TWENTY-NINTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1964

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[1] Term expired Dec. 16, 1964.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 4, 1965.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-ninth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1964, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

FRANK W. MCCULLOCH, *Chairman.*

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

Washington, D.C.

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Operations in Fiscal Year 1964

1. Summary

Viewing the National Labor Relations Board's operations in fiscal 1964, the twenty-ninth year of its administration of the National Labor Relations Act, two factors stand out as measures of the Agency's contribution to a constantly growing national economy.

There was continued growing demand for the NLRB's services, which in fiscal 1964 rose to a record level, and which presented its proportion of complex issues. Along with this development there was equally significant growth in the number of voluntary adjustments of cases before the NLRB, demonstrating a willingness of parties to settle their disputes without litigation.

Total effectiveness of a statute such as the National Labor Relations Act cannot, of course, be measured solely in statistical terms. To a very large extent labor and management effectively adjust their problems within the framework of the national labor policy without resort to NLRB proceedings. However, even with these private adjustments, reflecting in large measure a responsible, voluntary acceptance of statutory policies, the demand for NLRB services has not slackened. The ever-accelerating tempo of our economy and the changing pattern of the Nation's industrial, economic, and social conditions, including geographical shifts of industry, and automation, all contribute to the size, variety, and complexity of the NLRB's caseload.

In carrying out the congressionally established policy of the statute—"to eliminate the causes of certain substantial obstructions to the free flow of commerce . . ."—the NLRB disposed of 26,715 cases of all kinds in fiscal 1964, and during the year it had a total intake of 27,403 cases. Both figures are alltime high records at the Agency.

The figures represent service requested and service rendered. It may be noted in relation to service rendered that parties to the cases made their own contribution to speedy implementation of statutory policy when, with the assistance of the Agency, they settled 75 percent of meritorious cases, thereby eliminating protracted litigation, and a drain on the Agency's resources.

Among the more significant issues the Agency considered during fiscal 1964 were: (a) racial discrimination and the duty of fair representation; (b) representation issues involving the NLRB's rules on contracts as bars to employee elections; (c) enforcement of union rules in relation to fines allotted against members; (d) a union's right to file unfair labor practice charges based on an employer's preelection conduct after the union participated in the election; and (e) an employer's obligation to permit a union access to plant production areas to make time studies of operations in order to determine desirability of arbitrating grievances concerning employer-established production rates.

And, acting in the role it was required to assume under a Supreme Court decision, the NLRB during fiscal 1964 made affirmative awards of work to groups of employees in a number of jurisdictional dispute cases arising from a variety of industries.

The NLRB and its General Counsel, who is charged with supervision of regional offices, report continued timesaving in the handling of contested employee representation cases by regional directors. Delegation to regional directors of this authority is one of the measures the Agency has taken to keep pace with the case burden.

a. NLRB and the NLRA

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

Board Members are Chairman Frank W. McCulloch of Illinois, Boyd Leedom* of South Dakota, John H. Fanning of Rhode Island, Gerald A. Brown of California, and Howard Jenkins, Jr., of Colorado. Arnold Ordman of Maryland is General Counsel.

The statute administered by the NLRB has become complex but its basic purpose remains unchanged: to promote collective bargaining and to protect freedom of employee organization as the best means of encouraging industrial peace. Under the Act the NLRB has two primary functions—(1) to prevent and remedy unfair labor practices whether by labor organizations or employers, and (2) to determine by Agency-conducted secret-ballot elections whether employees wish to have unions represent them in collective bargaining.

To achieve the statute's purpose, its unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with employees, as well as with each other, and its election provisions set forth the mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees.

*Term expired Dec. 16, 1964.

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

NLRB has no statutory self-contained power of enforcement of its orders but it may seek enforcement in the U.S. Courts of Appeals. Similarly, parties aggrieved by the orders may seek reversal.

Authority within the Agency is divided by law. The Board Members act primarily as a quasi-judicial body in deciding cases upon formal records. The General Counsel, independently, is responsible for the issuance and prosecution of formal complaints, 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 practice cases, the NLRB employs trial examiners who hear and decide the cases initially. Trial examiners are independent of NLRB supervision, being appointed from a roster compiled by the Civil Service Commission. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken, otherwise the statute requires the Board to adopt the trial examiners' orders.

Petitions for employee representation elections are filed with NLRB regional offices, which have the authority to investigate the petitions, determine appropriate employee units for collective-bargaining purposes, conduct the elections, and to pass on objections to conduct of elections. Appeals from regional directors' decisions may be made in accordance with Board Rules.

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

b. Some Case Activity Highlights

In continuation of the accelerated NLRB case activity of recent years, record workloads and production were repeated in fiscal 1964. In a number of areas Agency activity surpassed the prior year's, and reached alltime highs in some. New records included:

- A total intake of 27,403 cases of all kinds, including 15,620 unfair labor practice charges; 11,685 employee representation petitions; and 98 petitions to rescind unions' authority to make union-shop agreements with employers.

- A total of 26,715 cases of all kinds closed, of which 15,074 were unfair labor practice cases, 11 percent above fiscal 1963's total case output.
- Issuance by the Office of the General Counsel of 1,890 formal complaints, 19 percent over the previous high of 1,588 in fiscal 1963.
- Increases in types of unfair labor practice charges filed, for example: charges of employer refusal to bargain rose to 3,088, as against 2,584 in fiscal 1963; charges of illegal secondary boycotts by unions went up to 1,456, compared to 1,307 of the prior year.
- A total of $3,001,630 awarded in backpay for 5,142 employees discriminated against by employers, unions, or both, in cases closed in fiscal 1964. Also, $55,550 in fees, dues, and fines was reimbursed to discriminatees.

2. Operational Highlights

a. Case Intake and Disposition

In fiscal 1964 the NLRB experienced another sharp increase in caseload, receiving 27,403 cases of all types, more than 2,000 above the intake of fiscal 1963. The 1964 intake was 8 percent greater than in 1963, and the magnitude of the current caseload may be measured by these figures: in 1948, the first year's experience with the Act's 1947 amendments (Taft-Hartley), the Board received 10,636 unfair labor practice and representation cases; 10 years later in 1958 the case intake was 16,748; and in 1964 nearly 11,000 cases were added to the Agency's caseload, making a total of 27,403 cases, or almost 3 times the 1948 total.

However, mere numbers alone are not a true measure of the workload inherent in the case intake. Of the 1964 cases, 15,620 were charges of unfair labor practices, an increase of 10 percent in this category over 1963. These cases require more manpower and more processing time than do employee representation cases, thus in measuring Agency workload the growth in unfair labor practice charges must be gauged in higher terms than mere numerical or percentage gains.

The 15,620 separate charges filed with NLRB regional offices in 1964 made up 13,978 unfair labor practice situations, a 10-percent gain over situations of 1963. A situation, in NLRB terms, comprises one or more related charges processed as a single unit of work. For example, a number of employees of the same plant may file separate but similar charges against the employer or a union. The charges would make up one situation.

Another record established was in the 11,783 petitions for employee elections of all kinds received by the Agency in fiscal 1964. This was

578 or more than 5 percent above the prior year's total, and exceeded by about 4 percent the previous record in fiscal 1962 of 11,369 petitions. (See charts 1 and 1A.)

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE SITUATIONS AND REPRESENTATION PETITIONS

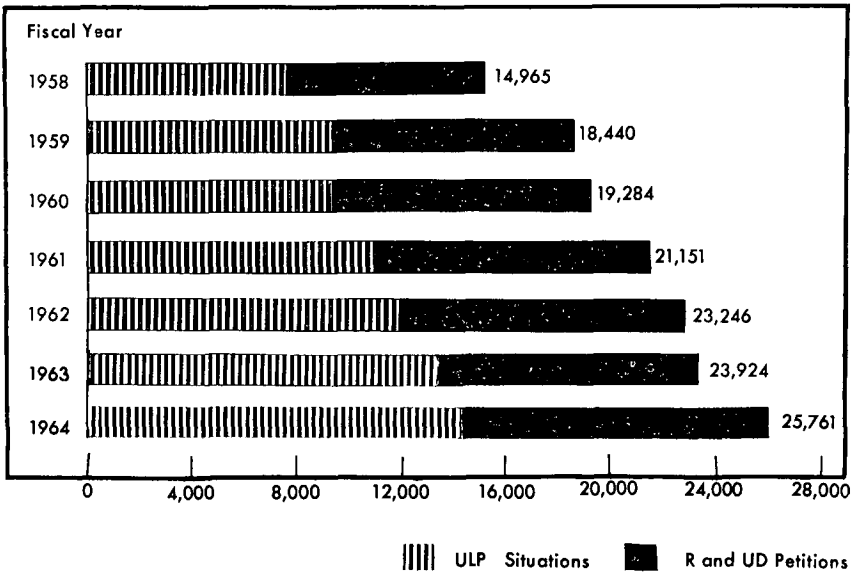
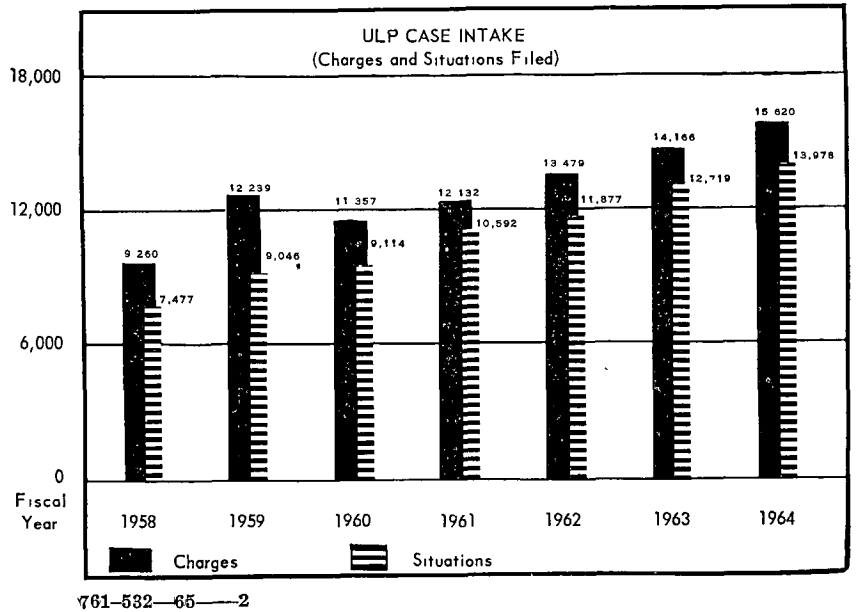


Chart 1A



The Agency's caseload handling is demonstrated in the closing or disposition of cases. In fiscal 1964 the NLRB closed 26,715 cases of all kinds at all Agency levels, which was a gain of 2,037, or approximately 8 percent above the disposition of 24,678 cases in fiscal 1963. The growth in case disposition kept pace with the percentage gain in cases received in 1964.

Significantly, among the 26,715 cases closed, there were 15,074 unfair labor practice charges, more than 10 percent above the 13,605 unfair labor practice cases closed in fiscal 1963, and representing 72 percent of the gain of 2,037 in cases disposed of in fiscal 1964.

In the employee representation area, the Agency closed 11,641 cases of all kinds, including 95 where petitions were filed for voting by employees to rescind the authority of unions to make union-shop agreements. The total number of cases closed was 568, or 5 percent above the prior year's 11,073 cases, including 92 union-shop deauthorization petitions.

At all Agency levels there were 8,085 cases pending at the end of fiscal 1964, 688 more than at the end of fiscal 1963. Of the 1964 pending total, 5,731 were unfair labor practice cases; 2,334 were representation cases; and 20 were union-shop deauthorization requests. The pending workload was 688 cases, or 9 percent above the 7,397 at the end of fiscal 1963.

In fiscal 1964, 63 notices of hearing were issued in cases coming under the Act's section 10(k), that is, proceedings in which generally it is alleged that jurisdictional disputes between groups of employees have caused or threatened strikes, and the Board may then "award" work assignments. There were 33 hearings held in such cases during the year, resulting in the Board's issuance of 32 decisions and determinations of dispute.

b. Unfair Labor Practice Charges

Except for continued increase, unfair labor practice charges filed with the NLRB have not shown marked statistical change in recent years. Unions continue to be the leading source of charges, followed by individuals, then employers. However, there has been some change in the situations which give rise to charges. In addition to the production of charges from traditional situations, there is a substantial number arising from changes in the Nation's industrial picture. A sizable portion of refusal-to-bargain charges, for example, arise at new plants where sophistication in management-union relations has not yet developed, and others occur in extension of automation with its effect on employee bargaining units, and in geographical movement of industry, to mention a few generating forces.

Fiscal 1964 was another record year in the 15,620 unfair labor practice charges filed with the NLRB. As in recent years, unions in 1964 led in filings with 7,209 cases, or 46 percent of the total (a 14-percent increase over the 6,346 of fiscal 1963); individuals were next with 5,865 cases, more than 37 percent of the total (2 percent less of the total but numerically greater than the 5,495 of 1963); and employers submitted 2,546, approximately 16 percent, equal to the 1963 percentage but exceeding that year's number of 2,325.

Of the 15,620 unfair labor practice charges filed during fiscal 1964, 68 percent, or 10,695 alleged employer violations of the Act. As compared with fiscal 1963 the 10,695 charges represented a numerical increase of 12 percent, or 1,145 above the 9,550 allegations of the prior year.

Allegations of union violations accounted for 4,856, or more than 31 percent of the 1964 total. This was an increase of 303, about 7 percent, above the 4,553 of fiscal 1963.

There were 69 charges filed jointly against unions and employers.

A breakdown of the statistics to indicate sources of the charges produces these figures:

In the total of 10,695 charges against employers, 7,008 (66 percent) were filed by unions; 3,685 (34 percent) came from individuals; and 2 charges were filed by other employers.

Against unions, 2,489 (51 percent) were filed by employers; 2,175 (45 percent) by individuals; and 192 (4 percent) by unions against unions.

Against both employers and unions, 9 were filed by unions; 5 by individuals; and 55 by employers.

Charges against employers filed by unions show a continued upward trend, increasing from the 44 percent of total allegations in 1958 to the 66 percent of 1964. On the other hand, the proportion of charges against employers filed by individuals in the same period have decreased from the 56 percent of 1958 to 34 percent in 1964.

Similarly, the pattern of charges against unions shows that while employer allegations against unions increased from the 34 percent of 1958 to 51 percent in 1964, the filings by individuals have decreased from 63 percent in 1958 to 45 percent in 1964. Charges by unions against unions have fluctuated only between 3 and 5 percent of total filings against unions in that period.

Another facet of the unfair labor practice charges is that with unions accounting for 7,209 of the 15,620 allegations, their percentage of filings has increased from 30 percent of the 1958 total to 46 percent of the 1964 total. AFL–CIO affiliated unions filed 5,243 charges in fiscal 1964; the Teamsters Union submitted 1,314; other national unaffiliated unions filed 396; and 256 came from local unaffiliated unions.

Individuals filed 5,865, or 38 percent, of the total charges, and employers submitted 2,546 or 16 percent.

Again in 1964, the principal charge directed at employers continued to be illegal discharge or other forms of discrimination against employees. Out of the total 10,695 charges against employers, 7,654, or 72 percent, contained allegations of discrimination. This equaled the percentage rate of fiscal 1963, but the allegations were 814 above the 1963 number, a climb of about 12 percent.

A considerable increase also was noted in refusal-to-bargain charges against employers in 1964. There were 3,088 such allegations, 504 more than the 2,584 of 1963, or in excess of 19 percent above the prior year.

There has been a steady climb of employer refusal-to-bargain charges since 1958 when 1,039 such allegations were filed, about 17 percent of total charges against employers, compared with the current threefold rate, amounting to 29 percent of the total.

Against unions, the fiscal 1964 charges showed some percentage shifts in types of unfair labor practices but none of any marked nature. Approximately 51 percent of charges filed in the year against unions alleged illegal restraint or coercion of employees in exercising their right to join, or refrain from union activity. There were 2,451 such charges, just 52 above the number of fiscal 1963.

Alleged discrimination against employees by unions accounted for 1,766 charges (36 percent of the total), a drop of 19 below the 1,785 charges of fiscal 1963.

There were 1,626 allegations of illegal union secondary boycotts, including cases involving jurisdictional disputes, an increase of 180, or 12 percent above the 1,446 of fiscal 1963.

Charges of union picketing illegally to obtain recognition or for organizational purposes rose to 419 in fiscal 1964, or more than 18 percent above the 354 in fiscal 1963.

Charges of hot cargo violations against unions and employers jointly increased to 69, which was 6 above the 1963 total.

Industrial distribution of unfair labor practice charges showed the manufacturing industries again well in the lead with 49 percent of the total for fiscal 1964. The construction industry produced 15 percent; transportation, communication, and other public utilities accounted for 12 percent; and other industries contributed the remainder.

c. Division of Trial Examiners

NLRB trial examiners, from either the Trial Examiner Division's Washington, D.C., headquarters or its San Francisco, California, office, conduct formal hearings in unfair labor practice cases in the instances

where formal complaints have been issued, and there has been no intervening disposition of the cases.

After hearing a case, the trial examiner issues a decision and recommended order, which then goes to the five-member Board for decision. Exceptions to the trial examiner's findings may be filed within 20 days. If exceptions are not filed, the trial examiner's recommended order becomes that of the Board. If exceptions are filed, the case goes to the Board for review and decision.

In fiscal 1964 there was an upswing in the number of hearings (989) conducted by trial examiners, and the number of cases involved (1,443). This was an increase of nearly 33 percent over the 745 hearings of fiscal 1963, and a 30-percent boost over the prior year's 1,111 cases involved in hearings. (Chart 8.)

Trial examiners also issued 734 decisions and recommended orders during fiscal 1964, a more than 8-percent increase over the 675 of the prior year. They also issued 33 backpay decisions, and 13 supplementary decisions.

Of the 1964 trial examiners' decisions and recommended orders, 81 were not contested. These amounted to approximately 11 percent of the total trial examiners' decisions issued.

d. Processing of Unfair Labor Practice Cases

Unfair labor practice cases may not be initiated by the NLRB. They originate when an outside party files charges at an NLRB regional office. They then are investigated to determine if they have merit. The regional office staff conducts the investigation, supervised by the regional director acting for the NLRB General Counsel, who under the statute has sole responsibility for investigation of charges, issuance of formal complaints, and further prosecution of unfair labor practices.

The destiny of a charge, once filed, may be settlement, withdrawal, dismissal, or it may go to the full course of litigation—that is, to formal complaint issuance, hearing and decision by a trial examiner, decision by the five-member Board, possibly then to a U.S. Appeals Court for review or enforcement, and perhaps ultimately to the U.S. Supreme Court.

Cases may be settled by the parties before or after issuance of formal complaints. A substantial number are disposed of in this manner. A large number of cases also are withdrawn after filing, and before issuance of complaints. Another large proportion of charges are dismissed.

As chart 2 shows, approximately 69 percent of the 15,074 unfair labor practice cases closed during fiscal 1964 either were dismissed or were withdrawn before issuance of complaint, maintaining a level

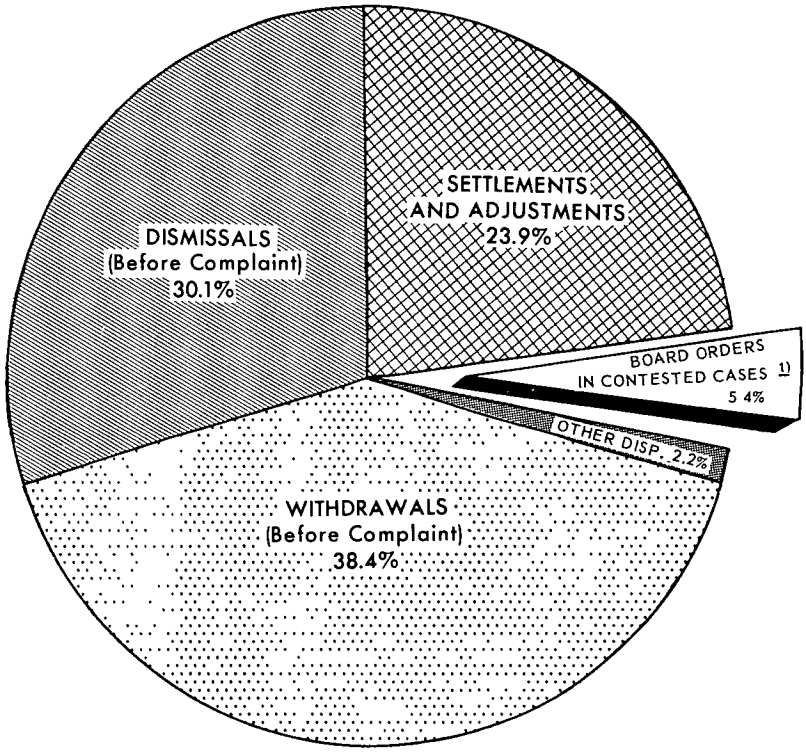
consistent with that of the prior 3 years. And during 1964 about 24 percent of the closed cases were settled or adjusted without need for trial examiners' decisions.

Chart 2

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1964



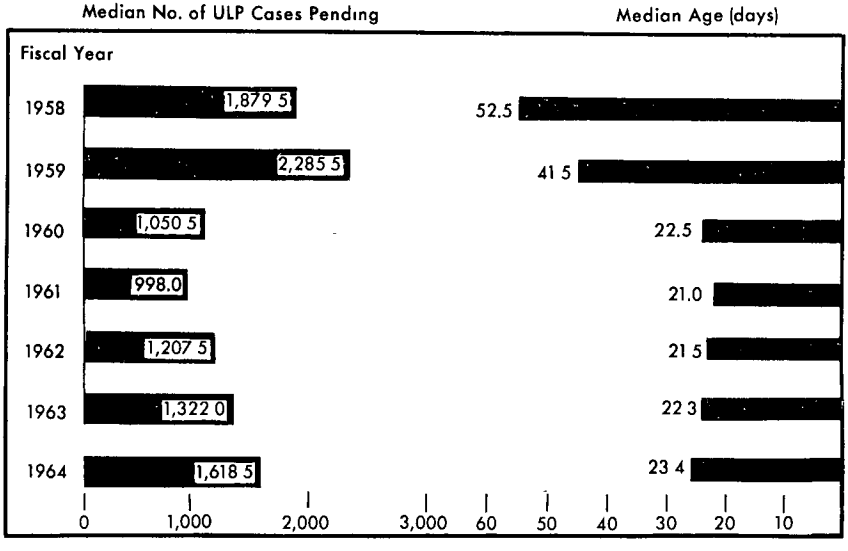
1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

Settlement and adjustment of cases also show consistency in terms of percentages—23.9 percent in fiscal 1964, 23.5 percent in fiscal 1963—but it should be noted that the actual number of cases in which NLRB regional offices secured settlement or adjustment in 1964 without need for trial examiners' decisions was 3,596, as compared with the 3,197 of 1963, a 12 percent gain.

With settlements and adjustments, withdrawals, and dismissals accounting for 92.4 percent of fiscal 1964 unfair labor practice cases closed, approximately 5.4 percent of the cases went to Board Members in Washington for decision, as against approximately 6 percent in fiscal 1963. The remaining 2.2 percent had other disposition.

Chart 3

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



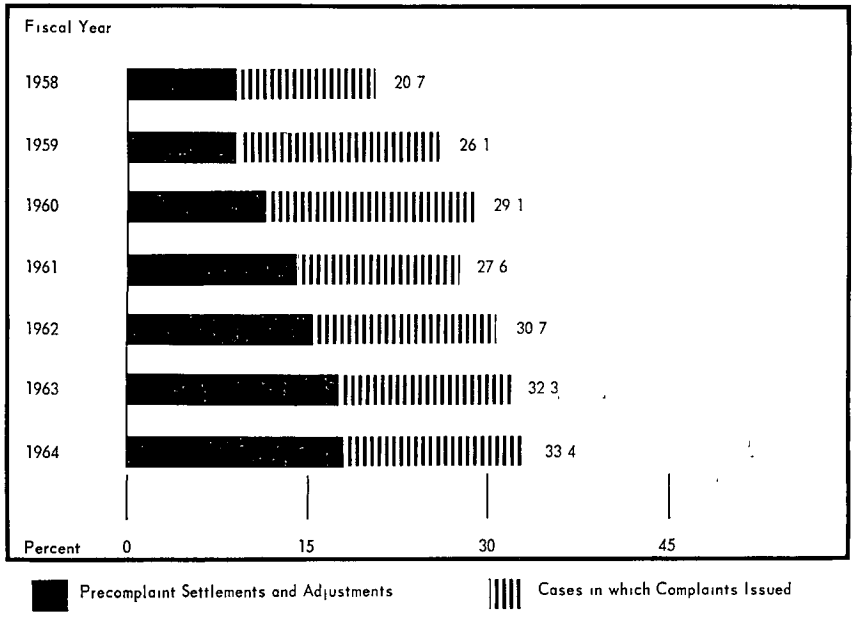
A significant development in unfair labor practice charges has been the tandem growth of number of cases and those found to have merit, prompting issuance of formal complaints by the NLRB General Counsel. This dual growth has placed increasing workload pressure on the Agency.

In fiscal 1964 the proportion of charges found to have merit rose to 33.4 percent, compared to the 32.3 percent of fiscal 1963, with fewer cases, and continuing the upward trend since the 20.7 percent of 1958, as shown in chart 4.

Again in fiscal 1964, as in the prior year, over half the meritorious charges were settled or adjusted without need for formal proceedings, issuance of a complaint, etc. But, again, with the increased number and merit factor in charges the formal complaint issuance by the Office of the General Counsel set a new record. There were 1,890 complaints issued, a 19-percent increase over the 1,588 of fiscal 1963. For contrast, the figure for fiscal 1964 was 249 percent above the 541 complaints issued in 1958. (See chart 5.) Approximately 79 percent

Chart 4

UNFAIR LABOR PRACTICE MERIT FACTOR



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

of the complaints were issued against employers, 17 percent against unions, and the remaining 4 percent against both employers and unions.

With the substantial workload increase imposed on NLRB regional offices by the greater number of unfair labor practice cases filed, and the higher volume found to have merit, the median time from filing of charges to complaint issuance was 56 days, as against the 49-day median of fiscal 1963. See chart 6 for comparison of median times since 1958. The time from filing of charges to issuance of complaint includes 15 days in which parties have the opportunity to adjust the case and remedy the violation without resort to formal Agency processes.

Among developments in case processing, employees illegally discharged or suffering similar discrimination under the Act were awarded $3,001,630 in total backpay (lost wages) under formal deci-

Chart 5

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS

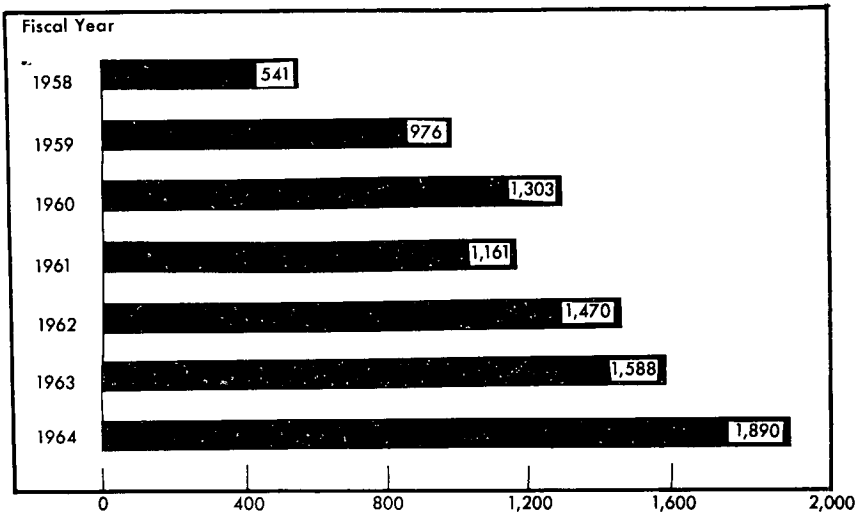


Chart 6

MEDIAN DAYS FROM FILING OF CHARGE TO ISSUANCE OF COMPLAINT

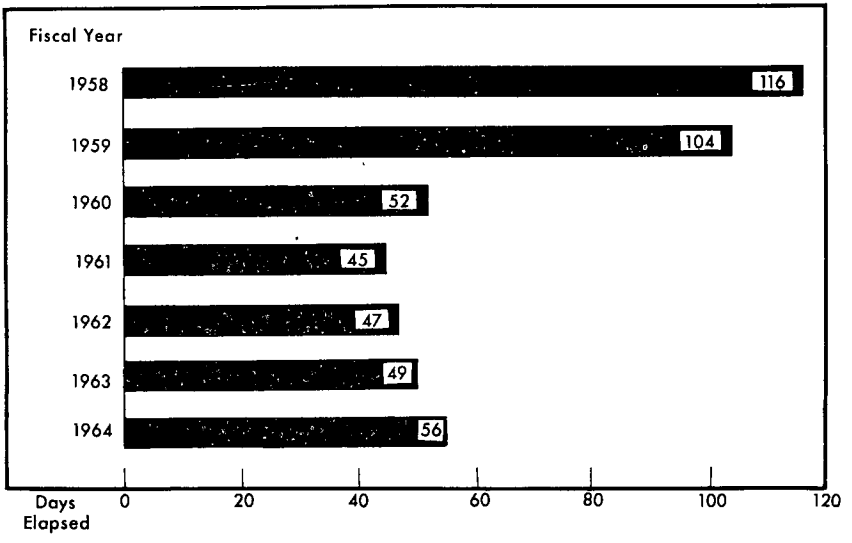
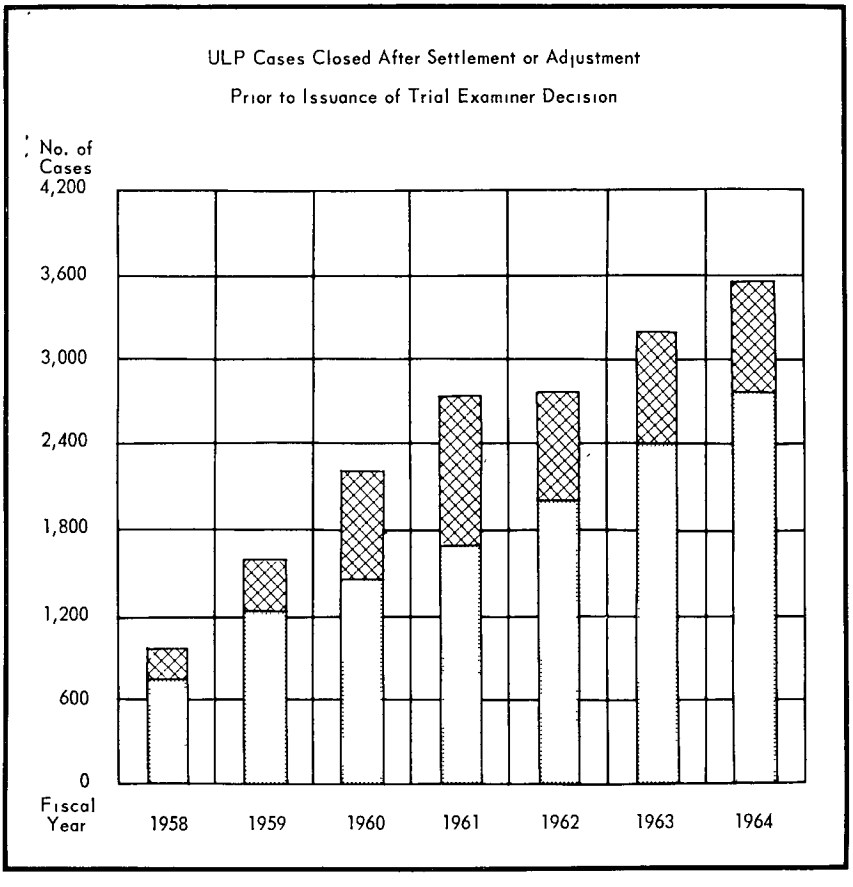


Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



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

sions, and settlements and adjustments of unfair labor practice charges. This was a new record, a 9-percent increase over the $2,749,-151 awarded in fiscal 1963. (Chart 9.)

In fiscal 1964, 5,142 employees received backpay, and 4,044 were offered job reinstatement, compared with the 6,965 who received backpay, and 3,478 offered reinstatement in fiscal 1963.

In 1964, of the employees offered reinstatement, 3,004, or 74 percent, accepted, and returned to work.

Chart 8

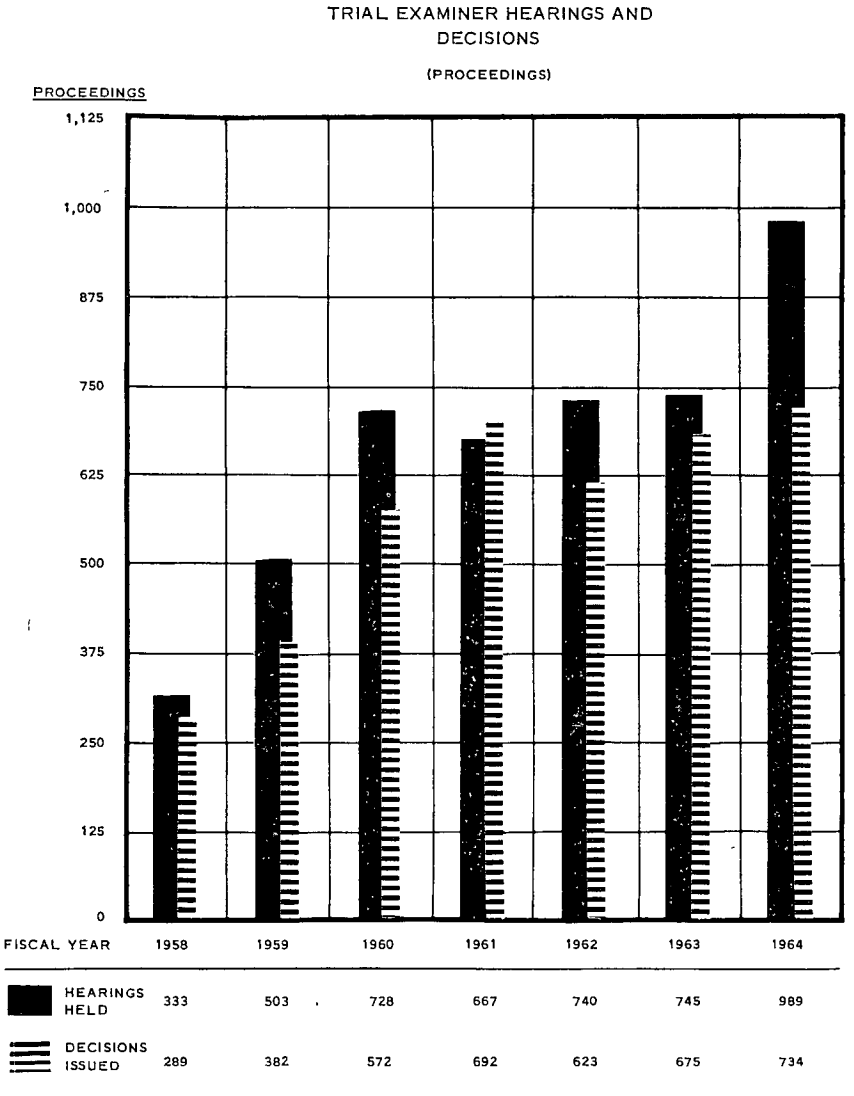
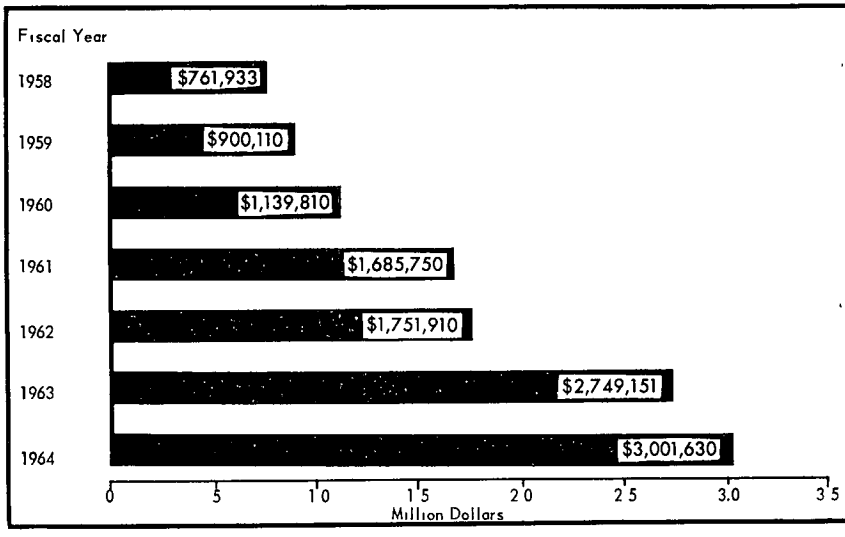


Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



e. Processing of Representation Cases

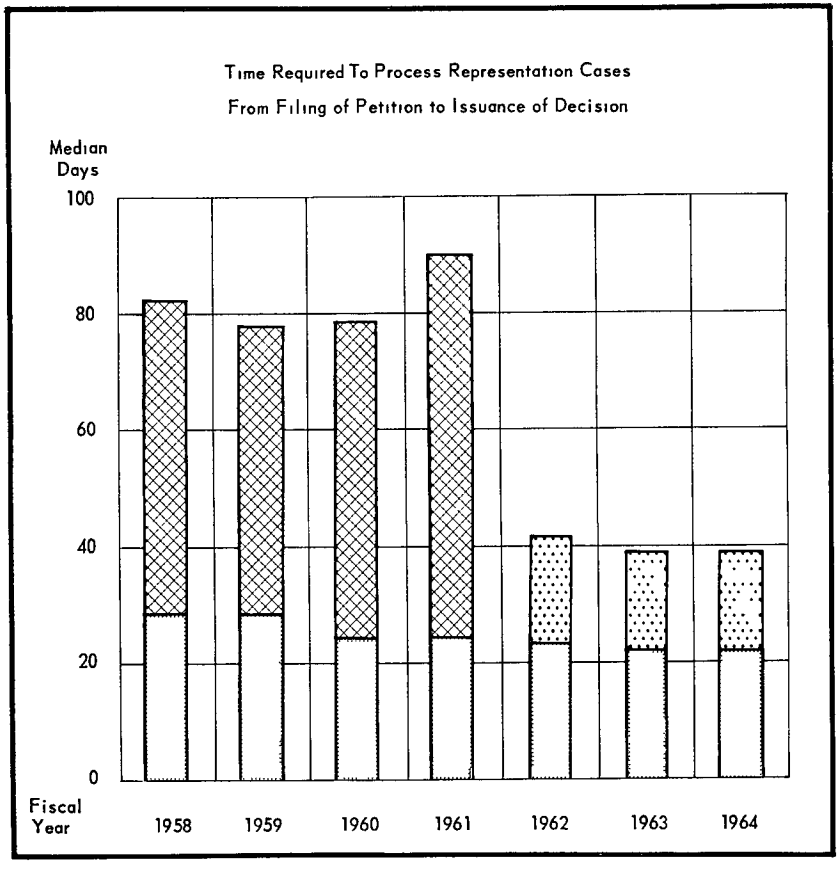
In its third full year of experience with delegation of the five-member Board of authority in handling contested representation cases to the NLRB's regional directors (along with their processing of uncontested cases), the Agency in 1964 closed 11,641 representation and union deauthorization cases, a 5-percent increase over the 11,073 of fiscal 1963, and just 67 short of the record closing of 1962.

In the year, elections resulted in the closing of 7,703 cases, 66 percent of the representation and union deauthorization cases closed. There were 2,917 withdrawals, about 25 percent of the total closings, and 1,021, or 9 percent, were dismissed.

Of the 7,703 cases closed as a result of elections of all types, 6,027, or 78 percent, were brought about by election agreements, as compared with 74 percent in fiscal 1963, and 71 percent in fiscal 1962; 1,565, or 20 percent, were contested cases in which regional directors ordered elections following hearings; and 19 cases, less than 1 percent, were expedited cases, in which elections were held under the Act's section 8(b)(7)(C) provisions pertaining to picketing for recognitional or organizational purposes.

The Board ordered elections in 92 cases, 1 percent of the total, having received them either on appeal or by transfer from regional offices.

Chart 10



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

In the processing of representation cases, note should be made of the requests received by the Board for review of regional directors' decisions on representation issues.

During fiscal 1964 regional directors issued 1,890 decisions in contested cases. The Board during the year received 379 review requests, amounting to 20.1 percent of regional directors' decisions. Acting on

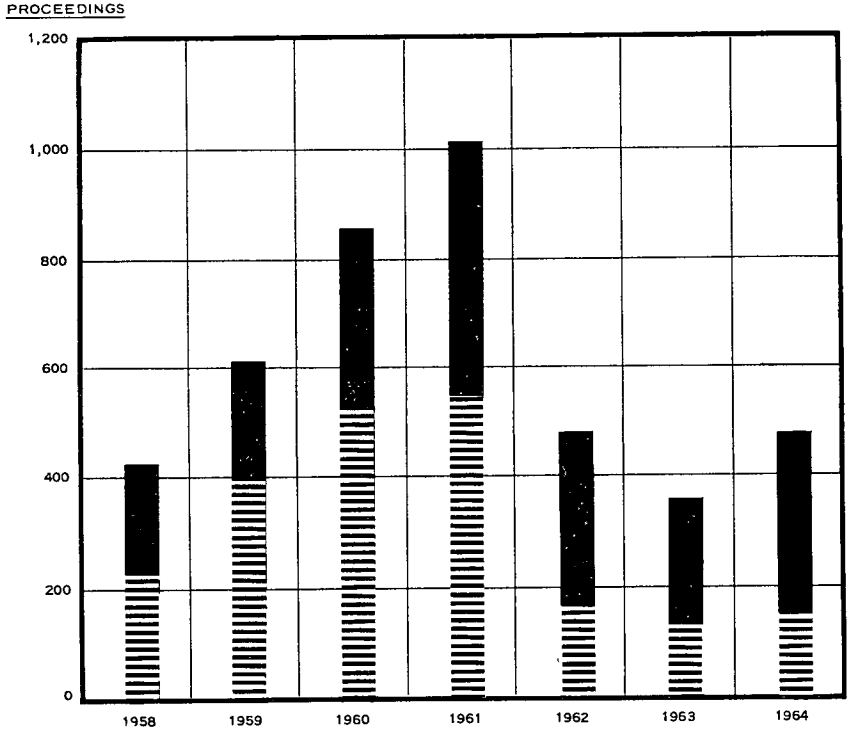
376 requests, the Board denied review in 290 instances; granted review in 61; and in 25 cases the requests were withdrawn.

The Board issued 49 decisions following review of regional directors' decisions. In those the regional directors were affirmed in 21 cases; there was modification in 7 decisions; and regional directors were reversed in 21 cases.

If a comparison is made with the number of decisions issued by the regional directors, the cases in which the directors were reversed following review amounted to only 1.1 percent of the 1,890 decisions issued, and the 7 modifications would equal only about four-tenths of 1 percent of that total.

Chart 11

BOARD CASE BACKLOG



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

f. Elections

Two noteworthy developments in elections conducted by NLRB regional offices in fiscal 1964 were (1) increased agreement of parties to the holding of elections, and (2) an upward swing in the number of elections held.

During the year, regional offices conducted 7,309 elections. Of this number there were 5,716, or 78 percent, conducted by voluntary agreement of the parties to dispense with formal NLRB proceedings, such as the holding of hearings, resulting in substantial manpower and monetary savings to the Agency.

In fiscal 1963, 75 percent of such elections were conducted voluntarily. In fiscal 1962, 71 percent were voluntary.

The total of 7,309 elections also represent a 6-percent increase over the 6,871 of fiscal 1963. (Chart 12.)

Although unions won more elections in fiscal 1964, gaining bargaining rights in 4,229 instances, their percentage of victories was 58, compared to the 59 percent of fiscal years 1962 and 1963, the 63 percent of 1959, and 61 percent in 1958.

In the union-won elections, AFL–CIO affiliates accounted for 2,633, or 62 percent of the total union victories.

Other national unaffiliated unions won 34 percent of the elections, and in the remaining 4 percent local unaffiliated unions gained bargaining rights.

Among nonaffiliated organizations, the Teamsters Union won 1,133, or 27 percent, of the total 4,229 elections in which unions were certified as bargaining agents.

More than 500,000 employees participated in the 1964 NLRB-conducted elections. There was an average of 66 employees who voted in each 1964 election; the average was 64 in 1963.

Small bargaining units continued to predominate in elections conducted by the Agency. About 76 percent of the elections were in units of 59 or fewer employees, and 23 percent were in units of 9 or fewer workers.

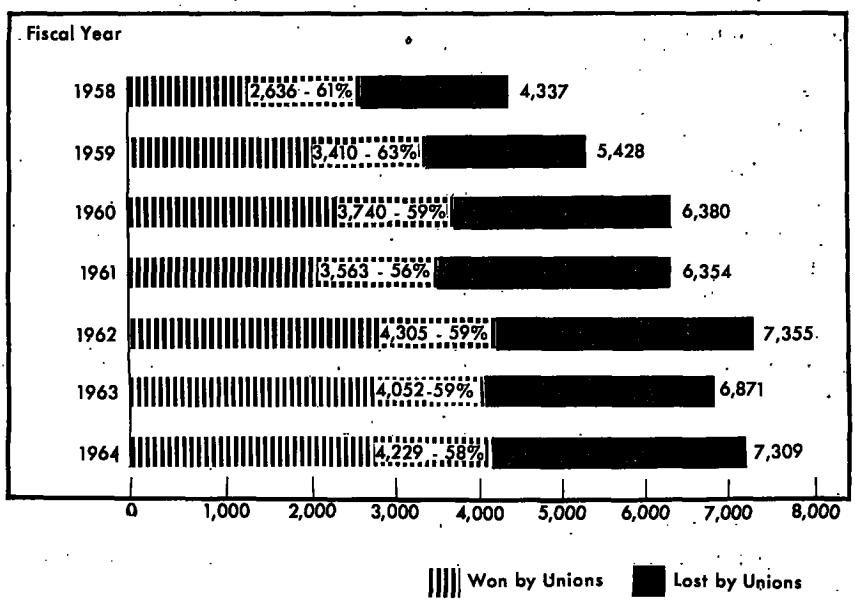
In the elections for certification of a bargaining agent, 538,019 employees were eligible to vote, of whom 90 percent, or 486,573, cast valid ballots. This high proportion of voting has been stable in 6 of the last 7 years, deviating only once in fiscal 1961 when it dropped moderately to 89 percent.

In the fiscal 1964 elections, 282,483 employees, amounting to 53 percent of the 538,019 eligibles, voted for union representation. This was a drop from prior fiscal years. In 1963 union representation was favored by 54 percent of the voters and 57 percent in 1962.

From the elections, unions were certified to represent 286,897 employees, or 53 percent of the employees eligible to vote. In the 3 prior fiscal years this rate has fluctuated between 51 and 57 percent, compared to the 1958 to 1960 period when the range was 56 to 60 percent.

Chart 12

COLLECTIVE BARGAINING ELECTIONS HELD
Number and Percent



Industrial classification of the elections showed that a substantial majority were held in manufacturing plants which accounted for 4,469 of the 7,529 elections of all kinds, or 59 percent. In a breakdown of this category, food-manufacturing plants led with 690 elections.

In other classifications, retail trade establishments accounted for 855 elections, about 12 percent of the total. In wholesale trades there were 799 elections, 11 percent of the total. In transportation, communications, and other public utilities, there were 669 elections, 9 percent of the total. The remaining number were conducted at a variety of other industries and services.

Regarding other types of employee voting, in fiscal 1964 there were 220 decertification elections in which employees were to decide whether they wished to retain their bargaining agents. The 220 elections were a 2-percent drop from the 225 of fiscal 1963, and were 23 percent below the 285 of fiscal 1962.

It might be noted in the fiscal 1964 figures that although unions lost in 153 decertification contests involving 5,399 employees, they won in

67 elections in which they gained the right of continued representation of 8,333 employees. Thus, unions were able to retain their bargaining representation in larger employee bargaining units in fiscal 1964, while losing representation in small units. The units in decertification elections won by unions averaged 124 employees in size; the average was 35 employees in the units lost.

But the pattern in this election category is fluid. While it is true that unions in fiscal 1963 similarly lost more decertification elections than they won, but apparently were able to retain larger bargaining units, there was a considerably narrower area between the sizes of the units. In 1963 the unions lost 165 decertification elections involving 8,033 employees; they won in 60 elections to retain bargaining for 5,223 workers. The average size of units in elections won was 87; in elections lost it was 48-plus.

In union deauthorization voting, in which employees decide whether incumbent unions should retain the right to negotiate union-shop agreements, there was a sharp drop of more than 24 percent in the number of such situations in fiscal 1964 as compared with fiscal 1963. Under union-shop agreements employees are required to join a union on or after 30 days of employment or the effective date of a union-shop agreement, whichever is later.

There were 34 union-deauthorization elections in fiscal 1964; there were 45 in fiscal 1963. In the 1964 voting, involving a total of 2,811 employees, unions lost the right to make union-shop agreements in 23 cases, or 68 percent of the 34 total. In 11, or 32 percent, the unions retained that right. The unions retaining the right represented 1,836 employees; those losing the right represented 975 employees. As in the decertification cases, unions in deauthorization situations were more successful in the larger than in the smaller employee bargaining units. In the 11 cases where unions retained union-shop authorization, the average size of bargaining units was 167 employees; in the 23 cases lost, the average bargaining unit size was 42-plus.

g. Decisions and Court Litigation

In fiscal 1964 the Agency issued 3,197 decisions in 3,804 cases, as shown in chart 13, exclusive of 350 decisions on objections and/or challenges in 363 election cases and 41 supplemental decisions in 68 unfair labor practice cases, making a total of 3,588 decisions in 4,235 cases of all types. Of these, Board Members issued 1,348 decisions, involving 1,875 cases; NLRB regional directors issued 2,240 decisions in 2,360 representation cases. The facts or application of the law were contested in 938 decisions of the Board: 515 decisions in unfair labor practice cases; 17 supplemental unfair labor practice decisions; 16 deci-

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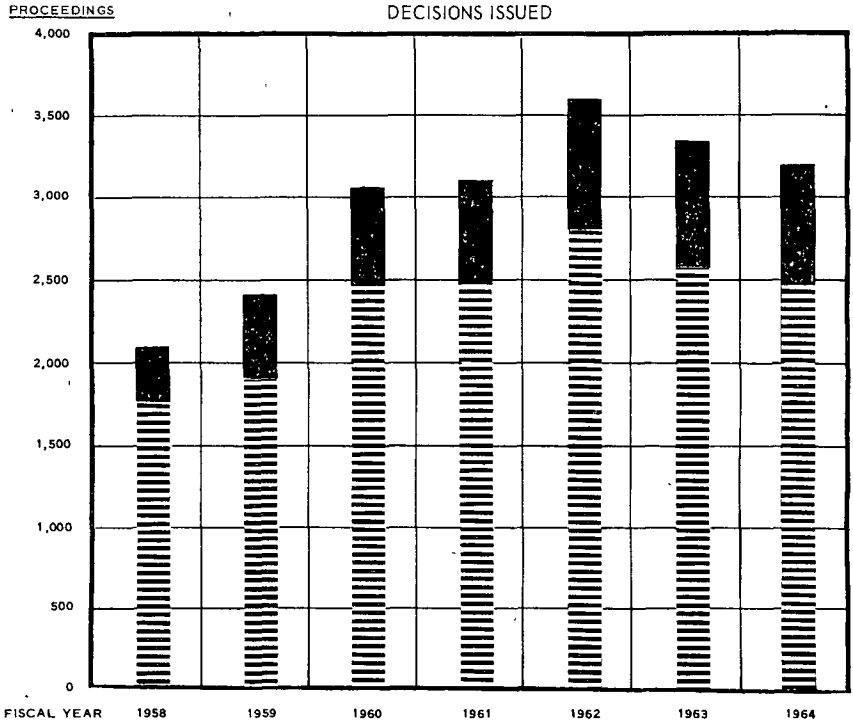
sions involving employee backpay; 32 determinations in jurisdictional disputes over job assignments under the Act's section 8(b)(4)(D); 176 decisions on representation questions; and 182 rulings on objections and challenges in employee elections. The other 410 decisions were in cases not contested before the Board.

Chart 13



FISCAL YEAR	1958	1959	1960	1961	1962	1963	1964
PROCEEDINGS							
C	382	460	626	636	851	813	735
R	1,703	1,962	2,444	2,467	2,749	2,527	2,462
TOTALS	2,085	2,422	3,070	3,103	3,600	3,340	3,197

In 719, or 83 percent, of the 865 contested unfair practice cases, the Board found violations, compared with the 80 percent in fiscal 1963, and 79 percent in fiscal 1962.

Charts on Board findings against employers and unions show a sawtooth pattern. In fiscal 1964, in 586, or 87 percent, of the 670 cases against employers the Board found violations, as compared with the 79 percent of 700 cases in fiscal 1963 and the 84 percent of 783 cases

in fiscal 1962. In the fiscal 1964 decisions the Board ordered employers to reinstate 1,029 employees, with or without backpay, and awarded backpay only to 173 employees. The Board ordered a halt to illegal assistance or domination of labor organizations by employers in 43 cases, and in 175 cases employers were ordered to bargain collectively, a 6-percent increase over the 165 so ordered in the prior year.

In the 195 cases against unions, the Board found violations in 133, or 68 percent, as compared with the 83 percent of 205 cases in fiscal 1963, and the 70 percent of the 334 cases in fiscal 1962. Board orders were directed against illegal union secondary boycotts in 40 cases. In eight cases unions were ordered to cease obtaining or receiving unlawful employer assistance. In 28 cases union-caused illegal discharge of employees was found, and the Board ordered unions to give 85 employees backpay. As to 58 of these employees, employers and unions were held jointly liable for the backpay.

In fiscal 1964, total output at all levels of the Agency was the highest of the past 7 fiscal years. Total case processing was 8 percent greater than in fiscal 1963. Case closings in unfair labor practice cases rose 11 percent above fiscal 1963, while in representation cases the closings were 5 percent above 1963. (See charts 13 and 14.)

Highlighted by a 23-percent gain in U.S. Courts of Appeals decisions, the court activity in NLRB-related cases gained in all areas. The Agency's success in litigation continued at a high level, except for a slight drop in grants of NLRB-requested injunctions in the district courts.

In the appeals courts, where appearances of the Agency result from either its requests for enforcement of its decisions or requests for review by aggrieved parties, there were 244 decisions in the fiscal year in NLRB cases, as compared with the 198 of fiscal 1963 which was a gain of 34 percent over fiscal 1962. The Agency's record of successful litigation in the appellate courts during fiscal 1964 was 78 percent in cases won in whole or in part, a percentage level identical with the prior year, which was 3 percent above fiscal 1962.

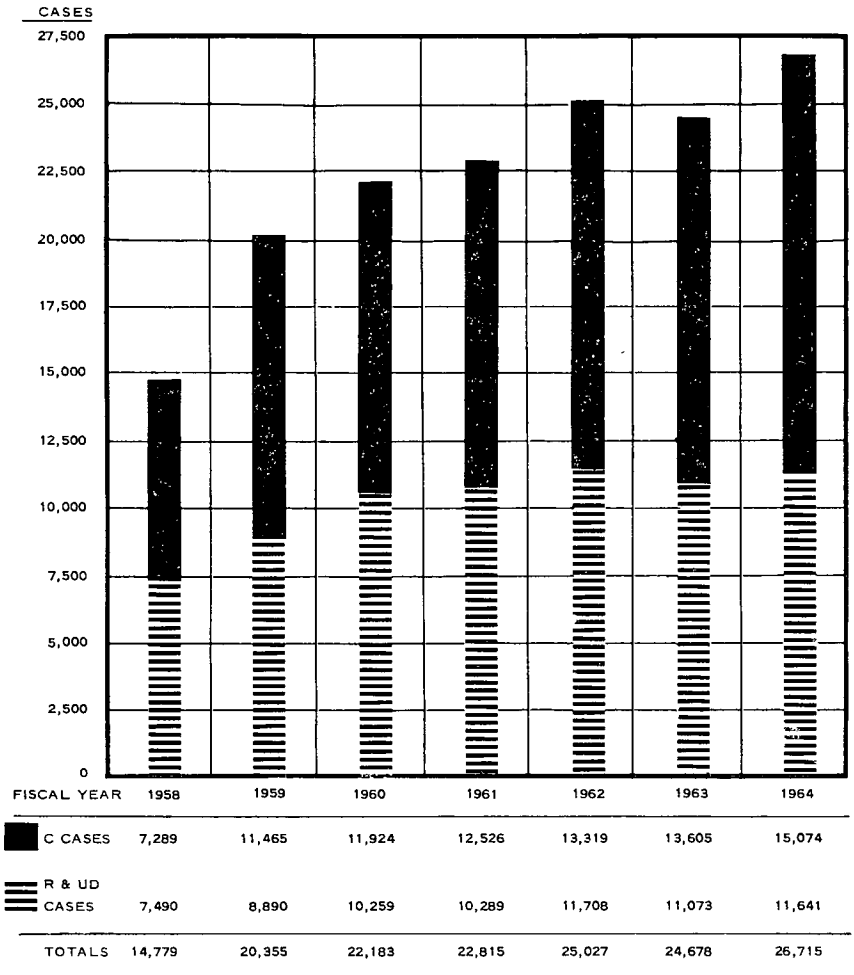
Appeals courts in fiscal 1964 enforced NLRB cases in full in 134 cases; 53 were enforced with modification; 10 were remanded to the NLRB; 3 were partially enforced and partially remanded; and 44 NLRB orders were set aside. Also, in 5 cases involving contempt proceedings the respondents complied with the NLRB's orders after the Agency's contempt petitions had been filed; in another 10 cases appeals courts held the respondents in contempt.

In the U.S. Supreme Court, five of six NLRB orders were affirmed in full in fiscal 1964; one order was set aside.

NLRB-related injunction litigation in the U.S. District Courts rose 17 percent in fiscal 1964 over fiscal 1963 in terms of cases

Chart 14

CASES CLOSED



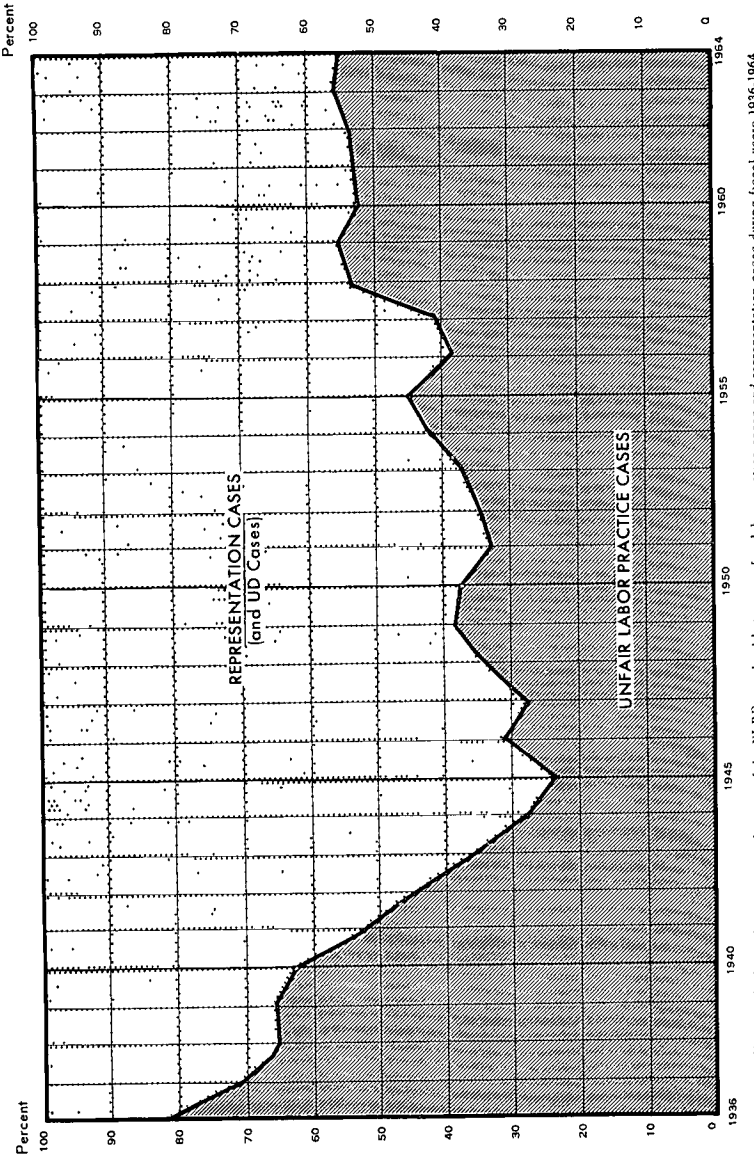
FISCAL YEAR	1958	1959	1960	1961	1962	1963	1964
C CASES	7,289	11,465	11,924	12,526	13,319	13,605	15,074
R & UD CASES	7,490	8,890	10,259	10,289	11,708	11,073	11,641
TOTALS	14,779	20,355	22,183	22,815	25,027	24,678	26,715

instituted—270 in 1964 as against 230 in the prior year. The district courts granted NLRB injunctions in 85 percent of the contested cases litigated to final order compared to the 91 percent of the year before. There were 87 injunction petitions granted, 15 were denied, 13 were withdrawn, and 5 were dismissed; also, 147 petitions were settled or placed on the courts' inactive dockets, and 13 petitions were awaiting action at the end of the fiscal year.

During the year there were 41 other cases involving miscellaneous litigation decided by the courts, appellate and district.

Chart 15

COMPARISON OF FILINGS OF UNFAIR PRACTICE CASES AND REPRESENTATION CASES



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1964

h. Other Developments

Informal conferences were held by the Agency during the fiscal year with representatives of the National Association of Manufacturers, the Chamber of Commerce of the United States, and the organizing departments of the American Federation of Labor-Congress of Industrial Organizations, and the AFL–CIO's Industrial Union Department. The conferences included area meetings with the NAM and the AFL–CIO organizations, separately conducted, and were climaxed by Washington, D.C., sessions attended by NLRB Board Members and the General Counsel in addition to top staff personnel who had attended the area sessions. A similar meeting was held with the Chamber of Commerce in Washington. The meetings produced frank discussion and appraisal of the Board's decisions, policies, and practices, and contributed to greater mutual understanding of viewpoints of all parties as to the Agency's administration of the National Labor Relations Act.

Following a conference with the Liaison Committee of the Labor Law Section of the American Bar Association, the Agency drafted proposed rules changes which were aimed at substantial improvement in the overall processing of cases. In this connection, a report of the Bar Association's Liaison Committee noted approval of the relationship of the NLRB and the association, and success of the Agency's regional offices under supervision of the General Counsel in their handling of contested representation cases with authority delegated by the Board.

The Agency on June 12, 1964, formally opened a new regional office in Milwaukee, Wisconsin, following earlier announced intention to do so there as well as to establish a new office in Brooklyn, New York. The new offices will relieve work overloads in the New York City and Chicago, Illinois, offices principally, and to a degree the office in Minneapolis, Minnesota.

As previously noted in the fiscal 1963 annual report, Howard Jenkins, Jr., of Colorado on August 29, 1963, took office as a member of the NLRB, succeeding Philip Ray Rodgers, whose term had expired.

Performance of the Agency's regional offices was underscored by the showing that with a total staff increase of about 1 percent, the offices processed workload increases of 10 percent in unfair labor practice situations and 5 percent in representation cases over fiscal 1963, and that this amounted to a productivity increase of 18 percent by the field staff.

i. Note on Statistical Tables for 1964 Annual Report

To increase usefulness of the statistical tables found in appendix A of this report, the Agency has added some new tables, and has ex-

panded others. The changes are intended to advance the statistical information on Agency activity both in form and in detail.

Also, a glossary of terms used in the tables has been provided. Some of the terminology used in tables of former annual reports has been altered, thus the glossary will aid in making valid comparisons of fiscal 1964 data with that in former reports.

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

3. Decisional Highlights

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

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

a. Racial Discrimination and the Duty of Fair Representation

In the landmark *Hughes Tool Co.*[1] consolidated representation and unfair labor practice case, the Board, consonant with court decisions condemning Government sanctions of racially separate groupings, held that "the Board cannot validly render aid under Section 9 of the Act to a labor organization which discriminates racially while acting as a statutory bargaining representative." The Board therefore rescinded its certification issued jointly to two locals—one representing only the white employees in the unit and the other representing only the Negro employees—because they executed racially discriminatory contracts and administered them so as to perpetuate racial discrimination in employment. Further reasons for rescission of the certification were the locals' racial discrimination in determining eligibility for membership and the racial segregation of their members.

The unfair labor practice feature of the case was based upon the failure, motivated by racial discrimination, of the jointly certified

[1] *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB No 166, see pp. 47, 72, and 84, *infra*.

local composed of the white employees in the unit to consider or process a grievance filed by a Negro employee member of the other jointly certified local. By the grievance he sought consideration for a job opening covered only by the separate contract with the respondent local. The Board held that the rights guaranteed an employee by section 7 of the Act include the right to fair representation by the designated bargaining agent. The failure of the union to consider the grievance was held to be a *pro tanto* refusal to represent him and to constitute restraint and coercion in violation of section 8(b)(1)(A).[2] That failure was also held to violate section 8(b)(2) since the respondent local, by withholding from the employee treatment he would have received had he been eligible for membership in it, caused the employer "to derogate the employment status of an employee." The union's failure, based upon "arbitrary or irrelevant reasons or upon the basis of an unfair classification," was held to be equally a violation as affirmative action would have been.

The Board further found the failure to process the grievance was a breach of the bargaining obligation imposed upon the local by section 8(b)(3). The Board held that the bargaining obligation of the union is a duty owed the employees as well as the employer. It viewed the local's failure to act on the grievance as the equivalent of affirmative action taken on behalf of some but not all the employees in the unit, and springing from motivations of racial discrimination, constituted a breach of its duty to fairly represent all the employees.

b. Representation Issues

Pressing considerations of national policy were urged upon the Board in two cases involving contract-bar issues. In *Aerojet-General Corporation*[3] the incumbent union negotiating a new contract for employees in the aerospace industry had agreed to withhold strike sanctions during intervention by the President and Secretary of Labor to resolve the bargaining dispute. The petition of a rival union filed during this period of Federal intervention, although seemingly timely under contract-bar rules, was dismissed by the Board since, in its view, the situation was one in which Board proceedings should be accommodated "to other instruments of the national labor policy." The Board, considering also that a denial of protection to an incumbent union might discourage them from cooperating in future situations, concluded that under the circumstances "the public interest in stability outweighs the employees' interest in freedom of choice."

[2] See *infra*, p. 83.
[3] 144 NLRB 368.

An effort to have the Board waive its contract-bar rules upon national policy grounds was rejected in *Swift & Co.*,[4] where a marginal plant in an economically depressed area was threatened with shutdown by the employer when the union refused to extend an exemption for the plant from the terms of the national agreement under which the employer obtained the operational flexibility needed to maintain the plant. In dismissing the petition of a group of employees who sought to disaffiliate from and displace the incumbent, the Board, recognizing the economic complexity of the situation and the questionable value of emphasizing the immediate public interest at the expense of the nationwide and long-range public interest in the basic principles of labor relations, concluded that resolution of the situation was most appropriately left to the parties acting within the framework of established collective-bargaining principles.

Acting upon its belief that "the Board, as a major custodian of the national labor policy, should take all positive action available to eliminate industrial strife and encourage collective bargaining," the Board also announced that it would resume processing motions for clarification of noncertified units and resolving questions concerning the placement of disputed employees in such units.[5] In determining to assert its statutory authority to do so, the Board noted that "[i]f we were to refuse . . ., we would be exacerbating a dispute which reached us in the first place because the parties could not settle it themselves."

c. Board Procedure

Finding upon "the experience gained in its application" that a "rule which was itself a departure from well-established prior Board precedent does not serve to effectuate the policies of the Act," the Board in *Bernel Foam*[6] returned to the rule that a majority union which chooses to participate in a Board-conducted election with knowledge of the employer's unlawful refusal to extend recognition and bargain, and loses the election, is not thereby precluded from filing refusal-to-bargain charges based upon the employer's preelection misconduct. Union objections to the election in that case had been sustained and the election set aside. Analyzing the existing rule, the Board noted that the union by proceeding to an election waives the unfair labor practice; that the employer's unlawful conduct requires the union to choose between filing refusal-to-bargain charges or proceeding with the election; and that the union in either of these proceedings is forced to prove its majority status although the employer has no good-faith doubt concerning it. The Board concluded that this rule had not been

[4] 145 NLRB 756, *infra*, p. 47.

[5] See *infra*, pp. 56–57. *Brotherhood of Locomotive Firemen & Enginemen*, 145 NLRB 1521.

[6] 146 NLRB 1277, *infra*, pp. 38–39.

justified by the economy considerations leading to its establishment, and that the two types of procedures do not involve contrary assertions of fact or position by the union. It accordingly held that no basis existed for applying an election of remedies or waiver doctrine to the situation and returned to precedent from which the rule had departed.

d. Bargaining Obligation

The obligation of an employer to permit a union access to production areas of the plant to make its own time studies of manufacturing operations was considered by the Board in the *Fafnir Bearing Co.* case.[7] The union sought to make the time studies to evaluate the desirability of arbitrating grievances concerning standard production rates established by the employer. The Board viewed the requests to make the time studies as "in the nature of" requests for information which was within the employer's power to make available to the union, but was not otherwise available to it. Finding no hardship to the employer nor potential interference to production, the Board concluded that upon balance of the interests involved, the employer was obligated to afford access to production areas for that limited purpose.

The increasing emphasis and reliance placed by the Board upon the bargaining process to work out disagreements required it to resolve claims of contract waiver of bargaining rights made in several cases.[8] In one the Board found that by contracting that in the final grievance step the union would be represented only by members of its bargaining committee, who had to be selected from the unit, the union had waived its right to have a nonemployee chief shop steward represent the union in the grievance procedure. In another, the Board found that the language of a management prerogatives clause precluded the union's demand to bargain concerning physical examinations required of certain employees. A third case involved the claim of waiver by the union since it had sought certain provisions during negotiations, but accepted a contract which was silent on the subject, although the employer's subsequent actions in that area would have been subject to grievance and arbitration under the contract. The Board found no waiver, holding that an unsuccessful attempt to achieve a contract objective, even though obtaining the right to arbitration on the issue, cannot preclude subsequent assertion of the union's statutory rights as bargaining representative.

[7] 146 NLRB 1582, *infra*, p. 76.
[8] See *infra*, pp 78, 79.

e. Enforcement of Union Rules

During the year the Board decided a number of cases involving union efforts to enforce, sometimes through the employment relationship, a variety of rules originating with the union and designed to regulate union membership or conditions of employment. In *Wisconsin Motor*,[9] the Board found no violation of the Act where the union instituted a State court suit to collect a fine levied against some of its members. They had been found by union procedure to have engaged in conduct unbecoming a member, having exceeded production ceilings established by the union. The production ceilings were not incorporated in the contract although recognized by the employer as an element of its negotiated wage structure. The Board found that the rules pertained solely to the internal affairs of the union and the fines were enforcement of internal union policy. The union's actions were therefore within the protection of the proviso to section 8(b)(1)(A) which preserves a union's right to prescribe its own membership rules. In the similar *Associated Home Builders* case,[10] the Board found no violation in the imposition of fines for exceeding production quotas but did find the Act violated when the union attempted to collect them by allocating money tendered as dues to payment of the fines, and then threatened to invoke the union-security contract to obtain the discharge of affected employees for nonpayment of dues.

Other cases in which the Board found no violations of the Act when the union sought to enforce its own rules include *New York Typographical Union Number Six*,[11] where the union, in furtherance of a policy of sharing work incorporated in a rule prohibiting priority of employment in the printer's trade to those holding full-time jobs elsewhere, obtained the reclassification of an employee holding a second job. The Board found that enforcement of the rule, with the resultant loss of priority in employment, was permissible under the contract with the employer and not inconsistent with it. And in *Millwright's Local 1102*,[12] the Board found no violation when the union attempted to obtain the discharge of an employee for accepting employment without receiving payment of a subsistence allowance for transient employees, where the union in good faith interpreted the contract as requiring payment of the subsistence allowance under the circumstances.

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[9] 145 NLRB 1097, *infra*, p 85
[10] 145 NLRB 1775, *infra*, p 85.
[11] 144 NLRB 1555, *infra*, p. 87
[12] 144 NLRB 798, *infra*, p. 88.

f. Picketing To Compel Bargaining

Section 8(b)(7)(C)'s prohibition against picketing to force an employer "to recognize or bargain with a labor organization as the representative of his employees" was construed by the Board in two cases in which it was urged that the literal language of the section, being phrased in the disjunctive, barred picketing for a bargaining objective as well as picketing for recognitional purposes.[13] In each case the picketing in issue was found to have the objective of requiring an employer to fulfill an existing bargaining obligation owed the picketing union under the provisions of a multiemployer association-multiunion contract binding upon the employer. Upon an analysis of congressional purpose in enacting the section, the Board concluded that "the words 'recognize or bargain' were not intended to be read as encompassing two separate and unrelated terms." In the Board's view, the section was intended to proscribe picketing to obtain an employer's "initial" recognition of the union as representative of its employees, rather than proscribe picketing to enforce an established bargaining obligation.

4. Fiscal Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1964, are as follows:

Personnel compensation	[1] $17,787,965
Personnel benefits	[2] 1,298,968
Travel and transportation of persons	1,229,208
Transportation of things	51,855
Rent, communications, and utilities	662,132
Printing and reproduction	417,101
Other services	492,172
Supplies and materials	223,987
Equipment	132,276
Insurance claims and indemnities	12,175
Subtotal, obligations and expenditures	22,307,839
Transferred to Operating Expenses, Public Buildings Service (Rent)	14,160
Total Agency	22,321,999

[1] Includes $1,843 for reimbursable personnel compensation.
[2] Includes $16 for reimbursable personnel benefits.

[13] See *infra*, p. 98.

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 the Board's jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction; i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

A. Enterprises Subject to Board Jurisdiction

During fiscal 1964, the Board had occasion to further delineate its legal jurisdiction and jurisdictional standards by determining the applicability of the Act to such nonprofit enterprises as a country club, a YMCA, and a research and educational institution.

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[1] See secs. 9(c) and 10(a) of the Act, and also the definitions of "commerce" and "affecting commerce" set forth in secs. 2 (6) and (7), respectively. Under sec. 2(2), the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision, any nonprofit hospital, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. "Agricultural laborers" and others excluded from the term "employee" as defined by sec. 2(3) of the Act are discussed below under "Representation Cases," pp. 52–55.

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

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

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

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

1. Nonprofit Enterprises

In *Walnut Hills Country Club*,[6] the Board announced [7] that the retail jurisdictional standard [8] would be applied to employees engaged in the operation of country clubs, since such operations are basically retail in nature.[9]

In *Young Men's Christian Association of Portland, Oregon*,[10] upon petition for an advisory opinion, the Board advised that it would not assert jurisdiction over a nonprofit, charitable, and religiously oriented institution where the activities involved are noncommercial in nature and are intimately connected with the civic, educational, charitable, and religious activities of that institution.[11] The Board applied the *Columbia University* doctrine [12] concerning the exercise of jurisdiction over a nonprofit, educational institution, to the instant nonprofit, charitable, and religiously oriented employer—the YMCA in a metropolitan area.

In *University of Miami, Institute of Marine Science Division*,[13] the Board declined to assert jurisdiction over a nonprofit marine science institute operated as a division of the University of Miami, where its activities, including a research program, are primarily educational rather than commercial in character. Jurisdiction was declined even though its interstate activities appear to satisfy the statutory as well as the Board's jurisdictional standards. The institute performs research for, and is substantially supported by, the Federal Government,[14] but is first and foremost an educational institution for the advanced study of oceanography, with its research activities contributing directly to its curriculum and program for the practical training of scientists in oceanography.

[6] 145 NLRB 81.

[7] The Board had left open in previous cases the question of whether it would apply the retail or nonretail standards to country clubs *El Paso Country Club, Inc*, 132 NLRB 942; *Pennsylvania Labor Relations Board (Chartiers Country Club)*, 139 NLRB 741; *Muskegon Country Club*, 144 NLRB 1.

[8] The current Board standard for the assertion of jurisdiction over retail enterprises is an annual gross volume of business of at least $500,000. *Carolina Supplies & Cement Co.*, 122 NLRB 88, 89

[9] The Board here declined jurisdiction over the country club because its annual gross revenues were less than $500,000 even though its annual purchases of goods originating outside the State exceeded the $50,000 minimum jurisdictional amount for nonretail enterprises

[10] 146 NLRB 20.

[11] See also *Crotty Bros*, 146 NLRB 755

[12] *Trustees of Columbia University*, 97 NLRB 424.

[13] 146 NLRB 1448

[14] The Board distinguished *Woods Hole Oceanographic Institution*, 143 NLRB 568, where virtually the only function of the employer was the performance of research for the Federal Government. In asserting jurisdiction there, the Board found that the employer was "literally in the business of doing business with the Federal Government" in much the same fashion as a profit-making concern, and that its activity was beneficial to private industry and exerted a substantial impact upon commerce See Twenty-eighth Annual Report (1963), pp 35–36.

B. Application of Jurisdictional Standards

During the past year, a number of cases presented questions as to the manner or method of applying the Board's discretionary standards. Significant among them are two such cases which dealt primarily with the application of the Board's current standards to an enterprise rendering services to federally subsidized local projects, and to an enterprise selling altered interstate commerce goods.

1. Services to Federally Subsidized Local Projects

In *Browne and Buford*,[15] the Board asserted jurisdiction over a partnership engaged in rendering surveying, design, and inspection services which met the Board's $50,000 outflow standard for nonretail enterprises.[16] In so doing, the Board held that services rendered to State political subdivisions in connection with two projects financed substantially by the Federal Government under urban renewal and another nationwide Federal program are considered to be indirect outflow for jurisdictional purposes.[17] The Board noted that a labor dispute disrupting services to these projects would have a serious and adverse impact on programs which are closely bound to the national interest. And, in the Board's view, the employer's services to State political subdivisions are infused with at least as great a Federal interest as services rendered to other private concerns whose operations in other respects meet the Board's jurisdictional standards.

2. Material Alteration of Goods in Interstate Commerce

In the *Schuwirth* case,[18] a Board majority asserted jurisdiction over an employer engaged in selling spent grain, the residual byproduct of brewing, to local dairy farmers for dairy feed. The employer annually purchased more than $50,000 worth of this spent grain from a brewing company which met the Board's indirect inflow standard in purchases of whole grains from outside the State. The majority found that the processes to which the grain was subjected by the brewing company did not involve such an alteration in the grain's form as to take the sales of the spent grain out of the stream of commerce and thus render the Board's indirect inflow standard inapplicable.

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[15] *Browne and Buford, Engineers and Surveyors*, 145 NLRB 765

[16] See *Siemons Mailing Service*, 122 NLRB 81.

[17] See also *Truman Schlup, Consulting Engineer*, 145 NLRB 768.

[18] *George Schuwirth*, 146 NLRB 459, Chairman McCulloch and Members Brown and Jenkins for the majority, Member Leedom dissenting.

C. "Labor Dispute" as Jurisdictional Requirement

In four cases decided during the past year, the Board had occasion to determine whether the existence of a labor dispute with an employer is a prerequisite to the application of section 8(b)(4) boycott provisions. In *Maryland Ship Ceiling*,[19] the Board rejected a union's contention that a labor dispute with a primary employer must exist before section 8(b)(4)(B) may be invoked.[20] And in the other three cases,[21] the Board also rejected the contention that it may not assert jurisdiction because of the absence of a labor dispute, although noting that the respondent union's picketing of ships manned by a rival union, in retaliation for the latter's picketing, did involve a labor dispute insofar as it related to the dispute between rival unions over representation rights.

[19] *Local 1355, ILA (Maryland Ship Ceiling Co)*, 146 NLRB 723.

[20] The Board cited *N L.R B.* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F. 2d 149, 152 (C.A. 9), in support of its finding that the existence of a labor dispute with a primary employer is immaterial. However, the Fourth Circuit denied enforcement for the reason, among others, that the Board lacked jurisdiction; see *infra*, p 111.

[21] *NMU (Houston Maritime Assn., Inc)*, 147 NLRB No 142; *NMU (Weyerhaeuser Lines)*, 147 NLRB No. 144; *NMU (Delta Steamship Lines, Inc.)*, 147 NLRB No. 147.

III

Board Procedure

Among the cases decided by the Board during the fiscal year were four which enunciated important principles controlling Board procedures. Two cases concerned procedure in representation matters and two involved regulation of unfair labor practice proceedings.

A. Expediting Representation Election

In *Kingsport Press*,[1] the Board, in order not to disfranchise replaced strikers who might be eligible voters during the first 12 months of an economic strike, directed an election upon the record made at a hearing without awaiting briefs from the parties on the issue of whether an election should be held. However, the Board stated in its decision that it would treat any briefs subsequently filed as motions for reconsideration of any adverse dispositions, and directed that all ballots be impounded until the Board considered such briefs. Briefs were filed and in the supplemental proceeding,[2] treating the briefs as motions for reconsideration, the Board considered the numerous contentions of the employer that the Board acted improperly in expediting the direction of election to permit economic strikers to vote within the 12-month limitation of section 9(c)(3),[3] and by conducting the election without awaiting briefs. In rejecting these contentions, the Board noted that Congress not only intended to give replaced economic strikers an opportunity to vote within the 12-month period when it amended section 9(c)(3), but also indicated that implementation of that right should be accomplished by Board regulation. In the Board's view, it should be controlled by this intent when adjudicatively processing petitions and scheduling elections, and need not resolve such issues by the issuance of formal rules and regulations.

[1] *Kingsport Press, Inc*, 146 NLRB 260.

[2] 146 NLRB 1111.

[3] Sec 9(c)(3) provides that employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of the Act in any election conducted within 12 months after the commencement of the strike.

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B. Availability of Witnesses' Statements

In *Blades Manufacturing Corp.*,[4] the Board held the *Jencks* rule [5] applicable to hearings on objections to election in representation proceedings as well as to unfair labor practice proceedings. The Trial Examiner had initially rejected the contention of the employer that it had been deprived of an adequate hearing on objections to an election, since the regional director was not required to furnish pretrial statements of witnesses in that proceeding. The trial examiner noted that the *Jencks* rule had been applied exclusively to unfair labor practice cases, and that its application to representation proceedings was without precedent.[6] However, the Board held the rule applicable to representation hearings also and reopened and remanded the case to the regional director for the purpose of producing the pretrial statements previously denied the employer, and for a further hearing to permit cross-examination.

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

In *Bernel Foam Products*,[7] the Board held that a majority union which chooses to participate in an election with knowledge of the employer's unlawful refusal to extend recognition and bargain, and thereafter loses the election, is not thereby precluded from filing refusal-to-bargain charges based upon the employer's preelection misconduct. In that case, union objections based upon employer misconduct had been sustained by the regional director who set aside the election. In so holding, the Board restored the rule prevailing prior to the *Aiello* decision,[8] which decision had held that by proceeding to the election the union waived the unfair labor practices. It expressed the view that unfair labor practice charges and representation proceedings are not inconsistent procedures and therefore no basis exists for applying the election of remedies concept established

[4] *Blades Manufacturing Corp.*, 144 NLRB 561.

[5] The *Jencks* rule was adopted by the Board in *Ra-Rich Manufacturing Co*, 121 NLRB 700, and is embodied in sec. 102.118 of the Board's Rules and Regulations, Series 8 It affords a party, upon proper demand, the right to production for purposes of cross-examination of pretrial statements made by witnesses who have already testified in such proceedings.

[6] The amendment of sec 102 118 of the Board's Rules and Regulations making witnesses' statements available in hearings on objections to elections did not take effect until Sept. 18, 1963.

[7] *Bernel Foam Products Co, Inc*, 146 NLRB 1277, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion Member Jenkins concurring would find *Aiello, infra,* inapplicable and accordingly would not reach issue of *Aiello* rule Member Leedom, dissenting, would adhere to the *Aiello* rule

[8] *Aiello Dairy Farms*, 110 NLRB 1365 (1964), overruling *M H Davidson Co*, 94 NLRB 142 (1951), announced the rule that once having chosen to participate in an election with knowledge of the employer's unlawful refusal to bargain, a union could not after the election file sec. 8(a)(5) charges, even though the employer's preelection conduct resulted in the election being set aside and a new one ordered.

in *Aiello*. Nor had that rule been justified by the materialization of the overriding economic benefits anticipated from elimination of Board proceedings. The Board noted that the employer's unlawful conduct requires the union to make a choice between filing section 8(a)(5) charges or proceeding with an election, under either of which proceedings the union is forced to prove its majority status although the employer has no good-faith doubt concerning it. It found no warrant for imposing upon the union which represents the employees an irrevocable option as to the method it will pursue in seeking vindication of the employees' representation rights, since the two procedures involve no contradictory assertions of fact or position by the union. Nor did it view the statutory obligation of an employer to bargain collectively with a union representing a majority of its employees as being subject to waiver by a union. Rather, it found that the overriding consideration with which Congress was concerned in section 8(a)(5) was the right of employees, if they so desired, to be represented by a union of their own choosing. It is the responsibility of the Board to protect this right, the Board concluded, by providing an adequate remedy for employer conduct which has been specifically proscribed by Congress.[9]

D. Pleaded and Litigated Facts as Constituting Violations of Sections of Act in Addition to Those Alleged

In *Hughes Tool*,[10] a procedural question was presented as to whether, when facts have been alleged and fully litigated, the Board is precluded from finding section 8(b)(2) and (3) violations because the General Counsel charged in the complaint that the union violated only section 8(b)(1)(A), and specifically chose not to allege as a legal conclusion that the pleaded and litigated facts violated section 8(b)(2) and (3). The Board found that the trial examiner properly considered whether the union's conduct set forth in the complaint violated those sections,[11] holding that the Board's discretion to control its adjudicatory process was not limited, under these circumstances, by the legal conclusions set forth in the complaint.

[9] See also *S N.C Manufacturing Co*, 147 NLRB No 92, where the Board, in view of its finding of a sec. 8(a)(5) violation and its order requiring the employer to recognize and bargain with the union, refused to direct a new election and dismissed an election petition, notwithstanding its finding that the employer's preelection conduct interfered with the employee's freedom of choice in selecting a bargaining representative. The majority, comprising Chairman McCulloch and Members Fanning and Brown, followed *Bernel Foam Products;* Member Leedom, dissenting with respect to this issue, would retain the *Aiello* rule of waiver; Member Jenkins did not participate.

[10] *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB No. 166, Members Leedom, Brown, and Jenkins for the majority, Chairman McCulloch and Member Fanning concurring in part and dissenting in part, also with respect to this issue.

[11] The Board noted that although it was not essential that the trial examiner notify the parties at the hearing that he might decide whether the conduct alleged and litigated violated sec 8(b)(2) and (3), the trial examiner did so notify the parties and also invited them to brief the issues.

IV

Effect of Concurrent Arbitration Procedure

Cases coming before the Board during the report year, where the Board was urged to defer to arbitration, principally involved two types of situations, those where arbitration was available but either had not been invoked or had been invoked but no award rendered at the time of Board consideration, and those where an award had already been rendered.[1] In three cases presenting the former type of situation, all involving an employer's unilateral change of working conditions, the Board declined to withhold its remedial processes in deference to available or pending arbitration procedures.

In the *Smith Cabinet* case,[2] the Board rejected the employer's defense that its dispute with the union over the company's right to unilaterally alter conditions of employment related to a grievance matter that should be disposed of under the existing arbitration provision of the contract. It was pointed out that the union's complaint was directed at the denial of a statutory right guaranteed by section 8(d), namely, the union's right to bargain about the terms and conditions of employment specifically covered by the contract, rather than a grievance relating to the interpretation or misapplication of specific contractual provisions. Moreover, the Board noted that it was not precluded from resolving an unfair labor practice issue simply because as an incident thereto it may be necessary to construe a contract to determine whether the right to take unilateral action has been contractually reserved to management.[3]

Similar reasons were given by the Board in *Adams Dairy*[4] for

[1] See, e.g., cases discussed *infra*, pp. 41–42; Twenty-eighth Annual Report (1963), pp. 38–45.

[2] *Smith Cabinet Manufacturing Co.*, 147 NLRB No. 168

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

[4] *Cloverleaf Division of Adams Dairy Co.*, 147 NLRB No. 133, Chairman McCulloch and Member Fanning joining in the principal opinion, Member Leedom concurring in part, Member Brown concurring, Member Jenkins not participating. Member Brown would not defer to arbitration since the parties have not by practice, bargaining history, or contract resolved their mutual rights and obligations with respect to the disputed subject matter of subcontracting.

rejecting the employer's claim that the parties should be relegated to their contract remedy of arbitration in a dispute over the subcontracting of unit work. In addition, the Board noted that when a dispute involves statutory rather than contractual obligations there would be little likelihood that arbitration could effectively dispose of the issue so as to put at rest the unfair labor practice controversy in a manner sufficient to effectuate the policies of the Act. Another basis for refusing to defer Board action pending arbitration was explained by the Board in the *LeRoy Machine* case,[5] in which it held that such a defense may not be urged when the respondent has itself frustrated the arbitral process. The employer had refused on three separate occasions to process grievances protesting its unilateral fixing of new job rates.

In cases in which an arbitration award has already been rendered, the Board has determined that before it will exercise its discretion under section 10(a) to honor an award, it must be satisfied that the proceedings meet the *Spielberg* [6] standards of fairness and regularity. When a dispute is submitted by the parties to an impartial third party for decision under the terms of their contract, the interests of the parties are usually opposed, a matter considered by the Board before withholding its processes in deference to the arbitrator's determination.[7] Even when contract procedures simply provide for the submission of a dispute to a bipartite committee composed of representatives of the contracting parties, the absence of an impartial public arbitrator will not necessarily foreclose the exercise of the Board's discretion to defer to decisions of the committee.[8] Under these circumstances, each representative is customarily prepared to argue for or against the merits of the employee's grievance.

In two cases, the Board was presented with the problem of evaluating the effect of an arbitration award rendered by a committee composed of equal employer and union representatives but no impartial public member. In both cases, the Board declined to defer to the award of the tribunal because of special circumstances suggesting that the arbitration proceedings may have failed to comport with the requisite standards of adequate representation and impartiality.

In the first case, *Roadway Express*,[9] the Board adopted the trial

[5] *LeRoy Machine Co., Inc.*, 147 NLRB No. 140, Chairman McCulloch and Members Leedom and Jenkins joining in the principal opinion, Members Fanning and Brown concurring in part and dissenting in part.

[6] *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955).

[7] See *Intl. Union of Operating Engineers, Local 18 (Frazier Davis Construction Co.)*, 145 NLRB 1492, where the contract provided for one representative of the union and one of the employer and an impartial third member, and the Board deferred to the award. Members Leedom and Brown, joining in the principal opinion, Member Fanning, concurring, would have affirmed the trial examiner's finding on the merits, which coincided with the arbitrator's conclusion.

[8] *Denver-Chicago Trucking Co.*, 132 NLRB 1416 (1961).

[9] *Roadway Express, Inc.*, 145 NLRB 466, Members Leedom and Brown joining in the principal opinion, Member Fanning concurring.

examiner's finding on the merits, rather than deciding to defer to the award of the Joint Area Committee established by the Teamsters Central States Area Road Freight Agreement, because the grievant's vigorous opposition to the union and his repeated and widely publicized attacks upon the industry in general strongly supported the conclusion that the arbitration tribunal was constituted of members whose common interests were adverse to those of the grievant.[10] Similarly, in the second case, *Youngstown Cartage*,[11] the Board found that, in view of the grievant's association with a dissident movement which sought a separate union and his open criticism of the employer, the absence of an impartial public member on the arbitration panel and the possibility that the entire bipartite panel may have been arrayed in common interest against the grievant, strong doubt existed as to whether the arbitration proceeding met the standards of impartiality that the Board requires before deferring to arbitration.[12]

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[10] The Board adopted the trial examiner's finding that the discharge of the grievant was for just cause, the same conclusion reached by the Joint Area Committee. Member Fanning was of the view that the Board's decision should have been confined to the factual findings and that consideration should not have been given to whether the arbitration award satisfied the standards of acceptability set forth in the *Spielberg* decision, *supra*.

[11] *Youngstown Cartage Co.*, 146 NLRB 305, Member Fanning concurring in the result with Members Leedom and Brown, but relying upon the reasoning set forth in his separate concurrence in *Roadway Express, Inc., supra*.

[12] However, the Board did defer to awards of this same arbitration committee in connection with the disputes of other grievants, where the record did not suggest that employer and union representatives on the committee were arrayed in interest against those grievants.

V

Representation Cases

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections.[2] The Board may conduct such an election after a petition has been filed by the employees, or by any individual or labor organization acting in their behalf, or by an employer who has been confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining,[3] and to formally certify a collective-bargaining representative upon the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents which have been previously certified, or which are being currently recognized by the employer. Decertification petitions may be filed by employees, or individuals other than management representatives, or by labor organizations acting on behalf of employees.

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

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

A. Availability of Board Representation Procedures to Labor Organization Which Discriminates Racially as Representative

In *Hughes Tool* [4] the Board rescinded its certification issued jointly to two locals—one representing the employer's white employees only and the other representing Negro employees only—because the certified unions executed contracts based upon racial distinctions and administered them so as to perpetuate racial discrimination in employment.[5] A Board majority furthermore held that, in view of the constitutional prohibition against governmental action condoning or enhancing racial segregation,[6] "The Board cannot validly render aid under section 9 of the Act to a labor organization which discriminates racially when acting as a statutory bargaining representative." The majority concluded that the certification should be rescinded for the further reason that the locals discriminated on the basis of race in determining eligibility for full and equal membership and segregated their members on the basis of race.[7]

B. Existence of Question Concerning Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate hearing before the Board [8] shows that a question of representation exists. However, petitions filed under the circumstances described in the first proviso to section 8(b)(7)(C) are specifically exempted from this requirement.[9]

The investigation of a petition for a representation election must establish a proper basis [10] for a finding of the existence of a question concerning representation. In *Aerojet-General Corp.*,[11] a rival union's petition for an election was dismissed as not raising a question concerning representation, even though the petition was timely filed under

[4] *Independent Metal Workers Union Local 1 (Hughes Tool Co.)*, 147 NLRB No 166, Members Leedom, Brown, and Jenkins for the majority, Chairman McCulloch and Member Fanning concurring in part and dissenting in part.

[5] See *Pioneer Bus Co., Inc*, 140 NLRB 54, discussed in Twenty-eighth Annual Report (1963), p. 49.

[6] Citing, e.g., *Shelley* v. *Kraemer*, 334 U S. 1 (1948).

[7] The majority overruled *Atlanta Oak Flooring Co.*, 62 NLRB 973 (1945), *Larus & Brother Co.*, 62 NLRB 1075 (1945), and other like cases insofar as they hold that unions which exclude employees from membership on racial grounds, or which classify or segregate members on racial grounds, may obtain or retain certified status under the Act.

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

[9] See NLRB Statements of Procedure, Series 8, as amended, sec 101.23.

[10] The ultimate finding of the existence of a representation question depends further on the presence or absence of certain factors, *viz*, qualification of the proposed bargaining agent; bars to a present election, such as contract or prior determinations; and the appropriateness of the proposed bargaining unit.

[11] 144 NLRB 368.

existing contract-bar rules, where it was initiated during Federal intervention in the course of collective bargaining. The President and the Secretary of Labor had intervened in the national interest and set up special procedures to resolve the dispute in order to avert a strike in the Nation's vital aerospace industry, and the incumbent union had agreed to hold all strike sanctions in abeyance while such efforts were made to reach an amicable settlement. This effort at the national level finally resulted in a contract acceptable to both the employer and the union. The Board held that under such circumstances the public interest in stability outweighs the employees' interest in freedom of choice, and an election based on the rival union's petition would not be in the public interest. It held that simply because the settlement reached had not yet been consummated by a written agreement it did not mean that a question concerning representation was raised by the filing of the petition. In the Board's view, a denial of protection to unions against new representation challenges under these circumstances may serve to discourage unions in comparable future situations from acceding to presidential requests to forgo strike action during settlement efforts.

A petition will be dismissed for lack of a question concerning representation if interest in the employees involved has been effectively disclaimed by the petitioning labor organization itself, by the labor organization named in an employer petition, or by the incumbent representative which is sought to be decertified. But a union's disclaimer must be clear and unequivocal, and not inconsistent with its other acts or conduct.

In *Sigo Corp.*,[12] the Board accorded merit to an employer's contention that under the circumstances a question concerning representation did not exist since the union had unequivocally withdrawn its election petition, and such withdrawal amounted to a disclaimer of interest by the union. Eight days after its filing, the union withdrew the petition. Four days thereafter the employer received notice of the withdrawal, with neither a reason given for the union's action nor any notice of the union's intentions. On the day of receipt of the notice of withdrawal, the employer offered an insurance plan to its employees. The Board held that this action did not constitute prohibited unilateral action by the employer since after the withdrawal of the petition it was reasonable for the employer to assume that the union had either lost interest in organizing the employees, or that the organizing campaign was to be held in abeyance for the time being.

[12] 146 NLRB 1484, Chairman McCulloch and Member Leedom for the majority, Member Brown dissenting.

The Board also dismissed an employer's petition for election in *Sutherlin Machine Works*,[13] because no question concerning representation existed, where several unions, which had been picketing the employer's construction site, disclaimed any interest in the employees covered by the petition and thereafter engaged in no further picketing or any other conduct that might be construed as evidencing a continued claim for recognition. The Board found that under these circumstances the unions had effectively disclaimed their interest in representing the employees.

And in the *Martino's* and *Cockatoo* cases,[14] the Board held that no question concerning representation existed, and therefore dismissed the employers' petitions for elections, where it found that the unions' picketing of the employers' establishments constituted neither a present demand for recognition nor activity inconsistent with the unions' disclaimers of interest in representing the employees covered by the petitions. In *Martino's*, at the time of the hearing the union had not communicated with the employer for almost 2 years and had continually disclaimed any present recognitional objective, even though during such period the union continued picketing and handbilling at the customer entrances of the employer's stores. According to the majority, the main thrust of the union's appeal was directed at the public to persuade potential consumers not to shop at the employer's stores, and thus was protected by the publicity-picketing proviso to section 8(b)(7)(C).[15] Similarly, in *Cockatoo*, the Board found that the purpose and effect of a union's picketing at the customer entrances of the employer's hotel and restaurant [16] was to notify the public that the employer was "not union." Consequently the picketing was not inconsistent with the union's disclaimers of interest in the employees covered by the employer's petition for election. Also in *Tribune Publishing*,[17] the Board held that no question concerning representation of the employer's composing room employees existed, where the union

[13] *Sutherlin Machine Works, Inc*, 145 NLRB 511, Chairman McCulloch and Member Fanning joining in the principal opinion, Member Leedom concurring.

[14] *Martino's Complete Home Furnishings*, 145 NLRB 604; and *Cockatoo, Inc*, 145 NLRB 611, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting.

[15] The majority noted that when a union is engaged in publicity picketing for an ultimate, as distinguished from an immediate, recognitional objective, such picketing does not provide a basis for processing a representation petition. To hold that such picketing provides a basis for entertaining a representation petition even though no current question concerning a representation exists would permit an employer to put an end to otherwise lawful publicity picketing under the second proviso to sec. 8(b)(7)(C) by merely filing a representation petition to obtain an election the union would surely lose and then filing a charge alleging picketing within 1 year of an election in violation of sec. 8(b)(7)(B).

[16] Cf. *Normandin Bros Co*, 131 NLRB 1225, discussed in Twenty-sixth Annual Report (1961), p. 36, where the union picketed only at the employee-service entrance and not at the customer entrance.

[17] *Tribune Publishing Co*, 147 NLRB No. 99, Chairman McCulloch and Member Brown for the majority, Member Leedom dissenting.

contended that it represented only the composing room strikers and not their replacements. The majority construed the union's position as a disclaimer that it represented a majority of the employees in the recognized unit. The union had made no request for recognition and bargaining since the inception of its picketing at the employer's premises. Moreover, the picketing was not inconsistent with the union's disclaimer, nor with its claim that the purpose of the picketing was to protect the employer's breach of contract.

But in *Capitol Market*,[18] the Board held that the conduct of a union amounted to a present demand for recognition inconsistent with its disclaimer where, prior to its disclaimer, the union presented the employer with a claim for immediate recognition and in furtherance of that claim picketed all entrances used by both employees and customers at the employer's stores. Subsequent to its purported disclaimer, the union continued to picket with only a slight modification in the signs, and advised the employer that the picketing was designed to force capitulation to its recognitional demand.

C. Contract as Bar to Election

The Board has adhered to a policy of not directing an election among employees currently covered by a valid collective-bargaining agreement, except under certain circumstances. The question whether a present election is barred by an outstanding contract is determined according to the Board's contract-bar rules. Generally, these rules require that a contract asserted as a bar be in writing, properly executed, and binding on the parties; that the contract be in effect for no more than a "reasonable" period; and that the contract contain substantive terms and conditions of employment which are consistent with the policies of the Act.

In one case the Board considered but rejected the contention that the compelling public interest in relieving depressed economic areas dictated waiver of the contract-bar rules. In *Swift & Co.*,[19] it dismissed a petition for an election at one of the employer's meat packinghouses located in a depressed area, holding that a nationwide master agreement between the employer and the intervening international union should be recognized as a bar to the rival union's petition. As the result of the employer's assertions that it could not operate this plant profitably under the master agreement wage scales, the local representing the employees at the plant, with the permission of the parent international, had agreed to a separate guaranteed annual compensation plan designed to provide the employer with the opera-

[18] *Capitol Market No. 1, et al.*, 145 NLRB 1430, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Member Leedom concurring

[19] 145 NLRB 756.

tional flexibility necessary to maintain the plant. At the expiration of the 1-year term of the separate agreement the parties were unable to agree to its extension, and the master agreement then automatically became applicable again. When the employer simultaneously gave notice of its intention to close the plant, employee members of the incumbent local voted to disaffiliate, and joined another international union which filed the petition. The announced plant closing was subsequently postponed indefinitely in view of the Board proceeding.

The petitioning union contended that the contract-bar rules are discretionary rather than mechanical and, in the instant circumstances, the extreme public interest in relieving depressed economic areas and unemployment dictates that the normal contract-bar rules should not be applied and an election should be directed. The State in which the plant is located filed an *amicus* brief in which it emphasized that a strict application of the contract-bar rule here would in effect force the employer to close the plant and thereby produce the anomalous result of destroying rather than fostering industrial stability. In rejecting these contentions as controlling the Board pointed out the uncertainties of the outcome of an election even if one were directed and the uncertainties of the plant remaining open in any event. It questioned the wisdom of permitting a threatened plant closing to influence a Board's decision whether to direct an election in the face of an existing contract, and noted that by directing an election it would substitute its judgment for that of the international concerning a subject matter that should be resolved by the parties through collective bargaining. Recognizing the complexity of the situation, and the questionable value of emphasizing the immediate public interest at the expense of the nationwide and long-range public interest in the basic principles of labor relations, the Board concluded that resolution of the situation was more appropriately left to the parties acting within the framework of established collective-bargaining principles.

1. Terms of Contract

a. Validity of Checkoff Provision

In fiscal 1964, the Board examined the principles underlying the *Keystone* case rule [20] for determining the effect for contract-bar purposes of contracts containing checkoff provisions. In the *Gary Steel Supply* case,[21] the Board conformed the rule applicable to checkoff clauses to make them consistent with those applicable to union-security

[20] *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880. See Twenty-fourth Annual Report (1959), pp. 24–26.

[21] *Gary Steel Supply Co*, 144 NLRB 470.

clauses.[22] It announced that a contract will not be considered defective as a bar to a representation proceeding simply because it contains a checkoff provision which fails to spell out the requirements of the proviso to section 302(c)(4).[23] Exceptions to the announced rule, in accord with exceptions to the union-security clause rule, are those situations where the checkoff provision is either unlawful on its face or has otherwise been determined to be illegal in an unfair labor practice proceeding or in a proceeding initiated by the Attorney General. The Board also reiterated its holding in *Paragon Products* [24] that no testimony or evidence will be admissible in a representation proceeding where the testimony or evidence is only relevant to the question of the practice under a contract urged as a bar to the proceedings.

D. Unfair Labor Practice Charges as Bar to Election

The Board does not usually conduct representation elections while unresolved unfair labor practice charges are pending, unless the charging party requests the Board to proceed with the election. This policy was formulated in section 8(a) and(b) cases where, if the charges were true, a free election could not be held because of the restraint and coercion of employees following from the unfair labor practice.

In *Holt Bros.*,[25] the Board directed an immediate election on the union's petition notwithstanding the employer's pending section 8(e) charge against the petitioning union resulting from its allegedly unlawful hot cargo contract with an employer association. The Board noted that, in contrast to section 8(a) and (b) cases, a section 8(e) charge, even if true, would not necessarily restrain or coerce employees and thus prevent a fair election, because section 8(e) deals only with terms of agreement between an employer and a labor organization, regardless of whether it is publicized to employees. Here, in the absence of any allegation that the union sought to utilize the contract with the employer association to influence the employee choice of a bargaining representative, the Board concluded that the pendency of the section 8(e) charge will not render a free election impossible at the present time.

[22] See *Paragon Products Corp.*, 134 NLRB 662. Twenty-seventh Annual Report (1962), pp. 54–55.

[23] Under the proviso to sec 302(c)(4), in order for money to be lawfully deducted from the wages of employees in payment of membership dues in a labor organization, the employer must have received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than 1 year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

[24] 134 NLRB 662, 667.

[25] 146 NLRB 383.

E. Unit of Employees Appropriate for Bargaining

Section 9(b) requires the Board to decide in each representation case whether, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." [26] The following sections discuss the more important cases decided during fiscal 1964 involving unit issues.

1. Single-Location Units in Multi-Location Enterprises Presumptively Appropriate

In *Frisch's Big Boy*,[27] the Board construed the policy enunciated in *Sav-On Drugs* [28] as abandoning the approach that a multistore unit alone could be appropriate, and as adopting the view that the general unit criteria should apply to retail store units. Under such long-established criteria, the Board continued, a single-plant unit is presumptively appropriate unless it is established that it has been effectively merged into a more comprehensive unit so as to have lost its individual identity,[29] Applying this interpretation of *Sav-On Drugs*, the Board found a requested separate unit of employees confined to 1 of a citywide chain of 10 restaurants to be appropriate. Although it expressed the view that the optimum unit for collective bargaining may well be citywide in scope, it held that a union is not precluded from seeking a smaller unit when the unit sought is in and of itself also appropriate for collective bargaining under all the circumstances.[30] The Board concluded that on the record before it there were no compelling reasons to override the presumption that the single-store unit sought in the case is appropriate.

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[26] Unit determinations also have to be made in refusal-to-bargain cases, as no violation of the relevant paragraph of sec 8(a) or (b) can be found unless the bargaining representative involved had a majority status in an appropriate bargaining unit at the time of the alleged refusal to bargain.

[27] *Frisch's Big Boy Ill-Mar, Inc*, 147 NLRB No 61, Chairman McCulloch and Members Fanning and Brown for the majority, Members Leedom and Jenkins dissenting

[28] *Sav-On Drugs, Inc*, 138 NLRB 1032. See Twenty-eighth Annual Report (1963), pp. 51–52.

[29] The majority disagreed with the dissent's interpretation that under *Sav-On Drugs* it had presumed all stores in an administrative division or geographical area to constitute an appropriate unit unless grounds are shown for establishing a smaller appropriate unit.

[30] In finding that the requested single-restaurant unit was appropriate, the majority noted, *inter alia*, the substantial degree of autonomy that each manager exercised in the day-to-day operations of his establishment, the minimal interchange of employees, the absence of any bargaining history, and the fact that no union was seeking a larger unit.

2. Voluntary Combination of Professional and Nonprofessional Employees

Section 9(b)(1) prohibits the Board from deciding that a unit including both professional and nonprofessional employees is appropriate unless a majority of the professional employees vote for inclusion in such a mixed unit. In *Vincent Drugs*,[31] the Board dismissed an unfair labor practice complaint challenging the validity of a union-security provision in a contract covering a unit combining professional and nonprofessional employees, even though no self-determination election among the professional employees had been held. The contract unit was initially established by agreement of the contracting parties themselves and was maintained without challenge for many years before the execution of the particular contract sought to be invalidated. According to the Board, neither section 9(b)(1) nor its legislative history suggests that Congress intended that section to invalidate as inappropriate a historically established contract unit simply because of a joinder of professional and nonprofessional employees.[32]

3. Craft Status of Electronics Technicians

The Board has continued to apply the *American Potash* rules [33] in passing on petitions for the establishment of craft units. Under these rules, a craft unit must be composed of true craft employees having "a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training." In *Boeing Co.*,[34] the Board held that electronics technicians at a missile manufacturing plant did not constitute an appropriate unit on a craft basis. In so holding, the Board noted that despite the advance of electronic technology and its proliferation into many varied types of industrial processes, there have not yet developed any accepted standards by which to measure whether and when craft proficiency has been attained. It may be that applicable standards will be gradually developed in the course of years, the Board observed, but for the present it could not accept the petitioner's position that only those employees whom it had designated as electronics technicians were in fact craftsmen. The Board concluded that within the broad spectrum of skills and training exercised by these technicians there were many

[31] *Retail Clerks, Local 324 (Vincent Drugs No. 3, Inc.)*, 144 NLRB 1247.

[32] The Act does not require prior resort to a Board determination whenever the parties establish an appropriate unit. Sec. 9(b)(1) has been interpreted by the Board as applying only in situations where a representation election is sought in a unit including professional employees among others.

[33] *American Potash & Chemical Corp.*, 107 NLRB 1418; Nineteenth Annual Report (1954), pp. 38–41

[34] 144 NLRB 1110.

other manual employees of the employer whose skills and training were not clearly distinguishable from those in the unit sought by the petitioner.

4. Separate Lithographic Unit Inappropriate

Employees who constitute a true craft group of a traditional distinct departmental group, and who are presently represented as part of a larger unit, may be severed and placed in separate units under the *American Potash* rule,[35] provided the union seeking severance has traditionally represented the particular type of employees. In *Packaging Corp.*,[36] the Board held that a unit of lithographic employees could not appropriately be severed from a production and maintenance unit in view of the "blending of printing techniques" at the employer's plant.[37] It found that technical innovations already instituted had destroyed the cohesiveness of the lithographic employees and that changes planned for the near future would accelerate the blurring of the distinction between letterpress and lithographic employees. The Board noted that the instituted and proposed technological changes will result in the employer's lithographers performing an increasing amount of nonlithographic work.[38]

5. Status as Employees

a. Agricultural Laborers

Since 1946, Congress has annually added a rider to the Board's appropriation, which in effect directs the Board to be guided by the definition set forth in section 3(f) of the Fair Labor Standards Act in determining whether an individual is an agricultural laborer and therefore not an "employee" within the meaning of section 2(3) of the National Labor Relations Act. Considering it a duty, the Board follows, whenever possible, the interpretation of section 3(f) adopted by the Department of Labor.[39] Thus, in *Bodine Produce*,[40] relying on the administrative determination of the Department of Labor, the

[35] *Supra*, footnote 33.

[36] *Packaging Corp. of America*, 146 NLRB No. 185, Chairman McCulloch and Members Brown and Jenkins for the majority, Members Leedom and Fanning dissenting.

[37] The majority took cognizance of the fact that the Board has traditionally granted severance to units of lithographic employees. However, it followed *Weyerhaeuser Co*, 142 NLRB 1169. Accord: *Allen, Lane & Scott*, 137 NLRB 223; Twenty-seventh Annual Report (1962), p. 65, footnote 53.

[38] The majority emphasized that its decision was predicated on the facts in the instant case and should not be construed as a reevaluation of any Board rules governing the appropriateness of units in the commercial printing industry.

[39] The Department of Labor is charged with the responsibility for and has the experience of administering the Fair Labor Standards Act

[40] *Bodine Produce Co.*, 147 NLRB No. 93, Chairman McCulloch and Members Leedom and Jenkins for the majority, Members Fanning and Brown dissenting.

Board held that melon packingshed workers, who prepared melons grown on the employer's own land for market and delivery to carriers for transportation, were agricultural laborers performing operations which were incident to and in conjunction with the employer's farming operations. Although the employer employed a separate labor force to work in its packingshed and followed the wage scale paid by other packers in the area, the Board, citing the Supreme Court decision in the *Waialua* case,[41] attached substantial weight to the fact that the packingshed operations resulted in no significant change in the form of the product.[42] It also considered as significant the fact that the employer confined its packing operations to its own produce, and that the purpose of the packing operation was to prepare the product for market—a necessary function that is an incident to and is properly to be considered an integral part of the employer's farming operation.[43]

b. Nonowner-Drivers of Leased Tractors

In determining whether an individual is an independent contractor rather than an employee,[44] and therefore to be excluded from a proposed bargaining unit, the Board has consistently applied the "right-of-control" test.[45] This test is based on whether the person for whom the individual performs services has retained control not only over the result to be achieved but also over the manner in which the work is to be performed. The resolution of this question depends on the facts of each case, and no one factor is determinative.

In several cases, the question arose as to whether individuals who drove tractors leased by their owners on a manned basis to a trucking firm were employees of that firm. In *Deaton Truck Lines*,[46] the Board held that drivers of vehicles leased to a common carrier were employees of the carrier in view of the degree of hiring and operational control exercised by the carrier over the drivers, as shown in part by the bargaining history. The vehicles bore the carrier's name and transported its goods under its direction and exclusive control. And in

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[41] *Maneja* v. *Waialua Agricultural Co.*, 349 U.S. 254 (1955).

[42] The melons left the packingshed in practically the same raw or natural state as when they were received from the field.

[43] The majority overruled *Imperial Garden Growers*, 91 NLRB 1034 (1950), relied on by the union here, and the cases based thereon, to the extent that they are inconsistent with the instant finding that the packingshed workers are agricultural laborers. See Sixteenth Annual Report (1951), pp 115–116

[44] The term "employee" is defined in sec. 2(3) of the Act.

[45] This test applies equally in determining whether the particular individuals may properly be included in a bargaining unit under sec. 9 of the Act, and where their employee status for the purpose of the unfair labor practice provisions of sec. 8 is in issue.

[46] *Deaton Truck Lines, Inc.*, 143 NLRB 1372, Chairman McCulloch and Member Leedom joining in the principal opinion, Member Rodgers concurring in the dismissal of the unfair labor practice complaint but dissenting with respect to the status findings of drivers.

Western Nebraska Transport,[47] it was held that lease drivers supplied by the lessors of equipment leased to the carrier were employees of the carrier even though the lessors physically possessed, maintained, and serviced the leased equipment, selected repair stations and sources of supply, paid all license fees, hired the lease drivers, and determined the drivers' wages, hours of work, and vacations. These factors, in the Board's view, were outweighed by the carrier's more basic ultimate control of the drivers' employment through hiring clearance and determination of conditions of employment and job performance.

Similarly, in two companion cases, *National Freight* and *Chemical Leaman Tank Lines*,[48] the Board held that while certain factors suggested in isolation that drivers of tractors leased by their owners to the carriers were not employees of the carriers, the record as a whole revealed that the carriers in fact retained sufficient control over the drivers' activities to warrant a finding of the existence of the employee-employer relationship. But in *Reisch Trucking*,[49] the Board held that drivers of tractors which were leased by their owners to a common carrier were not employees of the lessee-carrier. Rather it found that the nonowner-drivers of these leased vehicles were employees of the owners who were independent contractors. In addition to numerous other factors which were the basis for its finding that the drivers had no employee status with the carrier, the Board gave special consideration to the fact that the control exercised by the carrier over the drivers' work was for the purpose of complying with the rules and regulations of the Interstate Commerce Commission, and that the carrier did not withhold income or social security taxes, pay for workmen's compensation for the drivers, or provide the employment benefits of its own employees to the drivers. Nor were its rules and regulations given to or applied to the drivers.

c. Multiple Owner-Drivers of Leased Tractors

Although individuals who own and lease more than one tractor to a firm and drive one of their leased vehicles are frequently found not to be independent contractors, an issue then arises as to whether they are employees or supervisors within the meaning of the Act.[50] In three cases involving this question,[51] the Board found in each case that

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[47] *Western Nebraska Transport Service, Division of Consolidated Freightways*, 144 NLRB 301, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[48] *National Freight, Inc.*, 146 NLRB 144, and *Chemical Leaman Tank Lines, Inc.*, 146 NLRB 148, Chairman McCulloch and Members Fanning and Brown for the majority, in both cases, Member Leedom dissenting in both

[49] *Reisch Trucking and Transportation Co.*, 143 NLRB 953.

[50] Sec. 2(11) defines the term "supervisor."

[51] *Deaton Truck Lines, Inc., supra; National Freight, Inc., supra; Chemical Leaman Tank Lines, Inc., supra;* Member Brown dissenting on this point in the last two cases.

the multiple owner-drivers were supervisors and, accordingly, were excluded from the appropriate unit. These individuals had and exercised the power to hire their nonowner-drivers, subject to the approval of the carrier, and to discharge, assign, transfer, and responsibly direct them, which authority was exercised not only for the purpose of protecting their leased equipment but also in the interest of the carrier's operations.[52]

d. Pilots on Great Lakes

In *Chicago Calumet Stevedoring Co.*, the Board held that pilots who navigated vessels of foreign shipping operators from the St. Lawrence Seaway to various ports on the Great Lakes were not employees but, rather, were either independent contractors or supervisors.[53] In so finding,[54] the Board noted that the pilot retained for a particular voyage was normally unknown to the captain of the ship or his officers, his selection having been determined by the position of his name on the availability list. The pilot gave orders to the helmsman in the wheelhouse as to the course, and to the engineroom as to speed, which orders were countermanded by the captain or a ship's officer only in extraordinary circumstances. On occasion, they effectively recommended to the captain the discipline of helmsmen. Because of the special navigational skills of the pilots, the captain normally did little if anything with respect to the navigation of his vessel while a pilot was aboard,[55] and did not in any way interfere with or supervise the means or methods by which the pilots took the vessels to their ultimate destination. The Board also found significant the fact that the operators of the vessels compensated the pilots directly, with no social security or other taxes being withheld.[56]

6. Previously Unrepresented Hotel Employees

The Board's general policy with respect to the hotel industry is that all operating personnel have such a high degree of functional integra-

[52] The nonowner-drivers, over whose tenure the multiple owners had effective authority, were found to be employees of the carrier. See *supra*, pp. 53–54.

[53] *Intl. Organization of Masters, Mates and Pilots, Great Lakes District, Local 47 (Chicago Calumet Stevedoring Co.)*, 146 NLRB 116 The issue of whether the pilots, who were members of Great Lakes District Local 47, MMP, were employees, was posed by the Circuit Court of Appeals for the District of Columbia in an order remanding the case for a finding on that point.

[54] Chairman McCulloch and Members Leedom and Fanning for the majority, Members Brown and Jenkins dissenting.

[55] Under maritime law, all orders given aboard ship technically emanate from the captain although he may not personally issue them.

[56] See *Bernhardt Bros. Tugboat Service, Inc.* v. *N.L.R.B.*, 328 F. 2d 757 (C.A. 7), enfg. 142 NLRB 851, where the Board adopted the trial examiner's finding that pilots as part of the permanent complement on tugboat vessels plying the Mississippi River and its tributaries were supervisors, since they had authority responsibly to direct the crew members on their watch, and the exercise of such authority was not merely routine but on the contrary required the use of independent skill and judgment.

tion and mutuality of interests that they should be grouped together for bargaining purposes.[57] Last year, the Board modified the rule by holding that it does not apply where the area practice, adhered to by the hotel concerned, has for years been that of bargaining in less than hotelwide units.[58] In fiscal 1964, the Board held in *LaRonde Bar & Restaurant*[59] that a unit less than hotelwide in scope, which conforms to an existing and well-defined area practice, is appropriate even when there has been no bargaining history for the affected employees of the hotel concerned.

F. Basis for Revocation of Certification

1. Indirect Affiliation of Guard Union With Nonguard Union

Section 9(b)(3) provides that no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization is affiliated directly or indirectly with an organization which admits to membership employees other than guards. This provision requires that a guard union be free to formulate its own policies and decide its own course of action, with complete independence from control by a nonguard union. In *International Harvester*,[60] the Board revoked the certification issued to a guard union because of indirect affiliation between that union and a nonguard union, notwithstanding that the nonguard union did not represent employees in the same plant in which the guards involved were employed. The guard union accepted substantial financial aid from the nonguard union, and permitted the nonguard union to participate in its affairs, to negotiate with the employer on its behalf, to organize and direct its strike, and to determine the terms for settlement of the strike.

G. Clarification of Scope of Uncertified Unit

The Board's express authority under section 9(c)(1) to issue certifications necessarily carries with it the implied authority to police its certifications and to amend or clarify them as a means of effectuating the policies of the Act. While a request for clarification of a certified bargaining unit may thus be entertained, the Board had been operating under the holding in *Bell Telephone*[61] that there is no similar

[57] *Arlington Hotel Co., Inc*, 126 NLRB 400; Twenty-fifth Annual Report (1960), p. 42.
[58] *Water Tower Inn*, 139 NLRB 842; Twenty-eighth Annual Report (1963), p. 51.
[59] *LaRonde Bar & Restaurant, Inc. and/or Carrousel Motels, Inc*, 145 NLRB 270, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting.
[60] *International Harvester Co., Wisconsin Steel Works*, 145 NLRB 1747.
[61] *The Bell Telephone Co. of Pennsylvania*, 118 NLRB 371; Twenty-second Annual Report (1957), pp. 59–60.

statutory authority to clarify a unit established by contract, rather than certification, and to determine the status of employees in a unit which has never been found appropriate by the Board.

In *Brotherhood of Locomotive Firemen*,[62] the Board determined not to follow the *Bell Telephone* decision,[63] and treated an employer's petition for an election as an entertainable motion to clarify the status of certain employees in a contract unit, even though that unit had never been certified by the Board or the subject of a Board proceeding. As in *Bell Telephone*, the employer did not genuinely question the union's representative status but was instead actually seeking Board clarification of the contractual, noncertified unit, with neither party actually desiring an election.[64] In the Board's view, there was ample statutory support for the Board's authority to determine the status of the disputed employees even though the unit had never been found appropriate by the Board. Rejecting the rationale of *Bell Telephone* as unduly limiting the positive contribution the Board could make to eliminate industrial strife and encourage collective bargaining, the Board concluded that the provision of section 9(c), delineating the procedure for the handling of certain types of representation issues, does not operate as a negation of all other procedures which the Board might utilize for the determination of issues arising from other types of representation situations.[65]

H. Conduct of Representation Elections

Section 9(c)(1) of the Act provides that if a question of representation exists, the Board must resolve it through an election by secret ballot. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down in the Board's Rules and Regulations and in its decisions.

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to determine, and to register a free and untrammeled choice in the selection of, a bargaining representative. Any party to an

[62] *Brotherhood of Locomotive Firemen & Enginemen*, 145 NLRB 1521, Chairman McCulloch and Members Leedom and Brown for the majority; Member Fanning, dissenting, would direct an election without considering *Bell Telephone*

[63] *Bell Telephone Co of Pennsylvania, supra*, where a Board majority dismissed a representation petition on the grounds that it had no statutory power to make a determination of the status of certain disputed employees in a contract unit when the union had never been certified, the union's majority representative status was not in issue, and neither the employer nor the union desired an election because the parties only desired a Board determination of unit placement.

[64] According to the majority, any intimation that the employer might be questioning the union's majority status and might want an election was born of a desire to avoid dismissal of its petition under *Bell Telephone* and did not manifest its real position.

[65] For example, as here, to clarify a unit represented by an uncertified union.

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 then either make a report on the objections, or he may issue a decision disposing of the issues raised by the objections, which is subject to a limited review by the Board.[66] In the event the regional director issues a report, any party may file timely exceptions to this report with the Board. The issues raised by the exceptions to the report are then finally determined by the Board.[67]

1. Election Propaganda

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

An election may be set aside because of prejudicial conduct whether or not the conduct is attributable to one of the parties. The determinative factor is that conduct has occurred which created a general atmosphere in which the freedom of choice of a bargaining representative was impaired.

a. Creating Apprehension of Strikes

Although campaign propaganda capitalizing on strikes and their consequences may not itself contain any express or implied threats of retaliatory action by the employer, it may nevertheless become excessive when it produces an atmosphere of unreasoned fear that the employer will take retaliatory advantage of the presumably inevitable strike action if the employees select a labor organization to represent them. In cases of this nature, therefore, the problem is often one of determining whether the campaign propaganda has exceeded the bounds of fair comment, taking into account the entire context in which the material was presented, as well as whether there was opportunity for reply by the participating labor organization, and for independent evaluation by the employees.

[66] This procedure applies only to directed elections, not consent or stipulated elections. For the latter procedures, see the Board's Rules and Regulations, Series 8, as amended, secs. 102.62 and 102.69(c).

[67] This procedure for filing objections and exceptions and for their disposition are set out in sec. 102.69 of the Board's Rules and Regulations, Series 8, as amended.

Thus, in *General Industries Electronics*,[68] the Board set an election aside where, even though each component part of the employer's posters, speeches, and letters to its employees may have been viewed as falling short of interference if viewed separately, the sum total of the employer's conduct was found to have created an atmosphere of fear and to constitute "a clear message that it was futile for [the employees] to select the [union] as their bargaining representative for the purpose of improving their conditions of employment, and that selection of [the union] could only bring strikes, violence, and loss of jobs." In making this determination the Board stated: "It makes no sense to us to find that such a message does not interfere simply because each component part of the message, viewed separately, falls just a little short of interference. We are not here engaged in the addition of a series of ciphers, the sum of which is always zero, but rather in assessing the impact of a series of statements delivered in the course of an antiunion campaign and couched in words which were well calculated to impress upon employees that the selection of [the union] as their bargaining represenative could only change their conditions of employment for worse."

On the other hand, upon the different facts in *Trent Tube*,[69] it was held that an employer's letters to its employees were not coercive and could clearly be evaluated by the employees as partisan electioneering. The letters had stressed the benefits enjoyed by employees without unionization which, in the employer's view, would not necessarily continue under a union contract because "bargaining starts from scratch," and emphasized that the union's weapon to force unwarranted concessions would be a strike with resulting hardship and loss of wages. In letters to the employees, the union had answered the employer's contentions point by point. Considering the employer's letters in their entirety as to both content and timing, as well as the union's opportunity for responses thereto, the Board concluded that the information had been imparted to the employees in a noncoercive manner and could not reasonably be construed as threats of reprisals by the employer in the event the union won the election.

In two other cases, *American Greetings Corp.*[70] and *Shure Brothers*,[71] the Board refused to set an election aside because it viewed the

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[68] *General Industries Electronics Co.*, 146 NLRB 1139, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting.

[69] *Trent Tube Co., Subsidiary of Crucible Steel Co. of America*, 147 NLRB No 60, Chairman McCulloch and Members Leedom and Jenkins for the majority, Members Fanning and Brown dissenting.

[70] 146 NLRB 1440, Chairman McCulloch and Members Leedom and Fanning for the majority. Member Brown dissenting.

[71] 147 NLRB No. 10, Chairman McCulloch and Members Leedom and Jenkins for the majority, Member Brown dissenting.

employer's preelection material, which developed a strike theme and pointed up to employees that in light of the union's own strike record their selection of the union might lead to their involvement in strikes, violence, and loss of jobs to replacements, as permissible campaign propaganda.[72] In the *American Greetings* case, the employer made reference to two strikes in which the petitioning union was involved, and to another strike involving a different union and employer. In rejecting the union's objections to the election, the Board noted that the employer's statements concerning the strikes were temperate and factual in character and to the extent, if any, that the statements may have created a distorted picture, the union had full opportunity to, and actually did, circulate counterpropaganda. In the Board's view, the employer's statements and cartoons could readily be evaluated by the employees as typical campaign propaganda. In the *Shure Brothers* case, the employer's preelection statements in letters and a speech to employees referred to the union's record of strikes and violence, misrepresenting it to some degree. In overruling the union's objections, the Board found that the union had ample opportunity to respond to the inaccuracies which, under the circumstances, did not amount to a material misrepresentation. Also, the Board noted that the employer's remarks concerning the union's strike record were not accompanied by any statements which reasonably could have led the employees to believe that the employer would not bargain in good faith or that it would be futile to select the union as their bargaining representative.[73]

b. Impact of Community Campaigns

In two cases, the Board was called upon to evaluate the impact of statements made by members of the community, during the union's preelection campaign, upon the exercise of the employees' free choice in an election. Differing results were reached in the two cases. In *Utica-Herbrand Tool Division of Kelsey-Hayes Co.*,[74] the Board set an election aside where official and influential citizens of the community, through letters, visits to employees' homes, leaflet distribu-

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[72] The majority distinguished the facts of *Storkline Corp.*, 142 NLRB 875, where the employer raised the strike issue as a "straw man" with which to frighten employees In the instant cases, the employer related the strike and violence issues to the petitioning union's own strike record which was relevant to the election issues.

[73] See *American Greetings Corp., supra,* where the Board majority disagreed with the regional director's conclusion that the employer's propaganda had the impact of creating in the minds of the employees the futility of selecting a bargaining representative. The majority noted that in those cases in which the Board had set aside an election for that reason the employer had stated, either expressly or by clear implication, that it would not bargain in good faith with a union even if it were selected by the employees. See *Dal-Tex Optical Co., Inc.*, 137 NLRB 1782; *Oak Mfg. Co.*, 141 NLRB 1323; and *The Lord Baltimore Press*, 142 NLRB 328; discussed in Twenty-eighth Annual Report (1963), pp 59–62.

[74] 145 NLRB 1717.

tion, radio newscasts and spot announcements, and newspaper editorials and advertisements, reiterated the themes that selection of the union would cause the employer to move, the city to become a distressed area, and would deprive employees of job opportunities because other companies would not locate in the area. The Board viewed this massive campaign conducted by third parties in the community, in the context of the employer's statements developing the same theme, as creating an atmosphere of fear of reprisal and loss of job opportunity if the employees selected the union as their bargaining representative. The Board noted that such pressures as home calls by local police officers and the mayor of the city, and the distribution of antiunion propaganda at all banks in the community, although not emanating from the employer, exerted a coercive effect upon the employees' free choice.

In the second case, *Claymore Mfg. Co.*,[75] the Board refused to set an election aside, notwithstanding the preelection statements of the employer and the activities of prominent and influential members of the community who attempted to dissuade employees from voting for the union by spreading rumors that the plant would close if the union won the election. The Board pointed out that, at the union's request, the employer had issued a letter to the employees disavowing the rumors of the plant closing, and that there was no showing that the union was dissatisfied with the disavowal. In concluding that neither the campaign of the community leaders nor the employer's statements interfered with the election, the Board also noted the give-and-take of the campaign, the fact that the campaign propaganda occurred in the context of the employer operating at a loss, and the employer's straightforward assurances to the employees that it had dealt fairly with them, hoped to do better by them, and intended to keep the plant operating regardless of the outcome of the election.

c. Proviso to Section 8(b)(1)(A) Does Not Protect Threats of Reprisals Affecting Employment Opportunities

In *Hurwitz Electrical*,[76] the Board had occasion to determine whether the preelection conduct of a union threatening retaliation against employees through intraunion procedures which would affect their union standing and "thus jeopardize their opportunities for jobs on union projects" was protected in a representation proceeding by the proviso to section 8(b)(1)(A) which protects "the right of a labor organization to prescribe its own rules with respect to the acquisition

[75] *Claymore Mfg Co of Arkansas, Inc.*, 146 NLRB 1400, Members Leedom, Fanning, and Jenkins for the majority, Chairman McCulloch and Member Brown dissenting.
[76] *Hurwitz Electrical Co.*, 146 NLRB 1265.

or retention of membership." Without deciding the extent to which this proviso affects representation proceedings, the Board held that the union's threats of reprisals, which it found had interfered with the employees' free choice in the election, did not fall within the protection of the proviso.

d. Adequacy of Election Propaganda Disavowal

While the Board has in certain cases found disclaimers and disavowals of conduct prejudicial to elections to have adequately neutralized and dissipated the coercive effect of that conduct, such statements have been generally considered effective only when they have been communicated to all employees in an unambiguous and unequivocal manner. During the past year, in *Air Control Products*,[77] the Board was presented with the question whether an employer's posted notice to its employees effectively neutralized statements by an intervening union [78] asserting that the employer had promised the intervenor that a retroactive wage increase would be granted to employees if it won. The employer had posted on its bulletin boards a notice to all employees which stated: "This is to notify all employees that the Company has not authorized or approved and takes no responsibility for any statements made by either union during the election campaign currently going on." The Board viewed the notice as an insufficient disavowal [79] under the circumstances, and concluded that the employer, as the only party who could effectively do so, did not take adequate affirmative steps to dissipate the effect of the claim.

2. Provisions of Notice of Second Election

When the Board sets an election aside and directs a second election, it has seldom heretofore exercised its discretion to incorporate in the election notice any language which might explain the basis for the holding of a new election. However, in *Lufkin Rule*,[80] at the request of the party whose objections to election conduct had been sustained, the Board exercised its discretion to do so and directed the regional director to include in the notice of the second election the fact that a new election would be conducted because the employer's preelection conduct had "interfered with the employees' exercise of a free and reasoned choice" and thus warranted setting aside the original election. Rejecting the employer's contention that such a notice, having

[77] *Air Control Products, Inc.*, 147 NLRB No. 165.

[78] The intervenor's prior recognition by the employer had been withdrawn pursuant to a Board order in another proceeding (139 NLRB 607) based upon findings of illegal assistance.

[79] Compare *Claymore Mfg Co*, *supra*, p 61.

[80] *Lufkin Rule Co.*, 147 NLRB No. 46

the imprimatur of the Board, would suggest to the employees that in view of the employer's conduct the Board favored a vote for the union in the second election, the Board viewed the primary purpose of such a notice as an "official notification to all eligible voters, without detailing the specific conduct involved, as to the reason why the elections were set aside." [81]

I. Agency-Shop Deauthorization Election

During the past year, the Board had occasion to reaffirm its long-standing position [82] that the limitation of section 9(e)(2) on the holding of an election within 12 months of a prior one refers only to union-security deauthorization elections held pursuant to section 9(e) within the prior 12 months, and does not apply to representation elections held pursuant to section 9(c).[83] Directing an agency-shop clause deauthorization election in the same case, *Monsanto Chemical*,[84] the Board held that an affirmative deauthorization vote would suspend the effectiveness of the agency-shop provisions of the 3-year-term contract between the union and the employer immediately upon certification of the section 9(e) election results, even though the certification year would not yet have expired and the contract was still in the first year of its term.[85]

[81] The Board denied the union's request that copies of the Board's decision be posted

[82] See, e g., *Southern Press*, 121 NLRB 1080 (1958).

[83] *Monsanto Chemical Co.*, 147 NLRB No. 5.

[84] *Monsanto Chemical Co., supra.*

[85] The Board majority, comprising Chairman McCulloch and Members Leedom, Fanning, and Jenkins, followed *Andor Co., Inc.*, 119 NLRB 925 (1957), and *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494 (1952). Member Brown, dissenting in this respect, would not have entertained the petition because, in his view, congressional intent obligates the Board in deauthorization proceedings, as in conventional representation proceedings, to establish appropriate filing periods which are meaningfully adapted to viable labor relations under the Act, and no such requirement was imposed.

VI

Unfair Labor Practices

The Board is empowered by the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general, section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until a charge of an unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other party irrespective of any interest they might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during the 1964 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

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

1. Limitations on Communication

The Board has held with judicial approval that an employer may not prohibit his employees from distributing union literature on their own time in nonworking areas of the plant unless it can show special cir-

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

cumstances making the rule necessary in order to maintain production or discipline.[2] During the past year, the Board had occasion to consider whether or not the distribution of intraunion election campaign material is protected by this principle. In *General Aniline*,[3] an employer was found to have violated section 8(a)(1) by his enforcement of a broad no-distribution rule precluding employees from distributing union officer election campaign literature in nonworking areas and on nonworking time. The Board rejected the contention that the material was purely personal in nature and therefore not protected by the Act, pointing out that much of the material related directly to the effect of the election on bargaining attitudes and working conditions, and that election campaign literature discussing a candidate's qualifications for union office is an effective implement in enabling employees to choose their own representatives. A further assertion by the employer that the campaign material contained epithets which could arouse employee factionalism and endanger the employer's operations was found to be without merit by the Board. The bounds of lawful comment were not exceeded, in spite of the highly critical content of the literature, since they were not deliberately and maliciously false.

In *General Motors*,[4] the Board held that an employer and a union violated the Act by maintaining in effect a contract provision prohibiting the distribution of union literature during nonworking time in nonworking areas of the employer's premises, insofar as the contractual prohibition extended to employee advocates of unions other than the incumbent union.[5] The Board also found that the employer violated section 8(a)(1) for the additional reasons that it maintained in effect two shop rules, one prohibiting unauthorized distribution of literature on the employer's premises,[6] and the other prohibiting unauthorized solicitation on company premises.[7]

The right of an employee to question fellow workers concerning possible grievances is protected by the Act. In *Market Basket*,[8]

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[2] *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962). Accord. *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956); *N.L.R.B.* v. *Linda Jo Shoe Co.*, 307 F. 2d 355 (C.A. 5) (1962).

[3] *General Aniline & Film Corp.*, 145 NLRB 1215.

[4] *General Motors Corp. (Buick-Oldsmobile-Pontiac Assembly Div.)*, 147 NLRB No. 59, Members Fanning and Brown joining in the principal opinion, Member Jenkins concurring in part and dissenting in part, Member Leedom dissenting in part, Chairman McCulloch not participating.

[5] Members Fanning and Brown followed their decision in *Gale Products, Div. of Outboard Marine Corp.*, 142 NLRB 1246; Member Jenkins would go further and hold that such a contractual prohibition is also invalid as applied to employees who are members or supporters of the contracting union, Member Leedom, adhering to his position in the dissenting opinion in *Gale Products*, would find no violation.

[6] Member Leedom would find no violation since the distribution of literature was subject matter covered by the contract.

[7] With respect to this prohibition, Member Leedom joined the other members in finding that the employer violated sec. 8(a)(1) because solicitation was not covered by the existing contract.

[8] *Market Basket*, 144 NLRB 1462.

an employer prohibited a union shop steward from conducting so-called "witch hunts" to uncover grievances, on company property at any time, and from holding meetings of employees in the parking lot during free time. The Board held that such a restrictive rule obstructs the employees' right to self-organization and representation. However, the Board affirmed its policy of limiting solicitation of grievances to nonworking time, since a prohibition of solicitation on working time is presumptively valid unless an unlawful motive is shown.[9] Accordingly, the trial examiner's recommended order was modified so as to permit a working time no-solicitation rule.

In *Montgomery Ward*,[10] the Board was presented with the problem of balancing the right of the employer to regulate access to his own records as against the union's right to receive information relevant to the processing of a grievance. The employer had instructed an employee not to disclose to her union agent information from its records concerning the volume of pending work orders. The information sought was relevant to the processing of an employee's grievance concerning a layoff for asserted lack of work. The Board, noting that the conditions under which an employer would supply information to a union were matters to be resolved at the bargaining table, found no violation of section 8(a)(1), holding that under the circumstances the employer had the right to control its property and prohibit disclosure of the record contents by its employees. Otherwise, the Board reasoned, the employer's right to meet and bargain concerning the conditions of performance of its obligation, and upon proper request, to furnish the relevant information at the bargaining table, would be vitiated.[11]

2. Disclosure of Communication With Board Agents

A further aspect of the *Montgomery Ward* case[12] involved the right of an employer to determine whether or not his employee had given a pretrial statement to Board agents. Although the Board has held that an employer's demand, or request, for a copy of an employee's statement exceeds the limit of lawful pretrial investigation,[13] the Board found that the facts here were clearly distinguishable from that line of cases. The employer, in the course of a noncoercive inter-

[9] See *James Hotel Co., d/b/a Skirvin Hotel*, 142 NLRB 761.

[10] *Montgomery Ward & Co., Inc.*, 146 NLRB 67.

[11] Dissenting Member Brown was of the view that an employer's right of nondisclosure of its business records is limited to confidential records of the type reflecting management policies in the field of labor relation.

[12] *Montgomery Ward & Co, Inc., supra.*

[13] See, e.g., *W. T. Grant Co.*, 144 NLRB 1179. See also Twenty-seventh Annual Report (1962), pp. 98–99.

view, had limited his inquiry to whether a statement had been given the Board without requesting a copy of the statement. The majority noted that such a question does not create the impression that the employer seeks knowledge of the contents of the statements, which would inhibit the employee's willingness to cooperate with Board investigators. Furthermore, the Board pointed out, the purpose of an inquiry of this type is to obtain information for a later proper demand of the employee's affidavit in the event he testifies at the Board proceeding.[14] The information sought met the requisite standard of relevancy and necessity in pretrial interviews.[15]

3. Other Forms of Interference

In *Southland Cork*,[16] the Board held that an employer's conduct in parading job applicants through its plant constituted, under the circumstances, a threat to the employees that they would lose their jobs if they had the temerity to strike. As a result of the employer's delaying tactics in bargaining with the certified union, employees represented by the certified union authorized it to strike. Although the employees had not actually struck, the employer subsequently posted "help wanted" signs throughout the neighborhood. Many job applicants who responded filled out applications in full view of employees at work and were then openly escorted through the plant. Noting that there was nothing unlawful *per se* about the employer's conduct in seeking to protect its plant operations by having a ready supply of help available in the event of a strike, the Board viewed the manner in which the employer advertised to existing employees the recruitment of potential employees as far exceeding the reasonable requirements of the situation. The ostentatious flaunting of a large number of job applicants by having them fill out job applications in the plant under the employees' eyes and then parading them through the plant in groups under the guidance of high officials had an object beyond that of simple job recruitment. A principal purpose of this procedure, the Board concluded, was to intimidate employees, which it did, by creating fear that if they struck they would be immediately and permanently replaced.

In *Wallace Press*,[17] the Board held that an employer's use of a private credit bureau to secure information concerning the union membership and activities of job applicants was a violation of section 8

[14] Dissenting Members Brown and Fanning are of the view that a violation of sec. 8(a)(1) occurred, since the question did not pertain to an issue raised in the complaint and was not necessary to preparation of a defense

[15] See *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 185 F. 2d 732, 743 (C.A.D.C.), enforcing 85 NLRB 1263, certiorari denied 341 U.S. 914.

[16] *Southland Cork Co.*, 146 NLRB 906.

[17] *Wallace Press, Inc.*, 146 NLRB 1236.

(a)(1). The Board viewed such use of the bureau as comparable to the kind of illegal labor espionage or surveillance resorted to by employers who seek to obstruct and destroy employees' self-organizational rights and activities. Rejecting the employer's contention that the information sought pertained to the applicants' qualifications for employment, the Board concluded that the information involved was not meant to serve a legitimate function in the hiring process, and that, in the absence of any justification, it is reasonable to infer that the surreptitious investigations were without a legitimate purpose.[18]

B. Employer Support of Labor Organization

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."[19] The section provides, however, that an employer may permit employees to confer with him during working hours without loss of pay.

1. Forms of Support

Two companion cases considered by the Board involved a factional conflict within the certified union resulting in an attempted disaffiliation by one of the factions. The faction had formed an independent union and subsequently made demands upon the employers for representation rights. A Board majority decided in each case that the employers did not violate section 8(a)(2) by their conduct when faced with conflicting demands by each union group for the right to administer the contract during the certification year. In *Miramar Charterhouse*,[20] the dissident independent called a strike to enforce its demands that the employer reinstate four discharged employees and recognize it as bargaining representative. Although the employer adjusted the grievances of the dischargees without consulting the incumbent union, and entered into a strike settlement with the independent, the Board found that by this action the employer did not in fact concede exclusive bargaining rights to the independent or render unlawful assistance and support to it. The Board held that "the rendering of assistance in violation of Section 8(a)(2) rests, not upon what has been requested from, but what has been extended by, the employer." As the employer had refused to recognize the inde-

[18] The Board regarded as immaterial the fact that the employer may have hired applicants who were union adherents. It also restated the doctrines that unremitting hostility to the principle of self-organization is not a prerequisite for a finding that a discriminatory hiring policy is unlawful, nor is employee knowledge of the existence of such a policy a necessary condition for finding it violative of sec. 8(a)(1).

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

[20] *Miramar Charterhouse*, 144 NLRB 728.

pendent from the outset, its discussion of grievances with it, even if treated as affecting the work status of all strikers, still fell short of recognition as majority representative. Moreover, a demand for reinstatement of the dischargees is not, in the Board's view, tantamount to a demand for recognition, and settlement of such demand is therefore not equivalent to the extension of exclusive recognition.[21]

In the companion *Hotel La Concha* case,[22] when faced with representation demands from both union groups, the employer filed an interpleader action in the local court. When a grievance within the contract unit subsequently arose it notified both groups and insisted that they decide between themselves who would represent the employees in the matter. Upon the basis of its reasoning in *Miramar Charterhouse*, *supra*, the Board similarly dismissed section 8(a)(2) allegations based upon this conduct.[23]

2. Contract Negotiation With Minority Union

In *Majestic Weaving*,[24] the Board found that an employer violated section 8(a)(2) where it negotiated with a nonmajority union, even though it conditioned the actual signing of a contract on the union achieving a majority at the conclusion of negotiations.[25] In so finding, the Board equated the instant case involving contract negotiation following an oral recognition agreement, with the *Bernhard-Altmann* case [26] involving execution with a minority union of an interim agreement without union-security provisions. It viewed that case, wherein the Board and courts [27] had found the premature grant of exclusive bargaining status to a union to be objectionable, and the instant case as being similar with respect to the deleterious effect upon employee rights.

C. Employer Discrimination Against Employees

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or

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[21] Member Leedom, dissenting, viewed the employer's conduct as necessarily tantamount to recognition of and bargaining with the independent union in derogation of the status of the contracting local, and therefore violative of sec 8(a)(2).

[22] *Landrum Mills Hotel Corp., d/b/a Hotel La Concha,* 144 NLRB 754.

[23] *Fafnir Bearing Co*, 146 NLRB 1582, Chairman McCulloch and Members Fanning *supra.*

[24] *Majestic Weaving Co., Inc, of New York,* 147 NLRB No. 113.

[25] The Board overruled *Julius Resnick,* 86 NLRB 38 (1949), to the extent that it holds that an employer and a union may agree to terms of a contract before the union has organized the employees, so long as the union has majority representation when the contract is executed.

[26] *Intl Ladies' Garment Workers' Union* v *N.L.R.B.* (*Bernhard-Altmann Texas Corp.*), 366 U.S 731 (1961).

[27] *Bernhard-Altmann Texas Corp.,* 122 NLRB 1289, enforced 280 F. 2d 616 (C.A D.C.), affirmed 366 U.S. 731.

condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. However, the union-security provisions of section 8(a)(3) and 8(f) create exceptions to this blanket prohibition which permit an employer to make an agreement with a labor organization requiring union membership as a condition of employment, subject to certain limitations.

1. Lockouts

The question of the legality of lockouts arose in several cases during the past year. One case involved the use of the lockout by an employer association to attempt to force a change in the bargaining pattern, and another involved its use to enhance the bargaining position of the members of an employer association. A third case involved its use as a defensive tactic by members of an employer association who bargained with the same unions, but with some on an individual and with others on a multiemployer basis.

In the *A & P* case,[28] the employer members of a recently formed theretofore bargained with them on a single-employer unit basis, called a strike against one employer whose contract had expired, following a breakdown in the negotiations for a multiemployer unit insisted upon by the association. Contrary to the contention that the union had agreed to industrywide bargaining, the Board found that it had merely met with the association to explore its possibilities, and that the lockout was unlawful since it was used as an offensive tactic to force a change in the bargaining pattern from single-employer to multiemployer bargaining. In the Board's view, the employers' actions were not warranted by special circumstances of the type held in *Buffalo Linen*[29] to justify a defensive lockout by the nonstruck employer to *preserve* the multiemployer unit from attempted destruction by the union.

In the second case, *Bagdad Bowling Alleys*,[30] members of a multiemployer association, who locked out and temporarily replaced their employees when the union struck one of the members during bargaining negotiations, were held, together with the multiemployer association, to have violated section 8(a)(3). In so holding, the Board relied upon the rationale set forth in its decisions in *Brown Food Store*[31]

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[28] *Great Atlantic & Pacific Tea Co.*, 145 NLRB 361.

[29] *N.L.R.B.* v. *Truck Drivers Local 449, IBT*, 353 U.S. 87 (1957), affirming 109 NLRB 447.

[30] *Bagdad Bowling Alleys*, 147 NLRB No. 97.

[31] *Brown Food Store*, 137 NLRB 73, enforcement denied 319 F. 2d 7 (C.A. 10), Board's petition for certiorari granted 375 U.S. 962, Twenty-seventh Annual Report (1962), pp. 113–114; Twenty-eighth Annual Report (1963), pp 129–130.

and *The Kroger Company*[32] where the Board held that nonstruck employers, in locking out their employees and continuing to operate with temporary replacements, exceed the lawful defensive limits established in *Buffalo Linen*. As an additional factor supporting its conclusion that the employers' actions here were offensive rather than defensive, the Board noted that "Respondents themselves considered the lockout as a means of enhancing their bargaining strength against the Union, rather than as a means of preserving the integrity of the multiemployer bargaining unit."[33]

In the third case, *Evening News Association*,[34] a lockout by a newspaper publisher belonging to a multiemployer bargaining unit, when the other member of the unit was struck by a union, was held by the Board to come within the principle of the *Buffalo Linen* case.[35] The lockout was in implementation of the employer's well-known suspension agreement that a strike by a union representing employees in the multiemployer unit would automatically cause a suspension of operations at both papers. It was used to protect the unit and not as an offensive weapon.[36] However, both employers also bargained for other employees on a single-employer basis, although those units were represented by the same union. A similar suspension agreement applied to their respective single-employer units, in aid of their individual bargaining with the union representing those employees, was held unlawful by the Board. One employer's lockout of employees in its single-employer unit, when the other was struck by the union, was held a violation of section 8(a)(3), since there was no established multiemployer bargaining unit essential to the invocation of *Buffalo Linen*, notwithstanding the fact that common problems and bargaining issues were created by the union's contract demands to both employers.

In both the *A & P* and *Evening News Association* cases,[37] the Board also held the incidental layoffs of other employees not involved in the bargaining disputes because of lack of work due to the suspension were violative of section 8(a)(3) where the lockout was itself unlawful. Although the lockouts were not directed against the other employees, their loss of employment was proximately and entirely due to the unlawful lockouts.[38]

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[32] *The Kroger Co.*, 145 NLRB 235.

[33] Member Brown would not rely on the evidence of purported intent.

[34] *Evening News Assn., Owner and Publisher of Detroit News*, 145 NLRB 996.

[35] *N.L.R.B.* v. *Truck Drivers Local 449, IBT, supra.*

[36] See *Publishers Assn. of New York City*, 139 NLRB 1092, affirmed *sub nom. New York Mailers' Union No. 6, ITU*, 327 F. 2d 292 (C.A. 2); Twenty-eighth Annual Report (1963), pp 71–72.

[37] *Great Atlantic & Pacific Tea Co., supra; Evening News Assn., supra.*

[38] Compare *New York Mailers' Union No. 6, I T.U.* v. *N.L R B., infra*, p. 116.

2. Motivation for Striker Replacement

In *Hot Shoppes*,[39] the Board held that an employer did not violate section 8(a)(3) by refusing to reinstate permanently replaced economic strikers. In rejecting the trial examiner's conclusion that the employer acted discriminatorily in hiring strike replacements pursuant to a "contrived scheme" to defeat the economic strikers' rights to reinstatement, and that the implementation of such a scheme converted the strike to an unfair labor practice strike, the Board disagreed with the premise that an employer may replace economic strikers only if it is shown that he acted to preserve efficient operation of his business. In arriving at its conclusion the Board construed the Supreme Court's decision in *Mackay Radio & Telegraph Co.*,[40] and cases thereafter, as holding that "the motive for such replacements is immaterial, absent evidence of an independent unlawful purpose."

D. The Bargaining Obligation

Section 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain in good faith about wages, hours, and other terms and conditions of employment with the representative selected by a majority of the employees in an appropriate unit. Generally, the duty to bargain arises when the employees' representative requests the employer to negotiate about matters which are bargainable under the Act.

Section 8(b)(3) prohibits a labor organization from refusing "to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)." The requisites of good-faith collective bargaining are set forth in section 8(d) of the Act.[41]

1. Racial Discrimination in Representation of Employees

In *Hughes Tool*[42] a Board majority held that the failure of a certified union to process a grievance was a refusal to bargain within the prohibition of section 8(b)(3), where the union's failure was moti-

[39] *Hot Shoppes, Inc*, 146 NLRB 802

[40] *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S 333 (1938).

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

[42] *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB No. 166, Members Leedom, Brown, and Jenkins for the majority, Chairman McCulloch and Member Fanning dissenting in part.

vated by racial discrimination constituting a breach of its statutory duty to represent all employees in the unit fairly as their representative.[43] In the view of the majority, the respondent local—admitting to membership only white employees in the unit—was, in effect, acting for the benefit of its members only when it failed to consider for processing a grievance filed by a Negro employee in the unit—a member of a jointly certified sister local established for the Negro employees. Its failure to act on the grievance was therefore as much of a refusal to bargain as would be discriminatory affirmative action taken by it on behalf of some but not all of the employees in the unit. The majority found no statutory premise for limitation of a union's bargaining obligation as a duty owed only to employers, and not one owed equally to employees.[44]

2. Subjects for Bargaining

Both the employer and the statutory representative of an appropriate employee unit must bargain as to all matters pertaining to "wages, hours, and other terms and conditions of employment." In other matters which are lawful, bargaining is permissible though not mandatory. But insistence on inclusion in a contract of clauses dealing with matters outside the category of mandatory bargaining subjects specified in the Act, as a condition of bargaining on mandatory matters, constitutes an unlawful refusal to bargain.[45]

In a number of cases during fiscal 1964, the Board had occasion to determine whether certain matters were subjects of mandatory bargaining. These cases dealt with the obligation to bargain on such matters as the payment of Christmas checks as a traditional bonus, a contract provision for the establishment of an escrow account to secure the payment of wages, ratification by the union membership as a condition of the contract, the discontinuance of an employer's operation, and a contract provision providing unit seniority for supervisors.

In the *General Telephone* case,[46] the Board held that Christmas checks given in accordance with long-established custom constituted wages which an employer could not unilaterally discontinue without bargaining with the union, even though the most recent contract did

[43] Chairman McCulloch and Member Fanning dissented with respect to this point. See *Miranda Fuel Co., Inc.*, 140 NLRB 181, where Members Rodgers, Leedom, and Brown for the majority, Chairman McCulloch and Member Fanning dissenting, found an 8(b)(1)(A) violation because the union failed to accord one of its members his right to fair and impartial treatment, discussed in Twenty-eighth Annual Report (1963), pp. 84–85; for the *Miranda* court decision, see *infra*, p 122 See also *infra*, p 123

[44] Chairman McCulloch and Member Fanning view sec. 8(b)(3) as prescribing a duty owed by a union to employers only and not to employees.

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

[46] *General Telephone Co. of Florida*, 144 NLRB 311.

not include an "existing benefits" clause. The Board reasoned that the employees were entitled to rely upon the checks as wages, not only because they had been paid regularly over a 35-year period, but also because the employer had advised the employees that they were one of the extra benefits of the employment relationship. It rejected the employer's position that the checks were purely gratuities and that the union was equitably estopped to contest their elimination by its failure to include them in the bargaining proposals and by its acquiescence over the years in the employer's unilateral granting of the checks. The employer had given the union assurance during negotiations that it did not intend to diminish "fringes and extra benefits." The Board concluded that the fact that the union did not disturb an agreeable custom of long standing afforded the employer no reason to expect that it would not object if the customary benefits were discontinued.

In the *Carpenters' District Council of Detroit* case,[47] the Board again declared it to be an unlawful refusal to bargain for either an employer or a union to insist upon a performance bond, or its equivalent, as a condition to entering into a collective-bargaining contract. It held that a union violated section 8(b)(3) by demanding and striking for a contract provision requiring the employer to establish an escrow fund as security for payment of wages and fringe benefits to employees, even though the need for and reasonableness of the fund might have been demonstrated by the employer's past delinquencies in those matters. Noting that it has consistently held that performance bonds are not mandatory subjects of bargaining because they are not within the area of "wages, hours and other terms and conditions of employment," the Board, equating the present demand to one for a performance bond, found no compelling reason to alter that interpretation of the statute.[48] To so construe it would be to open the way for unlimited demands for wage bonds from employers, and surety bonds against strikes from unions, merely because some remote connection with wages, hours, and terms and conditions of employment could be described.[49]

In *North Country Motors*,[50] the Board held that an employer violated section 8(a)(5) by refusing to execute a written agreement as

[47] *Carpenters' District Council of Detroit (Excello Dry Wall Co.)*, 145 NLRB 663, Chairman McCulloch and Members Leedom and Fanning for the majority, Members Brown and Jenkins dissenting.

[48] In the view of the dissenting members, application of the "relationship test" as set forth in *N.L.R.B.* v. *Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (i.e., whether the proposal "regulated the relations between the employer and the employees") establishes that the escrow account meets the test because it is related to a benefit or security for the employees, and was not an indemnity for one of the contracting parties.

[49] See *Intl. Brotherhood of Teamsters (Conway's Express)*, 87 NLRB 972 (1949).

[50] *North Country Motors, Ltd.*, 146 NLRB 671, Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority, Member Leedom dissenting.

agreed upon by the negotiating parties. The employer alleged that it refused to do so because the union had agreed that the proposed contract was to be subject to ratification by the employees in the bargaining unit—pursuant to the union's constitution and bylaws—and that a proper ratification had not been obtained. The Board noted that any union agreement with respect to employee ratification could have extended no further than an undertaking on its part to comply with its internal procedures and requirements relating to ratification. Inasmuch as the Act imposes no obligation upon a bargaining agent to obtain employee ratification of a contract it negotiates in their behalf, the requirement for ratification could only have been one which the union itself assumed. The Board concluded that whether the union had obtained proper ratification was a matter for the union to decide in construing its internal regulations, and not for the employer to challenge once assured by the union that the latter's ratification requirements had been met.

In *Winn-Dixie Stores*,[51] the Board held that an employer violated section 8(a)(5) when it terminated its cheese-processing operation without first notifying, consulting with, or bargaining with its employees' representative. In so holding, the Board rejected the employer's contention that "absent a collective-bargaining agreement, any operational change is a matter of management prerogative and not a bargainable subject." The Board further held that a union need not make a specific request to bargain even if it has knowledge of the established operation's discontinuance where a continuing refusal to bargain, during court review of the certification and a bargaining violaton finding, was taking place.

In *Mobil Oil*,[52] the Board held that an employer did not violate his bargaining obligations by insisting upon a contract clause providing for the retention and accumulation of unit seniority by employees promoted to supervisory positions. The Board pointed out that seniority for present and future employees in the bargaining unit is a mandatory subject of collective bargaining, and the manner in which seniority shall be determined is a bargaining detail. The provision for the retention of an employee's seniority earned before his promotion to a supervisory position and for the continued accumulation of unit seniority while in such supervisory position, the Board noted, is applicable only if he is subsequently demoted to a position within the rank-and-file bargaining unit, and does not determine conditions of employment for supervisors *qua* supervisors.

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[51] *Winn-Dixie Stores, Inc.*, 147 NLRB No 89.
[52] *Mobil Oil Co.*, 147 NLRB No. 43.

3. Data To Be Furnished for Bargaining

The statutory duty of an employer to bargain in good faith includes the duty to supply information, which is relevant and necessary, to the union, in order that it might carry on intelligent bargaining. In *Curtiss-Wright*,[53] the Board concluded that a union has a statutory right to job descriptions and related wage data of employees even though outside the unit, when that data is relevant or related to the union's role as bargaining representative. The Board held that there is a presumption of relevance when the data relates to employees within the unit,[54] but that no such presumption exists concerning data relating to employees outside the unit. In the case under consideration the union's limited request for specific data concerning specified administrative jobs was found adequate, unaided by any presumption of relevance, where the union established a basis for its good-faith belief that certain misclassifications had taken place which eroded the unit. This showing of relevancy was reinforced by the several changes favorable to the union made by the employer in the composition of the unit after information was eventually furnished. To the extent that the employer withheld some of the requested material, it was found to have violated section 8(a)(5). However, the union's earlier "shot-gun" request for complete information concerning all nonunit employees was not shown to be relevant to the union's function as bargaining representative and the employer was not required to comply with that request.

In *Fafnir Bearing*,[55] the Board held that an employer violated its statutory bargaining obligation by refusing to permit the contracting union access to the plant to perform its own independent time study of job operations to obtain information from which to ascertain whether it should proceed to arbitration. The employer denied the union's request on the grounds that sufficient information for an intelligent determination by the union had already been supplied, an independent time study was not provided by contract, and the arbitrator would in any event conduct his own study. The Board found that the study requested was relevant and necessary to enable the union to decide whether to arbitrate. It noted that the information supplied by the employer was not sufficient to make an intelligent decision, since actual observation of the job by an expert was necessary because of the many variables to be considered. Nor was there an alternative source of information. Pointing out that the statutory obligation of an employer to furnish information upon request extends

[53] *Curtiss-Wright Corp., Wright Aeronautical Div.*, 145 NLRB 152.

[54] See *Boston Herald Traveler Corp.* v. *N.L.R.B.*, 223 F. 2d 58, 62–64 (C.A. 1).

[55] *Fafnir Bearing Co.*, 146 NLRB 1582, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting.

to information which the union may require in order "to police and administer existing agreements," the Board viewed the requested time study as being in the nature of a request for such information. Moreover, the Board concluded, the employer had made no showing that the performance of a time study would interfere with production or discipline.[56]

4. Scope of Bargaining Required Over Decision To Subcontract or Terminate Operations

Although an employer may be under an obligation to notify and bargain with the employees' bargaining representative before subcontracting its operations, as noted *supra*, the Board has held in a number of cases during the report year that, under the circumstances, that obligation has been satisfied and no violation of the Act has occurred. Thus, in *Hartmann Luggage*,[57] the Board dismissed an 8(a)(5) complaint, even though it found the employer to have been under an obligation before subcontracting its operations to notify and consult with the union concerning its plan to subcontract, where the *prima facie* showing of violation inherent in the employer's unilateral action was overcome or "cured" by its overall bargaining conduct, both prior and subsequent to execution of the subcontract. The employer had previously notified the union of its intention to subcontract due to economic circumstances if the union did not accept a substantial wage cut and the parties had thereafter negotiated a new agreement which contained a clause dealing with vacation payments in the event of subcontracting. The employer had notified the union immediately after signing the subcontract, which was executory in nature and did not irretrievably commit the employer, and 2 weeks later afforded the union full opportunity to be heard. However, the union's principal demands concerned the effect of the subcontract and did not seek its abrogation. In these circumstances, the union was held to have acquiesced in the employer's action.[58]

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[56] Although the union could have waived its statutory right to the information it sought, such a waiver must be clear and unmistakable. There is nothing in the contract, the Board found, to support a finding that the union waived its right to the information sought. The contention that the arbitrator would conduct his own time study if the grievances were submitted to arbitration does not justify the employer's refusal to grant the union's request. The union sought the information for the purpose of enabling it to decide whether to take the grievances to arbitration in the first place. It is entitled to the information, in the Board's view, both for that purpose and for the purpose of preparing its cases for arbitration should it ultimately take that course.

[57] *Hartmann Luggage Co.*, 145 NLRB 1572.

[58] Member Leedom concurred since the employer's decision to subcontract was economically motivated, adhering to his views expressed in *Fibreboard Paper Products Corp.*, 130 NLRB 1558, that in such situation the employer's sole bargaining duty is to deal with the union concerning posttermination rights and obligations.

A union's bargaining technique was also noted in *Dove Flocking*,[59] where the issue was whether an employer violated section 8(a)(3) by relocating its plant in another State during a lawful strike, with resultant termination of the strikers. The Board concluded that the employer's action was prompted by legitimate business reasons rather than union hostility. Although the union did not charge that the employer had unlawfully refused to bargain about the matter, evidence concerning the parties' discussion of the union's contract demands had significant relevance to the question of the employer's motivation in moving the plant. The strike activities prevented the employer from conducting normal operations, and it protested that it could not afford the contract terms and stay in business. However, the union made it unequivocably clear that its demands for execution of the area contract were not negotiable, and that it would continue economic pressure rather than bargain to gain their acceptance.

5. Waiver of Right by Contract

Under the Act a union as the duly designated representative of employees in the bargaining unit has a right to select persons, whether they be employees or nonemployees, to negotiate with the employer as to grievances. An employer therefore may not, without violating the Act, insist that the union surrender this right as a condition of entering into a collective-bargaining agreement. While a union may not be compelled to agree to give up the right to be represented by any class of persons it desires, it may waive this right voluntarily pursuant to genuine collective bargaining. However, the waiver, as with all waivers of statutory rights, must be clearly and unmistakably established and is not lightly to be inferred.

In *Brunswick Corp.*,[60] the Board had occasion to decide whether the union had voluntarily waived its right to be represented in the adjustment of grievances by a representative who was not a member of the bargaining unit. It held that the union had voluntarily waived that right and consequently the employer's refusal to discuss grievances with a nonemployee designated by the union as chief shop steward was not violative of section 8(a)(5). The contract did not expressly waive the employees' statutory right in that regard, but required that the union be represented in the final grievance procedure by its bargaining committee to be composed of members of the bargaining unit. As the contractual language was found by the Board to be somewhat ambiguous in that it was not clear whether the chief shop steward was a member of the bargaining committee or whether he was required to be an

[59] *Dove Flocking & Screening Co.*, 145 NLRB 682.
[60] 146 NLRB 1474.

employee, the Board resorted to extrinsic evidence to find the intent of the parties. Evaluating the undenied testimony of union officers, the invariable practice, and the precontract negotiations, the Board found that the revised grievance clause was designed to limit participation in the grievance procedure to union representatives who were employees. The Board concluded that the contract requirement applied to the chief shop steward who was found to be an ex officio member of the union's bargaining committee, even though he was the only union official participating in all steps of the grievance procedure.

And in *LeRoy Machine*,[61] the Board held that although a requirement that employees with bad absentee records submit to a physical examination by a physican of their choice at the employer's expense, subject to disciplinary action if they refused, was a mandatory subject of bargaining, the union waived its right to bargain about such matter by virtue of a management prerogative clause in its existing contract with the employer. That clause gave the employer the sole right to determine the qualifications of employees. The Board viewed the clause as encompassing the physical examinations and thus removing that subject from the scope of collective bargaining during the term of the contract.[62]

However, in a third case, *Adams Dairy*,[63] the Board found that the union neither acquiesced in nor clearly and unmistakably waived its statutory right to bargain on proposed changes in the terms and conditions of employment—the employer's unilateral subcontracting of accounts of its driver-salesmen. Although the union had sought certain provisions during negotiations, it accepted a contract which was silent with respect to those subjects. The employer's subsequent actions relative to those issues, however, were subject to grievance and arbitration under the contract. The Board held that the union's unsuccessful attempt to include specific provisions in the contract, even though it obtained the right to arbitration on the issue, did not preclude the subsequent assertion of its statutory rights. Neither did its acquiescence in certain other changes in methods of operations, nor its unsuccessful prosecution of a grievance over a similar transaction, preclude a finding of no waiver.

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[61] *LeRoy Machine Co., Inc.*, 147 NLRB No. 140, Chairman McCulloch and Members Leedom and Jenkins joining in the principal opinion, Members Fanning and Brown concurring in part and dissenting in part.

[62] Member Fanning, dissenting on this point, would find that the union had not clearly and unequivocally contracted away or otherwise waived its statutory right to be consulted and to bargain about the requirement that employees undergo physical examination. Member Brown would await the arbitrator's ruling before resolving the merits of the physical examination aspect; see *supra*, p. 77.

[63] *Cloverleaf Div. of Adams Dairy Co.*, 147 NLRB No. 133, Chairman McCulloch and Member Fanning joining in the principal opinion, Member Leedom concurring in part, including this issue.

6. Union Coercion of Employer in Selection of Representative

The Board was presented during the year with the question whether a strike by a union representing employees in a multiemployer unit against certain individual members of that employer group to force individual negotiations, even though other members had effectively withdrawn from the group, constituted a violation of the prohibition against coercing employers in the selection of their bargaining representative. In the *Ice Cream Drivers* case,[64] a breakdown in multiemployer negotiations resulted from a bargaining impasse. The resultant strike by the union against the association members was terminated as to four members when they approached the union and requested individual bargaining. The Board found that by thus inviting and entering into a separate understanding with the union, those employers effectively and voluntarily revoked their designation of the association as their representative.[65] There was therefore no basis for holding that the union restrained or coerced them within the meaning of section 8(b)(1)(B). However, the Board found that the union coerced the remaining members in the selection of their bargaining representative when it demanded that they also sign separate agreements, and resorted to strikes to force individual negotiations. The voluntary withdrawal of the four employers did not excuse the union from its obligation to respect the integrity of the multiemployer unit, and did not release it from its duty to continue to recognize the association's representative status for those employers still desiring multiemployer bargaining.

7. Individual Bargaining With Members of Multiemployer Association

Where an employer has once entered into a multiemployer bargaining arrangement, he may effectively withdraw from that arrangement only if he does so at an appropriate time dependent upon the contract term and pendency of negotiations, except where the withdrawal is with the consent, express or implied, of the union. In *C & M Construction*,[66] an employer's withdrawal from group bargaining was untimely, coming after the commencement of negotiations for a new multiemployer agreement in which he was a member of the association bargaining team. The Board was faced with the question whether

[64] *Ice Cream Drivers, etc., Local 717, IBT (Ice Cream Council, Inc.)*, 145 NLRB 865

[65] Chairman McCulloch and Member Fanning for the majority; Member Leedom dissenting on this point, was of the view that even assuming an impasse after the strike, the four employers who negotiated separately remained part of the unit, their purported withdrawal having come at an inappropriate time.

[66] *C & M Construction Co.*, 147 NLRB No. 103, Chairman McCulloch and Members Leedom, Fanning, and Jenkins for the majority, Member Brown dissenting.

the union had acquiesced in the employer's withdrawal, thereby relieving the employer of an obligation to be bound by the multiemployer association's agreement, which was thereafter entered into with the union. The Board found that the union, by accepting without objection the notification of the employer's withdrawal, and by its subsequent efforts to obtain his individual execution of the contract negotiated with the association, had so acquiesced. It therefore dismissed the complaint alleging an 8(a)(5) violation.

In *Rose Printing Co.*,[67] the Board held that an employer violated section 8(a)(5) by refusing to bargain on an individual-employer basis, notwithstanding that the employer had theretofore bargained as one of four members of an association of printers. Negotiations with the association had reached a genuine impasse in certain areas pertinent to printing operations, and the union abandoned multiemployer bargaining when it initiated joint bargaining with the three other employers, and individual bargaining with the respondent. As the union made no attempt to bring the respondent employer back into multiemployer negotiations with the other employers and had not given it notice of such negotiation meetings, the employer was found not to have unlawfully withdrawn from or refused to be bound by those multiemployer negotiations. However, after the union requested bargaining with the employer on an individual basis and made substantial concessions to that end, which effectively broke the prior impasse, the employer engaged in actions premised upon its voluntary acceptance of individual bargaining, and was found to have violated its bargaining obligation by its conduct.[68]

8. Loss-of-Status Provision of Section 8(d)

The Board had occasion during the past year to determine the applicability of the loss-of-status provision of section 8(d) of the Act to a strike called to protest an employer's unlawful refusal to bargain over an economic matter.[69] In *Mrs. Fay's Pies*,[70] the Board held that the notice requirements and loss-of-status provision of section 8(d) are inapplicable to a strike which protests an unfair labor practice over an economic matter. The strike occurred because of a wage dispute, but the union took action only after its efforts to negotiate were stifled

[67] *Rose Printing Co., Inc.*, 146 NLRB 638.

[68] The employer conditioned further negotiations upon the union's complete surrender of the impassed issues, it unilaterally granted a wage increase in excess of the figure offered to the union by the association during the negotiation, and it unilaterally granted its employees a holiday without pay, improved hospitalization benefits, and a new life insurance program while negotiations were in process

[69] The issue was posed but reserved in *Local 156, United Packinghouse Workers, et al. (DuQuoin Packing Co.)*, 117 NLRB 670, 672, footnote 2 (1957), where the union conceded that it called the strike "solely on the issues of wages."

[70] *Mrs. Fay's Pies, Inc.*, 145 NLRB 495.

by employer conduct amounting to an unlawful refusal to bargain. Where the subject of the employer's unfair practices and the source of the union's economic motivation to strike was the same, the Board found that it was in fact the employer's unlawful refusal to bargain which caused the strike. The Board viewed the decision as an application of *Mastro Plastics*,[71] where the Supreme Court held that section 8(d) is not applicable to a strike against unfair labor practices of an employer.

9. Certification Year Presumption of Majority Status

The majority status of a bargaining representative which has been certified by the Board in a proceeding under section 9(c) of the Act is presumed to continue for at least a year. During this period the employer, and also a successor employer, must bargain with the representative upon request, except in unusual circumstances.[72] During the past year, the Board had occasion to determine in several cases whether the presumption of the certified union's continuing majority status during the normal 1-year period had been effectively rebutted.

In *Miramar Charterhouse*,[73] an employer who had adjusted grievances through an independent union formed by a dissident group within the certified union without giving the incumbent appropriate notice and opportunity to be present was held by the Board to be in technical violation of section 8(a)(5). Although there was considerable confusion pending settlement of the intraunion dispute, the Board did not consider the circumstances warranted an exception to the general rule requiring recognition of the certified representative for at least the duration of the certification year, as there was no schism and the incumbent had not become defunct. Accordingly, the employer was not relieved of the statutory obligation to recognize the incumbent to the exclusion of all others, and its good or bad faith was immaterial. The Board's decision in the related *La Concha* case [74] was to the same effect: that the employer had technically violated section 8(a)(5) when it withheld recognition from the certified union by denying it the right to administer its current contract and process grievances,[75] even though it filed an interpleader action in court to determine the respective contract rights of the claiming unions to the checked-off dues.

The *Rohlik* case [76] involved a successor employer's obligation to recognize and bargain with a union certified more than a year prior to its acquisition of the business, even though all employees had been

[71] *Mastro Plastics Corp., et al.* v. *N.L.R.B.*, 350 U.S. 270 (1956).
[72] See *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96 (1954).
[73] *Hotel Corp. of Puerto Rico, Inc. d/b/a Miramar Charterhouse*, 144 NLRB 728.
[74] *Landrum Mills Hotel Corp., d/b/a Hotel LaConcha*, 144 NLRB 754.
[75] Member Fanning would dismiss the 8(a)(5) allegations in both cases.
[76] *Rohlik, Inc.*, 145 NLRB 1236.

terminated at the time of the sale. The employer thereafter invited only a selected group to apply for employment with the new company. In an address at a meeting of the applicants, he asked them to poll themselves on whether they wanted to continue with union representation. In the poll the employees rejected the union. The Board noted its consistent holdings that even after the certification year has elapsed, there is a rebuttable presumption, derived from the certification, that the union continues to be the majority representative of employees in the unit. Therefore a successor employer, as well as the original employer, is obligated to continue to recognize and bargain with the union, unless there is cause to doubt the majority status. The employer contended that the results of the poll of the prospective employees gave it good cause to doubt the union's continued majority and justified its refusal to recognize and bargain with the union. The Board held that under the circumstances the poll was inherently restraining and coercive and did not represent the employees' free choice. It therefore concluded that the claimed good-faith-doubt defense could not validly be based on the results of the poll and the presumption of continued majority remained unrebutted.[77]

E. Union Interference With Employee Rights and Employment

The Board described the obligation of representation which a labor organization owes to the employees whom it represents in the *Miranda* case.[78] There, it stated that "Section 8(b)(1)(A) of the Act prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." In fiscal 1964, the Board had occasion to rule in a landmark case which also involved the right of an employee to fair representation by the designated bargaining agent. In *Hughes Tool*,[79] the Board found that a local union admitting to membership only the white employees in the bargaining unit violated section 8(b)(1)(A) of the Act by its failure, motivated by racial discrimination, to process a grievance of a member of a jointly certified sister local comprised of the Negro

[77] The Board further held that even in the absence of a finding that the employer violated sec. 8(a)(1) by requesting the poll, he violated sec 8(a)(5) because, contrary to his obligation to bargain as a successor employer, he sought to undermine the union's support by persuading the employees to desert the union and deal with the employer directly.

[78] *Miranda Fuel Co., Inc.*, 140 NLRB 181, discussed in Twenty-eighth Annual Report (1963), pp. 84–85, Members Rodgers, Leedom, and Brown for the majority, Chairman McCulloch and Member Fanning dissenting.

[79] *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB No. 166, Members Leedom, Brown, and Jenkins for the majority, Chairman McCulloch and Member Fanning concurring in part and dissenting in part.

employees in the unit. The majority held that the rights guaranteed an employee by section 7 of the Act include the right to fair representation by the designated bargaining agent. The failure of the union to entertain in any fashion or to consider the grievance of the employee was held to be to that extent a refusal to represent him, and restrained and coerced him in his exercise of his right to be represented.[80] In the view of the dissenting members, however, neither section 7 nor section 8(b)(1)(A) as enacted imposes a duty of fair representation which could be the basis for an unfair labor practice finding. Rather, they would base a finding of a violation of section 8(b)(1)(A) upon the union's conceded failure to process the grievance because of the employee's lack of membership in the respondent local union.

1. Racially Discriminatory Failure To Process Grievance

In the same case, *Hughes Tool*,[81] the majority found that the failure to process the grievance was also a violation of section 8(b)(2), since it withheld from the employee treatment he would have received had he been eligible for membership in the local union. Relying upon the rationale of *Miranda Fuel*[82] that union action based upon "arbitrary or irrelevant reasons or upon the basis of an unfair classification" violated the Act, the majority held that a failure to act, based upon such factors, was equally a violation.[83]

F. Union Rules as Condition of Employment

The Act specifically provides that a labor organization may prescribe its own rules with respect to the acquisition or retention of membership.[84] This limitation on members means, according to the courts and legislative history, that labor organizations may enforce their internal policies upon their membership as they see fit.[85] It is only to

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[80] See the analysis, relative to sec. 8(b)(1)(A), of the Board majority in *Miranda Fuel Co., supra.*

[81] *Independent Metal Workers Union, Local 1 (Hughes Tool Co.), supra.*

[82] *Miranda Fuel Co., supra.*

[83] The minority members, repeating their view that sec. 8(b)(2) outlaws only discrimination related to "union membership, loyalty, the acknowledgment of union authority, or the performance of union obligations," would find no "causing or attempting to cause" within the meaning of the statute since the legality of the collective-bargaining contract between the company and the respondent local was not affirmatively in issue in the case, and there was no request or demand to the employer relative to the grievance.

[84] Sec. 8(b)(1)(A) provides that it shall be an unfair labor practice "for a labor organization or its agents to restrain or coerce employees in the exercise of their rights guaranteed in section 7, provided that such provision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

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

the extent that a labor organization seeks to impair a member's status as an employee that it may not enforce its internal rules governing membership status.

During the year the Board considered a number of cases involving the enforcement or attempted enforcement of union rules, or union interpretation of the applicability of contractual provisions, as conditions of employment. In *Wisconsin Motors*,[86] it held that an union did not violate section 8(b)(1)(A) of the Act by imposing a fine upon certain members and suspending their membership for breaching a union rule which limited the amount of incentive pay a member could earn through increased production. The union subsequently instituted a State court suit to collect the fine but did not go to the employer to seek his assistance in collecting it through the employment relationship. The enforcement of its rule and collection of the fine was found to involve no attempt to affect the members' employment status, but to pertain solely to the internal affairs of the union and the enforcement of internal union policy. As such, the union's actions were viewed as protected by the proviso to section 8(b)(1)(A). It was sufficient, in the Board's view, that the union carefully restricted the enforcement of its rule to an area involving the status of the individual as a *member* rather than as an *employee*.

Similarly, in *Associated Home Builders*,[87] the Board found no violation when a union imposed fines upon certain members who breached internal union rules relating to production restrictions. However, a violation of section 8(b)(1)(A) was found by the Board in the union's enforcement of its unilateral rules governing job performance through interference with the employment relationship. The union attempted to collect the fines through allocating money tendered as payment of dues to the satisfaction of the fines, and thereafter threatened the employees with loss or impairment of employment for failure to pay their dues as required by the union-shop provisions of the contract with the employer.

And, in *Piper & Greenhall*,[88] the Board held that a local union did not violate the Act by failing to withdraw its request, made pursuant to a union-security agreement with the employer, for the discharge

[86] *Local 283, UAW (Wisconsin Motor Corp.)*, 145 NLRB 1097, motion for reconsideration denied May 18, 1964, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Member Jenkins concurring separately, emphasized that the employees had voluntarily submitted to the union's rule by becoming members. Member Leedom, dissenting, viewed the union's actions as outside the proviso since the rule did not relate to the "acquisiton or retention of membership" but was rather an attempt to control production.

[87] *Bay Counties District Council of Carpenters (Associated Home Builders of the Greater East Bay)*, 145 NLRB 1775, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting with respect to the issue of the union's imposition of fines

[88] *Plasterers' Local 77 (Piper & Greenhall)*, 143 NLRB 765.

of an employee working in its jurisdiction who was a member of a sister local and was in arrears in dues payable to that local. The union had returned the employee's payment of dues tendered to it under a provision of the international constitution which permitted the payment of a lesser amount of dues by members of sister locals provided they were currently paid up in dues owed the sister local. As he was not currently paid up at his home local, the tender of the lesser amount was insufficient and failed to comply with the union-security terms of the contract. In the view of the Board, a labor organization which is a party to a union-security contract is entitled to require adherence to its terms. Since the employee had rejected a request to transfer to the local, enforcement through a valid contract clause of its internal rules governing the relationship of sister locals did not violate the Act.[89]

But on the other hand, in *Hargett Construction*,[90] the Board found that a union, which had a valid union-security and hiring hall arrangement with the employer, violated the Act by refusing to refer an applicant to an available construction job with the employer because of his dues delinquency in a sister local, thereby causing his employer not to hire him. The union membership and bylaws requirements, the Board concluded, may not be enforced so as to prevent the applicant not previously employed within the unit from obtaining, as distinguished from retaining, such employment by reason of nonpayment of dues in his own or in any other union.

Disqualification for employment of a member of a sister local was also at issue in *Central States Painting*.[91] In this case, the Board held that a local union had not violated the Act by demanding that an employer, which had no contract with it but was operating in its territorial jurisdiction, abide by the apprenticeship training and area resident quota provision of the local's area contract with other employers in the industry, and discharge a nonresident apprentice who did not qualify under its apprenticeship program, even though he was a member of a sister local in another area. A week after leaving the job the apprentice, having attained journeyman status from his out-of-area local in the interim, was denied further employment on the ground that he was not a local resident within the terms of the union's contract requiring the employer to hire a certain quota of

[89] However, the Board held that the union violated the Act by prematurely requesting the discharge The request was made on the seventh day of the employee's employment on the construction job, when the time for his performance of the requirement to pay dues and fees to the respondent local had not yet arrived. According to the Board, the union's request for discharge before the required time for tender of such payments was the equivalent of making such a request prior to the expiration of the statutory grace period.

[90] *Hargett Construction Co.*, 147 NLRB No. 32.

[91] *Painters District Council No. 3, Brotherhood of Painters (Central States Painting & Decorating Co.)*, 147 NLRB No 12, Chairman McCulloch and Members Fanning and Brown for the majority, Members Leedom and Jenkins dissenting.

local men. The Board noted that the employer was contractually obligated, by virtue of its contract with a sister local outside the respondent's territorial jurisdiction, to comply with all lawful provisions of a contract in any out-of-area jurisdiction in which the job was located. Although the respondent union was not a signatory of the employer's contract, the majority viewed it as an intended beneficiary thereof and—whether regarded as a third-party beneficiary of the employer's contract or as agent of the sister local—as having the right to insist, in accordance with that contract, that the employer conform with the respondent's locally established, lawful, nondiscriminatory apprenticeship training program which was not dependent on union membership. The majority concluded that the area quota provision appearing in both area contracts also did not refer to union membership and was not enforced on that basis.

During the past year, the Board also upheld the legality of the union's insistence upon adherence to a contract clause which limited the opportunities for full-time employment of those employees classified as auxiliary employees because of their limited availability for work due to full-time employment elsewhere.[92] The auxiliary employees were entitled to membership in a separate part-time division of the union having a greatly reduced initiation fee. Noting that the contract clause had its origin in the union resolution and bylaws establishing the part-time division, the Board found that "as included in the contract, it deals with a condition of employment—promotion—on a basis unconnected with union loyalty, membership, or obligation, and therefore is lawful." The Board found the incorporation of such a clause in the contract to be "at least presumptively, within that 'wide range of reasonableness . . . allowed a statutory bargaining representative in serving the unit it represents,'" and that there was no evidence that the union in enforcing the clause acted other than in good faith and honesty of purpose.

In another case,[93] the Board held that a local union could legally enforce its international's rules defining job classifications, where the rules were not inconsistent with the contract between the local and the employer. Here, the local reclassified a member, who was an employee of the newspaper-employer and who also held a full-time job at another occupation. His classification was reduced from an employment priority status as a "regular situation holder" to a "not at trade" category pursuant to an international rule that placed restrictions on employment of members employed full time in other occupations. This change deprived him of employment opportunities with the em-

[92] *Amored Car Chauffeurs and Guards Local 820, Teamsters (United States Trucking Corp.)*, 145 NLRB 225.

[93] *New York Typographical Union No. 6, ITU (New York Times Co.)*, 144 NLRB 1555.

ployer that he could have had if he had retained his priority. In the Board's view, the local's action was for the legitimate purpose of attempting to give the work of the trade to those who presumably needed it, rather than to those who held full-time positions elsewhere. Such conduct was based on a reasonable classification of employees, and was not contrary to the terms of the local's contract with the employer.

Similarly, in *Houston Chronicle Publishing*,[94] the Board held that a union local did not violate the Act by enforcing its bylaws which, although not part of the written contract nor incorporated therein by reference, had been adopted as a condition of employment by agreement of the employer and the local. The bylaws imposed an obligation on a senior extra at the top of the extra list to accept a tendered regular situation or suffer suspension from employment in the particular department for 6 months. The bylaws were adopted to meet the needs of publishers who were encountering difficulties in filling night-shift situation jobs. Extras with top priority, preferring day jobs, would refuse regular situations since they would then become vulnerable to "bumping" by senior situation holders and would usually end up with night-shift work. The local's internal rule was thus designed to govern employment availability and was a well-established and well-known work rule implementing the contract between the local and the employer. The Board found it to be valid, and fairly, rather than arbitrarily or invidiously, enforced.

To the same effect was the Board's decision in *Planet Corp.*,[95] in which it was held that a union had not violated the Act by attempting to cause the discharge of a member who was a transient worker employed by the employer without payment of a subsistence allowance, which nonpayment the union interpreted as a violation of a lawful provision of its contract with the employer. It found that the union's attempted enforcement of its interpretation of the applicability of the contract provision for payment of a subsistence allowance under specific conditions, which actually constituted a wage provision, was solely in pursuit of a legitimate economic objective. The union's only aim was to police and enforce the contractual provision governing subsistence allowance which was for the benefit of employees generally. The union could, in the view of the Board, properly regard the employee's willingness to work without the subsistence allowance as

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[94] *Houston Typographical Union No. 87, ITU (Houston Chronicle Publishing Co.)*, 145 NLRB 1657.

[95] *Millwrights' Local 1102, United Brotherhood of Carpenters (Planet Corp.)*, 144 NLRB 798.

undermining an important element of its negotiated wage structure to the detriment of its represented employees as a whole.[96]

In a similar situation arising in *Townsend and Bottum*,[97] the Board held that a local union did not violate the Act by refusing to refer one of its members to an employer because he would neither turn in nor destroy a travel card issued to him by the local. The local required that travel cards either be turned in or destroyed when the member desired to return to work in his home local's territorial jurisdiction. The member involved here was aware of the local's practice but nevertheless kept his travel card so as to obtain employment in other geographical areas as well as local employment. The Board viewed the local's practice of conditioning referral of a member on the surrender of his travel card as a permissible means of protecting a legitimate interest, namely, trying to ease the impact of local unemployment by excluding workers holding outside jobs, or by attempting to cause employers to limit work opportunities to local applicants.

G. Prohibited Strikes and Boycotts

1. Identity of Neutral Employers

Insulation of neutral or secondary employers from involvement in primary disputes under the secondary boycott provisions of the Act often turns on the issue of identification of the primary employer. In numerous cases, the Board has held that if an employer under economic pressure from a union is powerless to resolve the "underlying dispute," [98] such an employer is a neutral or secondary, and the employer who has the power to resolve the dispute is the primary employer.

During the past year, the Board applied this standard in a case [99] involving a dispute over work prefabricated off the jobsite, and outside the union's jurisdictional area. Relying on a contract provision limiting the use of materials prefabricated off-site to those produced within its jurisdiction by outside carpenter members, the union abrogated its contract with the carpenter subcontractor and induced its

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[96] *International Assn. of Bridge, Structural & Ornamental Iron Workers, Local 494 (Spiegelberg Lumber & Building Co.)*, 128 NLRB 1379, which held that a union's attempt to cause the discharge of an employee in order to enforce a valid wage provision in a contract is an inherent encouragement of union membership or fealty, was overruled to the extent inconsistent.

[97] *Local 337, United Assn. of Journeymen, etc. (Townsend and Bottum)*, 147 NLRB No. 95.

[98] E.g., *International Longshoremen's Assn. and Local 1694 (The Board of Harbor Commissioners)*, 137 NLRB 1178.

[99] *Ohio Valley Carpenters District Council (Cardinal Industries)*, 144 NLRB 91.

member employees to cease work. The Board [1] found that the carpenter subcontractor had been effectively deprived by its contract of control over the work assignment, and was powerless to affect the assignment. Therefore, the effect of the union's action was to force the general contractor at the site to cease doing business with the manufacturer of the prefabricated material and reassign the work to the carpenter subcontractor, and to compel the latter to cease doing business with the manufacturer. The Board found the manufacturer, not the carpenter subcontractor, to be the primary target of the union's conduct,[2] rendering its actions clearly secondary.

2. Proscribed Objectives

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

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

In several cases decided during the year, the Board followed its *Colson and Stevens* decision [3] in holding that the construction industry exemption to section 8(e) was not intended to remove from the reach of section 8(b)(4) picketing and other conduct designed to coerce acceptance of such agreements in the construction industry, even though they might be voluntarily executed without violating the Act. Thus, violations of section 8(b)(4)(A) were found in cases where the union threatened to picket or picketed to obtain a contract requiring signatory employers to cease doing business with nonsignatory

[1] Chairman McCulloch and Members Rodgers, Leedom, and Fanning for the majority. Member Brown dissenting.

[2] Citing *Local 5, United Assn. of Journeymen etc. (Arthur Venneri Co.)*, 137 NLRB 828, enforced as modified 321 F. 2d 366 (C.A.D.C.). Member Brown, dissenting, would have dismissed the complaint on the ground that a violation does not necessarily flow from the absence of control, citing *Milk Drivers' Union Local 753; Teamsters (Pure Milk Assn.)*, 141 NLRB 1237.

[3] *Construction, Production & Maintenance Laborers Union Local 383 (Colson & Stevens Construction Co.)*, 137 NLRB 1650; Twenty-eighth Annual Report (1963), pp. 97–98. For report of court review, see *infra*, p. 124.

employers who fail to apply the terms of the contract to their employees.[4] In each of those instances the union's actions were also held prohibited by section 8(b)(4)(B) since the union sought to disrupt the primary employer's business relationship with identified subcontractors.

By contrast, in two cases [5] in which unions resorted to coercive measures—picketing in one instance and a strike in the other—to compel compliance with agreements limiting subcontracting to employers signatory to contracts with the union, the Board found no violations of section 8(b)(4)(A) since the employers had voluntarily entered into the agreements. However, the Board found that in resorting to the coercive measures with an object of requiring the employers to cease doing business with identified subcontractors, the unions had violated section 8(b)(4)(B).

In *Maryland Ship Ceiling*,[6] the Board held that a local union and its international violated section 8(b)(4)(B) by refusing—contrary to past practice under its governing hiring hall arrangements—to refer work gangs to a local employer to fit the *Tulse Hill*, a foreign-flag ship owned by a foreign corporation, thereby denying to the local employer its customary work force. The local's conduct was an implementation of its international's policy of eliminating trade with Cuba by withholding the labor of its members from ships that had engaged in such trade. The Board found that such conduct had an object of forcing or requiring the cessation of business between the local employer and the owner of the vessel.

Similarly, in three companion cases,[7] the Board held that the National Maritime Union violated section 8(b)(4)(B) when it engaged in retaliatory picketing outside the gates of municipal wharves and at piers and docks of four different cities [8] where members of the rival MEBA [9] were working. The picketing arose out of a dispute between NMU and MEBA involving the latter's picketing in the port of Phil-

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[4] *Southern California District Council of Hod Carriers and Local 345 (Swimming Pool Gunite Contractors Group)*, 144 NLRB 978; *Hod Carriers & Construction Laborers Union Local 300 (Fiesta Pools)*, 145 NLRB 911; *Intl. Union of Operating Engineers Local 825 (Building Contractors Assn. of New Jersey)*, 145 NLRB 952; *Los Angeles Building & Construction Trades Council (Treasure Homes)*, 145 NLRB 279.

[5] *Los Angeles Building & Construction Trades Council (Stockton Plumbing Co.)*, 144 NLRB 49, Supplemental Decision and Order, 146 NLRB 737; *Intl. Union of Operating Engineers Local 12 (B. R. Schedel)*, 145 NLRB 351, panel of Members Leedom, Fanning, and Brown. Member Brown, dissenting on the 8(b)(4)(B) issue, expressed his view that the union's sole object was to enforce a hiring hall provision

[6] *Local 1355, ILA (Maryland Ship Ceiling Co.)*, 146 NLRB 723. For the "labor dispute" jurisdictional aspect of this case, see *supra*, p 36

[7] *NMU (Houston Maritime Assn.)*, 147 NLRB No 142; *NMU (Weyerhaeuser Lines)*, 147 NLRB No. 144; *NMU (Delta Steamship Lines)*, 147 NLRB No. 147. For the jurisdictional aspect of these cases, see *supra*, p 36.

[8] Houston and Galveston, Tex. (147 NLRB No. 142), Philadelphia, Pa. (147 NLRB No. 144), and New Orleans, La. (147 NLRB No. 147).

[9] Marine Engineers Beneficial Association, an ally of the Seafarers' International Union.

adelphia of a ship [10] which was manned by members of NMU.[11] Although NMU had no labor dispute with the employers at the picketed wharves, the Board found that NMU's picketing was for an object of causing a cessation of business between the neutral employers affected.

In situations involving picketing at common situs locations where business is carried on by both the primary employer and neutral employers, the Board had occasion to determine whether *Moore Dry Dock* standards [12] applied so as to shield a union's picketing activities. In *Combustion Associates, Inc.*,[13] the Board found that under the circumstances the union's illegal object did not carry over from the cessation of an illegal strike at one site to contaminate the immediate commencement of picketing at another. In that case the union's demand that its members be used for boiler installation work was rejected by both the prime contractor and a representative of the public utility contracting for the installation, even though union members were at the time used by a different contractor to install a boiler at a nearby facility of the same utility. A strike at the latter location to pressure the utility into requiring its prime contractor at the former location to use a contractor who would employ union members was found to be in violation of section 8(b)(4)(B). However, the day after cessation of the strike the union began picketing at the only entrance to the facility where the nonunion contractor was at work, bearing signs advertising the fact that he had no union contract. Finding that the picketing conformed to the *Moore Dry Dock* standards, the Board [14] found it did not violate the Act, rejecting the trial examiner's finding that the union's picketing had the same cease-doing-business object as that which initiated the strike.

In *New Power Wire and Electric Corp.*,[15] picketing at a common situs when employees of the primary employer were absent for substantial periods of time was held by the Board [16] to be valid under the *Moore Dry Dock* standards. Noting that the presence of employees of the primary at the common situs was only one factor to be considered in determining the validity of the picketing, the Board concluded that the picketed location was the situs of an active dispute

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[10] SS *Maximus*.

[11] The *Maximus* was manned also by members of the Brotherhood of Marine Officers, an affiliate of NMU.

[12] *Moore Dry Dock Co.*, 92 NLRB 547.

[13] *Intl Brotherhood of Boilermakers, Local 193 (Combustion Associates)*, 144 NLRB 1206. Panel of Members Fanning, Brown, and Leedom Member Leedom, dissenting in part, would not find change of object with the commencement of picketing at the second site even though *Moore Dry Dock* criteria were satisfied.

[14] Members Fanning and Brown for the majority, Member Leedom dissenting.

[15] *Local 8, IBEW (New Power Wire and Electric Corp.)*, 144 NLRB 1089.

[16] Chairman McCulloch and Member Fanning for the majority, Member Leedom dissenting.

since the primary "was in fact engaged in its operations at the situs of the dispute or would have been so engaged but for the picketing, . . . " The Board recognized that "[o]f course, the Company's operations were not 'normal,' but only because the picketing was successful in depleting the Company's employee complement at the sites to the point where all the Company could do was to engage in a fraction of its normal operations." Similarly, in *Brownfield Electric*,[17] the Board, relying upon the rationale of *New Power Wire*, *supra*, held that despite the absence of primary employees because of the picketing, the employer was nevertheless engaged in normal operations within the intendment of the *Moore Dry Dock* standards, and the picketing did not violate the Act.

3. Permissible Objectives

In *United Dairy Workers, Local 83*,[18] the Board held that a union, which induced employees of a dairy company to cease serving two customers who had initially been permitted to make dockside pickups on a temporary basis but then continued to do so on a regular daily basis in spite of the union's protest, had engaged in lawful primary activity which had as its purpose the protection of bargaining unit work.[19] During a strike against a competitor of the employer, these two customers of the competitor were permitted to make pickups at the employer's dock. However, the pickups continued even after the strike had ended. The majority viewed the union's conduct as being legitimately undertaken to preserve and maintain the historic delivery system contemplated by the collective-bargaining agreement under which deliveries to the employer's customers were made by the employer's routemen who were part of the bargaining unit.

H. Hot Cargo Agreements

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby the 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 unenforcible and void."

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[17] *IBEW, Local 861 (Brownfield Electric)*, 145 NLRB 1163, Members Fanning and Brown for the majority, Member Leedom dissenting.

[18] *United Dairy Workers, Local 83 (Sealtest Foods Div.)*, 146 NLRB 716, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting.

[19] See the majority opinion in *Milk Wagon Drivers (Drive-Thru Dairy)*, 145 NLRB 445, see *infra*, p. 94.

During the past fiscal year, the Board had occasion to determine whether various types of contract provisions came within the purview of section 8(e). Thus, in one case,[20] the Board held that a clause requiring the application of the terms of the contract to employees of nonsignatory subcontractors was within the scope of section 8(e) as it required signatory employers to cease doing business with nonsignatory subcontractors who failed to apply the terms of the contract to their employees. On the other hand, a clause forbidding pickups at the employer's docks by customers who normally received deliveries from company drivers was found valid by the Board,[21] and a strike to enforce it against a new customer was held not in violation of the Act as the union's object was the preservation of work for the bargaining unit.

In *Wilson & Co.*,[22] a clause which forbade subcontracting to other employers unless their employees "enjoy the same or greater wages" and benefits as employees of signatory companies was held violative of section 8(e). The Board viewed it as merely an alternative approach to limit overflow work to members of the union, and not merely to restrict subcontracting "for the purpose of the preservation of jobs and job rights of the unit employees." In another case involving a "protective wage clause" designed to require unorganized coal producers to adopt union standards in order to remain or become eligible to receive subcontracts from signatory employers, the Board found [23] the clause to be in violation of section 8(e), as it did not seek to preserve work for employees of the signatory employers but limited the right of the employer to do business with another.

In *Island Dock Lumber*,[24] the Board reaffirmed its holding in the *Connecticut Sand and Stone Corp.* case [25] and held that the mixing and delivery of ready-mix concrete at construction sites is not on-site work within the meaning of the section 8(e) proviso exempting agreements in the construction industry, and an agreement limiting an employer to certain suppliers for that material is violative of the Act.

The question of contractual limitations on the employer's right to deal with others was also considered in *Sealtest Foods*,[26] in which it

[20] *Southern California District Council of Hod Carriers (Swimming Pool Gunite Contractors Group)*, 144 NLRB 978.

[21] *Drive-Thru Dairy, Inc.*, 145 NLRB 445 Chairman McCulloch and Members Fanning and Brown for the majority; Member Leedom, dissenting, would find an object of union conduct was to force a change in the manner of doing business between the employer and its new customer, or a "cease doing business object"

[22] *Meat & Highway Drivers, Local 710 (Wilson & Co.)*, 143 NLRB 1221. Members Rodgers, Leedom, and Fanning for the majority, Chairman McCulloch dissenting in part and Member Brown dissenting in part For court review of this case see *infra*, p 129

[23] *Raymond O. Lewis (UMW) (Arthur J Galligan)*, 144 NLRB 228

[24] *Island Dock Lumber, Inc.*, 145 NLRB 484

[25] *Teamsters Local 559 (Connecticut Sand and Stone Corp)*, 138 NLRB 532.

[26] *Milk Drivers and Dairy Employees, Local 537 (Sealtest Foods, a Division of National Dairy Products Corp.)*, 147 NLRB No 35

was held that a union violated section 8(e) by reaffirming and maintaining in effect a clause in its contract with the employer permitting the sale of drivers' routes to anyone, provided, however, the purchasers adhered to all conditions of the contract.[27] Although the contract was also signed by other members of a multiemployer association to which the employer belonged, the Board found no violation as to their agreements since the union did not reaffirm that clause with such other employers during the period not barred by the statute of limitations prescribed by section 10(b).[28]

I. Jurisdictional Disputes

The prohibition against unions engaging in, or inducing, strike action for the purpose of forcing an employer to assign a particular work task is found in section 8(b)(4)(D) of the Act. Section 10(k) provides for a hearing and a determination by the Board of the jurisdictional dispute giving rise to an 8(b)(4)(D) charge unless within 10 days after notice of filing of the charge the parties have either adjusted, or reached an agreed-upon method for a voluntary adjustment of, the dispute. In either such event the charge is dismissed.

During the past year, one case[29] raised the question whether the Act permits the institution of an 8(b)(4)(D) complaint proceeding without the prerequisite of a hearing and determination under section 10(k), when there exists a method of voluntary adjustment agreed to by the parties but resort to the agreed-upon method has failed to bring about a "voluntary adjustment of the dispute."[30] The Board found that there was an agreed-upon method for the voluntary adjustment of the dispute binding upon the parties, namely, submission of the dispute to the Joint Board sponsored by the Building and Construction Trades Department, AFL–CIO. However, the Board also found that that method failed to produce an adjustment of the dispute since the losing party did not accept the determination. Issuance of the 8(b)(4)(D) complaint was therefore considered ap-

[27] Pursuant to policies enunciated in prior cases, the Board held immaterial the fact that the employer was not a party respondent, or that the contract was executed more than 6 months before the charge was filed, since the violation was established when the union "entered into" the unlawful hot cargo agreement by insisting on its enforcement within the 6-month statutory period. See, e.g., *Dan McKinney Co.*, 137 NLRB 649, 657; *Local 585, Painters (Falstaff Brewing Corp)*, 144 NLRB 100.

[28] See *infra*, p. 102, for remedial order provisions.

[29] *Electrical Workers Local 26, IBEW (McCloskey & Co.)*, 147 NLRB No. 159.

[30] The trial examiner was of the view that the issue was controlled by the Board's decision in *Wood, Wire & Metal Lathers Intl. and Local 2 (Acoustical Contractors Assn. of Cleveland)*, 119 NLRB 1345.

propriate[31] without a prior Board determination of the dispute through a 10(k) hearing.

The Board continued to issue "affirmative" work assignment determinations in accordance with the Supreme Court's *Columbia Broadcasting System* decision.[32] In *Structural Concrete*,[33] the Board gave controlling weight to its certification in awarding disputed work of erecting prestressed and precast concrete building parts to the employer's erection crew represented by Steelworkers, rather than to an erection crew represented by Ironworkers. The Steelworkers had been certified by the Board as the bargaining representative of all production and maintenance employees of the employer and had entered into a contract with the employer which specifically covered the erection crew. Although the certification did not specifically list the erection crew as included in the unit, the crew members had been permitted to vote in the election. The Board found that under those circumstances they were included in the certified unit. It pointed out that the Act requires that, in determining jurisdictional disputes, controlling weight be given to a certification of the Board determining the bargaining representative for employees performing the disputed work,[34] and awarded the work accordingly.

In *Labor Cooperative Educational and Publishing Society*,[35] the Board, noting the absence of established custom and practice within the newspaper publishing industry and in the geographical area with respect to the performance of offset preparatory work, assigned such disputed work to the printers at the employer's newspaper plant rather than to its pressmen.[36] The preparatory operation work for the employer's new offset press displaced the work previously performed by stereotypers who did not, however, claim the new work.[37] In making the award the Board relied upon the employer's assignment which

[31] The Board further agreed with the trial examiner that Electrical Workers had violated sec 8(b)(4)(D) by threatening to withdraw the services of all electricians on the project if employees represented by a rival union should perform the disputed work. The work had been awarded to the nonelectricians by the Joint Board and all parties were found to be bound by that award

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

[33] *Intl. Assn. of Bridge, Structural & Ornamental Iron Workers, Local 474 (Structural Concrete Corp)*, 146 NLRB 1435.

[34] The Board found that factors other than the certification would have nevertheless warranted assignment to the Steelworkers, i.e, the contract, company and area practice, efficiency, and the fact that the Steelworkers members are sufficiently skilled to perform the work and have performed the work to the satisfaction of the employer who desires to retain them.

[35] *Newspaper Web Pressmen Local 6, Intl. Printing Pressmen (Labor Cooperative Educational and Publishing Society)*, 147 NLRB No. 72.

[36] See *Philadelphia Typographical Union, Local 2 (Philadelphia Inquirer)*, 142 NLRB 36, where the jurisdictional disputes also arose out of technological change in the newspaper publishing industry. Twenty-eighth Annual Report (1963), pp. 106–107.

[37] Cf. *Philadelphia Inquirer, supra.*

was consistent with its bargaining agreement with ITU—representative of the printers—entered into subsequent to the purchase of the new offset equipment. The Board noted that the ITU employees presently engaged in the preparatory operation work had received special schooling in the new process and were sufficiently skilled,[38] whereas the pressmen—represented by Printing Pressmen—could not perform the work and the Pressmen would have to furnish other members to do so, displacing the present employees.

In the companion *American Mail Line* and *Albin Stevedore* [39] cases the Board, after noting factors justifying assigning the work of dockside crane operation to both claimants, ultimately decided the issue in both cases by honoring an arbitrator's award made pursuant to the existing contracts between the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, providing for resolution of dock automation issues. A factor leading to this decision was its assistance in implementation of the PMA–ILWU agreement constituting a peaceful settlement of a problem that had plagued the waterfront for years.

In another case,[40] the Board concluded that such factors as union charter and constitutional jurisdiction claims, skills, relative efficiency, and practice and custom in the industry, were practically in balance between the contesting unions. It therefore awarded the disputed work in accordance with the employer's assignment, that being the only determinant factor.

J. Recognitional or Organizational Picketing by Noncertified Union

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

Recognitional or organizational picketing is prohibited under the three subparagraphs of section 8(b)(7) as follows: (A) Where another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under section 9(c);

[38] The Board noted that some of the traditional skills of a printer, such as stripping, imposition, and the arranging of materials to produce a finished plate, are required in the offset preparatory process.

[39] *ILWU and Local 19 (American Mail Line)*, 144 NLRB 1432; *ILWU and Local 19 (Albin Stevedore Co.)*, 144 NLRB 1443.

[40] *Local 5, United Assn. of Plumbers (Arthur Venneri Co.)* 145 NLRB 1580.

(B) where a valid election has been held within the preceding 12 months; or (C) where no petition for a Board election has been filed "within a reasonable period of time not to exceed 30 days from the commencement of such picketing." This last subparagraph provides further that if a timely petition is filed, the representation proceeding shall be conducted on an expedited basis. However, picketing for the informational purposes set forth in the second proviso to subparagraph C [41] 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.

In one case,[42] the Board was called upon to consider the application of the 8(b)(7)(A) proscription against organizational or recognitional picketing where there was allegedly a lawfully recognized union and a question concerning representation could not be raised. It was found that the respondent union's picketing had a recognitional object, but the Board found no 8(b)(7)(A) violation,[43] since the incumbent union had not established its majority status in accordance with section 9 of the Act. As a prehire contract in the construction industry, the union's contract with the employer was protected by section 8(f), but it also therefore came within that section's provision removing any such agreement as a bar to the raising of a question concerning representation. Consequently, since there was no basis aside from the contract for finding that such a bar existed, the complaint was dismissed.

In both *Sullivan Electric* [44] and *Downtowner Motor Inn*,[45] the Board considered defenses to alleged 8(b)(7)(C) violations which asserted that the sole objective of the union's picketing was to compel the employer to comply with an existing valid collective-bargaining contract. Analyzing the congressional purpose behind the enactment of section 8(b)(7), the Board found that the words "recognize or bargain" were not intended to be read as encompassing two separate and unrelated terms, but rather were intended to proscribe picketing having as its target forcing or requiring an employer's initial acceptance of the union as the bargaining representative of his employees. In

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

[42] *Alton-Wood River Building & Construction Trades Council (Kopp-Evans Construction Co.)*, 144 NLRB 260.

[43] Chairman McCulloch and Members Fanning and Brown for the majority. Dissenting Members Rodgers and Leedom did not find recognition of the incumbent union unlawful simply because at the time of recognition the employees had not affirmatively expressed their desires, in view of the employees' subsequent acquiescence to the recognition of the union.

[44] *Building & Construction Trades Council of Santa Barbara County (Sullivan Electric Co.)*, 146 NLRB 1086.

[45] *Local Joint Executive Board, Hotel & Restaurant Employees (Downtowner and Downtowner Motor Inn)*, 146 NLRB 1094.

Sullivan Electric, the employer agreed in a contract made with the unions' district council to perform work pursuant to an agreement to be executed with the local unions when the occasion arose. Long before the disputed picketing commenced, the employer had recognized and extended bargaining rights to the unions. The Board concluded that the unions' picketing was for the purpose of enforcing the employer's bargaining obligation under its contract with the council and dismissed the complaint. And in *Downtowner Motor Inn*, the employer had joined a multiemployer association and become a signatory to the existing contract between the association and the union. The union's subsequent strike to require the employer to abandon its unilateral changes in working conditions was found to have the objective of forcing the employer to abide by the conditions of employment established by the contract and, therefore, not to be within the proscription of section 8(b)(7)(C).

K. Remedial Order Provisions

During fiscal 1964, the Board was confronted with the task of designing remedial orders relating to such matters as unlawful termination or change of operations by employers and the appropriateness of a bargaining order against an employer in the face of violence by a union seeking to obtain recognition. The possibility that a union might have included an unlawful provision in its contracts with other employers as it did with regard to the charging employer was also dealt with by the Board. Other remedial problems involved such diverse matters as reimbursement of victims of assaults by union agents for their medical expenses and loss of backpay and reinstatement and backpay of strikers engaged in unprotected activity provoked by their employer's unfair labor practices.

Under the circumstances present in *Pepsi-Cola Bottling Co. of Beckley*[46] involving a plant shutdown, the Board did not order the employer to reopen his plant, notwithstanding that the employer violated section 8(a)(5) by refusing to bargain with the union about its unilateral decision to shut down. Mitigating circumstances included the fact that the employer's decision to shut down the plant was made before it had an obligation to bargain with the union, and that its decision was motivated by lawful economic considerations, as a strike by the union had presented the employer from timely completion of construction of the plant. However, the Board ordered the employer, in the event operations are resumed at the plant, (1) to offer employment to employees terminated as a result of the shutdown on a nondiscriminatory basis and before other employees are hired, and

[46] 145 NLRB 785.

(2) to bargain upon request with the union as the exclusive bargaining representative of its employees in the appropriate unit.

A change in operations without bargaining also occurred in *Fairbanks Dairy*,[47] in which an employer was held to have violated its bargaining obligation by converting its employees to independent contractors without notifying and discussing the change with the union. The Board held that the employer need not reestablish the status quo [48] in view of the independent contractors' continued employment, their newly acquired investments and financial obligations, and their increased income. The employer was, however, required to bargain "in good faith with the union concerning the changes so made, the problems that gave rise to the changes, and the possible methods for resolving these matters."

Similarly, in *Winn-Dixie Stores*,[49] where the employer violated section 8(a)(5) by eliminating its cheese-processing operation without first notifying and offering to bargain with the union, the Board's remedy was "tempered by practical considerations." Notwithstanding its view that the nature of the violation would justify an order requiring the employer to reestablish the discontinued operation, the Board found that a restablishment order was "not essential in this case to the moulding of a meaningful remedy . . . ." [50] It did, however, order the employer to bargain with the union concerning the resumption of the operation and, absent agreement with respect thereto, concerning the effect of the discontinuance on its employees. In this connection, the Board distinguished the remedy provided in the *Renton News* [51] case, where the remedy was limited to require the employer to bargain about the effects of its unilateral action on its employees, but not about the elimination or resumption of the operation. The Board noted that in *Renton News*, unlike the instant case, "the change unilaterally effected was unavoidable because of pressing economic necessity" with the only alternative being for the employer to go out of business, a return to the *status quo ante* would have worked an undue hardship on innocent third parties, and there was no union animus on the employer's part.

[47] *Fairbanks Dairy, Div of Cooperdale Dairy Co*, 146 NLRB 893.

[48] Cf. *Town & Country Mfg. Co.*, 136 NLRB 1022; Twenty-seventh Annual Report (1962), p. 136.

[49] *Winn-Dixie Stores, Inc.*, 147 NLRB No. 89. See *supra*, p. 75, for the unfair labor practice violation aspect.

[50] The Board believed that such reestablishment would not be "suited to the practical needs of the situation" in view of the nature of the general business operations, the likelihood that the affected employees were suitable for other employment in the employer's organization, and the possibility that the discontinued operation may currently be outmoded.

[51] *Renton News Record*, 136 NLRB 1294, discussed in Twenty-seventh Annual Report (1962), p. 136.

In one case [52] involving a violation of section 8(a)(3) as a result of the employer's conduct in discriminatorily discontinuing one department in the plant and permanently laying off several of the department's employees, the Board, under the particular circumstances, modified its normal remedy of requiring the employer to resume the discontinued department. The Board ordered the employer either to reinstitute the discontinued department and offer the laid-off employees reinstatement therein, or, at the employer's option, to offer them reinstatement to available positions in the other departments retained by the employer. The alternative remedy option which the Board provided was justified by the circumstances that the laid-off employees were qualified to perform the work in the retained departments, which work was substantially equivalent to their former positions in the discontinued department.

In *Laura Modes Co.*,[53] the Board, although finding that the employer violated section 8(a)(5) by refusing recognition to the union representing a majority of the employees, did not issue an affirmative bargaining order because the union's violence against the employer before and after it filed refusal-to-bargain charges against the employer indicated a disregard for enforcement of its bargaining rights through peaceful means. Consequently, the Board denied to the union the right to benefit from the Board's statutory process in aid of its demand for recognition, unless and until the union demonstrated its majority among the employees through the Board's election process, in an atmosphere free of any possible trace of coercion.

In companion cases,[54] where union agents violated section 8(b)(1)(A) by physically assaulting employees, who incurred medical expenses in the treatment of their injuries and a loss of pay during the period they remained away from work either because of the injuries sustained or because of the fear generated by the union's unlawful conduct, the Board denied the injured employees reimbursement for medical expenses, backpay, or other compensatory relief. In both cases the Board considered the conduct, although violative of the Act, not beyond the reach of State power and State court jurisdiction, and declined to extend the scope of its remedial order beyond that of the cease-and-desist order. The Board emphasized that to the extent that satisfaction of individual claims which are primarily private in nature may also serve to further the public interest in obtaining the peaceful resolution of labor disputes, it is equally well served by the individual's resort to those remedies traditionally used to process

[52] *Square Binding and Ruling Co., Inc.*, 146 NLRB 206.

[53] 144 NLRB 1592.

[54] *International Union of Operating Engineers, Local 513 (Long Construction Co.)*, 145 NLRB 554; *International Hod Carriers, Local 916, AFL–CIO (Owen Langston)*, 145 NLRB 565. See also *Local 612, Teamsters (Deaton Truck Line)*, 146 NLRB 498.

claims resulting from another's tortious conduct. It also noted that the numerous and complicated factual questions involved in settling such claims are not such questions as fall within the Board's special expertise, but do fall within the special competence of judge and jury. Under these circumstances, the exercise of such authority by the Board might well exert an inhibitory effect on the exercise of State authority, and would complicate and confuse the issue to the possible detriment of the employees whose rights the Board seeks to protect.

The discharge of strikers allegedly engaged in unprotected activity while protesting the employer's unfair labor practices occurred in *Blades Manufacturing Corp.*,[55] in which the Board applied the *Thayer* doctrine of evaluating employer provocation for unprotected employee strike activity in determining entitlement to reinstatement,[56] as specifically approved by the District of Columbia Circuit in the *Kohler* case.[57] It directed reinstatement and backpay for the dischargees, finding they were not separated for cause. The Board held that under the circumstances it would apply *Thayer* even assuming the dischargees had engaged in a planned series of work stoppages involving partial or intermittent strike activity which was unprotected. However, the conduct of the employer was found to be in flagrant disregard of the employees' rights and of the rights of the union as their exclusive bargaining representative. In contrast the strike activity of the dischargees was peaceful, not in any violation of the law, and there was no showing that the dischargees' activity caused any greater damage to the employer's business than a concededly protected strike would have.

A question as to the scope of the Board's order prohibiting enforcement of an unlawful contractual provision was considered in *Sealtest Foods*,[58] in which the union was found to have illegally reaffirmed and maintained in effect, with only one member of a multiemployer association,[59] a hot cargo provision of the association contract. Noting that the unlawful provision may still be included in its contracts with the other employers, the Board ordered the union to cease and desist from entering into, maintaining, or giving effect to the hot cargo provision not only with that employer, but also with any employer over whom the Board would assert jurisdiction.

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[55] 144 NLRB 561.

[56] *N.L.R.B.* v. *Thayer Co.*, 213 F. 2d 748 (C.A. 1) (1954), certiorari denied 348 U S. 883

[57] *Local 833, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America* v *N L R B*, 300 F. 2d 699, certiorari denied 370 U S. 911.

[58] *Milk Drivers and Dairy Employees, Local 537 (Sealtest Foods)*, 147 NLRB No 35

[59] See *supra*, p 94

VII

Supreme Court Rulings

During fiscal year 1964, the Supreme Court decided six cases in which the Board was directly involved. One case dealt with the Court's power to condition enforcement of the Board's bargaining order upon a representation election. Another concerned the question of whether an employer's grant of benefits prior to a Board election constituted interference and restraint barred by section 8(a)(1). Another involved the power of the district court, at the suit of an employer, to enjoin an election directed by the Board. Three other cases dealt with various aspect of picketing: one involved appeals to managerial personnel and the publicity proviso to section 8(b)(4), another involved consumer picketing, and the third involved "separate gate" picketing. The Board was upheld on the merits in five of the cases and was reversed in one.

In addition, the Board participated in Supreme Court litigation as *amicus curiae* in three cases. In each case the Court's ruling was consistent with the position taken by the Board.

1. Preelection Benefits

In *Exchange Parts*,[1] the Supreme Court upheld the Board's ruling that an employer violated section 8(a)(1) of the Act by announcing new and additional benefits for the employees shortly before a scheduled representation election, for the purpose of inducing employees to vote against the union. The Court rejected the view of the court of appeals that there was no unlawful restraint since the benefits were conferred unconditionally. The Court noted that section 8(a)(1) prohibits "not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of influencing their freedom of choice for or against unionization and is reasonably calculated to have that effect." It concluded that there is a "danger inherent in well-timed increases in benefits," even where they are conferred permanently and unconditionally. The danger "is the suggestion of a fist inside the velvet glove.

[1] *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405, reversing 304 F. 2d 368 (C.A. 5) and enforcing 131 NLRB 806.

Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged."

2. Remedial Bargaining Orders

In *Progressive Mine Workers of America*,[2] the Supreme Court reversed, *per curiam*, the action of the Court of Appeals for the Seventh Circuit in conditioning enforcement of a Board bargaining order upon the result of an election to be held by the Board. The court of appeals had sustained the Board's findings that the new owner of a mine took over and continued the old enterprise, that it had no reason to doubt the majority of the incumbent United Mine Workers at the time of the purchase, and that it thus violated the Act by refusing to bargain with that union and entering into a contract with another union, Progressive. The court of appeals had concluded, however, that enforcement of the Board's order that the new owner bargain with the United Mine Workers "would be . . . disruptive of a peaceful *status quo*" unless conditioned upon the outcome of an election—since approximately 2 years had elapsed from the date on which employees had affiliated with Progressive, the employees had not filed charges in the proceedings, and no employee had complained of any coercion. The Supreme Court, on the Board's petition for certiorari, summarily reversed the court of appeals, citing its recent decision in *N.L.R.B.* v. *Katz*[3] and its earlier decisions in *Franks Bros. Co.* v. *N.L.R.B.*[4] and *N.L.R.B.* v. *P. Lorillard Co.*[5] In these cases, the Supreme Court had held that, where a union's loss of support was attributable to employer unfair labor practices, the Board may properly require the employer to bargain with the union, even though it may not then represent a majority of the employees, and although a long period of time may have elapsed since the union first obtained such support.

3. Union Appeals to Managerial Personnel; the Publicity Proviso to Section 8(b)(4)

In *Servette*,[6] the Supreme Court sustained the Board's dismissal of a complaint charging that the union violated section 8(b)(4)(i)(B) by requesting secondary store managers to discontinue handling products distributed to them by Servette, with whom the union had a

[2] *N.L.R.B.* v *International Union, Progressive Mine Workers of America (Quality Coal Co.)*, 375 U.S. 396, reversing 319 F. 2d 428 (C.A. 7).
[3] 369 U.S. 736.
[4] 321 U.S. 702.
[5] 314 U.S. 512.
[6] *N.L.R.B.* v. *Servette*, 377 U.S. 46, reversing 310 F. 2d 659 (C.A. 9).

primary dispute. The Board had held that the store managers were not "individuals" within the meaning of Section 8(b)(4)(i),[7] but on review the Ninth Circuit, concluding that the term "individual" was to be read literally and thus included store managers, had set aside the Board's dismissal. The Supreme Court, in sustaining the Board, held that, while the court of appeals correctly interpreted the term "individual" in clause (i) as including the supermarket managers, it erred in holding that the union's attempts to enlist the aid of the managers constituted inducement in violation of the subsection. In the Supreme Court's view, the union, in asking the managers not to handle Servette items, was not attempting to induce or encourage them to cease performing their managerial duties in order to force their employers to cease doing business with Servette. Rather, the managers were asked only to make a managerial decision which the Board found was within their authority to make. The Court found that clause (i) was intended to reach the same type of conduct as did the old section 8(b)(4)(A), and that the provision merely condemned "union pressures calculated to induce the employees of a secondary employer to withhold their services in order to force their employer to cease dealing with the primary employer." The Court added that, if "subsection (i), in addition to prohibiting inducement of employees to withhold employment services, also reaches an appeal that the managers exercise their delegated authority by making a business judgment to cease dealing with the primary employer, subsection (ii)[8] would be almost superfluous."

Servette also presented the question whether the union's handbilling of, and threats to handbill, those stores which did not discontinue handling Servette products was a threat or restraint proscribed by section 8(b)(4)(ii)(B), or privileged by the publicity proviso[9] to section 8(b)(4). The Board, following its ruling in *Lohman Sales Co.*,[10] where it held that products "produced by an employer" included products merely distributed, as here, by a wholesaler, concluded that

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[7] *Carolina Lumber Co.*, 130 NLRB 1438 (1961); Twenty-sixth Annual Report (1961), pp. 131–132. The Board viewed the statute as distinguishing between "low level" and "high level" supervisors, and as proscribing only inducement of the former.

[8] Sec. 8(b)(4)(ii) makes it unlawful "to threaten, coerce, or restrain any person" for the proscribed object

[9] The proviso reads:

"*Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution; . . ."

[10] 132 NLRB 901.

the handbilling was protected by the proviso. The Ninth Circuit disagreed, holding that the proviso must be literally construed to apply only to the manufacturer of a physical product.[11] The Supreme Court sustained the Board's position. The Court pointed out that the proviso was the outgrowth of a profound Senate concern that the freedom of unions to appeal to the public for support of their case be adequately safeguarded, and concluded that "it would fall far short of achieving this basic purpose if the proviso applied only in situations where the union's labor dispute is with the manufacturer or processor." The Court added: "There is nothing in the legislative history which suggests that the protection of the proviso was intended to be any narrower in coverage than the prohibition to which it is an exception, and we see no basis for attributing such an incongruous purpose to Congress." Finally, the Court held that the warnings that handbills would be distributed in front of noncooperating stores afforded no independent ground for prohibiting such action as "threats" under clause (ii) since the "statutory protection for the distribution of handbills would be undermined if a threat to engage in such protected activity were not itself protected."

4. Consumer Picketing

In *Fruit and Vegetable Packers*,[12] a majority of the Supreme Court held, contrary to the Board's view, that section 8(b)(4)(ii)(B) was not intended to proscribe all peaceful consumer picketing at secondary sites. The Board had held that Congress, in amending the Act in 1959 to bar threats, coercion, or restraint of any person, had intended to ban all consumer picketing in front of a secondary establishment for the prohibited secondary object.[13] It thus found that the union had violated section 8(b)(4)(ii)(B) when, in furtherance of its dispute with some fruit packers, it picketed the stores selling their products with signs appealing to members of the consuming public not to buy the products in dispute. The Court of Appeals for the District of Columbia reversed the Board, holding that consumer picketing could not be found to "threaten, coerce or restrain the stores being picketed [absent] affirmative proof that a substantial economic impact on the store had occurred, or was likely to occur as a result of the

[11] The court followed its decision in *Great Western Broadcasting Co.* v. *N.L.R.B.*, 310 F. 2d 591.

[12] *N.L.R.B.* v. *Fruit and Vegetable Packers & Warehousemen, Local 760, et al.* (*Tree Fruits, Inc.*), 377 U.S. 58, reversing 308 F. 2d 311 (C.A.D.C.). Justices Harlan and Stewart dissented in a separate opinion; Justice Black wrote a separate concurring opinion.

[13] This position was first enunciated in *Upholsterers Frame & Bedding Workers Twin City Local 61 (Minneapolis House Furnishing Co.)*, 132 NLRB 40. The Board's position was accepted by the Fifth Circuit in *Samuel H. Burr & Perfection Mattress & Spring Co.* v. *N.L.R.B.*, 321 F. 2d 612.

conduct." It remanded the case to the Board for the receipt of such evidence.[14] The Supreme Court vacated the judgment of the court of appeals and set aside the Board's order.

Noting its "concern that a broad ban against peaceful picketing might collide with the guarantees of the First Amendment," and that "Congress has consistently refused to prohibit peaceful picketing except where it is used as a means to achieve specific ends which experience has shown are undesirable," the Court concluded that the legislative history "does not reflect with the requisite clarity a congressional plan to proscribe all peaceful consumer picketing at secondary sites." "All that the legislative history shows in the way of an 'isolated evil' believed to require proscription of peaceful consumer picketing at secondary sites, was its use to persuade the customers of the secondary employer to cease trading with him in order to force him to cease dealing with, or to put pressure upon, the primary employer." In the Court's view, there is a big difference between such conduct and peaceful picketing at the secondary site directed only at the struck product. "In the latter case, the union's appeal to the public is confined to its dispute with the primary employer, since the public is not asked to withhold its patronage from the secondary employer, but only to boycott the primary employer's goods. On the other hand, a union appeal to the public at the secondary site not to trade at all with the secondary employer goes beyond the goods of the primary employer, and seeks the public's assistance in forcing the secondary employer to cooperate with the union in its primary dispute." Since the picketing in this case was confined to persuading customers to cease buying the product of the primary employer, the Court held that it was not within the area barred by section 8(b) (4) (ii) (B).

5. Common Situs Picketing—"Separate Gate"

In *Carrier*,[15] the Supreme Court upheld the Board's ruling that the union was engaged in legitimate primary activity when, in furtherance of a strike against Carrier, it picketed an entrance, used exclusively by railroad personnel, to a railway spur track located on a right-of-way owned by the railroad and adjacent to the Carrier premises. The Board had concluded that the *General Electric* [16] case was controlling and had dismissed a complaint alleging that union's picketing at the railroad gate was secondary and thus violative of section 8(b) (4) (B). The Second Circuit set aside the Board's dismissal, holding that the railroad gate picketing was secondary and not primary.[17] The

[14] 308 F. 2d 311, 318.

[15] *United Steelworkers of America* v. *N L R B*, 376 U.S. 492.

[16] *Local 761, International Union of Electrical Workers* v. *N.L R B.*, 366 U S. 667 (1961). Twenty-sixth Annual Report, pp. 157–158.

[17] 311 F. 2d 135.

Supreme Court reversed the Second Circuit. The Court pointed out that it had held in *General Electric* that Congress intended to preserve the right to picket during a strike a gate reserved for employees of neutral deliverymen furnishing day-to-day services essential to the primary employer's regular operations. It concluded, in agreement with the Board, that no meaningful distinction could be drawn between *General Electric* and the situation here, on the ground that the picketed gate here was located on property owned by the railroad and not upon property owned by the primary employer. The Supreme Court stated that "The location of the picketing is an important but not decisive factor, and in this case we agree . . . that the location of the picketed gate upon New York Central property has little, if any, significance." "The railroad gate adjoined company property and was in fact the railroad entrance to the Carrier plant. For the purposes of § 8(b)(4) picketing at a situs so proximate and related to the employer's day-to-day operations is no more illegal than if it had occurred at a gate on property owned by Carrier."

6. Judicial Intervention in Representation Proceedings

In *Greyhound Corp.*[18] the Supreme Court, sustaining the Board's position, reemphasized that the district courts are severely limited in their jurisdiction to enjoin representation elections directed by the Board. The Board, finding that Greyhound was a "joint employer" with its subcontractor, Floors, of the employees providing janitorial and related services at four Greyhound terminals, had directed an election under section 9 to determine whether those employees desired the petitioning union as their representative. The district court,[19] at the suit of Greyhound, enjoined the election on the ground that Greyhound was not the employer of the employees involved, and that the Board had thus exceeded its statutory authority in directing the election. It held that it had jurisdiction of the suit under the doctrine of *Leedom* v. *Kyne*.[20] The Court of Appeals for the Fifth Circuit, in a *per curiam* opinion, affirmed.[21] The Supreme Court reversed, holding that the district court lacked jurisdiction to enjoin the election.

The Court reemphasized that Congress had deliberately refrained from making Board decisions in representation proceedings directly reviewable in the courts, and had intended that normally they would be reviewable only where they culminated in a certification which, in turn, formed the basis for a final unfair labor practice order. The Court added that *Kyne* was a narrow exception to that rule, occasioned

[18] *Boire* v. *Greyhound Corp*, 376 U.S. 473.
[19] 205 F. Supp. 676.
[20] 358 U.S. 184 (1958), Twenty-fourth Annual Report (1959), pp. 117–118.
[21] 309 F. 2d 397.

by the extraordinary circumstance, *inter alia*, that the Board had plainly acted in excess of its statutory authority and contrary to a specific prohibition in the Act. The instant case was different, for, "whether Greyhound possessed sufficient indicia of control to be an 'employer' is essentially a factual issue, unlike the question in *Kyne* which depended solely upon the construction of the statute." The Court concluded: "The *Kyne* exception is a narrow one, not to be extended to permit plenary District Court review of Board orders in certification proceedings whenever it can be said that an erroneous assessment of the particular facts before the Board has led to a conclusion which does not comport with the law."

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

(a) *The Schermerhorn case.*[22] During its 1962 term, the Supreme Court determined, in its first decision in this case,[23] that an agency shop arrangement was within the scope of section 14(b) of the Act, and therefore could properly be prohibited by a State under its right-to-work law. However, the Court scheduled for reargument the question of whether the State courts, or only the Board, would have jurisdiction to enforce the State's prohibition, and invited the views of the Board on this question. This term, the Court, consistent with the position advanced by the Board as *amicus curiae*, held that section 14(b) empowered the State courts to declare the agency-shop provision in the contract in *Schermerhorn* unlawful and to enjoin enforcement of that provision. The Court noted, however, that, although the State had power to enjoin enforcement of a union-security arrangement unlawful under State law, "picketing in order to get an employer to execute an agreement to hire all union labor in violation of a state union security statute lies exclusively in the federal domain." This is "because state power, recognized by § 14(b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b)*. Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under *Garmon*." [24]

(b) *The Westinghouse case.*[25] In this case, the Supreme Court, again consistent with the position of the Board as *amicus curiae*, held that the court could properly compel arbitration under a collective-bargaining contract of a controversy over certain work, even though the matter might also involve a representation or a work assignment issue within the jurisdiction of the Board. IUE, the certified repre-

[22] *Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96.

[23] *Retail Clerks, Local 1625* v. *Schermerhorn*, 373 U S 746. See Twenty-eighth Annual Report (1963), p. 123, footnote 16.

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

[25] *James B. Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261. Justice Harlan concurred in a separate opinion; Justices Black and Clark dissented.

sentative of Westinghouse's production and maintenance employees, had filed a grievance under its contract asserting that technical employees, represented by another union certified for a unit of technical employees, were performing production and maintenance work which should be assigned to employees in the IUE unit. Westinghouse refused to arbitrate on the ground that the controversy presented a representation matter for the Board. The Court of Appeals of New York agreed, and affirmed a dismissal of IUE's suit to compel arbitration.[26] The Supreme Court reversed.

The Supreme Court noted that the facts presented either a controversy involving a jurisdictional dispute or a question of representation, and thus the possibility existed of obtaining relief from the Board. The Court added, however, that it had held in *Smith* v. *Evening News Assn.*[27] that the existence of a remedy before the Board did not bar a suit to enforce a collective-bargaining agreement, and that "the same policy considerations are applicable here." In answer to the argument that arbitration would serve no useful purpose in that it would not bind the other union, the Court stated: "If it is a work assignment dispute, arbitration conveniently fills a gap and avoids the necessity of a strike to bring the matter to the Board. If it is a representation matter, resort to arbitration may have a pervasive, curative effect even though one union is not a party. By allowing the dispute to go to arbitration its fragmentation is avoided to a substantial extent; and those conciliatory measures which Congress deemed vital to 'industrial peace' . . . and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at anytime. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area."

(c) *The Hattiesburg case.* In this case,[28] the Supreme Court reversed, on the petition for certiorari, an injunction issued by the Mississippi court against peaceful picketing. The picketing occurred at a common situs, and the State court, on finding that the primary employer's operations were not sufficient to meet the Board's jurisdictional yardsticks, concluded that the preemption rule was not applicable. The Supreme Court noted that, in a potential secondary boycott situation, the Board's jurisdictional standards may be satisfied by reference to the business operations of either the primary or the secondary employer. Finding that the record showed that the secondary employer's operations met the Board's jurisdictional requirements and that the union's picketing was arguably secondary, the Court concluded that the preemption rule was still applicable and that the State court therefore lacked jurisdiction to enjoin the picketing.

[26] 11 N.Y. 2d 452, 230 N.Y S. 2d 703.
[27] 371 U.S. 195, discussed Twenty-eighth Annual Report, pp. 123–124.
[28] *Hattiesburg Bldg. and Trades Council* v. *Broome,* 377 U.S. 126.

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by courts of appeals in 246 enforcement or review proceedings during fiscal 1964.[1] This was a substantial increase from the 198 enforcement proceedings experienced in fiscal 1963, and from the 148 enforcement proceedings experienced in each of the fiscal years of 1962 and 1961. Some of the more important decisions resulting from that litigation are summarized in this chapter.

A. Board Jurisdiction

1. "Labor Dispute" as Jurisdictional Requirement

In *ILA, Local 1355*,[2] the Fourth Circuit reversed the Board's holding that a labor dispute with a primary employer was not a jurisdictional requirement to be met before initiation of 8(b)(4) proceedings. In the court's view, the union's contention rejected by the Board was based upon the absence of any labor dispute rather than merely the absence of a labor dispute with a primary employer. The court found that the union activity in issue pertained to a general political question, and that the union was not seeking to alter any terms or conditions of employment by its bare refusal to work ships that have engaged in trade with Cuba. It held that the existence of a labor dispute is a prerequisite to jurisdiction which, in this case, is not to be assumed by the Board simply because a union calls a work stoppage or refuses to supply a labor force.

B. Board Procedure

1. Separate Proceedings on Related Events

The Board's action in issuing similar complaints against the union from two adjacent regional offices based upon related secondary activity occurring in the respective regions was sustained by the Fifth

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

[2] *N.L.R.B.* v. *ILA and Local 1355, ILA (Ocean Shipping Service)*, 332 F. 2d 992. For the Board decision see *supra*, p. 36.

Circuit in *Truckdrivers & Helpers Local 728*.[3] The court rejected the union's contention that it had been prejudiced by separate trials, noting that since the union violated the Act in both regions, "it should not be heard to complain if it is held to account in both places." Moreover, the prosecution of two separate cases was appropriate since they involved violations in North Carolina and Georgia which, although part of an overall scheme, presented two distinct legal issues, and the convenience of the witnesses was properly considered by the Board.

2. Board Authority To Amend Complaint To Conform to Proof

In the *Frito* case [4] the Ninth Circuit, reversing the Board, held that the Board has authority to allow a motion to amend a complaint to conform to proof although opposed by the General Counsel, since this is the exercise of a judicial function rather than a review of a decision of the General Counsel. The original complaint filed by the General Counsel had alleged that four provisions of a collective-bargaining agreement relating to "work performed" and "subcontracting and assignment of work" were violative of section 8(e). The amended complaint predicated the violations on only two sections of the contract. The answer of the respondent employers, however, denied that the illegality was confined to those sections mentioned in the complaint and contended that the complaint should have included the provisions omitted by the General Counsel. Evidence introduced without objection at the hearing supported this contention. In the court's view, the proof having been admitted without objection, the trial examiner and the Board were free to consider the evidence and to exercise judicial discretion as to whether to permit amendment to conform to the proof.

C. Arbitration as an Alternative to Board Action

Two cases involving the question whether the Board abused its discretion of either honoring or rejecting a decision of an arbitrator were considered by the courts during the last fiscal year.[5] In *Raytheon*,[6] the First Circuit expressed strong doubts whether the Board

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[3] *Truckdrivers & Helpers Local 728* v. *N.L.R.B.*, 332 F. 2d 693.

[4] *The Frito Co., Western Div.* v. *N.L.R.B.* and *N.L.R.B.* v. *Retail Clerks Union Local 770*, 330 F. 2d 458.

[5] During this fiscal period, the Supreme Court in *James B. Carey* v. *Westinghouse Eletcric Corp.*, 375 U.S. 261, *supra*, p. 109, noted that "If by the time the dispute reaches the Board, arbitration has already taken place, the Board shows deference to the arbitral award, provided the procedure was a fair one and the results not repugnant to the Act."

[6] *Raytheon Co.* v. *N.L.R.B.*, 326 F. 2d 471.

should have rejected an arbitrator's findings, although it did not decide the question because it found the Board's decision on the merits of the unfair labor practice allegations not supported by evidence. The Board had not given effect to an arbitrator's award on the ground that the arbitrator's hearing was unfair in that on a request by the employee for a general continuance the arbitrator granted only 1 day. In the *Ramsey* case,[7] the Seventh Circuit sustained the Board's action in honoring an arbitration award notwithstanding an employee's claim that he was not given notice of the arbitration hearing and did not appear there. In the court's view, an employee has no statutory or constitutional right to be present at an arbitration hearing; moreover, the employer had fully and adequately defended the employee's position. The court concluded that since no other procedural irregularity, collusion, or unfairness entered into the arbitrator's decision, the Board had not abused its discretion in deferring to his decision.

D. Appropriateness of Limited Area Bargaining Units

In determining the appropriate bargaining unit in the insurance and retail chain industries, the Board applies normal unit principles.[8] In several cases involving those enterprises, however, the issue has been raised as to whether the union's extent of organization was the controlling factor in the Board's determination.[9] This issue was considered by courts of appeals upon review of four cases, three involving an insurance company and one involving a retail chain. In one of the *Metropolitan Life Insurance* cases,[10] the Third Circuit sustained the Board's finding that a unit of insurance agents at two of the three district offices in the State was appropriate. The third office was located 46 miles from the metropolitan area in which the other two offices embraced in the unit sought by the union were located. In view of the Board's unit determination having been made after the union had failed in its attempt to organize all three district offices, the employer contended that the grouping of the two offices is not an appropriate unit, and that the Board's determination was in fact

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[7] *Thomas D. Ramsey* v. *N.L.R.B.*, 327 F. 2d 784; certiorari denied 377 U.S. 1003.

[8] See *Quaker City Life Insurance Co.*, 134 NLRB 960 (1961), where a Board majority departed from the previous policy that only statewide or employerwide unit of insurance agents was appropriate; *Sav-On Drugs, Inc*, 138 NLRB 1032 (1962), where a Board majority altered the previous policy that a retail chain unit should embrace all stores within the employer's administrative division or geographic area

[9] Sec. 9(c)(5) prohibits the Board from establishing a bargaining unit solely or to a controlling degree on the basis of "the extent to which the employees have organized"

[10] *Metropolitan Life Insurance Co.* v. *N.L.R.B.*, 328 F. 2d 820 Company's petition for certiorari filed Apr. 8, 1964.

based on the extent of union organization. In rejecting this contention, the court held that the grounds upon which the Board rendered its determination are not unreasonable since, among other factors, grouping of the two district offices was founded in part on cogent geographical, administrative, and bargaining history considerations. The court noted that "the union may be controlled by the extent of its organization [in petitioning for an election] so long as the Board is not so controlled, i.e., the certified appropriate unit must be in and of itself appropriate apart from the extent of employee organization."

But in another *Metropolitan Life Insurance* case [11] the First Circuit refused to accept the Board's finding that a unit of insurance agents at a single district office was appropriate. Similar to other *Metropolitan* cases, the union had petitioned for a unit on a district office basis when it failed in organizing on a broader basis. After considering other recent *Metropolitan* cases involving Board unit determination, the court noted that in not one instance has the Board refused the unit petitioned for by the union. Finding that factor to be indicative of the absence of any rational basis for the Board's varying unit determinations, the court concluded that the Board had reverted to its pre-1944 policy of regarding the extent of union organization as controlling, in violation of section 9(c)(5). However, the Sixth Circuit in a third case [12] involving the *Metropolitan Life Insurance Co.* agreed with the Board's unit determination based upon considerations of administrative organization, bargaining history, and geographical location, and rejected the employer's contention that the Board had violated section 9(c)(5) of the Act by giving controlling weight to the extent of union organization. In the court's view, the Board "is not bound by a rule once adopted if it determines subsequently that the reason for the rule fails and it does not act arbitrarily, unreasonably or in violation of the Act." [13]

In *Singer Sewing Machine*,[14] the Fourth Circuit held that the Board did not abuse its discretion in selecting a metropolitan areawide unit consisting of eight stores in a nationwide retail chain. In the court's view, although other bargaining units may be appropriate also, the Board's determination of the appropriateness of the unit petitioned

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[11] *Metropolitan Life Insurance Co.* v. *N.L.R.B.*, 327 F. 2d 906, Board's petition for certiorari filed May 18, 1964.

[12] *Metropolitan Life Insurance Co.* v. *N.L.R.B.*, 330 F. 2d 62, Company's petition for certiorari filed June 30, 1964.

[13] The rationale of the Board's ruling in insurance company cases is set forth in *N.L.R.B.* v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (C.A. 4). See Twenty-eighth Annual Report (1963), p. 140.

[14] *Singer Sewing Machine Co.* v. *N.L.R.B.*, 329 F. 2d 200.

for by the union was supported by substantial evidence and therefore neither arbitrary nor capricious.[15]

E. Employer Differentiation in the Employment Relationship

1. Separation for Refusal To Cross Picket Line

The District of Columbia Circuit, on review of the Board decision in *Redwing Carriers*,[16] agreed with the Board's rationale and dismissal of the complaint against an employer based upon its discharge of several truckdrivers for refusing to cross a picket line at a customer's place of business. Although finding that the drivers in refusing to cross the picket line had engaged in protected concerted activity, the Board also recognized that the company had a corresponding right to continue to operate its business, which must be balanced against the rights of the employees. The Board had found no union animus, and concluded that the discharges were not in reprisal for honoring the picket line, but solely to continue the company's business with its customer.

2. Good-Faith But Mistaken Belief in Cause for Discharge

In *Burnup and Sims, Inc.*,[17] the Fifth Circuit reversed the Board's finding and held that an empoyer did not violate the Act by discharging employees he honestly but mistakenly believed had engaged in misconduct warranting discharge. The Board had held that when in the course of protected activity employees are accused of misconduct and discharged for seeming cause, "such an honest belief would be an adequate defense to a charge of discrimination for refusing to reinstate . . . *unless it affirmatively appears that such misconduct did not in fact occur.*" [18] In rejecting this doctrine, the Fifth Circuit held that if an employer can establish that "he had a good faith belief that an employee has engaged in misconduct such as here, it need not appear that the alleged misconduct in fact occurred." In the court's view, a good-faith belief that an employee engaged in unprotected activity is sufficient reason for discharge. To rebut such a defense

[15] Notwithstanding its affirmance of the Board's unit determination, the court remanded the case to the Board with directions that it consider certain evidence excluded at the hearing. The evidence excluded related to the action of Board agents handling the representation proceeding and was proffered by the respondent to show that the extent of organization was actually the controlling factor in the unit determination in violation of sec. 9(c)(5) of the Act.

[16] *Teamsters, Chauffeurs & Helpers, Local 79, IBT* v. *N.L.R.B.*, 325 F. 2d 1011; certiorari denied 377 U.S. 905.

[17] *N.L R.B.* v. *Burnup and Sims, Inc.*, 322 F. 2d 57, petition for certiorari granted 375 U.S. 983.

[18] Quoting *Rubin Bros. Footwear, Inc*, 99 NLRB 610.

it is necessary for the General Counsel to establish that the belief was not bona fide, and proof that the misconduct did not occur is insufficient.

3. Multiemployer Lockout

Upon review the Second Circuit affirmed [19] the Board's dismissal of a complaint charging that all newspaper members of the Publishers Association of New York City had violated the Act by suspending operations under an agreement which provided that if one member was forced to shut down because of work stoppages by the unions in violation of their contract, all other members would do likewise until work was resumed. The Board held that the publishers' suspension agreement was legitimate defensive activity designed to preserve the bargaining unit. In the court's view, the Board's decision reflected "existing industrial realities." Evaluating the Board's action in weighing the ultimate loss of work for neutral employees not participating in the work stoppages but idled by the shutdown, against the employer's rights, the court concluded that the Board "did not err in striking a balance between the competing legitimate interests."

4. Discharge for Spontaneous Work Stoppage

Spontaneous work stoppages by minority groups, which may be protected activity even if the dispute did not originate from union demands, were involved in several court decisions upon review of Board orders rendered during the year. In *Western Contracting Corp.*,[20] the Tenth Circuit sustained the Board's determination that an employer had violated the Act by discharging its truckdrivers who had engaged in a spontaneous walkout over the company's failure to install heaters in its trucks. On learning of the strike, the union supported the employees' demands and lent aid to the strike. In the court's view, the ultimate issue was whether the action of the employees was in support of the union rather than in derogation of it. The Board had found that the actions of the employees and the union were "one and the same," and the strike was protected activity. The court agreed that the work stoppage was union activity which was not prohibited by any provision of the collective-bargaining agreement and was consistent with the position of the employee representative. And in *R. C. Can Co.*,[21] the Fifth Circuit enforced the Board's order based upon its finding that the employer had refused to reinstate employees for engaging in a "quickie" strike to force the company

[19] *New York Mailers' Union No. 6, ITU* v. *N.L.R.B.*, 327 F. 2d 292.
[20] *Western Contracting Corp. v. N.L.R.B.*, 322 F 2d 893
[21] *N.L.R.B.* v. *R. C. Can Co.*, 328 F. 2d 974.

to meet more often with the union in order to conclude contract negotiations. The court held that the criteria to be applied in the balancing of the respective rights of the parties concerned are as follows: "Is the action of the individual or a small group in criticism of, or opposition to, the policies or actions theretofore taken by the organization? Or, to the contrary, is it more nearly in support of the things which the union is trying to accomplish? If it is the former, then such divisive, dissident action is not protected." On the other hand if the action "seeks to generate support for and an acceptance of" the union demands, "it is protected" so long as the means used "do not involve a disagreement with, repudiation or criticism of, a policy or decision previously taken by the union."

5. Discharge for Strike in Violation of Section 8(d)(4)

Upon review of a case in which the Board had construed the notice obligation provisions of section 8(d),[22] the District of Columbia Circuit sustained the Board's dismissal of a complaint alleging the unlawful discharge of employees for engaging in a strike. In the court's view, the Board accurately construed the congressional purposes embodied in the notice requirements by concluding that the strike was rendered unlawful by the union's failure to notify the Federal and State mediation and conciliation services of the situation as required by section 8(d)(3) of the Act, although it had given the employer notice to terminate or modify its contract pursuant to section 8(d)(4) of the Act. Consequently the strikers were not engaged in activity protected by the Act and their discharge was not violative of the statute.

6. Termination of Operation

The courts had occasion to consider two cases involving violations found to have resulted from termination of part of an employer's operations, and the resultant effect on the employees involved. In both cases, the facts disclosed that the termination was motivated by union animus. In *Darlington Manufacturing Co.*,[23] the Fourth Circuit, in a 3–2 decision reversing the Board, held that the decision to close a plant was the employer's "absolute prerogative" and therefore not an unfair labor practice. In the court's view, "The right of discontinuance" means "actual unfeigned and permanent end of operations," which it found occurred in the case at bar. The court also held that the Board's application of the single-employer doctrine, even if applicable on the facts, could not extend liability to a parent corporation since "a part, like the whole, of a business may be abolished when the

[22] *United Furniture Workers Local 270, et al* v *N.L.R.B.*, 336 F. 2d 738, 49 LC ¶18,897.
[23] *N.L.R.B.* v. *Deering-Milliken*, 325 F. 2d 682, certiorari granted 377 U.S. 903.

extinction is consummated in circumstances like the present." However, in *Savoy Laundry, Inc.*,[24] the Second Circuit, in agreement with the Board, held that the closing down of a laundry division was violative of the Act. In the court's view, the company's actions were based on a desire to rid itself of the union, and not for economic reasons. According to the court, "the crucial factor is not whether business reasons cited by Savoy were good or bad, but whether they were honestly invoked and were, in fact, the cause of the change."

F. Employer Liability for Union Actions

1. Discriminatory Hiring Practices

In the *Lummus Co.* case the Board had concluded that the union had violated the Act by refusing the use of its exclusive hiring hall to applicants for work because they were in disfavor with the union business agent. The company, which, although not a party to the exclusive hiring hall agreement, obtained employees through the hall, was held equally liable on the grounds that the union was its agent in obtaining employees, that the company had notice of or should have known of the unlawful refusal, and its failure to ascertain the reasons for the denial constituted acquiescence and ratification of the union's action. The District of Columbia Circuit denied enforcement[25] of the order relating to the company's liability, holding that the company was not jointly liable because in the circumstances of the case the union, in the operation of the hiring hall, could not be deemed to be an agent for the company. In the court's view, the company did not discriminate against the applicant for work at the time he applied since no jobs were available. The court also found that the company did not have notice of or probable cause to inquire into the nature of the applicant's difficulties with the union.

However, in *Southern Stevedoring and Contracting Co.*,[26] the Fifth Circuit sustained the Board's determination that the company was jointly responsible for discriminatory hiring practices engaged in by the union. The court held that while the hiring provisions of the contract in effect between the parties were not illegal, it is clearly established that if an employer vests a union with sole power to hire in his behalf, he is responsible for the hiring practices of the union if he knows, or should know, what those practices are. Here the officials of the ILA, and the gang foreman operating under its direction, hired ILA members in direct preference to IBL members. The company

[24] *N L.R B.* v *Savoy Laundry, Inc*, 327 F. 2d 370.

[25] *The Lummus Co.* v. *N.L.R.B.* and *N.L.R.B.* v. *Local 80, Plumbers*, 56 LRRM 2425; 49 LC ¶19,051 (C.A D C.).

[26] *N.L.R B.* v. *Southern Stevedoring & Contracting Co.*, 332 F. 2d 1017.

knew of the policy and program of the ILA, and is equally responsible for the discrimination against the applicants in regard to hire, which encouraged membership in a labor organization in violation of the Act.

2. Enforcement of Union-Security Provisions

Two other cases involved the issue of employer liability for union violations in seeking enforcement of a union-security clause for reasons other than nonpayment of regular dues and initiation fees. In *Stackhouse Oldsmobile, Inc.*,[27] the Sixth Circuit denied enforcement of the Board's order requiring an employer to execute a collective-bargaining agreement which contained a union-security clause. The clause would incorporate by reference into the contract the constitution and bylaws of the union, and by its express terms required the employer to discharge any employee within 3 days following receipt of notice from the union that the employee was not a member in good standing according to the union's constitution and bylaws, whatever the specific ground or cause might be. The Board had concluded that it would not assume that a violation of Federal law through literal application of the provisions was contemplated by the parties, and found that the employer had violated section 8(a)(5) by refusing to execute the agreement. In the court's view, the union-security clause would place an unreasonable burden on the employer in the event the clause had to be enforced. Each time the union might request the discharge of a certain employee, the employer would have the responsibility of investigating and determining that the true and only reason for the requested discharge was the failure to tender dues and initiation fees, or otherwise subject itself to potential liability for the union's illegal request. The same circuit reached a similar conclusion in another case [28] where it refused to sustain the Board's finding that the company violated the Act by discharging employees upon the union's demand. In the court's view, the company had no clear indication of the impropriety of the demand and could not be held to be obligated to conduct an extensive investigation to determine the merits of the union's demand.

G. Bargaining Obligation

1. Furnishing of Information Preliminary to Arbitration

Three cases involving the obligation of an employer to furnish the union with relevant data claimed to be needed in a grievance or arbi-

[27] *Stackhouse Oldsmobile, Inc* v. *N.L.R.B.*, 330 F. 2d 559.
[28] *N.L.R.B* v. *Leece-Neville Co. and IBEW Local 1377*, 330 F. 2d 242.

tration proceeding were considered by the courts during this fiscal year. In *Timken Roller Bearing*,[29] the Sixth Circuit, and in a *per curiam* opinion in *Perkins Machine*,[30] the First Circuit, sustained the Board's holdings that the employers violated the Act by refusing to furnish requested wage computation data to the certified unions, even though their respective contracts were silent with respect to any provision for furnishing such data. Both courts held that the union's statutory right to the data was not waived by its failure to include it in the contract. This right is derived from section 8(d), and any waiver by the union must be clearly and unmistakably expressed. In the third case, *Square D Co.*,[31] the Board had held that the company violated the Act by refusing to furnish the union with relevant data pertaining to the operation of its group incentive plan and by refusing to discuss and negotiate grievances concerning it. The Ninth Circuit denied enforcement of the Board's order, holding that the resolution of the dispute lay in the answer to the question whether the union had waived its right to grieve relative to the incentive plan. This issue in turn involved the construction of the contract on the area which the parties themselves had agreed should be arbitrated. The court concluded that in the light of the Board's *Hercules Motor Corp.*[32] decision, the question whether the union had waived its right to grieve with respect to the incentive plan should have been first submitted to arbitration as agreed upon by the parties before the Board could lawfully determine whether the company had committed an unfair labor practice.

2. Unilateral Termination of Operation

Four cases involved the question of whether an employer must bargain with the representative of its employees in the bargaining unit concerning a decision to subcontract the work of such employees. In all four the Board held that the employer had violated the Act by refusing to so bargain. In *Fibreboard Paper Products*, the Board had held that the employer violated the Act by unilaterally subcontracting its maintenance work without first bargaining with the union over its decision to do so. Upon review,[33] the District of Columbia Circuit sustained the Board's decision that an employer must bargain about a decision to subcontract even if the employer's decision was based solely on economic grounds. But the Eighth Circuit, in

[29] *Timken Roller Bearing Co* v *N L R B*, 325 F 2d 746, certiorari denied, 376 U.S 971.
[30] *N.L.R.B.* v. *Perkins Machine Co.*, 326 F. 2d 488
[31] *Square D Co.* v. *N.L.R.B*, 332 F. 2d 360.
[32] 136 NLRB 1648.
[33] *East Bay Union of Machinists, Local 1304, Steelworkers* v *N L R B*, 322 F 2d 411 (C A D.C.) enforcing 138 NLRB 550. Employer's petition for certiorari granted 375 U S. 963 (No 610), limited to questions concerning duty to bargain and related remedy issues.

Adams Dairy,[34] reversing the Board, held that the employer's unilateral decision to discharge its driver-salesmen and replace them with independent contractors without first notifying and consulting with the employees' certified representative was not violative of the Act in the absence of some illegal motivation or intent of inherently discriminatory result.

In another case [35] the Board held that the employer violated the Act when, immediately after an economic strike had begun, it subcontracted its delivery services, which had been performed by some of the strikers, for the purpose of keeping the plant operating. It did not bargain with the union representing the strikers about its decision. The Ninth Circuit, in reversing the Board,[36] held that an employer's legal position is different when he is confronted with a strike from that which exists when no strike is expected or occurs. An employer is under no duty to offer to bargain, after a strike starts, about a decision to hire replacements. In the court's view, the Board may not premise a violation upon the decision of the employer, in a strike situation, to keep the struck business operating by subcontracting, any more than upon a decision to replace, permanently, individual strikers. Similarly, the Seventh Circuit in *Robert S. Abbott Publishing Co.*[37] held, contrary to the Board, that the employer by contracting out its composing work during an economic strike without notifying or consulting the union, did not violate the Act. The court distinguished this case from a situation where no strike had been called and the bargaining table remains accessible to both parties, noting also the conceded absence of union animus as a factor in the decision. In the court's view, the union had turned its back on collective bargaining and, by calling a strike, "placed the employer suddenly in a position made precarious by the inexorable demands of newspaper publication."

3. Multiple-Unit Bargaining

In *Standard Oil*,[38] the Sixth Circuit affirmed the Board's finding that the employer violated the Act by refusing to negotiate with the unions' bargaining committees because representatives from other certified units at plants of the employer represented by the same union were present. The court held that absent any finding of bad faith or

[34] *N.L.R.B.* v *Adams Dairy, Inc*, 322 F. 2d 553. Board's petition for certiorari filed Jan. 9, 1964 (No 741).

[35] *Hawaii Meat Co.* v. *N.L R B.*, 321 F 2d 397 (C A. 9).

[36] The court assumed, without deciding, that the Board was correct in its position that an employer violates sec. 8(a)(5) if, in the absence of a strike, it does not offer the union an opportunity to bargain about its proposed decision to subcontract work performed by its employees, citing *Fibreboard Paper Products Corp, supra.*

[37] *N.L.R.B* v. *Abbott Publishing Co*, 331 F 2d 209.

[38] *Standard Oil Co.* v. *N L.R.B*, 322 F 2d 40.

ulterior motive on the part of the unions, or unusual or exceptional circumstances, the employer must bargain with those representatives designated by the unions. The court rejected the employer's contention that the presence of the other representatives constituted an attempt by the unions to force companywide bargaining. The court also sustained the Board's finding that the unions violated the Act during the course of the same negotiations by refusing to execute written contracts embodying agreements reached in one of the bargaining units until an agreement had been reached on contracts with other bargaining units.

In a case arising from multiemployer-association bargaining,[39] the District of Columbia Circuit Court of Appeals agreed with the Board that the employer did not violate the Act by refusing to execute a contract embodying the agreements concerning a pension plan, reached between the unions and other employers assertedly linked with the employer in a multiemployer bargaining unit. Exercising a prerogative established by past bargaining practice, the employer insisted upon separate individual negotiations on the pension plan proposal. In the court's view, the group bargaining arrangements here were understood by the participating unions and employers as not operating to require contract uniformity under all circumstances. The court further agreed that the employer acted in good faith and, under the circumstances, with appropriate speed and clarity so as not to mislead the unions during the group negotiations with respect to its position on not being bound by what the other employers might agree to do concerning pension plans.

H. Union Rules as a Condition of Employment

During the report year the Second Circuit reviewed the *Miranda Fuel* case,[40] in which the Board held that an employer and a union jointly violated the Act by the employer's accedence to the union's demand that an employee union member be placed at the bottom of the seniority list because the employee started his leave, albeit with the employer's consent, prior to the summer slack period authorized by the contract. The contract had no provision for early departure and provided for loss of seniority only upon failing to return to work timely. The Board found that the union's action, acquiesced in by the employer, was hostile and for irrelevant, unfair, or invidious reasons, and that the union exceeded any legitimate union purpose in obtaining the employee's reduction in seniority. The Board found that the union's action was in breach of its duty of fair representation imposed upon it

[39] *Retail Clerks Union, No 1550* v. *N.L.R.B.* (*Kroger Co*), 330 F. 2d 210.

[40] *N.L.R B* v *Miranda Fuel Co and Local 553, IBT*, 326 F 2d 172, Circuit Judge Medina for the principal opinion, Chief Judge Lumbard concurring, Circuit Judge Friendly dissenting.

by section 9 and constituted an impairment of the employee's section 7 rights as well as discrimination within the meaning of section 8(a)(3) and 8(b)(2). Accordingly, the Board found that the union and the employer by acquiescing in the union's action had violated, respectively, section 8(b)(1)(A) and (2) and 8(a)(1) and (3). The Second Circuit denied enforcement of the Board's order. Judge Medina was of the view that discrimination within the meaning of the Act must be related to union considerations and that the duty of fair representation, implicit in section 9, is not within the scope of section 7 or section 8 of the statute.[41] Concurring in the denial of enforcement, Chief Judge Lumbard found it unnecessary to consider the legal issues raised by the Board's decision, since, in any event, he viewed the evidence as insufficient to sustain the conclusion that the union's action was arbitrary or invidious. Dissenting, Judge Friendly expressed the view that the Board could reasonably conclude that the union's action was an arbitrary exercise of union power which encouraged membership and although unrelated to union considerations, constituted discrimination within the meaning of section 8(a)(3) and 8(b)(2).

In *Shear's Pharmacy*,[42] the same circuit agreed with the Board that an employer's refusal, at the union's insistence, to reinstate an employee because of the latter's violation of a supposed union rule constituted a violation of section 8(a)(3) by the employer and of section 8(b)(2) by the union. The court noted that evidence was sufficient to sustain the Board's determination even under the view taken by the majority of the court in the *Miranda Fuel* case.

In *Animated Displays*,[43] the Board had held that an employer violated the Act by discriminatorily laying off an employee, and that a district council violated the Act by causing such layoff because the employee was a member of the decorators' local rather than the carpenters' local. Both locals were constituents of the parent district council, and membership in either local met the union-security requirements of the contract between the employer and the council. Although the council asserted that its action was based upon a trade custom which required for layoff purposes that preferential treatment be accorded to carpenters, the court sustained the Board's finding that the reason

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[41] Citing *N.L.R.B.* v. *Local 294 IBT* (*Valletta Motor Trucking Co.*), 317 F. 2d 746 (C.A. 2 (1963)). Twenty-eighth Annual Report (1963), pp. 132–133; *Local 357, IBT* v. *N.L.R.B.* (*Los Angeles-Seattle Motor Express*), 365 U.S. 667 (1961). Twenty-sixth Annual Report, pp. 153–155 (1961).

[42] *N.L.R.B.* v. *Shear's Pharmacy, Inc., and Retail Drug Employees' Union Local 1199*, 327 F. 2d 479 (C.A. 2), enforcing 137 NLRB 451.

[43] *N.L.R.B.* v. *Animated Displays Co and Carpenters' District Council of Detroit*, 327 F. 2d 230 (C.A. 6), enforcing 137 NLRB 999.

for the employee's layoff was his nonmembership in the carpenters' local. The council's action encouraged the employee's membership in the carpenters' local and discouraged his membership in the decorators' local, an action proscribed by the Act. In the court's view, the Board's inference that the motivation for the parent district council's pressure for the layoff of the employee was to favor the carpenters' local over the decorators' local was within the Board's province.

I. Prohibited Boycotts and Strikes

1. Proscribed Objectives

a. Compelling Execution of Agreements Covered by the Construction Industry Proviso to Section 8(e)

During the report year courts of appeals reviewed Board decisions in three cases presenting the question whether picketing or strike action to secure agreements covered by the construction industry proviso to section 8(e) of the Act violates section 8(b)(4)(A) and (B). After reviewing the legislative history, the Ninth Circuit in *Construction Laborers' Union, Local 383*[44] concluded, contrary to the Board, that picketing to secure such agreements is not proscribed by section 8(b)(4)(A) and (B). In the court's view section 8(b)(4)(B) has no application to picketing to secure agreements to cease doing business with any person; section 8(b)(4)(A) expressly covers only agreements prohibited by section 8(e), and the construction industry proviso to that section exempts subcontracting agreements in the industry from the prohibition to section 8(e).

A similar case involving that issue was *Essex County and Vicinity District Council of Carpenters*,[45] where the Third Circuit rejected the Board's finding that the union violated section 8(b)(4)(i) and (ii)(A) by threatening to strike and striking a group of employers in order to compel them to agree to be bound by a construction industry proviso agreement. Following the interpretation of the Act on this point by the Ninth Circuit in *Construction Laborers' Union*,[46] the court concluded that since the effect of the proviso was to exempt agreements relating to subcontractors for work to be performed at the construction site from the prohibition of section 8(e), coercive activity to obtain such a contract was similarily outside the reach of section 8(b)(4)(A) which in terms deals only with agreements prohibited by section 8(e).

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[44] *Construction, Production & Maintenance Laborers' Union, Local 383* v. *N.L.R.B.* (*Colson & Stevens*), 323 F. 2d 422.

[45] *Essex County and Vicinity District Council of Carpenters* v. *N.L.R.B.* (*Associated Contractors*), 332 F. 2d 636.

[46] *Construction, Production & Maintenance Laborers' Union, Local 383* v *N.L.R.B.*, *supra*.

In a third case in which the Board found violations of section 8(b)(4)(A) and (B) when a union threat to picket to enforce a subcontractor clause resulted in the removal of a nonunion subcontractor, the District of Columbia Circuit enforced the order only as to the 8(b)(4)(B) violation.[47] The court held that section 8(b)(4)(B) prohibits economic action to enforce subcontracting clauses blacklisting nonunion subcontractors. However, section 8(b)(4)(A) does not reach such action since "that section incorporates § 8(e) by reference, and § 8(e)'s proviso exempts subcontracting clauses in the construction industry from its prohibition." In reaching this conclusion the court adhered to the principles which it had explicated in *Orange Belt District Council*.[48] There the court held:

> Secondary subcontracting clauses in the construction industry are lawful, under the *proviso* to Section 8(e), and economic force may be used to obtain them notwithstanding Section 8(b)(4)(A), because Section 8(b)(4)(A) incorporates that *proviso* by reference. But under Section 8(b)(4)(B) such secondary clauses may be enforced only through lawsuits, and not through economic action. Primary subcontracting clauses, on the other hand, fall outside the ambit of Section 8(e), as the Board concedes. Moreover, economic enforcement thereof is not proscribed by Section 8(b)(4)(B) since they are not directed at involving neutral employers in a labor dispute "not their own." [Footnotes omitted.]

In determining whether subcontracting clauses are "primary" or "secondary," the test, the court said, is "whether the clauses are 'germane to the economic integrity of the principal work unit,' and seek 'to protect and preserve the work and standards [the union] has bargained for,' or instead 'extend beyond the [contracting] employer and are aimed really at the union's difference with another employer.'" Because the specific contract clauses under challenge in that case were not in the record the court remanded the case to the Board to supplement the record with the text of the clauses and their surrounding circumstances and to determine, in the light of the entire record and in accord with the principles enunciated by the court, whether the clauses are primary or secondary.

b. Disruption of Business Relationships

Section 8(b)(4)(B), prohibiting pressure on "any person" to cause him to cease doing business with "any other person," is intended to prevent the disruption of business relationships by proscribed tactics. The Ninth Circuit, in reviewing the Board decision in *Construction Laborers' Union, Local 383, supra*, that the union's picketing to compel an employer to sign an agreement to cease doing business with nonunion employers was a violation of section 8(b)(4)(B), overruled

[47] *Building & Construction Trades Council of San Bernardino* v. *N.L.R.B.*, 328 F. 2d 540, enforcing in part 139 NLRB 236.

[48] *Orange Belt District Council of Painters No. 48* v. *N.L.R.B.*, 328 F. 2d 534 (C.A.D.C.).

the Board in this respect also and found no 8(b)(4)(B) violation. The court found the legislative history "too inconclusive to support an inference that Congress intended that subsection (B) proscribe picketing to secure agreements to cease doing business."

Since the prohibition against secondary boycotts is intended to protect neutral or secondary employers from becoming involved in a primary dispute between a union and another employer, the identity of the employer with whom the union has its primary dispute at times becomes a crucial issue. In *Board of Harbor Commissioners*,[49] the Third Circuit agreed with the Board that strike action against an employer who is powerless to resolve the underlying dispute is secondary action outlawed by section 8(b)(4)(B). The union struck the employer and thereby disrupted his business relations in order to obtain the assignment of work which, the Board and the court found, the struck employer had no power to assign. The court held that since the struck employer was without power to assign that work or without authority to perform it, he was a neutral and hence the strike, having as an object the disruption of his business relations, violated the prohibition of section 8(b)(4)(B) against secondary strike pressures.

In *Local 825, IUOE*,[50] the Third Circuit denied enforcement of a Board order based upon the finding that a brief work stoppage, which occurred when union employees left their work stations to physically impede employees of the primary contractor in the performance of work claimed to be theirs under the contract, was a strike to require their employer to cease doing business with the prime contractor, in violation of section 8(b)(4)(B). In overruling the Board, the court found the union's conduct was directed only against the primary contractor and only incidentally affected secondaries. In the court's view, this was insufficient evidence to support a finding that an object of the work stoppage was to require a cessation of business with the primary contractor.

In the *Tulse Hill* case,[51] the union refused to supply workmen to an employer for work aboard a ship owned by another employer. The reason for the union's refusal to supply workmen was that the ship had engaged in trade with Cuba and the union had adopted a policy forbidding its members to work on such ships. Contrary to the Board's view, the court held that the Board lacked jurisdiction over the matter because the union's action "pertains to a general political question"

[49] *N L R B.* v. *ILA, and ILA, Local 1694 (Board of Harbor Commissioners)*, 331 F. 2d 712

[50] *N.L.R.B* v. *Local 825, IUOE (Nichols Electric)*, 326 F. 2d 218, denying enforcement of 138 NLRB 540

[51] *N.L.R B.* v. *ILA and Local 1355, ILA (Ocean Shipping Service, Ltd)*, 332 F. 2d 992 (C A. 4)

unrelated to any terms or conditions of employment and under the Act the "existence of a 'labor dispute' [is] the indispensable prerequisite to jurisdiction" by the Board. The court further concluded that even if the Board had jurisdiction over the dispute, the union's bare refusal to supply workmen did not in the circumstances of the case constitute restraint or coercion within the meaning of section 8(b) (4) (ii) (B).

2. Work Jurisdiction Disputes

In the first court review of a jurisdictional dispute affirmative award made by the Board pursuant to the Supreme Court's *CBS* decision,[52] the Third Circuit enforced the Board's order in *Nichols Electric*[53] where the Board had found a violation of section 8(b) (4) (D) based upon the union's failure to conform to a determination made pursuant to section 10(k). The court recognized, under *CBS*, "the limited scope of judicial review of the Board's award in such matters," and held that such awards should not be set aside by a reviewing court unless "arbitrary or capricious." And in *Union Carbide Chemicals Co.*,[54] the Fifth Circuit also enforced the Board's order where the Board had found an 8(b) (4) (D) violation. Recognizing the Board's wide discretion under section 10(k) in determining jurisdictional disputes between unions, the court noted that such determinations are not, however, entirely immune from court review of the merits and upon review of the related 8(b) (4) (D) proceedings, the courts have power to consider whether there is substantial evidence to support the Board's 10(k) determination.

J. Recognitional Picketing

The proscriptions of section 8(b) (7) of the Act apply to picketing for an object of recognition and bargaining, or organization by a union which has not been certified. In *Dayton Typographical Union No. 57, ITU*,[55] the District of Columbia Circuit enforced a Board order where the Board had found an 8(b) (7) (C) violation despite the union's contention that although the picketing had a recognitional objective, there was no violation since the union had majority status and the company had illegally refused to bargain with it. Among other things, the court, in agreement with the Board, held that the statutory provision "prohibits picketing for recognition by a union

[52] *N L R B* v *Radio & Television Broadcast Engineers, Local 1212*, 364 U S 573; Twenty-sixth Annual Report, pp 152–153 (1961)

[53] *N L R B* v *Local 825, IUOE*, 326 F 2d 213, enforcing 140 NLRB 458.

[54] *N L R B* v *Local 991, ILA*, 332 F 2d 66, enforcing 139 NLRB 1152.

[55] *Dayton Typographical Union No. 57, ITU* v. *N.L.R.B. (Greenfield Printing)*, 326 F 2d 634

beyond the 30-day period prescribed (assuming that a petition for representation has not been filed under Section 9(c)), where the union has not been certified but holds authorization cards signed by a majority of the employees." The court also rejected the union's contention that the section was unconstitutional, noting that the regulation of picketing imposed by the section "appears to us to be far from severe, and well within the authority of Congress."

In *Barker Bros. Corp.*,[56] the Ninth Circuit sustained the Board's holding where it had found that isolated refusals by drivers for suppliers to make deliveries did not, standing alone, cause recognitional picketing to lose the protection of the 8(b)(7)(C) proviso. Quoting with approval from the Board's decision, the court held that a "quantitative test concerning itself solely with the number of deliveries not made and/or services not performed is an inadequate yardstick for determining whether to remove informational picketing from the proviso's protective ambit. Rather . . . it would be more reasonable to frame the test in terms of the actual impact on the picketed employer's business. That is, the presence or absence of a violation will depend upon whether the picketing has disrupted, interfered with, or curtailed the employer's business." The same court, in *Crown Cafeteria*,[57] again in agreement with the Board, held that the second proviso to section 8(b)(7)(C) refers to recognitional and organizational picketing and that such picketing is protected by the proviso if it is addressed to the public, is truthful, and does not induce stoppages of deliveries or services. According to the court, if the picketing "did not have 'an object' bringing it within subdivision (7), it would not be prohibited at all." And to say that recognitional picketing whose "purpose" is to truthfully advise the public would nevertheless be illegal, "seems to us, as it did to the Board, that to so construe the statute would make the proviso meaningless."

K. Hot Cargo Agreements

1. Prohibited Secondary Objective

In *Truck Drivers Union Local 413, IBT*[58] the Court of Appeals for the District of Columbia Circuit reviewed the Board findings that struck-goods and picket-line clauses were illegal under section 8(e) because the clauses were unduly broad. The court agreed with the Board that the struck-work provision permitting a refusal to perform struck work even though not handled by their employer under a con-

[56] *Barker Bros. Corp* v. *N L.R B*, 328 F 2d 431.
[57] *Crown Cafeteria* v. *N.L.R.B.*, 327 F 2d 351.
[58] *Truck Drivers Union Local 413, IBT (Patton Warehouse)* v. *N L R B.* and *Truck Drivers Local 728, IBT (Brown Transport Corp.)* v. *N.L.R.B.*, 334 F. 2d 539.

tract with the struck employer protected refusals to work beyond the scope of the ally doctrine and, to the extent that it did so, authorized a secondary boycott, and was void under section 8(e). While the court agreed with the Board that the picket-line clause privileging employees to refuse to cross any picket line was too broad insofar as it privileged refusals to cross a picket line which was itself secondary activity, it rejected the Board's view that the clause was also unlawful in that it failed to confine refusals to cross a picket line at the primary employer's premises to strikes called by a majority union. Since the right to cross a primary picket line, the court held, is activity protected by section 7, the union and the employer may provide by contract that such refusal shall not be grounds for discharge and there is no warrant for applying to such agreements the limitations of the picket-line proviso of section 8(b)(4).

And in *Meat and Highway Drivers, Local 710*,[59] the same court agreed with the Board's finding that an agreement between a union and an employer which limited subcontracting to companies employing union members was violative of section 8(e). In the court's view, to make the selection of subcontractors turn upon union approval bore only a tenuous relation to the legitimate economic concerns of the employees in the unit, and enabled the union to use secondary pressure in its disputes with the subcontractors.

2. Permissible Work Preservation Objectives

In *Truck Drivers Union Local 413, IBT, supra*, the Board had held a clause limiting subcontracting to those employers observing union standards [60] to be violative of section 8(e) because it dictated to the employer those persons with whom he shall be permitted to do business, rather than only obligating him to refrain from contracting out work previously performed by employees in the bargaining unit. Contrary to the Board, the Court of Appeals for the District of Columbia Circuit held the subcontracting clause to be valid and further emphasized the distinction between union signatory subcontracting clauses (limiting subcontracting to those with a union contract) and union standards clauses (limiting subcontracting to those maintaining union standards) which it had prescribed in previous cases it had decided.[61] In the court's view, the union signatory subcontracting clauses are secondary in effect, and therefore within the scope of

[59] *Meat & Highway Drivers, Local 710, IBT* v. *N L R B* (*Wilson & Co.*), 335 F. 2d 709.

[60] The clause provided that the employer would refrain from using the services of any person who did not observe the wages, hours, and conditions of employment established by labor unions having jurisdiction over the type of services performed.

[61] *Building & Construction Trades Council* v. *N.L.R.B*, 328 F. 2d 540; *Orange Belt Dist Council of Painters No. 48* v. *N.L.R.B*, 328 F 2d 534; *District No 9 IAM* v. *N L R B.*, 315 F. 2d 33 (1962); and *Retail Clerks Union Local 770* v *N L R B.*, 296 F 2d 368 (1961).

section 8(e), while union standards subcontracting clauses are primary as to the contracting employer. Here, the court found that since the clause only required union standards, and not union recognition, the clause was primary, and thus outside section 8(e)'s prohibitions. The same court in *Meat and Highway Drivers, Local 710, supra*, ruled similarly on another union standards subcontracting clause [62] which the Board had found violated section 8(e). The Board's basic reason for finding the clause illegal was that a work standards clause accords "the union a veto over the decision as to who may receive the signatory employer's contracts" by defining "the persons with whom the signatory employer may and may not do business with." This view, drawing the distinction that clauses which regulate "who" may receive subcontracting work are secondary, while only clauses which regulate "when" subcontracting occurs are primary, was rejected by the court. Contrary to the Board's finding, the court also held lawful a work allocation [63] clause in the *Meat and Highway Drivers* case, *supra*. The Board has held that since the deliveries allocated by the clause were not bargaining unit work, they could not be the subject of a clause which would allocate that work to the bargaining unit. Therefore the clause provided for "work acquisition," not "work preservation," and was consequently secondary in nature. In the court's view, delivery in the Chicago area, irrespective of the origin of the shipment, was work fairly claimable by the union. The clause was an attempt on the part of the union to maintain and regain the local delivery jobs for members of the bargaining unit and was typical primary activity valid under section 8(e).

L. Remedial Order Provisions

1. Reimbursement of Hiring Hall Fees

In *Local 138, IUOE* [64] the Second Circuit remanded for further consideration a Board order which required a union to reimburse all individual nonmembers in full for permit fees paid by them as a condition of referral by a hiring hall operated by the union. The court, although enforcing the cease-and-desist portions of the Board's order relating to the union's unlawful referral system, did not agree with the Board's conclusion that there was "blanket discrimination" in the

[62] The clause provided that if the employer did not have sufficient equipment to make deliveries within the Chicago city limits, it may contract with any company whose truck-drivers enjoy the same or greater wages and other benefits as provided in its contract with the union

[63] The clause provided that truck shipments by each meatpacker to its customers within Chicago be made from a Chicago distribution facility of the employer "by employees covered by this agreement."

[64] *Local 138, IUOE* v. *N.L.R.B.* (*Nassau and Suffolk Contractors Assn.*), 321 F. 2d 130

operation of the system but held that the record merely showed "some" discrimination against certain nonmembers. The court agreed with the Board that the permit fees were excessive,[65] but remanded to the Board for determination the question of the degree of the excess, and to consider which proportion of fees paid was reasonably related to the value of the services provided by the union, "having in mind also the cost to the union of performing such services. Any excess over that amount could properly be ordered returned to the men who paid it." Similarly, in *Local 1351, ILA*,[66] the District of Columbia Circuit remanded a Board order which required the union and employers, jointly and severally, to reimburse all nonunion employees for the percentages of their wages paid to secure referral by a hiring hall, the operation of which the Board had found discriminated in favor of the union members. While the Board's order was enforced in full otherwise, the court held some charge for the use of hiring hall to be lawful and that, "while the discrimination against nonmembers may have reduced the value of services they received, the value of the services was not so minimal that no charge therefor could be considered reasonable." The court held that to require a refund of all the percentages would be "punitive" since it would do more than remedy the inequity borne by nonmembers. The case was remanded to the Board to determine "such proportion of the fees paid as was reasonably related to the service provided by the union, having in mind the cost to the union of providing the services."

2. Appropriateness of Order Directing Withdrawal of Recognition and Setting Aside Contract

In *Reliance Steel Products Co.*,[67] the Fifth Circuit enforced a Board order based upon findings of violations of section 8(a)(3), (2), and (1), which required the employer to cease and desist from lending further unlawful assistance to the union, and to make whole the discharged employees for any losses in pay. However, the court held that, under the circumstances, the Board had improperly ordered the company to withdraw recognition from the union and to cease giving effect to its contract with it until the union was duly certified. It therefore denied enforcement of that part of the Board's order. Notwithstanding acts of assistance rendered the incumbent local of the Pipefitters during an organizing campaign conducted by District 50,

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[65] The fees entitled nonmembers only to the use of the hiring hall but were equal to the monthly dues payable by union members

[66] *Local 1351, Steamship Clerks and Checkers, ILA* v *N L R.B* (*Houston Maritime Assn.*), 329 F. 259.

[67] *N.L.R.B.* v *Reliance Steel Products Co.*, 322 F. 2d 49.

UMW, the two unions and the employer entered into a consent-election agreement and the election was won by the incumbent Plumbers. District 50 filed objections to the conduct of the election which were rejected as untimely, having been filed after expiration of the 5-day period for filing.[68] Unfair labor practice charges were then filed and a complaint issued based upon the same conduct which had been the basis for the objections. The Board's order was issued in that proceeding. In the court's view, "to sustain the Board in this particular would, in effect, set aside the results of an election in disregard of the Board's rules and regulations, in derogation of a stipulation agreement among the parties, and in contravention of the decisional doctrine that elections will not be open to attack based on conduct which occurred prior to the stipulation agreement cut-off date." The Board may not, the court held, do indirectly, by way of a remedy for unfair labor practice charges, that which its own rules prevented it from doing directly by way of consideration of objections to such election.

[68] Board's Rules and Regulations, Section 102 69.

IX

Injunction Litigation

Sections 10 (j) and (l) authorize application to the U.S. District Courts, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunction Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, to petition a district court, after issuance of an unfair labor practice complaint against an employer or a labor organization, "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1964, the Board filed 18 petitions for temporary relief under the discretionary provisions of section 10(j)—14 against employers and 4 against unions.[1] Injunctions were obtained in seven cases and denied in two cases, and one case was dismissed on procedural grounds. Of the remaining cases, four were settled prior to court action, one petition was withdrawn, and three were pending at the end of the report period. Orders were granted against employers in five cases, one of which involved the employer's continued recognition of and assistance to a company employees' union, three involved the employer's refusal to bargain with a representative certified by the Board, and the remaining case involved threats to discourage union organization and illegal discharges.[2] Orders were obtained against unions in two cases, one of which involved alleged union coercion of its members to prevent their testifying in Board proceedings, and one which involved an alleged violation of the union's obligations to bargain in good faith.

In *Waukesha Lime & Stone* [3] the holding of a private election among employees of a unit after a trial examiner's recommended order had

[1] See table 20 in appendix.

[2] However, in *Davis* v. *Ferrantello d/b/a Texas Poultry & Egg Co.* (D C N. Tex., Dallas Div), Apr. 14, 1964, 56 LRRM 2316; 49 LC ¶18,945, the court found reasonable cause to believe there had been 8(a) (1) and (3) violations, but held it had no jurisdiction to require respondents to bargain notwithstanding an alleged 8(a) (5) charge.

[3] *Madden* v. *Waukesha Lime & Stone Co., Inc.* (D.C.E. Wis) Dec. 5, 1963, No. 63–C–281 (unreported).

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issued requiring the employer to recognize and bargain with a designated union as employee representative was enjoined by the court. The Board had refused to process the petition of the rival union in view of the pending unfair labor practice proceedings. Based on a Board complaint that the proposed private election was a further violation of the Act, the 10(j) petition was initiated to avoid any possible extension of recognition by the employers to the rival union, pending final Board adjudication of the issues. In reaching its decision the court pointed out that the polling of union sympathies by an interested employer absent special circumstances has been consistently held by the Board and courts to be in violation of section 8(a)(1). And in *Evans Mfg. Co.*,[4] a district court enjoined an employer's continued recognition of and assistance to an incumbent union.

In *Texas Poultry & Egg Co.*,[5] a district court granted an injunction, finding reasonable cause to believe that the employer had, by coercive statements and discharges, violated section 8(a)(1) and (3). The court, however, refused to enjoin an alleged refusal to bargain, holding that its jurisdiction, limited to the granting of a temporary injunction to preserve the status quo, did not include the power to grant a mandatory injunction requiring the respondent to bargain with the union. However, in *Holland Die Casting*,[6] another 10(j) proceeding, a district court entered an injunction requiring the employer to bargain with the union, and to disestablish a committee assisted in violation of section 8(a)(2) of the Act. And in *Kuhne-Simmons*,[7] a district court enjoined a union from interfering with or coercing its members from testifying in proceedings before the Board.

An injunction sought pursuant to section 10(j) was denied in *Armco Steel*[8] by a district court considering the case after issuance of a trial examiner's decision which found that the company had violated section 8(a)(1) by enforcing against a rival union seeking to represent its employees a broad waiver of distribution and solicitation rights contained in an existing bargaining agreement. In denying the injunction, the court took cognizance of the Board's decision in *Gale Products*[9] which reversed established cases upholding the validity of such waiver clauses. Noting that *Gale Products* was pending on appeal, and that respondent had relied on validity of the clauses for

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[4] *Johnston* v. *Evans Mfg. Co. et al*, 223 F Supp 766 (D.C E N C.).

[5] *Davis* v. *Ferrantello d/b/a Texas Poultry & Egg Co*, Case No. CA3-460 (D.C N. Tex, Dallas Div), 49 LC ¶18,945, decided Apr. 14, 1964, 56 LRRM 2316.

[6] *Brooks* v *Holland Die Casting & Plating Co., Inc.*, Case No. 4718 (D C W. Mich., S. Div.), decided Apr. 30, 1964 (unreported)

[7] *Madden* v. *Local 703, International Hod Carriers*, Case No 2134-D (D C E Ill.), decided Dec. 9, 1963 (unreported).

[8] *Getreu* v *Armco Steel Corp*, Case No. 5661 (D C S. Ohio), 50 LC ¶19,108, decided June 12, 1964, 56 LRRM 2501.

[9] 142 NLRB 1246.

many years, the court held that on the present state of the law, the clause was binding and effective. To hold it binding on all "except those who don't like it" would, the court said, be destructive of the entire provision, "and perhaps destructive of the entire collective bargaining process."

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4) (A), (B), (C),[10] or section 8(b)(7),[11] and against an employer or union charged with a violation of section 8(e),[12] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In section 8(b)(7) cases, however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1964, the Board filed 252 petitions for injunctions under section 10(l).[13] In several cases, legal issues of substantial importance to the nature of the injunction proceeding were determined. These included cases in which the courts entered orders permitting the continuance of picketing under limited conditions, and decisions

[10] Sec 8(b)(4) (A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers 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)

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

[12] 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.

[13] See table 20.

concerning the availability of discovery procedures in the injunction proceeding.

1. Conditional Orders

In two cases district courts, though granting an injunction, permitted the continuance of picketing in modified form. In *Restaurant Management, Inc.*,[14] the court found the union had engaged in picketing which was lawful "informational" picketing under the second proviso of section 8(b) (7) (C), up to a certain date when the picket signs were changed, with substantial delivery stoppages thereafter resulting. It found the change in the nature of the union's activity disclosed by the change in signs sufficient to warrant the regional director's belief that the Act was thereby violated, and granted injunctive relief. The court concluded that "[i]n the circumstances of this case the union should be enjoined from picketing other than informational picketing of the kind carried out prior to July 31st" but that it should be permitted informational picketing on one street "where it will not induce stoppage of deliveries," and on another "on condition it shall cease there if it induces stoppages of deliveries or services." Upon the regional director's later showing that the picketing continued to interfere with deliveries, the court modified its order as to the latter situation. Similarly, the court in *Fisher Construction Co.*,[15] although finding reasonable cause to believe section 8(b) (7) and 8(b) (4) (B) were being violated by the union's picketing and that injunctive relief was warranted, concluded "[i]n light of all that has taken place up to now," it should enjoin all picketing only for a period of 2 weeks "to serve as a change of pace." Thereafter it was to be permitted, "with a limited number of pickets and subject to certain conditions" including court approval of the legend on the picket signs.

2. Court Deference to Board on Determination of Issues

In two cases decided during the year courts issued injunctions to preserve the status quo pending Board determination of undecided issues. In *Dutch Lane Apartments*[16] the union's defense to an 8(b) (7) (C) petition was that there was no reasonable cause to believe the Board would take jurisdiction, and there was no violation of the Act, as the Board would not process a 9(c) petition where a "one-man unit" was involved. As to the jurisdictional aspects, the court could not find a specific Board standard to fit the case, but noted that the Board has

[14] *Samoff* v. *Hotel, Motel & Club Employees' Union Local 568*, 223 F. Supp 762 (D C.E Pa.).

[15] *Samoff* v. *Building & Construction Trades Council of Philadelphia*, Nov. 8, 1963 (D.C E. Pa.), Civ No. 34322 (unreported).

[16] *McLeod* v. *Local 32–E, Building Service Employees International Union*, 227 F. Supp. 242 (D.C.S N.Y.).

the power to take jurisdiction over cases which do not come within its enunciated standards. On that basis the court preserved the "status quo" until the Board had an opportunity to decide this issue. Likewise, on the merits, the court, citing *Al & Dick's Steak House*[17] for authority that the Board will not direct an election in a one-man unit, noted that despite a dismissal of the petition for an election in that case, the Board had stated, "We express no opinion, of course, as to whether the picketing involved in such charges is violative of 8(b)(7)." For this reason the court held that it was a matter for the Board to determine if there has been a violation, and issued an injunction.

The court in *Westinghouse Broadcasting Corp.*[18] also acted to preserve issues for the Board as well as to prevent a potentially conflicting determination by staying arbitration proceedings until the Board acted. The employer refused a union request to arbitrate an alleged breach of a clause in its collective-bargaining contract and, instead, filed an 8(e) charge alleging the union was seeking to "implement or give effect" to an illegal clause by its demand to arbitrate a grievance arising from its breach. In granting the Board's application for an injunction upon finding reasonable cause to believe that the clause in question was violative of section 8(e), the court also enjoined the arbitration proceeding since if the Board ultimately found the clause violative of section 8(e), it would be unenforceable and void, and could not form the basis for an enforceable arbitration award.

3. Applicability of Discovery Procedures

In two cases where regional directors refused to testify or submit documents in court proceedings, the court dismissed the applications for injunctions for failure to comply with the discovery provisions of the Federal Rules of Civil Procedure which they held to be applicable in section 10(l) proceedings. The regional director's refusal to answer questions initiated by respondent under the discovery provisions of the F.R.C.P. in *Milk Wagon Drivers Union*[19] was predicated on the ground that section 10(l) proceedings require that the Board merely allege and show "reasonable cause" to believe that a violation has occurred, and therefore an inquiry into the facts underlying the regional director's belief is irrelevant and immaterial to the litigable issues before the court. In rejecting the Board's contentions, the court held that unless district courts are merely to be "rubber stamps" in issuing 10(l) injunctions, evidence establishing "reasonable cause" will have to be presented, and if discovery is not permitted, respondents will face

[17] 129 NLRB 1207.

[18] *McLeod* v. *American Federation of Television & Radio Artists, New York Local,* Case No 64 Civ. 1318 (D C S N Y), 49 LC ¶19,063, decided June 4, 1964, 56 LRRM 2615.

[19] *Madden* v. *Milk Wagon Drivers Local 753, IBT,* 229 F. Supp 490 (D.C N. Ill.).

the possibility of surprise, which the Federal Rules were designed to eliminate.

In *Sealtest Foods*,[20] pending a hearing on a 10(l) petition, the respondents served upon the regional director a *subpoena duces tecum* directing him to appear and testify and to produce certain records in connection with respondent's claim that the regional director, prior to instituting the action, had failed to conduct a hearing and had acted arbitrarily and capriciously. In denying the regional director's motion to quash, the district court permitted the submission of the evidence *in camera*, so that the court could then decide if the documents should be made available. Although agreeing to this procedure, the regional director sought to reserve the right to dismiss the action if the court ruled that any part of the records must be produced. The court then dismissed the case upon respondent's motion. On appeal, the Tenth Circuit affirmed, holding good cause had been shown for production of the documents and that under the Federal Rules of Civil Procedure, it was for the district court to determine whether the documents were privileged and the regional director could not usurp the court's function by attempting to condition the court's inspection of the documents.

4. Enjoining Picketing by Railway Employees' Unions

Secondary picketing by two unions representing only railway employees subject to the Railway Labor Act was enjoined in *B. B. McCormick* [21] by a district court which found reasonable cause to believe that the two unions were acting as agents of unions which were representatives of employees within the purview of the NLRA. Eleven unions representing nonoperating railway employees had struck the Florida East Coast Railway which operates a spur line into the Merritt Island launch area and Cape Kennedy, Florida. The picketing at MILA was conducted solely by two of the unions representing only employees subject to the Railway Labor Act, who were acting pursuant to directions from a master strike team composed, also, of traditional construction craft unions, falling within the Board's jurisdiction, who also represented part of the railway employees. Upon finding reasonable cause to believe that an 8(b)(4)(B) violation had occurred, the court enjoined the traditional craft unions as principals, and the other picketing railway employees' unions as their agents.

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[20] *Sperandeo* v *Milk Drivers & Dairy Employees*, No CA 8096 (D C Col.), decided Aug 12 1963 (unreported); affirmed 334 F. 2d 381 (C A 10), June 8, 1964

[21] *Boire* v *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers*, Case No 64–73 (D C.M D. Fla., (Orlando Div.)), decided June 18, 1964 (unreported).

X

Contempt Litigation

During fiscal 1964, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 14 cases, 13 for civil contempt and 1 for criminal contempt adjudication. In three of these, the petitions were withdrawn following compliance by respondents during the course of the proceedings;[1] in one, the court held in abeyance a ruling upon the petition, but directed immediate disclosure of business records sought by the Board for backpay computation purposes;[2] in three, the petitions were granted and civil contempt case adjudicated;[3] in the criminal contempt case, guilt was adjudged and the respondents fined a total of $20,000;[4] in two other cases, the issues are before Special Masters to whom the respective courts referred them for trial and recommendation;[5] the remaining four cases are pending in various pretrial stages.[6] In addition, six cases which were commenced prior to fiscal 1964 were disposed of during this fiscal year. Of these, two resulted in findings of civil contempt;[7] two were withdrawn upon full compliance *pendente lite;*[8] and two were settled, with the approval of the court, during the course of hearings before Special Masters.[9]

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[1] *N L R B* v. *Han-Dee Spring & Mfg Co , Inc.* (C.A. 2) ; *N.L R.B.* v. *Associated Wrecking Contractors, Inc.* (C A. 5) No 20,610 ; *N.L R B.* v. *Park Edge Sheridan Meats, Inc ,* in contempt of 323 F. 2d 956 (C A. 2).

[2] *N.L.R.B.* v. *Buncher,* in contempt of 316 F. 2d 928 (C A. 3).

[3] *N.L R.B* v. *ILA, District Council of the Ports of Puerto Rico* (C.A. 1) No. 5403, Supp. ; *N.L.R B.* v. *Local 825, IUOE* in contempt of 322 F 2d 478 (C A 3) ; *N.L R.B.* v *Main Lane Sportswear Corp.* (C A. 2).

[4] *N.L.R B.* v. *Local 825, IUOE,* in contempt of 326 F 2d 218 (C A. 3). The union was fined $15,000, and its president, separately, $5,000.

[5] *N L.R.B* v. *Kohler Co.* in contempt of 300 F 2d 699 (C A.D C) ; *N L R.B* v *McCarthy Motor Sales Co.* in contempt of 309 F. 2d 732 (C A. 7)

[6] *N L.R.B.* v. *Mooney Aircraft, Inc.* in contempt of 310 F. 2d 565 (C.A. 5) ; *N L R B.* v. *Mooney Aircraft, Inc.* in contempt of 328 F. 2d 426 (C.A 5) ; *N.L.R.B.* v. *Mrak Coal Co., Inc.,* No. 18,575 (C.A. 9) ; *N.L R B.* v. *Harry Schwartz Yarn Co., Inc.,* No. 18,353 (C.A. 9).

[7] *N.L R.B.* v *Local 5881, United Mine Workers of America,* 323 F 2d 853 (C A 6) ; *N.L.R B.* v. *Local 777, Taxicab Drivers, Maintenance and Garage Helpers Union, International Brotherhood of Teamsters,* No. 16,418 (C A D.C). In *Local 777,* the decree was entered upon stipulation consummated during hearings before a Special Master.

[8] *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Iron Workers, Local 494, AFL–CIO,* No. 6,676 (C.A. 10) ; *N L.R.B.* v. *ILA, District Council of the Ports of Puerto Rico,* No. 15,296 (C.A.D.C.).

[9] *N.L.R.B.* v. *Deena Artware, Inc ,* 310 F. 2d 470 (C.A. 6) ; *N.L.R.B.* v. *Poray, Inc.,* No. 13,692 (C A. 7).

The settlement in *Deena Artware*,[10] based on charges filed with the Board in 1948, marked the culmination of an extended series of proceedings to impose derivative liability for backpay on companies which were engaged in a single economic enterprise with the company in the basic unfair labor practice case.

The Sixth Circuit in *Local 5881, UMW*,[11] reaffirmed that the court will adopt the report of its Special Master unless his findings of fact are clearly erroneous. In adopting the Master's recommendations, the court also imposed prospective sanctions against the union and its officers to insure obedience to its decree.

Costs, including the Board's expenses for preparing and participating in the contempt proceedings, were assessed against respondents in three cases.[12]

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[10] For reports of prior proceedings, see Twenty-eighth Annual Report (1963), p. 153; Twenty-fifth Annual Report (1960), p. 124; and Twenty-third Annual Report (1958), p 140.

[11] *N L R.B.* v. *Local 5881, UMW,* 323 F 2d 853 (C.A. 6).

[12] *Local 5881, UMW,* 323 F. 2d 853 (C.A. 6); *Local 825, IUOE; N.L R B.* v. *Superior Business Forms,* pursuant to 316 F. 2d 631, 634 (C A. 9).

XI

Miscellaneous Litigation

Litigation engaged in by the Board and the General Counsel during fiscal 1964 for the purpose of aiding or protecting their administrative processes included actions by affected parties to intervene in circuit court proceedings. Other litigation involved diverse issues including reviewability by a district court of an interim order issued in an unfair labor practice proceeding, district court review of Board rulings in representation proceedings, and the enforcement of a *subpoena duces tecum*.

A. Intervention by Affected Parties After Court of Appeals Decision

The Supreme Court has held [1] that the Act gives no authority to private persons to institute proceedings for enforcement of a Board order. This exclusive authority rests with the Board. However, private parties have been permitted to intervene in circuit court proceedings.[2] Recently two circuit courts considered rather novel aspects of the right to intervene. In two cases, motions to intervene were made after the courts had rendered their decisions, by parties before the Board who had not intervened in the courts of appeals proceeding. In *Walter E. Flack*,[3] the Seventh Circuit reversed the Board's dismissal of the complaint alleging that the employer and the union had discriminated against the charging party in violation of the Act and, in effect, directed entry of an order to remedy the unfair labor practice. Thereafter the union and the employer moved to intervene, asserting that in the absence of their joinder the court was without power to direct the entry of an order against them. The court dismissed the motion noting that neither of the movants attempted to intervene prior to the court's final judgment. However, in *Atlas*

[1] *Amalgamated Utility Workers* v *Consolidated Edison Co.*, 309 U.S 261.

[2] *Mine, Mill & Smelter Workers, Local 15* v. *Eagle-Picher Mining & Smelting Co.*, 325 U.S. 335. Though the Board did not seek the writ of certiorari in that case, it appeared in support of the petition.

[3] *Walter E. Flack* v. *N.L.R.B.*, 327 F. 2d 396; company and union petition for mandamus denied 376 U.S. 948.

Linen[4] the Sixth Circuit granted a motion to intervene by a group of employees after its decision had issued, setting aside a Board order in their favor. The purpose of the motion was to obtain standing to file a petition for certiorari with the Supreme Court.

In a third case,[5] the Sixth Circuit denied a petition for a writ of error *coram nobis* to vacate a consent decree issued by the court enforcing a Board order entered pursuant to a settlement agreement between the Board and the respondent employer. The order required, *inter alia*, that the respondent rehire certain employees who had been discharged during the course of a strike, laying off, if necessary, employees who replaced such discharged employees. The petition was filed by three of the employees laid off to permit reinstatement of the discriminatees. The court pointed out that the Act did not vest it with power to entertain an original application for writs *coram nobis*,[6] and further that it was not the appropriate forum in which to vindicate whatever contractual rights the employees may have had in the premises.

B. Reviewable Orders

In *Chicago Automobile Trade Assn.*,[7] the Board prevailed on its appeal from a district court decision enjoining it from proceeding *de novo* in an unfair labor practice case where the trial examiner had recessed the case *sine die*, and disqualified himself because of ill health. The district court[8] had found that even though the association and other respondents had failed to exhaust their administrative remedies, irreparable injury would result in time and money if respondents were forced to defend against the charges *de novo*. The court found also there was no adequate administrative remedy or other remedy, due to the lack of right to an interlocutory appeal to the Board.

In reversing the district court on grounds of lack of jurisdiction of the subject matter, the Seventh Circuit, citing *Myers*[9] and *Vapor Blast*,[10] pointed out that the Board's ultimate decision and order is subject to review before it can be enforced, and section 10 (e) and (f) of the Act affords an exclusive and adequate review procedure, thus precluding exercise of equitable jurisdiction by the district court at

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[4] *N.L.R.B.* v. *Fred H. Johnson, Trustee Under the Will of Clay M. Thomas, Deceased, d/b/a Atlas Linen and Industrial Supply*, Case No. 15,031 (C A 6), dated Nov. 29, 1963.

[5] *N.L.R.B.* v. *Tennessee Products & Chemical Corporation, Roane Electric Furnace Division*, 329 F. 2d 873.

[6] As a civil writ, *coram nobis* was abolished by rule 60(b) of the Federal Rules of Civil Procedure.

[7] *Chicago Automobile Trades Assn.* v *Madden*, 328 F. 2d 766 (C.A. 7), certiorari denied 377 U S. 979.

[8] 215 F. Supp. 828. Twenty-eighth Annual Report (1963), p. 138.

[9] *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U S. 41.

[10] *Vapor Blast Mfg. Co.* v. *Madden*, 280 F. 2d 205 (C A. 7).

this stage of the administrative proceeding. Otherwise, the court pointed out, assertion of district court jurisdiction to enjoin unfair labor proceedings prior to a final Board order is, as found by the Supreme Court in *Myers*, "at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."

C. Representation Proceedings

1. Voting Eligibility of Replaced Economic Strikers

In *Miami Herald Publishing* [11] the employer sought to enjoin the regional director from holding an election among its employees, contending that his decision and direction of election giving permanently replaced economic strikers on strike for less than 12 months the right to vote was arbitrary and capricious, and a denial of due process. A Federal district court entered an order permitting the election to be held but impounding the ballots, subsequently finding the allegations of the complaint sufficient to invoke jurisdiction. Prior to a court hearing on the merits, the Board reconsidered its decision, vacated the election, and, since only one member of the Board has passed upon the employer's prior request for review of the regional director's decision when it had been previously denied,[12] granted another review before the Board. Based on this Board action, the district court dismissed the injunction petition as moot. The Board subsequently ordered a "re-run" election which was held, but later set aside by the Court of Appeals for the District of Columbia Circuit [13] in an action initiated by the union involved. In holding that the union was entitled to have the Board certify the results of the original election, the court of appeals, citing *Leedom* v. *Kyne*,[14] stated that when the Board finds that a question of representation exists, and an election is held, the statutory requirements in section 9(c)(1) that it "shall" certify the results is mandatory. The employer then filed another action in a Federal district court [15] seeking to enjoin the regional director from counting the impounded ballots of the original election on the ground that the Board's decisional pronouncements regarding voting eligibility of replaced economic strikers did not constitute the issuance of regulations on that subject as required by section 9(c)(3), and its failure to issue formal regulations was violative of both the NLRA

[11] *Miami Herald Publishing Co.* v. *Boire*, 209 F. Supp. 561 (D.C S. Fla.).

[12] The Board acted to correct an apparent infirmity in its procedure, as sec. 3(b) authorizes delegation of powers to any group "of three or more members."

[13] *Miami Newspaper Printing Pressmen's Union Local 46* v. *McCulloch*, 322 F. 2d 993.

[14] 358 U S. 184

[15] *Miami Herald Publishing Co.* v. *Boire*, 48 LC ¶18,507, 54 LRRM 2415 (D.C.S. Fla.).

and the Administrative Procedure Act. In granting the injunction the district court stated that the employer had the right to have the court determine if the adoption of such regulations by the Board is a condition precedent to permitting such strikers to vote, and if so, the original election was invalid. The Board has appealed that ruling to the Court of Appeals for the Fifth Circuit.

2. Employer Assistance in Filing Decertification Petition

A hearing officer's rejection of evidence offered by the union in a decertification proceeding tending to show the employer had initiated and fostered the filing of the petition in violation of section 8(a)(2) was the basis of an injunction suit brought by the union in *Lawrence Typographical Union.*[16] Finding that the Board conducted an "appropriate hearing" under the provisions of section 9(c)(1), and that it was within the Board's discretion to exclude, in the representation proceeding, evidence pertaining to unfair labor practices, the court dismissed the action.

3. Expediting Election Procedures

In *Kingsport Press*,[17] the company sought to enjoin the Board from holding an election which it, in order not to disenfranchise replaced strikers who might be eligible voters during the first 12 months of an economic strike, had directed before receipt and consideration of briefs from the parties. The Board ordered an expedited election and directed that replaced strikers would be eligible to vote pursuant to the provisions of section 9(c)(3) "[I]n order to implement to the extent possible the Congressional intent to enfranchise strikers during the first 12 months of an economic strike." The district court dismissed the action for lack of jurisdiction over the subject matter, rejecting a claimed denial of due process and arbitrary action. On appeal, the circuit court, citing *Boire* v. *Greyhound*[18] and *Leedom* v. *Kyne*,[19] affirmed the order of the lower court.

D. Enforcement of *Subpoenas Duces Tecum*

In *O. T. Link*[20] the Board, while investigating charges prior to issuance of a complaint, had obtained an order from a district court requiring a detective and his associates to reveal the contents of a

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[16] *Lawrence Typographical Union, ITU* v. *McCulloch (Kansas Color Press)*, 222 F. Supp. 154 (D C.D C.).

[17] *Kingsport Press, Inc* v *McCulloch*, 49 LC ¶19,082, 56 LRRM 2561 (C A D C).

[18] 376 U.S. 473.

[19] 358 U.S. 184.

[20] *O. T. Link, d/b/a Danville Detective Agency* v. *N.L.R.B.*, 330 F. 2d 437 (C.A. 4).

report prepared in the course of their surveillance of employees engaged in organizational activity, and to identify the person who had hired them. The defendants appealed from an adjudication of contempt for refusing to obey the district court's order on the ground that the Board had no subpena power in a precomplaint investigation over persons not parties to the unfair labor charge. The Fourth Circuit, in affirming the district court, emphasized that the investigative powers set forth in section 11 of the Act do not limit the Board's power of subpena to persons being investigated or proceeded against, and to satisfy the objectives of the Act the administrative power to investigate must be permitted full effect. Thus, in its conduct of a precomplaint investigation the Board is "more analogous to the grand jury," and is limited in its power to subpena only by the requirement that the information sought must be relevant to the inquiry.

Index of Cases Discussed

APPENDIX A

Statistical Tables for Fiscal Year 1964

New Features and Changes From Prior Year's Statistical Tables

Many changes have been made this year in the statistical tables in the Agency's annual report. These changes are designed to increase the usefulness of the tables—existing ones have been expanded to supply greater detail and new tables have been added to reflect changes in the nature of the Agency's work or to increase the type of information available. In changing the tables herein, retention of compatibility with previously issued statistical series has been an overall objective.

For the first time, a glossary of terms used in the tables has been provided. Those making use of the data may, by reference to the glossary, secure an improved understanding of the terms employed. Where greater detail has been added or terminology has been altered, reference to the glossary will assist in enabling valid comparison of data for 1964 with similar classes of information in prior annual reports.

Although every effort has been made to explain the changes made in the tables, questions may arise. Readers are encouraged to communicate with the Board as to such questions and also comment on the new tables by writing to: Chief, Statistical Analysis Branch, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C., 20570.

Changes in General Applying to a Number of Tables:

Titles and column captions describe more specifically the table contents.

Where tables in prior annual reports referred to "unaffiliated unions" (unions not affiliated with AFL–CIO), tables herein have been expanded to include greater detail by subdividing the category into three groups: Teamsters unions (which file a significant portion of the Agency's caseload); other national unions; and unaffiliated local unions.

Other Significant Changes by Table Number:

Table 1A—Unfair Labor Practice Cases Received, Closed, and Pending.
Table 1B—Representation and Union Deauthorization Cases Received, Closed, and Pending.

Data in these tables were formerly contained in a single table (1A) and have been rearranged to facilitate comprehension. Union deauthorization cases have been added to table 1B (formerly listed in table 1 only).

Table 2—Types of Unfair Labor Practices Alleged.

This table has been revised to reflect two types of analysis of allegations contained in unfair labor practice charges filed with the Agency. One type of analysis shows all allegations separately, the same as last year's annual

report (see "Recapitulation" in sections A, B, B1 and B2 of table). The other type of analysis shows allegations in terms of the combinations which actually appear in cases filed. This latter type of analysis was last shown in the 1950 annual report.

Table 3A—Formal Action Taken in Unfair Labor Practice Cases.
Table 3B—Formal Action Taken in Representation and Union Deauthorization Cases.

These tables are expansions of former table 3 In prior years, the *number of cases* in which formal actions were taken was reported throughout the tables. To provide overall continuity, the first column of the revised tables shows the total number of cases in which formal actions were taken. Thereafter, the figures shown are the actual *number* of the respective *formal actions taken.*

In table 3A formal actions previously reported in four broad categories are now provided in substantially greater detail by type of case (see "Types of Cases"—glossary). Those cases previously listed as "10(k) C cases" are now listed in two columns under the heading "CD." Formal actions shown now include backpay specifications and backpay hearings, as well as other supplemental hearings, including remands. Hearings held in C cases are now described as initial unfair labor practice hearings with supplemental hearings and hearings on remand set forth separately. Similarly, greater detail is provided in accounting for trial examiner and Board decisions. "Intermediate Reports" previously listed are comparable with what are now identified as "Initial ULP decisions" under the title "Decisions by trial examiners."

Table 3B now includes "UD" cases which were not reported previously (shown by count of formal actions only; totals are not included in the R-case columns). In representation cases, formal actions taken are reported in total and by type of case (see "Types of Cases"—glossary).

Notices of hearing issued have been eliminated from the table on the ground that they do not constitute a statistically significant formal action.

All decisions on representation issues are presented separately from decisions on objections and/or challenges. Board decisions on review of regional directors' decisions are broken down into those directing election and those dismissing the petition.

Decisions on objections and/or challenges by regional directors are shown for the first itme. Also, for the first time, Board decisions on objections and challenges which had been referred to the Board by regional directors are shown.

Board rulings on objections and challenges in stipulated elections are broken down into two categories: (1) those in which no exceptions were filed to the regional director's report and (2) those which were contested (exceptions filed), requiring Board study and ruling.

Table 4—Remedial Action Taken in Unfair Labor Practice Cases Closed.

This table has been expanded to include greater detail on remedies effected. It has also been rearranged to show employer and union actions on one line following the identification of the action so as to provide totals for similar actions taken by all respondents.

Table 5—Industrial Distribution of Cases Received.
Table 6—Geographic Distribution of Cases Received.

UD (union deauthorization) cases have been added to both tables so that all charges and petitions filed during the year could be included. Data in the first

column—"All cases"—is comparable to that of prior years when data in the "UD" total column are subtracted.

Table 7—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed.

Table 7A—Analysis of Stages of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings.

The method of accounting for the disposition of "Jurisdictional dispute" cases closed "Before issuance of complaint" has been modified. Formerly, a series of footnotes to table 7 explained the details of disposition at this stage. A new table, 7A, now provides an organized framework for the presentation of such data. A jurisdictional dispute case is converted to a CD unfair labor practice proceeding by issuance of complaint (see "Jurisdictional Disputes" in glossary).

Table 9—Disposition of Representation and Union Deauthorization Cases Closed.

A column on UD (union deauthorization) cases has been added to the prior format (but they are not included in the totals in the "All R cases" column).

Table 10—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases.

This table was realigned for clarity and consistency. Data concerning cases closed after an election were grouped together. A total of all cases closed in which an election had been conducted and certification issued is now obtainable on one line, "Certification issued, total."

Three subitems, instead of four, now appear under "Stipulated elections." In prior years, the last subitem, "After postelection decision," covered stipulated decisions to which objections were filed and/or in which challenges were determinative and consequently resulted in a postelection decision by the Board. (Data covering this group of cases—but based on "elections" rather than "cases"—now appear in a new table, 11A.) Stipulated elections are now reported in the same pattern as consent elections; i.e., by stage at which the election agreement was executed.

Table 11A—Elections in Which Certification Issued After Objections to Election Were Filed and/or in Which Determination of Challenges Was Required, Fiscal Year 1964.

This is a new table showing, by type of election and type of case, the number of elections reported in table 11 to which objections to the conduct of election had been filed and/or in which challenges were determinative.

All figures herein are based on elections which resulted in the issuance of certifications. For example, where objections to the conduct of an initial election were filed and such objections were sustained, resulting in a rerun election to which objections were also filed, both sets of objections would be counted as "one"—that is, the *fact* that objections were involved in an election resulting in certification is counted rather than the total number of objections.

Table 11B—Disposition of Objections in Representation Cases Closed.

This is a new table showing the total number of objections to elections filed in representation cases closed during the fiscal year and the disposition of such objections. The figures in this table are not comparable to table 11A because (1) 11B includes all objections even though the representation case in which

the election was held was withdrawn or dismissed (i.e., no certification issued), whereas 11A is based only on cases in which certification issued; and (2) objections filed to an initial election and a rerun election in the same representation case are counted as "two" objections in 11B as against a single count of an election case involving objections in table 11A.

Table 11C—Results of Rerun Elections Held in Representation Cases Closed.

This is a new table showing the number of rerun elections held in cases in which objections were sustained, as shown in table 11B. The results of the rerun elections are shown according to whether or not a union involved was certified, and whether the outcome of the original election was changed.

Table 11D—Objections Filed in Representation Cases Closed, by Party Filing.

This is a new table supplementing table 11B, showing the total number of objections according to the party which filed the objections.

Table 13—Final Outcome of Representation Elections in Cases Closed.
Table 14—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed.

Prior annual reports tables 13, 13A, 14, and 14A, contained data comparable to data in the current tables 13 and 14.

Data formerly presented in tables 13 and 13A may be secured from sections B and C of revised tables 13 and 14.

Data formerly presented in tables 14 and 14A may be secured from section D of revised tables 13 and 14.

The revised tables are now in a form consistent with the monthly "N.L.R.B. Election Report" and summarize data from such report to cover the fiscal year.

Table 15—Geographic Distribution of Representation Elections Held in Cases Closed.

Table 16—Industrial Distribution of Representation Elections Held in Cases Closed.

Decertification elections (RD cases), not included in prior years, have been added to these tables to supply data on the total number of representation elections. As a result, the revised tables are not completely comparable with tables in prior years, but the degree of incomparability is relatively minor since decertification elections are less than 3 percent of the total representation elections.

Table 16 has been further expanded to show the types of industrial "services" involved. Prior years' reports showed total "services" only.

Table 17—Size of Units in Representation Elections Held in Cases Closed.

A column showing cumulative percentages of all elections conducted for each size of unit class has been added. Also added are columns showing the number of elections won and lost as a percentage of all elections conducted in the same size categories. This indicates the frequency of wins and losses by size class.

Table 18—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment [Note: Prior table 18 on Injunction Litigation has been consolidated with table 20].

This is a new table providing information on size of establishments involved in unfair labor practice filings. In order to minimize duplication, the table is based upon unfair labor practice "situations" rather than on "cases" inasmuch as several "cases" may be filed involving one "situation" and, therefore, one establishment. (See glossary for definitions of "situation" and "types of cases.") The table is presented in percentage terms only, this year, because complete data were not furnished in all situations.

Table 19—Litigation for Enforcement or Review of Board Orders.

This table represents a change from similar tables in prior annual reports. A number of the categories in the left-hand column have been reworded slightly, the word "affirmed" having been substituted for "enforced." No change in the nature of the data was made. Since, for the first time, contempt litigation in the courts of appeals is reported, the title "Proceedings decided by the U.S. Courts of Appeals" is *not* comparable to the similar title in prior years. Where, previously, "Cases decided by U.S. Courts of Appeals" was used to describe appellate cases tried, now comparable figures appear opposite "On petitions for review and enforcement." The data herein appearing in the "Total" column are comparable to the data in the "Number" column of prior years. The total "Percent" column has been omitted. New columns to show the number and percentage of court actions, broken down by the kind of respondent, have been added as has the category "Board dismissals." The latter term designates proceedings in which appeals to the courts were taken from Board orders dismissing complaints.

Table 19A—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1964, Compared With 5-year Cumulative Totals, Fiscal Years 1960 Through 1964.

This table supplements the first subsection of table 19 and shows, by each circuit court, the outcome of proceedings decided.

Table 20—Injunction Litigation Under Section 10(e), 10(j), and 10(l).

This table consolidates the data formerly contained in tables 18 and 20. The present data are comparable to the prior tables on a summary basis, the names of complainants and unions having been dropped.

The method of disposition is shown by allegations involved in each type of proceeding. "Inactive," as a means of disposition, refers to cases in which the respondent has withdrawn its objectionable activity and, in order to assure that there is no reinstitution thereof, an injunction petition is filed without requesting a hearing date. This has the effect of suspending action on the petition and is considered a means of disposition since no further action is taken in such cases.

Table 21—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued.

This is the first time a table on miscellaneous litigation has appeared in the annual report to supplement the chapter on this subject contained in the text.

Table 22—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1964

Table 22A—Disposition of Advisory Opinion Cases, Fiscal Years 1960–1964.

Tables on advisory opinion cases (see "AO" under "Types of Cases" in glossary) appear for the first time in this year's annual report.

Table 22 shows the number of such cases received and closed during fiscal year 1964 and the number pending at the end of the fiscal year. They have not been consolidated with table 1 because, uniquely, they are not investigated in any way (as are the cases covered by table 1); instead, they are filed directly with the Board in Washington for consideration.

Table 22A shows the action taken on advisory opinion cases on a fiscal year basis since 1960 when they were first filed following the Landrum-Griffin amendments to the Act.

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceedings 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.

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment. Also included is interest on such moneys, payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed, i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amounts of backpay due discriminatees under a prior Board order or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amounts held by the regional director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the regional director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representatives is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when the other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the result of the election. The challenges in such a case are never resolved, and the certification is based upon the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the regional director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and an adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before a trial examiner pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the trial examiner in his decision; as ordered by the Board in its Decision and Order; or as decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge voluntarily. (See also "Withdrawn Cases.") Cases may also be dismissed by the trial examiner, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and for the final determination of all postelection issues by the regional director.

Election, Directed

Board Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the

original ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b)(1)(A) or (2), or 8(a)(1) and (2) or (3), where, for instance, such moneys were collected pursuant to an illegal hiring-hall arrangement or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the case of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are, further, those in which the decision-making authority of the Board (the regional director in representation cases), as provided in sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the regional director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with the respective U.S. District Courts for injunctive relief under section 10(j) or section 10(l) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with a U.S. Court of Appeals under section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Thereafter, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Case."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purposes of hearing.

Representation Case

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representatives if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same respondent and 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 committeed unfair labor practices in violation of section 8(b) (1), (2), (3), (5), or (6), or any combination thereof.

CC: A charge that a labor organization has committed unfair labor practices under section 8(b)(4) (i) and/or (ii), (A), (B), or (C), or any combination thereof.

CD: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(4) (i) or (ii)(D). Preliminary actions under section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).

CP: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(7) (A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) of the Act.

RC: A petition by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RM: A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RD: A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

Other Cases

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.

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.)

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases:

See "C Cases" under "Types of Cases."

Union Deauthorization Cases:

See "Other cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1964 [1]

	Total	Identification of filing party					
		AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	Individuals	Employers
	All cases						
Pending July 1, 1963	7,397	3,286	824	274	161	1,917	935
Received fiscal 1964	27,403	11,289	4,294	1,045	598	6,643	3,534
On docket fiscal 1964	34,800	14,575	5,118	1,319	759	8,560	4,469
Closed fiscal 1964	26,715	10,962	4,125	1,011	557	6,694	3,366
Pending June 30, 1964	8,085	3,613	993	308	202	1,866	1,103
	Unfair labor practice cases [2]						
Pending July 1, 1963	5,185	1,990	417	145	88	1,791	754
Received fiscal 1964	15,620	5,243	1,314	396	256	5,865	2,546
On docket fiscal 1964	20,805	7,233	1,731	541	344	7,656	3,300
Closed fiscal 1964	15,074	4,900	1,239	367	224	5,917	2,427
Pending June 30, 1964	5,731	2,333	492	174	120	1,739	873
	Representation cases [3]						
Pending July 1, 1963	2,195	1,296	407	129	73	109	181
Received fiscal 1964	11,685	6,046	2,980	649	342	680	988
On docket fiscal 1964	13,880	7,342	3,387	778	415	789	1,169
Closed fiscal 1964	11,546	6,062	2,886	644	333	682	939
Pending June 30, 1964	2,334	1,280	501	134	82	107	230
	Union-shop deauthorization cases [3]						
Pending July 1, 1963	17	----	----	----	----	17	----
Received fiscal 1964	98	----	----	----	----	98	----
On docket fiscal 1964	115	----	----	----	----	115	----
Closed fiscal 1964	95	----	----	----	----	95	----
Pending June 30, 1964	20	----	----	----	----	20	----

[1] See "Glossary" for definition of terms
[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 1964 [1]

	Number of cases						
		Identification of filing party					
	Total	AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	Individuals	Employers
	CA cases						
Pending July 1, 1963	3,653	1,932	412	138	69	1,100	2
Received fiscal 1964	10,695	5,141	1,304	368	195	3,685	2
On docket fiscal 1964	14,348	7,073	1,716	506	264	4,785	4
Closed fiscal 1964	10,189	4,792	1,227	354	170	3,642	4
Pending June 30, 1964	4,159	2,281	489	152	94	1,143	0
	CB cases						
Pending July 1, 1963	943	41	4	7	14	677	200
Received fiscal 1964	2,811	70	9	9	16	2,119	588
On docket fiscal 1964	3,754	111	13	16	30	2,796	788
Closed fiscal 1964	2,958	79	11	9	16	2,228	615
Pending June 30, 1964	796	32	2	7	14	568	173
	CC cases						
Pending July 1, 1963	357	4	0	0	5	7	341
Received fiscal 1964	1,233	7	0	16	25	36	1,149
On docket fiscal 1964	1,590	11	0	16	30	43	1,490
Closed fiscal 1964	1,154	6	0	3	20	27	1,098
Pending June 30, 1964	436	5	0	13	10	16	392
	CD cases						
Pending July 1, 1963	93	8	1	0	0	3	81
Received fiscal 1964	393	15	0	2	2	16	358
On docket fiscal 1964	486	23	1	2	2	19	439
Closed fiscal 1964	328	17	1	1	1	12	296
Pending June 30, 1964	158	6	0	1	1	7	143
	CE cases						
Pending July 1, 1963	43	5	0	0	0	3	35
Received fiscal 1964	69	7	1	0	1	5	55
On docket fiscal 1964	112	12	1	0	1	8	90
Closed fiscal 1964	49	4	0	0	1	4	40
Pending June 30, 1964	63	8	1	0	0	4	50
	CP cases						
Pending July 1, 1963	96	0	0	0	0	1	95
Received fiscal 1964	419	3	0	1	17	4	394
On docket fiscal 1964	515	3	0	1	17	5	489
Closed fiscal 1964	396	2	0	0	16	4	374
Pending June 30, 1964	119	1	0	1	1	1	115

[1] See "Glossary" for definition of terms.

Table 1B.—Representation and Union Deauthorization Cases Received, Closed, and Pending, Fiscal Year 1964 [1]

	Number of cases						
	Total	Identification of filing party					
		AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	Individuals	Employers
	RC cases						
Pending July 1, 1963	1,904	1,294	407	129	72	2	
Received fiscal 1964	10,018	6,041	2,979	649	338	11	
On docket fiscal 1964	11,922	7,335	3,386	778	410	13	
Closed fiscal 1964	9,925	6,058	2,885	644	329	9	
Pending June 30, 1964	1,997	1,277	501	134	81	4	
	RM cases						
Pending July 1, 1963	181						181
Received fiscal 1964	988						988
On docket fiscal 1964	1,169						1,169
Closed fiscal 1964	939						939
Pending June 30, 1964	230						230
	RD cases						
Pending July 1, 1963	110	2	0	0	1	107	
Received fiscal 1964	679	5	1	0	4	669	
On docket fiscal 1964	789	7	1	0	5	776	
Closed fiscal 1964	682	4	1	0	4	673	
Pending June 30, 1964	107	3	0	0	1	103	
	UD cases						
Pending July 1, 1963	17					17	
Received fiscal 1964	98					98	
On docket fiscal 1964	115					115	
Closed fiscal 1964	95					95	
Pending June 30, 1964	20					20	

[1] See "Glossary" for definition of terms

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1964

A CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8(a)

	Number of cases showing specific allegations	Percent of total cases
Subsections of sec 8(a) Total cases	10,695	100 0
8(a)(1)	875	8 2
8(a)(1)(2)	227	2 1
8(a)(1)(3)	6,007	56 2
8(a)(1)(4)	26	2
8(a)(1)(5)	1,826	17.1
8(a)(1)(2)(3)	227	2 1
8(a)(1)(2)(4)	2	(3)
8(a)(1)(2)(5)	81	8
8(a)(1)(3)(4)	223	2 1
8(a)(1)(3)(5)	1,041	9 7
8(a)(1)(4)(5)	3	(3)
8(a)(1)(2)(3)(4)	20	.2
8(a)(1)(2)(3)(5)	106	1 0
8(a)(1)(2)(4)(5)	1	(3)
8(a)(1)(3)(4)(5)	27	3
8(a)(1)(2)(3)(4)(5)	3	(3)

RECAPITULATION [1]

8(a)(1) [2]	10,695	100 0
8(a)(2)	667	6 2
8(a)(3)	7,654	71 6
8(a)(4)	305	2 9
8(a)(5)	3,088	28 9

B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)

	Number of cases showing specific allegations	Percent of total cases
Subsections of sec. 8(b). Total cases	4,856	100 0
8(b)(1)	743	15 3
8(b)(2)	157	3 2
8(b)(3)	178	3 6
8(b)(4)	1,626	33 5
8(b)(5)	1	(3)
8(b)(6)	15	3
8(b)(7)	419	8 6
8(b)(1)(2)	1,541	31 7
8(b)(1)(3)	98	2 0
8(b)(1)(5)	2	.1
8(b)(1)(6)	2	1
8(b)(2)(3)	5	.1
8(b)(2)(6)	1	(3)
8(b)(3)(5)	1	(3)
8(b)(3)(6)	1	(3)
8(b)(5)(6)	1	(3)
8(b)(1)(2)(3)	51	1 1
8(b)(1)(2)(5)	6	1
8(b)(1)(2)(6)	2	1
8(b)(1)(3)(5)	2	.1
8(b)(1)(3)(6)	1	(3)
8(b)(1)(2)(3)(6)	2	.1
8(b)(1)(2)(3)(5)(6)	1	(3)

RECAPITULATION [1]

8(b)(1)	2,451	50 5
8(b)(2)	1,766	36 4
8(b)(3)	340	7.0
8(b)(4)	1,626	33 5
8(b)(5)	14	3
8(b)(6)	26	.5
8(b)(7)	419	8 6

B1. ANALYSIS OF 8(b)(4)

Total cases 8(b)(4)	1,626	100 0
8(b)(4)(A)	68	4 2
8(b)(4)(B)	931	57 2
8(b)(4)(C)	17	1 0
8(b)(4)(D)	393	24 2
8(b)(4)(A)(B)	190	11 7
8(b)(4)(A)(C)	2	1
8(b)(4)(B)(C)	19	1.2
8(b)(4)(A)(B)(C)	6	.4

RECAPITULATION [1]

8(b)(4)(A)	266	16 4
8(b)(4)(B)	1,146	70 5
8(b)(4)(C)	44	2 7
8(b)(4)(D)	393	24 2

B2. ANALYSIS OF 8(b)(7)

Total cases 8(b)(7)	419	100 0
8(b)(7)(A)	105	25.1
8(b)(7)(B)	18	4 3
8(b)(7)(C)	270	64.4
8(b)(7)(A)(B)	5	1 2
8(b)(7)(A)(C)	19	4 5
8(b)(7)(B)(C)	2	.5

RECAPITULATION [1]

8(b)(7)(A)	129	30 8
8(b)(7)(B)	25	6 0
8(b)(7)(C)	291	69 5

C CHARGES FILED UNDER SEC. 8(e)

Total cases 8(e)	69	100 0	Against employers alone	1	1.4
Against unions alone	46	66 7	Against union and employers	22	31 9

[1] A single case may include allegations of violation of more than one subsection of the Act Therefore, the total of the various allegations is greater than the total number of cases.
[2] Subsec. 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.
[3] Less than one-tenth of 1 percent.

Table 3A.—Formal Action Taken in Unfair Labor Practice Cases, Fiscal Year 1964 [1]

Type of formal action taken	Total		Number of formal actions taken by type of case									
						CD				CA	C	
	Cases in which formal actions taken	Number of formal actions taken	CA	CB	CC	Jurisdictional disputes	Unfair labor practices	CE	CP	Combined with CB	Combined with representation cases	Other C combinations
10(k) notice of hearing issued	86	63				63						
Complaints issued	2,415	1,890	1,486	110	108		4	8	26	73	36	39
Backpay specifications issued	71	46	43	2	0		0	0	0	1	0	0
Hearings completed, total	1,592	1,070	806	71	46	33	3	7	14	51	26	13
Initial ULP hearings	1,488	1,022	765	71	46	33	3	7	14	45	25	13
Backpay hearings	51	25	24	0	0		0	0	0	1	0	0
Other hearings	53	23	17	0	0		0	0	0	5	1	0
Decisions by trial examiners, total	1,157	780	587	72	39		3	5	9	31	25	9
Initial ULP decisions	1,071	734	546	70	39		3	5	9	28	25	9
Backpay decisions	57	33	29	1	0		0	0	0	3	0	0
Supplemental decisions	29	13	12	1	0		0	0	0	0	0	0
Decisions and orders by the Board, total	1,252	776	529	75	54	32	2	4	14	30	24	12
Upon consent of the parties	169	107	72	11	15		0	0	1	6	1	1
Adopting trial examiners decisions (no exceptions filed):												
Initial ULP decisions	110	81	65	6	3		0	0	1	1	4	1
Backpay decisions	13	8	7	0	0		0	0	0	1	0	0
Contested												
Initial ULP decisions	883	527	352	56	23	32	2	2	9	22	19	10
Decisions based upon stipulated record	22	20	8	0	8		0	2	2	0	0	0
Supplemental ULP decisions	23	17	11	0	5		0	0	1	0	0	0
Backpay decisions	32	16	14	2	0		0	0	0	0	0	0

[1] Formal actions were taken in connection with the processing of 20,805 ULP cases on docket during fiscal year (See table 1.) See "Glossary" for definition of terms.

Table 3B.—Formal Action Taken in Representation and Union Deauthorization Cases, Fiscal Year 1964 [1]

Type of formal action taken	All R cases, total		Number of formal actions taken by type of case			
	Cases in which formal actions taken	Number of formal actions taken	RC	RM	RD	UD
Initial hearings completed	2,287	2,131	1,916	121	94	3
Decisions issued, total	2,213	2,066	1,881	99	86	2
By regional director	1,997	1,890	1,734	75	81	1
Elections directed	1,807	1,733	1,596	65	72	1
Dismissals on record	190	157	138	10	9	0
By Board	216	176	147	24	5	1
After transfer by regional director for initial decision	162	127	104	20	3	1
Elections directed	102	78	67	8	3	1
Dismissals on record	60	49	37	12	0	0
After review of regional director's decision	54	49	43	4	2	0
Elections directed	46	41	35	4	2	0
Dismissals on record	8	8	8	0	0	0
Decisions on objections and/or challenges, total	770	746	707	25	14	0
By regional director	363	350	335	9	6	0
By Board	407	396	372	16	8	0
In stipulated elections	365	363	341	14	8	0
No exceptions to regional director's report	216	214	198	11	5	0
Exceptions to regional director's report	149	149	143	3	3	0
In ordered elections (after transfer by regional director)	26	18	17	1	0	0
In ordered elections after review of regional director's supplemental decision	16	15	14	1	0	0

[1] Formal actions were taken in connection with the processing of 13,995 representation and union deauthorization cases on docket during fiscal year (See table 1.) See "Glossary" for definition of terms.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1964 [1]

Action taken	Total all	Remedial action taken by—							
		Employer				Union			
		Total	Pursuant to—			Total	Pursuant to—		
			Agreement of parties	Recommendation of trial examiner	Order of Board or court		Agreement of parties	Recommendation of trial examiner	Order of Board or court
A By number of cases involved	[2] 4,202								
Notice posted	2,680	2,018	1,464	84	470	662	509	19	134
Recognition or other assistance withdrawn	113	113	91	0	22				
Employer-dominated union disestablished	32	32	21	2	9				
Employees offered reinstatement	1,161	1,161	842	45	274				
Employees placed on preferential hiring list	146	146	123	3	20				
Hiring hall rights restored	37					37	35	0	2
Objections to employment withdrawn	97					97	75	3	19
Picketing ended	332					332	308	0	24
Work stoppage ended	114					114	108	3	3
Collective bargaining begun	986	859	707	25	127	127	117	1	9
Backpay distributed	1,073	957	724	47	186	116	77	6	33
Reimbursement of fees, dues, and fines	125	69	51	0	18	56	45	0	11
Other conditions of employment improved	316	183	182	0	1	133	126	0	7
Other remedies	68	27	27	0	0	41	41	0	0
B. By number of employees affected:									
Employees offered reinstatement, total	4,044	4,044	2,831	77	1,136				
Accepted	3,004	3,004	2,281	42	681				
Declined	1,040	1,040	550	35	455				
Employees placed on preferential hiring list	595	595	525	6	64				
Hiring hall rights restored	99					99	97	0	2
Objections to employment withdrawn	108					108	86	3	19
Employees receiving backpay:									
From either employer or union	5,124	5,054	3,566	88	1,400	70	53	3	14
From both employer and union	18	18	9	3	6	18	9	3	6
Employees reimbursed for fees, dues, and fines	3,524	2,382	2,006	0	376	1,142	1,000	0	142
C. By amounts of monetary recovery, total	$3,057,180	$2,969,480	$1,060,760	$70,110	$1,838,610	$87,700	$41,990	$2,360	$43,350
Backpay (includes all monetary payments except fees, dues, and fines)	3,001,630	2,940,750	1,038,560	70,110	1,832,080	60,880	18,170	2,360	40,350
Reimbursement of fees, dues, and fines	55,550	28,730	22,200	0	6,530	26,820	23,820	0	3,000

[1] See "Glossary" for definition of terms. Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1964 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 1964 [1]

Industrial group [2]	Unfair labor practice cases								Representation cases				Union deauthorization cases
	All cases	All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD
Total, all industrial groups	27,403	15,620	10,695	2,811	1,233	393	69	419	11,685	10,018	988	679	98
Manufacturing	13,970	7,591	5,994	1,140	228	101	17	111	6,320	5,582	397	341	59
Ordnance and accessories	62	47	39	8	0	0	0	0	15	14	1	0	0
Food and kindred products	1,878	947	747	138	41	4	8	9	925	818	59	48	6
Tobacco manufacturers	12	7	6	1	0	0	0	0	5	5	0	0	0
Textile mill products	433	297	266	22	3	0	1	5	133	111	12	10	3
Apparel and other finished products made from fabric and similar materials	534	371	282	55	14	3	1	16	162	126	31	5	1
Lumber and wood products (except furniture)	452	204	170	19	6	3	1	5	243	200	26	17	5
Furniture and fixtures	566	338	291	38	6	1	0	2	226	198	13	15	2
Paper and allied products	464	217	177	35	2	0	0	3	245	230	7	8	2
Printing, publishing, and allied industries	810	434	302	82	14	25	0	11	373	321	24	28	3
Chemicals and allied products	737	343	265	50	20	3	1	4	390	352	16	22	4
Products of petroleum and coal	181	96	72	10	7	5	1	1	84	74	4	6	1
Rubber products	560	245	202	33	5	1	0	4	313	294	10	9	2
Leather and leather products	235	147	122	22	0	0	0	3	86	76	5	5	2
Stone, clay, and glass products	706	382	280	45	33	12	0	12	323	278	26	19	1
Primary metal industries	991	566	418	111	13	13	0	11	419	386	12	21	6
Fabricated metal products (except machinery and transportation equipment)	1,516	772	636	101	21	8	1	5	735	663	38	34	9
Machinery (except electrical)	1,154	573	474	61	19	7	3	9	578	504	43	31	3
Electrical machinery, equipment, and supplies	1,190	742	576	149	4	7	0	6	443	380	32	31	5
Aircraft and parts	229	146	104	37	2	3	0	0	83	81	1	1	0
Ship and boat building and repairing	101	65	49	11	3	1	0	1	36	31	3	2	0
Automotive and other transportation equipment	531	339	263	67	5	3	0	1	190	168	10	12	2
Professional, scientific, and controlling instruments	168	83	71	7	4	1	0	0	85	70	10	5	0
Miscellaneous manufacturing	460	230	182	38	6	1	0	3	228	202	14	12	2
Agriculture, forestry, and fisheries	4	4	4	0	0	0	0	0	0	0	0	0	0
Mining	413	259	172	36	13	8	3	27	150	135	8	7	4
Metal mining	65	30	22	8	0	0	0	0	35	31	1	3	0
Coal mining	177	147	93	17	9	8	3	17	30	27	3	0	0
Crude petroleum and natural gas production	29	10	9	1	0	0	0	0	19	17	0	2	0
Nonmetallic mining and quarrying	142	72	48	10	4	0	0	10	66	60	4	2	4

Construction	2,772	2,394	700	665	646	216	18	149	377	319	42	16	1
Wholesale trade	2,022	803	617	100	52	2	6	26	1,212	982	152	78	7
Retail trade	3,058	1,506	1,160	187	87	6	6	60	1,537	1,178	249	110	15
Finance, insurance, and real estate	195	96	69	13	10	1	1	2	99	89	1	9	0
Transportation, communication, and other public utilities	3,112	1,912	1,211	480	136	45	12	28	1,191	1,025	87	79	9
Local passenger transportation	234	146	109	32	3	0	0	2	86	73	5	8	2
Motor freight, warehousing, and transportation services	1,890	1,127	741	262	81	19	7	17	757	663	55	39	6
Water transportation	405	336	138	148	28	11	4	7	69	62	4	3	0
Other transportation	86	40	26	5	8	0	0	1	46	39	5	2	0
Communications	275	155	118	21	9	6	1	0	119	89	12	18	1
Heat, light, power, water, and sanitary services	222	108	79	12	7	9	0	1	114	99	6	9	0
Services	1,857	1,055	768	190	61	14	6	16	799	708	52	39	3
Hotel and other lodging places	420	254	202	39	8	2	0	3	166	147	8	11	0
Personal services	258	134	92	25	11	0	2	4	124	108	10	6	0
Automobile repairs, garages, and other miscellaneous repair services	382	147	115	18	10	1	0	3	234	206	18	10	1
Motion picture and other amusement and recreation services	191	130	72	52	4	1	1	0	61	56	2	3	0
Medical and other health services	17	9	5	2	1	1	0	0	8	7	1	0	0
Legal services	1	1	1	0	0	0	0	0	0	0	0	0	0
Educational services	6	5	4	0	1	0	0	0	1	1	0	0	0
Museums, art galleries, botanical and zoological gardens	2	1	1	0	0	0	0	0	1	1	0	0	0
Nonprofit membership organizations	79	68	49	14	2	1	2	0	11	10	1	0	0
Miscellaneous services	501	306	227	40	24	8	1	6	193	172	12	9	2

[1] See "Glossary" for definition of terms.
[2] Source Standard Industrial Classification, Division of Statistical Standards, U S Bureau of the Budget, Washington, 1957

Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1964 [1]

Division and State [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD
Total, all States and areas	27,403	15,620	10,695	2,811	1,233	393	69	419	11,685	10,018	988	679	98
New England	1,290	719	522	120	54	8	0	15	569	498	38	33	2
Maine	129	80	59	9	11	1	0	0	49	42	1	6	0
New Hampshire	51	28	17	8	1	0	0	2	23	18	3	2	0
Vermont	30	13	10	2	1	0	0	0	17	17	0	0	0
Massachusetts	746	417	306	70	28	5	0	8	328	294	18	16	1
Rhode Island	112	69	46	14	3	2	0	4	42	36	6	0	1
Connecticut	222	112	84	17	10	0	0	1	110	91	10	9	0
Middle Atlantic	5,890	3,604	2,236	770	313	120	11	154	2,250	2,001	146	103	36
New York	2,956	1,896	1,128	441	176	65	4	82	1,041	928	67	46	19
New Jersey	1,256	697	461	139	53	15	2	27	545	472	44	29	14
Pennsylvania	1,678	1,011	647	190	84	40	5	45	664	601	35	28	3
East North Central	6,138	3,514	2,489	683	202	79	12	49	2,605	2,239	178	188	19
Ohio	1,725	978	678	214	62	14	1	9	742	663	44	35	5
Indiana	755	411	308	65	25	4	0	9	341	292	27	22	3
Illinois	1,705	1,073	747	207	70	21	9	19	627	524	45	58	5
Michigan	1,466	818	569	166	33	40	1	9	642	544	44	54	6
Wisconsin	487	234	187	31	12	0	1	3	253	216	18	19	0
West North Central	1,983	969	662	131	98	29	4	45	1,009	879	80	50	5
Iowa	262	96	79	6	8	1	0	2	166	154	9	3	0
Minnesota	342	122	88	15	11	2	0	6	218	187	20	11	2
Missouri	918	517	330	88	57	17	3	22	399	346	29	24	2
North Dakota	42	10	9	0	0	0	0	1	32	27	4	1	0
South Dakota	23	4	3	0	0	1	0	0	19	16	0	3	0
Nebraska	173	102	67	15	11	3	0	6	70	62	5	3	1
Kansas	223	118	86	7	11	5	1	8	105	87	13	5	0
South Atlantic	2,988	1,714	1,330	198	122	26	8	30	1,272	1,145	66	61	2
Delaware	81	40	22	6	9	1	0	2	41	38	2	1	0
Maryland	509	222	179	27	10	2	0	4	286	256	21	9	1
District of Columbia	148	61	39	7	6	8	1	0	86	80	1	5	1
Virginia	323	192	148	12	26	5	0	1	131	114	11	6	0

West Virginia	250	153	104	29	12	3	2	3	97	87	6	4	0
North Carolina	358	226	215	11	0	0	0	0	132	130	1	1	0
South Carolina	142	91	84	5	2	0	0	0	51	49	1	1	0
Georgia	373	206	161	28	12	0	5	0	167	147	8	12	0
Florida	804	523	378	73	45	7	0	20	281	244	15	22	0
East South Central	1,518	926	722	147	23	9	1	24	592	538	33	21	0
Kentucky	369	188	151	32	2	2	0	1	181	164	7	10	0
Tennessee	628	397	306	76	7	5	0	3	231	212	12	7	0
Alabama	402	260	202	29	12	2	0	15	142	130	9	3	0
Mississippi	119	81	63	10	2	0	1	5	38	32	5	1	0
West South Central	1,712	968	687	144	86	30	3	18	744	654	45	45	0
Arkansas	223	130	113	11	4	2	0	0	93	81	8	4	0
Louisiana	348	220	135	35	31	13	2	4	128	121	1	6	0
Oklahoma	193	71	57	6	6	0	0	2	122	107	9	6	0
Texas	948	547	382	92	45	15	1	12	401	345	27	29	0
Mountain	1,297	734	512	121	65	24	3	9	557	466	59	32	6
Montana	128	71	58	7	3	0	0	3	56	29	24	3	1
Idaho	104	53	46	3	3	1	0	0	49	41	2	6	2
Wyoming	20	10	7	3	0	0	0	0	10	9	1	0	0
Colorado	455	271	188	50	22	9	0	2	182	158	15	9	2
New Mexico	160	109	61	23	14	9	0	2	51	41	9	1	0
Arizona	183	106	65	19	17	2	1	2	77	67	4	6	0
Utah	92	39	31	6	1	1	0	0	53	44	3	6	0
Nevada	155	75	56	10	5	2	2	0	79	77	1	1	1
Pacific	4,056	2,210	1,332	448	263	68	27	72	1,830	1,355	334	141	16
Washington	358	210	133	50	20	3	0	4	148	107	30	11	0
Oregon	278	131	79	22	17	5	0	8	144	97	37	10	3
California	3,165	1,757	1,043	353	218	59	27	57	1,395	1,030	258	107	13
Alaska	70	42	25	11	3	0	0	3	28	23	5	0	0
Hawaii	185	70	52	12	5	1	0	0	115	98	4	13	0
Outlying areas	531	262	203	49	7	0	0	3	257	243	9	5	12
Puerto Rico	517	259	200	49	7	0	0	3	246	233	8	5	12
Virgin Islands	14	3	3	0	0	0	0	0	11	10	1	0	0

[1] See "Glossary" for definitions of terms
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 7.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1964 [1]

Stage and method of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total number of cases closed	15,074	100.0	10,189	100.0	2,958	100.0	1,154	100.0	328	100.0	49	100 0	396	100 0
Before issuance of complaint	13,077	86 8	8,657	84.9	2,724	92.1	981	85.0	[2] 317	96.7	35	71 5	363	91.7
Adjusted	2,627	17 4	1,800	17.6	383	13 0	340	29 5	-------	-------	7	14 3	97	24 5
Withdrawn	5,659	37 6	3,881	38 1	1,217	41.1	389	33 7	-------	-------	17	34 7	155	39.1
Dismissed	4,474	29.7	2,976	29 2	1,124	38.0	252	21 8	-------	-------	11	22.5	111	28 1
10(k) actions	317	2.1	-------	-------	-------	-------	-------	-------	317	96 7	-------	-------	-------	-------
After issuance of complaint, before opening of hearing	870	5.8	676	6 6	81	2.7	90	7.8	3	.9	7	14.3	13	3.3
Adjusted	638	4 2	524	5 1	48	1.6	48	4.2	0	0	7	14.3	11	2.8
Compliance with stipulated decision	10	.1	7	.1	2	.1	1	.1	0	0	0	.0	0	.0
Compliance with consent decree	94	.6	55	.5	19	6	19	1.6	1	.3	0	.0	0	.0
Withdrawn	105	.7	73	7	11	.4	17	1.5	2	.6	0	.0	2	.5
Dismissed	23	2	17	.2	1	[3]	5	.4	0	.0	0	.0	0	.0
After hearing opened, before issuance of trial examiner's decision	118	8	98	1.0	14	.5	5	4	0	.0	0	.0	1	.2
Adjusted	44	.3	40	.4	3	.1	1	.1	0	.0	0	.0	0	0
Compliance with stipulated decision	2	[3]	2	[3]	0	0	0	.0	0	.0	0	.0	0	.0
Compliance with consent decree	58	.4	43	.5	10	.4	4	.3	0	0	0	0	1	.2
Withdrawn	11	.1	10	.1	1	[3]	0	0	0	.0	0	.0	0	.0
Dismissed	3	[3]	3	[3]	0	0	0	.0	0	0	0	.0	0	.0
After trial examiner's decision, before issuance of Board decision	109	.7	89	.9	16	.5	3	.3	1	.3	0	.0	0	.0
Adjusted	1	[3]	1	[3]	0	.0	0	0	0	.0	0	.0	0	.0
Compliance	104	.7	85	9	15	.5	3	.3	1	.3	0	.0	0	.0
Withdrawn	2	[3]	2	[3]	0	.0	0	0	0	.0	0	.0	0	.0
Dismissed	2	[3]	1	[3]	1	[3]	0	0	0	.0	0	0	0	0
After Board order adopting trial examiner's decision in absence of exceptions	75	5	48	.5	9	3	17	1 5	0	.0	0	0	1	.2
Compliance	33	.2	16	2	7	2	9	8	0	.0	0	0	1	2
Dismissed	42	3	32	.3	2	1	8	7	0	.0	0	0	0	0

After Board decision, before circuit court decree	436	2 9	316	3.1	74	2 5	24	2 1	7	2 1	2	4 0	13	3 3
Compliance	297	2 0	241	2 4	35	1 2	11	1 0	1	3	1	2 0	8	2 0
Withdrawn	6	(3)	0	0	0	.0	0	0	5	1 5	0	0	1	3
Dismissed	130	9	72	7	39	1 3	13	1 1	1	3	1	2 0	4	1 0
Otherwise	3	(3)	3	(3)	0	0	0	0	0	.0	0	.0	0	0
After circuit court decree, before Supreme Court action	339	2 2	263	2 6	35	1 2	31	2 7	0	.0	5	10 2	5	1 3
Compliance	249	1 6	186	1 8	30	1 0	24	2 1	0	0	5	10 2	4	1 0
Dismissed	90	6	77	8	5	.2	7	6	0	.0	0	0	1	.3
After Supreme Court action	50	3	42	4	5	2	3	.2	0	.0	0	0	0	.0
Compliance	45	.3	41	.4	3	.1	1	1	0	0	0	.0	0	.0
Dismissed	5	(3)	1	(3)	2	1	2	1	0	.0	0	.0	0	0

[1] See "Glossary" for definition of terms
[2] CD cases closed in this stage are processed as jurisdictional disputes under sec. 10 (k) of the Act. See table 7A for details of disposition in this stage.
[3] Less than one-tenth of 1 percent.

Table 7A.—Analysis of Stages of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1964 [1]

Stage and method of disposition	Number of cases	Percent of cases
Total number of cases closed before issuance of complaint	317	100.0
Before 10(k) notice	267	84.2
Adjusted	97	30.6
Withdrawn	117	36 9
Dismissed	53	16.7
After 10(k) notice, before opening of 10(k) hearing	24	7.6
Adjusted	9	2.8
Withdrawn	15	4 8
After opening of 10(k) hearing, before issuance of decision and determination	2	.6
Adjusted	1	3
Withdrawn	1	.3
After Board decision and determination of dispute	24	7.6
Compliance with Board determination	16	5 0
Withdrawn	3	1 0
Dismissed by Board	5	1 6

[1] See "Glossary" for definition of terms.

Table 8.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1964 [1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	15,074	100.0	10,189	100.0	2,958	100 0	1,154	100.0	328	100.0	49	100.0	396	100 0
Before issuance of complaint	13,077	86 8	8,657	84 9	2,724	92.1	981	85.0	317	96 7	35	71.5	363	91 7
After issuance of complaint, before opening of hearing	870	5.8	676	6.6	81	2 7	90	7.8	3	.9	7	14 3	13	3 3
After hearing opened, before issuance of trial examiner's decision	118	.8	98	1.0	14	.5	5	.4	0	.0	0	.0	1	.2
After trial examiner's decision, before issuance of Board decision	109	.7	89	.9	16	.5	3	.3	1	.3	0	.0	0	.0
After Board order adopting trial examiner's decision in absence of exceptions	75	.5	48	5	9	3	17	1 5	0	.0	0	0	1	.2
After Board decision, before circuit court decree	436	2 9	316	3.1	74	2.5	24	2 1	7	2.1	2	4.0	13	3.3
After circuit court decree, before Supreme Court action	339	2.2	263	2.6	35	1.2	31	2.7	0	.0	5	10.2	5	1.3
After Supreme Court action	50	.3	42	.4	5	.2	3	.2	0	.0	0	.0	0	.0

[1] See "Glossary" for definition of terms

Table 9.—Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1964 [1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	11,546	100 0	9,925	100.0	939	100 0	682	100 0	95	100.0
Before issuance of notice of hearing	5,919	51 3	4,851	48 9	625	66 6	443	65 0	92	96 7
After issuance of notice of hearing, before close of hearing	3,412	29 5	3,078	31 0	182	19 4	152	22 3	1	1 1
After hearing closed, before issuance of decision	117	1.0	94	.9	18	1 9	5	.7	1	1 1
After issuance of regional director's decision	1,937	16 8	1,766	17 8	93	9 9	78	11 4	1	1.1
After issuance of Board decision	161	1.4	136	1 4	21	2 2	4	.6	0	.0

[1] See "Glossary" for definition of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1964[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD case	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	11,546	100 0	9,925	100 0	939	100 0	682	100 0	95	100.0
Certification issued, total	7,669	66 4	7,032	70 9	402	42 9	235	34 5	34	35 7
After										
Consent election	3,496	30 3	3,195	32 2	191	20 4	110	16 1	8	8 4
Before notice of hearing	2,292	19 9	2,078	20 9	148	15 8	66	9 7	8	8 4
After notice of hearing, before hearing closed	1,176	10 2	1,091	11 0	42	4 5	43	6 3	0	0
After hearing closed, before decision	28	2	26	3	1	1	1	1	0	0
Stipulated election	2,523	21 8	2,336	23 5	126	13 4	61	9 0	0	0
Before notice of hearing	1,251	10 8	1,145	11 5	80	8 5	26	3 8	0	0
After notice of hearing, before hearing closed	1,247	10 8	1,168	11 8	44	4 7	35	5 2	0	0
After hearing closed, before decision	25	2	23	2	2	2	0	0	0	0
Expedited election	19	2	5	1	13	1 4	1	.1		
Regional director-directed election	1,539	13 3	1,417	14 3	62	6 6	60	8 8	26	27 3
Board-ordered election	92	8	79	8	10	1 1	3	.5	0	0
By withdrawal, total	2,872	24 9	2,263	22 8	341	36 3	268	39 3	45	47 5
Before notice of hearing	1,751	15 2	1,287	13 0	253	26 9	211	30 9	42	44 2
After notice of hearing, before hearing closed	878	7 6	755	7 6	71	7 6	52	7 6	1	1 1
After hearing closed, before decision	50	4	39	4	8	9	3	5	1	1 1
After regional director decision and direction of election	178	1 6	167	1 7	9	9	2	3	1	1 1
After Board decision and direction of election	15	1	15	1	0	0	0	0	0	0
By dismissal, total	1,005	8 7	630	6 3	196	20 8	179	26 2	16	16 8
Before notice of hearing	614	5 3	338	3 4	136	14 5	140	20 5	16	16 8
After notice of hearing, before hearing closed	104	9	62	6	21	2 2	21	3 1	0	0
After hearing closed, before decision	13	.1	6	1	6	6	1	1	0	0
By regional director decision	220	1 9	182	1 8	22	2 3	16	2 4	0	0
By Board decision	54	5	42	4	11	1 2	1	1	0	0

[1] See "Glossary" for definition of terms.

Table 11.—Types of Elections Conducted in Cases Closed, Fiscal Year 1964 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board ordered	Regional director directed	Expedited elections under 8(b) (7)(C)
All types, total						
Elections	7,563	3,441	2,438	91	1,577	16
Eligible voters	554,562	163,756	238,767	12,748	138,835	456
Valid votes	501,064	148,345	218,384	11,179	122,757	399
RC cases						
Elections	6,940	3,147	2,280	79	1,434	0
Eligible voters	517,661	146,785	228,378	10,710	131,788	0
Valid votes	468,961	133,255	209,105	9,761	116,840	0
RM cases						
Elections	369	180	109	9	56	15
Eligible voters	20,358	12,370	3,902	1,899	1,740	447
Valid votes	17,612	10,956	3,411	1,293	1,562	390
RD cases						
Elections	220	106	49	3	61	1
Eligible voters	13,732	4,217	6,487	139	2,880	9
Valid votes	12,419	3,851	5,868	125	2,566	9
UD cases						
Elections	34	8	0	0	26	----
Eligible voters	2,811	384	0	0	2,427	----
Valid votes	2,072	283	0	0	1,789	----

[1] See "Glossary" for definition of terms

Table 11A.—Elections in Which Certification Issued After Objections to Election Were Filed and/or in Which Determination of Challenges Was Required, Fiscal Year 1964 [1]

Type of election	All R cases			RC cases			RM cases			RD cases			UD cases		
	Total representation elections	Objections and/or challenges		Total RC elections	Objections and/or challenges		Total RM elections	Objections and/or challenges		Total RD elections	Objections and/or challenges		Total union decertification elections	Objections and/or challenges	
		Number elections involved	Percent of total R elections		Number elections involved	Percent of total RC elections		Number elections involved	Percent of total RM elections		Number elections involved	Percent of total RD elections		Number elections involved	Percent of total UD elections
All types, total	7,529	1,161	15 4	6,940	1,090	15 7	369	46	12 5	220	25	11 4	34	5	14 7
Objections alone or with challenges		851			797			33			21			4	
Challenges only		310			293			13			4			1	
In consent elections, total	3,433	421	12 3	3,147	394	12 5	180	18	10 0	106	9	8 5	8	1	13 8
Objections alone or with challenges		279			259			14			6			1	
Challenges only		142			135			4			3			0	0
In stipulated elections, total	2,438	373	15 3	2,280	353	15 5	109	12	11 0	49	8	16 3	0	0	.0
Objections alone or with challenges		288			273			8			7			0	
Challenges only		85			80			4			1			0	
In expedited elections, total	16	6	37 5	0	0	.0	15	5	33 3	1	1	100 0			
Objections alone or with challenges		4			0			3			1				
Challenges only		2			0			2			0				
In regional director-ordered elections, total	1,551	322	20 8	1,434	309	21 6	56	7	12 5	61	6	9 9	26	4	15 4
Objections alone or with challenges		246			236			4			6			3	
Challenges only		76			73			3			0			1	
In Board-ordered elections, total	91	39	43 0	79	34	43 0	9	4	44 4	3	1	33 3	0	0	0
Objections alone or with challenges		34			29			4			1			0	
Challenges only		5			5			0			0			0	

[1] See "Glossary" for definition of terms.

Table 11B.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1964 [1]

Type of case	Objections filed	Objections withdrawn	Objections ruled upon	Disposition of objections ruled upon			
				Overruled		Sustained [2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All elections	1,003	189	814	531	65 2	283	34 8
RC elections	940	181	759	490	64 6	269	35 4
RM elections	40	6	34	28	82.4	6	17 6
RD elections	23	2	21	13	61.9	8	38.1

[1] See "Glossary" for definitions of terms
[2] See table 11C for rerun elections held after objections were sustained.

Table 11C.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1964 [1]

Type of case	Total rerun elections		Union certified		Union lost		Outcome of original election reversed	
	Number	Percent of total rerun elections	Number	Percent of total rerun elections	Number	Percent of total rerun elections	Number	Percent of total rerun elections
All elections	[2] 220	100 0	78	35 5	142	64 5	81	36 8
RC elections	206	93.7	74	33.7	132	60 0	78	35 5
RM elections	6	2.7	2	.9	4	1 8	2	.9
RD elections	8	3 6	2	9	6	2 7	1	.4

[1] See "Glossary" for definition of terms.
[2] In 63 elections in which objections were sustained, the cases were subsequently withdrawn; therefore no rerun election was conducted.

Table 11D.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1964 [1]

Type of case	Total		By employer		By union		By both parties [2]	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All elections	1,003	100 0	250	24 9	741	73 9	12	1.2
RC cases	940	93 7	236	23 5	694	69 2	10	1.0
RM cases	40	4 0	13	1 3	26	2 6	1	.1
RD cases	23	2 3	1	.1	21	2.1	1	.1

[1] See "Glossary" for definition of terms.
[2] Objections filed by more than one party in the same case are counted as one.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1964

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	34	23	67 6	11	32 4	2,811	975	34 7	1,836	65 3	2,072	73 7	1,485	52 8
AFL-CIO	23	15	65 2	8	34 8	2,220	613	27 6	1,607	72 4	1,591	71.7	1,123	50 6
Teamsters	7	5	71 4	2	28 6	358	219	61. 2	139	38 8	267	74 6	184	51 4
Other national unions	1	0	0	1	100 0	90	0	.0	90	100 0	72	80 0	43	47 8
Local unaffiliated unions	3	3	100. 0	0	0	143	143	100 0	0	0	142	99 3	135	94 4

[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 1964 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						
		Percent won	Total won	AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions		Total	In elections won	In units won by—				In elections where no representative chosen
											AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	
A ALL REPRESENTATION ELECTIONS															
Total representation elections	7,529	57.1	4,296	2,685	1,146	294	171	3,233	551,751	295,230	211,218	35,554	26,148	22,310	256,521
1-union elections	6,659	53 7	3,575	2,300	987	201	87	3,084	400,315	161,031	128,496	21,601	7,932	3,002	239,284
AFL-CIO	4,275	53 8	2,300	2,300				1,975	311,563	128,496	128,496				183,067
Teamsters	1,911	53 6	987		987			924	51,403	21,601		21,601			29,802
Other national unions	343	58 6	201			201		142	22,694	7,932			7,932		14,762
Local unaffiliated unions	130	66 9	87				87	43	14,655	3,002				3,002	11,653
2-union elections	826	82 8	684	365	151	88	80	142	116,725	101,787	56,750	10,982	17,190	16,865	14,938
AFL-CIO v AFL-CIO	199	64 3	128	128				71	21,635	12,877	12,877				8,758
AFL-CIO v Teamsters	251	86 1	216	98	118			35	27,397	24,851	15,322	9,529			2,546
AFL-CIO v Natl	160	86 3	138	75		63		22	36,701	34,177	19,372		14,805		2,524
AFL-CIO v Local	130	95 4	124	64			60	6	19,382	18,742	9,179			9,563	640
Teamsters v Teamsters	4	100 0	4		4			0	136	136		136			0
Teamsters v. Natl	30	90 0	27		15	12		3	2,411	2,093		911	1,182		318
Teamsters v Local	31	87 1	27		14		13	4	5,793	5,656		406		5,250	137
Natl v Natl	2	100 0	2			2		0	225	225			225		0
Natl v Local	18	94 4	17			11	6	1	2,774	2,759			978	1,781	15
Local v. Local	1	100 0	1				1	0	271	271				271	0
3 (or more)-union elections	44	84 1	37	20	8	5	4	7	34,711	32,412	25,972	2,971	1,026	2,443	2,299
AFL-CIO v AFL-CIO v. AFL-CIO	5	20 0	1	1				4	1,496	211	211				1,285
AFL-CIO v AFL-CIO v Teamsters	3	66 7	2	1	1			1	1,388	688	194	494			700
AFL-CIO v. AFL-CIO v. Natl	12	100 0	12	9		3		0	1,627	1,627	699		928		0
AFL-CIO v AFL-CIO v Local	6	83 3	5	3			2	1	2,534	2,389	720			1,669	145
AFL-CIO v Teamsters v Natl	8	87 5	7	3	4	0		1	25,514	25,345	24,016	1,329	0		169
AFL-CIO v. Teamsters v. Local	4	100 0	4	1	2		1	0	1,197	1,197	28	1,144		25	0
AFL-CIO v Natl. v Natl	1	100 0	1	1		0		0	41	41	41		0		0
AFL-CIO v Natl v. Local	1	100 0	1	1		0	0	0	63	63	63		0	0	0
AFL-CIO v. Local v Local	1	100 0	1	0			1	0	749	749	0			749	0
Teamsters v. Teamsters v Natl	1	100 0	1		1	0		0	4	4		4	0		0
Teamsters v Natl v Local	1	100 0	1		0	1	0	0	26	26		0	26	0	0
Natl v Natl. v. Local	1	100 0	1			1	0	0	72	72			72	0	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1964 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						
		Percent won	Total won	AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions		Total	In elections won	In units won by—				In elections where no representative chosen
											AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	
B. ELECTIONS IN RC CASES															
Total RC elections	6,940	58 5	4,062	2,538	1,077	286	161	2,878	517,661	278,077	199,395	32,906	24,223	21,553	239,584
1-union elections	6,101	55 2	3,369	2,170	924	194	81	2,732	370,410	147,977	117,893	20,369	7,007	2,708	222,433
AFL-CIO	3,948	55 0	2,170	2,170				1,778	292,673	117,893	117,893				174,780
Teamsters	1,707	54. 1	924		924			783	46,489	20,369		20,369			26,120
Other national unions	327	59. 3	194			194		133	17,412	7,007			7,007		10,405
Local unaffiliated unions	119	68. 1	81				81	38	13,836	2,708				2,708	11,128
2-union elections	796	82. 5	657	348	146	87	76	139	113,660	98,808	55,530	10,686	16,190	16,402	14,852
AFL-CIO v AFL-CIO	191	63 4	121	121				70	21,378	12,637	12,637				8,741
AFL-CIO v. Teamsters	242	86 0	208	94	114			34	26,427	23,912	14,656	9,256			2,515
AFL-CIO v Natl	157	86 6	136	74		62		21	35,658	33,172	19,367		13,805		2,486
AFL-CIO v. Local	122	95. 1	116	59			57	6	18,881	18,241	8,870			9,371	640
Teamsters v. Teamsters	4	100 0	4		4			0	136	136		136			0
Teamsters v Natl	30	90 0	27		15	12		3	2,411	2,093		911	1,182		318
Teamsters v. Local	30	86. 7	26		13		13	4	5,770	5,633		383		5,250	137
Natl v. Natl	2	100 0	2			2		0	225	225			225		0
Natl v. Local	18	94. 4	17			11	6	1	2,774	2,759			978	1,781	15
3 (or more)-union elections	43	83 7	36	20	7	5	4	7	33,591	31,292	25,972	1,851	1,026	2,443	2,299
AFL-CIO v. AFL-CIO v AFL-CIO	5	20. 0	1	1				4	1,496	211	211				1,285
AFL-CIO v. AFL-CIO v. Teamsters	3	66 7	2	1	1			1	1,388	688	194	494			700
AFL-CIO v. AFL-CIO v. Natl	12	100 0	12	9		3		0	1,627	1,627	699		928		0
AFL-CIO v. AFL-CIO v. Local	6	83. 3	5	3			2	1	2,534	2,389	720			1,669	145
AFL-CIO v. Teamsters v Natl	7	85 7	6	3	3	0		1	24,394	24,225	24,016	209	0		169
AFL-CIO v Teamsters v Local	4	100 0	4	1	2		1	0	1,197	1,197	28	1,144		25	0
AFL-CIO v. Natl. v Natl	1	100 0	1	1		0		0	41	41	41		0		0
AFL-CIO v Natl. v. Local	1	100. 0	1	1		0	0	0	63	63	63		0	0	0
AFL-CIO v. Local v. Local	1	100. 0	1	0			1	0	749	749	0			749	0
Teamsters v. Teamsters v. Natl	1	100. 0	1		1	0		0	4	4		4	0		0
Teamsters v Natl v Local	1	100. 0	1		0	1	0	0	26	26		0	26	0	0
Natl. v. Natl. v. Local	1	100. 0	1			1	0	0	72	72			72	0	0

C ELECTIONS IN RM CASES

Total RM elections	369	45 3	167	95	56	8	8	202	20,358	8,820	5,186	1,125	1,925	584	11,538
1-union elections	348	42 5	148	83	53	7	5	200	18,255	6,786	4,660	952	925	249	11,469
AFL-CIO	196	42 3	83	83				113	9,176	4,660	4,660				4,516
Teamsters	130	40 8	53		53			77	3,061	952		952			2,109
Other national unions	13	53 8	7			7		6	5,254	925			925		4,329
Local unaffiliated unions	9	55 6	5				5	4	764	249				249	515
2-union elections	21	90 5	19	12	3	1	3	2	2,103	2,034	526	173	1,000	335	69
AFL-CIO v. AFL-CIO	6	100 0	6	6				0	212	212	212				0
AFL-CIO v. Teamsters	3	66 7	2	0	2			1	181	150	0	150			31
AFL-CIO v Natl	3	66 7	2	1		1		1	1,043	1,005	5		1,000		38
AFL-CIO v Local	7	100 0	7	5			2	0	373	373	309			64	0
Teamsters v. Local	1	100 0	1		1		0	0	23	23		23		0	0
Local v. Local	1	100 0	1				1	0	271	271				271	0

D. ELECTIONS IN RD CASES

Total RD elections	220	30 5	67	52	13	0	2	153	13,732	8,333	6,637	1,523	0	173	5,399
1-union elections	210	26 4	58	47	10	0	1	152	11,650	6,268	5,943	280	0	45	5,382
AFL-CIO	131	35 9	47	47				84	9,714	5,943	5,943				3,771
Teamsters	74	13 5	10		10			64	1,853	280		280			1,573
Other national unions	3	0	0			0		3	28	0			0		28
Local unaffiliated unions	2	50 0	1				1	1	55	45				45	10
2-union elections	9	88 9	8	5	2	0	1	1	962	945	694	123	0	128	17
AFL-CIO v AFL-CIO	2	50 0	1	1				1	45	28	28				17
AFL-CIO v. Teamsters	6	100 0	6	4	2			0	789	789	666	123			0
AFL-CIO v. Local	1	100 0	1	0			1	0	128	128	0			128	0
3 (or more)-union elections	1	100.0	1	0	1	0	0	0	1,120	1,120	0	1,120	0		0
AFL-CIO v. Teamsters v. Natl	1	100 0	1	0	1	0		0	1,120	1,120	0	1,120	0		0

[1] See Glossary for definitions of terms.

[2] Includes each unit in which a choice as to a 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 1964 [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 affiliates	Teamsters	Other national unions	Unaffiliated local unions		Total	AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	
A ALL REPRESENTATION ELECTIONS													
In all representation elections	498,992	209,776	135,031	36,281	22,285	16,179	53,946	79,564	62,291	8,836	4,807	3,630	155,706
1-union elections	365,290	97,068	76,380	13,633	4,975	2,080	48,703	74,070	57,932	8,215	4,344	3,579	145,449
AFL–CIO	284,435	76,380	76,380				40,094	57,932	57,932				110,029
Teamsters	46,660	13,633		13,633			5,831	8,215		8,215			18,981
Other national unions	20,708	4,975			4,975		2,271	4,344			4,344		9,118
Local unaffiliated unions	13,487	2,080				2,080	507	3,579				3,579	7,321
2-union elections	102,277	83,965	43,538	12,433	15,597	12,397	4,770	4,805	3,772	541	441	51	8,737
AFL–CIO v AFL–CIO	19,065	9,584	9,584				1,543	2,740	2,740				5,198
AFL–CIO v Teamsters	23,472	19,928	10,539	9,389			1,209	804	320	484			1,531
AFL–CIO v Natl	32,330	28,724	15,350		13,374		1,290	877	541		336		1,439
AFL–CIO v Local	16,831	15,838	8,065			7,773	473	203	171			32	317
Teamsters v. Teamsters	115	77		77			38	0		0			0
Teamsters v. Natl	2,124	1,795		905	890		43	119		18	101		167
Teamsters v Local	5,462	5,288		2,062		3,226	40	57		39		18	77
Natl v Natl	180	178			178		2	0			0		0
Natl v Local	2,479	2,367			1,155	1,212	99	5			4	1	8
Local v. Local	219	186				186	33	0				0	0
3 (or more)-union elections	31,425	28,743	15,113	10,215	1,713	1,702	473	689	587	80	22	0	1,520
AFL–CIO v. AFL–CIO v AFL–CIO	1,448	198	198				2	435	435				813
AFL–CIO v AFL–CIO v. Teamsters	1,226	446	179	267			117	130	58	72			533
AFL–CIO v. AFL–CIO v Natl	1,413	1,392	736		656		21	0	0		0		0
AFL–CIO v. AFL–CIO v Local	2,133	1,979	923			1,056	12	58	58			0	84
AFL–CIO v. Teamsters v Natl	23,472	23,019	12,648	9,414	957		297	66	36	8	22		90
AFL–CIO v. Teamsters v. Local	856	838	74	530		234	18	0	0	0		0	0

AFL-CIO v. Natl v Natl	37	37	31		6		0	0	0		0		0
AFL-CIO v. Natl v. Local	58	58	49		7	2	0	0	0		0	0	0
AFL-CIO v. Local v Local	683	678	275			403	5	0	0			0	0
Teamsters v Teamsters v. Natl	4	4		4	0		0	0		0	0		0
Teamsters v Natl v Local	23	23		0	18	5	0	0		0	0	0	0
Natl v Natl v Local	72	71			69	2	1	0			0	0	0

B ELECTIONS IN RC CASES

Total RC elections	468,961	199,022	127,933	34,619	20,894	15,576	49,418	74,706	59,922	8,023	3,329	3,432	145,815
1-union elections	338,928	89,515	70,338	12,824	4,502	1,851	44,566	69,227	55,576	7,404	2,866	3,381	135,620
AFL-CIO	267,614	70,338	70,338				36,661	55,576	55,576				105,039
Teamsters	42,482	12,824		12,824			5,498	7,404		7,404			16,756
Other national unions	16,115	4,502			4,502		1,944	2,866			2,866		6,803
Local unaffiliated unions	12,717	1,851				1,851	463	3,381				3,381	7,022
2-union elections	99,542	81,689	42,507	12,117	15,042	12,023	4,388	4,790	3,759	539	441	51	8,675
AFL-CIO v. AFL-CIO	18,854	9,398	9,398				1,535	2,736	2,736				5,185
AFL-CIO v. Teamsters	22,582	19,223	10,134	9,089			1,052	797	315	482			1,510
AFL-CIO v Natl	31,369	27,962	15,143		12,819		1,123	873	537		336		1,411
AFL-CIO v Local	16,400	15,423	7,832			7,591	457	203	171			32	317
Teamsters v. Teamsters	115	77		77			38	0		0			0
Teamsters v. Natl	2,124	1,795		905	890		43	119		18	101		167
Teamsters v Local	5,439	5,266		2,046		3,220	39	57		39		18	77
Natl v Natl	180	178			178		2	0			0		0
Natl v Local	2,479	2,367			1,155	1,212	99	5			4	1	8
3 (or more)-union elections	30,491	27,818	15,088	9,678	1,350	1,702	464	689	587	80	22	0	1,520
AFL-CIO v. AFL-CIO v AFL-CIO	1,448	198	198				2	435	435				813
AFL-CIO v. AFL-CIO v. Teamsters	1,226	446	179	267			117	130	58	72			533
AFL-CIO v. AFL-CIO v Natl	1,413	1,392	736		656		21	0	0		0		0
AFL-CIO v. AFL-CIO v Local	2,133	1,979	923			1,056	12	58	58			0	84
AFL-CIO v. Teamsters v. Natl	22,538	22,094	12,623	8,877	594		288	66	36	8	22		90
AFL-CIO v. Teamsters v Local	856	838	74	530		234	18	0	0	0		0	0
AFL-CIO v. Natl. v. Natl	37	37	31		6		0	0	0		0		0
AFL-CIO v. Natl. v. Local	58	58	49		7	2	0	0	0		0	0	0
AFL-CIO v. Local v. Local	683	678	275			403	5	0	0			0	0
Teamsters v. Teamsters v Natl	4	4		4	0		0	0		0	0		0
Teamsters v Natl. v Local	23	23		0	18	5	0	0		0	0	0	0
Natl v Natl. v. Local	72	71			69	2	1	0			0	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1964 [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 affiliates	Teamsters	Other national unions	Unaffiliated local unions		Total	AFL-CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	
C ELECTIONS IN RM CASES													
Total RM elections	17,612	5,609	3,388	701	1,028	492	2,130	3,146	1,156	321	1,471	198	6,727
1-union elections	15,734	4,074	2,791	606	473	204	1,847	3,135	1,147	319	1,471	198	6,678
AFL-CIO	7,977	2,791	2,791				1,208	1,147	1,147				2,831
Teamsters	2,473	606		606			285	319		319			1,263
Other national unions	4,566	473			473		327	1,471			1,471		2,295
Local unaffiliated unions	718	204				204	27	198				198	289
2-union elections	1,878	1,535	597	95	555	288	283	11	9	2	0	0	49
AFL-CIO v AFL-CIO	180	172	172				8	0	0				0
AFL-CIO v. Teamsters	173	83	4	79			62	7	5	2			21
AFL-CIO v Natl	961	762	207		555		167	4	4		0	0	28
AFL-CIO v. Local	322	310	214			96	12	0	0			0	0
Teamsters v. Local	23	22		16		6	1	0		0		0	0
Local v. Local	219	186				186	33	0				0	0

D. ELECTIONS IN RD CASES

Total RD elections	12,419	5,145	3,710	961	363	111	2,398	1,712	1,213	492	7	0	3,164
1-union elections	10,628	3,479	3,251	203	0	25	2,290	1,708	1,209	492	7	0	3,151
ALF-CIO	8,844	3,251	3,251				2,225	1,209	1,209				2,159
Teamsters	1,705	203		203			48	492		492			962
Other national unions	27	0			0		0	7			7		20
Local unaffiliated unions	52	25				25	17	0				0	10
2-union elections	857	741	434	221		86	99	4	4	0	0	0	13
AFL-CIO v. AFL-CIO	31	14	14				0	4	4				13
AFL-CIO v. Teamsters	717	622	401	221			95	0	0	0			0
AFL-CIO v. Local	109	105	19			86	4	0	0			0	0
3 (or more)-union elections	934	925	25	537	363	0	9	0	0	0	0	0	0
AFL-CIO v. Teamsters v Natl	934	925	25	537	363		9	0	0	0	0		0

[1] See "Glossary" for definition of terms

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1964 [1]

Division and State [2]	Total elections	Number of elections in which representation rights were won by—				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for—					Employees in units choosing representation
		AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions				AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	No union	
Total, all States and areas	7,529	2,685	1,146	294	171	3,233	551,751	498,992	197,322	45,117	27,092	19,809	209,652	295,230
New England	411	126	64	17	7	197	34,048	30,647	12,037	938	1,348	329	15,995	12,417
Maine	38	13	4	2	1	18	7,412	6,323	2,994	24	843	47	2,415	4,029
New Hampshire	18	4	1	0	0	13	1,775	1,613	457	15	0	0	1,141	98
Vermont	11	5	0	0	0	6	726	669	211	11	30	0	417	179
Massachusetts	234	73	39	9	6	107	15,548	14,190	5,264	598	327	282	7,719	4,722
Rhode Island	29	7	7	2	0	13	2,302	2,134	735	83	25	0	1,291	788
Connecticut	81	24	13	4	0	40	6,285	5,718	2,376	207	123	0	3,012	2,601
Middle Atlantic	1,341	415	258	80	55	533	112,764	103,378	39,980	16,601	5,999	7,742	33,056	67,376
New York	533	158	101	36	28	210	60,243	55,335	22,779	10,684	2,569	4,725	14,578	39,732
New Jersey	339	98	76	13	13	139	21,276	19,288	7,485	3,457	1,029	1,153	6,164	13,037
Pennsylvania	469	159	81	31	14	184	31,245	28,755	9,716	2,460	2,401	1,864	12,314	14,607
East North Central	1 825	645	272	61	33	814	137,351	125,546	50,864	8,446	8,115	3,000	55,121	74,292
Ohio	544	194	75	13	14	248	36,990	33,818	14,251	3,089	1,699	1,187	13,592	20,931
Indiana	231	73	34	10	4	110	19,650	18,080	7,246	1,320	2,377	391	6,746	10,915
Illinois	428	158	54	17	3	196	36,440	33,090	13,710	2,096	1,425	801	15,058	20,468
Michigan	431	151	75	18	8	179	28,417	26,308	10,492	1,368	2,013	347	12,088	16,525
Wisconsin	191	69	34	3	4	81	15,854	14,250	5,165	573	601	274	7,637	5,453
West North Central	660	250	118	11	3	278	32,197	29,058	11,478	3,838	513	250	12,979	16,296
Iowa	112	43	19	4	1	45	5,787	5,400	2,151	382	163	49	2,655	3,118
Minnesota	148	60	23	2	1	62	6,000	5,263	2,066	719	43	19	2,416	3,016
Missouri	248	97	43	5	0	103	15,784	14,366	6,041	1,802	74	159	6,290	7,445
North Dakota	21	7	4	0	0	10	523	459	134	93	0	0	232	223
South Dakota	16	6	3	0	0	7	166	155	53	26	0	0	76	67
Nebraska	51	21	10	0	0	20	1,763	1,400	549	366	0	0	485	1,313
Kansas	64	16	16	0	1	31	2,174	2,015	484	450	233	23	825	1,114

South Atlantic	851	325	107	20	13	386	72,152	66,127	27,113	5,387	2,214	3,223	28,190	39,223
Delaware	25	9	8	0	0	8	1,312	1,271	641	126	0	32	472	814
Maryland	172	57	21	4	4	86	14,879	13,806	3,367	2,445	629	2,921	4,444	8,914
District of Columbia	57	25	11	1	0	20	1,691	1,544	662	192	5	0	685	753
Virginia	102	36	11	4	0	51	7,564	6,918	2,959	220	526	0	3,213	3,615
West Virginia	64	17	8	6	0	33	7,404	7,006	3,174	166	311	[illegible] 0	3,355	2,971
North Carolina	109	46	12	0	1	50	13,159	11,829	5,135	303	21	119	6,251	5,155
South Carolina	30	15	1	0	0	14	4,352	3,964	2,103	92	[illegible] 98	0	1,671	2,886
Georgia	127	64	13	3	0	47	11,746	10,616	5,477	398	245	82	4,414	8,653
Florida	165	56	22	2	8	77	10,045	9,173	3,595	1,445	379	69	3,685	5,462
East South Central	419	154	65	16	2	182	32,550	29,527	11,371	1,803	1,477	164	14,712	16,175
Kentucky	115	29	20	9	0	57	7,531	7,144	2,294	420	667	1	3,762	2,693
Tennessee	166	62	35	7	1	61	13,591	12,260	4,901	802	716	45	5,796	7,630
Alabama	101	43	8	0	0	50	6,694	5,775	2,079	504	94	87	3,011	2,841
Mississippi	37	20	2	0	1	14	4,734	4,348	2,097	77	0	31	2,143	3,011
West South Central	534	230	53	13	12	226	40,050	36,429	15,513	2,353	518	2,394	15,651	22,324
Arkansas	63	28	7	3	0	25	4,947	4,579	2,094	91	128	0	2,266	2,382
Louisiana	96	40	13	1	0	42	5,966	5,558	2,226	777	62	210	2,283	3,402
Oklahoma	81	31	12	0	2	36	5,660	5,239	2,238	380	14	43	2,564	2,379
Texas	294	131	21	9	10	123	23,477	21,053	8,955	1,105	314	2,141	8,538	14,161
Mountain	302	113	51	11	5	122	17,379	15,609	5,489	964	2,115	332	6,709	10,658
Montana	28	11	4	2	1	10	2,401	2,012	768	78	628	242	296	2,062
Idaho	36	15	2	2	0	17	1,340	1,251	484	51	233	14	469	678
Wyoming	11	4	2	1	1	3	205	174	58	25	8	15	68	118
Colorado	96	33	22	2	1	38	5,228	4,671	2,132	363	71	43	2,062	4,135
New Mexico	29	12	3	0	0	14	1,058	960	257	105	0	0	598	353
Arizona	40	13	6	2	0	19	2,691	2,427	1,010	97	760	0	560	1,999
Utah	30	16	2	1	0	11	3,094	2,883	267	92	412	0	2,112	543
Nevada	32	9	10	1	2	10	1,362	1,231	513	153	3	18	544	770
Pacific	1,045	371	153	64	14	443	61,392	53,084	19,854	3,594	4,669	799	24,168	28,559
Washington	90	40	22	2	1	25	1,829	1,561	620	299	46	34	562	1,402
Oregon	91	31	16	0	2	42	3,705	3,232	1,275	136	36	44	1,741	1,359
California	785	275	105	40	11	354	52,855	45,573	16,986	2,822	3,981	712	21,072	23,611
Alaska	9	6	1	0	0	2	321	273	166	4	0	0	103	313
Hawaii	70	19	9	22	0	20	2,682	2,445	807	333	606	9	690	1,874
Outlying areas	141	56	5	1	27	52	11,868	9,587	3,623	1,193	124	1,576	3,071	7,910
Puerto Rico	132	49	5	1	27	50	11,482	9,291	3,423	1,193	124	1,576	2,975	7,650
Virgin Islands	9	7	0	0	0	2	386	296	200	0	0	0	96	260

[1] Representation elections include elections in RC, RM, and RD cases. Similar tables in prior years' annual reports included elections in RC and RM cases only.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representatio n Elections Held in Cases Closed, Fiscal Year 1964 [1]

Industrial group [2]	Total elections	Number of elections in which representation rights were won by—				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for—					Employees in unit choosing representation
		AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions				AFL–CIO affiliates	Teamsters	Other national unions	Unaffiliated local unions	No union	
Total, all industrial groups	7,529	2,685	1,146	294,	171	3,233	551,751	498,992	197,322	45,117	27,092	19,809	209,652	295,230
Manufacturing	4,469	1,717	454	218	109	1,971	418,166	380,247	149,739	23,715	22,165	17,335	167,293	212,415
Ordnance and accessories	10	3	0	2	0	5	1,893	1,719	284	272	310	0	853	781
Food and kindred products	690	197	142	33	21	297	44,032	39,239	14,042	5,476	2,249	1,369	16,103	24,505
Tobacco manufacturers	3	1	1	0	0	1	2,308	1,658	564	537	363	0	189	2,020
Textile mill products	78	27	3	5	4	39	9,544	8,460	3,324	319	203	347	4,267	3,600
Apparel and other finished products, made from fabrics and similar materials	93	40	3	2	2	46	10,542	9,472	4,007	134	265	178	4,888	4,421
Lumber and wood products (except furniture)	157	61	12	8	1	75	9,462	8,583	3,670	327	409	41	4,136	3,821
Furniture and fixtures	144	64	11	1	3	65	13,944	12,820	6,230	234	277	135	5,944	8,051
Paper and allied products	187	82	18	6	4	77	24,495	21,978	10,421	1,122	2,109	862	7,464	13,965
Printing, publishing, and allied industries	242	87	7	51	3	94	8,784	8,094	2,599	486	1,002	52	3,955	3,656
Chemicals and allied products	292	98	38	19	6	131	17,936	16,671	6,501	1,392	1,455	300	7,023	8,308
Products of petroleum and coal	63	21	7	4	3	28	13,260	12,060	3,590	712	2,371	2,492	2,895	9,721
Rubber products	239	88	25	8	1	117	19,214	17,570	7,901	1,159	861	103	7,546	10,539
Leather and leather products	59	24	0	2	1	32	13,896	12,888	5,341	117	282	134	7,014	6,027
Stone, clay, and glass products	217	90	37	10	7	73	12,793	11,652	4,965	974	957	253	4,503	8,581
Primary metal industries	315	139	28	10	9	129	37,181	34,128	12,812	2,817	2,343	3,196	12,960	20,424
Fabricated metal products (except machinery and transportation equipment)	534	248	33	21	10	222	34,605	31,842	14,817	1,563	508	197	14,757	16,668
Machinery (except electrical)	430	162	33	10	17	208	41,800	39,014	16,513	1,603	695	683	19,520	20,441
Electrical machinery, equipment, and supplies	315	112	18	11	13	161	64,281	58,296	17,070	1,865	3,755	6,346	29,260	23,211
Aircraft and parts	55	24	3	4	1	23	8,097	7,498	3,122	851	448	39	3,038	4,958
Ship and boat building and repairing	21	12	1	1	0	7	2,286	1,920	903	16	189	162	650	1,530
Automotive and other transportation equipment	144	70	11	6	0	57	13,139	12,242	6,068	267	663	99	5,145	8,265
Professional, scientific, and controlling instruments	52	20	4	0	0	28	3,900	3,553	1,333	452	63	199	1,506	2,254
Miscellaneous manufacturing	129	47	19	4	3	56	10,774	8,895	3,662	1,020	388	148	3,677	6,668

Mining	86	32	9	10	2	33	5,764	5,185	1,794	127	1,762	59	1,443	4,020
Metal mining	16	6	1	3	0	6	2,485	2,277	881	42	1,037	14	303	2,033
Coal mining	12	0	0	5	1	6	1,168	1,007	25	0	624	23	335	641
Crude petroleum and natural gas production	18	6	1	0	1	10	621	502	189	10	7	22	274	320
Nonmetalic mining and quarrying	40	20	7	2	0	11	1,490	1,399	699	75	94	0	531	1,026
Construction	176	98	5	6	11	56	5,762	4,614	2,450	76	109	164	1,815	3,499
Wholesale trade	799	163	283	16	8	329	15,612	14,492	3,123	3,972	193	316	6,888	7,881
Retail trade	855	326	110	13	14	392	34,770	30,479	11,068	1,972	1,136	636	15,667	14,084
Finance, insurance, and real estate	60	32	1	3	1	23	3,044	2,804	1,382	26	38	37	1,321	2,177
Transportation, communication, and other public utilities	669	177	211	11	10	260	51,502	46,425	22,272	13,237	1,227	703	8,986	40,980
Local passenger transportation	40	14	12	0	1	13	3,775	3,196	1,000	781	0	137	1,278	2,442
Motor freight, warehousing, and transportation services	417	55	186	6	5	165	10,458	9,159	1,397	3,299	112	218	4,133	5,207
Water transportation	26	12	1	0	1	12	725	672	340	12	5	81	234	508
Other transportation	35	16	8	1	2	8	1,983	1,847	1,118	341	4	20	364	1,696
Communication	74	42	0	1	1	30	29,865	27,106	16,293	8,755	580	247	1,231	28,748
Heat, light, power, water, and sanitary services	77	38	4	3	0	32	4,696	4,445	2,124	49	526	0	1,746	2,379
Services	415	140	73	17	16	169	17,131	14,746	5,494	1,992	462	559	6,239	10,174
Hotels and other lodging places	61	28	2	0	2	29	6,114	4,746	2,232	489	4	59	1,962	3,940
Personal services	62	17	15	2	3	25	3,353	3,029	1,198	466	64	119	1,182	2,014
Automobile repair, garage, and other miscellaneous repair services	159	49	42	4	1	63	2,619	2,413	835	461	43	45	1,029	1,501
Motion pictures and other amusement and recreation services	21	6	3	2	4	6	462	397	97	24	9	97	170	235
Medical and other health services	4	1	1	0	1	1	46	44	9	13	0	9	13	39
Nonprofit membership organizations	2	1	1	0	0	0	16	16	4	7	0	0	5	16
Miscellaneous services	106	38	9	9	5	45	4,521	4,101	1,119	532	342	230	1,878	2,429

[1] Representation elections include elections in RC, RM, and RD cases. Similar tables in prior years' annual reports included election in RC and RM cases only.
[2] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington 1957.

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Table 17.—Size of Units in Representation Elections Held in Cases Closed, Fiscal Year 1964 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by—												Elections in which no representative was chosen		
					AFL-CIO affiliates			Teamsters			Other national unions			Unaffiliated local unions					
					Number	Percent by size class—		Number	Percent by size class—		Number	Percent by size class—		Number	Percent by size class—		Number	Percent by size class—	
						of total elections	of elections won		of total elections	of elections won		of total elections	of elections won		of total elections	of elections won		of total elections	of elections won
A. CERTIFICATION ELECTIONS (RC & RM)																			
Total RC & RM elections	538,019	7,309	100.0		2,633	36.0	100.0	1,133	15.5	100 0	294	4 0	100.0	169	2 3	100 0	3,080	42 2	100.0
1-9	9,916	1,704	23 3	23.3	558	32.8	21.2	491	28.8	43 3	79	4 6	26 9	29	1 7	17 2	547	32.1	17.8
10-19	22,489	1,599	21 9	45 2	543	34.0	20 6	306	19 1	27.0	72	4.5	24 5	31	1.9	18.3	647	40 5	21.0
20-29	21,380	886	12 1	57 3	350	39 5	13 3	116	13.1	10.2	26	2.9	8 8	23	2.6	13 6	371	41 9	12.0
30-39	20,611	603	8 3	65 6	239	39 6	9 1	57	9 5	5.0	19	3.2	6 4	18	3.0	10.7	270	44.7	8.8
40-49	18,529	419	5.7	71 3	163	38 9	6 2	38	9 1	3 4	18	4.3	6.1	11	2.6	6 5	189	45.1	6.1
50-59	17,810	327	4 5	75 8	127	38 8	4 8	26	8 0	2 3	9	2.8	3.1	10	3 0	5.9	155	47.4	5.0
60-69	14,570	228	3 1	78.9	90	39.5	3 4	17	7 5	1 5	5	2 2	1.7	4	1.7	2 3	112	49 1	3.6
70-79	12,608	170	2.3	81.2	75	44.1	2.9	6	3.5	5	4	2.4	1.4	5	2 9	3 0	80	47.1	2.6
80-89	10,210	121	1.7	82.9	53	43.8	2 0	8	6 6	.7	5	4.1	1.7	4	3 3	2.3	51	42.2	1.7
90-99	12,190	129	1.8	84.7	47	36 4	1 8	8	6.2	7	5	3.9	1 7	3	2 3	1.8	66	51.2	2 1
100-149	47,123	391	5.3	90 0	142	36 3	5 4	24	6.1	2 1	14	3.6	4 8	10	2 6	5 9	201	51.4	6.5
150-199	39,182	227	3.1	93.1	79	34 8	3 0	11	4 8	1 0	7	3 1	2.4	3	1.3	1.8	127	56.0	4 1
200-299	50,707	209	2.8	95 9	69	33.0	2.6	10	4 8	9	10	4 8	3.4	5	2.4	3 0	115	55 0	3 8
300-399	37,183	107	1.5	97.4	31	29.0	1.2	5	4.7	.4	6	5 6	2 0	1	.9	.6	64	59 8	2.1
400-499	22,604	51	.7	98.1	18	35.3	.7	3	5.9	.3	5	9 8	1.7	3	5.9	1.8	22	43 1	.7
500-599	18,812	35	.5	98 6	11	31.4	.4	3	8.6	.3	2	5 7	.7	2	5.7	1.2	17	48.6	.6
600-799	28,902	42	.6	99.2	18	42.8	.7	2	4.8	.2	1	2.4	.3	1	2.4	.6	20	47 6	.6
800-999	9,685	11	.2	99.4	4	36.4	.2	0	.0	.0	2	18.2	.7	0	.0	.0	5	45.4	.2
1,000-1,999	48,058	35	.5	99.9	10	28.6	.4	2	5.7	.2	4	11 4	1.4	4	11.4	2.3	15	42 9	.5
2,000-2,999	14,410	6	.1	100 0	3	50 0	.1	0	.0	.0	1	16 7	.3	1	16.7	.6	1	16.6	(2)
3,000-3,999	9,664	3	(2)	100.0	1	33.3	(2)	0	.0	.0	0	.0	.0	0	.0	.0	2	66 7	.1
4,000-4,999	8,627	2	(2)	100 0	0	.0	.0	0	.0	.0	0	.0	.0	1	50.0	.6	1	50 0	(2)
5,000-9,999	18,749	3	(2)	100 0	1	33 3	(2)	0	.0	.0	0	.0	.0	0	.0	.0	2	66.7	.1
10,000 and over	24,000	1	(2)	100.0	1	100.0	(2)	0	.0	.0	0	.0	.0	0	.0	.0	0	.0	.0

B DECERTIFICATION ELECTIONS (RD)

Total RD elections	13,732	220	100 0		52	23 6	100 0	13	5 9	100 0	0	0	0	2	9	100 0	153	69 6	100 0
1-9	339	59	26 8	26 8	5	8 5	9 6	5	8 5	38 5	0	0	0	0	0	.0	49	83 0	32 0
10-19	738	53	24 1	50 9	8	15 1	15 4	3	5 7	23 0	0	0	0	0	0	0	42	79 2	27 4
20-29	683	27	12 3	63 2	8	29 6	15 4	0	0	0	0	0	0	0	0	0	19	70 4	12 4
30-39	587	17	7 7	70 9	5	29 4	9 6	1	5 9	7 7	0	0	0	0	0	0	11	64 7	7 2
40-49	353	8	3 6	74 5	1	12 5	1 9	0	0	0	0	0	0	1	12 5	50 0	6	75 0	3.9
50-59	386	7	3 2	77 7	5	71 4	9 6	0	0	0	0	0	0	0	0	0	2	28 6	1 3
60-69	388	6	2 7	80 4	1	16 7	1 9	0	0	0	0	0	0	0	0	0	5	83 3	3 3
70-79	446	6	2 7	83 1	3	50 0	5 8	0	0	0	0	0	0	0	0	0	3	50 0	2 0
80-89	175	2	9	84 0	0	0	0	0	0	0	0	0	0	0	0	0	2	100 0	1 3
90-99	475	5	2 3	86 3	1	20 0	1 9	2	40 0	15 4	0	0	0	0	0	0	2	40 0	1 3
100-149	1,440	12	5 5	91 8	4	33 4	7 7	1	8 3	7 7	0	0	0	1	8 3	50 0	6	50 0	3 9
150-199	1,320	8	3 6	95 4	6	75 0	11 5	0	0	0	0	0	0	0	0	0	2	25 0	1 3
200-299	729	3	1 4	96 8	2	66 7	3 9	0	0	0	0	0	0	0	0	0	1	33.3	.7
300-399	665	2	9	97 7	0	0	0	0	0	0	0	0	0	0	0	0	2	100 0	1 3
400 and over	5,008	5	2 3	100 0	3	60 0	5 8	1	20 0	7 7	0	0	0	0	.0	0	1	20 0	.7

[1] See "Glossary" for definition of terms.
[2] Less than one-tenth of 1 percent

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment, Fiscal Year 1964 [1]

Size of establishment (number of employees)	Total		Type of situations															
			CA		CB		CC		CD		CE		CP		CA-CB combinations		Other C combinations	
	Percent of all situations [2]	Cumulative percent of all situations	Percent by size class—		Percent by size class—		Percent by size class—		Percent by size class—		Percent by size class—		Percent by size class—		Percent by size class—		Percent by size class—	
			of all situations	of CA situations	of all situations	of CB situations	of all situations	of CC situations	of all situations	of CD situations	of all situations	of CE situations	of all situations	of CP situations	of all situations	of CA-CB situations	of all situations	of other C situations
	100.0	-------	68 0	100 0	12.4	100 0	7 3	100.0	2.1	100.0	0 4	100.0	2 6	100 0	6.0	100.0	1.2	100 0
1-24	33 5	33 5	67 6	32 6	9.1	27 3	10 6	50.8	2.0	33 2	4	42 5	4 6	57 6	3 8	21.3	1.9	50 3
25-49	17.7	51.2	73 1	18.5	10 0	15 7	6 6	16 4	1 8	16 2	(3)	3 0	2 8	18.2	4 7	13.8	1.0	14 7
50-74	9 3	60.5	75 9	10 2	8 9	7.4	4 3	5.6	1.2	5.7	.4	12 2	2 2	7.6	6.1	9.5	1 0	7.7
75-99	5.6	66.1	68 8	5 5	10 3	5 2	7 4	5 9	1 8	5 2	.5	9 1	1 2	2.5	8 8	8.2	1.2	5 6
100-149	6 7	72.8	74 2	7.1	9 8	5 9	3.9	3 7	3 0	10 0	.1	3 0	1.3	3 2	6 7	7 5	1.0	5 6
150-199	5.5	78.3	73 2	5 9	11 7	5 7	3.6	2 8	1 9	5.2	2	3 0	.9	1.9	7 9	7 2	.6	2 8
200-299	5.2	83.5	71 6	5 4	15 8	7 3	4 3	3 2	1 2	3 1	.0	.0	7	1.3	5 6	4 9	.8	3 5
300-399	3 0	86 5	72.4	3.1	12.4	3 3	3 8	1 6	1 4	2 2	.0	.0	1 1	1 3	7 8	3 9	1.1	2 8
400-499	2 4	88 9	58.5	2.0	17 8	3 9	7 4	2.6	3 9	4 8	.7	6.1	1.8	1 6	8 5	3.4	1.4	2.8
500-599	1.3	90 2	72.5	1.3	9.4	1 1	4 6	.9	2.7	1 7	.0	0	.7	3	9 4	2.0	.7	7
600-799	1.5	91 7	62.1	1 3	16.6	2.1	8 3	1.7	1 8	1.3	6	3.0	.6	3	10 0	2 4	.0	0
800-999	1.5	93.2	53.7	1 2	20.3	2.8	6 8	1.5	1.1	.9	.6	3 0	2.2	1 3	15 3	3 9	.0	0
1,000-1,999	2 6	95 8	60.3	2 3	19.7	4 6	5 2	2.0	4.9	6 5	.3	3 0	1.3	1 3	7 6	3.3	.7	1 4
2,000-2,999	1 1	96 9	54.2	.9	22.1	2.2	3 8	.6	1 5	.9	.0	.0	.8	3	16 8	3.2	.8	7
3,000-3,999	.6	97 5	65 7	.5	17.9	.9	0	.0	.0	.0	0	.0	4.5	1.0	10 4	1.0	1 5	7
4,000-4,999	.6	98 1	48.5	.4	26 5	1 4	1 5	.1	4.4	1 3	2 9	6.1	.0	.0	14 7	1 4	1.5	7
5,000-9,999	.8	98 9	63.0	.7	20.7	1 5	4 3	.5	2 2	.9	1 1	3.0	1.1	.3	7.6	1.0	.0	.0
10,000 and over	1.1	100 0	69.2	1.1	16 5	1 7	8	.1	1.5	.9	.8	3 0	.0	.0	11.2	2.1	.0	.0

[1] See "Glossary" for definition of terms.
[2] Represents 89 8 percent of all situations received. Absolute figures are not provided because complete data for entire year are not available.
[3] Less than one-tenth of 1 percent.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1964, and Cumulative Totals, Fiscal Years 1936–1964

	Fiscal year 1964									July 5, 1935–June 30, 1964	
	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	259	193	43	11	12						
On petitions for review and for enforcement	244	184	37	11	12	100	100	100	100	2,719	100
Board orders affirmed in full	134	105	20	1	8	57	54	9	67	1,559	57
Board orders affirmed with modification	53	41	7	5	0	22	19	46	0	546	20
Remanded to Board	10	4	3	0	3	2	8	0	25	104	4
Board orders partially affirmed and partially remanded	3	1	1	1	0	1	3	9	0	33	1
Board orders set aside	44	33	6	4	1	18	16	36	8	477	18
On petitions for contempt	15	9	6	0		100	100	0			
Compliance after filing of petition, before court order	5	4	1	0		44	17	0			
Court orders holding respondent in contempt	10	5	5	0		56	83	0			
Court orders denying petition	0	0	0	0		0	0	0			
Proceedings decided by U S. Supreme Court	6	3	1	0	2	100	100	0	100	152	100
Board orders affirmed in full	5	3	0	0	2	100	0	0	100	96	63
Board orders affirmed with modification	0	0	0	0	0	0	0	0	0	13	8
Board orders set aside	1	0	1	0	0	0	100	0	0	26	17
Remanded to Board	0	0	0	0	0	0	0	0	0	3	2
Remanded to court of appeals	0	0	0	0	0	0	0	0	0	11	7
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	0	0	0	0	1	1
Contempt case remanded to court of appeals	0	0	0	0	0	0	0	0	0	1	1
Contempt cases enforced	0	0	0	0	0	0	0	0	0	1	1

[1] "Proceedings" are comparable to "Cases" reported in prior annual reports. The new term more accurately describes the data inasmuch as a single proceeding often includes more than one case. See "Glossary" for definition of terms.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the court of appeals

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1964 Compared With 5-Year Cumulative Totals, Fiscal Years 1960 Through 1964 [1]

Circuit Courts of Appeals	Total fiscal year 1964	Total fiscal years 1960–64	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded				Set aside			
			Fiscal year 1964		Cumulative fiscal years 1960–64		Fiscal year 1964		Cumulative fiscal years 1960–64		Fiscal year 1964		Cumulative fiscal years 1960–64		Fiscal year 1964		Cumulative fiscal years 1960–64		Fiscal year 1964		Cumulative fiscal years 1960–64	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	244	863	134	55	452	52	53	24	182	21	10	2	56	7	3	1	17	2	44	18	156	18
1	12	51	4	33	21	41	2	17	8	16	0	0	6	12	0	0	5	10	6	50	11	22
2	21	102	13	62	63	62	5	24	21	21	1	5	9	9	1	5	2	2	1	5	7	7
3	23	75	15	65	49	65	2	9	12	16	2	9	3	4	0	0	0	0	4	17	11	15
4	15	47	8	53	23	49	1	7	7	15	0	0	2	4	0	0	0	0	6	40	15	32
5	44	148	23	52	79	53	15	34	39	26	0	0	3	2	0	0	3	2	6	14	24	16
6	35	100	21	60	54	54	8	23	19	19	0	0	2	2	0	0	1	1	6	17	24	24
7	26	87	14	54	37	43	5	19	19	22	0	0	3	3	0	0	0	0	7	27	28	32
8	17	41	7	41	21	51	6	35	14	34	0	0	0	0	0	0	1	2	4	24	5	12
9	20	90	13	65	39	43	1	5	20	22	2	10	10	11	0	0	1	1	4	20	20	22
10	10	37	5	50	26	70	3	30	5	14	2	20	2	5	0	0	0	0	0	0	4	11
D C	21	85	11	52	40	47	5	24	18	21	3	14	16	19	2	10	4	5	0	0	7	8

[1] Percentages may not add up to 100 because of rounding.

Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1964

Allegations involved in injunctions sought	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district courts June 30, 1964
		Pending in district courts July 1, 1963	Filed in district courts fiscal year 1964		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e)	0	0	0	0	0	0	0	0	0	0	0
Under sec. 10(j), total	18	0	18	15	7	2	4	1	1	0	3
8(a)(1)	2	0	2	2	0	1	1	0	0	0	0
8(a)(1)(3)	3	0	3	1	0	1	0	0	0	0	2
8(a)(1)(2)(3)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)(4)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(5)	2	0	2	1	1	0	0	0	0	0	1
8(a)(1)(3)(5)	5	0	5	5	3	0	0	1	1	0	0
8(b)(1)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(b)(1)(A)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(1)(B)(3)	1	0	1	1	0	0	1	0	0	0	0
Under sec. 10(l), total	262	10	252	252	80	13	64	12	4	79	10
8(b)(4)(A)	6	0	6	6	1	0	3	0	0	2	0
8(b)(4)(B)	119	4	115	112	32	3	24	4	0	49	7
8(b)(4)(D)	33	1	32	31	14	3	12	1	1	0	2
8(e)	12	3	9	12	5	1	6	0	0	0	0
8(b)(7)(A)	4	0	4	3	0	0	0	1	2	0	1
8(b)(7)(B)	5	1	4	5	2	1	1	0	0	1	0
8(b)(7)(C)	20	0	20	20	10	3	3	1	0	3	0
8(b)(4)(A)(B)	22	0	22	22	3	1	4	0	0	14	0
8(b)(4)(B)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)(D)	18	1	17	18	4	1	4	4	0	5	0
8(b)(4)(A)(B)(D)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B) and (7)(A)	2	0	2	2	0	0	0	0	0	2	0
8(b)(4)(B)(C) and (7)(A)	2	0	2	2	1	0	0	1	0	0	0
8(b)(4)(C) and (7)(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B) and (7)(C)	5	0	5	5	2	0	2	0	0	1	0
8(b)(4)(A)(B) and (7)(C)	2	0	2	2	0	0	2	0	0	0	0
8(b)(4)(A)(B) and 8(e)	8	0	8	8	3	0	3	0	1	1	0
8(b)(4)(B) and 8(e)	1	0	1	1	0	0	0	0	0	1	0

Table 21.—Miscellaneous Litigation Involving NLRB: Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1964

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
Total—all types	41	38	3	19	17	2	22	21	1
NLRB-initiated actions	4	3	1	3	2	1	1	1	0
To enforce subpena	2	2	0	2	2	0	0	0	0
To restrain dissipation of assets by respondent	1	0	1	1	0	1	0	0	0
To defend board's jurisdiction	1	1	0	0	0	0	1	1	0
Other	0	0	0	0	0	0	0	0	0
Action by other parties	37	35	2	16	15	1	21	20	1
To restrain NLRB from	31	30	1	13	13	0	18	17	1
Proceeding in R-case	24	23	1	10	10	0	14	13	1
Proceeding in unfair labor practice case	4	4	0	2	2	0	2	2	0
Proceeding in backpay case	1	1	0	1	1	0	0	0	0
Other	2	2	0	0	0	0	2	2	0
To compel NLRB to	6	5	1	3	2	1	3	3	0
Issue complaint	3	3	0	2	2	0	1	1	0
Seek injunction	1	1	0	0	0	0	1	1	0
Take action in R-case	2	1	1	1	0	1	1	1	0
Other	0	0	0	0	0	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1964

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1963	0				
Received fiscal 1964	19	7	9	1	2
On docket fiscal 1964	19	7	9	1	2
Closed fiscal 1964	12	5	5	1	1
Pending June 30, 1964	7	2	4		1

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Years 1960 Through 1964

Action taken	Fiscal year				
	1960	1961	1962	1963	1964
Total cases closed	9	17	10	23	12
Board would assert jurisdiction	5	4	7	13	4
Board would not assert jurisdiction	2	9	2	2	4
Unresolved because of insufficient data submitted				2	2
Dismissed	1	1	1	4	2
Withdrawn	1	3		2	

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