4	1	0
Unit clarification cases							
Pending July 1, 1974	74	20	2	4	2	1	45
Received fiscal 1975	317	110	18	6	20	16	147
On docket fiscal 1975	391	130	20	10	22	17	192
Closed fiscal 1975	305	102	15	10	19	14	145
Pending June 30, 1975	86	28	5	0	3	3	47

[1] See Glossary for definitions of terms Advisory Opinion (AO) cases not included. See table 22
[2] See table 1A for totals by types of cases
[3] See table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1975 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1974	6,952	3,554	753	272	178	2,185	10
Received fiscal 1975	20,311	8,255	2,170	646	492	8,697	51
On docket fiscal 1975	27,263	11,809	2,923	918	670	10,882	61
Closed fiscal 1975	19,144	7,804	2,075	580	474	8,180	31
Pending June 30, 1975	8,119	4,005	848	338	196	2,702	30
	CB cases						
Pending July 1, 1974	1,768	32	9	5	9	1,230	483
Received fiscal 1975	7,575	65	11	10	22	6,077	1,390
On docket fiscal 1975	9,343	97	20	15	31	7,307	1,873
Closed fiscal 1975	7,419	72	16	12	25	5,892	1,402
Pending June 30, 1975	1,924	25	4	3	6	1,415	471
	CC cases						
Pending July 1, 1974	624	3	0	1	12	20	588
Received fiscal 1975	2,098	7	0	39	19	66	1,967
On docket fiscal 1975	2,722	10	0	40	31	86	2,555
Closed fiscal 1975	2,101	6	0	36	12	52	1,995
Pending June 30, 1975	621	4	0	4	19	34	560
	CD cases						
Pending July 1, 1974	171	4	0	0	1	9	157
Received fiscal 1975	586	12	2	3	3	13	553
On docket fiscal 1975	757	16	2	3	4	22	710
Closed fiscal 1975	557	12	2	3	3	15	522
Pending June 30, 1975	200	4	0	0	1	7	188
	CE cases						
Pending July 1, 1974	89	1	0	0	15	14	59
Received fiscal 1975	120	1	1	0	14	12	92
On docket fiscal 1975	209	2	1	0	29	26	151
Closed fiscal 1975	81	0	1	0	6	3	71
Pending June 30, 1975	128	2	0	0	23	23	80
	CG cases						
Pending July 1, 1974	0	0	0	0	0	0	0
Received fiscal 1975	60	0	0	0	0	0	60
On docket fiscal 1975	60	0	0	0	0	0	60
Closed fiscal 1975	25	0	0	0	0	0	25
Pending June 30, 1975	35	0	0	0	0	0	35
	CP cases						
Pending July 1, 1974	107	1	0	0	1	3	102
Received fiscal 1975	503	3	0	2	1	20	477
On docket fiscal 1975	610	4	0	2	2	23	579
Closed fiscal 1975	481	2	0	2	2	21	454
Pending June 30, 1975	129	2	0	0	0	2	125

[1] See Glossary for definitions of terms

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1975 [1]

	Total	Identification of filing party					
		AFL–CIO Unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1974	3,211	1,989	846	189	173	14	
Received fiscal 1975	11,037	6,358	3,154	591	824	110	
On docket fiscal 1975	14,248	8,347	4,000	780	997	124	
Closed fiscal 1975	11,275	6,478	3,364	597	745	91	
Pending June 30, 1975	2,973	1,869	636	183	252	33	
	RM cases						
Pending July 1, 1974	257						257
Received fiscal 1975	880						880
On docket fiscal 1975	1,137						1,137
Closed fiscal 1975	898						898
Pending June 30, 1975	239						239
	RD cases						
Pending July 1, 1974	245	1	0	0	2	242	
Received fiscal 1975	1,166	9	3	1	8	1,145	
On docket fiscal 1975	1,411	10	3	1	10	1,387	
Closed fiscal 1975	1,152	10	3	1	9	1,129	
Pending June 30, 1975	259	0	0	0	1	258	

[1] See Glossary for definitions of terms

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1975

	Number of cases showing specific allegations	Percent of total cases
A Charges filed against employers under sec 8(a)		
Subsections of sec 8(a) Total cases	20,311	100 0
8(a)(1)	2,663	13 1
8(a)(1)(2)	327	1 6
8(a)(1)(3)	10,861	53 6
8(a)(1)(4)	138	0 7
8(a)(1)(5)	3,602	17 7
8(a)(1)(2)(3)	297	1 5
8(a)(1)(2)(4)	9	0 0
8(a)(1)(2)(5)	130	0 6
8(a)(1)(3)(4)	370	1 8
8(a)(1)(3)(5)	1,716	8 4
8(a)(1)(4)(5)	11	0 1
8(a)(1)(2)(3)(4)	13	0 1
8(a)(1)(2)(3)(5)	114	0 6
8(a)(1)(2)(4)(5)	5	0 0
8(a)(1)(3)(4)(5)	45	0 2
8(a)(1)(2)(3)(4)(5)	10	0 0
Recapitulation [1]		
8(a)(1) [2]	20,311	100 0
8(a)(2)	905	4 5
8(a)(3)	13,426	66 1
8(a)(4)	601	3 0
8(a)(5)	5,633	27 7
B Charges filed against unions under sec 8(b)		
Subsections of sec 8(b) Total cases	10,762	100 0
8(b)(1)	5,085	47 3
8(b)(2)	248	2 3
8(b)(3)	440	4 1
8(b)(4)	2,684	24 9
8(b)(5)	10	0 1
8(b)(6)	19	0 2
8(b)(7)	503	4 7
8(b)(1)(2)	1,440	13 4
8(b)(1)(3)	220	2 0
8(b)(1)(5)	8	0 1
8(b)(1)(6)	6	0 1
8(b)(2)(3)	12	0 1
8(b)(2)(6)	12	0 1
8(b)(3)(6)	2	0 0
8(b)(1)(2)(3)	59	0 5
8(b)(1)(2)(5)	7	0 1
8(b)(1)(3)(5)	2	0 0
8(b)(1)(3)(6)	2	0 0
8(b)(1)(2)(3)(5)	2	0 0
8(b)(1)(2)(3)(6)	1	0 0

	Number of cases showing specific allegations	Percent of total cases
Recapitulation [1]		
8(b)(1)	6,832	63 5
8(b)(2)	1,781	16 5
8(b)(3)	740	6 9
8(b)(4)	2,684	24 9
8(b)(5)	29	0 3
8(b)(6)	42	0 4
8(b)(7)	503	4 7
B1 Analysis of 8(b)(4)		
Total cases 8(b)(4)	2,684	100 0
8(b)(4)(A)	87	3 2
8(b)(4)(B)	1,938	72 3
8(b)(4)(C)	7	0 3
8(b)(4)(D)	586	21 8
8(b)(4)(A)(B)	53	2 0
8(b)(4)(A)(C)	4	0.1
8(b)(4)(B)(C)	9	0.3
Recapitulation [1]		
8(b)(4)(A)	144	5 4
8(b)(4)(B)	2,000	74 5
8(b)(4)(C)	20	0 7
8(b)(4)(D)	586	21 8
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	503	100 0
8(b)(7)(A)	123	24 5
8(b)(7)(B)	24	4 7
8(b)(7)(C)	342	68 0
8(b)(7)(A)(B)	3	0 6
8(b)(7)(A)(C)	4	0.8
8(b)(7)(A)(B)(C)	7	1 4
Recapitulation [1]		
8(b)(7)(A)	137	27.2
8(b)(7)(B)	34	6 8
8(b)(7)(C)	353	70 2
C Charges filed under sec. 8(e)		
Total cases 8(e)	120	100 0
Against unions alone	113	94 1
Against employers alone	2	1 7
Against unions and employers	5	4 2
D Charges filed under sec. 8(g)		
Total cases 8(g)	60	100 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 1975 [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	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearings issued	137	110				110							
Complaints issued	3,983	3,064	2,335	286	144		11	8	5	36	93	107	39
Backpay specifications issued	103	73	61	9	0		0	0	0	0	0	2	1
Hearings completed, total	1,512	1,120	811	89	35	69	2	2	0	6	26	72	8
Initial ULP hearings	1,444	1,075	776	81	35	69	2	2	0	6	26	70	8
Backpay hearings	44	28	23	5	0		0	0	0	0	0	0	0
Other hearings	24	17	12	3	0		0	0	0	0	0	2	0
Decisions by administrative law judges, total	1,299	980	747	84	31		4	1	0	7	25	73	8
Initial ULP decisions	1,226	926	707	75	30		4	1	0	6	24	71	8
Backpay decisions	47	33	25	6	0		0	0	0	0	0	2	0
Supplemental decisions	26	21	15	3	1		0	0	0	1	1	0	0
Decisions and orders by the Board, total	1,756	1,302	909	138	56	67	10	1	2	16	36	46	21
Upon consent of parties													
Initial decisions	210	135	56	30	25		0	0	0	6	7	1	10
Supplemental decisions	10	4	2	2	0		0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed)													
Initial ULP decisions	371	303	240	29	10		1	0	0	2	5	14	2
Backpay decisions	5	5	5	0	0		0	0	0	0	0	0	0
Contested													
Initial ULP decisions	1,073	789	566	62	18	67	7	1	0	7	23	31	7
Decisions based on stipulated record	31	25	13	3	3		2	0	2	1	0	0	1
Supplemental ULP decisions	10	7	5	2	0		0	0	0	0	0	0	0
Backpay decisions	46	34	22	10	0		0	0	0	0	1	0	1

[1] See Glossary for definitions of terms

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1975 [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	3,042	2,759	2,508	106	145	12
Initial hearings	2,733	2,459	2,232	98	129	12
Hearings on objections and/or challenges	309	300	276	8	16	0
Decisions issued, total	2,597	2,428	2,218	96	114	7
By regional directors	2,390	2,243	2,047	82	114	7
Elections directed	2,016	1,894	1,734	66	94	6
Dismissals on record	374	349	313	16	20	1
By Board	207	185	171	14	0	0
Transferred by regional directors for initial decision	117	101	90	11	0	0
Elections directed	86	76	68	8	0	0
Dismissals on record	31	25	22	3	0	0
Review of regional directors' decisions: Requests for review received	602	550	519	12	16	3
Withdrawn before request ruled upon	24	23	23	0	0	0
Board action on requests ruled upon, total	536	491	465	12	14	2
Granted	124	112	109	2	1	1
Denied	392	369	347	9	13	1
Remanded	20	10	9	1	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	90	84	81	3	0	0
Regional directors' decision:						
Affirmed	47	44	41	3	0	0
Modified	18	16	16	0	0	0
Reversed	25	24	24	0	0	0
Outcome:						
Election directed	36	31	30	1	0	0
Dismissals on record	24	19	19	0	0	0

[1] See Glossary for definitions of terms.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1975 [1]—Contd.

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
Decisions on objections and/or challenges, total	1,249	1,203	1,118	43	42	14
By regional directors	359	342	312	17	13	13
By Board	890	861	806	26	29	1
In stipulated elections	861	833	778	26	29	1
No exceptions to regional directors' reports	510	497	449	21	27	0
Exceptions to regional directors' reports	351	336	329	5	2	1
In directed elections (after transfer by regional director)	21	20	20	0	0	0
Review of Regional directors' supplemental decisions:						
Request for review received	57	49	45	3	1	2
Withdrawn before request ruled upon	2	2	2	0	0	0
Board action on requests ruled upon, total	50	42	38	3	1	2
Granted	13	13	12	1	0	0
Denied	31	23	21	1	1	1
Remanded	6	6	5	1	0	1
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	8	8	8	0	0	0
Regional directors' decisions:						
Affirmed	3	3	3	0	0	0
Modified	3	3	3	0	0	0
Reversed	2	2	2	0	0	0

[1] See Glossary for definitions of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1975 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
earings completed	120	15	98
cision issued after hearing	126	15	96
By regional directors	111	12	89
By Board	15	3	7
Transferred by regional directors for initial decision	10	3	3
Review of regional directors' decisions	5	0	4
Requests for review received	13	2	11
Withdrawn before request ruled upon	1	0	1
Board action on requests ruled upon, total	8	1	7
Granted	2	0	2
Denied	5	1	4
Remanded	1	0	1
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	5	0	4
Regional directors' decisions			
Affirmed	5	0	4
Modified	0	0	0
Reversed	0	0	0

[1] See Glossary for definitions of terms

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1975 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A By number of cases involved	[2] 8,044												
Notice posted	3,970	2,826	1,946	100	2	525	253	1,144	752	113	0	180	99
Recognition or other assistance withdrawn	60	60	39	3	0	13	5						
Employer-dominated union disestablished	33	33	24	0	0	5	4						
Employees offered reinstatement	1,532	1,532	1,035	36	0	286	175						
Employees placed on preferential hiring list	91	91	82	1	0	6	2						
Hiring hall rights restored	46							46	37	2	0	6	1
Objections to employment withdrawn	61							61	38	1	0	18	4
Picketing ended	657							657	599	27	0	22	9
Work stoppage ended	199							199	191	2	0	2	4
Collective bargaining begun	1,624	1,466	1,212	31	1	127	95	158	135	1	0	5	17
Backpay distributed	2,249	2,070	1,536	72	0	307	155	179	83	20	0	29	47
Reimbursement of fees, dues, and fines	294	152	91	11	0	30	20	142	56	20	0	44	22
Other conditions of employment improved	1,718	1,086	1,075	1	0	8	2	632	627	1	0	2	2
Other remedies	37	27	23	0	0	4	0	10	10	0	0	0	0

B. By number of employees affected													
Employees offered reinstatement, total	3,816	3,816	2,682	113	0	518	503						
Accepted	2,608	2,608	2,003	58	0	244	303						
Declined	1,208	1,208	679	55	0	274	200						
Employees placed on preferential hiring list	480	480	460	3	0	10	7						
Hiring hall rights restored	69							69	58	6	0	4	1
Objections to employment withdrawn	98							98	70	5	0	16	7
Employees receiving backpay													
From either employer or union	7,393	6,948	4,623	405	0	1,052	868	445	216	6	0	24	199
From both employer and union	12	12	5	0	0	7	0	12	5	0	0	7	0
Employees reimbursed for fees, dues, and fines													
From either employer or union	6,227	3,212	1,714	432	0	630	436	3,015	1,003	721	0	861	430
From both employer and union	133	133	47	0	0	86	0	133	47	0	0	86	0
C By amounts of monetary recovery, total	$12,019,170	$11,041,610	$6,065,640	$843,220	0	$2,055,860	$2,076,890	$977,560	$313,120	$126,400	0	$375,460	$162,580
Backpay (includes all monetary payments except fees, dues, and fines)	11,286,160	10,745,000	5,809,150	838,460	0	2,031,320	2,066,070	541,160	285,470	7,310	0	95,600	152,780
Reimbursement of fees, dues, and fines	733,010	296,610	256,490	4,760	0	24,540	10,820	436,400	27,650	119,090	0	279,860	9,800

[1] See Glossary for definitions of terms Data in this table are based on unfair labor practice cases that were closed during fiscal year 1975 after the company and/or union had satisfied all remedial action requirements

[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1975 [1]

Industrial group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Food and kindred products	1,908	1,292	844	390	39	7	4	0	8	591	521	25	45	5	3	17
Tobacco manufactures	23	19	12	6	1	0	0	0	0	4	4	0	0	0	0	0
Textile mill products	380	293	237	51	2	0	0	0	3	84	67	5	12	2	0	1
Apparel and other finished products made from fabric and similar materials	551	418	288	103	12	1	2	0	12	129	90	23	16	2	0	2
Lumber and wood products (except furniture)	610	372	298	56	15	2	0	0	1	226	195	14	17	5	1	6
Furniture and fixtures	521	374	281	83	9	0	0	0	1	139	125	5	9	1	1	6
Paper and allied products	572	426	309	98	13	2	2	0	2	138	117	3	18	3	0	5
Printing, publishing, and allied products	1,368	941	670	209	25	31	2	0	4	400	320	30	50	5	2	20
Chemicals and allied products	762	489	339	112	34	3	0	0	1	263	225	10	28	3	2	5
Petroleum refining and related industries	349	252	160	44	28	6	1	0	13	90	70	7	13	1	2	4
Rubber and miscellaneous plastic products	725	461	354	95	8	4	0	0	0	258	214	10	34	0	0	6
Leather and leather products	144	105	82	21	1	0	0	0	1	38	30	2	6	0	1	0
Stone, clay, glass, and concrete products	811	591	383	163	26	8	3	0	8	211	178	9	24	3	1	5
Primary metal industries	1,386	1,125	725	371	15	11	1	0	2	248	214	8	26	4	0	9
Fabricated metal products (except machinery and transportation equipment)	1,711	1,213	830	337	33	7	0	0	6	480	416	15	49	10	2	6
Machinery (except electrical)	1,681	1,190	866	293	15	10	0	0	6	458	384	22	52	12	3	18
Electrical and electronic machinery, equipment, and supplies	1,317	990	696	265	19	7	0	0	3	304	278	8	18	7	5	11
Aircraft and parts	331	274	169	102	3	0	0	0	0	54	49	1	4	0	2	1
Ship and boat building and repairing	161	133	82	50	1	0	0	0	0	25	21	0	4	0	0	3
Automotive and other transportation equipment	1,262	966	620	329	15	1	0	0	1	284	247	12	25	5	4	3
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks	325	217	165	36	13	3	0	0	0	105	90	6	9	1	0	2
Miscellaneous manufacturing industries	1,187	858	503	304	33	5	6	0	7	315	282	13	20	3	2	9
Manufacturing	18,085	12,999	8,913	3,518	360	108	21	0	79	4,844	4,137	228	479	72	31	139

Metal mining	99	69	48	19	2	0	0	0	0	27	23	0	4	0	1	2
Coal mining	353	280	162	54	60	0	1	0	3	72	62	5	5	0	0	1
Oil and gas extraction	48	20	16	2	0	1	0	0	1	27	26	0	1	1	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	116	74	48	14	9	3	0	0	0	42	34	6	2	0	0	0
Mining	616	443	274	89	71	4	1	0	4	168	145	11	12	1	1	3
Construction	4,872	4,414	1,461	1,216	1,110	357	22	0	248	447	342	84	21	5	2	4
Wholesale trade	2,219	1,273	921	253	69	8	3	0	19	919	753	74	92	13	2	12
Retail trade	4,855	2,878	2,210	456	104	14	17	0	77	1,914	1,480	207	227	46	3	14
Finance, insurance and real estate	599	343	269	42	18	3	1	0	10	249	224	10	15	2	1	4
U.S. Postal Service	868	834	665	168	1	0	0	0	0	34	30	1	3	0	0	0
Local and suburban transit and interurban highway passenger transportation	409	272	192	68	9	0	1	0	2	132	113	4	15	5	0	0
Motor freight transportation and warehousing	3,377	2,435	1,595	671	119	13	15	0	22	909	770	64	75	16	3	14
Water transportation	330	286	120	125	18	14	9	0	0	43	41	0	2	0	0	1
Other transportation	130	78	47	19	10	0	0	0	2	51	43	3	5	0	0	1
Communication	864	555	415	108	20	10	1	0	1	293	245	11	37	6	2	8
Electric, gas, and sanitary services	611	404	273	91	23	17	0	0	0	181	158	7	16	1	6	19
Transportation, communication, and other utilities	5,721	4,030	2,642	1,082	199	54	26	0	27	1,609	1,370	89	150	28	11	43
Hotels, rooming houses, camps, and other lodging places	784	559	409	115	20	2	6	0	7	236	195	17	24	6	0	3
Personal services	204	128	92	31	3	0	0	0	2	70	55	5	10	5	0	1
Automotive repair, services, and garages	372	201	148	38	10	0	0	0	5	168	139	12	17	2	1	0
Motion pictures	292	207	123	74	4	3	3	0	0	82	79	1	2	0	1	2
Amusement and recreation services (except motion pictures)	276	184	107	46	17	3	11	0	0	90	73	9	8	2	0	2
Health services	2,948	1,423	1,210	165	27	10	0	60	11	1,451	1,332	76	43	15	2	57
Educational services	350	202	149	28	22	2	1	0	0	134	123	5	6	0	1	13
Membership organizations	218	178	104	64	7	0	3	0	0	30	20	1	9	2	0	0
Business services	1,319	750	502	169	47	15	5	0	12	544	462	43	39	9	4	12
Miscellaneous repair services	92	49	39	7	2	1	0	0	0	42	33	2	7	1	0	0
Legal services	5	4	4	0	0	0	0	0	0	1	1	0	0	0	0	0
Museums, art galleries, botanical and zoological gardens	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0
Social services	108	67	50	11	3	1	0	0	2	38	31	5	2	0	1	2
Services	7,050	4,014	2,939	748	162	37	29	60	39	2,886	2,543	176	167	42	10	98
Public administration	38	25	17	3	4	1	0	0	0	13	13	0	0	0	0	0
Total, all industrial groups	44,923	31,253	20,311	7,575	2,098	586	120	60	503	13,083	11,037	880	1,166	209	61	317

[1] See Glossary for definitions of terms.
[2] Source Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, 1972.

594-380 O - 75 - 15

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1975 [1]

Division and State [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	112	68	51	13	4	0	0	0	0	42	38	2	2	1	0	1
New Hampshire	92	63	34	21	3	4	1	0	0	29	25	2	2	0	0	0
Vermont	43	22	20	1	1	0	0	0	0	21	19	0	2	0	0	0
Massachusetts	1,288	917	578	225	60	42	3	1	8	346	303	23	20	9	0	16
Rhode Island	154	109	67	30	9	1	0	0	2	39	33	6	0	4	0	2
Connecticut	480	308	198	86	12	5	0	1	6	163	140	10	13	3	1	5
New England	2,169	1,487	948	376	89	52	4	2	16	640	558	43	39	17	1	24
New York	3,925	2,659	1,404	883	198	63	23	11	77	1,187	1,034	86	67	15	3	61
New Jersey	1,555	1,040	602	314	61	38	6	0	19	499	449	17	33	12	2	2
Pennsylvania	2,819	1,980	1,205	533	142	66	2	1	31	818	733	34	51	3	3	15
Middle Atlantic	8,299	5,679	3,211	1,730	401	167	31	12	127	2,504	2,216	137	151	30	8	78
Ohio	2,782	1,981	1,288	535	91	39	0	2	26	760	683	26	51	20	4	17
Indiana	1,918	1,582	1,037	454	59	17	2	0	14	324	267	19	38	7	0	4
Illinois	3,107	2,447	1,472	774	139	19	6	2	35	626	521	52	53	13	4	17
Michigan	2,057	1,338	1,011	235	60	10	1	5	16	692	572	40	80	16	1	10
Wisconsin	925	613	439	120	43	4	1	2	4	301	244	12	45	2	1	8
East North Central	10,789	7,962	5,247	2,118	392	89	10	11	95	2,703	2,287	149	267	58	10	56
Iowa	403	229	140	45	25	14	0	0	5	171	143	7	21	0	0	3
Minnesota	555	284	204	46	26	4	1	0	3	265	226	17	22	4	0	2
Missouri	1,476	1,118	737	241	91	22	1	1	25	341	258	32	51	7	2	8
North Dakota	88	39	31	5	2	1	0	0	0	49	43	4	2	0	0	0
South Dakota	79	38	28	6	2	1	0	0	1	40	23	12	5	0	1	0
Nebraska	172	112	81	21	9	0	0	1	0	58	50	4	4	0	0	2
Kansas	342	245	175	49	16	3	0	0	2	94	77	9	8	1	0	2
West North Central	3,115	2,065	1,396	413	171	45	2	2	36	1,018	820	85	113	12	3	17
Delaware	123	66	43	11	9	3	0	0	0	57	49	3	5	0	0	0
Maryland	708	488	311	144	21	6	3	1	2	208	188	4	16	2	2	8
District of Columbia	231	143	97	30	8	1	1	0	6	81	71	4	6	0	1	6
Virginia	474	359	250	71	32	1	2	0	3	110	100	5	5	1	0	4

West Virginia	390	298	195	81	11	10	0	0	1	89	80	1	8	3	0	0
North Carolina	407	314	260	52	1	0	0	0	1	92	80	3	9	0	0	1
South Carolina	220	170	136	25	6	0	3	0	0	46	39	2	5	0	2	2
Georgia	576	410	304	59	35	6	2	0	4	165	145	3	17	0	1	0
Florida	971	686	495	124	29	24	4	3	7	278	239	7	32	0	2	5
South Atlantic	4,100	2,934	2,091	597	152	51	15	4	24	1,126	991	32	103	6	8	26
Kentucky	640	465	334	99	24	4	0	3	1	173	151	8	14	0	0	2
Tennessee	899	667	487	141	26	9	0	0	4	226	203	7	16	0	2	4
Alabama	444	288	208	53	23	3	0	0	1	153	138	5	10	0	0	3
Mississippi	217	158	137	17	3	1	0	0	0	54	50	2	2	0	1	4
East South Central	2,200	1,578	1,166	310	76	17	0	3	6	606	542	22	42	0	3	13
Arkansas	277	198	136	40	15	4	0	0	3	76	68	4	4	0	1	2
Louisiana	581	379	243	88	25	14	2	0	7	191	173	4	14	4	3	4
Oklahoma	419	282	192	51	18	2	1	1	17	132	109	10	13	2	1	2
Texas	1,743	1,308	911	260	94	20	1	7	15	421	342	44	35	1	4	9
West South Central	3,020	2,167	1,482	439	152	40	4	8	42	820	692	62	66	7	9	17
Montana	212	128	87	23	14	3	0	0	1	78	60	11	7	2	0	4
Idaho	133	73	52	10	7	3	0	0	1	55	36	6	13	2	0	3
Wyoming	91	67	48	11	8	0	0	0	0	24	21	1	2	0	0	0
Colorado	615	413	302	78	23	3	2	0	5	198	165	17	16	1	0	3
New Mexico	300	197	143	28	18	1	0	0	7	102	91	6	5	1	0	0
Arizona	473	344	209	72	34	6	3	9	11	126	112	6	8	0	0	3
Utah	154	83	55	12	15	0	0	0	1	70	59	5	6	0	0	1
Nevada	415	321	213	84	15	0	5	0	4	92	68	9	15	0	0	2
Mountain	2,393	1,626	1,109	318	134	16	10	9	30	745	612	61	72	6	0	16
Washington	1,098	676	449	127	65	11	5	0	19	384	260	54	70	14	5	19
Oregon	536	284	161	39	61	9	4	0	10	233	175	27	31	9	2	8
California	6,181	4,267	2,738	949	369	84	33	7	87	1,824	1,435	194	195	44	10	36
Alaska	220	128	72	44	7	0	0	0	5	90	80	7	3	0	0	2
Hawaii	358	217	126	71	11	5	2	0	2	138	129	3	6	1	1	1
Guam	13	3	3	0	0	0	0	0	0	10	9	0	1	0	0	0
Pacific	8,406	5,575	3,549	1,230	513	109	44	7	123	2,679	2,088	285	306	68	18	66
Puerto Rico	394	174	107	43	18	0	0	2	4	211	202	4	5	4	1	4
Virgin Islands	38	6	5	1	0	0	0	0	0	31	29	0	2	1	0	0
Outlying areas	432	180	112	44	18	0	0	2	4	242	231	4	7	5	1	4
Total, all States and areas	44,923	31,253	20,311	7,575	2,098	586	120	60	503	13,083	11,037	880	1,166	209	61	317

[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 1975 [1]

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	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Connecticut	480	308	198	86	12	5	0	1	6	163	140	10	13	3	1	5
Maine	112	68	51	13	4	0	0	0	0	42	38	2	2	1	0	1
Massachusetts	1,288	917	578	225	60	42	3	1	8	346	303	23	20	9	0	16
New Hampshire	92	63	34	21	3	4	1	0	0	29	25	2	2	0	0	0
Rhode Island	154	109	67	30	9	1	0	0	2	39	33	6	0	4	0	2
Vermont	43	22	20	1	1	0	0	0	0	21	19	0	2	0	0	0
Region I	2,169	1,487	948	376	89	52	4	2	16	640	558	43	39	17	1	24
Delaware	123	66	43	11	9	3	0	0	0	57	49	3	5	0	0	0
New Jersey	1,555	1,040	602	314	61	38	6	0	19	499	449	17	33	12	2	2
New York	3,925	2,659	1,404	883	198	63	23	11	77	1,187	1,034	86	67	15	3	61
Puerto Rico	394	174	107	43	18	0	0	2	4	211	202	4	5	4	1	4
Virgin Islands	38	6	5	1	0	0	0	0	0	31	29	0	2	1	0	0
Region II	6,035	3,945	2,161	1,252	286	104	29	13	100	1,985	1,763	110	112	32	6	67
District of Columbia	231	143	97	30	8	1	1	0	6	81	71	4	6	0	1	6
Maryland	708	488	311	144	21	6	3	1	2	208	188	4	16	2	2	8
Pennsylvania	2,819	1,980	1,205	533	142	66	2	1	31	818	733	34	51	3	3	15
Virginia	474	359	250	71	32	1	2	0	3	110	100	5	5	1	0	4
West Virginia	390	298	195	81	11	10	0	0	1	89	80	1	8	3	0	0
Region III	4,622	3,268	2,058	859	214	84	8	2	43	1,306	1,172	48	86	9	6	33
Alabama	444	288	208	53	23	3	0	0	1	153	138	5	10	0	0	3
Florida	971	686	495	124	29	24	4	3	7	278	239	7	32	0	2	5
Georgia	576	410	304	59	35	6	2	0	4	165	145	3	17	0	1	0
Kentucky	640	465	334	99	24	4	0	3	1	173	151	8	14	0	0	2
Mississippi	217	158	137	17	3	1	0	0	0	54	50	2	2	0	1	4
North Carolina	407	314	260	52	1	0	0	0	1	92	80	3	9	0	0	1
South Carolina	220	170	136	25	6	0	3	0	0	46	39	2	5	0	2	2
Tennessee	899	667	487	141	26	9	0	0	4	226	203	7	16	0	2	4
Region IV	4,374	3,158	2,361	570	147	47	9	6	18	1,187	1,045	37	105	0	8	21

Illinois	3,107	2,447	1,472	774	139	19	6	2	35	626	521	52	53	13	4	17
Indiana	1,918	1,583	1,037	454	59	17	2	0	14	324	267	19	38	7	0	4
Michigan	2,057	1,338	1,011	235	60	10	1	5	16	692	572	40	80	16	1	10
Minnesota	555	284	204	46	26	4	1	0	3	265	226	17	22	4	0	2
Ohio	2,782	1,981	1,288	535	91	39	0	2	26	760	683	26	51	20	4	17
Wisconsin	925	613	439	120	43	4	1	2	4	301	244	12	45	2	1	8
Region V	11,344	8,246	5,451	2,164	418	93	11	11	98	2,968	2,513	166	289	62	10	58
Arkansas	277	198	136	40	15	4	0	0	3	76	68	4	4	0	1	2
Louisiana	581	379	243	88	25	14	2	0	7	191	173	4	14	4	3	4
New Mexico	300	197	143	28	18	1	0	0	7	102	91	6	5	1	0	0
Oklahoma	419	282	192	51	18	2	1	1	17	132	109	10	13	2	1	2
Texas	1,743	1,308	911	260	94	20	1	7	15	421	342	44	35	1	4	9
Region VI	3,320	2,364	1,625	467	170	41	4	8	49	922	783	68	71	8	9	17
Iowa	403	229	140	45	25	14	0	0	5	171	143	7	21	0	0	3
Kansas	342	245	175	49	16	3	0	0	2	94	77	9	8	1	0	2
Missouri	1,476	1,118	737	241	91	22	1	1	25	341	258	32	51	7	2	8
Nebraska	172	112	81	21	9	0	0	1	0	58	50	4	4	0	0	2
Region VII	2,393	1,704	1,133	356	141	39	1	2	32	664	528	52	84	8	2	15
Colorado	615	413	302	78	23	3	2	0	5	198	165	17	16	1	0	3
Montana	212	128	87	23	14	3	0	0	1	78	60	11	7	2	0	4
North Dakota	88	39	31	5	2	1	0	0	0	49	43	4	2	0	0	0
South Dakota	79	38	28	6	2	1	0	0	1	40	23	12	5	0	1	0
Utah	154	83	55	12	15	0	0	0	1	70	59	5	6	0	0	1
Wyoming	91	67	48	11	8	0	0	0	0	24	21	1	2	0	0	0
Region VIII	1,239	768	551	135	64	8	2	0	8	459	371	50	38	3	1	8
Arizona	473	344	209	72	34	6	3	9	11	126	112	6	8	0	0	3
California	6,181	4,267	2,738	949	369	84	33	7	87	1,824	1,435	194	195	44	10	36
Hawaii	358	217	126	71	11	5	2	0	2	138	129	3	6	1	1	1
Guam	13	3	3	0	0	0	0	0	0	10	9	0	1	0	0	0
Nevada	415	321	213	84	15	0	5	0	4	92	68	9	15	0	0	2
Region IX	7,440	5,152	3,289	1,176	429	95	43	16	104	2,190	1,753	212	225	45	11	42
Alaska	220	128	72	44	7	0	0	0	5	90	80	7	3	0	0	2
Idaho	133	73	52	10	7	3	0	0	1	55	36	6	13	2	0	3
Oregon	536	284	161	39	61	9	4	0	10	233	175	27	31	9	2	8
Washington	1,098	676	449	127	65	11	5	0	19	384	260	54	70	14	5	19
Region X	1,987	1,161	734	220	140	23	9	0	35	762	551	94	117	25	7	32
Total, all Federal regions	44,923	31,253	20,311	7,575	2,098	586	120	60	503	13,083	11,037	880	1,166	209	61	317

[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 1975[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	29,808	100 0	.....	19,144	100 0	7,419	100 0	2,101	100 0	557	100.0	81	100 0	25	100 0	481	100 0
Agreement of the parties	6,740	22 6	100 0	4,576	23 9	1,032	13 9	915	43 5	6	1 1	24	29 6	14	56 0	173	36 0
Informal settlement	6,506	21 8	96 5	4,461	23 3	976	13 1	864	41.1	5	0.9	20	24 7	12	48 0	168	34 9
Before issuance of complaint	4,960	16 6	73.6	3,244	17 0	812	10 9	742	35 3		.....	15	18 5	12	48.0	135	28 1
After issuance of complaint, before opening of hearing	1,382	4 6	20.5	1,079	5 6	151	2.0	114	5.4	5	0 9	3	3 7	0	.....	30	6 3
After hearing opened, before issuance of administrative law judge's decision	164	0 6	2 4	138	0 7	13	0 2	8	0.4	0	.....	2	2.5	0	.....	3	0.6
Formal settlement	234	0 8	3 5	115	0.6	56	0 8	51	2 4	1	0.2	4	4 9	2	8 0	5	1 0
After issuance of complaint, before opening of hearing	153	0 5	2 3	69	0 4	40	0 6	34	1.6	1	0 2	4	4 9	2	8 0	3	0.6
Stipulated decision	29	0 1	0 5	12	0 1	12	0 2	4	0 2	0	.....	1	1 2	0	.....	0	.....
Consent decree	124	0 4	1 8	57	0 3	28	0 4	30	1 4	1	0 2	3	3 7	2	8 0	3	0 6
After hearing opened	81	0 3	1 2	46	0 2	16	0 2	17	0 8	0	.....	0	.....	0	.....	2	0.4
Stipulated decision	16	0 1	0 2	8	0.0	7	0 1	1	0 0	0	.....	0	.....	0	.....	0	.....
Consent decree	65	0 2	1 0	38	0 2	9	0 1	16	0 8	0	.....	0	.....	0	.....	2	0 4
Compliance with	1,078	3 6	100 0	822	4 3	163	2 2	62	3 0	13	2 3	1	1 2	0	.....	17	3 5
Administrative law judge's decision	1	0 0	0 1	1	0.0	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....
Board decision	740	2 5	68.6	553	2 9	123	1.7	44	2.2	9	1 6	0	.....	0	.....	11	2 3

Adopting administrative law judge's decision (no exceptions filed)	185	0 6	17 2	156	0 8	15	0 2	11	0.6	1	0 2	0	-------	0	-------	2	0 4
Contested	555	1.9	51 4	397	2 1	108	1 5	33	1 6	8	1 4	0	-------	0	-------	9	1.9
Circuit court of appeals decree	309	1 0	28 7	244	1 3	38	0 5	17	0 8	4	0 7	0	-------	0	-------	6	1 2
Supreme Court action	28	0 1	2 6	24	0 1	2	0 0	1	0.0	0	-------	1	1 2	0	-------	0	-------
Withdrawal	10,606	35 6	100 0	6,759	35 3	2,839	38 3	787	37 5	10	1 8	25	30 9	9	36 0	177	36 8
Before issuance of complaint	10,347	34.8	97 6	6,585	34.4	2,792	37 7	765	36 4	(2)	-------	25	30 9	9	36.0	171	35.6
After issuance of complaint, before opening of hearing	215	0 7	2 0	141	0 7	44	0.6	20	1.0	8	1 4	0	-------	0	-------	2	0 4
After hearing opened, before administrative law judge's decision	23	0 1	0 2	16	0 1	1	0 0	2	0.1	0	-------	0	-------	0	-------	4	0 8
After administrative law judge's decision, before Board decision	11	0 0	0 1	10	0 1	1	0 0	0	-------	0	-------	0	-------	0	-------	0	-------
After Board or court decision	10	0 0	0 1	7	0 0	1	0 0	0	-------	2	0.4	0	-------	0	-------	0	-------
Dismissal	10,855	36.4	100 0	6,986	36 5	3,385	45.6	337	16 0	0	-------	31	38.3	2	8 0	114	23.7
Before issuance of complaint	10,504	35 2	96.8	6,725	35 1	3,323	44.8	313	14.9	(2)	-------	29	35.9	2	8 0	112	23.3
After issuance of complaint, before opening of hearing	23	0 1	0 2	17	0 1	4	0.0	2	0.1	0	-------	0	-------	0	-------	0	-------
After hearing opened, before administrative law judge's decision	6	0 0	0 1	4	0 0	2	0 0	0	-------	0	-------	0	-------	0	-------	0	-------
By administrative law judge's decision	2	0 0	0 0	2	0 0	0	-------	0	-------	0	-------	0	-------	0	-------	0	-------
By Board decision	287	1 0	2 6	220	1.2	42	0 6	22	1.0	0	-------	1	1 2	0	-------	2	0 4
Adopting administrative law judge's decision (no exceptions filed)	89	0 3	0 8	74	0 4	11	0 2	4	0.2	0	-------	0	-------	0	-------	0	-------
Contested	198	0 7	1 8	146	0 8	31	0 4	18	0.8	0	-------	1	1.2	0	-------	2	0 4
By circuit court of appeals decree	23	0 1	0 2	17	0.1	5	0 1	0	-------	0	-------	1	1.2	0	-------	0	-------
By Supreme Court action	10	0 0	0 1	1	0.0	9	0.1	0	-------	0	-------	0	-------	0	-------	0	-------
10(k) actions (see table 7A for details of dispositions)	528	1 8	-------	-------	-------	-------	-------	-------	-------	528	94.8	-------	-------	-------	-------	-------	-------
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	1	0 0	-------	1	0 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 1975 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	528	100 0
Agreement of the parties—informal settlement	205	38 8
Before 10(k) notice	188	35 6
After 10(k) notice, before opening of 10(k) hearing	16	3 0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0 2
Compliance with Board decision and determination of dispute	21	4 0
Withdrawal	231	43 8
Before 10(k) notice	194	36 8
After 10(k) notice, before opening of 10(k) hearing	17	3 2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----------
After Board decision and determination of dispute	20	3.8
Dismissal	71	13 4
Before 10(k) notice	58	11.0
After 10(k) notice, before opening of 10(k) hearing	0	----------
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----------
By Board decision and determination of dispute	13	2 4

[1] See Glossary for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1975[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG 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	Number of cases	Percent of cases closed
Tota lnumber of cases closed	29,808	100 0	19,144	100.0	7,419	100 0	2,101	100.0	557	100 0	81	100.0	25	100 0	481	100.0
Before issuance of complaint	26,339	88 4	16,554	86 5	6,927	93 4	1,820	86.6	528	94 8	69	85 2	23	92.0	418	86.9
After issuance of complaint, before opening of hearing	1,773	5 9	1,306	6 8	239	3 2	170	8 1	14	2 5	7	8.7	2	8 0	35	7.3
After hearing opened, before issuance of administrative law judge's decision	274	0 9	204	1 1	32	0 4	27	1.3	0	-------	2	2.5	0	-------	9	1.9
After administrative law judge's decision, before issuance of Board decision	14	0 0	13	0 1	1	0 0	0	-------	0	-------	0	-------	0	-------	0	-------
After Board order adopting administrative law judge's decision in absence of exceptions	274	0 9	230	1.2	26	0 4	15	0 8	1	0.2	0	-------	0	-------	2	0 4
After Board decision, before circuit court decree	764	2 6	551	2.9	140	1.9	51	2.4	10	1.8	1	1 2	0	-------	11	2.3
After circuit court decree, before Supreme Court action	332	1 1	261	1.4	43	0.6	17	0 8	4	0.7	1	1.2	0	-------	6	1.2
After Supreme Court action	38	0.2	25	0.1	11	0.1	1	0.0	0	-------	1	1.2	0	-------	0	-------

[1] See Glossary for definitions of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1975 [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	13,325	100 0	11,275	100 0	898	100 0	1,152	100 0	203	100 0
Before issuance of notice of hearing	5,086	38 2	3,928	34 8	507	56 4	651	56 5	125	61 6
After issuance of notice, before close of hearing	5,696	42 7	5,079	45 0	253	28 2	364	31 6	11	5 4
After hearing closed, before issuance of decision	190	1 4	145	1 3	33	3 7	12	1 0	2	1 0
After issuance of regional director's decision	2,233	16 8	2,015	17 9	94	10 5	124	10 8	63	31 0
After issuance of Board decision	120	0 9	108	1 0	11	1 2	1	0 1	2	1 0

[1] See Glossary for definitions of terms

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1975 [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	13,325	100 0	11,275	100 0	898	100.0	1,152	100 0	203	100 0
Certification issued, total	8,664	65.0	7,740	68.6	393	43.8	531	46.1	110	54 2
After Consent election	1,031	7.7	891	7.9	70	7 8	70	6 1	29	14.3
Before notice of hearing	590	4 4	497	4.4	48	5 3	45	3 9	28	13.8
After notice of hearing, before hearing closed	438	3 3	391	3 5	22	2 5	25	2 2	1	0.5
After hearing closed, before decision	3	0 0	3	0.0	0	----	0	----	0	----
Stipulated election	5,886	44.2	5,285	46 9	236	26.3	365	31 7	17	8.4
Before notice of hearing	2,237	16 8	1,942	17 2	127	14.2	168	14.6	14	6.9
After notice of hearing, before hearing closed	3,607	27.1	3,308	29 4	108	12 0	191	16.6	3	1.5
After hearing closed, before decision	42	0 3	35	0 3	1	0 1	6	0 5	0	----
Expedited election	18	0.1	5	0 0	13	1.4	0	----	0	----
Regional director directed election	1,651	12 4	1,489	13.2	66	7.4	96	8 3	62	30.5
Board directed election	78	0 6	70	0 6	8	0 9	0	----	2	1.0
By withdrawal, total	3,459	26 0	2,717	24.1	344	38 3	398	34 5	78	38 4
Before notice of hearing	1,643	12 3	1,157	10 3	212	23 6	274	23 8	72	35.5
After notice of hearing, before hearing closed	1,499	11.3	1,286	11 3	95	10 6	118	10 2	5	2.4
After hearing closed, before decision	91	0 7	63	0 6	27	3.	1	0 1	1	0.5
After regional director's decision and direction of election	216	1 6	202	1 8	9	1.	5	0 4	0	----
After Board decision and direction of election	10	0 1	9	0 1	1	0.1	0	----	0	----
By dismissal, total	1,202	9.0	818	7 3	161	17 9	223	19.4	15	7.4
Before notice of hearing	598	4.6	327	2 9	107	11 9	164	14.3	11	5.4
After notice of hearing, before hearing closed	152	1 1	94	0 8	28	3 1	30	2 6	2	1 0
After hearing closed, before decision	54	0.4	44	0.4	5	0 6	5	0 4	1	0.5
By regional director's decision	366	2.7	324	2 9	19	2 1	23	2.0	1	0 5
By Board decision	32	0 2	29	0 3	2	0.2	1	0 1	0	----

[1] See Glossary for definitions of terms.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1975

	AC	UC
Total, all	66	305
Certification amended or unit clarified	37	32
Before hearing	27	6
By regional director's decision	27	6
By Board decision	0	0
After hearing	10	26
By regional director's decision	9	26
By Board decision	1	0
Dismissed	11	123
Before hearing	4	29
By regional director's decision	4	29
By Board decision	0	0
After hearing	7	94
By regional director's decision	5	86
By Board decision	2	8
Withdrawn	18	150
Before hearing	15	136
After hearing	3	14

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1975 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board-directed	Regional director-directed	Expedited elections under 8(b)(7)(C)
All types, total						
Elections	8,687	1,011	5,872	82	1,707	15
Eligible voters	576,536	30,588	398,888	10,221	136,622	217
Valid votes	508,031	26,412	352,033	8,815	120,595	176
RC cases						
Elections	7,729	865	5,294	75	1,491	4
Eligible voters	533,576	27,416	369,536	9,950	126,584	90
Valid votes	471,933	23,688	326,851	8,586	112,731	77
RM cases						
Elections	332	55	205	7	54	11
Eligible voters	11,527	988	9,221	271	920	127
Valid votes	9,953	835	8,028	229	762	99
RD cases						
Elections	516	72	355	0	89	0
Eligible voters	23,817	1,637	18,331	0	3,849	0
Valid votes	20,110	1,412	15,632	0	3,066	0
UD cases.						
Elections	110	19	18	0	73	----
Eligible voters	7,616	547	1,800	0	5,269	----
Valid votes	6,035	477	1,522	0	4,036	----

[1] See Glossary for definitions of terms.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1975

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	8,916	94	245	8,577	8,052	92	231	7,729	338	2	4	332	526	0	10	516
Rerun required			182				175				1				6	
Runoff required			63				56				3				4	
Consent elections	1,008	5	11	992	880	5	10	865	56	0	1	55	72	0	0	72
Rerun required			8				8				0				0	
Runoff required			3				2				1				0	
Stipulated elections	6,094	62	178	5,854	5,520	60	166	5,294	209	2	2	205	365	0	10	355
Rerun required			132				126				0				6	
Runoff required			46				40				2				4	
Regional director-directed	1,713	27	52	1,634	1,569	27	51	1,491	55	0	1	54	89	0	0	89
Rerun required			39				38				1				0	
Runoff required			13				13				0				0	
Board-directed	86	0	4	82	79	0	4	75	7	0	0	7	0	0	0	0
Rerun required			3				3				0				0	
Runoff required			1				1				0				0	
Expedited—sec. 8(b)(7)(C)	15	0	0	15	4	0	0	4	11	0	0	11	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 1975

	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	8,916	863	9 7	294	3 3	161	1 8	1,024	11 5	455	5.1
By type of case.											
In RC cases	8,052	807	10.0	272	3.4	146	1.8	953	11 8	418	5 2
In RM cases	338	21	6 2	11	3 3	8	2 4	29	8 6	19	5 6
In RD cases	526	35	6.7	11	2 1	7	1 3	42	8 0	18	3 4
By type of election											
Consent elections	1,008	51	5.1	15	1.5	8	.8	59	5 9	23	2 3
Stipulated elections	6,094	593	9 7	199	3 3	112	1.8	705	11 5	311	5.1
Expedited elections	15	2	13 3	0		0		2	13 3	0	
Regional director-directed elections	1,713	212	12 4	69	4 0	35	2 0	247	14 4	104	6 1
Board-directed elections	86	5	5.8	11	12 8	6	7.0	11	12 8	17	19.8

[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 1975 [1]

	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	1,230	100 0	477	38 8	725	58 9	28	2 3
By type of case								
RC cases	1,145	100 0	466	40 7	655	57.2	24	2 1
RM cases	35	100.0	5	14.3	27	77 1	3	8 6
RD cases	50	100.0	6	12.0	43	86 0	1	2 0
By type of election								
Consent elections	74	100 0	33	44 6	40	54 1	1	1 3
Stipulated elections	847	100 0	315	37 2	517	61.0	15	1 8
Expedited elections	2	100 0	0	--------	2	100 0	0	--------
Regional director-directed elections	296	100.0	122	41 2	165	55 7	9	3 1
Board-directed elections	11	100 0	7	63 6	1	9 1	3	27 3

[1] See Glossary for definitions of terms.
[2] Objections filed by more than one party in the same case are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1975 [1]

	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	1,230	206	1,024	804	78 5	220	21.5
By type of case							
RC cases	1,145	192	953	743	78 0	210	22 0
RM cases	35	6	29	27	93.1	2	6 9
RD cases	50	8	42	34	81 0	8	19 0
By type of election							
Consent elections	74	15	59	50	84 8	9	15.2
Stipulated elections	847	142	705	544	77.2	161	22 8
Expedited elections	2	0	2	2	100 0	0	----------
Regional director-directed elections	296	49	247	198	80 2	49	19 8
Board-directed elections	11	0	11	10	90 9	1	9 1

[1] See Glossary for definitions of terms

[2] See table 11E for rerun elections held after objections were sustained In 38 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 1975 [1]

	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	178	100 0	84	47.2	94	52 8	67	37.6
By type of case:								
RC cases	171	100 0	81	47.4	90	52 6	65	38 0
RM cases	1	100 0	0	----------	1	100 0	0	----------
RD cases	6	100 0	3	50 0	3	50 0	2	33 3
By type of election								
Consent elections	8	100 0	5	62 5	3	37 5	4	50 0
Stipulated elections	128	100 0	40	31 3	88	68 7	50	39 1
Expedited elections	0	----------	0	----------	0	----------	0	----------
Regional director-directed elections	39	100 0	10	25 6	29	74 4	12	30 8
Board-directed elections	3	100 0	1	33 3	2	66 7	1	33 3

[1] See Glossary for definitions of terms

[2] Includes only final rerun elections i e , those resulting in certification Excluded from the table are four rerun elections which were conducted and subsequently set aside pursuant to sustained objections The four 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 1975

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	110	61	55.5	49	44.5	7,616	3,227	42.4	4,389	57.6	6,035	79.2	2,519	33.1
AFL–CIO unions	72	42	58.3	30	41.7	5,771	2,963	51.3	2,808	48.7	4,484	77.7	2,277	39.5
Teamsters	24	15	62.5	9	37.5	400	227	56.8	173	43.2	362	91.0	206	51.5
Other national unions	8	3	37.5	5	62.5	1,120	31	2.8	1,089	97.2	1,042	93.0	30	2.7
Other local unions	6	1	16.7	5	83.3	325	6	1.9	319	98.1	147	45.2	6	1.9

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1975 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections															
AFL-CIO	4,717	46.6	2,200	2,200				2,517	329,821	99,137	99,137				230,684
Teamsters	2,487	43.3	1,077		1,077			1,410	82,855	24,950		24,950			57,905
Other national unions	450	48.7	219			219		231	44,104	16,936			16,936		27,168
Other local unions	311	57.9	180				180	131	19,461	8,783				8,783	10,678
1-union elections	7,965	46.2	3,676	2,200	1,077	219	180	4,289	476,241	149,806	99,137	24,950	16,936	8,783	326,435
AFL-CIO v. AFL-CIO	143	64.3	92	92				51	14,601	7,290	7,290				7,311
AFL-CIO v. Teamsters	181	71.3	129	61	68			52	21,917	13,473	8,932	4,541			8,444
AFL-CIO v. national	52	59.6	31	15		16		21	6,855	3,493	2,670		823		3,362
AFL-CIO v. local	115	89.6	103	54			49	12	34,878	32,945	10,462			22,483	1,933
Teamsters v. national	19	78.9	15		7	8		4	1,371	1,197		550	647		174
Teamsters v. local	37	83.8	31		15		16	6	3,080	1,982		871		1,111	1,098
Teamsters v. Teamsters	4	100.0	4		4			0	86	86		86			0
National local	16	100.0	16			10	6	0	2,158	2,158			1,628	530	0
National v. national	5	100.0	5			5		0	243	243			243		0
Local v. local	13	92.3	12				12	1	857	648				648	209
2-union elections	585	74.9	438	222	94	39	83	147	86,046	63,515	29,354	6,048	3,341	24,772	22,531
AFL-CIO v. AFL-CIO v. AFL-CIO	2	50.0	1	1				1	1,736	136	136				1,600
AFL-CIO v. AFL-CIO v. Teamsters	4	100.0	4	0	4			0	603	603	0	603			0
AFL-CIO v. AFL-CIO v. national	1	100.0	1	1		0		0	138	138	138		0		0
AFL-CIO v. AFL-CIO v. local	5	100.0	5	3			2	0	1,597	1,597	1,448			149	0
AFL-CIO v. Teamsters v. national	3	33.3	1	0	1	0		2	137	64	0	64	0		73
AFL-CIO v. Teamsters v. local	8	100.0	8	2	5		1	0	963	963	231	396		336	0
AFL-CIO v. national v. local	1	100.0	1	0		1	0	0	870	870	0		870	0	0

AFL-CIO v AFL-CIO v national v. local	1	100 0	1	0		0	1	0	254	254	0		0	254	0
All others	2	100 0	2	0	1	0	1	0	335	335	0	62	0	273	0
3 (or more)-union elections	27	88 9	24	7	11	1	5	3	6,633	4,960	1,953	1,125	870	1,012	1,673
Total representation elections	8,577	48 2	4,138	2,429	1,182	259	268	4,439	568,920	218,281	130,444	32,123	21,147	34,567	350,639

B Elections in RC cases

AFL-CIO	4,219	49 0	2,068	2,068				2,151	307,520	90,634	90,634				216,886
Teamsters	2,214	46 1	1,020		1,020			1,194	76,493	23,461		23,416			53,032
Other national unions	426	48 6	207			207		219	42,083	16,034			16,034		26,049
Other local unions	298	58 7	175				175	123	19,092	8,502				8,502	10,590
1-union elections	7,157	48 5	3,470	2,068	1,020	207	175	3,687	445,188	138,631	90,634	23,461	16,034	8,502	306,557
AFL-CIO v AFL-CIO	140	64 3	90	90				50	14,354	7,158	7,158				7,196
AFL-CIO v Teamsters	169	70 4	119	59	60			50	21,225	12,812	8,727	4,085			8,413
AFL-CIO v national	48	56 3	27	13		14		21	6,417	3,055	2,274		781		3,362
AFL-CIO v local	104	90 4	94	49			45	10	33,425	32,298	10,189			22,109	1,127
Teamsters v national	18	83 3	15		7	8		3	1,367	1,197		550	647		170
Teamsters v local	32	87 5	28		13		15	4	2,732	1,887		794		1,093	845
Teamsters v Teamsters	4	100 0	4		4			0	86	86		86			0
National v local	14	100 0	14			8	6	0	1,924	1,924			1,394	530	0
National v national	5	100 0	5			5		0	243	243			243		0
Local v local	12	91 7	11				11	1	727	518				518	209
2-union elections	546	74 5	407	211	84	35	77	139	82,500	61,178	28,348	5,515	3,065	24,250	21,322
AFL-CIO v. AFL-CIO v AFL-CIO	2	50 0	1	1				1	1,736	136	136				1,600
AFL-CIO v. AFL-CIO v Teamsters	4	100 0	4	0	4			0	603	603	0	603			0
AFL-CIO v AFL-CIO v national	1	100 0	1	1		0		0	138	138	138		0		0
AFL-CIO v ALF-CIO v local	4	100 0	4	2			2	0	852	852	703			149	0
AFL-CIO v Teamsters v. national	3	33 3	1	0	1	0		2	137	64	0	64	0		73
AFL-CIO v Teamsters v local	8	100 0	8	2	5		1	0	963	963	231	396		336	0
AFL-CIO v national v local	1	100 0	1	0		1	0	0	870	870	0		870	0	0
AFL-CIO v AFL-CIO v. national v. local	1	100 0	1	0		0	1	0	254	254	0		0	254	0
All others	2	100 0	2	0	1	0	1	0	335	335	0	62	0	273	0
3 (or more)-union elections	26	88 5	23	6	11	1	5	3	5,888	4,215	1,208	1,125	870	1,012	1,673
Total RC elections	7,729	50 4	3,900	2,285	1,115	243	257	3,829	533,576	204,024	120,190	30,101	19,969	33,764	329,552

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1975 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C Elections in RM cases															
AFL-CIO	189	27 0	51	51				138	6,836	2,202	2,202				4,634
Teamsters	109	26 6	29		29			80	2,121	361		361			1,760
Other national unions	8	37 5	3			3		5	788	113			113		675
Other local unions	7	42 9	3				3	4	121	89				89	32
1-union elections	313	27 5	86	51	29	3	3	227	9,866	2,765	2,202	361	113	89	7,101
AFL-CIO v. AFL-CIO	3	66 7	2	2				1	247	132	132				115
AFL-CIO v Teamsters	6	83 3	5	1	4			1	310	295	28	267			15
AFL-CIO v local	5	100 0	5	4			1	0	204	204	198			6	0
Teamsters v. national	5	0 0	0		0	0		1	4	0		0	0		4
Teamster v local	2	50 0	1		0		1	1	21	18		0		18	3
Local v local	1	100 0	1				1	0	130	130				130	0
2-union elections	18	77 8	14	7	4	0	3	4	916	779	358	267	0	154	137
AFL-CIO v AFL-CIO v local	1	100 0	1	1			0	0	745	745	745			0	0
3(or more)-union elections	1	100 0	1	1	0	0	0	0	745	745	745	0	0	0	0
Total RM elections	332	30 4	101	59	33	3	6	231	11,527	4,289	3,305	628	113	243	7,238

D Elections in RD cases

AFL-CIO	309	26 2	81	81				228	15,465	6,301	6,301				9,164
Teamsters	164	17 1	28		28			136	4,241	1,128		1,128			3,113
Other national unions	16	56 3	9			9		7	1,233	789			789		444
Other local unions	6	33.3	2				2	4	248	192				192	56
1-union elections	495	24 2	120	81	28	9	2	375	21,187	8,410	6,301	1,128	789	192	12,777
AFL-CIO v Teamsters	6	83 3	5	1	4			1	382	366	177	189			16
AFL-CIO v national	4	100 0	4	2		2		0	438	438	396		42		0
AFL-CIO v local	6	66 7	4	1			3	2	1,249	443	75			368	806
Teamsters v local	3	66 7	2		2		0	1	327	77		77		0	250
National v. local	2	100 0	2			2	0	0	234	234			234	0	0
2-union elections	21	81 0	17	4	6	4	3	4	2,630	1,558	648	266	276	368	1,072
Total RD elections	516	26 6	137	85	34	13	5	379	23,817	9,968	6,949	1,394	1,065	560	13,849

[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 one election in a single case, or several cases may have been involved in one election unit

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1975 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO	294,055	57,420	57,420				29,584	70,860	70,860				136,191
Teamsters	74,404	15,150		15,150			7,150	16,449		16,449			35,655
Other national unions	39,565	9,392			9,392		5,753	9,176			9,176		15,244
Other local unions	16,369	5,504				5,504	1,714	3,077				3,077	6,074
1-union elections	424,393	87,466	57,420	15,150	9,392	5,504	44,201	99,562	70,860	16,449	9,176	3,077	193,164
AFL-CIO v AFL-CIO	12,041	4,742	4,742				979	2,431	2,431				3,889
AFL-CIO v Teamsters	18,507	10,487	5,816	4,671			800	2,684	1,218	1,466			4,536
AFL-CIO v. national	5,927	2,659	1,546		1,113		189	1,219	230		989		1,860
AFL-CIO v. local	28,658	26,310	11,404			14,906	663	474	376			98	1,211
Teamsters v national	1,262	851		399	452		240	60		44	16		111
Teamsters v local	2,750	1,733		871		862	48	351		102		249	618
Teamsters v. Teamsters	58	52		52			6	0		0			0
National v. local	1,950	1,812			1,195	617	138	0			0	0	0
National v. national	234	173			173		61	0			0		0
Local v local	718	551				551	5	53				53	109
2-union elections	72,105	49,370	23,508	5,993	2,933	16,936	3,129	7,272	4,255	1,612	1,005	400	12,334
AFL-CIO v AFL-CIO v. AFL-CIO	1,454	60	60				47	610	610				737
AFL-CIO v AFL-CIO v Teamsters	521	497	139	358			24	0	0	0			0
AFL-CIO v. AFL-CIO v national	102	76	75		1		26	0	0		0		0
AFL-CIO v AFL-CIO v. local	1,380	1,369	815			554	11	0	0			0	0
AFL-CIO v. Teamsters v. national	115	55	1	40	14		0	25	19	2	4		35
AFL-CIO v. Teamsters v local	787	782	161	402		219	5	0	0	0		0	0
AFL-CIO v. National v. local	779	776	202		504	70	3	0	0		0	0	0
AFL-CIO v. AFL-CIO v. national v local	211	207	45		0	162	4	0	0		0	0	0
All others	149	149	3	35	24	87	0	0	0	0	0	0	0
3 (or more)-union elections	5,498	3,971	1,501	835	543	1,092	120	635	629	2	4	0	772
Total representation elections	501,996	140,807	82,429	21,978	12,868	23,532	47,450	107,469	75,744	18,063	10,185	3,477	206,270

B. Elections in RC cases

AFL-CIO	275,219	52,480	52,480				27,071	67,469	67,469				128,191
Teamsters	69,108	14,306		14,306			6,687	15,484		15,484			32,635
Other national unions	37,710	8,832			8,832		5,468	8,835			8,835		14,579
Other local unions	16,046	5,344				5,344	1,631	3,056				3,056	6,015
1-union elections	398,083	80,962	52,480	14,306	8,832	5,344	40,857	94,844	67,469	15,484	8,835	3,056	181,420
AFL-CIO v. AFL-CIO	11,859	4,638	4,638				974	2,401	2,401				3,846
AFL-CIO v. Teamsters	17,893	9,903	5,485	4,418			798	2,678	1,212	1,466			4,514
AFL-CIO v national	5,561	2,297	1,324		973		185	1,219	230		989		1,860
AFL-CIO v. local	27,362	25,716	11,115			14,601	657	290	223			67	699
Teamsters v. national	1,258	851		399	452		240	60		44	16		107
Teamsters v. local	2,448	1,643		826		817	47	313		64		249	445
Teamsters v. Teamsters	58	52		52			6	0		0			0
National v. Teamsters	1,732	1,680			1,065	615	52	0			0	0	0
National v national	234	173			173		61	0			0		0
local v. local	608	441				441	5	53				53	109
2-union elections	69,013	47,394	22,562	5,695	2,663	16,474	3,025	7,014	4,066	1,574	1,005	369	11,580
AFL-CIO v. AFL-CIO v. AFL-CIO	1,454	60	60				47	610	610				737
AFL-CIO v. AFL-CIO v. Teamsters	521	497	139	358			24	0	0	0			0
AFL-CIO v AFL-CIO v. national	102	76	75		1		26	0	0		0		0
AFL-CIO v AFL-CIO v. local	719	708	386			322	11	0	0			0	0
AFL-CIO v. Teamsters v. national	115	55	1	40	14		0	25	19	2	4		35
AFL-CIO v Teamsters v. local	787	782	161	402		219	5	0	0	0		0	0
AFL-CIO v. national v. local	779	776	202		504	70	3	0	0		0	0	0
AFL-CIO v. AFL-CIO v. national v. local	211	207	45		0	162	4	0	0		0	0	0
All others	149	149	3	35	24	87	0	0	0	0	0	0	0
3 (or more)-union elections	4,837	3,310	1,072	835	543	860	120	635	629	2	4	0	772
Total RC elections	471,933	131,666	76,114	20,836	12,038	22,678	44,002	102,493	72,164	17,060	9,844	3,425	193,772

See footnote at end of table.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1975[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases													
AFL-CIO	5,924	1,250	1,250				687	1,091	1,091				2,896
Teamsters	1,800	241		241			82	353		353			1,124
Other national unions	687	75			75		28	160			160		424
Other local unions	105	65				65	11	7				7	22
1-union elections	8,516	1,631	1,250	241	75	65	808	1,611	1,091	353	160	7	4,466
AFL-CIO v AFL-CIO	182	104	104				5	30	30				43
AFL-CIO v Teamsters	278	263	128	135			2	6	6	0			7
AFL-CIO v local	183	183	150			33	0	0	0			0	0
Teamsters v national	4	0		0	0		0	0		0	0		4
Teamsters v local	19	16		0		16	0	0		0		0	3
Local v local	110	110				110	0	0				0	0
2-union elections	776	676	382	135	0	159	7	36	36	0	0	0	57
AFL-CIO v AFL-CIO v local	661	661	429			232	0	0	0			0	0
3 (or more)-union elections	661	661	429	0	0	232	0	0	0	0	0	0	0
Total RM elections	9,953	2,968	2,061	376	75	456	815	1,647	1,127	353	160	7	4,523

D. Elections in RD cases

AFL–CIO	12,912	3,690	3,690				1,826	2,300	2,300				5,096
Teamsters	3,496	603		603			381	612		612			1,900
Other national unions	1,168	485			485		257	181			181		245
Other local unions	218	95				95	72	14				14	37
1-union elections	17,794	4,873	3,690	603	485	95	2,536	3,107	2,300	612	181	14	7,278
AFL–CIO v Teamsters	336	321	203	118			0	0	0	0			15
AFL–CIO v. national	366	362	222		140		4	0	0		0		0
AFL–CIO v local	1,113	411	139			272	6	184	153			31	512
Teamsters v. local	283	74		45		29	1	38		38		0	170
National v local	218	132			130	2	86	0			0	0	0
2-union elections	2,316	1,300	564	163	270	303	97	222	153	38	0	31	697
Total RD elections	20,110	6,173	4,254	766	755	398	2,633	3,329	2,453	650	181	45	7,975

[1] See Glossary for definitions of terms.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1975

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	29	9	8	1	0	0	20	4,173	3,638	1,486	1,409	77	0	0	2,152	929
New Hampshire	26	11	5	5	1	0	15	968	896	373	233	82	58	0	523	262
Vermont	13	8	7	1	0	0	5	506	437	239	178	55	0	6	198	248
Massachusetts	256	122	57	42	8	15	134	16,280	14,159	7,905	4,592	1,584	932	797	6,254	8,508
Rhode Island	27	15	11	4	0	0	12	1,490	1,391	807	748	59	0	0	584	683
Connecticut	87	47	35	4	4	4	40	6,207	5,362	2,360	1,636	288	214	222	3,002	2,480
New England	438	212	123	57	13	19	226	29,624	25,883	13,170	8,796	2,145	1,204	1,025	12,713	13,110
New York	543	273	156	62	13	42	270	44,809	37,571	25,922	12,349	1,760	347	11,466	11,649	30,664
New Jersey	265	135	67	47	7	14	130	12,955	11,471	5,896	2,988	1,204	830	874	5,575	5,489
Pennsylvania	559	271	153	77	19	22	288	36,574	33,283	15,370	9,517	2,255	2,031	1,567	17,913	12,425
Middle Atlantic	1,367	679	376	186	39	78	688	94,338	82,325	47,188	24,854	5,219	3,208	13,907	35,137	48,578
Ohio	538	257	136	89	23	9	281	31,596	28,340	13,903	8,189	1,980	2,915	819	14,437	11,992
Indiana	243	115	68	33	10	4	128	16,764	15,010	6,963	3,981	1,222	1,420	340	8,047	5,116
Illinois	426	213	135	53	13	12	213	23,443	19,955	9,692	6,012	1,776	1,024	880	10,263	9,762
Michigan	499	239	125	53	51	10	260	29,615	25,732	12,027	6,395	1,379	3,603	650	13,705	9,483
Wisconsin	245	127	86	32	3	6	118	12,418	10,832	5,236	3,459	910	368	499	5,596	4,642
East North Central	1,951	951	550	260	100	41	1,000	113,836	99,869	47,821	28,036	7,267	9,330	3,188	52,048	40,995
Iowa	100	48	24	18	5	1	52	3,359	2,988	1,384	660	375	277	72	1,604	1,153
Minnesota	182	91	51	29	4	7	91	7,294	6,663	2,991	2,167	513	187	124	3,672	2,599
Missouri	218	111	63	38	9	1	107	10,708	9,341	5,459	2,956	812	1,542	149	3,882	6,184
North Dakota	38	20	5	14	0	1	18	2,152	1,833	694	360	329	0	5	1,139	561
South Dakota	20	9	7	2	0	0	11	737	666	292	213	79	0	0	374	252
Nebraska	31	19	13	6	0	0	12	1,397	1,303	626	534	92	0	0	677	443
Kansas	77	42	30	10	1	1	35	4,731	4,235	2,050	1,683	262	33	72	2,185	1,600
West North Central	666	340	193	117	19	11	326	30,378	27,029	13,496	8,573	2,462	2,039	422	13,533	12,792
Delaware	26	14	4	9	0	1	12	2,026	1,757	756	347	312	2	95	1,001	392
Maryland	172	75	49	21	2	3	97	11,263	9,672	5,141	3,345	669	55	1,072	4,531	4,841
District of Columbia	48	32	26	4	0	2	16	3,642	2,960	2,055	1,815	176	0	64	905	3,015

Virginia	89	51	37	11	1	2	38	8,891	7,934	3,766	3,225	209	206	126	4,168	3,226
West Virginia	57	31	19	8	3	1	26	4,187	3,615	1,957	1,341	233	216	167	1,658	1,527
North Carolina	82	31	24	3	1	3	51	30,042	27,904	12,589	11,396	1,010	100	83	15,315	5,095
South Carolina	28	9	7	2	0	0	19	2,866	2,513	1,005	851	80	0	74	1,508	594
Georgia	129	56	42	9	4	1	73	12,991	11,541	5,049	4,348	563	37	101	6,492	2,709
Florida	211	73	42	25	0	6	138	18,272	16,148	6,690	4,547	1,393	77	673	9,458	3,946
South Atlantic	842	372	250	92	11	19	470	94,180	84,044	39,008	31,215	4,645	693	2,455	45,036	25,345
Kentucky	119	46	20	21	3	2	73	12,509	12,120	5,491	3,026	1,395	904	166	6,629	3,528
Tennessee	157	73	40	24	4	5	84	18,724	16,906	7,121	4,709	1,962	187	263	9,785	5,514
Alabama	128	59	49	9	1	0	69	14,732	13,406	6,392	5,518	571	43	260	7,014	4,785
Mississippi	49	26	17	9	0	0	23	8,300	7,411	3,507	2,875	225	407	0	3,904	2,950
East South Central	453	204	126	63	8	7	249	54,265	49,843	22,511	16,128	4,153	1,541	689	27,332	16,777
Arkansas	71	28	21	4	2	1	43	4,620	4,252	1,759	1,152	342	213	52	2,493	1,461
Louisiana	144	65	39	21	3	2	79	10,530	9,454	5,141	3,525	740	675	201	4,313	4,323
Oklahoma	93	39	27	12	0	0	54	6,557	5,985	2,501	1,557	851	82	11	3,484	1,054
Texas	282	139	87	37	7	8	143	23,958	21,186	9,892	7,519	1,707	367	299	11,294	8,400
West South Central	590	271	174	74	12	11	319	45,665	40,877	19,293	13,753	3,640	1,337	563	21,584	15,238
Montana	45	21	9	10	1	1	24	941	828	395	193	185	10	7	433	429
Idaho	34	16	15	1	0	0	18	1,093	980	438	414	24	0	0	542	338
Wyoming	18	14	8	5	1	0	4	668	577	419	295	68	56	0	158	606
Colorado	153	73	49	17	2	5	80	8,708	7,711	3,565	3,036	377	81	71	4,146	3,608
New Mexico	67	41	33	7	0	1	26	4,184	3,656	1,917	1,538	132	0	247	1,739	2,166
Arizona	115	60	38	20	0	2	55	6,884	5,847	3,704	2,131	1,377	5	191	2,143	4,840
Utah	63	32	14	18	0	0	31	3,940	3,434	1,485	1,053	415	0	17	1,949	933
Nevada	41	21	15	5	0	1	20	2,063	1,790	857	397	158	1	301	933	605
Mountain	536	278	181	83	4	10	258	28,481	24,823	12,780	9,057	2,736	153	834	12,043	13,525
Washington	228	103	61	27	0	15	125	9,241	7,992	4,179	2,797	633	168	581	3,813	3,843
Oregon	153	68	44	17	2	5	85	5,979	4,998	2,464	1,456	475	236	297	2,534	2,472
California	1,098	519	294	167	36	22	579	48,140	41,681	19,599	10,739	5,024	2,830	1,006	22,082	18,494
Alaska	49	28	10	17	0	1	21	1,455	1,170	678	319	347	0	12	492	910
Hawaii	64	37	11	11	14	1	27	1,606	1,435	844	185	307	303	49	591	834
Pacific	1,592	755	420	239	52	44	837	66,421	57,276	27,764	15,496	6,786	3,537	1,945	29,512	26,553
Puerto Rico	129	67	28	11	0	28	62	10,885	9,341	4,657	1,989	682	8	1,978	4,684	4,613
Virgin Islands	13	9	8	1	0	0	4	847	686	579	265	311	0	3	107	755
Outlying areas	142	76	36	12	0	28	66	11,732	10,027	5,236	2,254	993	8	1,981	4,791	5,368
Total, all States and areas	8,577	4,138	2,429	1,183	258	268	4,439	568,920	501,996	248,267	158,162	40,046	23,050	27,009	253,729	218,281

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce

594-380 O - 75 - 17

Table 15B.—Standard Federal Administrative Regional Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1975

Standard Federal Regions	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	87	47	35	4	4	4	40	6,207	5,362	2,360	1,636	288	214	222	3,002	2,480
Maine	29	9	8	1	0	0	20	4,173	3,638	1,486	1,409	77	0	0	2,152	929
Massachusetts	256	122	57	42	8	15	134	16,280	14,159	7,905	4,592	1,584	932	797	6,254	8,508
New Hampshire	26	11	5	5	1	0	15	968	896	373	233	82	58	0	523	262
Rhode Island	27	15	11	4	0	0	12	1,490	1,391	807	748	59	0	0	584	683
Vermont	13	8	7	1	0	0	5	506	437	239	178	55	0	6	198	248
Region I	438	212	123	57	13	19	226	29,624	25,883	13,170	8,796	2,145	1,204	1,025	12,713	13,110
Delaware	26	14	4	9	0	1	12	2,026	1,757	756	347	312	2	95	1,001	392
New Jersey	265	135	67	47	7	14	130	12,955	11,471	5,896	2,988	1,204	830	874	5,575	5,489
New York	543	273	156	62	13	42	270	44,809	37,571	25,922	12,349	1,760	347	11,466	11,649	30,664
Puerto Rico	129	67	28	11	0	28	62	10,885	9,341	4,657	1,989	682	8	1,978	4,684	4,613
Virgin Islands	13	9	8	1	0	0	4	847	686	579	265	311	0	3	107	755
Region II	976	498	263	130	20	85	478	71,522	60,826	37,810	17,938	4,269	1,187	14,416	23,016	41,913
District of Columbia	48	32	26	4	0	2	16	3,642	2,960	2,055	1,815	176	0	64	905	3,015
Maryland	172	75	49	21	2	3	97	11,263	9,672	5,141	3,345	669	55	1,072	4,531	4,841
Pennsylvania	559	271	153	77	19	22	288	36,574	33,283	15,370	9,517	2,255	2,031	1,567	17,913	12,425
Virginia	89	51	37	11	1	2	38	8,891	7,934	3,766	3,225	209	206	126	4,168	3,226
West Virginia	57	31	19	8	3	1	26	4,187	3,615	1,957	1,341	233	216	167	1,658	1,527
Region III	925	460	284	121	25	30	465	64,557	57,464	28,289	19,243	3,542	2,508	2,996	29,175	25,034
Alabama	128	59	49	9	1	0	69	14,732	13,406	6,392	5,518	571	43	260	7,014	4,785
Florida	211	73	42	25	0	6	138	18,272	16,148	6,690	4,547	1,393	77	673	9,458	3,946
Georgia	129	56	42	9	4	1	73	12,991	11,541	5,049	4,348	563	37	101	6,492	2,709
Kentucky	119	46	20	21	3	2	73	12,509	12,120	5,491	3,026	1,395	904	166	6,629	3,528
Mississippi	49	26	17	9	0	0	23	8,300	7,411	3,507	2,875	225	407	0	3,904	2,950
North Carolina	82	31	24	3	1	3	51	30,042	27,904	12,589	11,396	1,010	100	83	15,315	5,095
South Carolina	28	9	7	2	0	0	19	2,866	2,513	1,005	851	80	0	74	1,508	594
Tennessee	157	73	40	24	4	5	84	18,724	16,906	7,121	4,709	1,962	187	263	9,785	5,514
Region IV	903	373	241	102	13	17	530	118,436	107,949	47,844	37,270	7,199	1,755	1,620	60,105	29,121

Illinois	426	213	135	53	13	12	213	23,443	19,955	9,692	6,012	1,776	1,024	880	10,263	9,762
Indiana	243	115	68	33	10	4	128	16,764	15,010	6,963	3,981	1,222	1,420	340	8,047	5,116
Michigan	499	239	125	53	51	10	260	29,615	25,732	12,027	6,395	1,379	3,603	650	13,705	9,483
Minnesota	182	91	51	29	4	7	91	7,294	6,663	2,991	2,167	513	187	124	3,072	2,599
Ohio	538	257	136	89	23	9	281	31,596	28,340	13,903	8,189	1,980	2,915	819	14,437	11,992
Wisconsin	245	127	86	32	3	6	118	12,418	10,832	5,236	3,459	910	368	499	5,596	4,642
Region V	2,133	1,042	601	289	104	48	1,091	121,130	106,532	50,812	30,203	7,780	9,517	3,312	55,720	43,594
Arkansas	71	28	21	4	2	1	43	4,620	4,252	1,759	1,152	342	213	52	2,493	1,461
Louisiana	144	65	39	21	3	2	79	10,530	9,454	5,141	3,525	740	675	201	4,313	4,323
New Mexico	67	41	33	7	0	1	26	4,184	3,656	1,917	1,538	132	0	247	1,739	2,166
Oklahoma	93	39	27	12	0	0	54	6,557	5,985	2,501	1,557	851	82	11	3,484	1,054
Texas	282	139	87	37	7	8	143	23,958	21,186	9,892	7,519	1,707	367	299	11,294	8,400
Region VI	657	312	207	81	12	12	345	49,849	44,533	21,210	15,291	3,772	1,337	810	23,323	17,404
Iowa	100	48	24	18	5	1	52	3,359	2,988	1,384	660	375	277	72	1,604	1,153
Kansas	77	42	30	10	1	1	35	4,731	4,235	2,050	1,683	262	33	72	2,185	1,600
Missouri	218	111	63	38	9	1	107	10,708	9,341	5,459	2,956	812	1,542	149	3,882	6,184
Nebraska	31	19	13	6	0	0	12	1,397	1,303	626	534	92	0	0	677	443
Region VII	426	220	130	72	15	3	206	20,195	17,867	9,519	5,833	1,541	1,852	293	8,348	9,380
Colorado	153	73	49	17	2	5	80	8,708	7,711	3,565	3,036	377	81	71	4,146	3,608
Montana	45	21	9	10	1	1	24	941	828	395	193	185	10	7	433	429
North Dakota	38	20	5	14	0	1	18	2,152	1,833	694	360	329	0	5	1,139	561
South Dakota	20	9	7	2	0	0	11	737	666	292	213	79	0	0	374	252
Utah	63	32	14	18	0	0	31	3,940	3,434	1,485	1,053	415	0	17	1,949	933
Wyoming	18	14	8	5	1	0	4	668	577	419	295	68	56	0	158	606
Region VIII	337	169	92	66	4	7	168	17,146	15,049	6,850	5,150	1,453	147	100	8,199	6,389
Arizona	115	60	38	20	0	2	55	6,884	5,847	3,704	2,131	1,377	5	191	2,143	4,840
California	1,098	519	294	167	36	22	579	48,140	41,681	19,599	10,739	5,024	2,830	1,006	22,082	18,494
Hawaii	64	37	11	11	14	1	27	1,606	1,435	844	185	307	303	49	591	834
Nevada	41	21	15	5	0	1	20	2,063	1,790	857	397	158	1	301	933	605
Region IX	1,318	637	358	203	50	26	681	58,693	50,753	25,004	13,452	6,866	3,139	1,547	25,749	24,773
Alaska	49	28	10	17	0	1	21	1,455	1,170	678	319	347	0	12	492	910
Idaho	34	16	15	1	0	0	18	1,093	980	438	414	24	0	0	542	338
Oregon	153	68	44	17	2	5	85	5,979	4,998	2,464	1,456	475	236	297	2,534	2,472
Washington	228	103	61	27	0	15	125	9,241	7,992	4,179	2,797	633	168	581	3,813	3,843
Region X	464	215	130	62	2	21	249	17,768	15,140	7,759	4,986	1,479	404	890	7,381	7,563
Total, all Federal regions	8,577	4,138	2,429	1,183	258	268	4,439	568,920	501,996	248,267	158,162	40,046	23,050	27,009	253,729	218,281

[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 1975

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible 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		
Food and kindred products	451	233	118	95	11	9	218	27,045	23,918	11,929	6,660	3,573	1,063	633	11,989	11,877
Tobacco manufactures	2	0	0	0	0	0	2	352	348	124	0	0	0	124	224	0
Textile mill products	64	27	20	2	1	4	37	34,893	32,261	14,076	12,826	1,050	7	193	18,185	5,035
Apparel and other finished products made from fabrics and similar materials	86	28	25	1	0	2	58	10,779	9,613	4,092	3,200	295	7	590	5,521	3,095
Lumber and wood products (except furniture)	161	70	51	14	1	4	91	10,127	8,943	4,500	3,725	343	209	223	4,443	4,812
Furniture and fixtures	110	50	36	11	2	1	60	11,489	9,974	4,842	3,829	556	455	2	5,132	4,457
Paper and allied products	113	46	28	13	2	3	67	5,811	5,272	2,586	1,954	362	93	177	2,686	2,108
Printing, publishing, and allied industries	297	144	118	13	4	9	153	10,400	9,389	4,387	3,475	520	158	234	5,002	4,107
Chemicals and allied products	214	100	61	27	6	6	114	19,857	18,257	7,971	5,365	1,613	656	337	10,286	4,881
Petroleum refining and related industries	65	30	14	15	1	0	35	3,502	3,143	2,013	1,554	333	43	83	1,130	2,354
Rubber and miscellaneous plastic products	194	84	42	23	15	4	110	19,137	17,074	8,206	5,371	953	1,753	129	8,868	7,122
Leather and leather products	31	9	5	4	0	0	22	5,808	5,219	2,415	1,909	506	0	0	2,804	1,179
Stone, clay, glass, and concrete products	180	87	49	31	3	4	93	10,344	9,293	4,397	2,964	1,087	169	177	4,896	4,006
Primary metal industries	209	108	79	11	13	5	101	16,297	14,715	7,485	5,512	858	595	520	7,230	7,487
Fabricated metal products (except machinery and transportation equipment)	379	182	106	52	20	4	197	27,484	25,501	12,104	6,984	2,139	2,540	441	13,397	10,413
Machinery (except electrical)	418	204	112	38	50	4	214	32,063	29,221	13,936	8,191	1,454	3,672	619	15,285	10,937
Electrical and electronic machinery, equipment, and supplies	267	118	78	22	15	3	149	42,351	38,224	16,708	11,420	1,791	2,854	643	21,516	10,771
Aircraft and parts	220	91	35	27	27	2	129	25,160	22,622	9,959	3,341	1,805	4,531	282	12,663	6,355
Ship and boat building and repairing	18	6	6	0	0	0	12	4,831	4,180	1,984	1,926	19	0	39	2,196	890
Automotive and other transportation equipment	20	11	5	3	1	2	9	1,497	1,396	781	379	207	83	112	615	492
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods; watches and clocks	83	30	15	12	0	3	53	10,893	9,721	3,889	3,047	387	344	111	5,832	1,519
Miscellaneous manufacturing industries	160	72	34	27	8	3	88	10,527	9,692	3,766	2,587	887	128	164	5,926	2,306
Manufacturing	3,742	1,730	1,037	441	180	72	2,012	340,647	307,976	142,150	96,219	20,738	19,360	5,833	165,826	106,203

Metal mining	10	8	5	3	0	0	2	2,216	1,848	1,457	758	699	0	0	391	2,096
Coal mining	29	18	7	2	8	1	11	2,510	2,217	1,579	684	289	466	140	638	1,780
Crude petroleum and natural gas production	16	6	3	2	0	1	10	458	409	176	114	32	12	18	233	189
Mining and quarrying of nonmetallic minerals (except fuels)	23	12	6	6	0	0	11	512	464	204	111	90	3	0	260	292
Mining	78	44	21	13	8	2	34	5,696	4,938	3,416	1,667	1,110	481	158	1,522	4,357
Construction	207	97	70	13	3	11	110	7,505	6,470	2,801	1,659	576	289	277	3,669	2,629
Wholesale trade	734	319	97	195	18	9	415	21,420	19,071	8,937	3,705	4,645	380	207	10,134	9,237
Retail trade	1,221	600	419	151	12	18	621	46,248	39,478	19,728	14,204	3,918	344	1,262	19,750	18,454
Finance, insurance, and real estate	163	82	65	5	6	6	81	7,027	6,250	2,946	2,220	239	128	359	3,304	2,369
U S. Postal Service	9	5	3	0	0	2	4	1,206	1,128	586	560	20	0	6	542	1,074
Local and suburban transit and interurban highway passenger transportation	55	34	21	7	0	6	21	3,707	3,109	2,237	1,300	191	313	433	872	2,490
Transportation services	544	256	30	212	6	8	288	12,362	10,955	5,175	933	3,823	131	228	5,780	4,590
Water transportation	26	10	6	3	0	1	16	894	690	419	287	51	12	69	271	485
Pipe lines (except natural gas)	30	17	6	10	0	1	13	1,006	876	500	243	241	0	16	376	524
Motor freight transportation and warehousing	2	2	1	1	0	0	0	77	74	39	4	35	0	0	35	77
Communication	236	139	122	4	4	9	97	28,271	23,384	19,903	8,934	97	85	10,787	3,481	23,968
Electric, gas, and sanitary services	148	78	56	19	0	3	70	6,456	6,028	2,679	1,838	688	40	113	3,349	2,010
Transportation, communication, and other utilities	1,041	536	242	256	10	28	505	52,773	45,116	30,952	13,599	5,126	581	11,646	14,164	34,144
Hotels, rooming houses, camps, and other lodging places	122	30	21	3	2	4	92	8,345	6,784	2,681	2,394	140	43	104	4,103	1,469
Personal services	54	26	8	13	1	4	28	1,232	1,047	637	240	283	36	78	410	763
Automotive repair, services, and garages	102	43	17	25	1	0	59	1,710	1,514	684	300	338	37	9	830	610
Motion pictures	30	20	17	2	0	1	10	638	544	325	262	10	0	53	219	290
Amusement and recreation services (except motion pictures)	37	16	11	2	1	2	21	1,623	1,279	532	235	20	56	221	747	437
Health services	579	346	234	25	5	82	233	50,366	41,828	21,976	15,494	1,704	160	4,618	19,852	25,284
Educational services	87	56	37	4	0	15	31	6,875	5,910	3,544	1,626	229	98	1,591	2,366	3,971
Membership organizations	13	8	7	0	1	0	5	415	363	186	158	0	28	0	177	170
Business services	305	159	108	32	8	11	146	11,598	8,965	4,582	2,652	884	476	570	4,383	4,738
Miscellaneous repair services	32	10	7	2	1	0	22	1,001	922	415	348	58	7	2	507	334
Miscellaneous services	18	11	8	1	1	1	7	2,312	2,167	1,112	543	8	546	15	1,055	1,748
Services	1,379	725	475	109	21	120	654	86,115	71,323	36,674	24,252	3,674	1,487	7,261	34,649	39,814
Public administration	3	0	0	0	0	0	3	283	246	77	77	0	0	0	169	0
Total, all industrial groups	8,577	4,138	2,429	1,183	258	268	4,439	568,920	501,996	248,267	158,162	40,046	23,050	27,009	253,729	218,281

[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 1975 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by: AFL-CIO unions — Number	AFL-CIO unions — Percent by size class	Teamsters — Number	Teamsters — Percent by size class	Other national unions — Number	Other national unions — Percent by size class	Other local unions — Number	Other local unions — Percent by size class	Elections in which no representative was chosen — Number	Elections in which no representative was chosen — Percent by size class
	A Certification elections (RC and RM)													
Total RC and RM elections	545,103	8,061	100 0		2,344	100 0	1,148	100.0	246	100 0	263	100 0	4,060	100.0
Under 10	13,108	2	0 0	0 0	1	0.0	0		0		1	0.4	0	
10 to 19	51,415	3,743	46 4	46 4	1,172	50 0	768	66.9	102	41.7	91	34 7	1,610	39 7
20 to 29	23,905	993	12.3	58 7	301	12.8	135	11 8	26	10 7	34	13.0	497	12.2
30 to 39	22,974	674	8 4	67 1	181	7 7	77	6.7	22	9 0	19	7.2	375	9 2
40 to 49	20,934	474	5.9	73 0	148	6.3	44	3.8	17	6 9	19	7.2	246	6 1
50 to 59	17,350	322	4.0	77 0	86	3 7	29	2 5	7	2.8	13	4.9	187	4.6
60 to 69	14,764	230	2 9	79.9	59	2 5	14	1 2	12	4.9	13	4.9	132	3 3
70 to 79	12,617	170	2 1	82 0	59	2 5	14	1 2	1	0 4	10	3 8	86	2.1
80 to 89	13,673	163	2.0	84 0	35	1 5	8	0.7	4	1.6	11	4.2	105	2 6
90 to 99	10,908	116	1 4	85 4	36	1 5	5	0 4	5	2.0	4	1 5	66	1.6
100 to 109	11,212	108	1 3	86 7	25	1 1	4	0 3	7	2.8	3	1.1	69	1 7
110 to 119	11,626	102	1.3	88 0	23	1 0	7	0.6	6	2 4	9	3 4	57	1 4
120 to 129	10,792	87	1 1	89 1	22	0 9	6	0.5	3	1 2	2	0.8	54	1 3
130 to 139	11,023	82	1 0	90 1	24	1 0	7	0 6	5	2.0	3	1 1	43	1.1
140 to 149	9,220	64	0.8	90 9	16	0 7	5	0.4	3	1 2	3	1 1	37	0 9
150 to 159	7,983	52	0 6	91 5	11	0 5	2	0.2	0		7	2.7	32	0 8
160 to 169	6,392	39	0 5	92 0	10	0 4	2	0 2	3	1.2	1	0.4	23	0 6
170 to 179	7,856	45	0 6	92.6	11	0 5	3	0 3	1	0 4	1	0 4	29	0 7
180 to 189	4,978	27	0 3	92 9	6	0 3	1	0 1	0		4	1.5	16	0.4
190 to 199	6,396	33	0 4	93 3	7	0 3	0		0		1	0 4	25	0.6
200 to 299	53,163	221	2 7	96 0	43	1 8	8	0 7	7	2 8	8	3.0	155	3 8
300 to 399	41,175	121	1 5	97.5	27	1 2	2	0.2	4	1.6	4	1 5	84	2.1
400 to 499	24,832	57	0.7	98 2	14	0.6	2	0.2	3	1.2	0		38	0 9
500 to 599	14,855	27	0 3	98 5	4	0 2	2	0.2	0		0		21	0.5
600 to 799	31,841	45	0.6	99 1	11	0.5	3	0 3	2	0.8	0		29	0 7
800 to 999	18,713	21	0 3	99 4	5	0 2	0		5	2.0	0		11	0 3
1,000 to 1,999	40,130	33	0.4	99 8	4	0.2	0		1	0.4	1	0.4	27	0 7
2,000 to 2,999	14,628	6	0 1	99.9	2	0 1	0		0		0		4	0.1
3,000 to 9,999	16,640	4	0 1	100.0	1	0.0	0		0		1	0 4	2	0 0

B Decertification elections (RD)

Total RD elections	23,817	516	100.0	----------	85	100 0	34	100.0	13	100 0	5	100.0	379	100 0
U														
10nder 10	847	150	29 0	29.0	5	5 9	6	17 6	2	15 4	0	----------	137	36 2
20 to 19	1,625	119	23 0	52 0	7	8 2	8	23.6	1	7 7	0	----------	103	27 3
30 to 29	1,548	64	12 3	64 3	19	22 2	9	26 6	0	----------	1	20 0	35	9.2
40 to 39	1,326	39	7.5	71.8	7	8.2	1	2 9	1	7 7	0	----------	30	7.9
50 to 49	950	22	4 3	76 1	9	10 6	0	----------	0	----------	0	----------	13	3.4
60 to 59	805	15	2 9	79 0	4	4 7	0	----------	1	7 7	0	----------	10	2.6
70 to 69	1,155	18	3 5	82 5	5	5 9	4	11.8	2	15 4	1	20 0	6	1 6
80 to 79	1,022	14	2 7	85 2	4	4 7	2	5 9	0	----------	0	----------	8	2 1
90 to 89	769	9	1 7	86 9	3	3 5	0	----------	1	7.7	0	----------	5	1.3
10 to 99	561	6	1 2	88 1	3	3 5	0	----------	1	7.7	0	----------	2	0 5
110 to 109	414	4	0.8	88.9	2	2 4	0	----------	1	7.7	0	----------	1	0.3
120 to 119	689	6	1 2	90 1	1	1 2	0	----------	0	----------	0	----------	5	1.3
130 to 129	990	8	1 6	91 7	2	2 4	1	2.9	1	7 7	1	20 0	3	0.8
140 to 139	659	5	1 0	92.7	1	1 2	0	----------	1	7.7	1	20.0	2	0.5
150 to 149	439	3	0.6	93 3	1	1 2	1	2.9	0	----------	0	----------	1	0.3
160 to 159	616	4	0 8	94 1	2	2 4	0	----------	0	----------	0	----------	2	0.5
170 to 169	498	3	0.6	94 7	0	----------	1	2 9	0	----------	0	----------	2	0 5
200 to 199	1,117	6	1 2	95.9	3	3 5	1	2.9	0	----------	0	----------	2	0 5
300 to 299	2,353	10	1 9	97 8	3	3.5	0	----------	1	7.7	1	20.0	5	1.3
500 to 499	2,744	7	1.4	99.2	2	2.4	0	----------	0	----------	0	----------	5	1.3
800 to 799	1,784	3	0.6	99.8	2	2.4	0	----------	0	----------	0	----------	1	0 3
and over	906	1	0 2	100.0	0	----------	0	----------	0	----------	0	----------	1	0.3

[1] See Glossary for definitions of terms.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1975 [1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2]28,143	100.0	-------	17,912	100 0	5,699	100 0	1,794	100 0	479	100 0	104	100.0	51	100 0	433	100.0	1,474	100 0	197	100.0
Under 10	7,713	27.6	27.6	4,626	25 8	1,596	28.0	690	38.6	148	31 0	66	63 4	2	3 9	168	38 9	323	21 8	94	47 8
10–19	2,588	9.2	36.8	1,723	9.6	384	6 7	217	12.2	62	13.0	2	1.9	3	5.9	90	20 9	80	5 4	27	13 8
20–29	1,976	7.0	43 8	1,368	7 6	281	4.9	155	8 6	32	6 7	5	4.7	2	3.9	38	8.9	83	5 6	12	6 2
30–39	1,355	4 8	48.6	978	5 5	217	3 8	63	3.5	22	4.6	1	1 0	0	-------	23	5 4	45	3.1	6	3 0
40–49	982	3.5	52 1	670	3.7	175	3.1	61	3 4	10	2 1	2	1.9	2	3.9	22	5.1	38	2 6	2	1.0
50–59	1,121	4.0	56 1	730	4.1	215	3 8	69	3 8	28	5 8	1	1 0	3	5 9	10	2.3	57	3 9	8	4 1
60–69	736	2 6	58 7	520	2.9	125	2 2	36	2.0	9	1 9	3	2.9	3	5 9	8	1.8	29	2 0	3	1 5
70–79	604	2 1	60.8	415	2 3	112	2.0	27	1.5	7	1 5	0	-------	2	3.9	11	2.5	26	1 8	4	2.0
80–89	408	1 4	62 2	281	1 6	65	1 1	27	1 5	4	0 8	0	-------	1	2.0	4	0 9	25	1.7	1	0 5
90–99	244	0 9	63 1	179	1 0	45	0.8	6	0 3	3	0 6	0	-------	2	3 9	1	0.2	7	0 5	1	0.5
100–109	1,018	3.6	66.7	599	3 3	231	4 1	69	3.8	24	5.0	2	1.9	3	5.9	8	1.8	78	5.3	4	2.0
110–119	149	0.5	67.2	107	0.6	23	0.4	8	0 4	2	0 4	1	1 0	0	-------	1	0.2	6	0 4	1	0 5
120–129	387	1 4	68 6	276	1 5	58	1 0	18	1 0	7	1 5	1	1 0	0	-------	3	0.7	22	1.5	2	1 0
130–139	181	0 6	69 2	123	0 7	23	0 4	13	0.7	0	-------	0	-------	1	2 0	12	2.8	8	0 5	1	0 5
140–149	140	0 5	69 7	103	0 6	20	0 4	3	0 2	2	0 4	0	-------	0	-------	1	0 2	10	0 7	1	0 5
150–159	520	1 8	71.5	337	1 9	113	2.0	22	1.2	4	0 8	2	1 9	3	5 9	1	0.2	37	2 5	1	0 5
160–169	139	0 5	72 0	106	0 6	18	0 3	6	0 3	0	-------	0	-------	3	5 9	0	-------	6	0.4	0	-------
170–179	135	0.5	72 5	103	0 6	20	0.4	4	0 2	0	-------	0	-------	0	-------	1	0.2	6	0 4	1	0 5
180–189	109	0.4	72.9	79	0.4	14	0 2	9	0.5	2	0 4	0	-------	0	-------	1	0 2	4	0 3	0	-------
190–199	44	0.2	73 1	38	0 2	3	0.1	1	0 1	0	-------	0	-------	0	-------	0	-------	2	0 1	0	-------
200–299	1,548	5.5	78 6	990	5 5	338	5.9	65	3 6	27	5 6	1	1 0	4	7.8	5	1.2	108	7 3	10	5 1
300–399	992	3 5	82 1	618	3.5	260	4 6	33	1.8	15	3.1	1	1 0	0	-------	5	1.2	57	3.9	3	1 5
400–499	564	2 0	84 1	371	2.1	120	2.1	27	1 5	9	1 9	0	-------	0	-------	1	0 2	35	2 4	1	0 5
500–599	544	1.9	86.0	300	1 7	150	2.6	28	1.6	6	1 3	4	3 8	0	-------	4	0 9	50	3 4	2	1 0
600–699	332	1 2	87.2	238	1.3	63	1.1	12	0.7	2	0.4	0	-------	0	-------	0	-------	16	1 1	1	0.5
700–799	253	0 9	88 1	161	0.9	63	1.1	13	0 7	4	0 8	0	-------	1	2 0	0	-------	10	0 7	1	0.5
800–899	219	0.8	88 9	147	0 8	43	0.8	11	0.6	1	0 2	0	-------	1	2 0	1	0 2	15	1.0	0	-------
900–999	116	0.4	89 3	72	0.4	24	0.4	7	0.4	3	0.6	0	-------	3	5 9	1	0.2	4	0 3	2	1 0
1,000–1,999	1,122	4.0	93.3	681	3 8	279	4 9	32	1.8	21	4 4	3	2.9	5	9.7	1	0 2	98	6 6	2	1.0
2,000–2,999	458	1 6	94 9	242	1.4	150	2.6	12	0.7	4	0 8	0	-------	0	-------	1	0 2	48	3 2	1	0 5
3,000–3,999	318	1 1	96 0	178	1 0	89	1 6	6	0 3	2	0 4	2	1.9	0	-------	0	-------	40	2 7	1	0 5
4,000–4,999	145	0 5	96.5	71	0 4	53	0.9	5	0.3	2	0.4	0	-------	0	-------	1	0 2	13	0 9	0	-------
5,000–9,999	411	1.5	98 0	192	1 1	150	2.6	10	0.6	8	1 7	1	1 0	1	2 0	1	0.2	47	3 2	1	0.5
Above 9,999	572	2.0	100.0	290	1.6	179	3.1	29	1.6	9	1.9	6	5 8	6	11 7	9	2.1	41	2 8	3	1.5

[1] See Glossary for definitions of terms.

[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings as compared to situations shown in Charts 1 and 2 of Chapter I, which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1975; and Cumulative Totals, Fiscal Years 1936–1975

	Fiscal year 1975									July 5, 1935–June 30, 1975	
	Number of proceedings [1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal [2]	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	281	217	61	0	3						
On petitions for review and/or enforcement	261	200	58	0	3	100.0	100.0		100.0	5,958	100.0
Board orders affirmed in full	189	143	46	0	0	71.5	79 3			3,733	62.7
Board orders affirmed with modification	21	20	1	0	0	10 0	1.7			1,004	16.9
Remanded to Board	8	0	5	0	3		8.6		100.0	253	4.2
Board orders partially affirmed and partially remanded	11	7	4	0	0	3.5	6.9			89	1.5
Board orders set aside	32	30	2	0	0	15 0	3.4			879	14.7
On petitions for contempt	20	17	3	0	0	100.0	100 0				
Compliance after filing of petition, before court order	9	8	1	0	0	47.1	33.3				
Court orders holding respondent in contempt	11	9	2	0	0	52.9	66 7				
Court orders denying petition	0	0	0	0	0						
Proceedings decided by U.S. Supreme Court [3]	7	3	2	0	2	100 0	100 0		100.0	213	100.0
Board orders affirmed in full	6	2	2	0	2	66.7	100.0		100.0	128	60.1
Board orders affirmed with modification	1	1	0	0	0	33 3				16	7.5
Board orders set aside	0	0	0	0	0					33	15 5
Remanded to Board	0	0	0	0	0					17	7 9
Remanded to court of appeals	0	0	0	0	0					16	7 5
Board's request for remand or modification of enforcement order denied	0	0	0	0	0					1	0.5
Contempt cases remanded to courts 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 definitions 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 two cases, *American Radio Assn* v. *Mobile Steamship Assn.*, 419 U.S. 215, and *Connell Construction Co.* v. *Plumbers & Steamfitters Loc. 100*, 421 U.S 616—the Board's positions were not adopted by the Court.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1975, Compared With 5-Year Cumulative Totals, Fiscal Years 1970 through 1974 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1975	Total fiscal years 1970–74	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1975		Cumulative fiscal years 1970–74		Fiscal year 1975		Cumulative fiscal years 1970–74		Fiscal year 1975		Cumulative fiscal years 1970–74		Fiscal year 1975		Cumulative fiscal years 1970–74		Fiscal year 1975		Cumulative fiscal years 1970–74	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	261	1,682	189	72.4	1,215	72.2	21	8.0	180	10.7	8	3.1	80	4.8	11	4 2	28	1.7	32	12.3	179	10.6
1. Boston, Mass	8	59	7	87.5	44	74.5	0	------	3	5 1	0	------	3	5.1	0	------	1	1.7	1	12.5	8	13.6
2. New York, N.Y	14	130	9	64 3	105	80.8	2	14.3	12	9.2	0	------	1	0.8	0	------	0	------	3	21.4	12	9.2
3. Philadelphia, Pa	16	88	13	81.3	69	78 4	1	6.3	4	4 6	0	------	6	6.8	0	------	1	1 1	2	12.4	8	9.1
4. Richmond, Va	22	99	15	68.2	70	70.1	3	13.6	13	13 1	1	4 6	5	5.1	0	------	0	------	3	13 6	11	11.1
5. New Orleans, La	41	290	35	85.4	221	76.2	2	4.9	22	7.6	0	------	12	4.1	0	------	6	2.1	4	9.7	29	10.0
6. Cincinnati, Ohio	30	280	18	60.0	199	71.1	3	10.0	30	10.7	0	------	10	3.6	1	3.3	5	1.8	8	26.7	36	12.9
7. Chicago, Ill	32	160	26	81.3	118	73.8	3	9.4	21	13.1	1	3.1	3	1.9	0	------	1	0.6	2	6.2	17	10.6
8. St. Louis, Mo	22	143	15	68.2	76	53.1	3	13.6	42	29.4	0	------	8	5.6	1	4.6	0	------	3	13.6	17	11.9
9. San Francisco, Calif	32	245	19	59 3	183	74.7	3	9.4	18	7.3	3	9.4	16	6.5	3	9.4	4	1.6	4	12.5	24	9.8
10. Denver, Colo	11	75	10	90.9	58	77.3	0	------	4	5.3	0	------	1	1.3	0	------	1	1.3	1	9.1	11	14.7
Washington, D.C	33	113	22	66.7	72	63.7	1	3 0	11	9.7	3	9.1	15	13.3	6	18.2	9	8.0	1	3 0	6	5.3

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

Table 20.—Injunction Litigation Under Section 10(j) and 10(l), Fiscal Year 1975

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1975
		Pending in district court July 1, 1974	Filed in district court fiscal year 1975		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(j), total	25	4	21	20	6	1	4	0	4	5	5
8(a)(1)(3)	3	1	2	2	0	0	0	0	0	2	1
8(a)(1)(5)	5	1	4	4	0	0	0	0	3	1	1
8(a)(1)(3)(4)	1	0	1	1	0	0	1	0	0	0	1
8(a)(1)(3)(5)	5	1	4	3	1	0	0	0	1	1	2
8(a)(1)(2)(3)(4)(5)	2	0	2	2	1	0	0	0	0	1	0
8(b)(1)	6	1	5	5	2	1	2	0	0	0	1
8(b)(3)	3	0	3	3	2	0	1	0	0	0	0
Under sec. 10(l), total	345	29	316	333	98	15	133	43	26	18	12
8(b)(4)(A)	21	1	20	17	3	3	7	3	0	1	4
8(b)(4)(A)(B)	9	0	9	9	1	1	4	1	2	0	0
8(b)(4)(B)	184	16	168	177	49	5	76	23	13	11	7
8(b)(4)(B)(D)	1	1	0	1	1	0	0	0	0	0	0
8(b)(4)(B); 7(A)	0	0	0	0	0	0	0	0	0	0	0
8(b)(4)(B); 7(B)	1	1	0	1	0	0	1	0	0	0	0
8(b)(4)(B); 7(C)	1	1	0	1	1	0	0	0	0	0	0
8(b)(4)(B); 8(e)	0	0	0	0	0	0	0	0	0	0	0
8(b)(4)(B)(D), 8(e)	0	0	0	0	0	0	0	0	0	0	0
8(b)(4)(D)	77	6	71	77	28	3	24	11	6	5	0
8(b)(7)(A)	6	0	6	6	1	0	3	1	1	0	0
8(b)(7)(B)	3	0	3	3	0	0	2	0	1	0	0
8(b)(7)(C)	32	2	30	31	10	3	13	2	2	1	1
8(e)	10	1	9	10	4	0	3	2	1	0	0

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Fiscal Year 1975

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	102	92	10	36	35	1	66	57	9
NLRB-initiated actions or interventions	11	8	3	4	3	1	7	5	2
To enforce subpena	1	1	0	1	1	0	0	0	0
To restrain dissipation of assets by respondent	1	1	0	1	1	0	0	0	0
To defend Board's jurisdiction	9	6	3	2	1	1	7	5	2
Action by other parties	91	84	7	32	32	0	59	52	7
To restrain NLRB from	47	43	4	10	10	0	37	33	4
Proceeding in R case	21	18	3	6	6	0	15	12	3
Proceeding in unfair labor practice case	24	23	1	2	2	0	22	21	1
Proceeding in backpay case	0	0	0	0	0	0	0	0	0
Other	2	2	0	2	2	0	0	0	0
To compel NLRB to	40	37	3	21	21	0	19	16	3
Issue complaint	13	13	0	7	7	0	6	6	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R Case	13	13	0	9	9	0	4	4	0
Comply with Freedom of Information Act	9	6	3	1	1	0	8	5	3
Other	5	5	0	4	4	0	1	1	0
Other	4	4	0	1	1	0	3	3	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1975 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1974	3	3	0	0	0
Received fiscal 1975	15	11	1	0	3
On docket fiscal 1975	18	14	1	0	3
Closed fiscal 1975	17	13	1	0	3
Pending June 30, 1975	1	1	0	0	0

[1] See Glossary for definitions of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1975 [1]

Action taken	Total cases closed
Total	17
Board would assert jurisdiction	11
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	4
Withdrawn	2

[1] See Glossary for definitions of terms.

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