TWENTY-THIRD

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1958

TWENTY-THIRD

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1958

LIBRARY
NATIONAL LABOR RELATIONS BOARD

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. • 1959

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington 25, D.C. - Price 55 cents (paper)

NATIONAL LABOR RELATIONS BOARD

Members of the Board

BOYD LEEDOM, *Chairman*

PHILIP RAY RODGERS
JOSEPH ALTON JENKINS

STEPHEN S. BEAN
JOHN H. FANNING

Chief Counsel to Board Members

HARRY H. KUSKIN

THOMAS F. MAHER
JOHN F. FUNKE

THOMAS B. SWEENEY
WILLIAM C. BAISINGER

FRANK M. KLEILER, *Executive Secretary*
JAMES V. CONSTANTINE, *Solicitor*
WILLIAM R. RINGER, *Chief Trial Examiner*
LOUIS G. SILVERBERG, *Director of Information*
J. NEAL TOMEY, *Director, Division of Administration*

Office of the General Counsel

JEROME D. FENTON, *General Counsel*

WALTER C. PHILLIPS
Associate General Counsel
Division of Operations

THOMAS MCDERMOTT
Associate General Counsel
Division of Law

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 5, 1959.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-third Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1958, 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.

BOYD LEEDOM, *Chairman.*

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

Washington, D. C.

28,098

LIBRARY NATIONAL LABOR RELATIONS BOARD

TABLE OF CONTENTS

CHAPTER	Page
I. Operations in Fiscal Year 1958	1
1. Decisional Activities of the Board	2
2. Activities of the General Counsel	3
a. Representation Cases	3
b. Unfair Labor Practice Cases	4
c. Types of Unfair Labor Practices Charged	4
d. Division of Law	5
3. Division of Trial Examiners	5
4. Results of Representation Elections	5
5. Fiscal Statement	6
II. Jurisdiction of the Board	7
1. New Jurisdictional Standards	8
2. Jurisdiction Over Employers Refusing To Furnish Commerce Data	9
3. Enterprises Subject to Board Jurisdiction	10
a. Oil Operations on Outer Continental Shelf	10
b. Vessels of Foreign Registry	10
4. Application of Jurisdictional Standards	11
a. Outflow and Inflow Standard	11
b. Period Used in Determining Volume of Business	12
III. Representation Cases	13
1. Showing of Employee Interest To Justify Election	14
a. Sufficiency of Showing of Interest	14
2. Existence of Question of Representation	15
a. Certification Petitions	15
b. Decertification Petitions	16
c. Disclaimer of Interest	16
3. Qualification of Representatives	18
a. Filing Requirements	18
(1) Participation in Election by Noncomplying Union	19
b. Other Questions of Qualification	20
(1) Craft Representatives	20
4. Contract as Bar to Election	21
a. Execution and Ratification of Contract	22
b. Duration of Contract	23
c. The Contract Unit	23
d. Terms of Contract	24
(1) Illegal Union-Security Agreements	25
e. Change in Identity of Contracting Party	26
f. Effect of Rival Petition	27
(1) Timeliness in Case of Automatic Renewal Contract	27
g. Effect of Rival Claims—The 10-Day Rule	28
h. Premature Extension of Contract	28
5. Impact of Prior Determinations	29

CHAPTER Page

III. Representation Cases—Continued

6. Unit of Employees Appropriate for Bargaining 30
   a. Factors Considered 30
      (1) Bargaining History 31
      (2) Employees' Wishes in Unit Determinations 31
      (3) Extent of Organization 32
   b. Craft and Quasi-Craft Units 32
      (1) Automotive Mechanics as Craftsmen 33
      (2) Welders as Craftsmen 33
      (3) Multicraft Units 34
      (4) Craft and Departmental Severance 35
   c. Units in Integrated Industries 35
   d. Multiemployer Units 36
      (1) Scope of Multiemployer Unit 37
      (2) Withdrawal From Multiemployer Unit 37
   e. Plant Guards 38
   f. Individuals Excluded From Bargaining Unit by the Act 38
      (1) Agricultural Laborers 39
      (2) Independent Contractors 40
      (3) Supervisors 40
   g. Employees Excluded From Unit by Board Policy 41
      (1) Confidential Employees 41
      (2) Managerial Employees 42
7. Conduct of Representation Elections 43
   a. Voting Eligibility 43
      (1) Effect of Eligibility List 44
   b. Timing of Elections 45
   c. Standards of Election Conduct 46
      (1) Mechanics of Election 46
         (a) Opportunity to vote 46
         (b) Secrecy of ballot 47
      (2) Interference With Election 48
         (a) Preelection speeches—the 24-hour rule 48
         (b) Election propaganda and campaign tactics 49
         (c) Employee interviews 52
         (d) Preelection concessions 53
         (e) Threats and promises 54

IV. Unfair Labor Practices 55

A. Unfair Labor Practices of Employers 55
   1. Interference With Section 7 Rights 55
      a. Interrogation 57
      b. Prohibitions Against Union Activities 57
         (1) Strike Date Signs 58
      c Refusal To Furnish Employee's Work Record to Prospective Employer 58
   2 Employer Domination or Support of Employee Organizations 59
      a. Domination of Labor Organization 59
      b. Assistance and Support 59
         (1) *Midwest Piping* Doctrine Reaffirmed 60
      c. Remedies in Section 8 (a) (2) Cases 61
         (1) Remedial Elections in Case of Assistance to Noncomplying Union 62

CHAPTER Page

IV. Unfair Labor Practices—Continued

A. Unfair Labor Practices of Employers—Continued

3. Discrimination Against Employees 63
   a. Discrimination for Protected Activities 63
   b. Forms of Discrimination 64
      (1) Disparate Treatment of Represented Employees 65
      (2) Plant Removal 66
         (a) Remedy for unlawful removal of operations 66
      (3) Discriminatory Employment Practices 67
      (4) Discrimination Under Union-Security Agreements 70
         (a) Execution, maintenance, and enforcement of illegal agreements 70
         (b) Illegal enforcement of valid union-security provisions 71
4. Refusal To Bargain in Good Faith 71
   a. Representative's Majority Status 71
   b. Representative's Request To Bargain 72
   c. Subjects for Bargaining 73
      (1) Waiver 73
   d. Violation of Bargaining Duty 74
      (1) Unilateral Action 74
      (2) Refusal To Furnish Information 76
         (a) Wage information 76
         (b) Information as to ability to grant wage increase 77
         (c) Waiver 77

B. Union Unfair Labor Practices 78

1. Restraint and Coercion of Employees 78
   a. Picketing of Minority Union as Restraint or Coercion 80
2. Causing or Attempting To Cause Illegal Discrimination 82
   a. Indirect Pressure To Discriminate 82
   b. Discriminatory Practices and Agreements 83
      (1) Discriminatory Employment Practices 84
         (a) Exclusive hiring-hall agreements 85
      (2) Discrimination Under Union-Security Agreements 86
         (a) Illegal enforcement of union-security agreements 87
3. Refusal To Bargain in Good Faith 88
   a. Evidence of Bad Faith—Harassing Tactics 88
   b. Insistence on Bargaining in Inappropriate Unit 89
   c. Effect of Disclaimer of Representative Status 90
4. Secondary Strikes and Boycotts 91
   a. Inducement or Encouragement of Employees To Strike 91
   b. Neutrality of Secondary Employer 93
   c. Common Situs Picketing 95
5. Strikes for Recognition Against Certification 97
6. Jurisdictional Disputes 98
   a. Proceedings Under Section 10 (k) 99
      (1) Disputes Subject to Determination 100
      (2) Voluntary Adjustment 101
   b. Violation of Section 8 (b) (4) (D) 102

V. Supreme Court Rulings 104

1. Violation of Bargaining Duty—Conditions on Bargaining 104
2. Enforcement of No-Solicitation Rule During Employer's Antiunion Campaign 106

CHAPTER Page

V. Supreme Court Rulings—Continued
3. "Hot Cargo" Agreement Not a Defense to Secondary Boycott Charges 107
a. Direct Appeal to Employees 108
b. Validity of Hot-Cargo Agreements 109
4. Remedy in Case of Employer Assistance of Noncomplying Union 110
5. Validity of the Board's Subpena Procedures 111
a. Issuance of Subpenas 112
b. Revocation of Subpenas 112
VI. Enforcement Litigation 114
1. Employer Unfair Labor Practices 114
a. Contractual Limitations on the Right To Strike as Affected by Section 502 114
b. The Section 8 (a) (2) Ban on Domination or Interference With "Labor Organizations" 115
c. Refusal To Bargain 115
2. Union Unfair Labor Practices 117
a. Discrimination Under Section 8 (b) (2) 117
(1) Discriminatory Administration of a Referral System 117
(2) The Effect of an Employee's Belated Tender of Union Dues or Initiation Fees 118
(3) Union Bargaining Obligations Under Section 8 (b) (3) 119
b. Secondary Boycotts 119
(1) The Status of a Political Subdivision as a "Person" 120
(2) "Common Situs" Picketing 121
c. Union Pressure in Furtherance of Jurisdictional Claims Under Section 8 (b) (4) (D) 124
VII. Injunction litigation 126
A. Injunctions Under Section 10 (j) 127
B. Injunctions Under Section 10 (l) 130
1. Secondary Boycott Situations 130
a. Ambulatory Picketing 132
b. Union Bylaws 134
c. Nonneutral Defense 134
2. Injunctions Against Strikes Involving Board Certifications 135
3. Jurisdictional Dispute Situations 136
VIII. Contempt Litigation 138
IX. Miscellaneous Litigation 139
1. Subpena Enforcement 139
2. Discovery in Anticipation of Contempt Proceedings 140
3. Petitions for Judicial Intervention in Representation Proceedings 141
Appendix A. Statistical Tables for Fiscal Year 1958 143

TABLES IN APPENDIX A

(Statistical Tables for Fiscal Year 1958)

TABLE		Page
1.	Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1958	143
1A.	Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1958	144
2.	Types of Unfair Labor Practices Alleged, Fiscal Year 1958	145
3.	Formal Actions Taken, by Number of Cases, Fiscal Year 1958	145
4.	Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1958	146
5.	Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1958	147
6.	Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1958	148
7.	Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1958	149
8.	Disposition of Representation Cases Closed, Fiscal Year 1958	149
9.	Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1958	150
10.	Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1958	152
11.	Types of Elections Conducted, Fiscal Year 1958	153
12.	Results of Union-Shop Deauthorization Polls, Fiscal Year 1958	154
13.	Collective-Bargaining Elections by Affiliation of Participating Unions, Fiscal Year 1958	154
13A.	Outcome of Collective-Bargaining Elections by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1958	155
14.	Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1958	156
14A.	Voting in Decertification Elections, Fiscal Year 1958	156
15.	Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1958	157
16.	Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1958	158
17.	Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1958	160
18.	Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1958	161
19.	Litigation for Enforcement or Review of Board Orders, July 1, 1957–June 30, 1958, and July 5, 1935–June 30, 1958	161
20.	Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1958	162

I

Operations in Fiscal Year 1958

Fiscal year 1958 was a historic one in the annals of the National Labor Relations Board. Both the volume and the character of the caseload were marked by significant changes.

Unprecedented in the history of the Board were the total number of cases filed, 16,748. More cases were closed, 14,779, than in any year since 1953. More hearings were held, 2,586, than in any year since 1954. More decisions, 2,493, were issued by the Board than in any year since 1955.

And, for the first time since 1941, charges of unfair labor practices constituted a majority of all cases filed; that is, the number of charges of unfair labor practices exceeded the number of petitions for collective-bargaining elections.

In the field of *unfair labor practice cases:*

1. The number of unfair practice charges filed was the greatest in the history of the statute. The total of 9,260 charges represented an increase of 68 percent over the 5,506 filed during the preceding fiscal year, 1957.

2. The number of charges filed against either employers or unions was likewise unprecedented. Charges filed against employers numbered 6,068, an increase of 66 percent over the 3,655 charges filed in fiscal 1957; and 3,192 were filed against labor organizations, an increase of 72 percent over the 1,851 charges filed in 1957.

3. For the first time, charges filed by individuals constituted a majority of all charges of unfair labor practices. Individuals filed 5,410, or 58 percent, of all charges filed. Of the 5,410 charges, 3,412 were filed against employers, and 1,998 against labor organizations.

4. More unfair labor practice cases were closed—handled to conclusion—by the agency than ever before. A total of 7,289 unfair practice cases were closed, an increase of 42 percent over the 5,144 cases closed in the preceding year.

5. More complaints in unfair labor practice cases were issued by the General Counsel than in any year since 1953. A total of 822 cases involved complaints, 456 against employers and 366 against labor organizations.

6. The number of petitions for injunctions filed by the General Counsel was unprecedented. Petitions for injunctive relief were filed in 134 cases, as compared with 100 filed in the preceding year.

7. The number of decisions issued by the Board in unfair labor practice cases, 605, was the highest since fiscal year 1953.

In the field of *representation cases:*

1. Of all the elections conducted by the Board, a smaller proportion was held pursuant to the agreement of the parties. In the 1958 fiscal year, 72 percent of all elections were based on all-party agreements, as compared with 77 percent in 1957 and 79 percent in 1956. In other words, a greater proportion of the elections was being conducted only after contested hearings and pursuant to Board orders.

2. Fewer elections were conducted than in the preceding 2 years. In the 1958 fiscal year, 4,524 elections were held, as compared with 4,888 in 1957 and 5,094 in 1956.

3. Fewer employees were eligible to vote in the elections than in any year since 1948. In the 1958 fiscal year, 363,672 employees were eligible to vote, as compared with 470,926 in 1957 and 476,001 in 1956.

4. A higher percentage, 90 percent, of those eligible to vote cast valid ballots than in any year of the history of Government-conducted collective-bargaining elections.

5. For the first time in 4 years, more than 50 percent of all elections involved less than 30 employees.

6. Labor organizations lost a greater percentage of the elections than ever before. In 1958 they won majority designation in 61 percent of the elections, as compared with 62 percent in 1957, 65 percent in 1956, and 68 percent in 1955.

1. Decisional Activities of the Board

The Board Members issued decisions in 2,493 cases of all types. Of these cases, 2,106 were brought to the Board on contest over either the facts or the application of the law; 353 were unfair labor practice cases; and 1,753 were representation cases. The remaining 387 cases were uncontested; in these, the Board issued orders to which the parties had consented or made rulings as to conduct of elections held by agreement of the parties.

In the representation cases, the Board directed 1,526 elections; the remaining 227 petitions for elections were dismissed.

Of the unfair labor practice cases, 177, or 50.1 percent, involved charges against employers; 176, or 49.9 percent, involved charges against unions.

Of the 353 contested unfair labor practice cases, the Board found violations in 285 cases, or 81 percent.

The Board found violations by employers in 150, or 85 percent, of the 177 cases against employers. In these cases, the Board ordered

employers to reinstate a total of 418 employees and to pay back pay to a total of 624 employees. Illegal assistance or domination of labor organizations was found in 39 cases and ordered stopped. In 26 cases the employer was ordered to undertake collective bargaining.

The Board found violations by unions in 135 cases, or 77 percent of the 176 cases against unions. In 58 of these cases the Board found illegal secondary boycotts and ordered them halted. In 19 cases the Board ordered unions to cease requiring employers to extend illegal assistance. Ten other cases involved the illegal discharge of employees, and back pay was ordered for 22 employees. In the case of 16 of these employees found to be entitled to back pay, the employer, who made the illegal discharge, and the union, which caused it, were held jointly liable.

2. Activities of the General Counsel

The statute gives the General Counsel the sole and independent responsibility for investigating charges of unfair labor practices, issuing complaints in cases where his investigators find evidence of violation of the act, and prosecuting such cases.

Also, under an arrangement between the five-member Board and the General Counsel,[1] members of the agency's field staff function under the General Counsel's supervision in the preliminary investigation of representation and union-shop deauthorization cases. In the latter capacity, the field staffs in the regional offices have authority to effect settlements or adjustments in representation and union-shop deauthorization cases and to conduct hearings on the issues involved in contested cases. However, decisions in contested cases of all types are ultimately made by the five-member Board.

Dismissals by regional directors of charges in unfair labor practice cases may be appealed to the General Counsel in Washington. Regional directors' dismissals in representation cases may be appealed to the Board Members.

a. Representation Cases

The field staff closed 5,601 representation cases during the 1958 fiscal year without necessity of formal decision by the Board Members. This comprised 76 percent of the 7,403 representation cases closed by the agency.

Of the representation cases closed in the field offices, consent of the parties for holding elections was obtained in 3,144 cases. Petitions were dismissed by the regional directors in 654 cases. In 1,803 cases, the petitions were withdrawn by the filing parties.

[1] See Board Memorandum Describing Authority and Assigned Responsibilities of the General Counsel (effective April 1, 1955), 20 Federal Register 2175 (April 6, 1955).

b. Unfair Labor Practice Cases

The General Counsel's staff in the field offices closed 6,654 unfair labor practice cases without formal action, and issued complaints in 822 cases.

Of the 6,654 unfair labor practice cases which the field staff closed without formal action, 725, or 11 percent, were adjusted by various types of settlements; 2,242, or 34 percent, were administratively dismissed after investigation. In the remaining 3,687 cases, or 55 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases, the withdrawals actually reflected settlement of the matter at issue between the parties.

The regional directors, acting pursuant to the General Counsel's statutory authority, issued formal complaints alleging violation of the act in 822 cases. Complaints against employers were issued in 456 cases; complaints against unions, in 366 cases.

Of the total 822 complaints, 309 were based on charges filed by unions, 310 by individuals, and 203 by employers.

Of the 456 complaints issued against employers, 291 were based on charges filed by unions, 164 on charges filed by individuals, and 1 charge was filed by an employer association.

Of the 366 complaints issued against unions, 202 were based on charges filed by employers, 146 on charges filed by individuals, and 18 were based on charges filed by unions.

c. Types of Unfair Labor Practices Charged

The most common charge against employers continued to be that of illegally discriminating against employees because of their union activities or because of their lack of union membership. Employers were charged with having engaged in such discrimination in 4,649 cases filed during the 1958 fiscal year. This was 77 percent of the 6,068 cases filed against employers.

The second most common charge against employers was refusal to bargain in good faith with representatives of their employees. This was alleged in 1,039 cases, or 17 percent of the cases filed against employers.

A major charge against unions was illegal restraint or coercion of employees in the exercise of their right to engage in union activity or to refrain from it. This was alleged in 2,214 cases, or 69 percent of the 3,192 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 1,952 cases, or 61 percent. Other major charges against unions alleged secondary boycott violations in 527 cases, or 17 percent, and refusal to bargain in good faith in 211 cases, or 7 percent.

d. Division of Law

The Division of Law, which is located in the Washington office of the General Counsel, is responsible for the handling of all court litigation involving the agency—in the Supreme Court, in the courts of appeals, and in the district courts.

During fiscal 1958, the Supreme Court handed down decisions in seven cases involving Board orders. Three Board orders were enforced in full, 1 was enforced with modification, none was set aside, and 1 was remanded to the court of appeals. Enforcement of two Board subpenas was granted.

The courts of appeals reviewed 49 Board orders during fiscal 1958. Of these 49 orders, 33 were enforced in full and 4 with modification; 8 orders were set aside; and 4 were remanded to the Board.

Petitions for injunctions in the district courts reached an alltime high during fiscal 1958. Of the 134 petitions filed during the year, 127 were filed under the mandatory provision, section 10 (l), of the act. Seven petitions were filed under the discretionary provision, section 10 (j), of the act.

During the year, 63 petitions for injunctions were granted, 10 petitions were denied, 62 petitions were settled or placed on the courts' inactive docket, and 7 petitions were awaiting action at the end of the fiscal year.

3. Division of Trial Examiners

Trial examiners, who conduct hearings in unfair labor practice cases, held hearings in 522 cases [2] during fiscal 1958, and issued intermediate reports and recommended orders in 439 cases. These figures, when compared with the preceding year, represent a decrease of 5 percent in the number of cases heard and an increase of 19 percent in the number of cases in which intermediate reports were issued.

In 63 unfair labor practice cases which went to formal hearing during the year, the trial examiners' findings and recommendations were not contested; this comprised 14 percent of the 439 cases in which trial examiners issued reports. In the preceding year, trial examiners' reports which were not contested numbered 71, or 19 percent of the 370 cases in which reports were issued.

4. Results of Representation Elections

The Board conducted a total of 4,490 representation elections during the 1958 fiscal year. This was a decrease of 8 percent from the 4,874 representation elections conducted in fiscal 1957.

[2] During the year, 44 cases were closed by settlement agreements reached after the hearing opened but before issuance of intermediate report.

491249—59——2

In the 1958 representation elections, collective-bargaining agents were selected in 2,695 elections. This was 60 percent of the elections held, and compared with selection of bargaining agents in 61 percent of the 1957 elections.

In these elections, bargaining agents were chosen to represent units totaling 201,959 employees, or 56 percent of those eligible to vote. This compares with 57 percent in fiscal 1957, and 63 percent in fiscal 1956.

Of the 361,341 who were eligible to vote, 90 percent cast valid ballots.

Of the 324,510 employees actually casting valid ballots in Board representation elections during the year, 194,853, or 60 percent, cast ballots in favor of representation.

Unions affiliated with the American Federation of Labor-Congress of Industrial Organizations won 2,186 of the 3,853 elections in which they took part. This was 57 percent of the elections in which they participated, compared with 58 percent in 1957.

Unaffiliated unions won 509 out of 904 elections; this was 56 percent, compared with 63 percent in 1957.

5. Fiscal Statement

The expenditures and obligations of the National Labor Relations Board for fiscal year ended June 30, 1958, are as follows:

1958 Appropriation	
Salaries	$8,058,174
Travel	521,715
Transportation of things	32,984
Communication services	243,797
Rents and utility services	35,574
Printing and reproduction	95,498
Other contractual services	232,595
Supplies and materials	96,754
Equipment	15,858
Grants, subsidies, and contributions	450,506
Refunds, awards, and indemnities	2,870
Taxes and assessments	11,896
Total, obligations and expenditures out of 1958 appropriation	9,798,221
1959 Appropriation[1]	
Supplies and materials	27,336
Equipment	19,037
Total, obligations and expenditures out of 1959 appropriation	46,373
Grand total, obligations and expenditures	9,844,594

[1] This amount represents the obligations and expenditures created pursuant to Public Law 85-386, which authorized advance procurement obligations in fiscal year 1958 out of fiscal year 1959 appropriations.

II

Jurisdiction of the Board

The Board's jurisdiction under the act with respect to both representation proceedings and unfair labor practices extends to all enterprises whose operations "affect" interstate commerce.[1] However, the Board has discretion to limit its statutory jurisdiction to those cases which, in its opinion, have a substantial effect on commerce. In the exercise of this discretion, the Board has adopted specific standards to guide it in asserting jurisdiction. The first such standards were adopted in 1950 [2] and modified in 1954.[3]

Soon after the close of fiscal 1958, the Board announced certain proposed new standards in order that "more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute." [4] In the announcement, the Board said further:

> We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of *Guss* v. *Utah Labor Relations Board.* Therein the Supreme Court adverted to "a vast no-man's land, subject to regulation by no agency or court," and declared: (1) "Congress is free to change the situation"; and (2) "The National Labor Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction."
>
> On Friday, the Congress voted approval of the Board's appropriation for the fiscal year 1958–59. The total was $13,100,000, of which $1,500,000 took into allowance the extension of the Board's jurisdiction into some of the area covered by the so-called no-man's land.[5]

Comments and suggestions on the proposals were invited from any interested parties, and comments were received from about 80 individuals and organizations.

---

[1] See sections 9 (c) and 10 (a) of the act. The Board has no jurisdiction over railways and airlines, which come under the Railway Labor Act; and a rider to the Board's appropriation denies it jurisdiction over "mutual, nonprofit" water systems of which 95 percent of the water is used for farming, and over agricultural laborers as defined in section 3 (f) of the Fair Labor Standards Act.

[2] Fifteenth Annual Report (1950), pp. 5–6; Sixteenth Annual Report (1951), pp. 15–39.

[3] Nineteenth Annual Report (1954), pp. 2–5; Twenty-first Annual Report (1956), pp. 7–28; Twenty-second Annual Report (1957), pp. 7–9.

[4] Press Release R–570, July 22, 1958.

[5] The *Guss* decision, 353 U. S. 1 (1957) is discussed in the Twenty-second Annual Report, pp. 119–120.

1. New Jurisdictional Standards

On October 2, 1958, the Board announced its new standards, which modified somewhat its original proposals.[6] The new standards are:

1. **Nonretail:** $50,000 outflow or inflow, direct or indirect.[7]
2. **Office buildings:** Gross revenue of $100,000, of which $25,000 or more is derived from organizations which meet any of the new standards.
3. **Retail concerns:** $500,000 gross volume of business.[8]
4. **Instrumentalities, links, and channels of interstate commerce:** $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.[9]
5. **Public utilities:** $250,000 gross volume, or meet standard 1 (nonretail).[10]
6. **Transit systems:** $250,000 gross volume. (Except taxicabs, to which the retail test ($500,000 gross volume of business) shall apply.)
7. **Newspapers and communication systems:** Radio, television, telegraph, and telephone: $100,000 gross volume.[11] Newspapers: $200,000 gross volume.[12]
8. **National defense:** Substantial impact on national defense.[13]
9. **Business in the Territories and District of Columbia:**
   D. C.—Plenary.
   Territories—Standards apply.
10. **Associations:** Regarded as single employer.

Direct outflow refers to goods shipped or services furnished by the employer outside the State. Indirect outflow includes sales within the State to users meeting any standard except solely an indirect inflow or indirect outflow standard. Direct inflow refers to goods or services furnished directly to the employer from outside the State in which the employer is located.

Indirect inflow refers to the purchase of goods or services which originated outside the employer's State but which he purchased from a seller within the State. Direct and indirect outflow may be combined, and direct and indirect inflow may also be combined to meet the $50,000 requirement. However, outflow and inflow may *not* be combined.

In *Siemons Mailing Service*, the Board acknowledged that under the revised standards there would still remain a "no-man's land, subject to regulation by no agency or court." However, the Board pointed out, a further broadening of its jurisdiction, at this time, would produce a caseload of such proportions as seriously to lengthen the time for processing cases, thus lessening the efficacy of the Board as a forum to which labor disputants might turn for aid in resolving their disputes. In such circumstances the Board exercised its discretionary

[6] Press Release R-576, October 2, 1958.
[7] *Siemons Mailing Service*, 122 NLRB No. 13.
[8] *Carolina Supplies and Cement Co.*, 122 NLRB No. 17.
[9] *HPO Service, Inc.*, 122 NLRB No. 62.
[10] *Sioux Valley Empire Electric Assn*, 122 NLRB No. 18.
[11] *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB No. 16.
[12] *Belleville Employing Printers*, 122 NLRB No. 58.
[13] *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB No. 43.

authority to decline to exercise its full statutory jurisdiction.[14] As indicated in *Siemons*, the Board's decision to continue to utilize jurisdictional standards in determining whether or not it should exercise jurisdiction in a given case was based upon the Board's experience in making such determinations both with and without the aid of standards. That experience has demonstrated that the utilization of jurisdictional standards significantly reduces the amount of time, energy, and funds expended by the Board and its staff in the investigation and resolution of jurisdictional issues, thus enabling the Board to devote a greater portion of its resources to the processing of substantive problems in a greater number of cases than is possible on a case-by-case approach to the problem.

The Board also pointed out in *Siemons* that its new standards would be applied to all future and pending cases, including unfair labor practice cases in which the unfair labor practice occurred at a time when the Board was not exercising jurisdiction under its prior standards over the enterprise involved. The Board pointed out that the mere fact that a respondent had reason to believe, by virtue of the Board's announced jurisdictional standards, that the Board would not assert jurisdiction over it, gave it no legal, moral, or equitable right to violate the provisions of the act.[15] Accordingly, the Board will assert jurisdiction under its revised standards, for any other policy would benefit the party whose actions transgressed the provisions of the act at the expense of the victim of such actions and of public policy.

2. Jurisdiction Over Employers Refusing To Furnish Commerce Data

In a decision[16] issuing simultaneously with its lead jurisdictional decisions, the Board declared that the adoption of the revised standards does not preclude the Board from exercising its statutory authority in any properly filed case where legal jurisdiction alone is proven, if the Board is satisfied that such action will best effectuate the policies of the act.[17] Accordingly, the Board announced that it would assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled,

[14] Relying on the Supreme Court's decision in *Office Employees International Union* v. *N. L R. B*, 353 U. S. 313.

[15] The Board overruled its prior decision in *Almeida Bus Lines, Inc.*, 99 NLRB 498, to the extent it might be deemed inconsistent with this view, and respectfully declined to follow the decision of the Ninth Circuit Court of Appeals in *N. L. R. B.* v. *Guy F. Atkinson Co.*, 195 F. 2d 141.

[16] *Tropicana Products, Inc.*, 122 NLRB No 29.

[17] See *N. L. R. B.* v. *W. B. Jones Lumber Co.*, 245 F. 2d 388 (C. A. 9).

and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the employer's operations satisfy the Board's jurisdictional standards. Applying that policy in *Tropicana*, the Board asserted jurisdiction over the employer, which had refused to cooperate in the production of evidence concerning the effect of its operations on commerce, except under subpena, and declined to appear at the hearing, on the basis of record evidence that the employer's truckdriver employees made numerous trips in interstate commerce with products loaded at the employer's warehouse.

3. Enterprises Subject to Board Jurisdiction

Enterprises over which the Board exercised jurisdiction for the first time during the past year included labor organizations in their capacity as the employers of their own employees,[18] and business operations on the Outer Continental Shelf. One case involved the question of the Board's jurisdiction over certain ships of foreign registry.

a. Oil Operations on Outer Continental Shelf

The employer in one case was engaged in providing "boatel service," furnishing food and utensils and maintaining living quarters for personnel in the offshore oil industry in the Gulf of Mexico, including employees who worked on oil rigs and on drilling tenders.[19] Asserting jurisdiction in the case, the Board pointed out that the Outer Continental Shelf Lands Act [20] extended the Board's jurisdiction to commerce between States of the United States and points on the Outer Continental Shelf.

b. Vessels of Foreign Registry

Jurisdiction was asserted to conduct an election among the predominantly alien crews of two ships nominally owned by a foreign corporation and registered under the laws of the incorporating foreign country.[21] The Board rejected the contention that the act did not apply because foreign ships and foreign crews were involved. The Board found that, in order to have the ships manned with foreign crews in the interest of cheaper operation, the original American owner effected the ships' transfer to foreign registry through two specially formed foreign corporations. A third foreign corporation then chartered the vessels and, in turn, subchartered them to the

[18] *Oregon Teamsters' Security Plan Office et al.*, 119 NLRB 207; *American Federation of Labor and Congress of Industrial Organizations*, 120 NLRB No. 134. See Twenty-second Annual Report (1957), pp. 114–115, for background of the *Oregon Teamsters'* case; see also *infra*, p. 62.

[19] *General Marine Corp.*, 120 NLRB No. 185.

[20] 43 U. S. C. 1332, 1333.

[21] *Peninsular & Occidental Steamship Co. et al.*, 120 NLRB No. 147.

former owner. These corporate arrangements, however, left the latter in the operational control of the ships and, the Board found, the American owner was in fact the employer of the crews which were hired by the chartering corporation.

The Board also held that the ships could not be regarded as foreign vessels for jurisdictional purposes. The ships, the Board noted, had never been in the waters of the country where their nominal owner was incorporated, were under complete operational control of a domestic corporation, were engaged primarily in the commerce of the United States, and had a domestic home port where they were mainly provisioned and from which they derived most of their revenue. Noting further that most of the employees signed their shipping articles in this country and were paid off while their ships were in American ports, the Board held that the mere fact that a majority of the employees were nonresident aliens did not remove the case from the act's coverage. The *Compania Naviera* case [22] cited by the employer was held not controlling under the circumstances here.

The employers' contention that jurisdiction should be declined in any event because the case involved foreign workmen, not in competition with American workmen, was rejected, the Board pointing out that the ships' crews consisted at least in part of American citizens and residents, that they were in direct competition with American seamen for employment opportunities aboard the vessels, and that their organization with a view to improving their working conditions was of direct concern to American seamen.

4. Application of Jurisdictional Standards

During the past fiscal year, a number of cases presented questions as to the application of existing basic standards.

a. Outflow and Inflow Standard

In several cases, the Board had to determine whether certain types of transactions constituted "outflow" or "inflow" for jurisdictional purposes. In one case, sales to Federal Reserve banks were included in the computation of an employer's outflow.[23] The Board here pointed out that the banks are in fact economic and monetary instrumentalities of commerce with very large interstate operations. In the same case, the Federal excise and State sales taxes collected by the employer on its sales to firms engaged in commerce within the meaning of the act were likewise considered in computing outflow.

In another case [24] the employer contended that the sale of certain

[22] *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U. S. 138.
[23] *J. Tom Moore & Sons, Inc.*, 119 NLRB 1663.
[24] *McFarling Bros. Midstate Poultry & Egg Co.*, 120 NLRB No. 201.

poultry to a national meatpacking company should not be included in its outflow because it was a "paper transaction," the poultry having been purchased for the packing company and transferred to it at cost plus a handling charge. It was the employer's position that only the handling charges should be counted. The Board rejected this contention, pointing out that the employer paid for and acquired title to the poultry, which it then sold and delivered to the meatpacking company. The fact that the employer here realized no profit on the transaction was held immaterial.

In the *Oregon Teamsters'* case,[25] the Board, on remand from the Supreme Court,[26] asserted jurisdiction over the respondent local unions and their Security Plan Office on the basis of approximately $6 million annual per capita taxes and initiation fees and $2 million premium payments remitted to an out-of-State insurance carrier, respectively. Applicable jurisdictional standards were held met whether these sums be considered "inflow" or "outflow."

b. Period Used in Determining Volume of Business

In applying the jurisdictional standards, the Board normally determines volume of business on the basis of the employer's past experience rather than its future operations.[27] Accordingly, where an employer shipped more than $50,000 worth of goods out of State during its most recent calendar year the Board asserted jurisdiction, rejecting the employer's contention that jurisdiction should be declined because it had recently ceased the out-of-State shipments.[28] However, where an employer had been in business only 9½ months of the current calendar year, the Board projected the figures for this period over a 12-month period and asserted jurisdiction on the basis of the annual estimate.[29] Similarly, where the employer's current business was seriously curtailed by a strike, the Board asserted jurisdiction on the basis of the estimated volume of business, absent the strike.[30]

---

[25] *Supra,* footnote 18.

[26] *Office Employees International Union, Local No. 11* v. *N L. R. B.* (*Oregon Teamsters*), 353 U. S. 313.

[27] See *Aroostook Federation of Farmers, Inc.,* 114 NLRB 538; Twenty-first Annual Report (1956), pp. 10–11.

[28] *Jos. McSweeney & Son, Inc.,* 119 NLRB 1399. A contention that the last fiscal year rather than the last calendar year should be used was also rejected. The Board here also rejected a request that the employer's outflow be computed on the basis of payments received for goods shipped during the applicable period instead of the value of the goods shipped.

[29] *Coast Aluminum Co ,* 120 NLRB No. 173.

[30] *Hygienic Sanitation Co ,* 118 NLRB 1030

III

Representation Cases

The act requires that an employer bargain with the representative selected by a majority of his employees in a unit appropriate for collective bargaining. But the act does not require that the representative be selected 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. The Board may conduct such an election after a petition has been filed by the employees or any individual or labor organization acting in their behalf, or by an employer who has been confronted with a claim of representation from an individual or a labor organization.

Once a petition has been properly filed, the Board has the statutory authority to determine the employees' choice of collective-bargaining representative in any business or industry affecting interstate commerce, with the major exceptions of agriculture, railroads, and airlines.[1] It also has the power to determine the unit of employees appropriate for collective bargaining.

The Board may formally certify a collective-bargaining representative in a representation case only upon the basis of the results of a Board-conducted 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.

Petitions for elections are filed in the regional office in the area in which the plant or business involved is located. The Board provides standard forms for filing petitions in all types of cases.

[1] The Board does not always exercise that power where the enterprises involved have relatively little impact upon interstate commerce. See the Board's standards for asserting jurisdiction, discussed in the Twenty-second Annual Report at pp. 7–9, and Twenty-first Annual Report, pp. 7–28.

This chapter deals with decisions of the Board during the 1958 fiscal year which involve novel questions or set new precedents in representation cases.

1. Showing of Employee Interest To Justify Election

The Board requires, under section 9 (c) (1), that a petitioner seeking a representation election, other than an employer,[2] make a showing that the proposed election is favored by at least 30 percent of the employees. The showing must relate to the unit found appropriate.[3]

Intervening parties are permitted to participate in certification and decertification elections upon a showing of a contractual interest [4] or other representative interest.[5] However, an intervenor seeking a unit other than the petitioner must make a 30-percent showing of interest.[6]

a. Sufficiency of Showing of Interest

Generally, the Board determines the validity of a party's showing of representative interest only by an administrative investigation.[7] Parties are not permitted to litigate at the representation hearing allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or are stale.[8] Allegations that supervisors assisted in obtaining a showing will no longer be considered an exception to this general rule, the Board ruled this year.[9] The cases [10] permitting litigation of the issue of supervisory participation were overruled.[11]

In several cases, the evidence submitted was held insufficient to justify rejection of interest showing. The allegations included supervisory assistance [12] and fraud or misrepresentation in the procurement of designations.[13] Doubt as to the identity of the representative designated by the showing was raised in some cases, in which the

---

[2] NLRB Statements of Procedure, section 101.18 (a).

[3] See, e. g , *Tri-State Plastic Molding Co.*, 120 NLRB No. 186 ; *Carolina Power and Light Co.*, 119 NLRB 1422 ; cf. *P Ballantine & Sons*, 120 NLRB No. 16.

[4] *Barrett Division, Allied Chemical & Dye Corp.*, 120 NLRB No. 138 ; cf. *Sterling Faucet Co.*, 119 NLRB 1225.

[5] See *Southeastern Illinois Gas Co., etc.*, 119 NLRB 1665, where a second election was directed in order to afford a place on the ballot to a union with a representative interest which had not had timely notice of the representation proceeding.

[6] *Dierks Paper Co.*, 120 NLRB No. 45.

[7] Investigation of a party's showing of interest need not be completed before the closing of the hearing in the case. *O. E. McIntyre, Inc.*, 118 NLRB 1290.

[8] *Georgia Kraft Co.*, 120 NLRB No. 113.

[9] *Ibid.*

[10] E. g., *Wolfe Metal Products Corp* , 119 NLRB 659.

[11] Allegations challenging the validity of a party's showing of interest will be administratively investigated only if accompanied by supporting evidence. *Goldblatt Bros., Inc.*, 118 NLRB 643.

[12] *Georgia Kraft Co., supra.*

[13] *Tung-Sol Electric, Inc. and Triangle Radio Tube Corp.*, 120 NLRB No. 214 ; *Louisiana Creamery, Inc.*, 120 NLRB No. 26.

Board held: (1) Expulsion of a union from its parent, AFL–CIO, did not create such confusion as to require it to submit a new showing of interest, particularly because the Board's practice in such cases is to remove the designation "AFL–CIO" after the union's name;[14] (2) a new showing of interest was not required because the petition was amended to substitute for the petitioning local's name that of another local of the same international with which the petitioner had merged;[15] and (3) the interest of joint petitioners was sufficiently established by cards designating one of them, since it is immaterial whether authorization cards indicate a desire for joint or individual representation.[16]

2. Existence of Question of Representation

Section 9 (c) (1) conditions the granting of a petition for an election on a finding by the Board that a question of representation exists. Whether this condition is satisfied depends in the first place on whether or not the petition filed with the Board has a proper basis.[17]

a. Certification Petitions

A petition for certification as bargaining agent is generally regarded as raising a question of representation if the petitioner has made a demand for recognition and the employer has denied recognition. An unanswered demand, followed by a petition and denial of recognition by the employer at the hearing, likewise raises a question of representation.[18] The filing of a petition itself is a sufficient demand for recognition and, if denied by the employer at the hearing, also raises a representation question.[19]

The Board during the past year denied a request for reconsideration of the *General Box* rule [20] that the petition of a representative which has a contract, but wishes to secure the benefits of certification, gives rise to a question of representation.[21]

---

[14] *Louisiana Creamery, Inc., supra,* distinguishing *Mohawk Business Machines Corp.,* 118 NLRB 168.

[15] *Atlantic Mills Servicing Corp. of Cleveland, Inc, et al.,* 118 NLRB 1023; distinguishing *Mohawk Business Machines Corp., supra*

[16] *Mid-South Packers, Inc.,* 120 NLRB No. 70.

[17] The ultimate finding of the existence of a representation question under section 9 (c) (1) depends on other statutory and administrative provisions, *viz,* qualification of the proposed bargaining agent (see pp. 18–21); bars to a present election, such as contracts or prior determinations (see pp. 21–30); and the appropriateness of the proposed bargaining unit (see pp. 30–43).

[18] *Foothill Electric Corp,* 120 NLRB No. 170.

[19] *Goldblatt Bros., Inc.,* 119 NLRB 1340; *Gibbs Oil Co.,* 120 NLRB No. 202.

[20] 82 NLRB 678.

[21] *Jefferson City Cabinet Co.,* 120 NLRB No. 53. Where the contracting union seeks certification, the employer cannot assert the contract as a bar to the union's petition. *Ottawa Machine Products Co.,* 120 NLRB No. 151. Nor may the union assert its contract as a bar to the petition of a rival union. *Ibid.*

An employer petition, in order to raise a question of representation, must be based on an affirmative claim by a bargaining agent to represent the employees specified in the petition.[22] A claim supporting an employer petition may take the form of conduct on the part of the representative. Thus, the Board held in one case that a union's picketing activities, accompanied by notice that the employer was to be placed on an "unfair list," could not be viewed as having only organizational purposes, but constituted a present claim for recognition.[23]

b. Decertification Petitions

A question of representation may also be raised by a petition under section 9 (c) (1) (A) (ii) for the decertification of a bargaining agent "which has been certified or is being currently recognized" by the employer. A decertification petition may be filed by persons other than an employee of the employer.[24] But a petition will be dismissed where the employer of the employees in the bargaining unit has improperly participated in the filing of the petition.[25]

c. Disclaimer of Interest

A petition by which a question of representation has been raised will be dismissed if the party whose representative status is in issue disclaims interest in the employees involved. However, as pointed out again by the Board [26]—

> A disclaimer to be effective must be unequivocal and must have been made in good faith. A union's "bare statement" of disclaimer is not sufficient to establish that it has abandoned its claim to representation, if the surrounding circumstances justify an inference to the contrary. The union's conduct must not be "inconsistent" with its alleged disclaimer. [Footnotes omitted.]

Applying these rules, the Board held that determination of the representation question raised by the petition of an employer association could not be defeated by the union involved by simply disclaiming representation in an associationwide unit.[27] Up to the time of the filing of the petition, the union engaged in associationwide bargaining for a common contract from all association members, and implemented its objective by the "whipsaw" strategy of striking one member and threatening strike action against others if they did not accept the union's terms. After the association filed its petition, the union first continued the same conduct but later declared that it wished to change

---

[22] See *Levingston Shipbuilding Co*, 120 NLRB No 32.

[23] *Carter Manufacturing Co.*, 120 NLRB No. 204, Member Fanning dissenting. The majority overruled *Smith's Hardware Co.*, 93 NLRB 1009, insofar as inconsistent.

[24] See *Alexander Manufacturing Co.*, 120 NLRB No. 114, rejecting a contention that the petition was improperly filed by an attorney.

[25] *Birmingham Publishing Co.*, 118 NLRB 1380. See also *Worthington Corp*, 119 NLRB 306; *Consolidated Blenders, Inc.*, 118 NLRB 545.

[26] *Retail Associates, Inc.*, 120 NLRB No. 66.

[27] *Ibid.*

to individual bargaining for employees of association members. In the Board's view, the union's change of position was directly related to the filing of the petition, and the disclaimer clearly was but a tactical maneuver to avoid a Board election in an associationwide unit.

Also, a union's disclaimer of interest, after it received notice of the hearing to be held on the employer's petition for an election, was held insufficient to remove the question of representation raised by the petition when the disclaimer was inconsistent with the object of picketing activities.[28] The union had begun to picket the employer in connection with a demand for recognition, using picket signs which later were altered so as to invite the employees to join "to gain union hours, wages and working conditions." In the Board's view, this language did not indicate that the original object to obtain recognition had been abandoned,[29] and the picketing throughout constituted a present demand for recognition. In another case, an incumbent international union announced at the hearing on the employer's petition that it had assigned its contract to a noncomplying affiliated local which was claiming recognition. This was held not to be a "clear and unequivocal disclaimer," but rather an attempt by the international both to keep its claim alive and to avoid an election.[30] Nor did failure to appear at the hearing on an employer's petition constitute a disclaimer of interest on the part of a certified union which had abandoned its long-drawn-out economic strike against the employer but did not disclaim its interest in representing the employees.[31]

In another case, an employer's petition for an election in a 3-company unit was held not to have raised a question of representation because the union named in the petition, which had represented employees at only 2 of the 3 locations, disclaimed any desire to represent the 3-company unit.[32] The union's disclaimer was held not inconsistent with its picketing activities in connection with its demands for a new contract at one location. Also, a petition filed by an employer during an economic strike was dismissed in view of the striking union's claim that it represented only the strikers who had been replaced, and not the employees presently employed.[33] The replacements having become permanent employees, the Board construed the union's position as an effective disclaimer of its interest in representing employees in the unit for which it had been certified.[34]

---

[28] *New Pacific Lumber Co.*, 119 NLRB 1307.

[29] The Board here cited *Francis Plating Co.*, 109 NLRB 35, where picketing with similar signs was construed as an attempt by the union "to secure, by means of picketing, conditions and concessions normally obtained as a result of collective bargaining" and "to compel the Employer to bargain with it without regard to the question of the Union's status as representative of the employees."

[30] *Cosper Manufacturing Co.*, 118 NLRB 751.

[31] *Brazeway, Inc.*, 119 NLRB 87.

[32] *Maclobe Lumber Co.*, 120 NLRB No. 52.

[33] *Hygienic Sanitation Co.*, 118 NLRB 1030.

[34] In view of the union's disavowal of its majority status in the certified unit, the Board revoked the union's certification.

3. Qualification of Representatives

Section 9 (c) (1) provides that employees may be represented "by an employee or group of employees or any individual or labor organization." However, the Board's power to investigate and certify the representative status of a labor organization is subject to certain statutory limitations. Thus, a labor organization may be certified only if it is in compliance with the filing requirements of section 9 (f), (g), and (h). Moreover, section 9 (b) (3) of the act prohibits a labor organization from being certified as representative of a unit of plant guards if it "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." [35]

a. Filing Requirements

A labor organization which is not in compliance with the act's filing requirements, while not disqualified from representing employees for collective-bargaining purposes,[36] is deprived of the right to certification under section 9 of the act.[37] The Board, therefore, dismisses petitions filed by noncomplying unions or by individuals or organizations which are fronting for a union which the Board has found by administrative investigation to be out of compliance.[38]

A petition becomes subject to dismissal when the petitioner permits its compliance with section 9 (g) to lapse after the hearing and fails to renew it or to follow the certificate of intent procedure [39] which

---

[35] See, for instance, *Dalmo Victor Co. Division of Textron, Inc.*, 119 NLRB 737 (the contract bar aspects of the case are discussed at p. 27, *infra*).

No disqualifying affiliation of a guard union with a nonguard union was found merely because the president of a nonguard union acted on behalf of a guard group in seeking recognition and counseled the group in organizing matters, and the nonguard union's hall was used for initial guard meetings. Moreover, the guard union's president indicated that no further use of facilities or services of the nonguard union would be accepted. *Ingersoll-Rand Co.*, 119 NLRB 601.

[36] See *N. L. R. B.* v. *District 50, United Mine Workers of America (Bowman Transportation, Inc.)*, 355 U. S. 453, *infra*, p. 110–111; and *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, Twenty-first Annual Report, pp. 126–127.

[37] The filing requirements being applicable only to "labor organizations as defined in section 2 (5), the Board declined to dismiss the petition of an international union on the ground that its bargaining policy committee had not separately complied. The committee, the Board found, was an integral functioning part of the petitioner and was not a subordinate and separate organization. *General Shoe Corp., Chemical Division*, 120 NLRB No. 125. Similarly a petition was held not barred because there was no separate compliance on the part of the Trades Council of which the petitioner was a member. *Monsanto Chemical Co. (Queeny Plant)*, 119 NLRB 69. The Board held that the Trades Council was not a labor organization because it exercised its control over terms and conditions of employment of employees only through its constituent local unions, and not through direct negotiations or dealings with employers.

[38] See, for instance, *Natvar Corp.*, 118 NLRB 1611.

The fact of a petitioner's compliance is determined administratively and, unlike the question whether a given organization is subject to the filing requirements, may not be litigated in the representation proceeding. See *General Shoe Corp., supra*, and *Monsanto Chemical Co. (Queeny Plant), supra*.

[39] See *Monsanto Chemical Co.*, 115 NLRB 702, Twenty-first Annual Report, pp. 35–36.

was established by the Board to enable a petitioner to safeguard a proceeding during any temporary lapse of compliance.[40]

(1) Participation in Election by Noncomplying Union

The Board during fiscal 1958 reversed the prior policy[41] of omitting from the ballot in certification elections[42] the names of noncomplying unions. In the view of a majority of the Board, evaluation of the underlying issues in the light of recent Supreme Court pronouncements[43] requires that a noncomplying union named in a petition filed by an employer,[44] and noncomplying unions with a sufficient interest to permit intervention in a proceeding instituted by a complying union,[45] be placed on the ballot on the condition that if the noncomplying union wins the election only the arithmetical results will be certified.[46] The majority pointed out that in the *Arkansas Oak Flooring* and *Bowman Transportation* decisions the Supreme Court held that: (1) Section 9 (f), (g), and (h) deprives noncomplying unions only of certain benefits of the act but not of the right to act and be recognized as bargaining agent of employees; (2) the filing requirements do not forbid a noncomplying union's participation in a Board election but rather its certification as an employee representative; and (3) consideration must be given not only to the act's objective of denying benefits to noncomplying unions but also to the rights of the employees and the employer, particularly the employees' right to a free choice of bargaining representatives.

The majority of the Board also took the view that fairness to complying petitioners requires that noncomplying intervenors be placed on the ballot because omission of the intervenor might result in the petitioner's defeat by the pooled "no" votes of the noncomplying union's adherents and "no" votes of employees who are opposed to representation by any union. Such misleading results, in the majority's opinion, should be avoided by giving voters an opportunity to make a precise choice by voting for or against any union which claims to represent them. The majority observed that—

---

[40] *Ottawa Machine Products Co.*, 120 NLRB No. 151; see also *Technicolor New York Corp.*, 118 NLRB 588.

[41] See *Loewenstein, Inc.*, 75 NLRB 377, 381.

[42] Because of the different purpose of decertification elections, the Board has consistently placed noncomplying incumbents on the decertification ballot, but in case of a vote in favor of the incumbent has certified the results of the election rather than the bargaining status of the union. See *Harris Foundry & Machine Co.*, 76 NLRB 118; *Monsanto Chemical Co.*, 115 NLRB 702.

[43] *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62; *N. L. R. B.* v. *District 50, United Mine Workers of America (Bowman Transportation, Inc.)*, 355 U. S. 453, *infra*, pp. 110–111.

[44] *Retail Associates, Inc.*, 120 NLRB No. 66, Member Bean dissenting.

[45] *Concrete Joists & Products Co., Inc.*, 120 NLRB No. 198, Chairman Leedom and Member Bean dissenting.

[46] The doctrine of *Loewenstein, Inc.*, as applied in later similar cases, was overruled.

if meaningful election results are to be obtained, noncomplying unions must be placed on the ballot so that they, like other competitors, can claim only the votes of their true adherents, and not be permitted to lay claim to all the "No" votes, a dubious and disturbing practice which adherence to former policy not only encourages, but, in a negative sense, requires.

b. Other Questions of Qualification

Where the qualification of a proposed bargaining agent is challenged on the ground of matters pertaining to internal union affairs, the Board has consistently declined to concern itself with such matters.[47] Nor will the Board, in an election case, pass upon allegations of disqualification based on employer domination of, or assistance to, a union in violation of section 8 (a) (2) of the act, because of the well-established rule that allegations amounting to an unfair labor practice charge may not be litigated in a representation proceeding.[48] Overruling earlier inconsistent cases,[49] a majority of the Board held that this rule applied where a union's capacity to represent employees was challenged on the ground that it was the *alter ego* of a prior organization which had been disestablished because of employer domination.[50]

In one case, the Board made clear that in the absence of a statutory limitation a union which represented the employer's production and maintenance employees was not, as contended, disqualified from also representing technical employees.[51]

(1) Craft Representatives

A union which seeks separate representation for a group of craftsmen or a craftlike departmental group, which has a history of representation on a broader basis, must show that it is "a union which has traditionally devoted itself to serving the special interests of the employees" whom it proposes to sever from the existing unit.[52] However, the "traditional representative" test does not apply to a union which seeks to represent a craft or departmental group with no previous bargaining history.[53]

In determining whether a severance petitioner satisfies the "traditional union" test, the Board may take official notice of any earlier

---

[47] See *The Gemex Corp.*, 120 NLRB No. 8.

[48] *Grand Union Co.*, 118 NLRB 685; *General Industries Co.*, 118 NLRB 1121; cf. *The Wolfe Metal Products Corp.*, 119 NLRB 659.

[49] *Baltimore Transit Co.*, 59 NLRB 159, and *The Standard Oil Co. of Ohio*, 63 NLRB 990.

[50] *Nathan Warren & Sons, Inc.*, 119 NLRB 292, Member Murdock dissenting. The union was alleged to be the successor to an organization which was to be disestablished by the employer under a settlement agreement disposing of section 8 (a) (2) charges based on domination and interference.

[51] *Chapman Valve Manufacturing Co.*, 119 NLRB 935.

[52] *American Potash & Chemical Corp.*, 107 NLRB 1418.

[53] *Union Steam Pump Co.*, 118 NLRB 689.

decisions in which the same union was found to have traditionally represented employees such as the one sought.[54] However, where several unions seek severance of employees whose craft status the Board has recognized only recently, the record in the case must contain sufficient information to permit an independent determination as to what labor organizations qualify as the traditional representative of the particular craft.[55]

A majority of the Board declined during the past year to apply the *American Potash* requirements to technical employees, and to require that a union seeking to sever technical employees from an existing production and maintenance unit show that it has traditionally represented such employees.[56]

4. Contract as Bar to Election*

During fiscal 1958 the Board invited expression of views by interested parties regarding the continued application of the long-established general policy not to direct an election among employees presently covered by a valid collective-bargaining agreement. Periodic reappraisal of the policy is held desirable both in order to make adaptations indicated by the Nation's changing industrial life and for the purpose of the possible codification and simplification of the contract-bar doctrine as developed over many years. However, during the reexamination period the Board is adhering to the contract-bar principles previously announced and applied.

As heretofore, in order to find a bar to a present election, the Board requires that: The asserted contract be in writing and properly executed and binding on the parties; it be of no more than "reasonable" duration; it cover the employees involved in an appropriate unit; and it contain substantive terms and conditions of employment which are consistent with the policies of the act.

---

[54] *Union Steam Pump Co., supra.*

[55] *Monsanto Chemical Co. (Queeny Plant)*, 119 NLRB 69.

[56] *Westinghouse Electric Corp.*, 118 NLRB 1043, Member Rodgers dissenting.

***Many of the rules discussed in this section have been changed.** After the close of fiscal 1958, the Board issued a series of decisions substantially revising the contract-bar rules.

The decisions and the general areas they covered were: *Appalachian Shale Products Co.*, 121 NLRB No. 149 (adequacy of contract); *General Extrusion Co.*, 121 NLRB No. 147 (changed circumstances during contract term); *Pacific Coast Association of Pulp & Paper Manufacturers*, 121 NLRB No. 134 (duration of contract); *Hershey Chocolate Corp.*, 121 NLRB No. 124 (schism and the status of the contracting union); *Deluxe Metal Furniture Co.*, 121 NLRB No. 135 (timeliness of rival petitions and effect of claims); *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB No. 125 (unlawful union-security and checkoff provisions). Major changes included: (1) A 2-year limit on contracts as bars, and (2) a new rule that petitions cannot be filed during the last 60 days of the contract term but allowing petitions to be filed during the 90 days just preceding this 60-day "insulated" period.

491249—59——3

a. Execution and Ratification of Contract

Generally, an agreement reached by the parties but not yet reduced to writing and signed does not bar an election. The Board, however, has continued to hold that a petition for an election is barred where prior to its filing the parties have come to a complete accord on contract terms, have put substantive provisions of the agreement into effect, and nothing remains to be done except the "ministerial act" of signing the contract.[57] Unless these conditions are fully satisfied, a contract bar will not be found. Thus, the Board declined to dismiss a petition on the ground that, before its filing, the intervening union and the employer had put into effect new wage rates immediately upon reaching an oral understanding that upon verification of the intervenor's majority status at the plant involved a contract was to be drawn up similar to the one for another plant of the employer.[58] The Board pointed out that (1) the wage increase was not entitled to weight in determining the contract-bar question, because it was effected while establishment of a contractual relationship between the parties was contingent upon verification of the union's majority status; and (2) the contracting parties had not yet approved a written draft of their agreement so that more than the mere "ministerial act" of signing the contract remained to be accomplished. Nor were the requirements of the exception met by a contract which had been fully negotiated and put in writing but remained unsigned pending determination of questions regarding legal ownership and control of the company.[59] This contract was held no bar both because more than the performance of a final ministerial act was to be done and because of the long interval during which the contract remained unsigned. In one case, the Board made clear that an unsigned agreement on a new contract following expiration of the parties' old contract is insufficient to bar a petition even where the parties continue to operate under the old contract.[60] Continuation of the unchanged terms of the prior contract, according to the Board, "does not satisfy the requirement that, lacking a signed agreement, substantive provisions must have been placed in effect."

Regarding ratification as a prerequisite to finding that a contract is valid as a bar, the Board had occasion to reiterate that where membership ratification is not provided for in a fully executed contract and is not regarded by the parties as a condition precedent to the contract's validity, the Board will not inject itself into the contracting union's internal affairs by determining whether the union's con-

[57] *American Smelting and Refining Co., Silver Bell Operation,* 118 NLRB 915; *Standard Oil Co.,* 119 NLRB 598.

[58] *Penn Dairies, Inc.,* 119 NLRB 1683.

[59] *Advanced Manufacturing, Inc.,* 119 NLRB 722.

[60] *Dairy Cooperative Assn.,* 118 NLRB 1564.

stitution requires ratification.[61] The Board also held that, while employee ratification specifically provided for in a contract may be necessary to its validity as a bar, a further provision that the contract be certified by the contracting union's parent organization, which was not named as a party to the contract, is not "a substantial requirement necessary to achieve stability in the bargaining relationship of the named parties." [62] The contract, which was complete in all other respects, was held a bar.

b. Duration of Contract

A contract term of more than 2 years ordinarily is considered unreasonable, and a contract of such duration is accorded effect as a bar to an election only during the first 2 years. In order for a contract for more than 2 years to operate as a bar for its entire term, the Board has continued to require a showing that a substantial part of the industry involved is covered by similar contracts. In 1 case last year, the Board held that a practice of 3-year contracts in a substantial part of the entire paper bag industry was not established by the showing that about one-half of the employees in the industry on the west coast are covered by 3-year contracts.[63] Nor was the evidence sufficient that contracts of more than 2 years' duration prevail in a substantial part of the business machine industry.[64]

Contracts of uncertain duration, such as contracts terminable at will, likewise cease to be effective as a bar after 2 years. Thus, a petition was held not barred by a contract whose initial 2-year term had expired and which, by its terms, had become subject to 2 automatic biennial renewals absent termination by the employer.[65] Noting that the contract had become terminable at will by the employer, but was binding on the union for the full 6-year term, the Board held that the contract had ceased to be a bar whether viewed as of indefinite, or of unreasonable duration.

c. The Contract Unit

To constitute a bar, the contract must cover the employees sought in the petition. Questions of coverage most frequently arise in situations involving an expansion of, or change in, the employer's operations during the contract term.

In one case, the Board held that a petition for a manufacturer's over-the-road drivers was barred by an outstanding contract even

[61] *Parker Brothers & Co., Inc., et al.,* 119 NLRB 139, citing *Phelps Dodge Refining Corp.,* 112 NLRB 1209, 1212.
[62] *Standard Oil Co ,* 119 NLRB 598.
[63] *National Cash Register Co.,* 119 NLRB 486
[64] *Ames, Harris, and Neville,* 118 NLRB 858.
[65] *Ben Forman & Sons, Inc.,* 119 NLRB 1099.

though its recognition clause did not specifically refer to the driving operation which had been added by the employer.[66] The Board made clear that, where a new category or operation is added and the parties' conduct evinces their intention to extend the coverage of the contract accordingly, the parties' construction of the contract and their practices under it are controlling rather than the wording of the contract's recognition clause.[67]

As heretofore, a current collective-bargaining agreement has been held not to bar a petition for employees in a new operation which is not merely a normal accretion [68] to the unit covered by the contract, and in which there were no employees when the contract was executed,[69] or a representative segment of the necessary work force had not yet been hired.[70]

A contract was challenged as a bar in one case on the ground that its coverage differed from the unit certified by the Board [71] after a consent election. The original contract included a category of employees whom the Board had excluded from the unit and who, in fact, were supervisors. Later the contract unit was amended by a supplemental agreement excluding certain employees who had been in the unit certified. The Board held that the parties' departure from the certification was not such as to remove the contract as a bar. The original inclusion in the otherwise clearly appropriate unit of some employees who should not have been in it was held insufficient to justify disruption of the existing contractual relationship. Nor did the subsequent exclusion of certain employees from the certified unit require such disruption, since the excluded employees did not properly belong in the unit and had been included solely on the basis of the parties' consent-election agreement.[72]

d. Terms of Contract

Consistent with past practice, the Board has continued to accord contract-bar effect only to complete collective-bargaining agreements which contain substantive terms and conditions of employment. A

[66] *Sterling Faucet Co.*, 119 NLRB 1225.

[67] Cf. *Pittsburgh Plate Glass Co*, 118 NLRB 961, where a contract purporting to cover operations in a certain geographical area was held not to bar an election at one branch within the area because the parties had agreed orally to exclude the branch and did not follow important provisions of the contract there.

[68] Cf. *Richfield Oil Corp.*, 119 NLRB 1425, where offshore oil drilling operations were found to be an accretion to the employer's land-based drilling operations. The contract covering onshore production was therefore held to bar an election in the offshore operation.

[69] *Barrett Division, Allied Chemical & Dye Corp*, 120 NLRB No. 138, *Fleming & Sons, Inc.*, 118 NLRB 1451.

[70] *Chrysler Corp. (Ohio Stamping Plant)*, 119 NLRB 1312; *Atomic Power Equipment Department of General Electric Co.*, 118 NLRB 456.

[71] *C. G. Willis, Inc.*, 119 NLRB 1677.

[72] The extent of the departure from the certified unit here was held unlike that in *Calaveras Cement Co.* (89 NLRB 378), and *Central Truck Lines* (98 NLRB 374), where the parties' action was held to have vitiated the contract there asserted as a bar.

contract merely setting forth the parties' collective-bargaining objectives in general terms and the procedure for reaching an agreement will not bar an election.[73]

Moreover, the Board continues to disregard contracts which contravene the policies of the act, such as union-security agreements not authorized by the proviso to section 8 (a) (3).[74]

(1) Illegal Union-Security Agreements

The rule that a petition for an election is not barred by a union-security agreement which fails to satisfy the specific requirements of section 8 (a) (3) was applied where the agreement was made at a time when the contracting union was not in compliance with the filing requirements of section 9 (f), (g), and (h),[75] or was not the bona fide majority representative of the employees covered.[76] A case of the latter type involved a union-security clause originally included in a contract made before the employees were hired and reincorporated in a renewal contract following ascertainment of the union's majority status.[77] The Board held that the renewal contract could not serve as a bar because its union-security clause was invalid, being but a continuation of the clause originally adopted when the union did not have majority status. It was pointed out that, under well-established doctrine, the maintenance by the parties of the unlawful union-security clause had a restraining effect and prevented the employees from freely selecting their representative. Thus, their later designation of the union could not be regarded as constituting a valid authorization to reincorporate the union-security clause in a new contract. The Board made clear that its policy not to consider unfair labor practice questions in representation proceedings [78] does not preclude consideration of such matters "where they are material to the question of whether a question concerning representation exists," particularly the question of whether or not a contract is invalidated as a bar to an election because of some defect in its union-security provisions. A determination that because of such considerations a present election is appropriate, the Board noted, does not involve an unfair labor practice finding.[79]

---

[73] *American Radiator & Standard Sanitary Corp. (Louisville Works)*, 119 NLRB 204.

[74] The Board examines the union-security provisions of contracts asserted as a bar even where the parties do not cite them as a reason why the contracts should not be a bar. *Foothill Electric Corp.*, 120 NLRB No 170.

[75] *Stahl Manufacturing Co.*, 119 NLRB 1260.

[76] *Foothill Electric Corp., supra.*

[77] *Ibid.*

[78] *Nathan Warren & Sons*, 119 NLRB 292.

[79] Cf. *C. G. Willis, Inc.*, 119 NLRB 1677, where the Board rejected a contention that a contract, containing valid union-security clauses, should not be held a bar because it provided also for employer contributions to an illegal health and welfare fund. The Board cited *New Orleans Laundry, Inc.*, 100 NLRB 966, where it had been pointed out that "the legality of practices *apart* from the contract is not litigable in representation proceedings."

The effectiveness of a contract as a bar to an election depended in some cases on whether it provided for union security in excess of that permitted by section 8 (a) (3). In one case, the contract was held not a bar because, in addition to providing for the permissible discharge of union members "in bad standing" on account of nonpayment of dues, the contract denied dues-delinquent members all privileges and benefits of the contract.[80] And an otherwise lawful union-security agreement was held inoperative as a bar because of the additional provision that employees will receive a 5-cent hourly wage increase upon joining the contracting union.[81]

e. Change in Identity of Contracting Party

The Board has adhered to the practice of disregarding an outstanding contract and entertaining a petition for an election where a schism in the ranks of the contracting union has created a serious doubt as to the identity of the employees' representative, and where following disaffiliation the contracting union has become defunct. Thus, for instance, an election was directed where it appeared that the employees took all possible action to dissolve the contracting union with which they were dissatisfied, and affiliated with a new organization which functioned as their representative, holding meetings, soliciting members, and, to some extent, adjusting grievances.[82] The contracting union, on the other hand, had become inactive and was no longer "ready, willing, or able to administer the contract." The fact that the contracting union's officers were retained, that some of its funds were used after the attempted dissolution, and that the employer attempted to treat the dissident group as the old organization, was held insufficient to establish that the organization continued to function effectively.

Conversely, no schism or defunctness was found and the outstanding contract was held a bar where, despite disaffection of a great part of the contracting local's membership, the parent organization which was a signatory to the contract did not relinquish its rights under it and administered the local's affairs through an administrator, and where the local remained willing and able to administer its contract and the employer was willing to deal with the local under the contract.[83]

In one case,[84] the international of the local whose contract was as-

---

[80] *Reading Tube Corp.*, 120 NLRB No. 206

[81] *Lindmart Jewelry Mfg. Co*, 119 NLRB 651. The Board rejected the union's offer to prove that the clause as written did not express its actual intent. It was again pointed out that where the meaning of terms in a contract is clear, they cannot be varied by extrinsic evidence.

[82] *W. H. Nicholson & Co.*, 119 NLRB 1412.

[83] *Universal Moulded Products Corp.*, 118 NLRB 1277; *West Virginia Pulp & Paper Co.*, 118 NLRB 1595.

[84] *The Great Atlantic & Pacific Tea Co*, 120 NLRB No. 91.

serted as a bar had been expelled from the parent federation on the ground of corruption. Because of the expulsion, the local's membership took disaffiliation action and affiliated with another international which took over administration of the contract. The contracting local's old international in turn removed defecting officers and placed the local under a trustee who informed the employer of his intention to administer the contract. Holding that the contract was not a bar to an election, the Board applied the *Lawrence Leather* principle [85] that the expulsion of an international union from its parent organization, coupled with disaffiliation action at the local level for reasons related to the expulsion—be it communism as in *Lawrence Leather*, or corruption as here—disrupts and confuses the established bargaining relationship. A schism thus created, the Board held, warrants the holding of an election even where, as here, the contracting union is not defunct.[86]

In one case,[87] a contract covering a group of guards was held not to have become inoperative as a bar because the contracting union, in order to be eligible for Board certification as a guard's representative,[88] disaffiliated from its parent which admitted to membership both guards and nonguard employees. This change, the Board held, was merely one of description and affiliation and did not involve a schism or internal dispute within the contracting union resulting in the establishment of a new union which might challenge the representative status of the contracting union.

f. Effect of Rival Petition

The Board continues to hold that a contract executed, renewed, or to become effective after the filing of a rival petition does not bar an election. However, a contract executed before the employer has actual notice of the filing of a petition is a bar.[89]

(1) Timeliness in Case of Automatic Renewal Contract

Questions continue to arise regarding the effectiveness of petitions for the purpose of forestalling the automatic renewal of contracts. During fiscal 1958, the Board reaffirmed the rule that a petition filed within 3 months of a contract's automatic renewal date—the so-called *Mill B* date [90]—prevents the contract from barring an election.[91] The Board rejected a contention that the "3-month rule" should not apply where a "premature" rival demand for recognition was made more

[85] 108 NLRB 546.
[86] See also *Quaker City Chocolate & Confectionery Co, Inc.*, 120 NLRB No. 157.
[87] *Dalmo Victor Company Division of Textron, Inc.*, 119 NLRB 737.
[88] See sec. 9 (b) (3) of the act.
[89] Twenty-second Annual Report, p. 24.
[90] See *Mill B, Inc*, 40 NLRB 346.
[91] *American Aniline Products*, 119 NLRB 57.

than 3 months before the renewal date. However, a petition filed more than 3 months before the *Mill B* date of an outstanding contract will not be dismissed as premature where the *Mill B* date has been reached,[92] or will be reached shortly after issuance of the Board's decision in the case.[93]

The Board also reaffirmed the rule that, where a petition has raised a question of representation before the execution or the automatic renewal date of a contract, a later petition covering the same employees, and filed while the question of representation is still pending, is also timely and is not barred by the intervening execution of a contract.[94]

g. Effect of Rival Claims—The 10-Day Rule

As heretofore, the Board has held that an unsupported claim for recognition, if followed within 10 days by the filing of a supported petition, will prevent a contract executed or renewed during the 10-day period from becoming a bar.[95] The rule, however, does not apply where a new contract is made during the *Mill B* period of a current contract, that is, the period between the automatic renewal or notice period and the terminal date of the current contract. A contract made during this period bars an election unless preceded by the filing of a petition.[96]

The 10-day rule was held not to apply in 1 case where the claimant's failure to file a petition within 10 days was due to extenuating circumstances. In this case, the employer did not question a union's representation claim and led the union to beileve that it was being recognized without a Board determination. However, the employer on the same day executed a contract with another union. The petition filed by the union more than 10 days after its claim was held to have prevented the contract from constituting a bar to an election.[97]

h. Premature Extension of Contract

In order to provide employees an opportunity to change representatives, if they wish, at reasonable and predictable intervals, the Board has consistently held that the parties to an existing contract cannot forestall a redetermination of representatives by extending the term of their contract before its terminal or automatic renewal date. Such a premature extension is no bar to a petition which is

---

[92] *The Evening News Assn, d/b/a Detroit News,* 119 NLRB 345; see also *Wiedemann Machine Co.,* 118 NLRB 1616.

[93] See *Safeway Trails, Inc,* 120 NLRB No. 13, involving a petition filed about 6 months before the 60-day renewal periods of certain contracts.

[94] *Continental Can Co., Inc,* 119 NLRB 1851.

[95] The rule is commonly referred to as *General Electric* X-Ray rule; see 67 NLRB 997; *Grand Union Co.,* 118 NLRB 685

[96] See *Spencer Kellogg & Sons, Inc.,* 115 NLRB 838; Twenty-first Annual Report, pp. 44–45; Twenty-second Annual Report, p. 25.

[97] *Heckett Engineering Co.,* 118 NLRB 749.

timely in relation to the contract's original termination or automatic renewal date.[98]

As heretofore, the Board has held that the rule applies irrespective of whether the parties acted in good faith in executing the extension agreement,[99] or were motivated by economic considerations such as benefits accruing to employees under the extended contract.[1]

Nor was an exception to the rule held warranted because the parties' new agreement was made in anticipation of the transfer of employees to a new plant with many new classifications of employees, and in order to stabilize costs by determining in advance the wage rate for a definite period.[2] To make an exception in this type of situation,[3] the Board pointed out, would defeat the purpose of the premature-extension rule "to permit employees to change their bargaining agent, if they so desire, at reasonable and clearly predictable intervals."[4]

The Board had occasion to make clear that the extension of a contract of unreasonable duration is subject to the premature-extension rule even though the new contract is executed while the original contract itself is still a bar, that is, *during* the first 2 years of its term.[5] This type of situation, the Board pointed out, is unlike that in the *Cushman's Sons* case[6] where a contract of unreasonable duration was extended *after* the first 2 years, that is, at a time when there was no contract bar in effect.

5. Impact of Prior Determinations

In order to stabilize labor relations, certain administrative and statutory limitations have been placed upon the frequency with which representation elections may be held. It is the Board's policy, generally, to dismiss election petitions filed during the year following the certification of a bargaining agent. Moreover, section 9 (c) (3) of the act prohibits the Board from directing an election to be held within 12 months after a valid election for the same employee group.

---

[98] See *Beloit Eastern Corp*, 119 NLRB 1407.

[99] *Thos. & Geo. M. Stone, Inc*, 120 NLRB No. 62.

[1] *Ibid.*

[2] *Continental Can Co.*, 119 NLRB 1851; see also *Monsanto Chemical Co. (John F. Queeny Plant)*, 119 NLRB 69.

[3] The Board distinguished the *Sefton Fibre Can Co.* case (109 NLRB 360).

[4] In one case (*Tung-Sol Electric, Inc*, 120 NLRB No. 214), the Board rejected a contention that the contract asserted as a bar did not come within the premature-extension rule because the parties' earlier agreement was not a fully considered contract having been hurriedly executed while a motion for the reconsideration of the contracting union's certification was pending. The Board held the *Westinghouse* case (116 NLRB 1574) inapplicable since there the parties' earlier contract had been terminated under its broad reopening provisions, whereas here the extended contract was opened pursuant to a limited and narrow reopening provision.

[5] *Gibbs Oil Company and Henry & Paul Gibbs d/b/a Boulder Transportation Co.*, 120 NLRB No. 202.

[6] *Cushman's Sons, Inc*, 88 NLRB 121.

In administering the statutory 1-year limitation, the Board accords representation elections conducted by State authorities the same effect as its own elections where proper safeguards have been taken.[7]

The 1-year certification rule is strictly applied. The Board therefore dismissed a petition filed 12 days before the expiration of the 12-month period following an incumbent representative's certification.[8] However, adhering to the *Ludlow* rule,[9] the Board has again held that where the parties execute a contract within 12 months of the contracting union's certification, the certification year merges with that of the contract and the latter controls the timeliness of a petition because there is no need to protect the certification further.[10] Moreover, a petition which is timely in relation to such a contract will be processed even though it is filed prior to the end of the certification year.[11]

6. 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."[12] This section also imposes certain limitations on the unit placement of professional employees, craft employees, and plant guards. Section 9 (c) (5) precludes the Board from deciding the appropriateness of a bargaining unit solely on the basis of the extent to which the employees involved have been organized. A bargaining unit may include only "employees" within the definition of section 2 (3).

The following sections discuss the more important cases decided during fiscal 1958 which dealt with factors considered in unit determinations, particular types of units, and the treatment of particular categories of employees or employee groups.

a. Factors Considered

The appropriateness of a proposed bargaining unit is determined on the basis of the common employment interests of the group involved. In making such determinations, the Board has continued to give particular weight to any substantial bargaining history of the group and—in some situations—to take into consideration the wishes

[7] See Twenty-second Annual Report, p 30, and Twenty-first Annual Report, p. 51.
[8] *Riverside Manufacturing Co.*, 119 NLRB 328.
[9] *Ludlow Typograph Co.*, 108 NLRB 1463.
[10] *Stroehmann Brothers Co.*, 120 NLRB No. 107.
[11] *Ibid.*, citing *General Electric Co., Apparatus Service Shop*, 115 NLRB 1424.
[12] Unit determinations also have to be made in unfair labor practice proceedings where the existence of a violation of sec. 8 (a) or (b) depends on whether or not the bargaining representative involved had majority status in an appropriate bargaining unit.

LIBRARY NATIONAL LABOR RELATIONS BOARD

of the employees. Extent of organization may be a factor but it cannot be given controlling weight.

(1) Bargaining History

In determining the bargaining units for previously represented employees, the Board is reluctant to disturb a unit established by collective bargaining over a substantial period of time. Such a bargaining history will be given effect, unless of very short duration, or remote,[13] or based on a unit which is repugnant to Board policies or which does not give the employees the fullest freedom in exercising their rights under the act.[14]

In the case of a varied bargaining history of a group of employees ordinarily the most recent history is controlling.[15] Bargaining history in order to be given weight must have been effective and substantial.[16] Generally it is the bargaining history of the group involved that is considered. If unorganized, the bargaining history for other groups of employees of the same employer may be persuasive, but it is not invariably controlling.[17] Nor is the bargaining pattern at other plants of the same employer or in the particular industry generally controlling.[18]

In case of conflicting contentions as to the controlling bargaining pattern in a particular case—such as a contention that bargaining occurred on a single-plant rather than multiplant basis—the Board determines the intention of the parties as reflected by the manner in which bargaining demands were made and in which collective bargaining was carried on, the type of contract adopted by the parties, and the scope of application of contract terms.[19]

(2) Employees' Wishes in Unit Determinations

Where a homogeneous employee group, such as a craft or departmental group, is sought to be represented either separately or as part of a larger unit, or where a separately represented group is sought to be added to another existing unit, the Board has continued to direct self-determination elections to ascertain whether the group desires representation in a separate unit or as part of a larger unit. Similarly, where an unrepresented fringe group is sought to be added to an

---

[13] *Chrysler Corp. (Ohio Stamping Plant)*, 119 NLRB 1312; *Macy's San Francisco, and Seligman & Latz, Inc.*, 120 NLRB No. 7.

[14] *Westinghouse Electric Corp.*, 118 NLRB 1043; see also *West Virginia Pulp & Paper Co.*, 120 NLRB No. 163.

[15] *The Santa Fe Trail Transportation Co.*, 119 NLRB 1302.

[16] *Chrysler Corp. (Ohio Stamping Plant)*, 119 NLRB 1312; *Heublein, Inc.*, 119 NLRB 1337.

[17] *Arcata Plywood Corp. et al.*, 120 NLRB No. 205.

[18] See *Heublein, Inc.*, 119 NLRB 1337, and cases cited there; see also *Technicolor Corp.*, 120 NLRB No. 6.

[19] See *General Motors Corp.*, 120 NLRB No. 162.

existing unit, the group is accorded a separate election to determine whether they wish to join the existing unit or continue without representation.[20]

Where an employer acquires a new plant or operation which is not merely an accretion to existing operations, the Board normally also permits the employees at the new operation to decide whether or not they wish to be represented separately or as part of the existing unit.[21]

A self-determination election is mandatory under section 9 (b) (1) where it is proposed to include professional employees [22] in a unit with nonprofessionals. However, as in the case of other homogeneous groups, an election among professionals will not be directed where the proposed voting unit constitutes only an arbitrary segment of the employer's professional employees.[23]

(3) Extent of Organization

A bargaining unit may not be held appropriate solely on the ground that it is to include all the employees presently organized.[24] The Board has given effect to this rule by denying unit requests whose only apparent basis was the extent of the petitioner's organization of the employer's employees.[25] But section 9 (c) (5), which precludes the Board only from giving *controlling* weight to extent of organization, was held inapplicable where a departmental unit allegedly based on extent of organization was found to be appropriate on the basis of factors wholly unrelated to extent of organization.[26]

b. Craft and Quasi-Craft Units

The Board has continued to determine the basic appropriateness of craft and departmental units, and their severance from existing broader units, by applying the tests established in the *American Potash* case.[27] The rules there established concern the ascertainment of

---

[20] See, e. g., *North American Aviation, Inc.*, 120 NLRB No. 153; *Safeway Trails, Inc.*, 120 NLRB No. 13; *Pennsalt Chemicals Corp.*, 119 NLRB 128; *United States Gypsum Co.*, 119 NLRB 1415; *Kiekhaefer Corp.*, 119 NLRB 1097; *General Electric Co. (Clock and Timer Department)*, 118 NLRB 805; *Gulf States Telephone Co*, 118 NLRB 1039.

[21] *Fleming & Sons, Inc.*, 118 NLRB 1451; *Barrett Division, Allied Chemical & Dye Corp.*, 120 NLRB No. 138.

[22] The term "professional employee" is defined in sec. 2 (12) of the act. See, e. g., *General Electric Co.*, 120 NLRB No. 31.

[23] *General Electric Co., supra.* Cf. *Monsanto Chemical Co. (John F. Queeny Plant)*, 119 NLRB 69.

[24] Sec. 9 (c) (5).

[25] *Central Carolina Farmers Exchange, Inc*, 119 NLRB 1336; *Transcontinental Bus System, Inc.*, 119 NLRB 1840; *Catalina, Inc.*, 120 NLRB No. 63; *New England Power Co. (Western Division)*, 120 NLRB No. 98.

[26] *The Electronics and Instrumentation Division of Baldwin-Lima-Hamilton Corp.*, 118 NLRB 917. See also *Foremost Dairies, Inc.*, 118 NLRB 1424, where the Board rejected a request for dismissal on the ground that the petitioner had amended its unit request to conform to the unit in which it had an adequate showing of interest. The Board distinguished the situation here from the one in *Sanitary Farms Dairies, Inc.*, 107 NLRB 955.

[27] *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954).

whether particular employees constitute a true craft group or a traditional department for the purpose of separate representation, and whether the union which seeks to sever a craft or departmental group from an existing unit possesses the requisite qualifications.

Regarding the scope of craft and departmental units, the Board has again held that a proposed craft unit is not appropriate if it comprises only a segment of the craft employees in the particular craft,[28] and that a departmental unit must include all the employees in the department,[29] though not employees similarly occupied in other separately supervised departments.[30]

(1) Automotive Mechanics as Craftsmen

The Board during fiscal 1958 recognized the craft status of automotive mechanics employed at a manufacturer's truck service and sales branch.[31] Overruling earlier cases where automotive mechanics had been held not craftsmen,[32] the Board granted the present petition for a unit of automotive mechanics, their helpers, and apprentices. Parts men were excluded from the unit because, though working in association with the craftsmen, they were not in direct line of progression in the craft and exercised no craft skills. Present recognition of the craft status of employees, such as the ones here involved, was held indicated by the increase in the skill required of mechanics working on modern automobile engines and the consequent necessity of a detailed and extensive apprenticeship program.[33] The employer's program here envisaged a rounded experience in every phase of motor-truck service and understanding of every engine part. It was incorporated in a supervisor's manual giving explicit instructions on how to conduct the program and it had been approved by the United States Bureau of Apprenticeship, and similar agencies in some 12 States.

(2) Welders as Craftsmen

Petitions for separate units of welders, in the wake of the preceding year's decision in *Hughes Aircraft* [34] recognizing the craft status of the

---

[28] *National Cash Register Co.*, 119 NLRB 486.

[29] *Allied Chemical & Dye Corp, Nitrogen Division*, 120 NLRB No. 4, *Dierks Paper Co.*, 120 NLRB No. 45.

[30] *The Gemex Corp.*, 120 NLRB No. 8; *Union Steam Pump Co.*, 118 NLRB 689.

[31] *International Harvester Co*, 119 NLRB 1709. Member Jenkins, concurring, held that the unit request here could be granted on historical grounds and did not require consideration of the mechanics' craft status.

[32] *Armour & Co.*, 110 NLRB 587; *Gulf Oil Corp.*, 108 NLRB 162; *Key System Transit Lines*, 105 NLRB 526; *C. K. Williams & Co.*, 106 NLRB 219

[33] Absence of an apprenticeship program may, but does not necessarily, indicate lack of craft status. See *Catalina, Inc*, 120 NLRB No. 63, *Allied Chemical & Dye Corp, Nitrogen Division*, 120 NLRB No. 4; cf. *Union Steam Pump Co.*, 118 NLRB 689, *Griffin Wheel Co.*, 119 NLRB 336. Also, the mere existence of such a program is insufficient by itself to support a finding that a particular group of employees constitutes a craft. See *Standard Oil Co.*, 118 NLRB 1099.

[34] *Hughes Aircraft Co. (Tucson Operations)*, 117 NLRB 98, Member Bean dissenting. Twenty-second Annual Report, p 35.

welder group there, called for determinations whether other welding groups were likewise entitled to separate representation as members of the welding craft.

Shipyard welders and burners, in one case, who were engaged both in new construction and maintenance and repair work on marine vessels and dredges, were found to be skilled in the welding and burning required in the particular type of shipbuilding, and to constitute a proper craft unit.[35] Craft severance of heliarc welders in the aircraft industry was granted in two cases [36] on the basis of the *Hughes Aircraft* decision.[37] But spot welders and seam welders who worked on automatic welding machines were excluded.[38] It was found that in these categories the military tests and certifications required from other welders were not applicable, and that maintenance welders were not "primarily engaged" in the particular craft work as required under the *American Potash* severance rules.

On the other hand, welders who perform welding operations normally associated with a particular metal trades craft, and who perform other duties within the craft when not welding, were held not welding craftsmen within the meaning of the *Hughes Aircraft* decision. They were therefore held ineligible for severance from their basic metal trades unit.[39] Metal trades welders, as noted by the Board, do not have the extensive training experience or skill in the three basic types of welding—gas arc, electric arc, and heliarc; and their training to meet the welding requirements of one metal trades craft does not necessarily qualify them to perform welding operations in another craft.

(3) Multicraft Units

In accordance with established practice, multicraft groups, such as maintenance employees, with common interests distinct from those of production employees, have been held entitled to representation in a separate unit absent a controlling bargaining history on a broader basis.[40] Conversely, the Board does not permit severance of a multicraft maintenance group, en masse, from an existing plantwide unit.[41] A maintenance unit in order to be appropriate need not be composed exclusively of skilled employees with craft status.[42]

---

[35] *Parker Brothers & Co., Inc.,* 118 NLRB 1329.

[36] *Royal Jet, Inc*, 118 NLRB 1558; *Arrowhead Products Division of Mogul Bower Bearings, Inc., Long Beach Plant,* 120 NLRB No. 93.

[37] *Supra*

[38] *Arrowhead Products Division of Mogul Bower Bearings, Inc., Long Beach Plant, supra*

[39] *C F Braun & Co,* 120 NLRB No. 42, *Alameda Tank Co. et al.,* 120 NLRB No 43.

[40] *Chrysler Corp. (Ohio Stamping Plant),* 119 NLRB 1312 (maintenance and powerhouse group).

[41] *Union Steam Pump Co.,* 118 NLRB 689.

[42] *Union Carbide Chemicals Co., Division of Union Carbide Corp. (Torrance Plant),* 118 NLRB 954.

An employerwide multicraft unit including various building trade craftsmen was also held appropriate where no union sought to represent any of the crafts in a separate unit.[43]

(4) Craft and Departmental Severance

Employees who constitute a true craft group or 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, provided the union seeking severance has traditionally represented the particular type of employees.[44]

During the past year, a majority of the Board declined to apply the *American Potash* rules to severance of technical employees from an existing unit,[45] pointing out that *American Potash* was not intended to announce a rule for the severance of such employees. Continuation of the practice to permit severance of technical employees without regard to the nature of the union seeking to represent them, according to the majority, is consistent with the long-standing recognition that technical employees have a more distinctive community of employment interests than craftsmen. "It is for this reason that the Board excludes technical employees from a larger bargaining unit whenever any party objects to their inclusion while refusing to exclude craftsmen on mere request."

Regarding the "traditional union" test, the Board had occasion to point out again that a union organized for the sole and exclusive purpose of representing members of its particular craft meets the traditional craft union test.[46]

In determining a union's severance qualifications, the Board may take official notice of earlier decisions in which the union was found to have traditionally represented the particular craft or departments.[47] However, in a case involving welders the Board held that the petitioner's severance qualification was not established by the recent *Hughes Aircraft* decision [48] because it appeared that more than one union has traditionally represented welders.[49]

c. Units in Integrated Industries

The Board announced during the past year that the *National Tube* doctrine,[50] under which separate craft or departmental representation

---

[43] *Calumet Contractors Assn*, 121 NLRB No. 16.

[44] *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954).

[45] *Westinghouse Electric Corp.*, 118 NLRB 1043, Member Rodgers dissenting.

[46] *Colgate-Palmolive Co.*, 120 NLRB No. 192.

[47] *Union Steam Pump Co*, 118 NLRB 689.

[48] *Hughes Aircraft Co. (Tucson Operations), supra.*

[49] *Monsanto Chemical Co. (John F. Queeny Plant)*, 119 NLRB 69. The case was remanded to afford the petitioner an opportunity to present evidence of its qualification.

[50] *National Tube Co.*, 76 NLRB 1199.

had been denied in certain industries, *viz*, basic steel,[51] basic aluminum,[52] lumber, [53] and wet milling,[54] is applicable not only in the case of plants with a prior industrial bargaining history but also where new plants in those industries are involved.[55]

However, adhering to the policy announced in the *American Potash* case,[56] the Board has again declined to extend the *National Tube* doctrine and has permitted separate craft or departmental representation, regardless of integration of operations, in all industries other than basic steel, basic aluminum, lumber, and wet milling.[57]

d. Multiemployer Units

In dealing with requests for multiemployer units, the Board is primarily guided by the rule that a single-employer unit is presumptively appropriate and that to establish a contested claim for a broader unit a controlling history of collective bargaining on such a basis by the employers and the union involved[58] must be shown.[59] But no controlling weight was given to multiemployer bargaining which was preceded by a long history of single-employer bargaining, was of brief duration, did not result in a written contract of substantial duration, and was not based on any Board unit finding.[60]

The existence of a controlling multiemployer bargaining history may also depend on whether the employer group has in fact bargained jointly or on an individual basis. Generally, the Board will find that joint bargaining is established where the employers involved have for a substantial period directly participated in joint bargaining or delegated the power to bind them in collective bargaining to a joint agent, have executed the resulting contract, and have not negotiated on an individual basis.[61] Execution of the contract by each employer separately does not preclude a finding of a multiemployer bargaining history where the employers are clearly shown to have participated in a pattern of joint bargaining.[62]

---

[51] *National Tube Co, supra.*

[52] *Permanente Metals Corp.*, 89 NLRB 804.

[53] *Weyerhaeuser Timber Co.*, 87 NLRB 1076.

[54] *Corn Products Refining Co.*, 80 NLRB 362.

[55] *Kaiser Aluminum & Chemical Corp.*, 119 NLRB 695.

[56] *American Potash & Chemical Corp., supra.*

[57] *Monsanto Chemical Co. (John F. Queeny Plant)*, 119 NLRB 69 (organic chemicals industry); *Colonial Cedar Co., Inc*, 119 NLRB 1613 (basic atomic energy industry).

[58] *Macy's San Francisco, and Seligman & Latz, Inc.*, 120 NLRB No. 7.

[59] *Chicago Metropolitan Home Builders Assn.*, 119 NLRB 1184. See also Twenty-second Annual Report, pp. 33–34. Where the petitioner and employer seek a multiemployer unit and no union seeks to represent a smaller unit, collective-bargaining history is not a prerequisite to the appropriateness of the requested multiemployer unit. *Calumet Contractors Assn.*, 121 NLRB No. 16.

[60] *Chicago Metropolitan Home Builders Assn., supra;* see also *Macy's San Francisco, and Seligman & Latz, Inc., supra.*

[61] *Molinelli, Santoni & Freytes et al*, 118 NLRB 1010.

[62] *The Evening News Assn., Division of Hearst Publishing Co., Inc.*, 119 NLRB 345, see also *Thos. & Geo. M. Stone, Inc., et al.*, 120 NLRB No. 62.

(1) Scope of Multiemployer Unit

A multiemployer unit may include only employers who have participated in and are bound by joint negotiations. The mere adoption of a group contract by an employer who has not participated in joint bargaining directly, or through an agent,[63] or has indicated his intention not to be bound by future group negotiations,[64] is insufficient to permit his inclusion in a proposed multiemployer unit.

(2) Withdrawal From Multiemployer Unit

A petition for a single-employer unit, in the face of a multiemployer bargaining history, will be granted if it appears that the employer involved has effectively withdrawn from the multiemployer group and has abandoned group bargaining.[65] In order for withdrawal from multiemployer bargaining to be effective, the withdrawing party must unequivocally indicate at an appropriate time that it desires to abandon such bargaining.[66] Pointing out in one case [67] that the necessary stability in bargaining relations requires reasonable limits on the time and manner for withdrawal from an established multiemployer bargaining unit, the Board held that—

> The decision to withdraw must contemplate a sincere abandonment, with relative permanency, of the multiemployer unit and the embracement of a different course of bargaining on an individual-employer basis. The element of good faith is a necessary requirement in any such decision to withdraw, because of the unstabilizing and disrupting effect on multiemployer collective bargaining which would result if such withdrawal were permitted to be lightly made.

A majority of the Board [68] also believed that the issues raised in this case justified establishment of "specific ground rules" governing the withdrawal from multiemployer bargaining units in future cases. Noting particularly that insurance of stability in multiemployer bargaining relationships requires limitations on the timing of withdrawals, the majority announced that hereafter—

> [The Board] would . . . refuse to permit the withdrawal of an employer or a union from a duly established multiemployer bargaining unit, except upon adequate written notice given prior to the date set by the contract for modification, or to the agreed-upon date to begin the multiemployer negotiations. Where actual bargaining negotiations based on the existing multiemployer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances.

---

[63] *Molinelli, Santoni & Freytes, et al., supra; Colonial Cedar Co., Inc*, 119 NLRB 1613

[64] *Colonial Cedar Co., supra.*

[65] *Benjamin Franklin Paint & Varnish Co., a Division of United Wallpaper, Inc*, 118 NLRB 1007.

[66] See *The Standard Register Co., Pacific Division*, 120 NLRB No. 180; see also *International Brotherhood of Electrical Workers, AFL–CIO (Textite, Inc)*, 119 NLRB 1792

[67] *Retail Associates, Inc*, 120 NLRB No 66.

[68] Member Jenkins dissenting.

e. Plant Guards

Section 9 (b) (3) provides that plant guards may not be placed in units with nonguard employees. The section further provides that a union which admits to membership or is affiliated with one that admits employees other than guards may not be certified as bargaining representative of a guard unit. To be a guard within the meaning of the section, an employee must "enforce against employees and other persons rules to protect property of the employer or to protect safety of persons on the employer's premises." The statutory definition was held to apply to an employee who, in addition to regular production duties, was responsible, on weekends and during the 2-hour period between night and day shifts, for notifying the police or fire department and the employer of emergencies indicated by the sounding of the employer's burglar alarm system.[69] The Board here held that the employee's weekend functions were those of a guard, even though he reported incidents only upon being initially apprised by means of an alarm system rather than by personal observation while making rounds.[70] Nor was it held material for the purpose of the employee's guard status that he was compensated by the payment of part of his rent to his landlord by the employer. In one case, unarmed watchmen were found to be guards rather than only monitors because, in addition to duties with respect to fires and fire hazards, they had specific responsibilities in connection with attempts by unauthorized persons to enter the plant, the use of proper entrances and exits by employees, and the removal of property by employees without a pass.[71] On the other hand, night watchmen making regular rounds for fire security, but having no authority to admit anyone without obtaining authorization, and having no duties relative to burglary, were held not guards under section 9 (b) (3).[72]

The Board has adhered to excluding from nonguard units all employees who perform any guard duties during some of the time.[73]

f. Individuals Excluded From Bargaining Unit by the Act

A bargaining unit may include only individuals who are "employees" within the definition of section 2 (3) of the act. The categories expressly excluded from the statutory term "employee" include agricultural laborers, independent contractors, and supervisors.[74]

---

[69] *Aeroguild, Inc.*, 119 NLRB 329.

[70] Cf. *The Illinois Canning Co.*, 120 NLRB No. 94.

[71] *The Stearns & Foster Co.*, 119 NLRB 446.

[72] *The Woodman Co., Inc.*, 119 NLRB 1784.

[73] *The Celotex Corp.*, 118 NLRB 1020; *International Furniture Co.*, 119 NLRB 1462. See *Walterboro Manufacturing Corp.*, 106 NLRB 1383.

[74] Also excluded are domestic servants, any individual employed by his parent or spouse (see *The Colonial Craft, Inc.*, 118 NLRB 913), individuals employed by an employer subject to the Railway Labor Act or by any person who is not an employer as defined in sec. 2 (2).

(1) Agricultural Laborers

During fiscal 1958 the Board was further concerned with the status of employees whose working time is divided between agricultural and nonagricultural duties. Referring to the preceding year's *Rider* decision,[75] where employees engaged less than 30 percent of their time in agricultural work were included in a processing plant unit, the Board announced in the *Olaa Sugar Company* case [76] that

> employees who perform *any regular amount* of nonagricultural work are covered by the Act with respect to that portion of the work which is nonagricultural.[77]

In one case, the Board found that a seed company's seed-processing operations were not agricultural and that the employees engaged in seed processing could properly be included in the bargaining unit sought by the petitioning union.[78] The Board reached its conclusion on the basis of advice that the Wage and Hour and Public Contracts Division of the United States Department of Labor had held that the company's processing plant employees were not agricultural laborers for the purposes of the Fair Labor Standards Act. The Board again pointed out that it is its policy to give great weight to the interpretation of the term "agricultural" by the agencies which administer the Fair Labor Standards Act.[79] However, as the employees here also spent varying amounts of time in agricultural work, the Board applied the *Olaa Sugar* case rule,[80] holding that the employees were nevertheless covered by the National Labor Relations Act with regard to that portion of their work which is nonagricultural.[81]

Feed-mixing plant employees of an employer engaged in raising chickens were held not agricultural laborers for representation purposes in view of a Department of Labor ruling that such employees are not considered as engaged in "agriculture" where, as here, the

---

[75] *H. A. Rider & Sons,* 117 NLRB 517; Twenty-second Annual Report, pp 40–41

[76] 118 NLRB 1442. The *Olaa Sugar* case arose from a complaint alleging that the company unlawfully discriminated against an employee. The Board issued an order remedying the unfair labor practice (114 NLRB 670) and later petitioned the Court of Appeals for the Ninth Circuit for enforcement. The court remanded the case because of its view that the employee was in part engaged in agricultural labor and that the order could be enforced only upon a finding by the Board that the employee was nevertheless protected by the act (242 F. 2d 714).

[77] The Board noted that this treatment of part-time agricultural laborers coincided with the judicially approved position of the Department of Labor in administering the Fair Labor Standards Act. Adoption by the Board of the rules governing the application of the Fair Labor Standards Act, in the Board's view, is in harmony with both congressional intent and the dictates of comity which require that the view of the governmental agency most often concerned with a problem be respected by the agency to which the problem is relatively incidental.

[78] *Columbiana Seed Co.,* 119 NLRB 560.

[79] See footnote 77, *supra,* regarding the views expressed by the Board in the *Olaa Sugar* case.

[80] *Supra.*

[81] The principles of the *Olaa Sugar* and *Columbiana Seed* cases were held to apply likewise in the case of another seed company's seed-cleaning plant employees who, in addition to performing regularly nonagricultural seed-cleaning functions, spent some of their time in agricultural activities. *Waldo Rohnert Co.,* 120 NLRB No. 23.

work performed by them on feed for chickens raised in the employer's own growing units is not very carefully segregated from work performed on feed for chickens raised by independent contractors.[82]

(2) Independent Contractors

The Board has consistently held that the act requires that the question whether an individual is an independent contractor be determined by applying the "right-of-control" test. Under this test [83] an independent-contractor relationship will be found where the record shows that the person for whom services are performed reserves control only as to the result sought.[84] On the other hand, where the record shows that control is retained over the manner and means by which the result is to be accomplished, an employer-employee relationship will be found.[85]

(3) Supervisors

The supervisory status of an employee under the act depends on whether he possesses authority to act in the interest of his employer in the matters and the manner specified in section 2 (11) which defines the term "supervisors." Generally, it is the existence rather than the exercise of authority within the meaning of section 2 (11) that determines an employee's supervisory status.[86]

In determining the existence of supervisory authority in contested cases, the Board has continued to take into consideration such record facts [87] as the ratio of supervisory to supervised employees in the particular department or plant. Thus supervisory status has been held indicated where a finding that the employees involved were not supervisors would have resulted in a disproportionate number of rank-and-file employees to every remaining supervisor.[88] Conversely, an un-

---

[82] *Armour Ches-Peake,* 120 NLRB No. 108.

[83] The 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 purposes of the unfair labor practice provisions of sec 8 is in issue.

[84] See, for instance, *Harbor Plywood Corp. et al.,* 119 NLRB 1429, where loggers, reloaders, and roadbuilders who performed services for a lumber company were found to be independent contractors in view of the terms of the contracts and actual practice which governed the relationship of the parties. Cf. *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, etc. (A. C. E. Transportation Co , Inc.),* 120 NLRB No 150.

[85] See, for instance, *The Seven-Up Bottling Co. of Detroit, Inc.,* 120 NLRB No. 141, holding that a bottling company's distributors were employees because of the detailed control exercised by the company over the distributors' method of operation. Cf. *International Brotherhood of Teamsters, Locals 249 and 250 (Polar Water Co.),* 120 NLRB No. 25 ; *Rio De Oro Uranium Mines,* 119 NLRB 153.

[86] *Texas Bronze Manufacturing Co., Inc.,* 118 NLRB 1373 ; *Waldo Rohnert Co ,* 120 NLRB No. 23. Clarifying its certification in *Sherman White & Co.* (120 NLRB No 71), the Board included in the unit an employee who shortly before the election had been given a wage increase and had been advised that he was a foreman, but continued to perform his former duties which did not include any supervisory authority.

[87] A prior determination is not controlling where the present record warrants a different conclusion. See *United States Gypsum Co.,* 119 NLRB 1415.

[88] See, for instance, *Conso Fastener Corp.,* 120 NLRB No. 74 ; *Illinois Canning Co.,* 120 NLRB No. 94 ; *The Interstate Co.,* 118 NLRB 746.

usually small number of rank-and-filers may indicate that the employee whose status is challenged is not a supervisor.[89] Manner and rate of pay is also considered relevant in ascertaining the status of employees.[90]

Employees who possess some supervisory authority may be included in a bargaining unit if the exercise of their supervisory functions is only sporadic or occasional.[91] On the other hand, employees who substitute regularly and periodically for their superior during his absence are generally excluded from bargaining units.[92]

Management trainees hired by the employer for limited periods were excluded from the unit in one case because of insufficient community of interest with other employees.[93]

g. Employees Excluded From Unit by Board Policy

It is the Board's policy to grant requests for the exclusion from bargaining units of employees who perform certain confidential services for their employer, and employees whose interests are closely allied with those of management.

(1) Confidential Employees

Exclusion of employees because of the confidential nature of their duties is limited to—

> employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.[94]

This definition was held to apply to the secretaries of certain management officials who were on the employer's contract-negotiating and policymaking committees concerned with plantwide labor relations matters.[95] A payroll clerk was excluded from a unit because he pre-

---

[89] See, for instance, *Pervel Corp.*, 119 NLRB 497; *Bob Saunders, d/b/a Bob Saunders Co*, 118 NLRB 415; *American Radiator & Standard Sanitary Corp, Pacific Order Handling Division*, 119 NLRB 1715; *Sante Fe Trail Transportation Co.*, 119 NLRB 1302; *United States Gypsum Co.*, 119 NLRB 1415.

[90] See *Northrop Aircraft, Inc*, 120 NLRB No. 37; *Jefferson Mills, Division of Kahn & Feldman, Inc.*, 120 NLRB No. 67; *The Illinois Canning Co.*, 120 NLRB No. 94; *Georgia Kraft Co*, 120 NLRB No 113. Cf. *Warren Petroleum Co.*, 120 NLRB No. 61, holding that a wage differential was not indicative of supervisory status.

[91] See, for instance, *Italia Societa per Azioni di Navigazione*, 118 NLRB 1113; *The Barr Rubber Products Co.*, 118 NLRB 1428; *Armour & Co*, 119 NLRB 122.

[92] See *Swift & Co.*, 119 NLRB 1556; *United States Gypsum Co.*, 119 NLRB 1528; *MacIntyre Motor Co.*, 119 NLRB 54; *The Stearns & Foster Co.*, 119 NLRB 446. See also *Worthington Corp.*, 119 NLRB 306, where the Board declined to include in the unit a "temporary foreman" because he was presently acting as foreman and it was uncertain when he might be transferred back to his rank-and-file job. But see *Wallace Stenlake and John Baldwin d/b/a New Pacific Lumber Co.*, 119 NLRB 1307, where a substitute supervisor was found to have insufficient authority to warrant his exclusion from the unit.

[93] *Diana Shop of Spokane, Inc., et al.*, 118 NLRB 743. See also Twenty-second Annual Report, pp. 44–45.

[94] *Ethyl Corp.*, 118 NLRB 1369. The Board here reaffirmed the rule announced in the *B. F. Goodrich* case (115 NLRB 722, Twenty-first Annual Report, p. 62).

[95] See also *Kieckhefer Container Co*, 118 NLRB 950. For other cases excluding confidential secretarial employees see *Armour & Co.*, 119 NLRB 122; *Santa Fe Trail Transportation Co.*, 119 NLRB 1302; *Swift & Co.*, 119 NLRB 1556.

pared data showing effect of contemplated wage changes, attended conferences on contract negotiations, furnished information and advice on effect of contract terms, and participated in discussions regarding fiscal aspects of labor contracts.[96] An employee who substituted for a confidential clerk was also excluded in one case.[97]

An employee who does not presently perform confidential duties will not be excluded from the unit because of the possibility that he may have to do so in the future.[98] Nor will an employee be excluded on the ground that he works for an official who in the past was responsible for labor relations matters but has no present responsibility in connection with general labor policies.[99] Secretaries are considered not confidential employees if their supervisors handle only such matters as grievances and pay raises, or attend bargaining negotiations.[1]

(2) Managerial Employees

Employees in executive positions with authority to formulate and effectuate management policies are excluded from bargaining units.[2] Managerial status for exclusion purposes was found, for instance, in the case of a telephone company's exchange heads who dealt with the general public on all company problems; [3] assistant purchasing agents with discretion in selecting vendors and in determining prices and quality; [4] freight agents who act as terminal managers and are charged with protecting the employer's interests in the area; [5] and a manufacturer's assistant export manager who helps determine policy and draft dealership contracts.[6]

No managerial status warranting exclusion was found where the particular employee was not on the policymaking level of the employer's organization and where any decision he made must conform to the employer's established policy.[7] The Board does not consider the exercise of judgment and discretion or the absence of supervision as conclusive in determining whether an employee has managerial status.[8]

---

[96] *Triangle Publications, Inc.*, 118 NLRB 595.

[97] *Kieckhefer Container Co., supra.* But a summer substitute for a confidential employee was included in the unit absent evidence that she acted in confidential capacity during such periods. *Ibid.*

[98] *American Radiator & Standard Sanitary Corp., Pacific Order Handling Division,* 119 NLRB 1715.

[99] *Gulf States Telephone Co.*, 118 NLRB 1039.

[1] *Westinghouse Air Brake Co., Union Switch & Signal Division,* 119 NLRB 1391; *Eastern Sugar Associates (a Trust), d/b/a Central Juncos,* 119 NLRB 493; see also *Swift & Co.,* 119 NLRB 1556.

[2] See Twenty-second Annual Report, p. 45.

[3] *Gulf States Telephone Co., supra.*

[4] *Copeland Refrigeration Corp.*, 118 NLRB 1364.

[5] *Santa Fe Trail Transportation Co.*, 119 NLRB 1302.

[6] *Mixermobile Manufacturers, Inc.*, 119 NLRB 1617.

[7] See *Albert Lea Cooperative Creamery Assn.*, 119 NLRB 817.

[8] *Ibid.* See also *American Radiator & Standard Sanitary Corp, Pacific Order Handling Division,* 119 NLRB 1715.

These rules were applied in rejecting a union contention that persons employed by it as organizers or field representatives were managerial employees and as such not eligible for representation in a bargaining unit.[9] In the Board's view, the organizers here are the "production" employees of the employing union's department of organization who, apart from an occasional recommendation, have no part in the formulation of the department's policy, and who are subject to 2 or 3 levels of supervision. The Board also held that the organizers' asserted discretion, their representation of the employing union to the public, and their authority to pledge the union's credit and to sign labor agreements did not establish managerial status. The Board pointed out that neither authority to pledge credit, when strictly limited and not regularly exercised, nor authority to sign binding agreements had heretofore been held to confer managerial status.

7. Conduct of Representation Elections

Section 9 (c) (1) 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. Thus, 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.

a. Voting Eligibility

A voter, in order to qualify, must have employee status both on the applicable payroll date and on the date of the election. Eligibility for purposes of a runoff election, though based on the same eligibility date as that used in the original election, requires employee status on the date of the runoff.[10] Moreover, a voter must have worked in the voting unit during the eligibility period and on the date of the election.[11]

As specified in the Board's usual direction of election or election agreement, the requirement that the voter must be working on the

[9] *American Federation of Labor and Congress of Industrial Organizations,* 120 NLRB No. 134. Regarding the union's contention that such representation would be contrary to the best interests of the labor movement and that to extend bargaining rights to union organizers would create special problems warranting dismissal of the petition, the Board pointed out that in view of the congressional policy, as interpreted by the Supreme Court in the *Office Employees International Union* case (353 U. S. 313), the union's argument should be addressed to Congress rather than the Board.

[10] Sec. 102.62 (b) of the Board's Rules and Regulations, Series 6, as amended.

[11] See *Thos. & Geo. M. Stone, Inc.,* 120 NLRB No. 62, where employees in a multiemployer unit, who had been laid off by their employer and were working for another employer in the group at the time of the hearing, were held entitled to vote if otherwise qualified. But see *St. Regis Paper Co.,* 118 NLRB 1560, where the fact that an employee not within an eligible category had been awarded a job and was accruing seniority in the voting unit was held insufficient to make him eligible to vote in the election.

particular dates does not apply to employees who are ill or on vacation or temporarily laid off, or employees in the military service who appear in person at the polls, or strikers who are entitled to reinstatement.

Laid-off employees are permitted to vote only if they have a reasonable expectancy of reemployment at the time of the election.[12] Retention of seniority rights following layoff, with no expectancy of employment in the near future, is insufficient to establish eligibility.[13] In one case where some of the employer's employees were found to work on an intermittent basis, the Board provided for eligibility both of employees actually employed on the eligibility date and of intermittent employees on laid-off status who had been employed for a minimum of 280 hours during the year immediately preceding the direction of election and who had a reasonable expectation of future employment.[14]

Eligibility is customarily determined on the basis of the employer's payroll for the period which immediately precedes the date of the direction of election. In seasonal industries where the date of the election may be left to be determined by the regional director, the payroll period preceding the regional director's notice of election is used for determining eligibility.

The Board does not grant requests for departure from the usual eligibility dates in the absence of a showing that their use would disfranchise a substantial number of eligible voters.[15]

(1) Effect of Eligibility List

The Board during fiscal 1958 reiterated what it had pointed out in the preceding year's *Szekely* case,[16] that in order to facilitate the proper conduct of elections eligibility lists should be prepared by the parties for the use of Board agents and election observers.[17] In order to encourage the preparation and use of such lists, the Board again made clear that "mere participation in the preparation and checking of an eligibility list does not preclude a party from thereafter urging contentions on challenged ballots at variance with the eligibility lists."

On the other hand, the Board believes that the parties to a representation proceeding should be permitted to resolve eligibility issues

[12] See, for instance, *The Barr Rubber Products Co*, 118 NLRB 1428; *Norris-Thermador Corp*, 118 NLRB 1341; cf. *Hamilton Watch Co.*, 118 NLRB 591; *Venango Plastics, Inc.*, 119 NLRB 1318.

[13] *Sylvania Electric Products, Inc*, 119 NLRB 824; *Brown-Forman Distillers Corp.*, 118 NLRB 454.

[14] *Library Binding Co.*, 119 NLRB 161.

[15] See *Graver Construction Co.*, 118 NLRB 1050.

[16] *O. E. Szekely & Associates, Inc.*, 117 NLRB 42.

[17] *Norris-Thermador Corp.*, 119 NLRB 1301; see also *Norris-Thermador Corp*, 118 NLRB 1341.

finally before the election if they desire to do so.[18] To this end, the Board announced that—

> where the parties enter into a *written and signed agreement* which *expressly* provides that issues of eligibility resolved therein shall be final and binding upon the parties, the Board will consider such an agreement, and only such an agreement, a final determination of the eligibility issues treated therein unless it is, in part or in whole, contrary to the Act or established Board policy.[19]

In accordance with the principles stated in the *Norris-Thermador* case, the Board in a later case rejected the employer's contention that the petitioner, having examined and approved the eligibility list, could not later challenge the ballots of two employees at the time of the election.[20] And in another case,[21] an eligibility agreement between the employer and the petitioner that probationary employees should be excluded was held ineffective under the *Norris-Thermador* decision because it was contrary to the Board's established policy to permit all probationary employees to vote in Board elections.[22]

b. Timing of Elections

Ordinarily, the Board provides that elections be held within 30 days from the date of the direction of election. However, a different date is selected if this is required because of fluctuations in the employee complement or other circumstances. Thus, the Board usually directs that elections in seasonal industries be held near the peak of the business season, the exact date to be set by the regional director.[23] In one case the election at a seasonal produce packingshed was set aside and a new election was directed because it appeared that the original election had been held prematurely, employment having risen substantially after the election to a level which then remained the same for over a month.[24]

Ordinarily, an immediate election will not be held when major expansion or curtailment of the employer's operations is contemplated. However, the Board does not grant requests for postponement where a substantial and representative proportion of the anticipated working force is presently employed.[25] Where unfair labor practice charges are pending, it is the Board's policy to direct an immediate

---

[18] See *Norris-Thermador Corp.*, 119 NLRB 1301.

[19] *Consolidated Industries, Inc.*, 116 NLRB 1204, giving effect to an oral agreement, was modified to this extent. *Gulf States Asphalt Co*, 115 NLRB 100, was overruled as inconsistent with the announced rule.

[20] *Greensboro Coca Cola Bottling Co.*, 120 NLRB No. 11.

[21] *Westlake Plastics Co. & Crystal-X Corp.*, 119 NLRB 1434.

[22] See *National Torch Tip Co*, 107 NLRB 1271.

[23] See, for instance, *Columbiana Seed Co.*, 119 NLRB 560; *Geyer Mfg. Co., Division of The Wood Shovel & Tool Co.*, 120 NLRB No. 33.

[24] *Richard A. Glass Co.*, 120 NLRB No. 124.

[25] See, for instance, *Phillips & Buttorff Corp.*, 118 NLRB 800; *The American Brass Co.*, 120 NLRB No. 165.

election only where the charging party waives the charges as basis for objections to the election, or where the charges have been dismissed by the regional director.[26] Nor will the election be postponed because an appeal from the regional director's dismissal of charges is pending.[27] But where a petitioning union charged that the employer violated section 8 (a) (2) by entering into certain contracts with the incumbent intervening union, the Board held that an immediate election was appropriate without withdrawal of the charges which, at least in part, were related to the pending question concerning the representation of the employer's employees.[28] The Board provided, however, that the present direction of an election was not to prejudice any later determination of the intervenor's status in the pending section 8 (a) (2) proceeding, and that any certification following the election was to be conditioned upon the outcome of the unfair labor practice proceeding.

c. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to register a free and untrammeled choice in selecting a bargaining representative. Any party to an election who believes that the standards were not met may, within 5 days, file objections to the election with the regional director under whose supervision it was held. The regional director then makes a report on the objections, to which exceptions may be filed with the Board. The issues raised by such objections, and exceptions if any, are then finally determined by the Board.[29]

(1) Mechanics of Election

Election details, such as the time, place, and notice of an election, as well as preelection conferences,[30] are left largely to the regional director. The Board does not interfere with the regional director's broad discretion in making arrangements for the conduct of elections except where the discretion has been abused[31] and employees were deprived of a proper opportunity to vote.[32]

(a) Opportunity to vote

Elections must be conducted so as to afford the employees in the voting unit a fair opportunity to cast their ballots. The Board con-

[26] See, for instance, *Grand Union Co.*, 118 NLRB 685.
[27] See *Louisville Cap Co.*, 120 NLRB No. 103.
[28] *Marston Corp*, 120 NLRB No. 10.
[29] The procedures for filing objections and exceptions and for their disposition are set out in sec. 102.69 of the Board's Rules and Regulations, Series 7.
[30] See Twenty-second Annual Report, p. 51, footnote 76.
[31] See *Augusta Cartage Co.*, 120 NLRB No. 12; *National Van Lines*, 120 NLRB No. 178.
[32] See *The American Thermos Products Co.*, 119 NLRB 557.

siders itself responsible for insuring that "all eligible voters, not merely a representative number, be given the opportunity to vote." [33] Thus, where it appeared that an employee, who was eligible to vote by mail, did not vote because he was not furnished with a ballot, the Board set the election aside on its own motion.[34] It was pointed out that any opportunity the employee may have had to vote in person would not have satisfied the Board's election standards.

In one case, the Board rejected the employer's contention that the mail balloting procedure provided by the regional director failed to afford over-the-road van drivers a proper opportunity to vote.[35] In view of the fact that the places of employment and residences of the eligible drivers were scattered throughout the United States, the regional director arranged for mail ballots to be sent to the voters' residences and returned to his regional office. Forty-four days were allotted for the election period. The Board here held that this procedure afforded an adequate opportunity for all eligible voters to cast their ballots and was within the regional director's discretion. The fact that six voters failed to cast timely ballots was, the Board found, occasioned by their lack of diligence rather than any defect in the election procedure. A contention in another case that opportunity to vote was impaired by the regional director's schedule of times for voting also was rejected.[36] Here, a choice to vote either during working hours or on their own time was accorded eligible voters except employees who worked away from the plant. The latter were required to vote during working time to avoid administrative expense in the conduct of the election. No showing was made that this schedule of voting prevented a free and unimpeded election.

In 1 case, where elections in 2 separate units were conducted on the same day, 2 employees who were in doubt as to their proper voting unit were held to have had an adequate opportunity to exercise their voting rights by casting unchallenged ballots in 1 election and challenged ballots in the second election.[37]

(b) Secrecy of ballot

In addition to affording eligible employees an opportunity to vote, election procedures must also safeguard their statutory right to vote by "secret ballot." [38] In order to preserve the integrity of its election processes, it is the Board's policy to set aside any election conducted under circumstances which throw doubt on the secrecy of the ballots cast. Thus, a new election was directed where voting had taken place

[33] *Star Baking Co.*, 119 NLRB 835.
[34] *Ibid.*
[35] *National Van Lines, supra.*
[36] *The American Thermos Products Co.*, 119 NLRB 557.
[37] *Westinghouse Electric Corp.*, 119 NLRB 1858.
[38] See sec. 9 (c) of the act.

in a booth which was improvised after a lighting failure in the polling place originally selected.[39] The Board rejected the employer's contention that the election should not be set aside because the Board agent conducting it acquiesced in the arrangement and there was no evidence that the election observers could or did observe how the ballots were marked. The Board held the election was invalid because the voting arrangements were too open and subject to observation to insure secrecy of the ballot. Another election, which was held in a small lean-to shed attached to the employer's sawmill, was set aside on similar grounds.[40] Here a nonvoter was seen near the polling place during the voting period, the location being such that he could have seen how employees voted and that the voters could have believed that he saw their vote. However, the holding of an election in the employer's plant cafeteria was held not to require its being set aside where there was no showing that the secrecy of the election was impaired.[41]

(2) Interference With Election

Where an election has been accompanied by conduct which created an atmosphere of confusion or fear of reprisals, and interfered with the employees' free and untrammeled choice of a representative which the act guarantees, the election will be set aside. It was pointed out again during the past year that such conduct in order to be considered need not be attributable to the parties.[42] Thus, for instance, the arrest of the petitioning union's principal organizer before the eyes of voters, for reasons unknown to them, was held to have rendered a free choice impossible, regardless of the absence of evidence that the employer was responsible for the arrest.[43] The election was therefore set aside.

In determining whether specific conduct has prevented a free election, the Board does not attempt to assess its actual effect on the employees but concerns itself with whether the conduct "reasonably *tends* to interfere with a free choice of representatives." [44]

(a) Preelection speeches—the 24-hour rule

The Board's *Peerless Plywood* rule [45] forbids election speeches on company time and property to massed assemblies of employees within 24 hours before the scheduled time for conducting an election.

---

[39] *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911.

[40] *The Royal Lumber Co.*, 118 NLRB 1015.

[41] *Cupples-Hesse Corp.*, 119 NLRB 1288; cf *G. F. Lasater*, 118 NLRB 802, where the secrecy of the ballot was held not to have been violated to the extent that some of the voters marked their ballots in an area adjacent to the officially designated voting place.

[42] *Aeronca Manufacturing Corp.*, 118 NLRB 461 (Chairman Leedom and Member Rodgers dissenting from the finding that the facts here warranted setting the election aside); *The Great Atlantic & Pacific Tea Co.*, 120 NLRB No. 100; cf. *Tampa Crown Distributors, Inc*, 118 NLRB 1420; and *Orleans Manufacturing Co.*, 120 NLRB No. 83.

[43] *The Great Atlantic & Pacific Tea Co., supra.*

[44] *Shovel Supply Co*, 118 NLRB 315; *Zimmer Industries, Inc.*, 120 NLRB No. 50; *Orleans Manufacturing Co., supra.*

[45] *Peerless Plywood Co.*, 107 NLRB 427 (1953).

Application of the rule again had to be determined during the past year in cases involving situations which had not previously presented themselves.

Preelection discussions by company officials with individual employees at their work stations less than 24 hours before the election were held not to come within the *Peerless Plywood* prohibition.[46] And similar interviews extending into the 24-hour period were considered permissible even though the employer invited them during a speech delivered to the assembled employees more than 24 hours before the election.[47] The Board declined to "treat as an integral part of a speech to a massed assembly of employees any conversations by an employer with individual employees at their work locations which follow, and are proposed in, the speech." Two cases were concerned with the propriety of campaign speeches in advance of elections with several successive polling dates. In 1 case, the Board rejected a contention that an employer, who delivered separate preelection speeches more than 24 hours before the polls opened on 3 separate days, violated the *Peerless Plywood* rule because the second and third speech occurred within the total election period beginning on the first and ending on the third polling date.[48] In such a situation, the Board held, the *Peerless Plywood* rule requires only that no speeches be made within the 24-hour periods preceding each of the polling dates, regardless of whether the employees are eligible to vote on any of those dates. The same rule was held to apply also where the election period extended over 2 consecutive days at 2 widely separated polling places.[49] Here the employer had addressed the employees who were to vote on the second day, less than 24 hours before polling of the employees scheduled to vote on the first day began. No employees in the first group were present when the second group was addressed.

(b) Election propaganda and campaign tactics

The validity of Board elections is frequently challenged by employers or unsuccessful participating unions on the ground that the election propaganda or campaign tactics of one of the parties were such that a free election was impossible. If investigation of the objections shows that a party engaged in conduct which tended to interfere with the voters' free expression of their choice, the election will be set aside. As noted again by the Board during the past year,[50] in order to interfere with a free election, conduct need not constitute an unfair labor practice. Moreover, the Board in its discretion may find that an election was invalidated by coercive remarks made to relatively few voters,

[46] *Chock Full O'Nuts*, 120 NLRB No. 172.
[47] *Montgomery Ward & Co.*, 119 NLRB 52.
[48] *Pyramid Electric Co.*, 120 NLRB No. 142.
[49] *Dixie Drive-It-Yourself System Nashville Co., Inc.*, 120 NLRB No. 203.
[50] *Aeronca Manufacturing Corp.*, 118 NLRB 461.

or by threats or promises which were "veiled, hinted, or merely implied."[51] But conduct addressed to 1 of 2 groups of employees who voted in separate concurrent elections was held not to have invalidated both elections but only the election for the group directly involved.[52]

On the other hand, where objections to an election are based on conduct which is not inherently coercive, the Board adheres to the policy not to police or censor propaganda material used by the parties or consider the truth or falsity of statements, unless the ability of employees to evaluate such propaganda has been so impaired that the employees' free choice could not be determined in the election.[53] Thus, the Board declined to set aside an election because of the petitioning union's distribution of a circular containing comparisons of wage agreements with other companies and statements regarding the employer's wage policies which were inaccurate.[54] The employees here had an opportunity to examine the wage agreements in question, and their wage provisions were specifically called to the employees' attention and were discussed. Also the employees had personal knowledge of their employer's wage policies.[55] Similarly, the election in another case was held not invalidated by the petitioner's circulation of allegedly false and misleading information regarding the employer's seniority policy and wage rates at plants other than the one involved.[56] It was pointed out that the seniority and wage information was not within the petitioner's "special knowledge," but either was known to the employees or was information in the possession of the employer who had ample opportunity to answer the union's propaganda. The Board further noted that the employees themselves could evaluate the statements as to the wages of the employer's other employees working only about 60 miles away.

Conversely, an election was set aside where the petitioner's propaganda leaflets contained material misstatements as to vacation benefits and wage levels obtained in a recent contract made with another employer 2 or 3 days before.[57] Here, the information was within the petitioner's special knowledge; the employees had no independent means for evaluating the truth of the facts stated in the leaflet; and there was not sufficient time for the employer to learn of and correct the misstatements. In another case, 1 of several elections was set aside because within 24 hours of the election, 1 of the participants used as propaganda material copies of a forged letter, purportedly

[51] *Ibid.*, and authorities cited there.
[52] *Food Fair Stores of Florida, Inc.*, 120 NLRB No. 212
[53] See *Felix Bonura Co. (Magnolia Broilers)*, 119 NLRB 1620.
[54] *Wheelerweld Division, C. H. Wheeler Manufacturing Co.*, 118 NLRB 698.
[55] See also *The Vellumoid Co.*, 118 NLRB 1431.
[56] *General Electric Co. (Clock and Timer Department)*, 119 NLRB 944.
[57] *Kawneer Co.*, 119 NLRB 1460.

from one representative to another representative of a competing union, and containing derogatory remarks regarding the employees in the plant where the election was to be conducted.[58] The Board held that since the employees were deceived as to the source of the letter and were not in a position to evaluate its contents, they were entitled to a new election under the decision in the earlier *United Aircraft* case.[59] It was held immaterial whether or not the union which used the letter knew that it was a forgery because its impact on the employees was the same irrespective of the union's good or bad faith in distributing it. In setting the election aside, the Board also held that, in view of the kind of misrepresentation involved and the brief time between its dissemination and the election, the objecting union did not have a fair opportunity to counteract its effect.

The Board had occasion during the past year to point out that, where preelection propaganda refers to a prior Board decision, misrepresentation of the language or import of the decision will not be condoned.[60]

Preelection statements, whether by an employer or a union, reflecting the party's legal opinion on such matters as the effect of the result of the election on the employees' right to existing or future contractual wage rates or other benefits, have been held not to constitute interference. However, such statements must not be accompanied by threats of reprisals or promises of benefits to result from the selection or rejection of a representative, or by deliberate misrepresentations regarding matters peculiarly within the party's knowledge.[61]

Distribution of preelection pay envelopes, enclosing checks and paycheck stubs listing payroll deductions the employer would have to make if the union won, was held not to warrant setting the election aside in one case.[62] The check stubs were distributed in response to union circulars discussing the union's policies regarding dues, fines, and assessments. Rejecting the regional director's conclusion that the means by which the employer disseminated the information—which was substantially accurate—was itself objectionable, the Board found no ground for directing a new election, since there had been no misrepresentation, and the employees must have known that the

[58] *Sylvania Electric Products, Inc*, 119 NLRB 824.

[59] *United Aircraft Corp.*, 103 NLRB 102.

[60] Cf. *Hook Drugs, Inc.*, 119 NLRB 1502. The Board here overruled an objection to the election on the ground that the campaigning union had misrepresented a decision setting aside an earlier election among the same employees. The Board noted that the union's leaflet did not purport to quote the decision and that the employer was not prevented from publishing a correction.

[61] *Dartmouth Finishing Corp.*, 120 NLRB No. 44; *American Radiator & Standard Sanitary Corp., Pacific Order Handling Division*, 120 NLRB No. 176.

[62] *Montrose Hanger Co.*, 120 NLRB No. 15.

petitioner rather than the employer was the best source of information as to prospective union dues and assessments.

Regarding preelection references to problems of racial discrimination and bias by a party, the Board held in one case that, while appeals to racial prejudice are not to be condoned, injection of the racial issue into an election campaign is not of itself sufficient ground for invalidating an election.[63]

(c) Employee interviews

During an election campaign an employer is privileged to address his assembled employees on his premises—"the natural forum for him"[64]—and to express his views regarding the employees' selection of a bargaining agent. Absent coercive remarks such employer preelection speeches are not considered as interfering with a free election.[65]

On the other hand, the Board has consistently attributed coercive effect to the technique of calling individual employees, or small groups of employees, into a private area removed from the employees' normal work places for the purpose of urging them to reject union representation.[66] During fiscal 1958, a majority of the Board held in the *Peoples Drug Store* case[67] that the rule applied no less to an employer who operated a retail store than to employers engaged in other types of businesses. Here the company's store managers had carried out preelection instructions by calling employees, individually and in groups, into store basements and back rooms, where they interrogated them and made antiunion remarks. Rejecting the view that application of the rule to retail stores would effectively foreclose retail store employers from talking to their employees on their premises about union representation, the majority pointed out that a retail store employer, as any other employer, is free to assemble his employees on the premises during working hours or, if not feasible, after normal working hours, or to talk to the employees individually at their working stations. In the view of the majority, the fact that employees are "summoned by management representatives to a place, removed from their work stations, which has been selected for that purpose by management representatives, imparts to the place selected its character as 'the *locus* of *final* authority in the plant.'" It is for this reason, the majority stated, that individual interviews of the type here involved require that the election be set aside.

---

[63] *Sharnay Hosiery Mills, Inc.*, 120 NLRB No. 102; *Chock Full O'Nuts*, 120 NLRB No. 172; see also *Westinghouse Electric Corp. (Meter Plant)*, 119 NLRB 117.

[64] *Goldblatt Brothers, Inc.*, 119 NLRB 1711.

[65] See, for instance, *Louisville Cap Co*, 120 NLRB No. 103.

[66] See *Campbell Steel Co. and Campbell Steel Warehouse Co.*, 120 NLRB No. 24; *Armour & Co.*, 120 NLRB No. 81; cf. *Schick, Inc.*, 118 NLRB 1160, where individual talks with employees at their work stations were held not to have interfered with the election.

[67] *Peoples Drug Stores, Inc.*, 119 NLRB 634, Members Rodgers and Jenkins dissenting. See also *Grand Forks Grocery Co.*, 120 NLRB No. 20.

In one case individual preelection interviews of employees at the general foreman's desk were held to have invalidated the election regardless of the fact that the place of the interviews was an unenclosed area near the center of the plant.[68] The impact upon the employees of being summoned to the "boss' office," in the Board's view, "was not lessened by the nonexistence of physically enclosing walls."

But no interference within the meaning of the *Peoples Drug Store* type of case was found where before the election in a plant with over 1,000 employees, groups of from 60 to 80 were assembled in a conference room and were addressed by the company's president who expressed his belief that it would be to the employees' advantage not to select a bargaining representative.[69] The Board pointed out that the conference room was not "a private office or locus of managerial authority," and that there was no isolation of individuals, or groups of just a few employees, from the bulk of their fellow workmen. Thus, the Board held, a critical element supporting the inference of undue employer influence was lacking.[70]

(d) Preelection concessions

Wage increases and other concessions in employment, or their announcement by the employer during the period before a Board election, ordinarily will be held intended to influence the employees' vote and to require that the election be set aside. An exception is recognized, however, if it is shown that the timing of the concession or its announcement was governed by factors other than the pendency of the election, the burden being on the employer to show that its action was motivated by legitimate reasons.[71] This burden was held not sustained by an employer who insisted that the sole purpose of its preelection announcement of a wage increase was to inform the employees that a previously promised wage increase had been granted and made effective several days before the election.[72] Here, the employer made the announcement to individual employees called away from their work stations either during or a short time before the scheduled election hours at a time, the Board found, when the announcement would have the "maximum possible impact upon the minds of the employees." Similarly, a preelection announcement to employees at a dinner of a change in the company's bonus payment

[68] *Veeder-Root, Inc.*, 120 NLRB No. 127.

[69] *Mead-Atlanta Paper Co.*, 120 NLRB No. 110.

[70] Personal interviews with 4 employees, 1 in a private office, and 3 others away from a work station or at a foreman's desk, were held insufficient to justify setting aside the election which involved over 1,000 employees.

[71] *Food Fair Stores of Florida, Inc*, 120 NLRB No. 212; *Glosser Bros., Inc.*, 120 NLRB No. 129.

[72] *Food Fair Stores of Florida, Inc., supra.*

and anniversary sales plans, and the payment of partial, and in effect larger, bonuses on the morning of the election, was held not justified by the fact that the effected changes had been decided upon a year earlier.[73] The employer, the Board held, gave no convincing reason for withholding the announcement until the date of the election speech 2 days before the election, and did not sufficiently explain why the announcement could not have been made after, rather than before, the election. In another case, a wage increase and additional vacation benefits granted on the day the Board issued its direction of election was likewise held to have interfered with the election and to require its being set aside.[74]

The Board also reaffirmed its ruling in the *Electric Auto-Lite* case [75] that the making of concessions to, and their publication by, an incumbent union interferes with the employees' free choice in an election on the petition of another union and invalidates the election.[76]

(e) Threats and promises

Preelection threats or promises which tend to influence the employees' vote are grounds for setting the election aside.[77] But statements regarding the effects of union organization will not be held to have interfered with an election if they were mere expressions of opinion or the party's legal position.[78]

The Board had occasion to reaffirm its view that the practice of unions to reduce or waive initiation fees during an election campaign is not objectionable, and that an election will be set aside only where the reduction or waiver of initiation fees was offered as a reward for voting in favor of the union.[79]

---

[73] *Glosser Bros , Inc , supra*

[74] *Joanna Western Mills Co* , 119 NLRB 1789

[75] *The Electric Auto-Lite Co.,* 116 NLRB 788 ; Twenty-second Annual Report, p 57

[76] *Kiekhaefer Corp* , 120 NLRB No. 17. *Krambo Food Stores, Inc.,* 120 NLRB No. 188, Chairman Leedom and Member Bean concurring in the reaffirmance of the principle of the *Electric Auto-Lite* case, but dissenting from its application to the facts of this case.

[77] See, for instance, *Stretch-Tex Co.,* 118 NLRB 1359 (threat of shutdown in case of union victory) : *Aeronca Manufacturing Corp.,* 118 NLRB 461 (Board majority ; statements that petitioner's victory would result in loss of customers and consequent curtailment of employment) ; *Coca-Cola Bottling Co. of Louisville,* 118 NLRB 1422 (promise of "year-round job with a year-round pay envelope" if union were rejected) , *Food Fair Stores of Florida, Inc.,* 120 NLRB No. 212 (statement that certain privileges would not be continued under union conditions)

[78] See *Schick, Inc ,* 118 NLRB 1160 *National Furniture Co , Inc ,* 119 NLRB 1 , *Dartmouth Finishing Corp.,* 120 NLRB No 44

[79] *General Electric Co ,* 120 NLRB No 144.

IV

Unfair Labor Practices

The Board is empowered by the act "to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce." In general, section 8 forbids *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 unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or other private party. They are filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

This chapter deals with decisions of the Board during the 1958 fiscal year which involve novel questions or set new precedents.

A. Unfair Labor Practices of Employers

1. Interference With Section 7 Rights

Section 8 (a) (1) of the act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights to engage in, or refrain from, collective-bargaining and self-organizational activities as guaranteed by section 7. Violations of this general prohibition may take the form of (1) any of the types of conduct specifically identified in subsections (2) through (5) of section 8 (a),[1] or (2) any other conduct which independently tends to restrain or coerce employees in exercising their statutory rights.

The cases alleging independent 8 (a) (1) interference with employee rights again involved for the most part threats of reprisals[2] or promises of economic advantages[3] which were calculated to dis-

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

[2] See, e g., *Conso Fastener Corp.*, 120 NLRB No 74; *Traders Oil Co of Houston*, 119 NLRB 746; *Alamo Express, Inc, and Alamo Cartage Co*, 119 NLRB 6; *Jones Sausage Co and Jones Abattoir Co*, 118 NLRB 1403.

[3] See, e g, *Hannaford Bros. Co (T. R Savage Division)*, 119 NLRB 1100; *I. Taitel and Son*, 119 NLRB 910; *American Furniture Co, Inc*, 118 NLRB 1139; *Union Furniture Co., Inc.*, 118 NLRB 1148; cf. *General Electric Co —Apparatus Service Shop*, 119 NLRB 1821, where no violation was found.

courage organizational activities;[4] wage increases at a time when the employees' representative requested recognition;[5] soliciting employees to resign from their union,[6] or sponsoring decertification activities;[7] inducing abandonment of strikes;[8] and seeking to influence employees to repudiate union representation in a Board election.[9] Other forms of interference included making contracts with individual employees on the day of a Board election,[10] and the extension of a union-security contract to a newly acquired plant without affording the employees there an opportunity to express their free choice of a bargaining representative,[11] and contractual recognition of one of several unions claiming representation rights at a time when a "real question concerning representation" was unresolved;[12] as well as surveillance—actual or threatened—of employees' organizational activities,[13] and polling of employees as to their union or nonunion preference.[14] In one case, the employer was held to have violated section 8 (a) (1) by attempting to induce a prospective witness under subpena in a Board proceeding to give false testimony or not to testify at all.[15]

Other types of interference, noted below, with which the Board had to deal and which required restatement of established principles and their application to novel situations, included interrogation of employees concerning their organizational activities and leanings, prohibitions against union activities on company time or premises, and a refusal to furnish a discriminatee's work record.

---

[4] Accusing union adherents of "going Communist," although opprobrious, was held protected by sec 8 (c) since it was not a threat of reprisal or promise of benefit *Traders Oil Co. of Houston, supra*

[5] *Joslin Dry Goods Co*, 118 NLRB 555

[6] *Investment Building Cafeteria*, 120 NLRB No. 2; *Joslin Dry Goods Co, supra*

[7] *Birmingham Publishing Co*, 118 NLRB 1380

[8] *I. Taitel and Son, supra.* Cf *Fleetwood Trailer Co, Inc.*, 118 NLRB 1355, where an unlawful threat to discharge strikers was held not to justify issuance of a cease and desist order because the coercive effect of the threat had been dispelled by the employer's prompt and public repudiation

[9] *Traders Oil Co of Houston*, 119 NLRB 746 But see *Hicks-Hayward Co.*, 118 NLRB 695, where preelection antiunion meetings were held not to have violated sec 8 (a) (1), the Board again making clear that the test is not necessarily the same in determining whether employer conduct prevents a free election or whether it violates rights guaranteed by sec 7.

[10] *Traders Oil Co. of Houston, supra.*

[11] *Illinois Malleable Iron Co and Appleton Electric Co.*, 120 NLRB No. 68.

[12] *Novak Logging Co*, 119 NLRB 1573, *Scherrer and Davisson Logging Co*, 119 NLRB 1587, reaffirming the Board's *Midwest Piping* doctrine (63 NLRB 1060)

[13] *United Fireworks Mfg Co, Inc.*, 118 NLRB 883, *The R. C. Mahon Co*, 118 NLRB 1537, *Edmont Manufacturing Co*, 120 NLRB No 80; *Mid-South Manufacturing Co, Inc*, 120 NLRB No. 39. Cf. *Howard Aero, Inc.*, 119 NLRB 1531, where the invited presence at a union meeting of supervisors, themselves eligible to membership, was found not to have constituted prohibited surveillance.

[14] *Venango Plastics, Inc*, 119 NLRB 1318

[15] *Oregon Teamsters' Security Plan Office et al*, 119 NLRB 207.

a. Interrogation

Regarding the interrogating of employees as to their union activities, the Board reiterated during the past year that such interrogation is not unlawful *per se*,[16] but that, as held in *Blue Flash Express, Inc.*,[17] its legality depends upon "whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act." [18] In the *American Furniture* case, a majority of the Board held that under the *Blue Flash* test the interrogation involved was unlawful. It was pointed out that in *Blue Flash* the interrogation had a legitimate purpose, was accompanied by assurances against reprisals, and occurred in an atmosphere free from hostility to unions. Here, on the other hand, employees were questioned concerning their grievances and gripes in order to make changes in working conditions intended to discourage unionization and to influence the employees' votes in the impending Board election. Thus, the majority noted, the interrogation here did not stand alone but occurred in a context of, and was in fact an integral part of, another unfair labor practice. The *Blue Flash* rule, the majority stated, "was not intended to license or immunize the use of interrogation as an integral part of an unlawful campaign to defeat a union, simply because the interrogation, if considered in isolation separate from such a campaign, would not be found independently coercive." [19]

Again applying the *Blue Flash* test, the Board held in another case [20] that each of 7 instances of interrogation of employees, interviewed individually as to their union activities and sympathies, violated section 8 (a) (1) because 2 of the employees were threatened with reprisals while interviewed, 1 employee was discriminatorily discharged, and the employer concurrently committed other unfair labor practices.

b. Prohibitions Against Union Activities

Prohibitions against organizational activities, such as union solicitation or discussion, and distribution of union literature, were again held violative of the noninterference mandate of section 8 (a) (1) where it was found that they were promulgated or invoked, not for legitimate considerations of plant efficiency, order, or safety, but for the manifest purpose of impeding the employees' exercise of their

[16] *American Furniture Co., Inc.*, 118 NLRB 1139, Member Rodgers dissenting.
[17] 109 NLRB 591, 593 (1954).
[18] *Mid-South Manufacturing Co., Inc.*, 120 NLRB No. 39.
[19] See also *Union Furniture Co., Inc.*, 118 NLRB 1148.
[20] *Mid-South Manufacturing Co.*, 120 NLRB No. 39.

rights under the Act. Thus a violation of section 8 (a) (1) was found where an employer announced a no-distribution rule, not by general formal promulgation, but by calling it to the attention of certain employees who were about to distribute union literature.[21] The prohibition here, made applicable both within and without the plant proper, was held invalid because it was not intended to prevent litter in the plant but to prevent organizing activities.[22]

In another case, extension of a no-solicitation rule to apply to "rest stops" of the company's test drivers was held similarly invalid because the employer had not shown that safety of operation required such a rule.[23] "The burden," the Board stated, "rests upon an employer to establish that safety conditions actually require an invasion of the normal exercise by his employees of self-organizational rights during nonworking time."

(1) Strike Date Signs

Employees who had posted signs on their personal property—tool boxes—advertising the date on which they had voted to strike were held not required to remove them at the employer's direction under penalty of discipline.[24] The Board here pointed out that—

> The right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity. Interference with such activity is "presumptively invalid, in the absence of special circumstances" which makes such interference "necessary in order to maintain production and discipline." [Footnotes citing authorities omitted.]

The strike date signs here, in the Board's view, being unoffensive, were unlike "Don't be a scab" buttons which the court in the *Caterpillar Tractor* case[25] considered inherently disruptive of discipline and therefore subject to removal at the employer's command.

c. Refusal To Furnish Employee's Work Record to Prospective Employer

Section 8 (a) (1) was held to have been violated where an employer refused to fill out an employment questionnaire requested by another employer as a condition to hiring an employee the respondent had discriminatorily discharged.[26] In order to remedy the violation, the Board directed the respondent employer generally to cease and desist from refusing to furnish work records of employees because of their participation in activities protected by section 7 of the act. Affirmatively, the respondent was directed to forward the questionnaire on

---

[21] *Commercial Controls Corp*, 118 NLRB 1344.
[22] See also *United Fireworks Mfg. Co., Inc.*, 118 NLRB 883.
[23] *Armstrong Tire and Rubber Co, Test Fleet Branch*, 119 NLRB 382
[24] *Murphy Diesel Co.*, 120 NLRB No. 120.
[25] *Caterpillar Tractor Co.* v. *N. L R. B.*, 230 F. 2d 357 (C. A. 7).
[26] *L E Schooley, Inc*, 119 NLRB 1212.

behalf of the complaining discriminatee and to reimburse him for any loss of pay resulting from the failure to furnish the requested work record.

2. Employer Domination or Support of Employee Organizations

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

a. Domination of Labor Organization

A labor organization is considered dominated within the meaning of section 8 (a) (2) if the employer has interfered with its formation and has assisted and supported its administration to such an extent that the organization must be regarded as the employer's own creation rather than the true bargaining representative of the employees. Domination in this sense was found during the past year in a case where a—

"Committee" was formed by the Respondent shortly after the advent of the Union; the number of employees to serve thereon and the manner of their selection was decided upon by the Respondent; the time, date, and place of meetings were fixed by the Respondent; employees who served thereon were paid for attending meetings with the Respondent; the meetings were chaired by Respondent officials; and grievances, wages, and conditions of employment affecting employees generally were discussed at the meetings.[27]

In another case, a trial examiner's finding of unlawful domination was held supported by evidence which showed that: The employer instigated the formation of the company union involved and asked for employee support at a scheduled election for which another union had petitioned; during the interval between the inconclusive first election and the second election directed by the Board, the employer, while prohibiting union activities, solicited dues and members for the favored union and used coercive measures to bring about a majority vote in its favor in the second election; and upon the company union's election the employer continued to urge that it be supported and that all outside union efforts be resisted.[28]

b. Assistance and Support

The cases in which employers were found to have assisted or supported labor organizations involved numerous instances of illegal union-security and hiring arrangements insuring membership in

[27] *Pacemaker Corp*, 120 NLRB No 133

[28] *O. E Szekely & Associates, Inc.*, 118 NLRB 1125, see also *Mardril, Inc*, 119 NLRB 1174.

favored unions. These included: Union-security agreements with unions which did not have majority status among the employees covered;[29] a union-security agreement which provided for only 6 days' grace instead of the statutory 30 days within which employees may be required to join the union;[30] referral of job applicants for clearance by the favored union;[31] extension of a favored incumbent's union-security agreement to a new plant without affording the employees there an opportunity to express their free choice of a bargaining representative;[32] preferred seniority for members of the union;[33] and delegation of settlement of seniority controversies to a joint employer-union board on which the union had a majority.[34]

In the *Oregon Teamsters* case,[35] where the Board assumed jurisdiction over certain labor organizations as employers of their own employees in accordance with the Supreme Court's remand,[36] the respondent unions were found to have violated section 8 (a) (2) by discouraging their employees from joining a union which sought to represent them, and by soliciting their membership in one of their affiliates. The latter union itself was found to have solicited members among its own employees.

(1) *Midwest Piping* Doctrine Reaffirmed

The Board during fiscal 1958 expressed its adherence to the *Midwest Piping*[37] rule that—

> an employer faced with conflicting claims of two or more rival unions which give rise to a real question concerning representation may not recognize or enter into a contract with one of these unions until its right to be recognized has finally been determined under the special procedures provided in the Act.[38]

A question of representation exists for the purpose of the rule whether or not a petition is actually pending before the Board.[39]

The rule as thus restated was held violated in the *Novak Logging* case. The employer here granted exclusive recognition to a union

---

[29] *Max Factor & Co.*, 118 NLRB 808; *Bryan Manufacturing Co.*, 119 NLRB 502, *Morse Brothers et al.*, 118 NLRB 1312

[30] *Imperial Wire Co, Inc.*, 118 NLRB 775.

[31] *The Englander Co, Inc.*, 118 NLRB 707.

[32] *Illinois Malleable Iron Co. and Appleton Electric Co.*, 120 NLRB No. 68.

[33] *The Wheland Co*, 120 NLRB No. 105.

[34] *Gibbs Corp.*, 120 NLRB No 149.

In *Morton Salt Co.*, 119 NLRB 1402, the Board dismissed a complaint alleging that the employer unlawfully assisted a union when it failed to honor revocation by employees of their checkoff authorizations Noting that the question involved was whether the revocations were timely under the applicable collective-bargaining agreement, the Board again made clear that it is not its function under the act to police collective-bargaining agreements by attempting to resolve disputes over their terms, particularly where, as here, the respondent acted reasonably and in good faith

[35] *Oregon Teamsters' Security Plan Office, et al.*, 119 NLRB 207.

[36] *Office Employees International Union (Oregon Teamsters)* v. *N. L. R B.*, 353 U S 313; Twenty-second Annual Report, pp. 114–115.

[37] See *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060, and *William Penn Broadcasting Co*, 93 NLRB 1104.

[38] *Novak Logging Co.*, 119 NLRB 1573.

[39] *Ibid.*

and entered into a contract with it, although another union which had represented the employees had an operative bargaining agreement. The incumbent union manifested its continuing representation claim in current, strike-supported bargaining negotiations.[40] The Board held that under these circumstances the employer could not take it upon himself to determine on the basis of authorization cards which of the contending unions was the employees' statutory representative. It was again made clear that where an employer is faced with conflicting representation claims a majority card-showing by one of the rival unions does not impose on the employer an obligation to bargain, and the question of representation which exists under such circumstances can be determined only by the Board.[41]

c. Remedies in Section 8 (a) (2) Cases

In remedying section 8 (a) (2) violations, the Board has continued to differentiate between domination and lesser forms of interference with labor organizations. In the case of employer domination of a labor organization the Board directs that the dominated organization be completely disestablished,[42] the reason being that such an organization is inherently incapable of ever fairly representing employees.[43]

The normal remedy in assistance and support cases, on the other hand, is to require the employer to cease recognizing the assisted union and giving effect to any contracts with it until the effects of the employer's unfair labor practices have been dissipated. To this end, the Board in the past has prohibited recognition of assisted unions "unless and until . . . certified . . . by the Board."[44] In view of the remedial situation arising where an assisted union is not in compliance with the filing requirements of the act and is therefore not eligible for a section 9 certification, the Board, as noted more fully below,[45] has revised its formula and now directs in all assistance cases that the employer cease dealing with the assisted union "unless and until [it] shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election."[46]

---

[40] The Board pointed out that the incumbent union's strike, rather than indicating abandonment of the union's representative status, was evidence of the continuation of the union's claim.

[41] See also *The Wheland Co.*, 120 NLRB No. 105, where the same principles were applied.

[42] *O. E. Szekely & Associates, Inc.*, 118 NLRB 1125; *Mardril, Inc.*, 119 NLRB 1174; *Pacemaker Corp.*, 120 NLRB No. 133.

[43] See *N. L R B. v. District 50, United Mine Workers of America (Bowman Transportation, Inc.)*, 355 U. S 453, discussed at pp. 110–111, *infra*

[44] See, for instance, *Bryan Manufacturing Co.*, 119 NLRB 502; *Max Factor & Co.*, 118 NLRB 808; *Imperial Wire Co., Inc.*, 118 NLRB 775.

[45] See *infra*, p. 62–63

[46] *Bowman Transportation, Inc*, 120 NLRB No. 154, further discussed below. See also *Dixie Bedding Manufacturing Co.*, 121 NLRB No. 20 (July 28, 1958). In adopting the new formula, the Board pointed out that in the case of a complying union its effect was the same as that of the old formula because certification of a winning complying union follows automatically upon its election. See *Bowman Transportation, Inc, supra.*

In the *Oregon Teamsters* case,[47] withholding of recognition absent a prior Board election was held not an appropriate remedy insofar as applied to the respondent union-employer which was found to have violated section 8 (a) (2) by soliciting members among its own employees and employees of other closely allied respondents. Barring representation by this union of its own employees and those of its allied organizations at any time in the future, the Board pointed out that the union clearly was neither competent to bargain with itself on behalf of its own employees, nor qualified to bargain effectively for employees of its allies.

In addition to requiring an employer who has unlawfully assisted a labor organization to cease recognizing it and to give effect to its contracts, the Board also directs that dues unlawfully withheld from employees' earnings on behalf of the assisted union be reimbursed.[48]

(1) Remedial Elections in Case of Assistance to Noncomplying Union

In the *Bowman Transportation* case,[49] where the employer was found to have unlawfully assisted a labor organization, the Board originally issued the usual order conditioning further recognition of the union on certification. The union, having elected not to comply with the filing requirements of section 9 (f), (g), and (h), was not eligible for certification. The Court of Appeals for the District of Columbia reviewed and modified the order;[50] but the Supreme Court remanded the case to the Board with instructions to reshape the order so as to take into account the assisted union's noncompliance and consequent inability to achieve Board certification.[51] Pointing out that noncompliance with section 9 (f), (g), and (h) does not deprive a union of the right to represent employees as exclusive bargaining agent, the Supreme Court held that a noncomplying union which has received employer assistance is entitled, at an appropriate time, to demonstrate its lawful majority status among the employer's employees in an election held either by the Board outside the scope of section 9 (c) of the act, or by another Federal or State agency.

In carrying out the Supreme Court's mandate, the Board decided to conduct a remedial election in the present case, as well as in any future case involving employer assistance of a noncomplying union, and to condition future recognition of the assisted union on the outcome of the election.[52] The Board accordingly announced that—

---

[47] *Oregon Teamsters' Security Plan Office et al.*, 119 NLRB 207.

[48] *Coast Aluminum Co.*, 120 NLRB No. 173.

[49] *Bowman Transportation, Inc.*, 112 NLRB 387; 113 NLRB 786.

[50] *District 50, United Mine Workers of America (Bowman Transportation, Inc.)* v. *N L R. B.*, 237 F. 2d 585.

[51] *N L. R. B.* v *District 50, United Mine Workers of America (Bowman Transportation. Inc)*, 355 U. S 453 The decisions of the courts are more fully discussed at pp. 110–111 of this report

[52] *Bowman Transportation, Inc*, 120 NLRB No. 154.

in this as well as in all future Section 8 (a) (2) assistance cases involving noncomplying unions, the Board shall, after the appropriate posting period has elapsed and the Board is satisfied that a free and untrammeled election can be held, afford such unions an opportunity to demonstrate in a Board election held outside the scope of Section 9 (c) that the employees involved desire to be represented by those unions. In all such cases, the parties will be accorded a hearing to develop unit and related contentions. The Board's Rules and Regulations governing the conduct of hearings and elections under Section 9 (c) shall be applicable to the election procedures conducted pursuant to Section 10 (c). After the election procedures have been concluded, the Board will certify the arithmetical results to the parties. If the noncomplying unions are successful in those elections, the offending employers may thereafter grant exclusive recognition to them.

The Board further ruled that where a remedial election under section 10 (c) is directed at a time when a section 9 (c) representation proceeding involving the same employees is pending, the two proceedings shall be consolidated for "the dual purpose of resolving questions of representation while at the same time establishing whether the effects of unlawful assistance have been removed." [53]

In order to bring the remedial provisions in the *Bowman* decision into harmony with the foregoing procedure, the Board amended its order so as to prohibit the employer from dealing with the assisted union—

unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent's employees. [54]

3. Discrimination Against Employees

Section 8 (a) (3) forbids an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." However, the "union security" proviso to this section permits an employer to make an agreement with a labor organization requiring that the employees join the union within 30 days and maintain union membership as a condition of continued employment.

a. Discrimination for Protected Activities

To support a finding that section 8 (a) (3) has been violated, the record in the case must show that the complaining employees were in fact discriminated against because of activities protected by sec-

[53] In the present case, the sec. 10 (c) proceeding was consolidated with pending representation proceedings involving the employees of the respondent employer, with permission to the assisted union to intervene and to appear on the ballot if an election is directed Provision was made for certification of any of the petitioning unions if successful in the election, and for certification of the arithmetical result only if the assisted intervenor should win the election.

[54] The Board provided that the same remedial language was to be used in all sec. 8 (a) (2) assistance cases, without regard to the compliance status of the assisted union

tion 7 of the act and that the discrimination tended to encourage or discourage union membership.[55] Section 7 of the act protects the right of employees to organize for collective-bargaining purposes, and to engage "in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The section likewise protects the employees' right to refrain from any or all such activities, except where subject to a valid union-security agreement.

In order to be protected against discrimination, employees who engage in the activities contemplated by section 7 must have a lawful objective and must carry on their activities in a lawful manner. But, as held again by the Board during the past year,[56] the fact that an employer disciplined employees in a good-faith, but mistaken, belief that they engaged in serious misconduct in connection with otherwise protected activities does not relieve the employer of liability under section 8 (a) (3).[57]

The question whether the protection of section 7 applied arose in one case where employees advertised an impending lawful strike by posting strike-date signs on their toolboxes [58] in the plant. The Board held that the employees' action was protected and that the employer could not lawfully demand that the signs be removed from the employees' personal property. The strike-date signs, the Board pointed out, were completely inoffensive, were not calculated to defame or insult other employees, and did not tend to interfere with production or discipline. Thus, the Board noted, they were unlike the "Don't be a scab" buttons in the *Caterpillar Tractor* case.[59] There the employer was held justified in requiring removal of the buttons because of the inherently disruptive influence of the word "scab."

b. Forms of Discrimination

Section 8 (a) (3) forbids any discrimination in employment which tends "to encourage or discourage membership in any labor organization." As heretofore, the greater part of the cases under this section presented chiefly questions as to whether the complaints alleging unlawful discrimination were supported by sufficient credible evidence and required the issuance of the usual orders to remedy such recurring violations as discriminatory discharges, layoffs, transfers, or refusals to hire. The cases which presented other problems arising from the

[55] In order to establish unlawful motivation, it must appear that the employer knew about the discriminatee's union activities. However, such knowledge on the part of the employer—which may be inferred from the surrounding circumstances—is not conclusive of the issue of the employer's motive, particularly where there was good cause for disciplinary action *Howard Aero, Inc*, 119 NLRB 1531.

[56] *Hill & Hill Truck Line, Inc*, 120 NLRB No. 21.

[57] Compare the contrary view expressed in *Rubin Bros Footwear, Inc, et al.* v. *N. L. R. B.*, 203 F. 2d 486 (C. A. 5).

[58] *Murphy Diesel Co.*, 120 NLRB No. 120

[59] *Caterpillar Tractor Co.* v. *N. L. R B.*, 230 F. 2d 357 (C. A. 7).

nature of the discrimination involved, and pertaining to the appropriate remedial relief, are discussed below.

(1) Disparate Treatment of Represented Employees

In one case, the employer was charged with having unlawfully discontinued bonus payments to the employees in a bargaining unit, while continuing to give the bonus to unrepresented employees.[60] The record showed that the employer's action was not intended to penalize union employees, but was designed to minimize the substantial pay differential between his represented and unrepresented employees. Dismissing the complaint, the Board rejected the trial examiner's conclusion that, regardless of the legitimate reasons for the disparity in bonus payments, the employer's action inherently discouraged union membership within the meaning of the Supreme Court's decision in the *Radio Officers'* [61] case, and, therefore, violated section 8 (a) (3). That case involved unequal pay for like work to employees in a bargaining unit, the amount received by each employee depending upon his membership status, or lack of such status, in the common exclusive bargaining agent. The Supreme Court held that the disparate treatment necessarily encouraged union membership, and that the employer could be held liable under section 8 (a) (3) without independent evidence of unlawful intent because the encouragement of union membership was a foreseeable consequence. The Board in the *Anheuser-Busch*,[62] case took the view—which it reaffirmed here—that the *Radio Officers'* rule does not apply where represented employees are treated differently from unrepresented employees. The Board therefore held that, absent independent evidence that the unequal treatment here was intended to discourage union membership, the employer could not be found to have violated section 8 (a) (3). That there was, in fact, no such intent, according to the Board, was indicated by the absence of union hostility, and the employer's established concern over the existence of a wide differential in the earnings of the two groups of employees, as well as the employer's reasonable belief that both employees and unions were aware of the employer's position that bonus payments were a matter within its exclusive prerogative. The Board also pointed out that its conclusion was in accord with the holding of the courts in two cases [63] that the employers there did not violate section 8 (a) (3) when they continued certain benefits for unrepresented

[60] *Speidel Corp.*, 120 NLRB No 97

[61] *The Radio Officers' Union of the Commercial Telegraphers' Union, AFL* v. *N. L. R. B.; N. L. R. B.* v. *International Brotherhood of Teamsters, etc., et al ; Gaynor News Co., Inc.* v. *N. L. R. B.*, 347 U. S. 17 (1954).

[62] *Anheuser-Busch, Inc.*, 112 NLRB 686 (1955).

[63] *N. L. R. B.* v. *Nash-Finch*, 211 F. 2d 622 (C. A. 8 (1954)), setting aside 103 NLRB 1695; *Intermountain Equipment Co.* v *N. L. R. B.*, 239 F. 2d 480 (C. A. 9 (1956)), setting aside 114 NLRB 1371.

employees while withholding them from other employees after they became organized and became subject to a collective-bargaining agreement which did not provide for the particular employment benefits.

(2) Plant Removal

In several cases during fiscal 1958, the employers were found to have violated section 8 (a) (3) by shutting down and removing operations for the purpose of discouraging union activities.[64] As pointed out in the *Industrial Fabricating* case,[65] a shutdown of operations, or their removal to a distant location which results in loss of employment, can be justified only where the action is taken solely for economic reasons and not in an atmosphere of union animus on the part of the employer.[66] Here, the Board held, section 8 (a) (3) was violated because the employer, who had long indicated its union hostility and had organized subsidiary corporations to be utilized as an antiunion measure, finally shut down the plant involved and transferred the work to a subsidiary not properly equipped to do the job.

In the *Mahon* case [67] the Board similarly found that the employer eliminated its plant-protection department, contracted the work out, and terminated all plant-protection employees because of the latter's union activities and not for economic reasons. The employer's unlawful motive was held indicated both by concurrent unfair labor practices, such as unlawful interrogation, surveillance, and layoffs of employees, and by the circumstances attending the contracting of the work in question. In *Bermuda Knitwear*, the transfer of the employer's shipping department to a new location was found to have been but a pretext for the unlawfully motivated discharges of shipping employees.

(a) Remedy for unlawful removal of operations

In the *Mahon* case a majority of the Board held that, in order to remedy the discrimination resulting from the contracting out of the employer's plant-protection work, it was necessary to require the employer to reopen its plant-protection department and to offer the discharged employees immediate and full reinstatement with back pay. In the view of the majority, the fact that the employer incurred contractual obligations in committing an unfair labor practice was not sufficient reason to withhold otherwise appropriate remedial relief. The majority also noted that the present case was unlike earlier cases

[64] *The R. C. Mahon Co*, 118 NLRB 1537; *Industrial Fabricating, Inc*, 119 NLRB 162; *Bermuda Knitwear Corp.*, 120 NLRB No. 59; see also *Sebastopol Apple Growers Union*, 118 NLRB 1181 (intermediate report).

[65] *Supra.*

[66] See *N. L. R. B.* v. *Adkins Transfer Co.*, 226 F. 2d 324 (C. A. 6 (1955)), and *Mount Hope Finishing Co.* v. *N L R B.*, 211 F. 2d 365 (C A. 4 (1954)).

[67] *Supra.*

where resumption of abandoned operations was not required in that here no unwanted or unneeded operation was involved. The majority pointed out that plant-protection services were still required and were still being performed at the plant.

In the *Industrial Fabricating* and *Bermuda Knitwear* cases where operations, rather than being abandoned, were transferred to distant locations, the Board ordered that the discriminatees be reinstated to their former or substantially equivalent positions, be it at the former location if operations are resumed there or at the new location. Offers of employment at the new location were to be accompanied by offers to pay expenses necessary in moving the employees, their families, and household effects.

(3) Discriminatory Employment Practices

During fiscal 1958, a number of cases under section 8 (a) (3) again involved discrimination against employees resulting from the employer's acquiescence in union demands for the discriminatory treatment of employees to whose employment the union objected, or from the maintenance and enforcement of discriminatory agreements. [68]

Thus, section 8 (a) (3) violations were found where employers acceded to union demands for the denial of employment to dissident members,[69] or for the discharge of employees with rival union affiliations.[70] In the *Florio* case, the Board rejected the employer's defense that the discharge was justified as a means of preventing anticipated violence. The Board pointed out that the employer took no action to prevent an assault upon the discharged employees, although it was its "duty at least to take reasonable steps to resist any domination, violent or peaceful, of its right to employ."

In one case, an employer was held to have violated section 8 (a) (3) first by submitting to a union's demand to replace certain temporary nonunion workers with union journeymen, and then by denying the applications of the temporary employees for apprentice positions in order to further comply with the union's general desire that only union journeymen be employed.[71]

Delegation by employers of employment functions to a union was again held to constitute unlawful discrimination. Thus, a violation of section 8 (a) (3) was found where an employer entrusted hiring on a construction job to a supervisory master mechanic who was at the same time a union agent obligated to hire only union members.[72]

---

[68] The cases dealing with illegal hiring and referral arrangements between employers and labor organizations are more fully discussed in the chapter on union unfair labor practices under sec 8 (b) (2). See pp. 83–86, below.

[69] *A. Cestone Co*, 118 NLRB 669.

[70] *J P. Florio & Co., Inc*, 118 NLRB 753.

[71] *The Kansas City Star Co*, 119 NLRB 972

[72] *Booth & Flinn Co.*, 120 NLRB No. 75.

In another case,[73] section 8 (a) (3) was held violated by the delegation of authority over the settlement of controversies over grievances to a joint board on which the union was guaranteed a majority of the board's members. Citing its earlier decision in the *Pacific Intermountain* case,[74] the Board reiterated that the mere existence of such a clause, apart from its enforcement, is unlawful.[75]

Regarding hiring-hall arrangements, the Board again made it clear in one case [76] that it is a violation of section 8 (a) (3) for an employer to enter into and maintain an agreement with a union in which he surrenders to the union his normal hiring authority, and under which employment is conditioned on union approval without any voice on the part of the employer in the selection of employees.[77] It may reasonably be inferred, the Board held, that a union to which an employer has so delegated hiring powers will exercise its power with a view to securing compliance with membership obligations and union rules. Use of the employment power for this purpose is prohibited by section 8 (a) (3) except to compel payment of dues and initiation fees under a valid union-shop agreement.

On the other hand, as more fully discussed below,[78] the Board in the *Mountain Pacific* case [79] also expressed the view that the act does not outlaw all union hiring halls with their attendant benefits to both employees and employers, and that a hiring arrangement may be lawful if it does not confer on the union unfettered control over hiring and is nondiscriminatory on its face.[80]

In one case, the Board was again confronted with the question whether an employer violates section 8 (a) (3) if he accedes to a union's demand to cause another employer, with whom he has business relations, to discharge nonmember employees.[81] In this case, the employer—a general contractor who was bound by a master agreement

[73] *Gibbs Corp.*, 120 NLRB No 149

[74] *Pacific Intermountain Express Co.*, 107 NLRB 837.

[75] Cf *St. Johnsbury Trucking Co, Inc*, 120 NLRB No 85, where the Board sustained the trial examiner's conclusion that the *Pacific Intermountain* rule did not apply to a contract clause requiring the employer to "compile a seniority list from [its] regular payroll records, subject to the approval of the Union."

[76] *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883.

[77] The Board considered it immaterial that the agreement here limited the union's exclusive control to a 48-hour period after the employer's request for the referral of workmen

[78] See the chapter on union unfair labor practices under sec 8 (b) (2), *infra*, pp. 85–86.

[79] *Supra*, footnote 76.

[80] See p. 86, below, for specific provisions the Board considers necessary for a finding that a hiring-hall agreement is nondiscriminatory

[81] *Northern California Chapter, The Associated General Contractors of America*, 119 NLRB 1026. Cf *The Great Atlantic & Pacific Tea Co (Local 294, International Brotherhood of Teamsters, etc)*, 116 NLRB 943, and *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, etc. (Frick Co. et al.)*, 116 NLRB 119, Twenty-second Annual Report, pp. 85–86.

with the respondent union—had subcontracted certain work to an engineering firm whose employees were contractually represented by another union. When the respondent union struck, because employment of the subcontractor was "contrary to and in violation of" the master agreement, the general contractor brought about the termination of the subcontractor's employees on the project. A majority of the Board [82] held that the general contractor's action was discriminatory within the meaning of section 8 (a) (3), and that the respondent union, having caused the discrimination, violated section 8 (b) (2). According to the majority, the policies of the act do not require that legal responsibility for discrimination be dependent upon the existence of an employer-employee relationship. The *A & P* and *Frick Co.*[83] cases were therefore overruled, the majority's main opinion stating:

> As we see it, the question of legal responsibility for such discrimination does not, and cannot be made to, depend upon whether an employer has, by reason of his business relationship with another employer, such "contractual control" over the employees involved as to render them his own, for all practical purposes. To us, the relevant questions are whether an employer had the *power* to effectuate the removal of employees, whether he proceeded to do so, and thus, as a result, whether he thereby caused a discrimination with respect to their tenure of employment because of their union activities or lack thereof.

The opinion further states:

> It is sufficient for a finding of a violation of Section 8 (a) (3) and (1) that an employer, who meets the Act's definition of an employer, has accomplished an act which results in a discrimination with respect to "tenure of employment" of employees who meet the Act's definition of employees. It is the discrimination that encourages or discourages union membership that is of primary concern for determining the issue and not the specific relationship between the discriminating "employer" and the discriminated against "employees." It is sufficient that the discriminatee be a member of the working class in general and that the "employer" be any employer who has any interest, direct or indirect, in the conditions of employment of the discriminatee or has any control, direct or indirect, over the terms of his employment.

However, in the view of three members of the Board,[84] the general contractor did not also violate section 8 (a) (3) by "executing, maintaining, and enforcing" the master agreement which included a subcontractor clause requiring the general contractor to do business only with subcontractors whose employees become members of the contracting union.

---

[82] Members Rodgers, Bean, and Jenkins

[83] *The Great Atlantic & Pacific Tea Co. (Local 294, International Brotherhood of Teamsters, etc.)*, 116 NLRB 943, and *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, etc. (Frick Co. et al.)*, 116 NLRB 119, see footnote 81, above.

[84] Chairman Leedom and Members Murdock and Bean

(4) Discrimination Under Union-Security Agreements

In order for an employer to be protected in the execution and maintenance or the enforcement of a union-security agreement, the agreement must conform to the limitations of the union-security proviso to section 8 (a) (3) and it must be enforced in a lawful manner.

(a) Execution, maintenance, and enforcement of illegal agreements

A union-security agreement with a labor organization not properly qualified is invalid. Thus, an employer was held to have violated section 8 (a) (3) by entering into a union-shop contract with a union whose lack of majority status had been established shortly before in a Board election and which did not claim to represent a majority of the employees covered by the agreement.[85] Section 8 (a) (3) was held similarly violated by an employer who executed a like contract before any employees in the category covered by the contract had been hired.[86] And in another case,[87] the Board held that the respondent employer violated the act by the continued maintenance of a union-security agreement executed at a time when the contracting union did not have majority status [88] and by the later execution of a renewal agreement which continued the illegal provisions in effect.

Execution and maintenance of a union-security agreement with a union to which the employer has given assistance, and which therefore is not the employees' bona fide majority representative, also violates section 8 (a) (3).[89]

The proviso to section 8 (a) (3) further provides that an employer can validly enter into a union-security agreement only with a union which is in compliance with the filing and affidavit requirements of section 9 (f), (g), and (h) at the time the agreement is made. But, as held by the Board in one case, the act does not require compliance during every day the contract is in existence as a prerequisite to its continuing validity; nor does it require that the contracting union be in compliance at the time when the initially valid contract is enforced.[90] In the same case, the Board also held that the union-security provisions of the contract here were not invalidated by the fact that the contract had been made retroactive to a date when the parties'

---

[85] *Max Factor & Co*, 118 NLRB 808.

[86] *Foundation Co*, 120 NLRB No. 191.

[87] *Bryan Manufacturing Co.*, 119 NLRB 502

[88] The execution of the contract occurred more than 6 months before the filing of the charges in this case and, under sec. 10 (b) of the act, could not be held to be an unfair labor practice. However, the Board took the view that it was not precluded from determining that the contract was illegal in its inception and that the later maintenance of the contract therefore constituted a violation of the act The question is now pending before the Court of Appeals for the District of Columbia on a petition for review of the Board's order filed by the contracting union which was also a respondent in the case.

[89] *The Englander Co, Inc.*, 118 NLRB 707.

[90] *National Lead Co, Titanium Division*, 118 NLRB 1240.

earlier contract expired, and on which date the contracting union was temporarily out of compliance. The Board noted that the union was in compliance when the new contract was made, and that no attempt was made to enforce the union-security clause retroactively.

A union-security agreement to conform with section 8 (a) (3) must afford nonunion employees 30 days within which to join the union. The execution and maintenance of union-security provisions which fail to grant employees the full 30-day grace period is therefore violative of the act.[91]

(b) Illegal enforcement of valid union-security provisions

Employees who are subject to valid union-security obligations may be discriminated against by their employer only if the contracting union requests such discrimination because of nonpayment of the union's uniform dues or initiation fees. Compliance by an employer with such a request is lawful under section 8 (a) (3).[92] But an employer who had reasonable cause to believe that a request for the discharge of a dues-delinquent employee was inequitable was held to have violated section 8 (a) (3) by nevertheless honoring the request.[93] The employer had information that the union which requested the discharge had extended the time within which the employee could pay his dues, that this extension was peremptorily revoked, and that the union then demanded immediate payment. This information, in the Board's view, was insufficient to justify the employer in believing that he could lawfully accede to the union's request.

4. Refusal To Bargain in Good Faith

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 conditions of employment with the representative selected by a majority of the employees in an appropriate unit. The duty to bargain arises when the employees' majority representative [94] requests the employer to recognize it and to negotiate about matters which are subject to bargaining under the act.

a. Representative's 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

[91] *Imperial Wire Co , Inc.,* 118 NLRB 775.

[92] See, for instance, *National Lead Co., supra*

[93] *Pacific Transport Lines, Inc ,* 119 NLRB 1505.

[94] "The term 'representatives' includes any individual or labor organization" Sec. 2 (4) of the act. The term "labor organization," as defined in sec 2 (5), includes any organization in which employees participate and which exists, at least in part, for the purpose of bargaining collectively with employers on behalf of employees.

is presumed to continue for at least a year. During this period the employer must bargain with the representative upon request except in unusual circumstances.[95]

A similar presumption of continuing majority status applies where a bargaining agent without a Board certification has been granted exclusive recognition by an employer in a contract. The Board during fiscal 1958 reaffirmed the rule that the existence of such a contract obligates the employer to bargain with the representative for the period during which the contract is a bar to a redetermination of its bargaining status.[96] It was pointed out that where an employer grants exclusive recognition to a union the Board presumes that the employer acted lawfully and that the union had majority status at the time of the execution of its contract. Here, the Board held, no reason appeared why the contract would not have been a bar to an election at the time of the employer's refusal to bargain, and the employer's failure to bargain was therefore unlawful.

An employer who is requested to bargain with a representative which has not been certified or contractually recognized in the above sense may require that the bargaining agent demonstrate its majority status through a Board-conducted election. However, such proof of majority status through a Board election must be required in good faith. Thus, an employer's refusal to recognize a union which offered authorization cards in support of its majority claim was held violative of section 8 (a) (5) because the evidence showed that the employer's insistence on a Board election was not motivated by a good-faith doubt as to the union's majority status but by a desire to gain time in which to dissipate the union's strength.[97] In another case, the employer's contention that it insisted on an election because of its doubt regarding the complaining union's majority status was rejected under similar circumstances. Here, it was shown that upon receipt of the union's bargaining request the employer attempted to dissipate the union's majority by discharging its known adherents, and then requested that the union submit to a Board election.[98]

b. Representative's Request To Bargain

The employer's duty to bargain becomes operative upon a proper request of the employees' majority representative. As pointed out again during the past year, "the request to bargain need not be worded precisely so long as it is clear by implication that the request is for bargaining."[99] On the other hand, the representative's request must

[95] *Ray Brooks* v *N L R B*, 348 U S. 96; *Old King Cole, Inc.*, 119 NLRB 837.

[96] *Shamrock Dairy, Inc.*, 119 NLRB 998 The Board here cited its decision in *Hexton Furniture Co.*, 111 NLRB 342. For contract-bar rules, see *supra*, pp. 21–29

[97] *I. Taitel & Son*, 119 NLRB 910.

[98] *E. V. Prentice Machine Works, Inc*, 120 NLRB No. 64.

[99] *Cottage Bakers*, 120 NLRB No 99.

relate to an appropriate unit. If the unit proposed by the representative in its request differs substantially from the unit the Board finds appropriate in the section 8 (a) (5) proceeding,[1] no unlawful refusal to bargain will be found. Thus, the Board dismissed refusal-to-bargain charges based on the complaining union's request for a unit which was substantially larger than the appropriate unit because of the improper inclusion of certain categories.[2] But the Board pointed out again that variations between the proposed unit and the appropriate unit which are only minor—rather than substantial as in the present case—do not justify a refusal to bargain.

c. Subjects for Bargaining

An employer must bargain with the majority representative of his employees as to all matters pertaining to "rates of pay, wages, hours of employment, or other conditions of employment."[3] As to other lawful matters, the employer, as the employees' representative, is at liberty to bargain or not to bargain.[4]

(1) Waiver

A refusal by an employer to bargain as to a particular subject matter does not violate section 8 (a) (5) if the employees' representative has waived its right to bargain with respect to the particular subject. The waiver question arose during the past year in a case where the employer discontinued bonus payments to certain employees without discussing the matter with their representative.[5] While again making clear that a waiver of bargaining rights will not be readily inferred,[6] the Board held that here the union had

---

[1] The appropriateness of a unit request for sec. 8 (a) (5) purposes is governed by the principles which the Board follows in determining bargaining units in representation cases See chapter III, 6 of this report, and the corresponding chapters of earlier reports.

[2] *Joslin Dry Goods Co*, 118 NLRB 555 The union here sought to represent the employer's warehousemen and truckdrivers together with electrical appliance repairmen.

[3] Secs 8 (d) and 9 of the act See *Industrial Fabricating, Inc, et al*, 119 NLRB 162, where sec. 8 (a) (5) was held to have been violated by an employer who transferred operations to a new location without notice to the employees' bargaining representative. The discriminatory aspects of the shutdown and removal of operations in this case are discussed at pp. 66–67, *supra* See also *Frank I Sample, Jr, Inc*, 118 NLRB 1496, where the trial examiner found that the shortening of lunch hours was a bargainable matter on which the employer could not deal directly with the employees

[4] See the Supreme Court's decision in *N L R. B.* v. *Wooster Division of Borg-Warner Corp*, 356 U. S 342, discussed at pp. 104–106, *infra* See also *Economy Stores, Inc.*, 120 NLRB No 1, where the employer was held not to have violated sec. 8 (a) (5) by insisting on inclusion in the contract of a clause making the union liable for breach of contract. Two of the four participating members held that the required clause was bargainable, while the two remaining members held that there was no violation because the parties had, in fact, treated the liability clause as bargainable.

[5] *Speidel Corp*, 120 NLRB No. 97. Bonus payments to unrepresented employees were continued by the employer However, as noted above (see pp. 65–66), the Board found that the disparate treatment of represented employees was not unlawfully motivated and did not constitute prohibited discrimination within the meaning of sec. 8 (a) (3).

[6] See also *Shamrock Dairy, Inc*, 119 NLRB 998.

clearly "bargained away" its interest in the matter of bonuses. It was pointed out that during earlier contract negotiations the union requested a "maintenance of privileges clause," guaranteeing the continuance of precontract privileges to employees represented by the union, and that the union abandoned its demand after the employer rejected it because of the belief that the clause would include bonuses. The Board further noted that, while negotiating the parties' current contract, the union renewed its demand for a "maintenance of privileges" clause but made it clear that the clause was not to extend to bonus payments. This conduct, in the Board's view, indicated clearly that the union acquiesced in the employer's manifest position that bonuses were a management prerogative. The unilateral discontinuance of bonus payments to employees in the bargaining unit, according to the Board, was therefore not violative of the employer's bargaining duty under section 8 (a) (5).

d. Violation of Bargaining Duty

Section 8 (a) (5) is violated not only where an employer refuses outright to bargain with the majority representative of his employees on any matter within the contemplation of the act, but also where he engages in conduct vis-a-vis the representative which is inconsistent with the bargaining duty as defined in section 8 (d), or where he bargains only ostensibly but not with a good-faith intention to arrive at an agreement. Whether or not an employer has bargained in good faith is determined "by all the facts and circumstances of a given case, by the entire pattern of conduct, and not by isolated incidents." [7]

(1) Unilateral Action

The employer's statutory bargaining obligation includes the duty to notify the employees' bargaining representative of any contemplated change in employment terms or conditions, in order to afford the representative an opportunity to bargain with respect to the proposed changes.[8]

In one case where this duty was held to have been violated, the employer unilaterally substituted an "independent distributorship plan" for its former system of distributing dairy products through drivers of its own trucks.[9] The plan provided for the sale of milk routes and trucks to the former drivers under individual contracts. A majority of the three-member panel held that the union which represented the drivers was entitled to notice of the employer's pro-

[7] *Traders Oil Co of Houston,* 119 NLRB 746.
[8] See *Shamrock Dairy, Inc , supra.*
[9] *Shamrock Dairy, Inc , supra.*

posed plan and to an opportunity to bargain with respect to the execution of individual contracts.[10]

In another case the employer was held to have violated section 8 (a) (5) by entering into a contract with a local union, although the local's International, which was the exclusive bargaining representative of the employees, had given instructions against execution of an agreement with the local.[11] The Board here rejected the trial examiner's finding that the making of the contract was but a technical violation of section 8 (a) (5) and did not warrant issuance of a remedial order. According to the Board, the employer's conduct, being in disregard of the statutory representative, "was a violation of the essential principle of collective bargaining"[12] and therefore called for the usual remedial order.

An employer who had resisted union demands for a wage increase, holidays, or vacations was held to have violated section 8 (a) (5) when, over the protest of the union's negotiating committee, he called in the employees individually to inform them that wage, holiday, and vacation benefits had been granted.[13] The Board rejected the employer's contention that its announcement to the negotiating committee of its intention constituted "consultation" within the Supreme Court's *Crompton-Highland Mills* decision[14] and prevented the subsequent granting of concessions from being "unilateral" and unlawful. The employer's announcement and subsequent actions, the Board stated, was "the very antithesis of the making of a proposal which might form the basis for a . . . settlement of the matters at issue between the parties." The Board also rejected the further contention that the granting of the concessions here was justified because an impasse had been reached in negotiations. The Board pointed out that even if there was an impasse, it was effectively broken by the employer's change of position as to the concessions which it refused in the bargaining meetings with the union.

On the other hand, the Board in one case[15] reaffirmed the rule[16] that an employer does not demonstrate bad faith by unilaterally granting concessions equal to those offered to the bargaining agent during negotiations and rejected by the representative after submitting the

---

[10] Chairman Leedom held that the employer's action violated sec. 8 (a) (5) even though the individual contracts changed the status of the employee drivers to that of independent contractors. Member Murdock concurred in the finding of a violation but dissented from the conclusion that the individual contracts altered the drivers' employee status. Member Bean was of the view that the complaining union's majority status was not established (see p 72, *supra*), and that, therefore, no unlawful refusal to bargain could be found.

[11] *John L Clemmey Co., Inc.*, 118 NLRB 599.

[12] *Medo Photo Supply Corp.* v. *N. L. R. B.*, 321 U. S. 678.

[13] *Langlade Veneer Products Corp*, 118 NLRB 985.

[14] *N L. R B* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217.

[15] *Economy Stores, Inc*, 120 NLRB No 1.

[16] See *Exposition Cotton Mills Co*, 76 NLRB 1289.

proposal to the membership. The present case involved a unilateral grant of a wage increase during a strike. Dismissing the section 8 (a) (5) complaint, the Board pointed out that before the strike the parties had agreed on wage rates for the job classifications involved, that the agreement was communicated to the employees before the strike, and that the wage increases granted were either below or equal to the job rates on which agreement had been reached.

(2) Refusal To Furnish Information

Cases involving refusals by employers to furnish information requested by employee representatives for collective-bargaining purposes continue to come before the Board.

(a) Wage information

In one case, the employer was held to have unlawfully refused to honor the complaining union's request (1) for certain time studies and job evaluation data relative to the classification of a new job, and (2) for similar wage information used to set incentive rates and to classify and evaluate jobs in the bargaining unit.[17] Contrary to the employer's position that it was not obligated to supply the requested information, the Board pointed out that, under well-established precedent, the union was entitled to the requested time studies and job evaluation data because they were directly related to the setting of wage rates in the employer's plant. It was again made clear that the union's right to the information was not dependent on whether it was needed in connection with the processing of a particular grievance, or on whether the employer used the information to substantiate its bargaining position as to wage rates. The Board also reiterated that it is the employer's duty to furnish information which is necessary to the bargaining agent's "intelligent representation of the employees in the appropriate unit." Here, the Board observed, the union, without the requested information, "could not compare jobs and so determine whether a particular grievance had merit and should be processed. Nor could the union review Respondent's wage system for purposes of future wage negotiations or for purposes of contract administration." [18]

A refusal of several members of an employer group to furnish individual employment data to an international union's regional negotiat-

[17] *J. I. Case Co. (Rock Island, Ill.)*, 118 NLRB 520, enforced 253 F. 2d 149 (C. A. 7), *infra*, p. 116

[18] The Board here also rejected the employer's contention that the union requested the information for the purpose of harassment, and that to furnish the voluminous data would have been unduly burdensome The fact that the union did not show a specific immediate need for the information, according to the Board, did not permit an inference of harassment, since the information was manifestly relevant to the setting of wage rates. As to making the information available, the Board pointed out that reasonable arrangements with the union could have been made to this end.

ing committee and to certain subordinate locals also was held to have violated section 8 (a) (5), even though the refusal was not motivated by any intent to impede bargaining.[19] The information sought by way of a questionnaire pertained to each employee's name, job classification, rate of pay, seniority standing, paid holidays and vacations, total hours worked, and total annual earnings. It was to be used by the bargaining committee to compile statistics for actual bargaining in the industry as well as for determining future bargaining demands and methods. The information was also to serve local unions in bargaining as to local matters not delegated by them to the bargaining committee. The information, according to the Board, could not lawfully be withheld because, as consistently held by the Board and the courts, "a collective-bargaining agent is entitled to employment information pertaining to individual employees which enables it properly to carry out its duties in the general course of bargaining."

(b) Information as to ability to grant wage increase

In addition to wage data, the unions in the *Pine Industrial* case also sought information as to the employers' annual production and sales. A majority of the Board [20] held that this information could not be requested because it related to the employers' financial status and necessarily went to their ability to pay, and because inability to pay had not been claimed by the employers. The majority took the view that under applicable precedent a refusal to furnish information relating to the employer's ability to pay increased wages can be found to violate section 8 (a) (5) only if the issue of the employer's ability to increase wages was raised. Relevance of requested information, without a showing of specific need as to a particular issue, the majority held, is sufficient only in wage data cases. The majority observed that to hold otherwise would be in conflict with the Supreme Court's decision in the *Truitt* case.[21]

(c) Waiver

An employer's refusal to honor a request for information previously waived by the union does not violate section 8 (a) (5). However, a refusal to furnish information, as a refusal to bargain about a particular subject,[22] will not be held lawful where the record fails to show a clear and unambiguous waiver on the part of the union.[23]

---

[19] *Pine Industrial Relations Committee, Inc*, 118 NLRB 1055

[20] Member Murdock dissenting

[21] *N. L. R. B.* v. *Truitt Mfg. Co.*, 351 U. S. 149. See Twenty-first Annual Report, p. 123.

[22] *Supra*, 73–74.

[23] *Pine Industrial Relations Committee, Inc.*, 118 NLRB 1055; *Westinghouse Air Brake Co. (Air Brake Plant)*, 119 NLRB 1118.

B. Union Unfair Labor Practices

Section 8 (b) of the act specifically proscribes as unfair labor practices six separate types of conduct by unions or their agents. Cases decided during fiscal 1958 under subsections (1), (2), (3), and (4) of section 8 (b) are discussed below. No cases came to the Board involving subsection (5) which forbids excessive and discriminatory union fees, or subsection (6) which prohibits so-called "featherbedding" practices.

1. Restraint and Coercion of Employees

Section 8 (b) (1) (A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees" in the exercise of their right to engage in or refrain from concerted activities directed toward self-organization and collective bargaining. Subsection (B) of section 8 (b) (1) prohibits labor organizations from restraining or coercing employers in the selection of their bargaining representatives.[24]

The cases under section 8 (b) (1) (A) again involved coercion against employees in the form of threats of loss of employment [25] or of physical violence [26] intended to compel union adherence and observance of union rules. One union was found to have bolstered an economic strike by such conduct as preventing supervisory employees from bringing "outsiders" into the struck plant; preventing personnel from entering and bringing in supplies; threatening "strangers" who were to make repairs with harm to their families unless they withdrew, and overturning their car; and threatening and engaging in violence against company repairmen and vilifying them.[27] The Board held that all of this conduct was violative of the act regardless of the fact that some of it was directed against supervisory personnel. This, according to the Board, was immaterial, because at the time in question the company's supervisors were performing rank-and-file work as strike replacements. The Board also held that the union's conduct would have been unlawful even if it had been directed throughout at supervisors performing supervisory functions. For, the Board pointed out, both strikers and nonstrikers being aware of it, the con-

[24] See *Southern California Pipe Trades District Council No 16 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, etc.* (*Paddock Pools of California*), 120 NLRB No 36

[25] See, for instance, *Newspaper Guild of Buffalo, Local 26, American Newspaper Guild* (*Niagara Falls Gazette Publishing Corp.*), 118 NLRB 1471. The employee here, after validly resigning from the union (*infra*, p 80), was threatened with loss of employment unless she continued to maintain her membership.

[26] See, for instance, *International Brotherhood of Teamsters, etc., Locals 641 and 506, et al.* (*Ruffalo's Trucking Service, Inc*), 119 NLRB 1268

[27] *Communications Workers of America, AFL-CIO* (*Ohio Consolidated Telephone Co.*) 120 NLRB No. 96.

duct tended to restrain rank-and-file employees in the exercise of their own right to continue or discontinue striking.[28]

In one case, a union which had been elected as bargaining agent was held to have violated section 8 (b) (1) (A) by threatening that it would not sign a contract with the employer unless 80 percent of the employees in the certified bargaining unit joined the union and executed checkoff authorizations.[29] Following its certification, the union had entered into negotiations with the employer which resulted in agreement on contract terms including a 7-cent wage increase. Thus, according to the Board, employees who acquired membership and signed checkoff authorizations did not do so voluntarily but because they could not otherwise obtain the benefits the employer had agreed to grant. In order to remedy the unfair labor practice, the Board directed that the union (1) cease giving effect to the checkoff authorizations secured from the employees during the period in question and to return them to the respective employees; (2) request the employer to discontinue honoring the canceled authorizations; and (3) refund to present and former employees all monies checked off during the particular period and collected by the union from the employer. Insofar as the employees were coerced into joining the union, the Board ordered the union to notify the employees that "they are free to withdraw from, or remain in" the union, and that, absent a valid union-security agreement, membership will not be required as a condition to obtaining employment benefits secured by the union.

As heretofore, the Board has held that the illegal execution, maintenance, and enforcement of union-security agreements, and other arrangements with employers which made the employment opportunities of employees dependent on compliance with union requirements, violated section 8 (b) (1) (A) as well as section 8 (b) (2).[30]

Thus, employees were held to have been unlawfully coerced and restrained in their organizational freedom where a union entered into a union-shop agreement with an employer before any of the employees to which it was to apply had been hired,[31] or where similar agreements were made by unions which otherwise did not have majority status among the affected employees.[32]

---

[28] The fact that the employer may have engaged in antiunion conduct was held not to have constituted a justification for the respondent union's action. The Board pointed out that if there was such conduct the proper course for the union to pursue was to file appropriate charges with the Board.

[29] *General Drivers, Chauffeurs and Helpers, Local Union No. 886, International Brotherhood of Teamsters, etc., AFL–CIO (Unit Parts Co.)*, 119 NLRB 222.

[30] The 8 (b) (2) aspects of the cases noted below are discussed, *infra*, pp 84–86

[31] *Local No. 160, International Hod Carriers, Building & Common Laborers Union of America, AFL–CIO (Foundation Co.)*, 120 NLRB No 191.

[32] *International Brotherhood of Teamsters, Local 986, AFL–CIO, et al. (Max Factor & Co.)*, 118 NLRB 808. Cf *Local Lodge No. 1424, International Association of Machinists, AFL–CIO, et al. (Bryan Manufacturing Co.)*, 119 NLRB 502.

Section 8 (b) (1) (A) was also held violated where union-security agreements were sought to be enforced against employees who had effectively resigned from the union and were no longer obligated to maintain membership or to pay dues.[33] Section 8 (b) (1) (A) was again held violated by construction trade unions which caused the general contractor on a project to cancel his contract with subcontractors who employed nonunion employees or employees represented by another union.[34]

Unlawful restraint and coercion within the meaning of section 8 (b) (1) (A) has consistently been held to result also from illegal employment practices, such as maintenance of restrictive hiring agreements,[35] operation of discriminatory hiring halls,[36] and maintenance of an agreement under which the contracting union has authority over the settlement of controversies relating to the employees' seniority.[37]

a. Picketing of Minority Union as Restraint or Coercion

The most important question to arise under section 8 (b) (1) (A) during fiscal 1958 was whether the prohibitions of the section extend to economic pressures on an employer by a minority union for purposes which are inconsistent with the policies of the act. A majority of the Board[38] held that picketing by a minority union for the purpose of compelling an employer to grant exclusive recognition,[39] or the further purpose of obtaining a union-shop agreement,[40] violates section 8 (b) (1) (A). In the view of the majority, picketing is inherently coercive and, if used for the stated purposes, coerces and

---

[33] *Newspaper Guild of Buffalo, Local #26, American Newspaper Guild, (AFL–CIO) (Niagara Falls Gazette Publishing Corp)*, 118 NLRB 1471; *Public Utility Construction & Gas Appliance Workers of the State of New Jersey, Local 274, United Association of Journeymen & Apprentices of the Plumbing, etc., AFL–CIO (Public Service Electric & Gas Co)*, 120 NLRB No 57

[34] *Local Union No. 1, Bricklayers, Masons & Plasterers International Union of America, AFL–CIO (J Hilbert Sapp, Inc.)*, 119 NLRB 1466; *Northern California Chapter, The Associated General Contractors of America, Inc., et al. (Operating Engineers, Local Union No 3, of the International Union of Operating Engineers, AFL–CIO)*, 119 NLRB 1026..

[35] See, for instance, *International Typographical Union, Mailers Local Union No. 7, AFL–CIO (The Kansas City Star Co.)*, 119 NLRB 972.

[36] *Mountain Pacific Chapter of the Associated General Contractors, Inc , et al (International Hodcarriers, Building & Common Laborers Union of America)*, 119 NLRB 883, more fully discussed below, at pp 85–86.

[37] *Independent Workers' Union of Florida (Gibbs Corp.)*, 120 NLRB No. 149.

[38] Member Murdock dissenting.

[39] *Drivers, Chauffeurs & Helpers Local 639, International Brotherhood of Teamsters, etc. (Curtis Brothers, Inc.)*, 119 NLRB 232, *International Union of Operating Engineers, Local Union No. 12, AFL–CIO (Shepherd Machinery Co)*, 119 NLRB 320; *Paint, Varnish & Lacquer Makers Union, Local 1232, AFL–CIO, et al, International Brotherhood of Teamsters, etc. (Andrew Brown Co.)*, 120 NLRB No. 89, Member Fanning dissenting

[40] *International Association of Machinists, Lodge 942, AFL–CIO (Alloy Manufacturing Co.)*, 119 NLRB 307, overruling *The Texas Co*, 78 NLRB 971, insofar as inconsistent. See also *Building Material & Dump Truck Drivers Local No. 240, International Brotherhood of Teamsters, etc (Fisk & Mason)*, 120 NLRB No. 19, *General Teamsters, Packers, Food Processors and Warehousemen Union Local No 912, International Brotherhood of Teamsters, etc. (H. A. Rider & Sons)*, 120 NLRB No. 199.

restrains employees in their free exercise of the statutory right to select or reject a bargaining representative.[41] The majority of the Board further held[42] that section 8 (b) (1) (A) is similarly violated where a minority union seeks to advance the same illegal objectives by appeals to customers not to do business with the employer and by placing the employer on a "We Do Not Patronize" list.

In concluding that picketing is a form of union pressure within the purview of section 8 (b) (1) (A), the majority of the Board pointed out that picketing is coercive in an economic sense both as to the employer and the employees who continue at work. For, the majority stated, picketing is intended "to reduce the business [of the employer] to the point where his financial losses force him to capitulate to the union's demands . . . and the employees . . . cannot escape a share of the damage caused to the business on which their livelihood depends." The majority then went on to say[43]—

> Damage to the employer during such picketing is a like damage to his employees. That the pressure thus exerted upon the employees—depriving them of the opportunity to work and be paid—is a form of coercion cannot be gainsaid. There is nothing in the statutory language of Section 8 (b) (1) (A) which limits the intendment of the words "restrain or coerce" to direct application of pressure by the respondent union on the employees. The diminution of their financial security is not the less damaging because it is achieved indirectly by a preceding curtailment of the employer's interests

The majority in the later *Alloy* case also held that the same considerations apply where the coercive force takes the form of such other pressures as appeals to customers and "we do not patronize" lists. Rejecting the union's contention that these techniques were within the free speech protection of section 8 (c), the majority pointed out that the union in resorting to them was not exercising its right of free speech but was utilizing its economic power to force the employer to recognize it as an exclusive bargaining agent "in utter disregard of the employees' statutory right to select their own bargaining representative."[44]

In cases subsequent to the *Curtis* and *Alloy* decisions[45] it was made clear that those decisions envisaged only minority action for the

---

[41] Whether stranger picketing is involved, or picketing by the employer's own employees, was held unimportant because the effect of the picketing on the employees who are at work is the same regardless of the pickets' identity

[42] See *International Association of Machinists, Lodge 942, AFL–CIO (Alloy Manufacturing Co.), supra.*

[43] See *Curtis Bros, Inc*, footnote 16.

[44] The majority cited the Supreme Court's decision in *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502

[45] *Building Material & Dump Truck Drivers Local No. 240, International Brotherhood of Teamsters, etc (Fisk & Mason)*, 120 NLRB No. 19; *Retail Store Employees Union, Local 1595, Retail Clerks International Association, AFL–CIO (J C. Penney Co.)*, 120 NLRB No. 189, *General Teamsters, Packers, Food Processors and Warehousemen Union Local No. 912, International Brotherhood of Teamsters, etc. (H. A. Rider & Sons)*, 120 NLRB No. 199.

purpose of exclusive recognition[46] and that no consideration was was given to picketing for organizational purposes.[47]

The majority of the Board rejected the contention that according to its legislative history section 8 (b) (1) (A) was not intended to outlaw nonviolent picketing regardless of its purpose. While pointing out that section 8 (b) (1) (A) is clear and requires no construction, the majority of the Board also was of the view that, in any event, pertinent legislative history discloses no congressional intent to sanction picketing which restrains or coerces employees in their section 7 rights. Moreover, the majority continued, if the legislative history should be deemed ambiguous, the general purposes of the act would still require that section 8 (b) (1) (A) be held to prohibit picketing for the purposes here. For, it was pointed out, minority picketing for exclusive recognition conflicts with two basic policies of the act in that it constitutes (1) an attempt to cause an employer to commit an unfair labor practice, *viz*, to deal exclusively with a union which lacks majority status among its employees, and (2) an attempt to force the employees into a bargaining relationship not of their choosing.[48]

2. Causing or Attempting To Cause Illegal Discrimination

Section 8 (b) (2) prohibits a labor organization from causing or attempting to cause an employer to discriminate against employees within the meaning of section 8 (a) (3).

The cases decided under this section during fiscal 1958, as in prior years, were concerned chiefly with discrimination arising from hiring arrangements and union-security agreements between labor organizations and employers. Special consideration also was given to the question of the circumstances under which union pressure on an employer to bring about section 8 (a) (3) discrimination by another employer may be held to violate section 8 (b) (2).

a. Indirect Pressure To Discriminate

During the past year, a majority of the Board reversed the prior ruling that pressure on one employer to cause another employer to

[46] In the *Curtis* and *Andrew Brown* cases (footnote 39, *supra*) no merit was found in the unions' defense that their conduct ceased to have recognition for its purpose and became organizational following the elections which the unions lost. In each case the union's postelection conduct was held inconsistent with the asserted change in objectives.

[47] In the *Alloy* case it was pointed out that minority action for a union shop violates section 8 (b) (1) (A) in the same sense as like pressure for exclusive recognition, since the granting of union security by an employer necessarily presupposes recognition of the union as exclusive representative of the employees to be covered by the contract.

[48] It was also pointed out that such union action also tends to render meaningless section 9 (c) (3) which prohibits more than 1 collective-bargaining election within the same 12-month period The majority noted that to hold minority action for recognition lawful would permit a union which has lost an election to turn at once to coercive conduct "to achieve what the statute expressly precludes the Board from according it."

discriminate unlawfully against the latter's employees violates section 8 (b) (2) only if the contractual relationship between the two employers is such as to make them joint employers of the affected employees.[49] Overruling earlier decisions to this effect,[50] the majority held that section 8 (b) (2) was violated where a union struck a general contractor on a project for the purpose of causing him to bring about withdrawal from the project of a subcontractor's employees, who were represented by another union.[51] In the view of the majority, it was sufficient for the purposes of section 8 (a) (3) and 8 (b) (2) that the general contractor through whom the union sought to accomplish its objective[52] had the power to terminate the subcontract and thereby to cause the removal of the subcontractor's employees from the project. Section 8 (b) (2) was held similarly violated in another case[53] where a union struck and picketed an employer, thereby forcing him to cancel a subcontract with another employer who refused to enter into an illegal union-security agreement with the union.[54]

b. Discriminatory Practices and Agreements

Violations of section 8 (b) (2), not based on discriminatory agreements between unions and employers, involved union conduct intended to cause discrimination[55] against employees for the purpose of obtaining preference in employment of the respondent union's own members[56] or for such reasons as dual unionism[57] and opposition to

---

[49] *Operating Engineers, Local Union No. 3 of the International Union of Operating Engineers, AFL–CIO (Northern California Chapter, the Associated General Contractors of America, Inc., et al.)*, 119 NLRB 1026, Chairman Leedom and Member Murdock dissenting

[50] See *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 420, AFL–CIO (Frick Co et al.)*, 116 NLRB 119; *Local 294, International Brotherhood of Teamsters, etc (The Great Atlantic & Pacific Tea Co.)*, 116 NLRB 943 Twenty-second Annual Report, pp 85–86

[51] However, in the view of three members of the Board (Chairman Leedom and Members Murdock and Bean) the union did not also violate section 8 (b) (2) by executing, maintaining, and implementing a Master Agreement which included a subcontractor clause requiring the general contractor to do business only with subcontractors whose employees become members of the contracting union.

The sec 8 (a) (3) aspects of the case are discussed at pp 68–69, above

[52] The union's action against the general contractor resulted in the filing of charges and the issuance of a consent order under the secondary boycott provisions of sec 8 (b) (4) (A).

[53] *Local Union No. 1, Bricklayers, Masons & Plasterers International Union of America, AFL–CIO (J. Hilbert Sapp, Inc.)*, 119 NLRB 1466

[54] The union's strike action was also held to have violated sec. 8 (b) (4) (A) because its object was to bring about cessation of business between the struck employer and an employer with whom the union had a dispute

[55] A union's responsibility for the discriminatory treatment of an employee may be inferred from the circumstances. Thus, the unlawful discharge of employees in one case was held attributable to the employees' representative because the union (1) had threatened the employees with loss of employment for joining another union, and (2) was party to an illegal union-security agreement. *International Brotherhood of Paper Makers and its Local No. 670, et al. (Kalof Pulp & Paper Corp.)*, 120 NLRB No. 104.

[56] *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 92, AFL–CIO (Pittsburgh Des Moines Steel Co.)*, 119 NLRB 1605.

[57] *International Longshoremen's Assn. (Ind.); General Longshore Workers Local 1418, ILA, et al (J. P. Florio & Co., Inc.)*, 118 NLRB 753.

the union's leadership on the part of the discriminatees.[58] The Board pointed out that such action is clearly unlawful because the act "prohibits a union from resorting to curtailment of job rights—using the employer as a tool—for the purpose of curbing the independent preferences in union activities of individual employees." [59] Persistent demands by a union that an employer assign certain work to the union's members rather than to his own employees was also held violative of section 8 (b) (2) in that the union's demand constituted an attempt to cause the employer to discriminate against his employees.[60]

(1) Discriminatory Employment Practices

In several cases labor organizations were again found to have caused or attempted to cause unlawful discrimination against employees by arrangements with employers for preferential or exclusive hiring of employees who had complied with union requirements. Thus, section 8 (b) (2) was held violated by (1) the maintenance of an agreement under which the employer was to hire only members of the contracting union, as long as it could furnish them, and (2) the administration of the hiring clause through a company foreman who was recruited by, and was a member of, the union and was bound by the provisions of the union's constitution and bylaws limiting hiring to union members in good standing.[61] The section was held similarly violated by an arrangement whereby preference in hiring was to be given, and was given, to applicants having union cards,[62] and by the enforcement of a union's tacit understanding with an employer that nonunion temporary employees were to be denied apprentice positions.[63] The Board also had occasion to reiterate that a union violates section 8 (b) (2) by becoming party to an agreement which delegates to it control over the settlement of seniority controversies.[64] According to the Board, the mere existence of such an agreement, apart from its enforcement, is unlawful.

On the other hand, the Board again made clear that in order to establish a hiring arrangement which violates section 8 (b) (2), it is not sufficient to show that an employer utilizes the employment facil-

---

[58] *Local 138, International Union of Operating Engineers, AFL–CIO (A. Cestone Co.)*, 118 NLRB 669.

[59] *Ibid*

[60] *Local Union No. 48, Sheet Metal Workers' International Assn, AFL–CIO, et al (Acoustic Engineering of Alabama, Inc)*, 120 NLRB No. 34. Member Fanning did not join in finding violations of sec. 8 (b) (1) (A) and 8 (b) (2), expressing the view that sec. 8 (b) (1) (A) and 8 (b) (2) should not be applied where *primary* pressure on an employer arises out of a jurisdictional dispute because the procedures provided in secs 8 (b) (4) (D) and 10 (k) for the settlement of jurisdictional disputes are exclusive.

[61] *Local Union 825, International Union of Operating Engineers, AFL–CIO (Booth & Flinn Co.)*, 120 NLRB No 75.

[62] *Local 1408, 1408–A and 1597, ILA (Kaufmann Shipping Co.)*, 119 NLRB 645.

[63] *International Typographical Union, Mailers Local Union No. 7, AFL–CIO (The Kansas City Star Co.)*, 119 NLRB 972.

[64] *Independent Workers' Union of Florida (Gibbs Corp.)*, 120 NLRB No. 149.

ities of a union on a nonexclusive basis because these facilities best suit his need for obtaining experienced personnel.[65] And in one case, the Board dismissed section 8 (b) (2) charges against a union which were based on an employer's policy to recruit all employees through the respondent union.[66] Here, the record showed that the employer's policy was not the result of a mutual understanding or agreement but was instituted unilaterally by the employer.

(a) Exclusive hiring-hall agreements

The Board during the past year was faced with the question whether an exclusive hiring-hall agreement between a general contractors association and a construction trades union was unlawful in itself and violative of section 8 (a) (3) and section 8 (b) (2) and (1) (A).[67] The agreement here provided in substance that (a) recruitment of employees was the responsibility of the union, (b) the employers were to call upon the union for qualified workmen, and (c) the employers were free to secure workmen from other sources only if the union was unable to supply requested workmen within 48 hours. In the view of a majority of the Board,[68] an exclusive hiring-hall arrangement of this type is inherently discriminatory and no independent evidence of discriminatory practices under it is necessary to support a finding that the contracting employer has violated section 8 (a) (3) [69] and that the contracting union violated section 8 (b) (2). The discriminatory effect of such a hiring-hall arrangement, according to the majority, derives from the fact that it establishes the union as hiring agent with no restrictions upon the methods by which personnel is to be selected. As pointed out by the majority—

> Here the very grant of work at all depends solely upon union sponsorship, and it is reasonable to infer that the arrangement displays and enhances the union's power and control over the employment status. Here all that appears is unilateral union determination and subservient employer action with no aboveboard explanation as to the reason for it, and it is reasonable to infer that the Union will be guided in its concession by an eye towards winning compliance with a membership obligation or union fealty in some other respect. The Employers here have surrendered all hiring authority to the Union and have given advance notice via the established hiring hall to the world at large that the Union is arbitrary master and is contractually guaranteed to remain so.

However, the majority of the Board made clear that its decision envisaged only hiring halls which give the union unfettered control

---

[65] *Sailors' Union of the Pacific (Kaiser Gypsum Co.)*, 118 NLRB 1576.

[66] *Local No. 160, International Hod Carriers, Building & Common Laborers Union of America, AFL–CIO (Foundation Co.)*, 120 NLRB No. 191.

[67] *Mountain Pacific Chapter of the Associated General Contractors, et al. (International Hodcarriers, Building & Common Laborers Union of America, Local No 242, AFL–CIO)*, 119 NLRB 883.

[68] Member Murdock dissenting.

[69] See p. 68, *supra*.

over hiring, and that the decision is not to be taken as outlawing nondiscriminatory hiring halls and "their attendant benefits to employees and employers alike." The majority went on to announce that henceforth a hiring-hall agreement will be considered nondiscriminatory on its face if it provides expressly that—

(1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

(2) The employer retains the right to reject any job applicant referred by the union.

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.

The majority further announced that while an agreement which conforms to these requirements is lawful,[70] the parties to such an agreement will continue to be liable under section 8 (a) (3) and 8 (b) (2) for any discriminatory practices under their agreement.

(2) Discrimination Under Union-Security Agreements

The union-security proviso to section 8 (a) (3) of the act permits agreements between unions and employers requiring, as a condition of employment, membership in the contracting union after the expiration of a specified 30-day grace period. However, a union can validly enter into such an agreement only if it is the bona fide representative of the employees covered in an appropriate bargaining unit. Moreover, the union must be in compliance with the filing and non-Communist affidavit requirements of section 9 (f), (g), and (h), and its authority to enter into a union-security agreement must not have been revoked during the 12-month period before the effective date of the agreement in a "deauthorization" election under section 9 (e).

The execution and maintenance of a union-security agreement which fails to conform to any of the statutory requirements has consistently been held to violate section 8 (b) (2) because of the inherent threat that the contracting union may unlawfully request employees to be discharged for failure to acquire or maintain membership. Thus, section 8 (b) (2) violations were found where unions entered into union-security agreements at a time when they were not in compliance with section 9 (f), (g), and (h)[71] or did not have majority status among

[70] Cf. *Sheet Metal Workers International Association, Local Union No. 99 (Dohrmann Hotel Supply Co.)*, 120 NLRB No. 184, where the Board held that an exclusive hiring agreement was unlawful because it failed to conform to the requirements set out in the *Mountain Pacific* case.

[71] *International Brotherhood of Paper Makers and its Local No 670, et al (Kalof Pulp & Paper Corp.)*, 120 NLRB No. 104.

the employees involved.[72] The Board also held during the past year that a minority union which pickets an employer in order to force him to sign a union-security agreement likewise violates section 8 (b) (2) because such picketing constitutes an unlawful attempt to cause the employer to impose unlawful conditions of employment in violation of section 8 (a) (3).[73] A labor organization which has been unlawfully assisted by an employer, and therefore is not the bona fide representative of his employees, violates section 8 (b) (2) in the same sense if it enters into a union-security agreement with the employer.[74]

Execution and maintenance by a labor organization of a union-security agreement illegal in its terms—such as an agreement which does not afford employees the full 30-day grace period for acquiring membership—is similarly violative of section 8 (b) (2).[75]

(a) Illegal enforcement of union-security agreements

In several cases section 8 (b) (2) was found to have been violated by the manner in which valid union-security agreements were sought to be enforced.

Two cases involved union requests for the discharge of employees who had resigned from the union and therefore refused to continue their dues payments. One case[76] turned on whether the allegedly delinquent employee had effectively resigned under the union's contract which provided for maintenance of union membership by "all employees who, 30 days after the date of this agreement, are members . . . in good standing in accordance with the Constitution and By-laws" of the union. As pointed out by the Board, the contract's maintenance-of-membership provision thus did not become operative until 30 days after the effective date of the contract. The employee here resigned during the 30-day period, but the union contended that, not having followed constitutional procedures, the employee's resignation did not become effective during the contract's escape period. Re-

---

[72] *International Brotherhood of Teamsters, Local 986, AFL–CIO (Max Factor & Co)*, 118 NLRB 808; *Local No. 160, International Hod Carriers, Building and Common Laborers Union of America, AFL–CIO (Foundation Co.)*, 120 NLRB No. 191. See also *Local Lodge No. 1424, International Association of Machinists, AFL–CIO, et al (Bryan Manufacturing Co)*, 119 NLRB 502, and the further discussion of this case at p. 79, *supra*

[73] *International Association of Machinists, Lodge 942, AFL–CIO (Alloy Manufacturing Co)*, 119 NLRB 307 See also further discussion of this case at pp 81–82, *supra*. And see *Building Material & Dump Truck Drivers Local No. 420, International Brotherhood of Teamsters, etc. (Fisk & Mason)*, 120 NLRB No. 19.

[74] See *International Brotherhood of Teamsters, Chauffeurs, etc, Local Union No 117, AFL–CIO (The Englander Co , Inc)*, 118 NLRB 707.

[75] *Magnet Wire Workers Union, Inc. (Imperial Wire Co., Inc.)*, 118 NLRB 775. A majority of the Board here rejected the union's contention that the clause of the contract providing for 6 days' instead of the required 30 days' grace was inserted by mutual mistake and that the parties intended to comply with the act. The majority held that the evidence was insufficient to establish mutual mistake, or what the parties' actual intention was.

[76] *Newspaper Guild of Buffalo, Local #26, American Newspaper Guild (AFL–CIO) (Niagara Falls Gazette Publishing Corp)*, 118 NLRB 1471.

jecting this contention, the Board held that, while the union's constitution and bylaws may have been controlling as to the employee's status as a union member, they could not affect the employee's right under the contract to resign in order to avoid becoming subject to union-security obligations without jeopardizing his employment rights. Under a contrary holding, the Board stated, "the escape clause in the union-security agreement . . . would become a nullity and without effect [because under] the Union's constitution the right to resign from the Union is hedged with such conditions and restrictions as to make resignations to all intents and purposes impossible, at least within the 30-day escape period."

The other case [77] involved requests for the discharge of employees for dues delinquencies incurred under a maintenance-of-membership contract which had expired. The record showed that the employees resigned effectively from the union either before or after the contract's expiration, and before the union's later similar contracts with the employer became effective. The Board held that, whatever rights the union may have had with respect to the employees' delinquency under the former contract, the intervening lapse of that contract precluded the later reassertion of those rights.

In another case, the Board held that the respondent union, while entitled to enforce union-security provisions against a dues-delinquent member, violated section 8 (b) (2) by denying the employee a reasonable time for settling the delinquency before requesting his discharge.[78]

3. Refusal To Bargain in Good Faith

Section 8 (b) (3), the counterpart to section 8 (a) (5),[79] makes it an unfair labor practice for a labor organization or its agents to refuse to bargain in good faith with an employer when the organization represents a majority of the employees in an appropriate unit. Collective bargaining which satisfies the requirements of section 8 (b) (3) and 8 (a) (5) is defined in section 8 (d) of the act.

a. Evidence of Bad Faith—Harassing Tactics

The Board was again faced with the question whether harassing activities while bargaining negotiations are in progress justify an inference of bad faith on the part of the union and a consequent finding that the union has violated the good-faith bargaining require-

[77] *The Public Utility Construction & Gas Appliance Workers of the State of New Jersey, Local 274, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL–CIO (Public Service Electric & Gas Co., etc.)*, 120 NLRB No. 57.

[78] *Marine Cooks and Stewards, AFL–CIO (Pacific Transport Lines, Inc.)*, 119 NLRB 1505.

[79] Refusals of employers to bargain as required by sec. 8 (a) (5) are discussed at pp. 74–77.

ment of section 8 (b) (3).[80] In the case before it, the respondent union, whose current contract was about to expire, adopted a "Work Without Contract" program designed to force the employer to yield to the union's proposals for new contract terms. According to successive directives issued while negotiations progressed, the company's agents refused to write new business or to remain at work during customary hours; engaged in picketing and mass demonstrations; solicited policyholders' signatures on petitions; refused to attend business conferences and to make required reports; and engaged in other activities which likewise tended to disrupt and curtail the employer's business.

The Board took the view that these tactics—which unlike a strike were outside the protection of section 7 or section 13 of the act—reflected bad faith and required a finding that the union thereby violated its bargaining obligation under section 8 (b) (3). The Board stated:

> Collective bargaining in good faith, as the Board and the courts have so often held, presupposes that both the employer and the union "enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor." It requires "cooperation in the give and take of personal conferences with a willingness to let ultimate decision follow a fair opportunity for the presentation of pertinent facts and arguments."
>
> In the present case, the Respondent's reliance upon harassing tactics during the course of negotiations for the avowed purpose of compelling the Company to capitulate to its terms is the antithesis of reasoned discussion it was duty-bound to follow. Indeed, it clearly revealed an unwillingness to submit its demands to the consideration of the bargaining table where argument, persuasion, and the free interchange of views could take place. [Footnotes omitted] [81]

Moreover, the Board observed, the union's conduct here was no more indicative of "an open and fair mind to reach agreement on the basis of free exchange of ideas which is essential to good-faith bargaining" than the conduct of an employer who threatens to shut down his plant or to cut hours of work or to stop overtime in order to force a union to abandon its proposal and accept the employer's.

b. Insistence on Bargaining in Inappropriate Unit

The duty of a statutory representative to bargain under section 8 (b) (3) includes the duty to bargain for the unit it represents.

In one case, the Board found during fiscal 1958 that this duty was violated by a union which brought economic pressure on an employer to

---

[80] *Insurance Agents' International Union, AFL–CIO (Prudential Insurance Co of America)*, 119 NLRB 768.

[81] The Board expressed its disagreement with the contrary views of a majority of the Court of Appeals for the District of Columbia in the *Personal Products Corp* case (*Textile Workers of America, CIO* v. *N. L. R. B.*, 227 F. 2d 409). After the close of the fiscal year, the same court denied enforcement of the Board's order in the *Prudential Insurance* case. The Board petitioned the Supreme Court for review of the *Prudential* case.

bargain and enter into an agreement for a larger unit than the unit for which it had been certified by the Board.[82]

In another case, a union was found to have similarly violated section 8 (b) (3) by refusing to bargain for the unit it has represented for some time and by insisting that, as a condition to executing a contract, the contract unit be expanded so as to include a work classification covered by another union's Board certificate.[83] The union's insistence on enlargement of the unit was the result of the policy newly adopted by the union's International to require its locals not to sign a contract with, and not to award a union label to, any manufacturer unless the contract covered the particular work. In view of the directive of the International—also a respondent—and its control over bargaining negotiations of its locals, both respondents were held jointly liable for the refusal to bargain.

c. Effect of Disclaimer of Representative Status

In two cases, the unions which were found to have unlawfully refused to bargain[84] contended that they disclaimed interest in the employees in the bargaining unit and therefore were relieved of their bargaining obligation under section 8 (b) (3).

In the *Textile* case, the union's disclaimer was held to have been ineffective both because it was not made until more than a year after the opening of contract negotiations, and because it was not made in good faith. Regarding the requisite good faith, the Board again made clear that a "bare statement" of disclaimer accompanied by "inconsistent" conduct will not be given effect. According to the Board, the circumstances indicated that the local's disclaimer was but a tactical maneuver. Thus, it was pointed out, the employees in the bargaining unit continued to be members of the local; the local continued to exercise control over strike action and to receive welfare fund contributions from the employer on behalf of its members; and at the hearing the local expressed willingness to sign a contract with the employer for the proposed unit.

Similarly, the refusal of the union in the *Inland Steel* case[85] to honor an agreement reached in negotiations was held not excused by

---

[82] *International Longshoremen's Association, Ind., et al. (New York Shipping Assn, Inc.)*, 118 NLRB 1481.

[83] *International Brotherhood of Electrical Workers, AFL–CIO, and Local 59, International Brotherhood of Electrical Workers, AFL–CIO (Textlite, Inc.)*, 119 NLRB 1792 The Board here also rejected the contention that the single-employer unit in which the refusal to bargain occurred was inappropriate because of the employer's previous participation in multiemployer bargaining. It was pointed out that not only had the employer effectively withdrawn from the multiemployer unit, but that the union had, in fact, recognized the withdrawal and had engaged in bargaining with the employer on an individual basis.

[84] *Textlite, Inc., supra; Sheet Metal Workers Union, Local No. 65, AFL–CIO (Inland Steel Products Co.)*, 120 NLRB No. 216.

[85] *Supra.*

the notice to the employer—4 months later—that the union abandoned its claim to represent the certified unit for which it had bargained. Since the union had not been repudiated by the employees, the Board viewed the disclaimer as but an attempt by the union to extricate itself from its bargain with the company.

4. Secondary Strikes and Boycotts

The act's prohibitions against secondary boycotts are contained in section 8 (b) (4) (A) and (B). Subsection (A) is directed against secondary action which is intended to disrupt the business relations of separate employers, whereas subsection (B) prohibits strike action against one employer for the purpose of forcing another employer to recognize or bargain with a labor organization which has not been certified by the Board.[86]

a. Inducement or Encouragement of Employees To Strike

As heretofore, in some of the cases under the secondary-boycott provisions of the act, the respondent unions defended the conduct with which they were charged on the ground that it did not, or was not intended to, "induce or encourage" work stoppages for the purposes prohibited by section 8 (b) (4) (A) or (B). Thus, in two cases it was contended that picketing at the premises of secondary employers was intended solely to appeal to the general public to withdraw its patronage because the picketed employer used the goods or services of an "unfair" employer with whom the picketing union had a dispute. The unions' contention was rejected in both cases.[87] It was pointed out that, while the unions' picket signs ostensibly sought the support of the purchasing public, picketing was conducted so that employees could not go to or from work without crossing the picket line, and that the picketing, regardless of the picket-line legends, thus had the traditional effect of inviting employees not to work behind the picket line and to make common cause with the strikers,[88] for the manifest purpose of forcing the picketed employer to cease doing business with the employer involved in the union's primary dispute.

However, distribution of handbills to the general public in the vicinity of a picketed place, appealing for a consumer boycott, was

[86] Subsec. (A) also prohibits both primary and secondary strike action intended to force an employer or self-employed person to join any labor or employer organization.

[87] *Dallas General Drivers, Warehousemen & Helpers, Local No 745, AFL–CIO (Associated Wholesale Grocery of Dallas, Inc.)*, 118 NLRB 1251 (Member Murdock dissenting). *Laundry, Linen Supply & Dry Cleaning Drivers Local No. 928, International Brotherhood of Teamsters, etc., et al. (Southern Service Co., Ltd.)*, 118 NLRB 1435.

[88] That the picketing was so understood was held clearly indicated in one case (*Laundry, Linen Supply & Dry Cleaning Drivers Local No. 928, International Brotherhood of Teamsters, etc., et al. (Southern Service Co , Ltd), supra*) by the refusal of some employees to make deliveries to the picketed plant, and the inquiries of others as to whether the picketing was "official" and had to be respected.

held not violative of section 8 (b) (4) (A) because, unlike picketing, such action does not necessarily induce a work stoppage by employees.[89]

In some cases unions, charged with having unlawfully induced or encouraged strike action by their members, asserted that the work stoppages involved were not union induced but were the result of the exercise by individual employees of their right to refuse to handle "hot" goods under the "hot cargo" provisions of applicable collective-bargaining agreements. In the Board's view—affirmed by the Supreme Court during the past year [90]—a "hot cargo" agreement [91] does not validate otherwise prohibited secondary boycotts and a union which induces employees to assert contractual "hot cargo" privileges violates section 8 (b) (4).

In one case, where the employees of certain carriers refused to transport the goods of a struck manufacturer, the respondent union denied responsibility for the refusal under section 8 (b) (4) asserting that its members "individually and unanimously" decided at a special meeting not to handle the freight. The union further contended that it only advised its members at the meeting of their contractual "hot cargo" rights and of the union's obligation to notify the carriers in case the employees should decide to exercise those rights.[92] A majority of the Board,[93] however, viewed the employees' refusal as concerted action and as an integral part of a program formulated and sponsored by the union and its agents. This, according to the majority, was indicated by the fact that widespread "hot cargo" action followed the meeting which had been specifically called and conducted for the purpose of considering such action by the employees, and which in turn produced a resolution by the union's members not to handle the "hot" freight. It was also pointed out that the union's officials participated actively in the adoption of the hot cargo program by creating the occasion for the membership meeting, by pledging the union's resources as a means of protecting members against retaliation by their employers, and by actually threatening strike action against employers who resisted "hot cargo" action. The fact that the "hot cargo" program was adopted without any threats of either direct or indirect disciplinary action against nonconforming members was considered unimportant because, as had been made

[89] *Dallas General Drivers, Warehousemen & Helpers, Local No. 745, AFL–CIO (Associated Wholesale Grocery of Dallas, Inc.), supra.*

[90] See *Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, et al.* v. *N L R B. (Sand Door & Plywood Co.)*, 357 U. S. 93, discussed at pp. 107–110 *infra.*

[91] Generally, a "hot cargo" agreement obligates the contracting employer not to require employees to handle goods, materials, or equipment of a disputing employer.

[92] *Truck Drivers & Helpers Local Union No. 728, International Brotherhood of Teamsters, etc. (Genuine Parts Co.)*, 119 NLRB 399.

[93] Member Murdock dissenting.

clear by the Supreme Court,[94] the terms "induce and encourage" in section 8 (b) (4) apply equally where a union sponsors, authorizes, or otherwise encourages unlawful activity without compelling or requiring participation by its members. Nor, according to the majority, was it material that the union may have acted in a good-faith belief that in advising the members at a meeting it was but performing a legitimate intraunion duty. "The statute [the majority stated] grants no exemptions to unlawful conduct because committed in the confines of a union meeting or because it occurred as an incident to, or in explanation of, union regulations or policies." [95]

The question of illegal inducement and encouragement of strike action arises of course not only under the prohibitions against secondary boycotts in section 8 (b) (4) (A) and (B), but also in connection with the prohibitions of strikes against Board certifications in section 8 (b) (4) (C),[96] and of jurisdictional strikes within the meaning of section 8 (b) (4) (D).[97]

b. Neutrality of Secondary Employer

In order to run afoul of the prohibition against secondary boycotts, inducement of strike action by a labor organization must involve employees of an employer who is a stranger or neutral to the union's primary dispute.

An employer is not a "neutral" for secondary boycott purposes if he and the primary employer are so closely integrated as to constitute them a single employer.[98] And an employer loses his neutral status and the protection of section 8 (b) (4) (A) if he becomes an "ally" in

---

[94] *International Brotherhood of Electrical Workers, Local 501, et al* v. *N. L. R. B.* (*Samuel Langer*), 341 U. S. 694.

[95] See also *Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 390, International Brotherhood of Teamsters, etc.* (*Herbert A. Spencer, d/b/a U and Me Transfer, et al.*), 119 NLRB 852 (Member Murdock dissenting), where the respondent union was held to have unlawfully induced a trucker's employees not to handle the freight of another motor carrier with whom it had a dispute. Here the trucker's employees, who were members of the union, were told that the primary employer's freight "was declared unfair freight" and was not to be handled. The trucker was then informed that under his "hot cargo" contract with the union "employees would not be allowed to handle any of the freight of the primary employer."

[96] *Infra*, pp. 97–98.

[97] See, for instance, *United Brotherhood of Carpenters, etc., Local 978, AFL–CIO, et al.* (*Markwell & Hartz Contractors*), 120 NLRB No. 77, where the Board held that a union which picketed an employer in connection with a work assignment dispute was responsible for the refusal of employees of suppliers and subcontractors to perform services for the picketed employer regardless of whether or not the respondent union instructed those employees to respect the picket line, and regardless of the literal appeal of the picket signs which merely stated that the employer was not hiring members of the picketing union. See also *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO* (*Acousti Engineering of Alabama, Inc.*), 120 NLRB No. 35, where advance information to union stewards on a job, that picketing was to take place in connection with a jurisdictional dispute, was held "the equivalent of instructing the initiated that they were expected to honor the picket line"

[98] *International Brotherhood of Teamsters, etc., Local 249, et al.* (*Polar Water Co.*), 120 NLRB No. 25.

another employer's primary dispute with a union by performing work which the primary employer has farmed out because of the union's strike against him. Thus, the Board held in one case that a union, engaged in an economic strike, did not violate section 8 (b) (4) (A) when it picketed the plant of another employer who had agreed to perform certain work which the struck employer would have performed but for the strike.[99] The Board pointed out that "by knowingly doing the primary employer's farmed-out struck work, [the secondary employer] in effect engaged in strikebreaking, stripped itself of neutrality and unconcern with respect to the labor dispute, and allied itself with the primary employer and against the [striking union]." Nor, according to the Board, was section 8 (b) (4) (A) violated here by the representative of the "ally's" own employees which—independently of the "primary" union [1]—induced its members not to work on the farmed-out strike-bound project.

The Board in one case adopted the trial examiner's conclusion that the "ally" doctrine may not be construed so as to permit inducement of a work stoppage by secondary employees only to the extent that they are called upon to perform strike-bound work.[2] The trial examiner found no justification for such a limited application of the doctrine, especially when, as in the present case, the employees have no way of knowing whether the orders on which they are working came from the struck employer or from employers whose employees are not on strike.

The question of the neutral status of an employer for section 8 (b) (4) (A) purposes arose in one case where a union picketed the terminals of a motor carrier after it failed to obtain recognition as bargaining agent from certain individuals who furnished tractors and tractor drivers to the carrier under uniform lease agreements.[3] The drivers whom the union sought to represent were the lessors' employees, but the carrier, which was subject to Interstate Commerce Commission regulations, exercised supervision over the drivers while hauling freight. Finding that the carrier was a neutral in the union's dispute with the tractor lessors, and that the picketing of its terminals violated section 8 (b) (4) (A), a majority of the Board [4] rejected the trial examiner's conclusion that, in view of the divided control over the drivers, the equipment-lessors and the carrier-lessee were coemployers

[99] *International Die Sinkers Conference, San Jacinto Die Sinkers Lodge #410, et al. (General Metals Corp.)*, 120 NLRB No. 160.

[1] The "primary" union's picket signs stated that its dispute was with the primary employer and that it was not seeking to induce a strike by the employees of any other employer.

[2] *Shopmen's Local Union No. 501 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO (Oliver Whyte Co., Inc.)*, 120 NLRB No. 112.

[3] *Local No. 24, International Brotherhood of Teamsters, etc. (A. C. E. Transportation Co., Inc.)*, 120 NLRB No. 150.

[4] Member Bean dissenting.

and as such were not "neutrals or wholly unconcerned third parties in the Union's disputes . . . with any of them."

In another case, the respondent union was held not entitled to picket retail grocers in order to bring pressure on their common wholesaler with whom the union had a dispute over contract terms.[5] All of the stock of the "wholesale cooperative" here was owned by the 370 retail stores which it served. But, a majority of the Board found, the wholesaler had no control over the retail stores, and the stores were separate legal entities conducting a normal business relationship with the wholesaler. In the view of the majority, the retail stores did not lose their neutral status because at the beginning of the union's primary strike a few of the stores furnished replacements to the struck wholesaler. This temporary alliance, it was found, terminated more than a month before the union began to picket the stores.

c. Common Situs Picketing

During fiscal 1958, the Board was again concerned with the legality of picketing activitities at locations where both employees of the employer with whom the picketing union has a dispute and employees of neutral secondary employers are present. Regarding the extension of picketing from a primary employer's premises to secondary locations, it was again pointed out in one case [6] that—

> Where a primary employer has a permanent place of business at which a union can adequately publicize its labor dispute, the Board holds that the fact that picketing is conducted at the premises of a secondary employer plainly reveals that it was designed, at least in part, to induce and encourage the employees of the secondary employer to engage in a concerted refusal, in the course of their employment, to handle goods for the primary employer, with an object of forcing the secondary employer to discontinue doing business with the primary employer, thereby violating Section 8 (b) (4) (A) of the Act.

The respondent union here supplemented its strike picketing at the primary employer's two permanent places of business by following the employer's trucks to the plant of a secondary employer where they were to pick up supplies. Union representatives informed the supplier of the pending strike and requested him to cooperate and to refuse to load the struck employer's trucks. The record also showed that while the union picketed at the secondary premises another employer's delivery truck departed without unloading after its driver had conferred with a representative of the picketing union. The majority

---

[5] *Dallas General Drivers, Warehousemen & Helpers, Local No. 745, AFL–CIO (Associated Wholesale Grocery of Dallas, Inc)*, 118 NLRB 1251 (Member Murdock dissenting).

[6] *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local 386, and General Teamsters Union, Local 431 (California Association of Employers)*, 120 NLRB No. 161. Member Fanning concurred in the finding of a sec 8 (b) (4) (A) violation but dissented from the view that picketing under the circumstances specified by the majority is *per se* violative of sec. 8 (b) (4) (A).

of the Board held that the union's conduct was unlawful because the primary employer had two permanent places of business where the union's dispute could be, and was, publicized, and where the union could bring pressure on the struck employer's truckdrivers to support the strike.[7]

In the cases involving picketing at premises occupied jointly by primary and secondary employers, the Board has continued to determine the legality of the picketing on the basis of the principles first formulated in the *Moore Dry Dock* case.[8] As pointed out again in one case,[9] these rules require, in sum, that "the timing and location of the [common situs] picketing and the legends on the picket signs . . . be tailored to reach the employees of the primary employer, rather than those of neutral employers," the controlling consideration being "to require that the picketing be so conducted as to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees." These limitations, in the Board's view, were not observed in the *Hairdressers* case.[10] Here the respondent union picketed at hotels which were the site of trade shows in which beauty shop owners and exhibitors of products for the beauty shop trade participated. The picketing was to press the union's previous demands that the participants—the primary employers—employ only union members as operators or demonstrators at the shows. In holding that the hotel picketing was unlawful, the Board pointed out that the union made no attempt to reach the primary employees and to solicit membership directly from operators employed by the exhibitors. Picketing, the Board noted, began before the shows were officially opened, and the union took no action to mitigate the effect which its picketing was likely to have on neutral employees.[11]

---

[7] The majority of the Board also held that the respondent union continued to violate sec. 8 (b) (4) (A) even though it abandoned ambulatory picketing and resorted to picketing at the supplier's premises, first with organizational signs, and later with signs ostensibly seeking recognition as the bargaining agent of the supplier's employees. In the view of the majority, the circumstances indicated that the uninterrupted picketing was, at least in part, for the same unlawful purpose to cause a cessation of business between the picketed and the struck employer, and that the changes in the picket signs were primarily attempts to make the continued picketing seem lawful.

[8] *Moore Dry Dock Co.*, 92 NLRB 547. Under the rules announced in this case picketing at such a situs is lawful if (a) the picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer.

[9] *Journeymen Barbers, Hairdressers, Cosmetologists & Proprietors International Union of America, AFL–CIO (Chicago & Illinois Hairdressers Association)*, 120 NLRB No. 122.

[10] *Supra.*

[11] Insofar as the union also sought to force self-employed beauty shop owners at the shows to become union members, the Board held that the picketing even if considered primary violated the first part of sec. 8 (b) (4) (A) which prohibits strike action for the purpose of "forcing or requiring any employer or self-employed person to join any labor or employer organization."

In another case, involving a situation factually resembling that in the *Moore Dry Dock* case, picketing of a ship while in drydock at a ship repair yard was held secondary and unlawful,[12] because the ship's operator—the primary employer—was, at the time of the picketing, not "engaged in its normal business at the situs of the dispute." [13] The picketing here was the result of the primary employer's refusal to recognize the union as bargaining agent of the ship's unlicensed personnel. After picketing at the shipyard began, all nonsupervisory employees were removed from the ship. While the union and its pickets were notified to this effect, picketing nevertheless continued, albeit with signs and pamphlets ostensibly addressed to the employees of the ship's operator. In the view of the majority of the Board, the fact that the respondent was aware that no nonsupervisory primary employees were present showed that the picketing was intended to reach the employees of the secondary employer—the shipyard—who were engaged in repair work aboard the ship, the manifest purpose being to bring about a cessation of business between the yard and the operator of the ship, as well as between the owner of the ship and chartering operator. The case therefore was held unlike *Moore Dry Dock*, where at the time of the picketing the primary employer's nonsupervisory employees were preparing the docked ship for sailing. Here, the majority pointed out, the ship became a "dead" ship when nonsupervisory employees were removed, and its operator was not "engaged in its normal business" while the ship continued in drydock.

5. Strikes for Recognition Against Certification

Section 8 (b) (4) (C) forbids a union from engaging in strike activity in order to force an employer to recognize or bargain with one labor organization as the representative of the employer's employees when another union has been certified by the Board as such representative.

Only one case under section 8 (b) (4) (C) came up for decision by the Board during fiscal 1958.[14] The trial examiner's conclusion—adopted by the Board—that the union here violated the section turned on issues which, as in earlier similar cases,[15] arose from the picketing of an employer both before and after a union other than the respondent was certified as bargaining agent of the picketed employer's em-

[12] *Seafarers' International Union of North America, Atlantic & Gulf District, AFL–CIO (Salt Dome Production Co.)*, 119 NLRB 1638, Member Jenkins dissenting

[13] See footnote 12, *supra*.

[14] *Knitgoods Workers Union, Local 155, International Ladies' Garment Workers Union, AFL–CIO (Packard Knitwear, Inc)*, 118 NLRB 577.

[15] *See Local No. 25, Bakery & Confectionery Workers International Union of America, AFL–CIO, et al. (King's Bakery, Inc.)*, 116 NLRB 290; and *Knit Goods Workers' Union Local 155, International Ladies' Garment Workers Union, AFL–CIO (James Knitting Mills, Inc.)*, 117 NLRB 1468. Twenty-second Annual Report, pp. 106–107.

ployees. The trial examiner found that the respondent union began to picket the employer after he refused the union's demand for a contract, and that it continued to picket even after another labor organization was elected and certified by the Board as the employees' statutory representative. The trial examiner also found that there was no indication that the union's original objective—recognition—changed once the rival organization was certified. Concluding that the union's postcertification picketing was unlawful, the trial examiner pointed out that, under established Board precedent, the picketing had to be regarded as an inducement of the employees to strike, and that the strike was intended to achieve the objective specifically prohibited by section 8 (b) (4) (C). In adopting the trial examiner's conclusion, the Board again expressed disagreement with the view of the Second Circuit Court of Appeals [16] that peaceful picketing under circumstances such as this does not constitute unlawful inducement within the meaning of section 8 (b) (4) (C).

6. Jurisdictional Disputes

Section 8 (b) (4) (D) forbids a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work tasks to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

An unfair labor practice charge under this section, however, must be handled differently from charges alleging any other type of unfair labor practice. Section 10 (k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of charges with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," the Board is empowered to hear and determine the dispute.

Section 10 (k) further provides that pending section 8 (b) (4) (D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with, or where the parties have voluntarily adjusted the dispute. During fiscal 1958, the Board was for the first time squarely faced with the question whether these pro-

[16] *Douds* v. *Local 50, Bakery & Confectionery Workers International Union, etc., AFL–CIO,* 224 F. 2d 49; *N L. R. B.* v. *Local 50, Bakery & Confectionery Workers International Union, AFL–CIO,* 245 F. 2d 542; setting aside 115 NLRB 1333.

visions[17] permit prosecution of a section 8 (b) (4) (D) complaint without initial determination of the underlying dispute where the method for voluntary adjustment agreed upon by the parties has broken down, as where the agreed-upon method or a decision under it has been repudiated by a party. The Board held that in such circumstances a section 10 (k) determination is not a necessary prerequisite to the issuance and adjudication of a section 8 (b) (4) (D) complaint.[18]

This construction of section 10 (k) was held required by both its language and its purpose. The Board specifically pointed out that to condition unfair labor practice proceedings under section 8 (b) (4) (D) on an initial section 10 (k) determination even where an agreed-upon method for voluntary adjustment exists—

> frustrates the congressional purpose of protecting neutral employers and the public from jurisdictional strife, for it subjects them to continuing jurisdictional strikes when the agreed method does not result in a decision favorable to the striking union. On the other hand, the congressional purpose is clearly enhanced by a construction of the Act which does not countenance "forum shopping" in the fact of a private "agreed upon method of adjustment," which keeps an 8 (b) (4) (D) charge alive pending actual settlement of a jurisdictional dispute, and which, where the private adjustment machinery has broken down, provides a Board cease and desist order to stop a jurisdictional strike.

a. Proceedings Under Section 10 (k)

In order for the Board to proceed with a determination under section 10 (k), the record made at the hearing must show that a work assignment dispute within the meaning of sections 8 (b) (4) (D) and 10 (k) exists; that there is reasonable cause to believe that the respondent union has induced a work stoppage in connection with the dispute; and that the parties have not adjusted their dispute or agreed upon methods for its voluntary adjustment.

---

[17] Sec. 10 (k) in pertinent part reads: "Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

[18] *Wood, Wire & Metal Lathers International Union and its Local Union No. 2, AFL–CIO, et al. (Acoustical Contractors Association of Cleveland)*, 119 NLRB 1345. The Board's consideration of the question was occasioned by an appeal from the trial examiner's dismissal of the sec. 8 (b) (4) (D) complaint. In the view of the trial examiner, sec. 102.72 of the Board's Rules and Regulations (Series 6, as amended) and sec. 101.28 of the Board's Statements of Procedure in force at the time, required dismissal under the circumstances because there had been no sec. 10 (k) determination of the work assignment dispute which had given rise to sec. 8 (b) (4) (D) charges. A majority of the Board (Member Jenkins dissenting) held that secs. 102.72 and 101 28 as interpreted by the trial examiner were applicable and required dismissal of the complaint even though they were in conflict with the Board's present construction of sec. 10 (k). However, the Board announced that its Rules and Statements of Procedure would be revised so as to reflect the proper construction of sec. 10 (k). For pertinent revisions, see Rules and Regulations, and Statements of Procedure, Series 7, secs. 102.79, *et seq.*, and 101.27 *et seq*, effective February 28, 1958. See also *Lathers' Local Union No. 252, Wood, Wire & Metal Lathers' International Union, AFL–CIO (James I. Barnes Construction Co.)*, 120 NLRB No. 123

(1) Disputes Subject to Determination

Regarding the type of dispute contemplated by the act, the Board had occasion to reiterate that the dispute must be one over the assignment of particular work to 1 or 2 distinct groups of employees. As noted by the Board [19]—

> The required assignment must not only be to employees in one group, it must be in derogation of, or rather than, assignment to members of the other group.

Thus, the Board held itself without power to determine a dispute occasioned by the transfer of certain work functions from the department the union had contractually represented to a newly formed "machine service section." [20] Following the transfer, the union struck in support of its position that it was entitled to continuing recognition as representative of whatever employees were assigned to the work in question. The Board held that even if the union had, as asserted, demanded bargaining rights over the entire "machine service section," a 10 (k) determination was not appropriate because a "demand for recognition as bargaining representative for employees doing a particular job, or in a particular department, does not to the slightest degree connote a demand for the assignment of work to particular employees rather than to others."

A proceeding under section 10 (k) was likewise dismissed where the parties' disagreement concerned the method by which a particular type of work was to be performed, rather than the reassignment of the particular work.[21] The dispute between the employer and the union here arose upon the establishment by the employer of a new plant where modernized manufacturing methods were to be used. The union, which was the representative of the employees at the old plant and also was to represent the employees at the new plant, struck when the employer refused the union's demand that the work at both plants be performed by the union's members using the old operational techniques. The majority of the Board took the view that, since recognition of the union at the new plant was not an issue, the only employee group involved were the union's own members. Thus, it was pointed out, there could be no dispute over the assignment of work to competing groups, and the strike was therefore not one for an object prohibited by section 8 (b) (4) (D). The employer contended, however, that, whatever the union's initial objective, the strike became an unlawful jurisdictional strike after striking union members were replaced with nonmembers, because compliance with the union's con-

---

[19] See *Communications Workers of America, AFL–CIO, and its District 8 and its Local Union 8519 (The Mountain States Telephone & Telegraph Co.)*, 118 NLRB 1104.

[20] *Ibid.*

[21] *American Wire Weavers' Protective Association, AFL–CIO, and Ohio Division No. 2, American Wire Weavers' Protective Association, AFL–CIO (The Lindsay Wire Weaving Co.)*, 120 NLRB No. 130, Chairman Leedom dissenting.

tinued demand that work at the new plant be done by old employees and old methods would have involved the discharge of nonunion replacements. Rejecting the contention, the majority held that this inevitable result did not of itself convert an otherwise lawful strike into an unlawful one. To hold otherwise, the majority stated, would enable similarly situated employers to "make any lawful strike unlawful by hiring replacements for the strikers."

In two cases, section 10 (k) determinations were held inappropriate because no dispute over the assignment of particular work was involved, but a controversy arising from the union's demand that one of its members be hired for the performance of work not under the control of, or not theretofore done by, the complaining employer.[22] In the *Austin* case, the employer, who had contracted for the performance of a job on the premises of another company, was requested to hire a union operator for certain equipment used on the job but owned and regularly attended to by the contracting company's employees. The Board held that since the complaining employer had no control over the operation of the equipment it manifestly had no authority to assign the work to any employees, and that there was therefore no dispute within the meaning of section 10 (k). A similar situation was present in the *Associated Engineers* case. Here, the respondent union had insisted on the employment of a standby maintenance man for an electric welding machine. The record showed that welder maintenance was not done in the plant and that whenever maintenance work was needed the machine had to be returned to the manufacturer. The Board held that it was without authority to determine the dispute which did not involve reassignment of work from one employee to another, but involved the employment of an employee for work not being done by the complaining employer at all.

(2) Voluntary Adjustment

The propriety of a section 10 (k) determination depended in several cases on whether the parties were bound by an agreement upon methods for the voluntary adjustment of their dispute.

In one case[23] the proceeding was dismissed because the question whether certain disputed work should be assigned to lathers rather than to carpenters was subject to determination by the National Joint Board for the Settlement of Jurisdictional Disputes in the Building

[22] *Local 450, International Union of Operating Engineers, AFL–CIO (The Austin Co.)*, 119 NLRB 135; *International Brotherhood of Electrical Workers, Local Union No. 52 (Associated Engineers Inc. and Mechanical Contractors Association of N. J.)*, 120 NLRB No. 209.

[23] *Local 46, Wood, Wire & Metal Lathers International Union, AFL–CIO (Building Trades Employers Association of Long Island, Inc.)*, 120 NLRB No. 117.

and Construction Industry. The Board here found that the common parent of the International Brotherhood of Carpenters and the Lathers International was a signatory to the Plan for Settling Jurisdictional Disputes, and that the Plan was binding upon subordinate affiliates, including the respondent Lathers Local, notwithstanding its efforts to disassociate itself from the Plan. It was also found that the complaining employer (Jacobson), had submitted the present dispute to the Joint Board and ultimately assigned the disputed work in accordance with the Joint Board's decision. All parties being thus bound to submit work assignment disputes to the Joint Board and to abide by its decision, the Board held itself precluded from making an independent determination.

On the other hand, determination of the dispute in 1 case [24] was held proper although, 2½ years earlier, the complaining employer and the respondent union had entered into a collective-bargaining agreement which, among other things, provided for the submission of all jurisdictional disputes to the National Joint Board whose decisions were to be binding. The Board found that the parties' later conduct was totally inconsistent with the terms of their contract and amounted to abandonment of the agreement. The agreed-upon method for the adjustment of the parties' dispute, in the Board's view, was therefore no longer binding and was no longer an obstacle to a determination under section 10 (k). The Board also held that the union's claim to the disputed work being founded solely on the abandoned contract was not a valid claim.

In two cases, the Board proceeded to determine jurisdictional disputes after rejecting the respondent union's contention that the employer had agreed, contractually or by conduct, to submit to Joint Board procedures and to accept the Joint Board's decision. [25]

b. Violation of Section 8 (b) (4) (D)

Violations of section 8 (b) (4) (D) were found in three cases [26] where complaints were issued following noncompliance by the respondent unions with the Board's decision in the antecedent pro-

[24] *International Union of Operating Engineers, Local Union No. 12, AFL–CIO (West Coast Masonry Contractors, Inc.)*, 120 NLRB No. 5

[25] *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO (Acousti Engineering of Alabama, Inc.)*, 119 NLRB 157. *Local 450, International Union of Operating Engineers, AFL–CIO (Painting & Decorating Contractors, etc., on behalf of Sline Industrial Painters, et al.)*, 119 NLRB 1725.

[26] *International Longshoremen's Association, Ind., and its Local 976–4, et al. (Abraham Kaplan, et al.)*, 119 NLRB 653; *United Brotherhood of Carpenters & Joiners of America, AFL–CIO, et al. (Wendnagel & Co.)*, 119 NLRB 1444, *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO (Acousti Engineering of Alabama, Inc.)*, 120 NLRB No. 35.

ceedings under section 10 (k).[27] In each case it was found that the respondents resorted to strike action in support of demands for the reassignments of work to which they were not entitled under the Board's 10 (k) determination.[28]

In one of these cases [29] the union reasserted the defense, previously raised in the 10 (k) proceeding,[30] that the disputed work was assigned to its members in a Joint Board decision by which the employer was bound. The Board again rejected the defense because the employer, in fact, had never agreed to submit to Joint Board procedures and had refused to accept the Joint Board's determination which the union invoked.

The section 8 (b) (4) (D) complaint in one case,[31] as noted above, was dismissed on procedural grounds.

---

[27] As noted above (pp. 98–99), a complaint incorporating 8 (b) (4) (D) charges may issue (1) where a sec. 10 (k) determination of the underlying dispute has not been complied with; and (2) where existing voluntary methods for adjustment, which precluded a 10 (k) determination, have broken down. Noncompliance with a Board determination will be found where the union has not obeyed the usual direction to give notice of its intention to comply to the regional director in whose office the 8 (b) (4) (D) charges are pending *Abraham Kaplan, supra; Wendnagel & Co., supra.*

[28] In the *Wendnagel* case, the union was found to have applied both primary and secondary pressures to achieve its illegal objective. Holding that the union thus violated both subsecs. (A) and (D) of sec. 8 (b) (4), the Board rejected the trial examiner's view that the objects prohibited by the two subsections are mutually exclusive and that a single state of facts cannot be held violative of both subsections. See also *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO, et al. (Acousti Engineering of Alabama, Inc)*, 120 NLRB No. 34.

[29] *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO (Acousti Engineering of Alabama, Inc)*, 120 NLRB No. 35.

[30] *Local Union No. 48, Sheet Metal Workers' International Association, AFL–CIO (Acousti Engineering of Alabama, Inc.)*, 119 NLRB 157.

[31] *Wood, Wire & Metal Lathers International Union and its Local Union No. 2, AFL–CIO, et al. (Acoustical Contractors Association of Cleveland)*, 119 NLRB 1345. See p. 99, footnote 18.

V

Supreme Court Rulings

The cases litigated by the Board in the Supreme Court during fiscal 1958 called for decision on an uncommonly large number of issues of major importance in the administration of various provisions of the act. The cases involved the scope of an employer's bargaining duty under section 8 (a) (5) in regard to subjects of mandatory and nonmandatory bargaining;[1] enforcement of no-solicitation rules against employees by an employer who engages in an antiunion campaign;[2] the availability of "hot cargo" agreements to unions as a defense against secondary boycott charges;[3] the area of the Board's discretion in remedying unlawful employer assistance of a union not in compliance with the act's filing and non-Communist affidavit requirements;[4] and the validity of the Board's procedures for the issuance and revocation of subpenas.[5]

1. Violation of Bargaining Duty—Conditions on Bargaining

In the *Borg-Warner* case,[6] the Supreme Court affirmed the Board's conclusion that an employer violates section 8 (a) (5) if he insists on the inclusion in a collective-bargaining contract of clauses not dealing with "wages, hours, and other conditions of employment," and therefore not within the scope of mandatory collective bargaining as defined in section 8 (d) of the act. The employer had conditioned acceptance of any agreement on (1) a recognition clause that excluded the local union's parent organization which had been certified by the Board as the employees' bargaining representative; and (2) a clause providing for a secret ballot vote—of both union and nonunion em-

[1] *N. L. R. B.* v. *Wooster Division of Borg-Warner Corp*, 356 U. S. 342.

[2] *N. L. R. B.* v. *United Steelworkers of America, CIO, and Nutone, Inc.; N. L. R. B.* v. *Avondale Mills*, 357 U. S 357.

[3] *Local 1976, United Brotherhood of Carpenters, etc. (Sand Door & Plywood Co.)* v. *N. L. R. B.; N. L. R. B.* v *General Drivers, Chauffeurs, etc, Local 886 (American Iron & Machine Works), Local 850, International Association of Machinists, AFL–CIO* v. *N. L. R. B.* (consolidated for argument), 357 U. S. 93; and *N. L R. B.* v. *Milk Drivers and Dairy Employees Local Unions Nos. 338 and 680 (Crowley's Milk Co)*, 357 U. S. 345.

[4] *N. L R. B.* v. *District 50, United Mine Workers of America (Bowman Transportation, Inc)*, 355 U. S. 453.

[5] *Lewis Food Co. et al.* v. *N. L. R. B*, 357 U. S. 10; *N. L. R. B.* v. *Duval Jewelry Co of Miami, Inc., Jenkins & Sons, Inc., et al.*, 357 U. S. 1.

[6] *N. L. R. B.* v. *Wooster Division of Borg-Warner Corp.*, 356 U. S. 342.

ployees in the bargaining unit—on the company's last bargaining offer before the union could strike.

A majority of the Court held that the "ballot" and "recognition" clauses, while lawful if agreed upon voluntarily, were not subjects of compulsory negotiation within the statutory bargaining duty as defined in section 8 (a) (5) and 8 (d).[7] In mandatory matters, the Court pointed out, the act requires bargaining in good faith but does not require agreement. In lawful nonmandatory matters, on the other hand, the parties are left free to bargain or not to bargain, and to agree or not to agree. However, the Court went on to say, the act does not permit a party to insist on inclusion in a contract of a nonmandatory clause to the point of impasse as a condition to agreement on mandatory matters. The Court agreed with the Board that such insistence is a refusal to bargain about subjects within the scope of mandatory bargaining even though the party—as the employer here—has otherwise bargained in good faith as to those subjects.

In concluding that the "ballot" clause was not a subject of mandatory bargaining, the majority of the Court viewed the proposal as related only to the procedure to be followed by the employees among themselves before their representative may call a strike or refuse a final offer. The ballot clause, the Court stated, "settles no terms or conditions of employment—it merely calls for an advisory vote of the employees." The Court declined to treat the ballot clause as a partial "no-strike" clause and as subject to bargaining in the same sense as a general no-strike clause, on the ground that the clause was not designed to regulate relations between employer and employees but was concerned with relations between the employees and their union. The clause, according to the Court, "substantially modifies the collective-bargaining system provided for in the statute by weakening the independence of the 'representative' chosen by the employees. It enables the employer, in effect, to deal with its employees rather than with their statutory representative."

The "recognition" clause likewise was held not a matter for mandatory bargaining. The majority of the Court pointed out that the act required the employer to bargain with the International union which the Board had certified as the employees' representative, and that it could not, therefore, insist on the substitution of the International's Local as party to the contract. The Court held that, while the act does not prohibit the voluntary addition of a party as signatory to a

[7] Justice Frankfurter concurred in the majority's appraisal of the recognition clause as outside the scope of mandatory bargaining. Justices Harlan, Clark, and Whittaker concurred in the finding that the employer's insistence on the clause violated sec. 8 (a) (5), but solely on the ground that the employer violated its express statutory duty to sign an agreement with the certified exclusive bargaining representative. Justices Harlan, Clark, Whittaker, and Frankfurter dissented, however, from the finding that the prestrike ballot clause was outside the area of mandatory bargaining.

collective-bargaining agreement, insistence on excluding the certified representative is violative of the employer's statutory bargaining duty.

2. Enforcement of No-Solicitation Rule During Employer's Antiunion Campaign

In two cases, the Supreme Court granted certiorari in order to resolve the question whether it is an unfair labor practice for an employer to campaign against union organization and at the same time to enforce plant rules against solicitation by employees on working time, including organizational solicitation.[8]

In *Nutone, Inc.*, the Court of Appeals for the District of Columbia [9] had reversed the Board's ruling that, while the employer violated the act by seeking to arrest the organizational drive in the plant through surveillance, and interrogation and discharge of participants, it was not a separate unfair labor practice to prohibit employees from posting or distributing organizational campaign signs and literature on company property while the employer himself disseminated antiunion literature which, however, was noncoercive and was within the free speech protection of section 8 (c). In *Avondale Mills*, the Fifth Circuit had disagreed with the Board's conclusion that enforcement by the employer of its no-solicitation rule during an organizational campaign was unlawfully discriminatory in view of the employer's concurrent and coercive antiunion conduct—*viz*, interrogation of employees and solicitation of employee resignations from the union, accompanied by threats of a shutdown and loss of employee benefits should the mill become organized. In the Board's view, the employer's conduct constituted "antiunion solicitation" and was unlawful under the circumstances.

A majority of the Supreme Court held that under controlling principles, equally applicable in both cases, the employer's disregard of its own rule was not an unfair labor practice under the circumstances. The Court therefore reversed the District of Columbia Circuit in *Nutone* [10] and affirmed the Fifth Circuit's judgment in *Avondale*.[11]

The majority of the Court predicated its conclusion on two grounds: (1) the failure of the employees, or their union, to request that the employer relax its otherwise valid no-solicitation rule so as to permit prounion solicitation; and (2) the absence of a showing "that the no-solicitation rule truly diminished the ability of the labor organizations involved to carry their message to the employees," thereby creating a

[8] *N. L. R B.* v. *United Steelworkers of America, CIO, and Nutone, Inc.; N. L. R. B.* v. *Avondale Mills*, 357 U. S. 357.

[9] *Nutone, Inc.*, 112 NLRB 1153, reversed in part *sub nom United Steelworkers of America* v. *N. L. R. B.*, 243 F. 2d 593 (C. A., D. C.).

[10] Justices Black and Douglas dissenting.

[11] Chief Justice Warren and Justice Douglas dissenting.

substantial "imbalance in the opportunities for organizational communication." As to the first point, the majority noted that it was not for the employer to offer the employees the use of company time and facilities, especially because such a voluntary offer might conflict with the prohibition of section 8 (a) (2) against employer assistance and support of a labor organization.[12] Regarding point (2) the Court held that impairment of opportunity for organizational communication is relevant not only where the validity of a no-solicitation rule is in issue,[13] but also where the lawfulness of the application of an otherwise valid rule must be determined. Here, in the Court's view, sufficient impairment was not shown even though enforcement of the rules had the effect of closing off one channel of communication. However, the Court went on to say, the act—

> does not command that labor organizations as a matter of abstract law, under all circumstances, be protected in the use of every possible means of reaching the minds of individual workers, nor that they are entitled to use a medium of communication simply because the employer is using it. . . . If, by virtue of the location of the plant and of the facilities and resources available to the union, the opportunities for effectively reaching the employees with a pro-union message, in spite of a no-solicitation rule, are at least as great as the employer's ability to promote the legally authorized expression of his antiunion views, there is no basis for invalidating these "otherwise valid" rules. [357 U. S. at 364.]

The majority pointed out that since nothing in the record of the two cases indicated the existence of a crucial disparity in the respective opportunities to reach the employees, there was no basis for finding that enforcement of the no-solicitation rules was unlawfully discriminatory. The Court made clear, however, that it is not to be understood as holding that "enforcement of a valid no-solicitation rule by an employer who is at the same time engaging in anti-union solicitation may not constitute an unfair labor practice."[14]

3. "Hot Cargo" Agreement Not a Defense to Secondary Boycott Charges

A Supreme Court majority[15] held during the past year that a "hot cargo" provision in a collective-bargaining agreement—usually to the general effect that the contracting employer's workmen shall not be

[12] The majority also noted that while the Board in its specialized experience might have found that such a request would have been rejected, such a conclusion was not compelled as a matter of law.

[13] The majority's opinion here cites *Republican Aviation Corp* v *N. L R B.*, 324 U. S 793, 797–798; and *N. L. R. B.* v. *Babcock & Wilcox Co*, 351 U. S. 105, 112.

[14] Chief Justice Warren's dissenting opinion, in which Justice Douglas joined, expresses disagreement with the view that the situations in the two cases are controlled by the same considerations. The dissent holds that the two cases must be distinguished on the basis of the nature of the employer's antiunion conduct which was coercive in *Avondale,* and noncoercive and within the free speech privilege in *Nutone.*

[15] Dissenting opinion by Justice Douglas in which Chief Justice Warren and Justice Black concurred.

required to handle materials which are objectionable to the union representing his employees—cannot serve as a defense to an unfair labor practice charge under the secondary boycott ban of section 8 (b) (4) (A) when, in the absence of such a provision, the conduct charged would be a violation. The question was presented in three cases [16] in which the Court of Appeals for the Ninth Circuit,[17] on the one hand, and the Courts of Appeals for the District of Columbia [18] and for the Second Circuit,[19] on the other hand, had reached conflicting conclusions.

In *Sand Door*, the Ninth Circuit upheld the view that when the respondent union induced its members on a construction job not to hang nonunion doors, it thereby violated section 8 (b) (4) (A) even though the contractor's collective-bargaining agreement with the union provided that workmen shall not be required to handle nonunion material. Conversely, the District of Columbia Circuit in the *American Iron* case held that one of the respondent unions, which had a similar "hot cargo" agreement, was free to instruct the employees of certain carriers it represented not to handle freight of a manufacturer with which the other respondent in the case had a dispute.[20] And in the *Crowley's Milk* case, the Second Circuit adhered to the view expressed in an earlier case [21] that section 8 (b) (4) (A) is not violated where a union encourages employees to exercise a contractual right not to handle "hot cargo."

a. Direct Appeal to Employees

The majority of the Supreme Court pointed out that, in approaching the "hot cargo" question, account must be taken of the fact that section 8 (b) (4) (A) does not deal with so-called secondary boycotts as such; that it prohibits only the inducement of work stoppages by employees in order to force their employer to boycott a third party; and that it prohibits neither direct inducement of employers to engage

---

[16] *Local 1976, United Brotherhood of Carpenters, etc.* (*Sand Door & Plywood Co*) v. *N. L. R. B.; N. L. R. B.* v. *General Drivers, Chauffeurs, etc, Local 886* (*American Iron & Machine Works*); *Local 850, International Association of Machinists, AFL–CIO* v. *N. L. R. B.* (consolidated for argument), 357 U. S. 93; and *N. L. R. B.* v. *Milk Drivers and Dairy Employees Local Unions Nos. 338 and 680* (*Crowley's Milk Co.*), 357 U. S. 345

[17] *N. L. R. B.* v. *Local 1976, United Brotherhood of Carpenters, etc.* (*Sand Door & Plywood Co.*), 241 F. 2d 147.

[18] *General Drivers, Chauffeurs, etc., Local 886* (*American Iron & Machine Works*) v. *N. L R. B*, 247 F. 2d 71.

[19] *Milk Drivers & Dairy Employees Local Union No. 338, etc.* (*Crowley's Milk Co.*) v. *N. L. R. B.*, 245 F 2d 817.

[20] This union, after striking the manufacturer, extended the dispute to the carriers' loading platforms. There it picketed the manufacturer's trucks without making it clear that the dispute was only with the manufacturer, and also requested employees of some of the carriers not to handle the manufacturer's freight. The court of appeals held that, while the conduct of the union which had a "hot cargo" agreement was lawful, the striking union, not being a party to, or a third-party beneficiary of, the agreement, could not invoke its protection, and that the striking union's secondary action at the carriers' premises violated sec. 8 (b) (4) (A).

[21] *Rabouin, d/b/a Conway's Express* v. *N. L. R B*, 195 F. 2d 906.

in a boycott nor voluntary boycotts by employers for their own reasons. According to the Court's majority, section 8 (b) (4) (A) thus preserves the employer's freedom of choice in the matter of boycotts, and Congress apparently contemplated—

> a freedom of choice at the time the question whether to boycott or not arises in a concrete situation calling for the exercise of judgment on a particular matter of labor and business policy. Such a choice, free from the prohibited pressures—whether to refuse to deal with another or to maintain normal business relations on the ground that the labor dispute is no concern of his—must as a matter of federal policy be available to the secondary employer notwithstanding any private agreement entered into between the parties. [357 U. S. at 105.]

The Court went on to say that—

> This is so because by the employer's intelligent exercise of such a choice under the impact of a concrete situation when judgment is most responsible, and not merely at the time a collective bargaining agreement is drawn up covering a multitude of subjects, often in a general and abstract manner, Congress may rightly be assumed to have hoped that the scope of industrial conflict and the economic effects of the primary dispute might be effectively limited.

To allow a union to invoke a hot-cargo agreement in defense of a violation of section 8 (b) (4) (A) would, in the Court's view, "give it the means to transmit to the moment of boycott, through the contract, the very pressures from which Congress has determined to relieve secondary employers."

Upholding the Board's conclusion that a hot-cargo agreement does not justify any direct appeal to employees to engage in a work stoppage otherwise prohibited by section 8 (b) (4) (A), the Court noted that where a union is free to induce employees to enforce their contractual hot-cargo rights by self-help, the potentiality of coercive pressure on the employer is very great. Thus, according to the Court, the rule established by the Board—

> expresses practical judgment on the effect of union conduct in the framework of actual labor disputes and what is necessary to preserve to the employer the freedom of choice that Congress has decreed On such a matter the judgment of the Board must be given great weight, and we ought not set against it our estimate of the relevant factors.

b. Validity of Hot-Cargo Agreements

The Supreme Court took the view that the cases before it did not require consideration of the validity of hot-cargo agreements as such, the Board having been concerned solely with whether a hot-cargo agreement immunizes inducement of employees to strike or refuse to handle goods from the prohibition of section 8 (b) (4) (A). The Court observed that it is not the Board's province to invalidate hot-cargo agreements which contain "no element of an unfair labor practice";[22] nor, according to the Court, is the mere execution of a

[22] The Board's main opinion in *Sand Door* (113 NLRB 1210, 1215) similarly recognized that insofar "as such contracts govern the relations of the parties thereto with each other, we do not regard it our province to declare them contrary to public policy."

hot-cargo agreement *prima facie* evidence of prohibited inducement of employees.[23]

4. Remedy in Case of Employer Assistance of Noncomplying Union

The Supreme Court in the *Bowman Transportation* case [24] had before it the question whether the Board's longstanding practice to remedy unlawful employer assistance of a union by prohibiting its recognition until certified in a section 9 (c) proceeding was a proper remedy where the assisted union, not being in compliance with the filing requirements of section 9 (f), (g), and (h) of the act, was ineligible for certification. The Court of Appeals for the District of Columbia,[25] whose judgment was under review, had held that under the Supreme Court's *Arkansas Oak Flooring* decision [26] the Board was without power to require certification as a condition to Bowman's further recognition of the noncomplying union it had unlawfully assisted. The court of appeals therefore modified the Board's order so as to permit recognition of the assisted union as bargaining representative of the company's employees, either upon a Board election and certification, or, in the alternative, when the union shall have been otherwise selected as such representative by a majority of the employees after expiration of the 60-day period during which the company was to withhold recognition.[27]

The Supreme Court held that the Board's order conditioning the future recognition of the assisted union upon a Board certification was inappropriate under the circumstances. However, pointing out that the Board had the statutory power to condition such recognition upon an election not followed by certification, the Court directed that the case be remanded to the Board for appropriate remedial action. The judgment in which the lower court had modified the Board's order was vacated as in excess of permissible limits of judicial review.

---

[23] In the *American Iron* case, the Supreme Court also declined to hold that the hot-cargo agreements there were invalid because they conflicted with the signatory common carriers' duty under the Interstate Commerce Act to render nondiscriminatory service. The Court pointed out that while a hot-cargo agreement may not relieve the contracting carrier *pro tanto* of its obligations under the ICA, it does not follow that this circumstance automatically invalidates the agreement for the purpose of other congressional policies such as the prohibitions of sec. 8 (b) (4) (A) of the National Labor Relations Act.

[24] *N. L. R. B.* v. *District 50, United Mine Workers of America (Bowman Transportation, Inc.)*, 355 U. S. 453.

[25] Judge Washington dissenting.

[26] *United Mine Workers of America et al.* v. *Arkansas Oak Flooring Co.*, 351 U. S 62, Twenty-first Annual Report, pp. 126–127.

[27] The court of appeals also modified the Board's order by eliminating from the notice provisions references to the union whose organizational activities the employer had sought to defeat.

The inappropriateness of the challenged order, the Court held, derives from the fact that to condition recognition of the *assisted* union here, which had elected to forego the advantages of complying with the act's filing requirements, was tantamount to disestablishment, a device the Board, with court approval, had consistently reserved to remedy employer *domination* of a labor organization. In the case of domination, the Court noted, disestablishment rather than deferral of recognition has been held necessary because a dominated union, unlike an assisted one, has been deemed inherently incapable of ever fairly representing employees. The Court then pointed out that in assistance cases the primary concern in requiring nonrecognition absent certification is not the formal act of certification but the opportunity afforded the employees to select the assisted union in a free election after the effects of the employer's unfair labor practices have been dissipated. Such an election, the Court held, is not precluded by section 9 (f), (g), and (h), the sole purpose of the section being to deprive noncomplying unions of the benefits flowing from Board certification. According to the Court, subsections (f), (g), and (h) of section 9—

> contain nothing compelling the Board to insist upon a Board certification and thus to deny the employees the right at an election held under proper safeguards to select the noncomplying assisted union for their representative. Nothing in the subsections, for example, is a barrier to the conduct by the Board of an election not followed by a certification, or to the making of an arrangement with another appropriate agency, state or federal, for the conduct of the election under conditions prescribed by the Board. [355 U. S. at 461.]

Reiterating its holding in *Arkansas Oak Flooring*[28] that Congress did not make the filing requirements a condition precedent to the right of a union to be recognized as exclusive bargaining representative, the Court held that the Board could not, by requiring certification, make the noncompliance of the assisted union a reason for denying employees the right to choose it in an election. As noted above, the Court directed that the case be remanded to the Board for appropriate modification of its order.[29]

5. Validity of the Board's Subpena Procedures

Two companion cases involved the validity of the Board's rules and procedures relative to the issuance and revocation of subpenas under the powers conferred by section 11 (1) of the act.[30]

---

[28] *United Mine Workers of America et al.* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, 73; Twenty-first Annual Report, pp. 126–127.

[29] The Board's subsequent establishment of a remedial election procedure in cases involving employer assistance of noncomplying unions is discussed at pp. 62–63, *supra*.

[30] *Lewis Food Company, et al.* v. *N. L R. B.*, 357 U. S 10; *N. L. R. B.* v. *Duval Jewelry Company of Miami, Inc., et al.* 357 U. S. 1.

a. Issuance of Subpenas

In *Lewis Food*, the Supreme Court, affirming the Ninth Circuit Court of Appeals,[31] held that the provisions of section 11 (1), which make the issuance of subpenas mandatory, were properly implemented by the Board's practice to furnish its regional offices and trial examiners blank subpenas bearing its seal and the facsimile signature of a Board Member for automatic issuance upon application of a proper party. The act, the Court observed, does not require that the burden of performing the purely ministerial act of issuing subpenas be imposed on the Board Members themselves. The Supreme Court noted that lower Federal courts had consistently taken the same view of the law.

The Supreme Court affirmed the Ninth Circuit's conclusion that the Board's General Counsel is a proper party at whose request a subpena may issue. The General Counsel's role under section 3 (d) in the prosecution of unfair labor practice charges, the Court pointed out, is a major one and the issuance of subpenas is often essential to the performance of that role.

b. Revocation of Subpenas

In both *Duval* and *Lewis Food*, the parties to whom subpenas had been directed attacked the Board's procedures in administering the revocation provisions of section 11 (1) of the act. The parties contended, respectively, that the Board improperly delegated the power to pass on their motions to revoke to subordinates, i. e., the hearing officer in the *Duval* representation proceeding, and the trial examiner in the *Lewis Food* unfair practice case. The Supreme Court rejected the contention, thus reversing the Fifth Circuit's holding in *Duval*,[32] and affirming that of the Ninth Circuit in *Lewis Food*.[33]

The rules pursuant to which the Board acted,[34] the Supreme Court pointed out, contain only a limited delegation of power to the respective subordinates to make a preliminary ruling on motions to revoke, and final decision rests with the Board to which the moving party may appeal in accordance with the Board's Rules. In the Court's view, the requirement of the Rules that the party must request special permission to appeal is not prejudicial since it is but the method of showing that a substantial question is raised concerning the validity of the subordinate's ruling, a denial of leave being tantamount to a

---

[31] *Infra*, footnote 33

[32] *N. L. R. B.* v. *Duval Jewelry Company of Miami, Inc., et al.*, 243 F. 2d 427; Twenty-second Annual Report, pp. 154–155.

[33] *N. L. R. B.* v. *Lewis Food Co.*, 249 F. 2d 832.

[34] Rules and Regulations (Series 6), Sec. 102.58 (c), as to representation cases, and Sec. 102.31 (b) as to unfair practice cases, now Rules and Regulations (Series 7), Secs. 102.66 (c) and 102.31 (b).

decision that no substantial question exists. Holding the degree of delegation embodied in the Board's revocation rule to be permissible under section 11 of the act, the Court once again made clear that "the law does not 'preclude practicable administrative procedure in obtaining the aid of assistants' " and that "much of the work of the Board necessarily has to be done through agents."

In *Lewis Food*, the Court also noted that, while the Board's express statutory authority to revoke subpenas is limited to subpenas requiring the production of evidence (subpenas *duces tecum*), it is clearly within the Board's rulemaking power under section 6 of the act to make the revocation procedure applicable also to subpenas requiring the attendance and testimony of witnesses (subpenas *ad testificandum*).

VI

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by the courts of appeals in 49 enforcement cases during fiscal 1958. The more important issues decided by the respective courts are discussed in this chapter.

1. Employer Unfair Labor Practices

Aside from the usual evidentiary questions, the cases under section 8 (a) presented issues as to the definition of the term "labor organization" for the purposes of section 8 (a) (2), the incidents of an employer's bargaining obligation in certain circumstances, and the effect of section 502 of the act in a situation where employees walk off the job because of "abnormally dangerous" working conditions.

a. Contractual Limitations on the Right To Strike as Affected by Section 502

Section 502 of the act provides that "the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees [shall not] be deemed a strike under this Act." The Sixth Circuit agreed with the Board in one case[1] that in view of this provision the employer had violated section 8 (a) (1) and (3) in discharging a group of buffing-room employees when they walked off the job in midshift. The employees had walked out because the blower system was not operating and their work place had become excessively hot, humid, and fogged with abrasive dust. If viewed as a "strike" the walkout might have been regarded as valid grounds for discharge, as there was a union contract in effect at the time and it contained a no-strike clause. However, the court held that the no-strike provision did not apply in this case, for the faulty blower had created conditions which the employees could reasonably regard as "abnormally dangerous" within the meaning of section 502; hence their concerted action could not be treated as a "strike" in breach of the contract.

[1] *N. L. R. B* v *Knight Morley Corp*, 251 F 2d 753

b. The Section 8 (a) (2) Ban on Domination or Interference With "Labor Organizations"

In the *Cabot Carbon* case,[2] the Board had found that the employer violated section 8 (a) (2) by organizing and continuing to support a system of employee committees whose function was to "discuss" with management various matters of mutual interest including grievances, seniority, and working conditions. Since collective bargaining (in the sense of actually negotiating bilateral agreements as to working conditions and like matters) was expressly excluded from the committees' purposes, the employer contended that the committee was not a "labor organization" under the statutory definition of section 2 (5), which controls the reach of section 8 (a) (2). The Board rejected this contention, noting that a "labor organization" is defined in section 2 (5) as "any organization of any kind, or any . . . employee representation committee or plan, . . . which exists for the purpose, in whole or in part, of *dealing with* employers concerning grievances . . . or conditions of work." [Emphasis supplied.] In the Board's view, the activities of the committees in this case amounted to "dealing with" the employer, whether or not such "dealings" could properly be termed collective bargaining. The Fifth Circuit set aside the Board's decision on the ground that the committees, although employer dominated, were not "labor organizations." The court reasoned that the term "dealing," as used in section 2 (5), denotes something more than merely "discussing" and, indeed, must refer to actual "negotiating or bargaining," hence "a group of employees is not a labor organization unless it exists for the purpose of negotiating or bargaining with employers." In the court's view, support for this conclusion is found in the text and legislative history of the section 9 (a) proviso, which preserves the "right" of "any individual or group of employees" to present grievances to their employer. As the court acknowledged in its opinion, this reading of "labor organization" is in conflict with the decisions of other circuit courts in cases applying sections 8 (a) (2) and 2 (5), and the Board has petitioned for certiorari to resolve the conflict.

c. Refusal To Bargain

The scope of the employer's duty to furnish wage information requested by the employees' bargaining representative was at issue in one case arising under section 8 (a) (5). Another involved the effect of contractual grievance provisions in "channelizing" the duty to bargain.

---

[2] *Cabot Carbon Co and Cabot Shops, Inc.* v. *N L R B*, 256 F. 2d 281 (C A. 5), setting aside 117 NLRB 1633

Enforcing the Board's order in *J. I. Case Co.*,[3] the Seventh Circuit held that the employer had violated section 8 (a) (5) by refusing the certified union's request for "all data and time study information and material" used in setting the hourly and piece rates currently in effect for all production jobs in the plant. At the time of the union's request, a recently executed contract was in force between the parties and, under its terms, neither the employer nor the union was entitled to call for renegotiation of wage rates for another 8 months. The union stated, however, that it needed the time studies and related data for purposes of "contract administration" as well as "collective bargaining," and the court agreed with the Board in finding that this justification was advanced in good faith. In the circumstances, the court ruled, the employer was obligated to make the requested information available, as it was manifestly relevant "to the union's task as the bargaining representative," not only in assessing grievance claims and otherwise administering the contract from day to day, but also in preparing for the negotiations which might be expected some months hence. In overruling the employer's contention that the statutory duty to bargain is "pegged to the existence of pending wage negotiations" or specific formalized grievances, the court noted, citing recent Supreme Court decisions,[4] that "collective bargaining is a continuing process . . . [and] the union not only has the duty to negotiate collective bargaining agreements but also the statutory obligation to police and administer the existing agreements."

The union in the *Knight Morley* case [5] took up a grievance in behalf of a group of employees who had been discharged for staging a walkout in protest against unhealthful working conditions in their department. The collective-bargaining contract in effect at the time of the group discharge provided for a four-step grievance procedure, with either party having the option to call for arbitration as the fifth and final step. The union carried the matter through the first four steps of this procedure, but the company rejected the grievance at each stage. At that juncture the contract expired, and the union, instead of calling for arbitration, thereafter attempted to obtain redress for the discharged employees in negotiating with the employer as to the terms and conditions of a new contract. The employer, however, refused to treat the matter as one of the general bargaining issues, contending that the union should have exhausted its remedies under the grievance procedure provided in the expired contract. The Board rejected this contention in finding that the employer's position was in violation of

[3] *J. I. Case Co.* v. *N. L. R. B.*, 253 F. 2d 149. The Board's decision is discussed at p. 76, *supra*.

[4] Among others, *Conley* v. *Gibson*, 355 U. S. 41, and *N. L. R. B.* v. *F. W. Woolworth Co*, 352 U. S. 938.

[5] *N. L. R. B.* v. *Knight Morley Corp*, 251 F. 2d 753 (C. A. 6).

section 8 (a) (5) of the Act, but the Sixth Circuit reversed the Board's decision on this point.[6] Since the grievance had arisen while the prior contract was still in effect, the court held, the employer's duty to arbitrate on demand was not extinguished,[7] and the union, by the same token, was not entitled to abandon that agreed-upon channel for settlement.

2. Union Unfair Labor Practices

The more important issues decided by the courts of appeals under section 8 (b) concerned the secondary boycott provisions in subsection (4) (A) and the ban on union-caused discrimination in subsection (2). One case involved the bargaining requirements of subsection (3), and another had to do with the jurisdictional disputes provision in subsection 4 (D).

a. Discrimination Under Section 8 (b) (2)

One case under section 8 (b) (2) involved a union's refusal to "clear" several of its members for jobs with employers who depended upon the union as a source of labor. Two other cases called for construction of the union-shop provisions in section 8 (b) (2) and 8 (a) (3) as applied to an employee who, following a period of delinquency, makes an "eleventh hour" tender of his union initiation fees or dues.

(1) Discriminatory Administration of a Referral System

In enforcing the Board's order in *Local 542, Operating Engineers*,[8] the Third Circuit held that the respondent union had violated section 8 (b) (2) of the act by withholding "clearance" and thereby preventing several job applicants from obtaining work they had found for themselves on construction projects in the two-State area of the union's jurisdiction. Each applicant was a paid-up member of the union but, under the union's rules governing the classification of members and the distribution of available work, was not entitled to the particular job he sought. One man, for example, was a full-fledged "book" member applying for a low-rated job of the type which the union reserved for its subordinate "A" or "B" members; another, conversely, held his membership in the so-called apprentice, or "A" group, but was applying for the type of job which the union

[6] The court upheld the Board's finding of a sec. 8 (a) (5) violation on other grounds, however, and, as discussed above (p. 114) also affirmed the Board's finding that the employer's action in discharging the aggrieved employees was in violation of sec 8 (a) (1) and (3).

[7] As authority for this proposition, the court cited *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U S. 448, as well as its own rulings in two earlier cases

[8] *N. L. R B* v. *Local 542, International Union of Operating Engineers, AFL (Koppers Co., Inc.)*, 255 F. 2d 703.

reserved for full "book" members. A third, residing in Philadelphia, proposed to transfer with his last employer to a new construction project in Bethlehem, Pa., thus preempting a job which the union wanted to reserve for some unemployed member in the Bethlehem area. The court upheld the Board's finding that the union's action in withholding clearance in these cases was calculated to "encourage . . . membership" in the union so as to fall under the ban of section 8 (a) (3) and 8 (b) (2) of the act as construed in the *Radio Officers'* case.[9] Although noting that the union's "selective referral and hiring scheme" was not fraudulent or unfair, so far as appeared, and that union-administered referral systems are not *per se* unlawful, the court based its decision on the ground that "a union may not insist that an employer subordinate his own hiring preference to the union's referral arrangement."

(2) The Effect of an Employee's Belated Tender of Union Dues or Initiation Fees

In setting aside the Board's finding of a section 8 (b) (2) violation in one case,[10] the Second Circuit rejected the Board's view that an employee subject to a valid union-security contract cannot be treated as a "free rider" and, as such, discharged for nonpayment of his union dues, where he attempts to save his job by tendering the sums he owes, but not until sometime after the due date and the union's demand for his discharge.[11] The intent of the statutory union-security provisions is to allow "effective enforcement" of valid union-shop contracts, albeit within strict limits, the court declared, and—

> If labor organizations are to be allowed effective enforcement of union security provisions, they must be free to invoke the sanction of loss of employment against those union members who are delinquent in tendering their periodic dues. This sanction might become meaningless if an employee could avoid its impact by an eleventh hour tender of back dues just prior to actual discharge.

At the same time, the court pointed out that the discharged employee in this case was entitled to redress if the union's operative demand for his discharge was actually based, "even in part," upon some ground other than his failure to pay his dues on time. Since the Board had not made findings as to the union's underlying reason or reasons for continuing to demand the employee's discharge, even after he had tendered his dues, the court remanded the case to the Board for consideration of this question.

---

[9] *Radio Officers' Union* v. *N L R. B.*, 347 U. S 17.

[10] *International Association of Machinists, etc* v. *N. L R. B.*, 247 F 2d 414.

[11] The court noted that the Board had first adopted this view in *Aluminum Workers International Union, Local No. 135, AFL (The Metal Ware Corp)* (111 NLRB 411 ; 112 NLRB 619 (1955)), and that the Board's order in that case had been enforced by the Seventh Circuit (230 F. 2d 515). However, the court distinguished the Seventh Circuit's decision in *Aluminum,* stating that it rested on grounds which did not involve "the broad rule set forth by the Board."

On substantially the same grounds, and citing the Second Circuit's *IAM* decision with approval, the Ninth Circuit set aside the Board's finding of a section 8 (b) (2)–8 (a) (3) violation in the *Technicolor* case,[12] where an employee bound by a valid union-security contract had delayed for several months past the statutory 30-day grace period before tendering his union initiation fee.[13] At the same time, the court remanded the case to the Board to consider, among other things, the possibility that either or both the union and the employer might have been precluded from enforcing the contract because of "waiver, acquiescence or similar conduct."

(3) Union Bargaining Obligations Under Section 8 (b) (3)

In *United Mine Workers (Boone County Coal Corp.)*,[14] the Board found that a union violated section 8 (b) (3) by calling a strike over a dispute which was cognizable as a grievance, and, as such, was subject to arbitration under the settlement procedures set up in the union's contract with the employer. As the Board construed this contract, it had the effect of prohibiting a strike over such an arbitrable grievance even though it did not contain any express "no strike" provision. The Court of Appeals for the District of Columbia, however, rejected the Board's construction of the contract and held that it did not, in view of its peculiar history and language, import a covenant against strikes. Accordingly, the court found it unnecessary to decide the further question whether the Board was warranted in holding that the union's action in staging a strike, even assuming that it was in breach of the contract, amounted also to an unlawful refusal to bargain in violation of section 8 (b) (3).

b. Secondary Boycotts

Section 8 (b) (4) (A) makes it unlawful for a union to "induce or encourage" employees "of any employer" to strike or, e. g., refuse to handle particular goods, with the object of "forcing or requiring any employer . . . or other person to . . . cease doing business with any other person." The issue in one case was whether a political subdivision of a State may invoke the protection of this provision in the capacity of a "person," although such entities are excluded from the statutory definition of "employer." Four other cases presented the issue whether picketing conducted by a union at particular times and

---

[12] *N. L. R. B.* v *Technicolor Motion Picture Corp. and Local 683 of the IATSE, AFL–CIO*, 248 F. 2d 348.

[13] Upon reexamining the question of timely tender in the light of the court's decision here, the Board in a later case reaffirmed its conclusion that a delinquent's full and unqualified tender of dues and initiation fees at any time before actual discharge is a proper tender which protects the employee against discharge. *International Woodworkers of America, AFL–CIO, Local Union 13–433 (Ralph L. Smith Lumber Co.)*, 119 NLRB 1681.

[14] *International Union, United Mine Workers of America, et al.* v. *N. L. R. B.*, 257 F. 2d 211.

places was "secondary" in its "object" and, as such, within the proscription of section 8 (b) (4) (A) or, as the union contended in each instance, nothing more than "primary" strike activity shielded by sections 7 and 13 of the act.

(1) The Status of a Political Subdivision as a "Person"

In the *Furness* case,[15] the respondent union caused the employees of various employers to stop work or deliveries at a construction project where an airport terminal was being built for a county in the State of Delaware. The union's ultimate object was to force certain prime contractors on the project to cease doing business with the county and, in turn, to force the county to cease doing business with another prime contractor, a nonunion firm. The Board,[16] in finding that this was an unlawful "object" within the purview of section 8 (b) (4) (A), held that the county, while not an "employer,"[17] was entitled to protection in the capacity of a "person." The Third Circuit sustained this construction although it constituted a departure from earlier Board decisions in the *Schneider* and *Sprys* cases[18] that a political subdivision is neither an "employer" nor a "person" for secondary boycott purposes. The holding in those cases was predicated on 2 considerations, 1 of them being that section 2 (1) of the act, which defines "person," makes no reference to political subdivisions. Moreover, the Board reasoned, to extend the protection of section 8 (b) (4) (A) to political subdivisions as "persons" would conflict with the statutory scheme of correlative rights and duties of employer, employees, and labor organizations. For political subdivisions, though immune from unfair labor practice charges under section 8 (a) as employers, could nevertheless file charges in order to seek redress under section 8 (b) (4) (A). In the *Furness* case the Board took the view that the Supreme Court's intervening decision in the so-called piggyback case[19] required abandonment of the *Schneider* and *Sprys* holding that political subdivisions are not "persons" under section 8 (b) (4) (A).[20] The Third Circuit, while recognizing the convincing force of the Board's earlier reasoning in *Schneider* and *Sprys*, concluded that the Supreme Court's ruling in the so-

[15] *N. L. R. B.* v. *Local Union No. 313, International Brotherhood of Electrical Workers, AFL–CIO,* 254 F 2d 221 (C. A. 3).

[16] One member dissenting.

[17] Because "any State or political subdivision thereof" is expressly excluded from the statutory definition of "employer," sec 2 (2).

[18] See *Al J Schneider Co., Inc.,* 87 NLRB 99, 89 NLRB 221; *Sprys Electric Co.,* 104 NLRB 1128

[19] *Local Union No. 25, International Brotherhood of Teamsters, etc.* v *New York, New Haven & Hartford Railroad Co*, 350 U. S 155 (1956).

[20] A majority of the Board, however, adheres to the view that, because of their express exclusion from sec 2 (2), political subdivisions are not "employers" and that inducement or encouragement of their employees to strike cannot be held to constitute inducement or encouragement of "employees of any employer" within the meaning of sec. 8 (b) (4).

called piggyback case provides authority for the Board's position, and that the resulting protection of such nonemployer entities as governmental subdivisions is also "consistent with recognized public policy."

(2) "Common Situs" Picketing

In each of the four cases described below, the Board had found that a striking union's action in picketing at a particular time and place, albeit with signs which designated the "primary" employer alone as its adversary in the labor dispute, was within the ban of section 8 (b) (4) (A) because its purpose, or "object," at least in part, was to incite work stoppages by "secondary" employees at the site of the picketing, and thereby disrupt business relationships between their employers and the primary employer. The Board's finding of unlawful "object" was rejected by the reviewing court in 1 case, but sustained in the other 3.

Upsetting the Board's decision in *Incorporated Oil*,[21] the Eighth Circuit invoked the rule, settled in the *International Rice Milling* line of cases,[22] that a striking union is normally privileged to picket the "primary" employer *at his own place of business*, even though employees of secondary employers may be on the scene at the time, and are more likely than not to refuse to work behind the picket line. The primary employer in this case was the operator of a chain of gasoline stations, and the union, in the course of picketing each of the stations intermittently, picketed one which was undergoing renovation and temporarily shut down so far as the selling of gasoline was concerned. At that particular time, a "secondary" employer, a contractor engaged in rebuilding the station's main structure, had employees on the premises, but the gasoline pumps were out of operation and no primary employees were on the scene. As they had done once before, at an earlier stage of the construction work at this same station, the contractor's employees walked off the job when the pickets appeared. On these facts, stressing the point that the secondary employer was, in a sense, the sole occupant of the premises at the time of the incident, the Board found that "an object," if not the only object, of the picketing was to cause the secondary employees to stop work, and that section 8 (b) (4) (A) therefore applied. The court agreed that the work stoppage by the contractor's employees was a foreseeable consequence (and, in that sense, "an object") of the picketing, but held that this was not enough to convert otherwise

---

[21] *Local 618, Automotive, Petroleum & Allied Industries Employees Union, etc.* v. *N. L. R. B.*, 249 F. 2d 332, setting aside 116 NLRB 1844.

[22] *International Rice Milling Co., Inc., et al.* v. *N. L. R. B.*, 341 U. S. 665; *Di Giorgio Fruit Corp.* v. *N. L. R. B.*, 191 F. 2d 642 (C. A., D. C.), certiorari denied, 342 U. S. 869; *Oil Workers International Union (Pure Oil Co.)*, 84 NLRB 315; *United Electrical, Radio and Machine Workers etc. (Ryan Construction Corp.)*, 85 NLRB 417.

lawful primary picketing into a secondary boycott proscribed by section 8 (b) (4) (A), "considering the fact that the strike was a continuing one at the situs of the primary employer." [23] The temporary absence of primary employees made no difference, in the court's view, for it was still true that "the primary purpose of the picketing continued to be the obtaining of collective bargaining rights from the primary employer."

The union in *Crystal Palace*,[24] like the union in *Incorporated Oil*, claimed that its picketing was "primary" action and, as such, beyond the reach of section 8 (b) (4) (A), because the picketed building was owned and used as a place of business by the primary employer. The Ninth Circuit, however, rejected this claim, in view of what it termed the "unique" circumstances of the case. The locale of the picketing here was a large city market where the owner, the primary employer, directly operated some stands and shops while leasing the other spaces to a large number of independent retailers. As the court stated, in distinguishing the *International Rice Milling* line of cases [25]—

> Here, in addition to the primary employer owning the premises where it does business, there are neutral employers leasing space from the primary employer; . . . this is not the case where building construction tradesmen enter . . . to do one type of job after which there will be no more work to be done on the premises . . . . Here, the entire business operations of the many neutral employers were being conducted on premises owned by . . . the primary employer, and will probably continue to operate thereon so long as business conditions justify.

Accordingly, the court held, the Board had properly viewed this as a case of "common situs" picketing to be tested by the standards evolved in *Moore Dry Dock* [26] and similar cases. The applicability of section 8 (b) (4) (A), in other words, depended upon whether the union had "exercise[d] its right to picket with restraint consistent with the right of neutral employers to remain uninvolved in the dispute." Concluding that the Board had properly applied this standard in the "unique" factual situation here presented, the court sustained the Board's finding of a violation of section 8 (b) (4) (A).

In *Campbell Coal Co.*, reviewed by the District of Columbia Court of Appeals,[27] and also in *Barry Controls*, which came before the First

---

[23] The court indicated, however, that even such "picketing in support of a valid primary strike . . . against the primary employer at the employer's premises" is within the reach of sec. 8 (b) (4) (A) where the record warrants a "conclusion that the primary picketing serves no *lawful* purpose." [Emphasis supplied]

[24] *Retail Fruit & Vegetable Clerks Union et al.* v *N. L. R. B.*, 249 F. 2d 591.

[25] These cases are cited in footnote 22, *supra*.

[26] 92 NLRB 547, 549 (1950).

[27] *Truck Drivers & Helpers Local Union 728 (formerly Local Union 859) of International Brotherhood of Teamsters, etc* v. *N. L R. B.*, 249 F. 2d 512, certiorari denied, 355 U. S. 958.

Circuit,[28] the picketing in issue was conducted at the premises of secondary employers. The union in *Campbell*, on strike against a company which sold "ready-mixed" concrete, picketed the primary employer's vehicles when the drivers stopped to pour the "ready mix" at the construction projects of various secondary employers. The union in *Barry*, on strike against a manufacturing concern, picketed the manufacturer's delivery truck when the driver stopped to pick up or deliver goods at the establishments of secondary employers. In each case, the picketing concededly met the *Moore Dry Dock* requirements for lawful picketing at a "common situs." [29] However, it was also true in each case that the primary employer had its own separate place of business in the area where all the primary employees—not excepting the truckdrivers themselves—reported daily and spent all or a substantial part of their working time, and the union could and did maintain a conventional "primary" picket line. In these circumstances, applying its so-called *Washington Coca-Cola* doctrine,[30] the Board found in both cases that the truck picketing at the secondary employer's premises was "secondary" and, as such, unlawful. Appearances to the contrary notwithstanding, the Board reasoned, the picketing must have been intended, at least in part, to cause the secondary employees at the truck stops to refuse to work and by this means force their employers to stop doing business with the primary employer—the "object" proscribed in section 8 (b) (4) (A). In *Barry*, the Board's inference of illegal intent was based solely on the fact that the union had an adequate opportunity to publicize the labor dispute, and appeal to the primary employees for support, by picketing the primary employer's own premises. In *Campbell*, the Board relied mainly on this same factor and also found support for its inference of illegal intent in certain other circumstances, namely: (1) At each of the construction sites where the primary employer's "ready-mix" trucks stopped, the union's agent on the scene requested the secondary employer not to accept delivery of the concrete. If this request was complied with no picketing ensued, but if not, the pickets proceeded to patrol the truck as long as it remained on the scene. (2) In cases where neutral employees at the construction sites stopped work because of the pickets' presence, the union agents made no effort to advise them that the picketing was *not* intended as an appeal to *them* to engage in such work stoppages.

The Board's findings were upheld in both *Campbell* and *Barry*. On a prior submission of *Campbell*, the District of Columbia Court of

[28] *N. L R B.* v *United Steelworkers of America, etc.*, 250 F. 2d 184.

[29] See footnote 26 and discussion at p. 122, *supra*.

[30] See *Washington Coca-Cola Bottling Works*, 107 NLRB 299, enforced 220 F. 2d 380 (C. A., D. C.), and later cases cited and discussed in Twenty-first Annual Report, pp. 111–113, Twenty-second Annual Report, pp. 103–104.

Appeals had remanded the case, expressing disapproval of what it termed the Board's "rigid rule" (referring to the *Washington Coca-Cola* doctrine, *supra*) that "picketing at a common site . . . is unlawful *in every case* where picketing could also be conducted against the primary employer at another of its places of business." [Emphasis supplied.] [31] The court now held, however, that the entire "combination of circumstances," including the circumstances designated (1) and (2), above, "could be considered by the Board in determining that an object of the picketing came within . . . the secondary boycott section of the statute." In *Barry*, the First Circuit agreed that the Board's inference of illegal purpose was adequately supported by the fact, even though it stood alone, that the union could have reached all the primary employees if it had confined its picketing to the primary employer's plant. "Thus," the court stated—

> by picketing the premises of the primary employer, Barry, alone, the Union had a fully adequate opportunity to publicize its labor dispute to the members of the bargaining unit generally and also to exert individual pressure on [the truckdriver] by embarrassing him into either joining the strike or quitting his job. Certainly from these facts it was logical and reasonable for the Board to draw the inference that the Union's picketing of [the] truck at the premises of secondary employers must have been designed, in part at least, to encourage those employers to cease doing business with Barry, or to induce their employees not to handle or transport Barry's freight.

c. Union Pressure in Furtherance of Jurisdictional Claims Under Section 8 (b) (4) (D)

The Board's finding of a section 8 (b) (4) (D) violation in *Anning-Johnson* [32] was upheld by the Fourth Circuit during fiscal 1958. In this case, the respondent union had engaged in a strike to compel the employer to enter into a contract assigning to lathers, the class of employees it represented, certain work which the employer had been assigning to carpenters, a class of employees represented by another union. In contending that the Board erred in applying section 8 (b) (4) (D) in this situation, the union argued that it was only striking for a legitimate bargaining concession—a contract which, if accepted by the employer, would not have been in conflict with section 8 (b) (4) (D) or any other provision of the act. The court rejected this defense, noting that the work-assignment provision was the only controversial feature of the union's contract proposals, and that the employer would probably have been confronted with a strike by the other union, the carpenters' representative, if it had acceded to the respondent union's demands. "The clear purpose of section 8 (b) (4)

[31] *Sales Drivers, Helpers, etc, Local 859* v. *N. L. R. B.*, 229 F. 2d 514 (C. A, D. C), certiorari denied 351 U. S. 972.

[32] *N. L R B.* v *Local Union No. 9, Wood, Wire & Metal Lathers International Union, AFL–CIO*, 255 F. 2d 649.

(D) to eliminate jurisdictional strikes, except under certain conditions not present here, would be entirely circumvented," the court declared, "if the protesting union was released from the prohibitions of that section upon the adoption of the simple expedient of incorporating in a contract proposal its position in the jurisdictional dispute. An effort to recast the controversy into a different form does not change its substance."

VII

Injunction Litigation

Section 10 (j) and (l) authorizes temporary relief in the United States District Courts on petition of the Board, or on its behalf, pending hearing and adjudication of unfair labor practice charges by the Board.

Section 10 (j) provides that, after issuance of an unfair labor practice complaint against an employer or labor organization, the Board, in its discretion, may petition "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding before it. The court where the petition is filed has jurisdiction to grant "such temporary relief or restraining order as it deems just and proper." In fiscal 1958, the Board filed 7 petitions for temporary relief under section 10 (j), 1 against an employer, and 6 against unions. Only 5 of the petitions went to hearing, 1 against several unions being withdrawn upon settlement of the alleged unfair labor practices.[1] Hearing on another case was continued upon the union's agreement to discontinue its alleged unlawful conduct.[2] Injunctions were granted in 4 of the 5 cases which went to hearing, in 1 case against an employer,[3] and in 3 cases against unions.[4] In the fifth case,[5] the court found that injunctive relief was warranted but withheld entry of an injunction upon the union's representation that it would remedy its unfair labor practices. Later the court concluded that injunctive relief was unnecessary.

Section 10 (l) makes it mandatory for the Board to petition for "appropriate injunctive relief" against a labor organization charged with a violation of section 8 (b) (4) (A), (B), or (C) of the act,[6]

---

[1] *Schneid* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers (Rudy Schroeder & Son)*, No 57–C–2149 (D. C., N D Ill).

[2] *McLeod* v *Local 1922, International Brotherhood of Electrical Workers (Mid-Island Electrical Sales Corp.)*, petition filed June 6, 1958 (No. 18828, D. C., E D. N Y.).

[3] *Johnston* v *Darlington Mfg. Co*, November 27, 1957 (No. 126–258, D. C., S. D. N. Y.).

[4] *Schneid* v. *District 50, United Mine Workers of America, Ind (General Time Corp., Westclox Division)*, 40 LRRM 2529 (D. C., N. D. Ill); *Elliott* v. *Local Union 49, Sheet Metal Workers' International Assn (New Mexico Sheet Metal Contractors Assn)*, 42 LRRM 2100 (D C., N. M.); *Hull* v. *Sheet Metal Workers' International Assn. (Burt Mfg. Co)*, 161 F Supp. 161 (D C , N. D. Ohio).

[5] *Alpert* v. *International Typographical Union (Haverhill Gazette Co.)*, 161 F. Supp. 427 (D C., D. Mass)

[6] These subsections prohibit secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer associations, certain sympathy strikes, and strikes against Board certifications of bargaining representatives.

whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue." Section 10 (l) also provides for the issuance of a temporary restraining order without notice to the respondent upon a petition alleging 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 addition, section 10 (l) provides that its procedures may be used in seeking injunctive relief against a labor organization charged with engaging in a jurisdictional strike in violation of section 8 (b) (4) (D) "in situations where such relief is appropriate."

In fiscal 1958, the Board filed 127 mandatory petitions for injunctions under section 10 (l), a 30-percent increase over the previous record number filed in fiscal 1957.[7] Most of the petitions were based on charges alleging violations of the secondary boycott and sympathy strike prohibitions of section 8 (b) (4) (A) and (B). Twenty-eight petitions were based on charges alleging jurisdictional strikes in violation of section 8 (b) (4) (D), and nine were predicated on charges alleging strikes against Board certifications of representatives in violation of section 8 (b) (4) (C).

A. Injunctions Under Section 10 (j)

In one case during fiscal 1958, section 10 (j) was utilized for the first time to obtain "just and proper relief" other than the restraint of an alleged unfair labor practice.[8] Here the District Court for the Southern District of New York enjoined the company, which had voluntarily dissolved, from making further distribution of assets to stockholders pending the final disposition of charges before the Board alleging that the company, in violation of section 8 (a) (1), (3), and (5) of the act, had discharged its 600 employees and had dissolved to evade its statutory obligation to bargain with the union certified by the Board as the employees' representative. The company, after dissolving, liquidated its assets and commenced distribution of the proceeds to its stockholders. Upon a showing that the company's action jeopardized its ability to satisfy back-pay obligations which might be assessed in the case before the Board, the court halted further distributions to stockholders. The company, however, was not restrained from paying its debts.

In two cases, section 10 (j) relief was obtained against strikes allegedly in violation of the bargaining provisions of section 8 (d) and 8 (b) (3) of the act.

[7] These cases, and the action therein, are shown in table 18, appendix A.

[8] *Johnston* v. *Darlington Mfg. Co*, November 27, 1957 (No. 126–258, D. C., S. D. N. Y.).

In the *General Time* case,[9] the union struck for termination or modification of its contract causing a work stoppage among the company's 3,000 employees which interfered with the completion of national defense contracts. As required by subsections (1) and (4) of section 8 (d), the union gave 60 days' notice to the employer of its intention to terminate the contract and withheld strike action during the 60-day period. However, subsection (3), providing for a 30-day notice of a dispute to the Federal Mediation and Conciliation Service, was not complied with, notice to the Service having been delayed until after the strike began. The union contended that compliance with the 60-day notice provision of subsection (1) of section 8 (d) was sufficient to make the strike lawful under subsection (4), and that compliance with subsection (3) was not also required. The Special Master to whom the matter was referred rejected the union's contention on the basis of Board and court decisions[10] construing section 8 (d) as requiring compliance with the requirements for notice to the employer as well as to the Mediation Service before a union may lawfully strike for contract termination or modification. The court, adopting the Special Master's conclusion,[11] enjoined the union's existing strike and any future strike which did not comply with the requirements of section 8 (d).

In the *New Mexico Sheet Metal Contractors* case,[12] without giving 30 days' notice to the Federal and State conciliation services required by section 8 (d), and without meeting with the employers to negotiate a new contract as also required by the latter section, the union terminated its existing contract and went on strike against a large number of the sheet metal contractors in the State. The strike, which hampered the completion of a number of defense and atomic energy jobs as well as other construction jobs, also was alleged to violate section 8 (b) (1) (B) insofar as its purpose was to force the contractors to cease bargaining through their association and to compel them to negotiate directly with the union. The court, finding merit in the charges, enjoined the strike pending compliance with section 8 (d) and prohibited the union from refusing to meet and bargain with the association as the contractors' representative.

---

[9] *Schneid* v. *District 50, United Mine Workers of America, Independent, et al.* (*General Time Corp., Westclox Division*), 40 LRRM 2529 (D C, Ill.).

[10] *J. C. Penney Co.*, 109 NLRB 754; *West Virginia Pulp & Paper Co*, 118 NLRB 220; *Du Quoin Packing Co.*, 117 NLRB 670; *International Union of Operating Engineers, Local No. 181* v. *Dahlem Construction Co*, 193 F 2d 470 (C. A. 6).

[11] The Special Master also rejected the union's alternative defense that (1) its failure to give timely notice to the Conciliation Service was inadvertent, and (2) the strike was not called in connection with the termination of the union's contract but was an unfair labor practice strike and therefore not subject to the limitations of sec 8 (d) under the Supreme Court's decision in *Mastro Plastics Corp.* v. *N. L. R. B.*, 350 U. S. 270.

[12] *Elliott* v. *Local Union 49, Sheet Metal Workers' International Assn.* (*New Mexico Sheet Metal Contractors Assn.*), 42 LRRM 2100 (D. C., N. Mex.).

In the *Burt Manufacturing Co.* case,[13] the union was enjoined from engaging in a pattern of conduct designed to coerce the company's employees, allegedly in violation of section 8 (b) (1) (A), into revoking their designation of another union as their bargaining representative and accepting respondent union as such representative.[14] For a number of years the employees of the company, a fabricator of sheet metal roof ventilators and wall louvers, had been represented by United Steelworkers pursuant to a certification issued by the Board. Contending that the fabrication of the company's products was within its exclusive jurisdiction, Sheet Metal Workers by strikes, threats of work stoppages and fines, and other means, allegedly induced its members and employers in the construction industry to boycott the company's products. Sheet Metal Workers argued that its contracts with employers forbid the employers from handling or installing products of Burt and other companies which did not have contracts with it and that its activities to enforce the contracts were lawful. The court, rejecting this defense, and noting that "an indirect approach may coerce and restrain just as effectively as one which is direct," and that "an employee whose employer is rendered unable to market the goods produced by the employee because of a union boycott is . . . seriously affected thereby," held that there was "substantial evidence in the record upon which the Board would have reasonable cause to believe that respondents coerced Burt's employees in the exercise of their rights guaranteed under section 7 of the act, in violation of section 8 (b) (1) (A).[15]

In the *Haverhill Gazette* case,[16] it was alleged that the union struck the employer to compel its agreement to contract terms which would have created illegal closed-shop conditions in violation of section 8 (b) (2) and that the strike for the illegal contract constituted a refusal to bargain in good faith in violation of section 8 (b) (3). The contract demands included the requirement that the union's general laws be incorporated in the contract by reference. These general laws required journeymen and apprentices in the employer's composing room to be members of the union, permitted members of the union only to do composing room work, and contained other provisions creating closed-shop conditions. Conceding that the general laws were "not in all respects in accordance with law," the union contended, however,

---

[13] *Hull* v *Sheet Metal Workers' International Assn, AFL–CIO, et al* (*Burt Mfg. Co*), 161 F. Supp. 161 (D. C., Ohio). See discussion of other aspects of this case at p 134, below.

[14] This was a combined proceeding under sec 10 (j) and 10 (l) alleging, in addition, violations of the provisions of sec. 8 (b) (4) (A), (B), and (C).

[15] The court pointed out that its views were in accord with the Board's conclusions in *Curtis Brothers, Inc.*, 119 NLRB 232; *Alloy Manufacturing Co*, 119 NLRB 307; *Buffalo's Trucking Service*, 119 NLRB 1268, regarding the coercive effect of similar forms of union pressure. These cases are discussed at pp. 80–82, *supra*.

[16] *Alpert* v. *International Typographical Union*, 161 F. Supp 427 (D. C., D. Mass)

that the demanded contract was lawful because the general laws clause excluded provisions "in conflict with law." The court rejected the contention, holding that a "collective bargaining agreement should be understood in the marketplace, not in Utopia" and that its "specific provisions must be compatible with the . . . act on their face, and not as the result of some subsequent elimination or construction." Finding a "clear case of apparent unfair labor practice by the union," the court concluded that nothing further was "required to warrant the issuance of an injunction." Upon issuance of the court's opinion, the union withdrew its general laws demand and the court withheld injunctive action. When the union and the employer subsequently resumed negotiations, the court held there was then "no occasion for an injunction" and dismissed the petition.

B. Injunctions Under Section 10 (l)

In fiscal 1958, 68 petitions under section 10 (l) went to final order, the courts granting injunctions in 59 cases and denying injunctions in 9 cases. Injunctions were issued in 38 cases involving secondary action proscribed by section 8 (b) (4) (A) and/or (B); in 7 cases involving strikes against Board certifications in violation of section 8 (b) (4) (C); and in 14 cases involving jurisdictional disputes in violation of section 8 (b) (4) (D). One case under section 8 (b) (4) (C) and three under section 8 (b) (4) (D) also involved secondary activities under subsection (A) and/or (B).

All but 1 of the 9 cases in which injunctions were denied were predicated on alleged violations of section 8 (b) (4) (A) and/or (B); the remaining case alleged a violation of section 8 (b) (4) (D).

1. Secondary Boycott Situations

Several cases arose out of secondary boycotts in the milk industry. In *Chesterfield Farms*,[17] the union representing the employees of New York City milk processors and wholesale and retail dairies decided to organize the approximately 350 home delivery dealers. These home delivery dealers purchase their milk from the wholesale and retail dairies, which in turn secure their supply from the processors. Being unsuccessful in its direct appeal to many of the home dealers, the union instructed the dairies and their employees not to sell milk to the home dealers who refused to sign union contracts, and ordered their members at the processing plants not to bottle milk for dairies which violated its instructions by making sales

[17] *Douds* v. *Milk Drivers & Dairy Employees, etc.* (*Chesterfield Farms*), 154 F. Supp. 222 (D. C., S D. N. Y.)

to such home dealers. As a consequence, the supply of milk to a number of the home dealers was stopped one morning. Because of the serious consequences from a stoppage of the flow of milk for even a few days, the district court issued a temporary restraining order, which restored normal operations, and subsequently found the union's conduct to violate section 8 (b) (4) (A) and (B) and entered an injunction restraining a repetition of the conduct pending the Board's determination of the unfair labor practice charges on the merits. The union defended its activities on the ground that the dairies and processors had contractually agreed not to make deliveries to employers with whom it had a labor dispute, and that under the Second Circuit's decisions in *Rabouin* and *Crowley's* [18] its conduct was permissible to enforce the contractual agreements. The district court in sustaining the petition distinguished the contract clauses from those involved in *Rabouin* and *Crowley's* and held that they were inapplicable to the situation involved. The Second Circuit, in sustaining the district court's injunction on appeal,[19] stated that to "what extent employers and labor unions may by agreement modify or nullify (if at all) the laws enacted by Congress for the protection of the public is a question . . . Congress has vested in the Board" and that in proceedings under section 10 (l) the courts "cannot, and should not try to, usurp the function and duty of the Board," or "endeavor to speculate on the law or facts which may eventually underlie the Board's decision." [20]

The *Mayco* case [21] was similar to the *Chesterfield Farms* situation in that the union having a dispute with a Maryland dairy shut off its supply of milk by ordering the District of Columbia wholesalers and their employees not to sell milk to the dairy and picketed at the wholesalers while the dairy's trucks were attempting to pick up milk. In this case the union also relied on provisions in its contracts with the wholesalers to justify its actions, and in particular a provision permitting its members to refuse to cross picket lines. The court, in finding the union's conduct to violate section 8 (b) (4) (A), held that the foregoing contract provision was not a true "hot cargo agreement" and that, in view of the conflicting decisions in the courts of appeals,[22]

---

[18] *Rabouin* v *N L R B*, 195 F. 2d 906 (C A. 2); *Milk Drivers & Dairy Employees, etc.* v. *N. L R. B.* (*Crowley's Milk Co*), 245 F. 2d 817 (C A. 2), reversed 357 U. S. 345.

[19] *Douds* v. *Milk Drivers, etc.* (*Chesterfield Farms*), 248 F. 2d 534.

[20] For the subsequent decision of the Supreme Court on "hot cargo" contracts, see *Local 1976, United Brotherhood of Carpenters & Joiners, etc.* v. *N. L. R B*, 357 U. S. 93, discussed at pp 107–110 of this report

[21] *Penello* v. *Milk Drivers & Dairy Employees, etc.* (*Mayco, Inc.*), 156 F Supp 366 (D. C., Md.).

[22] See *Rabouin* v. *N. L. R B.*, 195 F. 2d 906 (C A. 2); *Milk Drivers & Dairy Employees etc* v. *N L. R. B* (*Crowley's Milk Co.*), 245 F. 2d 817 (C A 2); *General Drivers, etc* v *N. L R B* (*American Iron & Machine Works*), 247 F 2d 71 (C A, D C); *N L R B* v *Local 1976, United Brotherhood of Carpenters, etc* (*Sand Door & Plywood Co.*), 241 F 2d 147 (C. A. 9); *N. L. R. B.* v. *Local 11, United Brotherhood of Carpenters, etc.* (*General Millwork Corp.*), 242 F. 2d 932 (C. A. 6).

"whether or not the hot cargo provision is effective to insulate the labor union on the charge of secondary boycott is still . . . an open question for ultimate decision by the Supreme Court."[23] Under these circumstances, the court concluded, there was reasonable cause to believe the union had engaged in an unlawful secondary boycott and that injunctive relief was appropriate.[24] In reaching this conclusion, the court also rejected the union's contention that the injunction proceeding should have been instituted in the District of Columbia, where the boycott occurred, rather than in Maryland, where the primary dispute existed. The court held that the petitioner had a choice of districts and, being able to obtain service on the union through an officer residing in Maryland, it was not unreasonable to institute the proceeding in that district.

Injunctions also were issued to restrain secondary picketing at military establishments which caused the shutdown of important defense construction;[25] secondary picketing of trade shows to require self-employed demonstrators at the shows to join the union;[26] and the inducement of radio artists not to make transcriptions for broadcast over a radio station with which the respondent union had a dispute.[27] At the military establishments, the respondent unions shut down construction work by picketing all gates used by the construction workers, even after the employees of the primary employer and persons doing business with him were restricted to the use of one gate. Agreeing that this evidenced a secondary objective on the part of the respondent, the court in each case limited permissible picketing to the gate used by the primary employer.

a. Ambulatory Picketing

A number of cases involved picketing of trucks of a primary employer at the premises of secondary employers, notwithstanding adequate opportunity to the union to bring the primary dispute to the attention of the employees of the primary employer by picketing the latter's premises in the area. In the *Delaware Valley Beer Distribu-*

---

[23] At the time of this decision, the "hot cargo" contract cases were pending before the Supreme Court.

[24] The contention that "hot cargo" contract clauses immunized their conduct from the secondary boycott provisions of sec 8 (b). (4) (A) and (B) was urged by unions in a number of other cases prior to the June 16, 1958, decisions of the Supreme Court on the subject in *Local 1976, United Brotherhood of Carpenters & Joiners, etc.* v. *N. L. R. B.*, 357 U. S. 93. See pp. 107–110, *supra.*

[25] *Elliott* v. *General Drivers (Page Airways Inc.)*, February 11, 1958 (No 7892, D C, W. D. Okla.); *Elliott* v. *International Assn. of Machinists, Local Lodge 889 (Freeman Construction Co.)*, September 12, 1957 (No 7671, D. C., W. D. Okla)

[26] *Madden* v. *Journeymen Barbers, Hairdressers, etc. (National Hairdressers' & Cosmetologists' Assn)*, 40 LRRM 2676 (D. C., S. D. Ind.). See p. 96, *supra,* for the Board's decision on the merits of the case.

[27] *Getreu* v. *American Federation of Television & Radio Artists (L B. Wilson, Inc)*, December 30, 1957 (No. 4144, D C., W D. Ohio), affirmed 42 LRRM 2693 (C A 6)

tors case,[28] the union, in an attempt to compel all beer distributors in the Philadelphia area to sign contracts with it, issued cards saying "OK," or "OK to load," and posters for trucks stating "Signed up with Local 830," to the drivers of those distributors who had signed contracts, and advised the distributors that their trucks would not be loaded at the breweries and wholesalers unless they had a card or poster. Distributors who were unable to show they had signed agreements with the union by producing the card or poster were not loaded. In addition, union agents picketed in the vicinity of the trucks of nonsignatory distributors when they appeared at the breweries and wholesalers to pick up beverages. The union contended that its picketing met the criteria for ambulatory situs picketing set forth in *Moore Dry Dock* [29] and, therefore, was lawful. Noting that the distributors had premises of their own in the area where their employees "spent more time" than at the breweries or wholesalers and that the union had "adequate opportunity to reach" the distributors' employees at such premises, the court, in agreement with the Board's views in *Washington Coca-Cola*,[30] which the court noted had been consistently followed by the Board and approved by courts of appeals with one exception,[31] held that the picketing at the breweries and wholesalers was secondary and violated section 8 (b) (4) (A). In this connection, the court cited the union's failure to picket the distributors' premises as additional evidence that the picketing at the breweries and wholesalers was for the purpose of reaching secondary employees.[32] The court also rejected the argument that an injunction should have been withheld because some of the distributors allegedly had "unclean hands." Rejecting the contention on the merits, the court, noting that the "clean hands" doctrine is not applicable in proceedings to enforce Board orders,[33] also held that the doctrine was inapplicable to the Government seeking injunctive relief under section 10 (l) in the public interest.

In another case,[34] the court held that because the employees working aboard the floating derricks involved in the primary dispute reported

[28] *Schauffler* v. *Brewery & Beer Distributor Drivers, etc.* (*Delaware Valley Beer Distributors Assn*), 162 F. Supp. 1 (D. C., E. D. Pa.).

[29] 92 NLRB 547.

[30] 107 NLRB 299.

[31] The exception noted was the refusal of the court in *Sales Drivers, etc.* v. *N. L R. B.* (*Campbell Coal Co.*), 229 F. 2d 514 (C. A., D C.), to agree with the Board that picketing at secondary premises, when the primary employer had its own premises, *per se* violated the act without a finding of an illegal purpose The Board on remand found that the picketing was for the purpose of reaching secondary employees, and upon return of the case the court sustained this finding (249 F. 2d 512 (C A, D. C.)).

[32] See *Sales Drivers, etc.* v. *N. L R B*, 229 F. 2d 514 (C. A., D C.); *N. L. R. B.* v. *General Drivers, etc* (*Otis Massey Co*), 225 F 2d 205 (C. A 5).

[33] See *Eichleay Corp.* v. *N. L. R. B.*, 206 F. 2d 799, 806 (C. A. 3).

[34] *LeBus* v. *Seafarers' International Union, etc.* (*Superior Derrick Corp.*), 157 F. Supp 510 (D. C., E. D. La.).

directly to the derricks and not to the employer's plant, the derricks constituted the situs of the dispute. The court held, however, that when the derricks were tied up at docks of secondary employers, picketing had to comply with the requirements of the *Moore Dry Dock* case [35] and had to be confined to the derricks in order to be primary and not secondary. Since the union did not so confine its picketing, the court found a violation of section 8 (b) (4) (A) and (B) and enjoined the illegal conduct.

b. Union Bylaws

The Seventh Circuit's holding in the *Joliet Contractors Association* case [36] that a union must be deemed responsible for work stoppages encouraged by provisions in its bylaws, was relied upon by the district court in the *Burt Manufacturing* case [37] to find that employees of secondary employers were unlawfully induced by the union's constitution and standard form contracts to refuse to handle products of Burt because not made by the union's members. In enjoining the alleged 8 (b) (4) (A) and (B) violations, the court rejected the union's contention that injunctive relief should be denied on the ground that the Board was tardy in its application, pointing out that the doctrine of laches may not be applied to defeat the public interest.

c. Nonneutral Defense

Injunctions were opposed in some cases on the ground that the primary and secondary employers were interrelated to such an extent that the secondary employer could not be regarded as a neutral in the dispute between the primary employer and the union. In *Cellini Shoes*,[38] the primary employer and its stockholders owned a third interest in the secondary employer; the primary employer's vice president also was vice president of the secondary company; and approximately 30 percent of the production of the secondary employer was sold to the primary employer. The court concluded that this was insufficient to establish that either dominated or controlled the other or that the secondary employer was not a neutral in respect to the dispute between the union and the primary employer. The court therefore entered an injunction against the union's picketing of the secondary employer in furtherance of its dispute with the primary employer. Subsequently, the union consented to the entry of a cease and desist order by the Board.[39]

---

[35] 92 NLRB 547.

[36] *Joliet Contractors Assn, et al.* v *N. L. R. B.*, 202 F. 2d 606 (C A. 7).

[37] *Hull* v. *Sheet Metal Workers' International Assn (Burt Mfg. Co.)*, 161 F. Supp 161 (D. C., N. D. Ohio). See discussion of other aspects of this case at p. 129, above.

[38] *Schauffler* v *District 65, Retail, Wholesale & Department Store Union (Cellini Shoes, Inc.)*, 41 LRRM 2404 (D. C, E. D. Pa).

[39] *Cellini Shoes, Inc*, Case No. 4–CC–92.

In the *Bachman Machine* case,[40] the union argued that Bachman was not a neutral to the dispute with Plastic Molding Co. because the stock of the 2 corporations was commonly owned and the officers of the 2 concerns were substantially the same. The court rejected the contention, finding that the two companies, although commonly owned, were not commonly controlled or integrated, and enjoined the picketing of Bachman in support of a dispute with Plastic.[41]

2. Injunctions Against Strikes Involving Board Certifications

Strikes against Board certifications were the subject of 9 cases in 1958, in 2 of which the strikes were discontinued prior to the hearing. In the other seven cases, injunctions were issued. Two of the cases involved secondary strike action to force an employer to recognize one union although another union had been certified as the bargaining representative of the employer's employees.[42] In the other cases recognition was sought through primary picketing.[43]

In *Moore-McCormack*,[44] the respondent union for years had been the recognized bargaining representative of unlicensed personnel aboard the ships of Moore-McCormack. In 1957, Moore-McCormack purchased a fleet of 8 additional vessels, the personnel aboard which had been represented by another union. The respondent union claimed representation of the unlicensed personnel on the new ships under its contract with Moore-McCormack. The Board, however, concluding that each of the new ships constituted an appropriate unit for collective bargaining, directed elections on petitions of the other union. The other union won elections on four of the ships and was certified as the bargaining representative for the employees aboard the ships. The respondent union thereupon commenced picketing Moore-McCormack ships as they reached port and the injunction proceeding was insti-

[40] *Kennedy* v. *Warehouse & Distribution Workers Union, Local 688* (*Bachman Machine* Co), April 18, 1958 (No 58 C 29 (3), D. C., E. D. Mo.).

[41] But see *Bachman Machine Co.*, 121 NLRB No 165, decided after the end of the fiscal year. The Board sustained the trial examiner's conclusion that the two companies were commonly controlled because the same individual was president of both concerns and actively controlled the operations and labor relations policies of both, and dismissed the complaint. A majority of the Board reaffirmed the rule set forth in *Roy & Sons* that a "straight-line operation" is not a prerequisite to the establishment of an ally relationship where "common control and ownership" exists

[42] *Hull* v *Sheet Metal Workers' International Assn.* (*Burt Mfg Co.*), 161 F. Supp 161 (D C., N D Ohio) ; *Graham* v *Local 2247, United Brotherhood of Carpenters & Joiners* (*Fuller Paint & Glass Co*), January 6, 1958 (No A–14144, Alaska).

[43] *Graham* v *District Lodge 24, International Assn of Machinists* (*Industrial Chrome Plating Co*), April 23, 1958 (No. 9705, Oreg.) ; *Elliott* v. *Retail Clerks International Assn.* (*Montgomery Ward & Co*), May 19, 1958 (No. 11686, D. C., S D. Tex.) ; *McLeod* v *National Maritime Union* (*Moore-McCormack Lines, Inc*), 157 F. Supp. 691 (D. C , S D N. Y.) ; *Douds* v. *Knitgoods Workers Local 155* (*Moreelee Knitting Mills*), final order October 7, 1958 (No. 501–58, D. C., N. J.) , *Reynolds* v. *United Steelworkers Local 3852* (*Newark Brass & Iron Foundry, Inc*), March 18, 1958 (No. 273–58, D. C., N. J)

[44] *McLeod* v. *National Maritime Union* (*Moore-McCormack Lines, Inc.*), 157 F Supp. 691 (D C., S. D. N. Y.).

tuted. Respondent union contended that it was picketing only to enforce observance of the terms of its unexpired contract with Moore-McCormack aboard the new ships and not to displace the other union as the certified representative. The court rejected this contention, pointing out that in advancing this argument the respondent union was "insisting that the personnel on the newly acquired . . . vessels are included within the unit for which it is the collective bargaining representative." This, the court held, clearly warranted the belief that respondent union was seeking to compel recognition of it as the bargaining representative of the personnel aboard the new ships, notwithstanding certification of the other union, in violation of section 8 (b) (4) (C). The court therefore granted the injunction to restrain the picketing. In doing so, the court cited with approval a prior decision of the same court[45] holding that "the sole original jurisdiction to review orders or certifications of the Board lies in the court of appeals" and that a district court in a section 10 (l) injunction proceeding "is bound by a valid and subsisting certification by the Board."

3. Jurisdictional Dispute Situations

Injunctions were granted in 14 cases involving jurisdictional disputes; 7 related to conflicting claims to the assignment of work in the building and construction industry,[46] 2 concerned contests over work in the television industry,[47] and the remaining 5 involved disputes in the meatpacking, food distributing, printing, trucking, and shipping industries.[48]

---

[45] *Douds* v *International Longshoremen's Assn.* (*New York Shipping Assn*), 147 F. Supp. 103 (D. C , S D. N Y), affirmed 241 F 2d 278 (C. A 2)

[46] *Getreu* v *Local 48, Sheet Metal Workers' International Assn.* (*Acoustic Engineering of Ala , Inc*), August 5, 1957 (No. 8803, D C., N D Ala.) ; *Becker* v *Lathers Local 252, Wood, Wire & Metal Lathers International Union* (*James J. Barnes Construction Co*), September 10, 1957 (No 960–57 WM, D C., S. D. Calif) , *Douds* v. *International Brotherhood of Electrical Workers* (*General Dynamics Corp*), September 4, 1957 (No. 6727, D C . N D N Y) ; *Fraker* v. *Parkersburg Building & Construction Trades Council* (*Howard Price & Co*), July 19, 1957 (No. 808–W, D C., N. D W. Va.) ; *Sperry* v *Local 978, United Brotherhood of Carpenters & Joiners* (*Markwell & Hartz Contractors*), October 22, 1957 (No. 1525, D. C , W D. Mo.) ; *Douds* v *International Union of Operating Engineers, Local 825* (*Charles Simkin & Sons, Inc*), December 30, 1957 (No 1111–57, D. C , N J) . *Getreu* v *Local 697, International Brotherhood of Teamsters* (*R. O. Wetz Transportation*), Nov. 1, 1957 (No 831–W, D. C , N D W. Va.).

[47] *Douds* v *Radio & Television Broadcast Engineers, Local 1212, I. B E. W.* (*Columbia Broadcasting System, Inc.*), July 1, 1957 (No. 120–377, D. C , S D. N. Y.) , *McLeod* v. *Theatrical Protective Union No. 1, I A. T S E.* (*Columbia Broadcasting System, Inc.*), February 18, 1958 (No. 130–62, D C , S D. N Y).

[48] *Getreu* v *Plumbers & Steamfitters Local 157* (*Home Packing Co , Inc.*), March 18, 1958 (No TH 58–C–12, D C , S D. Ind.) ; *Donovan* v. *Retail Clerks International Assn.* (*Food Employers Council, Inc*), May 9, 1958 (No 291–58HW, D C , S D Calif.) , *LeBus* v. *International Typographical Union* (*Heiter-Stark Printing Co.*), March 4, 1958 (No 1971, D. C., S D Ala) ; *Naimark* v. *Truck Drivers & Chauffeurs Union, Local 478* (*United States Steel Corp*), July 11, 1958 (No. 718–58, D. C., N. J) ; *McLeod* v *Truck Drivers Local Union No. 807* (*New York Shipping Assn*), April 28, 1958 (No. 132–305, D C , S D N Y)

In one case,[49] the injunction order was appealed to the court of appeals. The union contended that the district court was without authority to entertain the petition for an injunction (1) because the Board had not first held a hearing under section 10 (k) of the act to determine the underlying dispute over the assignment of work, and (2) because the parties allegedly had agreed to a method for voluntary adjustment of the dispute, contending that when the parties reached such an agreement the Board was required under section 10 (k) of the act to dismiss the charge. The court of appeals, citing *Herzog* v. *Parsons*,[50] rejected the first contention, noting that if "a section 10 (k) determination were a prerequisite to a section 10 (l) injunction the speedy remedy provided by section 10 (l) to preserve the status quo would be rendered useless as to jurisdictional disputes." [51] In addition to disagreeing with the contention that the employer had consented to a method for voluntary adjustment, the court of appeals held that in any event this was a question properly to be resolved by the Board in the section 10 (k) hearing, not by the court in the section 10 (l) injunction proceeding. The injunction of the district court also was attacked on the ground that it was not restricted to the prohibition of work stoppages over the jurisdiction demands on the particular job involved, but enjoined strike action on other jobs over similar jurisdictional claims. The court of appeals refused to limit the injunction, noting the district court's findings that the union had induced work stoppages on other jobs in the area over similar jurisdictional demands.

---

[49] *Elliott* v. *Local 450, International Union of Operating Engineers (Sline Industrial Painters)*, May 9, 1957 (No. 10805, D. C., S. D. Tex.), affirmed 256 F 2d 630 (C A. 5).

[50] 181 F. 2d 781 (C A , D. C).

[51] Compare the Board's decision in *Wood, Wire & Metal Lathers International Union, etc*, 119 NLRB 1345, discussed at pp. 99–100, *supra*

VIII

Contempt Litigation

Petitions for adjudication in contempt of parties which, the Board believed, had failed to comply with decrees enforcing Board orders, were acted upon in three cases during fiscal 1958. In two cases the Board's petition was denied, the court being of the view that the evidence was insufficient to sustain a finding that the terms of the court's decree had been violated.[1]

In one case, *School-Timer Frocks, Inc.*,[2] the Board's petition was granted. Here, the Fourth Circuit affirmed the Special Master's finding[3] that the employer violated a decree requiring the reinstatement of a discriminatorily discharged employee. The evidence showed that the discriminatee was reinstated, but was again discharged less than a month later. As noted by the court, the Special Master concluded that this action carried "with it an implication of disobedience to the order, and that the testimony as to the circumstances surrounding the discharge did not reveal such a critical need for her discharge insofar as the proper operation of the plant was concerned as to overcome this implication." Adjudging the company in civil contempt, the court required it to offer the employee reinstatement in good faith within 30 days. The court's order further provided for payment by the company of a $100 fine for each day of noncompliance following the expiration of the 30-day period.

---

[1] *N. L. R. B.* v. *Irving Lambert, Murray B Lambert, et al, d/b/a Sue-Ann Mfg. Co.*, 250 F. 2d 801 (C. A. 5); *N L. R. B.* v. *J. C. Hamilton,* April 11, 1958, 42 L. R. R. M. 2287 (C. A. 10).

[2] *N. L. R B.* v. *School-Timer Frocks, Inc.,* 248 F. 2d 831 (C. A. 4).

[3] See Twenty-second Annual Report, p. 152.

IX

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's processes during fiscal 1958 included the defense of a suit in which private parties sought to enforce subpenas directed to Board agents, and a proceeding instituted by the Board for discovery in anticipation of the filing of a petition for adjudication in contempt. Other litigation involved the defense of actions to upset the Board's unit determinations or other rulings in representation cases arising under section 9 of the act. In addition, the Supreme Court agreed to review the *Hotel Employees'* case,[1] in which the lower courts had refused to interfere with the Board's practice of declining jurisdiction over the hotel industry.

1. Subpena Enforcement

Sustaining the Board's contentions, a United States District Court in *Biazevich* v. *Becker*[2] dismissed an action brought by private parties for enforcement of subpenas *duces tecum* issued by a Board trial examiner during the course of a hearing in an unfair labor practice case. The plaintiffs were respondents in the Board proceeding, and the subpenas—which had been automatically issued at their request, pursuant to section 11 (1) of the act[3]—called for the production of documents in the official possession of Board agents, notably the pretrial statements of several of the General Counsel's witnesses. Declining to produce these documents on grounds of official privilege,[4] the Board agents had appealed to the Board for revocation of the subpenas and the General Counsel, accordingly, had refused to institute proceeding in court to enforce the subpenas for the respondents' benefit. When the respondents thereupon applied to the court in their

[1] *Hotel Employees Local No. 255, etc.* v. *Leedom, et al.,* 147 F. Supp. 306 (D. C., D. C.), affirmed, 249 F. 2d 506 (C. A., D. C.), certiorari granted 355 U. S. 951.

[2] 161 F. Supp. 261 (D C., So. Calif.).

[3] As to the procedure for issuance and revocation of subpenas, see the *Lewis Food* and *Duval* cases, discussed *supra,* p. —.

[4] At that time, such claims of privilege were required by sec. 102.87 of the Board's Rules and Regulations, Series 6.

own names, the Board's representatives opposed the application on the ground, among others, that section 11 (2) of the act, the provision which confers jurisdiction on the United States District Courts to enforce Board subpenas, authorizes such judicial intervention only "upon application by the Board," and not at the suit of private parties. The court sustained this contention, remarking that the propriety of the Board's refusal to move for enforcement of a subpena issued at the request of a private party "can be reviewed under sections 10 (e) and (f) of the act [i. e., by a court of appeals in a proceeding to enforce or review the Board's final order in the case], . . . and such action may not be made the basis for a private suit for injunction in the federal district court." The conclusion is the same under section 6 (c) of the Administrative Procedure Act, the court added. The court noted also that, in any event, there was nothing before it to enforce, since the Board had by that time revoked the subpenas.

2. Discovery in Anticipation of Contempt Proceedings

In the *Deena Artware* case,[5] the Sixth Circuit, in 1952, enforced a Board order requiring the employer to make whole a large group of discriminatorily discharged employees and, in a supplemental decree entered in 1955, fixed the amount of back pay due each individual. Shortly after the entry of the original decree, however, the company reportedly transferred all its assets to other corporations owned and managed by the same individuals. The company then refused, on grounds of financial inability, to pay any part of the back-pay awards. In order to ascertain whether the company's assets had been "siphoned off" to avoid compliance with the court's decree, and whether contempt adjudications might be warranted on that or other grounds, the Board moved for discovery, inspection of the books and records of the company and its affiliates, and the right to take the depositions of the corporate officers and agents having knowledge of the pertinent transactions. The court denied the motion on the ground that such a discovery proceeding is premature unless and until an actual petition for an adjudication in contempt is filed.[6] It is out of order, the court declared, to permit "the taking of depositions and the compulsory production of books and records for examination by a claimant *before* the claimant files his complaint or pleading setting out the facts constituting his alleged cause of action . . . the validity of which can then be questioned as a matter of law by the respondent. . . ."

[5] *N. L R. B.* v. *Deena Artware, Inc*, 198 F. 2d 645, certiorari denied 345 U. S. 906.
[6] *N. L. R. B.* v. *Deena Artware, Inc.*, 251 F. 2d 183 (C. A. 6).

3. Petitions for Judicial Intervention in Representation Proceedings

Petitions to nullify or compel Board action in representation proceedings were denied by United States District Courts in two cases. In one,[7] the complaining union sought to upset the Board's unit determination under the following circumstances: The employer, a shipping company, had enlarged its fleet by taking over a group of vessels, along with their unlicensed personnel, from another company. At the time of the transfer, the complaining union was the recognized bargaining representative of all unlicensed ship personnel in the company's preexisting fleet, but the men on the newly acquired vessels had been represented by another union. A representation contest then arose between the two unions, with the one contending that the newly acquired ships and their personnel had been automatically submerged in the fleet unit for which it was bargaining, and the other contending that each of the transferred ships (or all of them as a block) ought to be treated as a separate unit. The Board held that the crews on the newly purchased ships could constitute separate bargaining units if they so desired, and provided for elections to be conducted on each of these ships, with both unions appearing on the ballots. In the ensuing elections, most of the crews voted to retain their former union representative and, accordingly, to remain separate from the rest of the fleet for the purposes of collective bargaining. The complaining union then applied to the district court for an injunction to nullify the resulting Board certifications. The court dismissed the suit, noting that it had no jurisdiction to interfere with the Board's processing of any representation case in the absence of a showing that the Board had acted " 'unlawfully,' either 'by way of departure from statutory requirements or from those of due process of law'."[8] In this case, the court said, there was no such ground for judicial intervention, since the Board had obviously not "exceeded its statutory authority," or "assumed a power with which it was not invested or which was specifically denied to it."[9] The court also held that the complaining union's charge of denial of due process was frivolous, since the record disclosed relevant facts which provided a basis for the Board's unit determination.

---

[7] *National Maritime Union* v. *McLeod et al.*, 160 F Supp 945 (D. C , S N Y.).

[8] Quoting from *Inland Empire District Council* v *Millis*, 325 U. S 697, 700

[9] At this point the court cited, as a comparable but distinguishable case, *Kyne* v *Leedom*, 148 F Supp 597 (D. C., D. C), affirmed 249 F 2d 490 (C A., D C.), certiorari granted 355 U. S 922 In this case, as stated in the Twenty-second Annual Report, pp 157–158, a district court, in an action affirmed by the District of Columbia Court of Appeals, had set aside a Board unit determination on the ground that it was in violation of an express requirement embodied in sec. 9 (b) of the act.

In a similar decision,[10] another district court refused to enjoin a Board-directed election in a representation case where the complaining union had contended that its contract with the employer should be treated as a "bar" to such an election. The Board, in overruling this contention and directing the election, had applied its so-called "schism" doctrine,[11] and the court held that, in view of the facts disclosed by the record, the Board's action did not present a "substantial constitutional question." The court observed, in this connection, that the contract-bar rule invoked by the complaining union is an administrative rule, not embodied in any express statutory provision, which the Board may waive in its discretion.

---

[10] *Local Union No. 492, Bakery & Confectionery Workers' International Union, et al* v. *Schauffler, et al.,* 162 F. Supp. 121 (D. C , E. Pa.).

[11] See pp. 26–27, *supra.*

APPENDIX A

Statistical Tables for Fiscal Year 1958

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1958

	Number of cases				
	Total	Identification of complainant or petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
	All cases [1]				
Pending July 1, 1957	4,416	2,322	307	1,236	551
Received fiscal 1958	16,748	7,070	1,971	5,990	1,717
On docket fiscal 1958	21,164	9,392	2,278	7,226	2,268
Closed fiscal 1958	14,779	7,280	1,548	4,400	1,551
Pending June 30, 1958	6,385	2,112	730	2,826	717
	Unfair labor practice cases				
Pending July 1, 1957	2,680	1,007	119	1,149	405
Received fiscal 1958	9,260	2,186	573	5,410	1,091
On docket fiscal 1958	11,940	3,193	692	6,559	1,496
Closed fiscal 1958	7,289	2,105	373	3,859	952
Pending June 30, 1958	4,651	1,088	319	2,700	544
	Representation cases				
Pending July 1, 1957	1,727	1,315	187	79	146
Received fiscal 1958	7,399	4,884	1,398	491	626
On docket fiscal 1958	9,126	6,199	1,585	570	772
Closed fiscal 1958	7,403	5,175	1,174	455	599
Pending June 30, 1958	1,723	1,024	411	115	173
	Union-shop deauthorization cases				
Pending July 1, 1957	9	0	1	8	----------
Received fiscal 1958	89	0	0	89	----------
On docket fiscal 1958	98	0	1	97	----------
Closed fiscal 1958	87	0	1	86	----------
Pending June 30, 1958	11	0	0	11	----------

[1] **Definitions of Types of Cases Used in Tables.**—The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases

CA: A charge of unfair labor practices against an employer under sec. 8 (a)

CB: A charge of unfair labor practices against a union under sec 8 (b) (1), (2), (3), (5), (6)

CC: A charge of unfair labor practices against a union under sec 8 (b) (4) (A), (B), (C).

CD. A charge of unfair labor practices against a union under sec 8 (b) (4) (D).

RC: A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under sec 9 (c) (1) (A) (i).

RM: A petition by employer for certification of a representative for purposes of collective bargaining under sec. 9 (c) (1) (B).

RD· A petition by employees under sec 9 (c) (1) (A) (ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative, no longer represents a majority of the employees in the appropriate unit

UD A petition by employees under sec. 9 (e) (1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec 8 (a) (3)

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1958

	Number of unfair labor practice cases					Number of representation cases				
	Total	Identification of complainant				Total	Identification of petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
	CA cases [1]					RC cases [1]				
Pending July 1, 1957	1,694	970	100	623	1	1,503	1,315	186	2	----------
Received fiscal 1958	6,068	2,108	544	3,412	4	6,284	4,882	1,396	6	----------
On docket fiscal 1958	7,762	3,078	644	4,035	5	7,787	6,197	1,582	8	----------
Closed fiscal 1958	4,805	2,040	343	2,421	1	6,352	5,174	1,171	7	----------
Pending June 30, 1958	2,957	1,038	301	1,614	4	1,435	1,023	411	1	----------
	CB cases [1]					RM cases [1]				
Pending July 1, 1957	717	32	17	525	143	146	----------	----------	----------	146
Received fiscal 1958	2,473	61	26	1,985	401	626	----------	----------	----------	626
On docket fiscal 1958	3,190	93	43	2,510	544	772	----------	----------	----------	772
Closed fiscal 1958	1,857	48	26	1,425	358	599	----------	----------	----------	599
Pending June 30, 1958	1,333	45	17	1,085	186	173	----------	----------	----------	173
	CC cases [1]					RD cases [1]				
Pending July 1, 1957	215	3	2	0	210	78	0	1	77	----------
Received fiscal 1958	527	7	2	5	513	489	2	2	485	----------
On docket fiscal 1958	742	10	4	5	723	567	2	3	562	----------
Closed fiscal 1958	479	7	3	4	465	452	1	3	448	----------
Pending June 30, 1958	263	3	1	1	258	115	1	0	114	----------
	CD cases [1]									
Pending July 1, 1957	54	2	----------	1	51					
Received fiscal 1958	192	10	1	8	173					
On docket fiscal 1958	246	12	1	9	224					
Closed fiscal 1958	148	10	1	9	128					
Pending June 30, 1958	98	2	0	0	96					

[1] See table 1, footnote 1, for definitions of types of cases

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1958

A CHARGES FILED AGAINST EMPLOYERS UNDER SEC 8 (a)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases	[1] 6,068	[1] 100 0	8 (a) (3)	4,649	76 6
8 (a) (1)	[2] 6,068	[2] 100 0	8 (a) (4)	116	1 9
8 (a) (2)	706	11 6	8 (a) (5)	1,039	17 1

B CHARGES FILED AGAINST UNIONS UNDER SEC 8 (b)

Total cases	[1] 3,192	[1] 100 0	8 (b) (3)	211	6 6
			8 (b) (4)	719	22 5
8 (b) (1)	2,214	69 4	8 (b) (5)	69	2 2
8 (b) (2)	1,952	61 2	8 (b) (6)	17	5

C ANALYSIS OF 8 (b) (1) AND 8 (b) (4)

Total cases 8 (b) (1)	[1] 2,214	[1] 100 0	Total cases 8 (b) (4)	[1] 719	[1] 100 0
8 (b) (1) (A)	2,183	98 6	8 (b) (4) (A)	494	68 7
8 (b) (1) (B)	42	1 9	8 (b) (4) (B)	203	28 2
			8 (b) (4) (C)	28	3 9
			8 (b) (4) (D)	192	26 7

[1] A single case may include allegations of violations of more than one section of the act Therefore, the total of the various allegations is more than the figure for total cases

[2] An 8 (a) (1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the act, and therefore is included in all charges of employer unfair labor practices

Table 3.—Formal Actions Taken, by Number of Cases, Fiscal Year 1958

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases [1]	Other C cases [1]	
Complaints issued	822	822	456	366	
Notices of hearing issued	3,431			42	3,389
Cases heard	2,586	522	296	226	2,064
Intermediate reports issued	439	439	248	191	
Decisions issued, total	2,493	605	305	300	1,888
Decisions and orders	395	395	[2] 201	[3] 194	
Decisions and consent orders	210	210	104	106	
Elections directed	1,526				1,526
Rulings on objections and/or challenges in stipulated election cases	135				135
Dismissals on record	227				227

[1] See table 1, footnote 1, for definitions of types of cases

[2] Includes 24 cases decided by adoption of intermediate report in absence of exceptions

[3] Includes 18 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1958

A BY EMPLOYERS [1]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notice posted	653	480	173
Recognition or other assistance withheld from employer-assisted union	114	82	32
Employer-dominated union disestablished	23	13	10
Workers placed on preferential hiring list	39	35	4
Collective bargaining begun	112	70	42
	Workers		
Workers offered reinstatement to job	1,067	[2] 635	[3] 432
Workers receiving back pay	1,368	796	572
Back-pay awards	$673,260	$212,950	$460,310

B BY UNIONS [4]

	Cases		
Notice posted	407	307	100
Union to cease requiring employer to give it assistance	74	39	35
Notice of no objection to reinstatement of discharged employees	67	47	20
Collective bargaining begun	16	11	5
	Workers		
Workers receiving back pay	291	229	62
Back-pay awards	$88,673	$42,870	$45,803

[1] In addition to the remedial action shown, other forms of remedy were taken in 33 cases.
[2] Includes 88 workers who received back pay from both employer and union.
[3] Includes 36 workers who received back pay from both employer and union.
[4] In addition to the remedial action shown, other forms of remedy were taken in 68 cases.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1958

Industrial group [1]	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA [2]	CB [2]	CC [2]	CD [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	16,659	9,260	6,068	2,473	527	192	7,399	6,284	626	489
Manufacturing	9,440	4,542	3,438	944	120	40	4,898	4,149	390	359
Ordnance and accessories	25	13	11	2	0	0	12	12	0	0
Food and kindred products	1,663	691	498	166	21	6	972	850	67	55
Tobacco manufacturers	15	8	7	1	0	0	7	7	0	0
Textile mill products	337	233	205	26	1	1	104	82	11	11
Apparel and other finished products made from fabric and similar materials	387	265	188	65	11	1	122	69	40	13
Lumber and wood products (except furniture)	347	156	128	24	3	1	191	155	22	14
Furniture and fixtures	377	194	150	32	9	3	183	146	22	15
Paper and allied products	326	117	94	14	9	0	209	177	18	14
Printing, publishing, and allied industries	444	202	144	47	3	8	242	218	11	13
Chemicals and allied products	478	220	186	30	4	0	258	225	16	17
Products of petroleum and coal	226	148	99	46	3	0	78	66	6	6
Rubber products	129	46	39	7	0	0	83	71	6	6
Leather and leather products	153	79	59	15	4	1	74	64	6	4
Stone, clay, and glass products	369	159	129	22	3	5	210	179	15	16
Primary metal industries	480	226	154	61	9	2	254	217	21	16
Fabricated metal products (except machinery and transportation equipment)	898	442	347	86	8	1	456	402	22	32
Machinery (except electrical)	844	362	276	69	14	3	482	391	40	51
Electrical machinery, equipment, and supplies	606	292	216	64	9	3	314	264	18	32
Aircraft and parts	265	171	124	45	0	2	94	82	6	6
Ship and boat building and repairing	90	49	40	9	0	0	41	37	4	0
Automotive and other transportation equipment	470	242	172	64	3	3	228	210	7	11
Professional, scientific, and controlling instruments	123	61	48	11	2	0	62	54	8	0
Miscellaneous manufacturing	388	166	124	38	4	0	222	171	24	27
Agriculture, forestry, and fisheries	4	3	1	1	0	1	1	0	1	0
Mining	417	304	250	53	1	0	113	97	12	4
Metal mining	72	25	19	6	0	0	47	41	6	0
Coal mining	221	216	178	38	0	0	5	5	0	0
Crude petroleum and natural gas production	46	24	22	2	0	0	22	19	2	1
Nonmetallic mining and quarrying	78	39	31	7	1	0	39	32	4	3
Construction	1,848	1,674	652	673	231	118	174	157	16	1
Wholesale trade	1,028	419	312	59	41	7	609	507	55	47
Retail trade	1,428	640	417	156	59	8	788	674	79	35
Finance, insurance, and real estate	43	18	15	2	0	1	25	18	4	3
Transportation, communication, and other public utilities	2,033	1,424	829	518	63	14	609	512	60	37
Highway passenger transportation	98	60	43	16	1	0	38	34	2	2
Highway freight transportation	877	679	442	212	21	4	198	171	22	5
Water transportation	519	450	199	236	11	4	69	62	5	2
Warehousing and storage	160	60	42	12	5	1	100	72	16	12
Other transportation	55	32	21	8	3	0	23	21	1	1
Communication	183	76	47	21	6	2	107	90	8	9
Heat, light, power, water, and sanitary services	141	67	35	13	16	3	74	62	6	6
Services	418	236	154	67	12	3	182	170	9	3

[1] Source. Standard Industrial Classification, Division of Statistica Standards, U S Bureau of the Budget, Washington, 1945

[2] See table 1, footnote 1, for definitions of types of cases.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1958

Division and State [1]	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA [2]	CB [2]	CC [2]	CD [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	16,659	9,260	6,068	2,473	527	192	7,399	6,284	626	489
New England	774	420	266	107	33	14	354	296	36	22
Maine	63	29	22	4	2	1	34	23	9	2
New Hampshire	28	8	6	1	1	0	20	19	1	0
Vermont	20	12	12	0	0	0	8	6	1	1
Massachusetts	434	243	151	67	19	6	191	163	18	10
Rhode Island	64	42	21	14	6	1	22	19	2	1
Connecticut	165	86	54	21	5	6	79	66	5	8
Middle Atlantic	3,343	1,836	1,123	555	108	50	1,507	1,241	152	114
New York	1,791	1,058	638	351	46	23	733	595	71	67
New Jersey	643	302	199	78	15	10	341	290	33	18
Pennsylvania	909	476	286	126	47	17	433	356	48	29
East North Central	3,385	1,818	1,199	502	92	25	1,567	1,334	129	104
Ohio	797	409	249	129	24	7	388	330	28	30
Indiana	464	303	186	92	22	3	161	147	5	9
Illinois	1,031	595	390	180	18	7	436	359	50	27
Michigan	820	434	313	93	22	6	386	329	34	23
Wisconsin	273	77	61	8	6	2	196	169	12	15
West North Central	1,285	552	399	115	29	9	733	639	51	43
Iowa	142	49	44	1	3	1	93	82	5	6
Minnesota	222	59	38	9	9	3	163	140	12	11
Missouri	584	341	234	91	11	5	243	212	20	11
North Dakota	46	12	10	1	1	0	34	28	3	3
South Dakota	55	7	7	0	0	0	48	46	1	1
Nebraska	99	35	29	6	0	0	64	57	1	6
Kansas	137	49	37	7	5	0	88	74	9	5
South Atlantic	2,232	1,372	995	315	45	17	860	779	46	35
Delaware	50	14	11	2	1	0	36	34	1	1
Maryland	180	98	61	33	2	2	82	68	11	3
District of Columbia	114	36	28	5	2	1	78	72	4	2
Virginia	235	123	100	13	8	2	112	101	6	5
West Virginia	225	163	106	39	10	8	62	52	8	2
North Carolina	300	153	136	17	0	0	147	136	4	7
South Carolina	60	42	37	5	0	0	18	15	2	1
Georgia	389	270	188	69	9	4	119	110	6	3
Florida	679	473	328	132	13	0	206	191	4	11
East South Central	1,286	894	582	188	106	18	392	344	23	25
Kentucky	378	289	192	51	37	9	89	77	5	7
Tennessee	486	312	198	70	40	4	174	150	11	13
Alabama	332	246	151	62	28	5	86	76	6	4
Mississippi	90	47	41	5	1	0	43	41	1	1
West South Central	1,230	659	463	162	28	6	571	486	46	39
Arkansas	104	32	29	3	0	0	72	67	4	1
Louisiana	373	237	155	76	6	0	136	119	10	7
Oklahoma	115	47	32	6	9	0	68	53	11	4
Texas	638	343	247	77	13	6	295	247	21	27
Mountain	757	409	238	97	44	30	348	298	34	16
Montana	58	36	24	7	4	1	22	10	8	4
Idaho	64	21	17	3	1	0	43	35	4	4
Wyoming	25	11	9	2	0	0	14	13	1	0
Colorado	216	110	86	23	1	0	106	91	10	5
New Mexico	243	177	64	52	33	28	66	58	8	0
Arizona	89	36	28	6	2	0	53	49	2	2
Utah	47	10	6	1	2	1	37	37	0	0
Nevada	15	8	4	3	1	0	7	5	1	1
Pacific	1,915	1,017	595	365	36	21	898	715	99	84
Washington	227	124	69	47	3	5	103	78	16	9
Oregon	203	118	73	41	3	1	85	56	17	12
California	1,485	775	453	277	30	15	710	581	66	63

Table 6—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1958—Continued

Division and State [1]	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA [2]	CB [2]	CC [2]	CD [2]	All R cases	RC [2]	RM [2]	RD [2]
Outlying areas	452	283	208	67	6	2	169	152	10	7
Alaska	85	35	22	10	2	1	50	48	1	1
Hawaii	57	17	13	2	1	1	40	32	7	1
Puerto Rico	310	231	173	55	3	0	79	72	2	5
Canada	0	0	0	0	0	0	0	0	0	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0

[1] The States are grouped according to the method used by the Bureau of the Census, U S Department of Commerce
[2] See table 1, footnote 1, for definitions of types of cases

Table 7.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1958

Stage of disposition	All C cases		CA cases [1]		CB cases [1]		CC cases [1]		CD cases [1]	
	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	7 289	100 0	4, 805	100 0	1, 857	100 0	479	100 0	148	100 0
Before issuance of complaint	6, 654	91 3	4, 433	92 2	1, 703	91 7	375	78 3	[3] 143	96 6
After issuance of complaint, before opening of hearing [2]	249	3 4	128	2 7	60	3 2	61	12 8	0	.0
After hearing opened, before issuance of intermediate report [2]	48	7	28	6	15	.8	5	1 0	0	.0
After intermediate report, before issuance of Board decision	33	.4	25	.5	3	.2	5	1 0	0	0
After Board order adopting intermediate report in absence of exceptions	25	3	18	.4	4	.2	3	.6	0	.0
After Board decision, before court decree	161	2 2	103	2 1	33	1 8	20	4 2	5	3 4
After Board order adopting intermediate report followed by circuit court decree	5	1	2	.1	3	.2	0	0	0	.0
After circuit court decree, before Supreme Court action	98	1 3	54	1 1	34	1 8	10	2 1	0	.0
After Supreme Court action [4]	16	3	14	3	2	.1	0	0	0	.0

[1] See table 1, footnote 1, for definitions of types of cases
[2] Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court
[3] Includes 26 cases in which a notice of hearing issued pursuant to sec 10 (k) of the act Of these 26 cases, 9 were closed after notice, 3 were closed after hearing, and 14 were closed after Board decision.
[4] Includes either denial of writ of certiorari or granting of writ and issuance of opinion

Table 8.—Disposition of Representation Cases Closed, Fiscal Year 1958

Stage of disposition	All R cases		RC cases [1]		RM cases [1]		RD cases [1]	
	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	7, 403	100 0	6, 352	100 0	599	100 0	452	100 0
Before issuance of notice of hearing	3, 974	53 7	3, 392	53 4	328	54 7	254	56 2
After issuance of notice of hearing, before opening of hearing	1, 360	18 3	1, 178	18 5	109	18 2	73	16.1
After hearing opened, before issuance of Board decision	383	5 2	324	5.1	31	5 2	28	6 2
After issuance of Board decision	1, 686	22 8	1, 458	23 0	131	21 9	97	21.5

[1] See table 1, footnote 1, for definitions of types of cases

Table 9.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1958

Stage and method of disposition	All C cases		CA cases [1]		CB cases [1]		CC cases [1]		CD cases [1]	
	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	7,289	100.0	4,805	100 0	1,857	100 0	479	100 0	148	100 0
Before issuance of complaint	6,654	91 3	4,433	92 2	1,703	91 7	375	78.3	143	96 6
Adjusted	725	9 9	445	9 2	153	8 2	101	21.1	[2] 26	17 6
Withdrawn	3,687	50 6	2,397	49.9	988	53 2	216	45 1	[3] 86	58.1
Dismissed	2,242	30 8	1,591	33 1	562	30.3	58	12 1	[4] 31	20 9
After issuance of complaint, before opening of hearing	249	3 4	128	2 7	60	3 2	61	12 8	0	.0
Adjusted	89	1 2	56	1 2	11	.6	22	4 6	0	.0
Compliance with stipulated decision	5	1	1	(5)	0	.0	4	.8	0	.0
Compliance with consent decree	124	1 7	55	1 1	44	2 3	25	5.3	0	.0
Withdrawn	29	.4	14	3	5	.3	10	2.1	0	.0
Dismissed	2	(5)	2	.1	0	.0	0	.0	0	.0
After hearing opened, before issuance of intermediate report	48	.7	28	.6	15	.8	5	1 0	0	.0
Adjusted	5	.1	3	.1	2	.1	0	0	0	.0
Compliance with stipulated decision	1	(5)	0	.0	0	.0	1	.2	0	.0
Compliance with consent decree	38	.5	22	.4	12	.6	4	.8	0	0
Withdrawn	3	.1	2	.1	1	.1	0	.0	0	.0
Dismissed	1	(5)	1	(5)	0	.0	0	.0	0	.0
After intermediate report, before issuance of Board decision—Compliance	33	.4	25	.5	3	.2	5	1.0	0	.0
After Board order adopting intermediate report in absence of exceptions	25	.3	18	.4	4	.2	3	.6	0	.0
Compliance	5	.1	5	.1	0	.0	0	.0	0	.0
Dismissed	20	.2	13	.3	4	.2	3	.6	0	.0
After Board decision, before court decree	161	2 2	103	2 1	33	1 8	20	4 2	5	3.4
Compliance	126	1 7	81	1.7	27	1 5	15	3 2	3	2.0
Dismissed	35	5	22	.4	6	.3	5	1 0	2	1 4

After Board order adopting intermediate report followed by circuit court decree—Compliance	5	.1	2	.1	3	.2	0	.0	0	.0
After circuit court decree, before Supreme Court action	98	1.3	54	1.1	34	1.8	10	2.1	0	.0
Compliance	90	1.2	50	1.0	31	1.6	9	1.9	0	.0
Dismissed	7	.1	3	1	3	.2	1	.2	0	.0
Otherwise	1	(5)	1	(5)	0	.0	0	.0	0	.0
After Supreme Court denied writ of certiorari—Compliance	11	.2	9	.2	2	.1	0	.0	0	.0
After Supreme Court opinion—Compliance	5	.1	5	.1	0	.0	0	.0	0	.0

[1] See table 1, footnote 1, for definitions of types of cases.
[2] Includes 6 cases closed by compliance with Board decision after 10 (k) notice; and 2 cases adjusted after 10 (k) notice.
[3] Includes 1 case withdrawn after Board decision, after 10 (k) notice, 3 cases withdrawn after 10 (k) hearing; and 7 cases withdrawn after 10 (k) notice.
[4] Includes 7 cases dismissed by Board decision after 10 (k) notice
[5] Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1958

Method and stage of disposition	All R cases		RC cases [1]		RM cases [1]		RD cases [1]	
	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	7,403	100 0	6,352	100 0	599	100 0	452	100 0
Consent election	1,772	23 9	1,607	25 3	103	17 2	62	13 7
Before notice of hearing	1,305	17 6	1,189	18 7	79	13 2	37	8 2
After notice of hearing, before hearing opened	357	4 8	323	5 1	20	3 3	14	3 1
After hearing opened, before Board decision	110	1 5	95	1 5	4	7	11	2 4
Stipulated election	1,488	20 1	1,390	21 9	68	11 3	30	6 6
Before notice of hearing	852	11 5	802	12 6	35	5 8	15	3 3
After notice of hearing, before hearing opened	410	5 5	378	6 0	22	3 7	10	2 2
After hearing opened, before Board decision	110	1 5	101	1 6	6	1 0	3	7
After postelection decision	116	1 6	109	1 7	5	8	2	4
Withdrawn	1,921	25 9	1,547	24 3	201	33 6	173	38 3
Before notice of hearing	1,192	16 1	941	14 8	130	21 7	121	26 8
After notice of hearing, before hearing opened	480	6 5	393	6 2	47	7 9	40	8 9
After hearing opened, before Board decision	131	1 7	103	1 6	17	2 8	11	2 4
After Board decision and direction of election	118	1 6	110	1 7	7	1 2	1	2
Dismissed	915	12 4	659	10 4	136	22 7	120	26 6
Before notice of hearing	559	7 6	399	6 3	79	13 2	81	17 9
After notice of hearing, before hearing opened	71	1 0	43	.7	20	3 3	8	1 8
After hearing opened, before Board decision	24	3	18	3	4	7	2	5
By Board decision	[2] 261	3 5	199	3 1	33	5 5	29	6 4
Board-ordered election	1,307	17 7	1,149	18 1	91	15 2	67	14. 8

[1] See table 1, footnote 1, for definitions of types of cases
[2] Includes 13 RC, 9 RM, and 14 RD cases dismissed by Board order after a direction of election issued but before an election was held.

Table 11.—Types of Elections Conducted, Fiscal Year 1958

Type of case	Total elections	Type of election			
		Consent [1]	Stipulated [2]	Board ordered [3]	Regional director directed [4]
All elections, total	4,524	1,769	1,467	1,265	23
Eligible voters, total	363,672	93,671	136,260	132,330	1,411
Valid votes, total	326,314	82,980	124,527	117,629	1,178
RC cases,[5] total	4,099	1,603	1,383	1,113	----------
Eligible voters	333,935	84,062	128,009	121,864	----------
Valid votes	300,363	74,642	117,139	108,582	----------
RM cases,[5] total	238	96	55	87	----------
Eligible voters	17,282	5,399	4,984	6,899	----------
Valid votes	15,065	4,735	4,418	5,912	----------
RD cases,[5] total	153	62	29	62	----------
Eligible voters	10,124	3,398	3,267	3,459	----------
Valid votes	9,082	3,064	2,970	3,048	----------
UD cases,[5] total	34	8	0	3	23
Eligible voters	2,331	812	0	108	1,411
Valid votes	1,804	539	0	87	1,178

[1] Consent elections are held by an agreement of all parties concerned. Postelection rulings and certifications are made by the regional director

[2] Stipulated elections are held by an agreement of all parties concerned, but the agreement provides for the Board to determine any objections and/or challenges.

[3] Board-ordered elections are held pursuant to a decision and direction of election by the Board. Postelection rulings on objections and/or challenges are made by the Board

[4] These elections are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are made by the Board.

[5] See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1958

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible [1]
Total	34	20	58 8	14	41 2	2,331	812	34 8	1,519	65 2	1,804	77 4	1,050	45 0
AFL-CIO	27	16	59 3	11	40 7	2,057	754	36 7	1,303	63 3	1,605	78 0	930	45.2
Unaffiliated	7	4	57 1	3	42 9	274	58	21 2	216	78 8	199	72 6	120	43.8

[1] Sec. 8 (a) (3) of the act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Collective-Bargaining Elections [1] by Affiliation of Participating Unions, Fiscal Year 1958

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total	[2] 4,337	2,636	60 8	[2] 351,217	196,334	55 9	[2] 315,428	89 8	190,558	60 4
AFL-CIO	3,722	2,131	57 3	324,106	157,925	48 7	290,992	89 8	154,997	53 3
Unaffiliated	882	505	57.3	80,284	38,409	47 8	72,037	89 7	35 561	49 4

[1] The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification

[2] Elections involving 2 unions of different affiliations are counted under each affiliation, but only once in the total. Therefore, the total is less than the sum of the figures or the 2 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections[1] by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1958

Affiliation of participating unions	Number of elections				Number of employees involved (number eligible to vote)				Total valid votes cast
	Total	In which representation rights were won by—		In which no representative was chosen	Total	In units in which representation rights were won by—		In units where no representative was chosen	
		AFL-CIO affiliates	Unaffiliated unions			AFL-CIO affiliates	Unaffiliated unions		
Total	4,337	2,131	505	1,701	351,217	157,925	38,409	154,883	315,428
1-union elections									
AFL-CIO	3,177	1,792	----------	1,385	238,354	107,545	----------	130,809	213,750
Unaffiliated	579	----------	352	227	23,709	----------	12,924	10,785	21,364
2-union elections.									
AFL-CIO v AFL-CIO	260	199	----------	61	29,235	19,012	----------	10,223	26,586
AFL-CIO v unaffiliated	256	119	116	21	50,577	27,558	21,366	1,653	45,435
Unaffiliated v unaffiliated	36	----------	34	2	3,402	----------	3,355	47	3,072
3-union elections									
AFL-CIO v AFL-CIO v AFL-CIO	16	12	----------	4	3,212	1,926	----------	1,286	2,928
AFL-CIO v AFL-CIO v. unaffiliated	8	5	2	1	2,402	1,596	726	80	1,975
AFL-CIO v. unaffiliated v unaffiliated	2	1	1	0	85	47	38	0	84
4-union elections									
AFL-CIO v AFL-CIO v. AFL-CIO v AFL-CIO	2	2	----------	0	132	132	----------	0	127
AFL-CIO v. AFL-CIO v unaffiliated v unaffiliated	1	1	0	0	109	109	0	0	107

[1] For definition of this term, see table 13, footnote 1.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1958

Union affiliation	Elections participated in					Employees involved in elections (number eligible to vote)					Valid votes cast			
	Total	Resulting in certification		Resulting in decertification		Total eligible	Resulting in certification		Resulting in decertification		Total	Percent of total eligible	Cast for the union	
		Number	Percent of total	Number	Percent of total		Number	Percent of total eligible	Number	Percent of total eligible			Number	Percent of total cast
Total	153	59	38.6	94	61 4	10,124	5,625	55 6	4,499	44 4	9,082	89 7	4,295	47 3
AFL–CIO	131	55	42 0	76	58 0	9 434	5.477	58 1	3,957	41 9	8,457	89 6	4.055	47 9
Unaffiliated	22	4	18 2	18	81 8	690	148	21 4	542	78 6	625	90 6	240	38 4

Table 14A.—Voting in Decertification Elections, Fiscal Year 1958

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total	5,625	5,074	90 2	3,263	1 811	4,499	4,008	89 1	1,032	2,976
AFL–CIO	5,477	4,941	90 2	3,162	1,779	3,957	3,516	88 9	893	2,623
Unaffiliated	148	133	89 9	101	32	542	492	90 8	139	353

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1958

A COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by—				Elections in which no representative was chosen	
			AFL-CIO affiliates		Unaffiliated unions			
			Number	Percent	Number	Percent	Number	Percent
Total	4,337	100 0	2,131	100.0	505	100 0	1,701	100 0
1-9	883	20 4	483	22 7	140	27 7	260	15 3
10-19	797	18 4	408	19 1	102	20 2	287	16 9
20-29	539	12 4	273	12 8	53	10 5	213	12 5
30-39	379	8 7	173	8 1	39	7 7	167	9 8
40-49	256	5 9	125	5 9	24	4 7	107	6 3
50-59	170	3 9	81	3 8	15	3 0	74	4 4
60-69	157	3 6	71	3 3	18	3 5	68	4 0
70-79	123	2 8	56	2 6	14	2 8	53	3 1
80-89	100	2 3	45	2 1	10	2 0	45	2 6
90-99	90	2 1	34	1 6	12	2 4	44	2 6
100-149	309	7.1	150	7 0	29	5 7	130	7.6
150-199	146	3 4	63	3 0	12	2 4	71	4 2
200-299	147	3 4	66	3 1	7	1 4	74	4 4
300-399	85	2 0	33	1 6	9	1 8	43	2 5
400-499	50	1 2	25	1 2	9	1.8	16	9
500-599	28	.6	16	8	1	.2	11	.6
600-799	30	.7	10	.5	5	1 0	15	.9
800-999	16	.4	7	.3	2	4	7	.4
1,000-1,999	23	5	8	4	2	4	13	.8
2,000-2,999	7	.2	3	.1	1	.2	3	2
3,000-3,999	1	(1)	0	.0	1	2	0	.0
4,000-4,999	0	.0	0	.0	0	.0	0	0
5,000-9,999	1	(1)	1	(1)	0	.0	0	0
10,000 and over	0	.0	0	0	0	0	0	.0

B. DECERTIFICATION ELECTIONS

Total	153	100 0	55	100 0	4	100 0	94	100 0
1-9	20	13 1	6	10 9	0	0	14	14 9
10-19	24	15 7	5	9 1	0	0	19	20 2
20-29	29	18 9	7	12 7	1	25 0	21	22 3
30-39	12	7 8	2	3 6	2	50 0	8	8 5
40-49	13	8 5	5	9.1	0	0	8	8 5
50-59	10	6 5	3	5 5	1	25 0	6	6 4
60-69	5	3 3	2	3 6	0	0	3	3 2
70-79	6	3.9	5	9 1	0	0	1	1 1
80-89	4	2.6	2	3 6	0	0	2	2 1
90-99	1	7	0	0	0	.0	1	1 1
100-149	13	8 5	6	10 9	0	0	7	7 4
150-199	5	3 3	5	9.1	0	0	0	.0
200-299	6	3 9	4	7 3	0	.0	2	2 1
300-399	2	1.3	1	1 9	0	.0	1	1 1
400 and over	3	2 0	2	3 6	0	0	1	1 1

[1] Less than one-tenth of 1 percent.

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1958

Division and State [1]	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for—			Employees in units choosing representation
		AFL-CIO affiliates	Unaffiliated unions				AFL-CIO affiliates	Unaffiliated unions	No union	
Total	4,337	2,131	505	1,701	351,217	315,428	154,997	35,561	124,870	196,334
New England	242	104	27	111	34,473	31,762	15,111	4,794	11,857	20,516
Maine	21	10	2	9	5,373	4,969	2,336	1,175	1,458	3,645
New Hampshire	16	4	1	11	2,190	2,030	834	6	1,190	713
Vermont	8	3	2	3	580	560	296	36	228	307
Massachusetts	132	59	16	57	19,243	17,630	8,819	2,809	6,002	12,173
Rhode Island	21	8	3	10	994	923	501	193	229	745
Connecticut	44	20	3	21	6,093	5,650	2,325	575	2,750	2,933
Middle Atlantic	808	432	103	273	67,699	60,733	32,628	7,799	20,306	44,012
New York	339	183	54	102	23,575	20,716	11,724	2,324	6,668	15,434
New Jersey	176	104	13	59	12,895	11,212	6,657	1,201	3,354	9,566
Pennsylvania	293	145	36	112	31,229	28,805	14,247	4,274	10,284	19,012
East North Central	911	449	112	350	71,164	64,065	31,846	7,442	24,777	40,339
Ohio	276	137	33	106	22,884	20,856	10,606	2,654	7,596	13,336
Indiana	99	42	12	45	7,769	6,970	3,223	348	3,399	3,155
Illinois	246	109	35	102	18,908	16,607	7,172	1,432	8,003	8,732
Michigan	187	97	21	69	13,949	12,748	6,455	2,016	4,277	8,794
Wisconsin	103	64	11	28	7,654	6,884	4,390	992	1,502	6,322
West North Central	478	248	60	170	29,335	25,955	13,098	2,863	9,994	16,871
Iowa	81	43	7	31	6,943	6,072	4,116	302	1,654	5,312
Minnesota	106	53	14	39	4,304	3,802	1,676	238	1,888	1,766
Missouri	150	79	24	47	11,045	9,915	4,110	1,754	4,051	5,959
North Dakota	23	13	4	6	793	693	363	149	181	629
South Dakota	22	15	2	5	527	460	248	35	177	398
Nebraska	45	19	5	21	2,363	1,892	1,143	190	559	1,665
Kansas	51	26	4	21	3,360	3,121	1,442	195	1,484	1,142

South Atlantic	551	271	44	236	52,155	46,677	21,901	2,549	22,227	22,909
Delaware	15	11	1	3	1,193	1,005	632	27	346	988
Maryland	63	34	2	27	6,433	5,824	1,968	727	3,129	2,291
District of Columbia	55	35	5	15	4,301	3,453	1,885	58	1,510	1,647
Virginia	68	30	9	29	8,219	7,428	3,819	355	3,254	4,075
West Virginia	35	14	4	17	4,680	4,414	2,078	124	2,212	1,866
North Carolina	81	27	7	47	7,887	7,332	2,554	152	4,626	1,371
South Carolina	17	8	2	7	1,462	1,319	669	42	608	912
Georgia	86	45	4	37	8,437	7,518	3,737	420	3,361	3,642
Florida	131	67	10	54	9,563	8,384	4,559	644	3,181	6,117
East South Central	243	94	19	130	22,273	20,072	9,257	808	10,007	9,232
Kentucky	62	15	9	38	4,918	4,268	1,423	217	2,628	1,047
Tennessee	106	49	6	51	10 532	9,567	4,829	375	4,363	5,642
Alabama	54	23	3	28	4,336	3,998	1,981	147	1,870	1,769
Mississippi	21	7	1	13	2,487	2,239	1,024	69	1,146	774
West South Central	394	187	40	167	30,255	26,753	12,879	3,669	10,205	17,170
Arkansas	46	23	7	16	2,728	2,419	1,343	88	988	1,735
Louisiana	88	44	13	31	5,630	4,905	2,726	543	1,636	3,703
Oklahoma	43	17	1	25	4,021	3,716	1,694	13	2,009	994
Texas	217	103	19	95	17,876	15,713	7,116	3,025	5,572	10,738
Mountain	194	100	21	73	8,940	8,187	3,370	1,148	3,669	4,373
Montana	14	7	2	5	257	232	155	14	63	165
Idaho	21	14	3	4	520	481	267	77	137	471
Wyoming	11	2	3	6	302	278	111	12	155	117
Colorado	73	46	4	23	3,900	3,583	1,608	79	1,896	1,181
New Mexico	25	12	3	10	1,008	914	349	334	231	777
Arizona	31	13	2	16	2,318	2,112	716	574	822	1,540
Utah	16	5	4	7	568	526	148	53	325	103
Nevada	3	1	0	2	67	61	16	5	40	19
Pacific	450	209	64	177	30,624	27,567	12,843	3,756	10,968	17,297
Washington	62	39	5	18	2,003	1,759	1,080	72	607	1,306
Oregon	35	18	5	12	2,143	2,005	1,247	175	583	1,514
California	353	152	54	147	26,478	23,803	10,516	3,509	9,778	14,477
Outlying areas	66	37	15	14	4,299	3,657	2,064	733	860	3,615
Alaska	6	5	0	1	143	108	96	2	10	132
Hawaii	21	10	7	4	696	605	237	251	117	533
Puerto Rico	39	22	8	9	3,460	2,944	1,731	480	733	2,950
Virgin Islands	0	0	0	0	0	0	0	0	0	0
Canada	0	0	0	0	0	0	0	0	0	0

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 17.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1958

Industrial group [1]	Number of elections				Eligible voters	Valid votes cast
	Total	In which representation rights were won by—		In which no representative was chosen		
		AFL-CIO affiliates	Unaffiliated unions			
Total	4,337	2,131	505	1,701	351,217	315,428
Manufacturing	3,010	1,500	320	1,190	289,463	260,770
Ordnance and accessories	8	4	1	3	1,600	1,520
Food and kindred products	585	321	82	182	45,959	39,160
Tobacco manufacturers	6	3	0	3	1,889	1,504
Textile mill products	51	12	8	31	9,151	8,273
Apparel and other finished products made from fabrics and similar material	39	16	4	19	3,736	3,416
Lumber and wood products	128	74	5	49	11,574	10,328
Furniture and fixtures	101	43	9	49	12,222	11,259
Paper and allied products	151	69	16	66	19,940	18,347
Printing, publishing, and allied industries	150	92	16	42	4,147	3,771
Chemicals and allied products	172	85	22	65	12,876	12,008
Products of petroleum and coal	58	18	12	28	5,222	4,818
Rubber products	52	23	10	19	5,318	4,923
Leather and leather products	55	25	2	28	12,852	11,673
Stone, clay, and glass products	119	73	9	37	10,380	9,315
Primary metal industries	168	73	21	74	13,204	12,330
Fabricated metal products (except machinery and transportation equipment)	308	162	26	120	24,635	22,641
Machinery (except electrical)	341	154	37	150	26,572	23,942
Electrical machinery, equipment, and supplies	189	80	19	90	34,259	31,060
Aircraft and parts	50	21	4	25	5,801	5,184
Ship and boat building and repairing	26	15	2	9	3,508	3,326
Automotive and other transportation equipment	101	58	7	36	7,218	6,655
Professional, scientific, and controlling instruments	32	17	1	14	7,704	6,710
Miscellaneous manufacturing	120	62	7	51	9,696	8,607
Agriculture, forestry, and fisheries	0	0	0	0	0	0
Mining	58	25	6	27	7,885	7,104
Metal mining	29	14	2	13	5,532	4,981
Coal mining	1	0	1	0	40	37
Crude petroleum and natural gas production	8	2	0	6	413	372
Nonmetallic mining and quarrying	20	9	3	8	1,900	1,714
Construction	42	27	2	13	1,664	1,220
Wholesale trade	356	154	68	134	9,330	8,664
Retail trade	446	221	37	188	23,848	20,525
Finance, insurance, and real estate	14	5	1	8	474	394
Transportation, communication, and other public utilities	319	142	60	117	15,193	13,745
Highway passenger transportation	21	14	4	3	1,988	1,676
Highway freight transportation	107	26	29	52	2,598	2,267
Water transportation	39	20	11	8	2,001	1,891
Warehousing and storage	54	22	12	20	1,135	995
Other transportation	5	4	1	0	909	821
Communication	50	30	0	20	3,095	2,797
Heat, light, power, water, and sanitary services	43	26	3	14	3,467	3,298
Services	92	57	11	24	3,360	3,006

[1] Source Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1958

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, withdrawn, inactive, pending, etc
Under sec. 10 (j):				
(a) Against unions	6	3	1	1 settled, 1 pending.
(b) Against employers	1	1	0	0
Under sec 10 (l)	127	[1] 59	9	29 settled. 2 withdrawn. 30 alleged illegal activity suspended [2] 6 pending
Total	134	[3] 63	10	[4] 69.

[1] Injunctions granted in fiscal 1958 on 4 petitions were instituted in the prior fiscal year.
[2] Illegal activity suspended prior to filing of petition, no order to show cause issued
[3] One proceeding combining requests for 10 (j) and 10 (l) relief is reflected in the statistics for both 10 (j) and 10 (l).
[4] Includes 2 settled and 2 alleged illegal activity suspended in cases instituted in previous fiscal year.

Table 19.—Litigation for Enforcement or Review of Board Orders, July 1, 1957–June 30, 1958; and July 5, 1935–June 30, 1958

Results	July 1, 1957–June 30, 1958		July 5, 1935–June 30, 1958	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals	56	100 0	1,773	100 0
Board orders enforced in full	39	70 9	1,063	60 0
Board orders enforced with modification	4	7 2	350	19 7
Remanded to Board	4	7 2	42	2 4
Board orders partially enforced and partially remanded	1	1.8	13	.7
Board orders set aside	8	12 5	305	17 2
Cases decided by United States Supreme Court	10	100 0	114	100 0
Board orders enforced in full	8	80 0	78	68 4
Board orders enforced with modification	0	0	11	10 5
Board orders set aside	1	10 0	14	12 3
Remanded to Board	1	10 0	2	1 8
Remanded to court of appeals	0	0	7	6 7

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
2-CD-125	*Longshoremen's Association, Locals 976-4, 1277 and 1804 (Abraham Kaplan, Associated Painting Employers of Brooklyn, Inc)	June 25, 1956	10 (l)			Apr 25, 1957 (denied Aug. 29, 1956, reversed on appeal).		June 3, 1958	Dec. 5, 1957.
1-CC-148	*Teamsters, Local 340 (Maine Canned Foods, Inc.)	June 25, 1956	10 (l)				Aug. 28, 1956	Dec. 19, 1957	Withdrawn
1-CC-155	Carpenters et al. (J. G. Roy & Sons Co).	June 28, 1956	10 (l)			July 12, 1956		July 29, 1957	June 24, 1957.
3-CC-57	*Teamsters, Local 294 (E. G. DeLia & Sons).	July 26, 1956	10 (l)			(1)		Nov. 7, 1957	Apr. 29, 1957.
3-CC-53	Carpenters, Local 1016 (Boohner Lumber Co., Inc.)	July 26, 1956	10 (l)			(1)		Oct. 23, 1957	May 24, 1957.
2-CD-126	Lathers, Local 46 (Jacobson & Co., Inc.)	Aug. 1, 1956	10 (l)			May 1, 1957[3]		May 19, 1958	Feb. 19, 1958.
10-CC-255, 256[2], 12-CC-1-2	*Teamsters, Local 390 (U & Me Transfer).	Aug 6, 1956	10 (l)			Aug 15, 1956		Mar. 12, 1958	Dec. 14, 1957.
2-CC-391-392	Garment Workers, Ladies, Local 155 (James Knitting Mills, Inc , et al).	Aug. 20, 1956	10 (l)			Jan. 3, 1957		Jan. 2, 1958	May 7, 1957.
10-CC-257-262, 264-266[2], 12-CC-4-12	Bricklayers, Local 1, and Carpenters, Local 1685, et al (J Hilbert Sapp, Inc. & A C. West).	Aug. 21, 1956	10 (l)			(1)		June 3, 1958	Feb. 7, 1958
2-CD-133	Engineers, Operating, Local 133 (Building Contractors Association of New Jersey)	Sept. 4, 1956	10 (l)					Apr. 2, 1958	Aug 7, 1957.
15-CC-52	Engineers, Operating, Locals 406, 406A, 406B, and 406C (Jahncke Service, Inc).	Sept. 18, 1956	10 (l)			Oct. 5, 1956			June 30, 1958.
8-CD-8	Lathers and Local 2 (Acoustical Contractors Association of Cleveland)	Sept. 20, 1956	10 (l)			(1)		Feb. 26, 1958	Jan. 17, 1958
7-CC-49	Grand Rapids Building & Construction Trades Council et al (Mooi Roofing Co).	Sept 21, 1956	10 (l)			Nov. 3, 1956		Nov. 5, 1957	Nov. 19, 1956 (I R. compliance).
2-CC-394	Retail, Wholesale, Employees, District 65 (Class-Knit Co).	Sept 26, 1956	10 (l)			Oct. 8, 1956		Aug. 2, 1957	Jan 2, 1957.
19-CD-26	*Longshoremen and Warehousemen, Local 16 (Denali-McCray).	Oct. 12, 1956	10 (l)			Oct. 19, 1956		Nov. 5, 1957	June 7, 1957.

24-CC-42	*Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico (of Juan Diaz Andujar) et al. (Puerto Rico American Sugar Refinery Co)	Oct 24, 1956	10 (l)			Nov. 2, 1956		Aug. 26, 1957	Jan 17, 1957.
21-CC-238	*Teamsters, Laundry, Linen Supply & Dry Cleaning Drivers, Local 928 (Southern Service Co , Ltd).	Nov. 2, 1956	10 (l)				Dec. 3, 1956		Sept. 25, 1957.
16-CC-71	*Teamsters, Dallas General Drivers, Warehousemen & Helpers, Local 745 (Associated Wholesale Grocery of Dallas, Inc)	Nov. 14, 1956	10 (l)			Nov 23, 1956		Sept. 11, 1957	Aug 29, 1957.
2-CB-1841	*Longshoremen's Association (New York Shipping Association).	Nov. 21, 1956	10 (j)	Nov. 21, 1956		Dec 12, 1956		Oct. 18, 1957	Sept. 30, 1957
6-CC-125, CD-53.	Electrical Workers, Local 5 (West Penn Power Co.).	Dec. 4, 1956	10 (l)			(1)		Sept. 13, 1957	Settled 6-CC-125, withdrawn 6-CD-53
15-CC-59, 61	Seafarers, Atlantic & Gulf District (Salt Dome Production Co).	Dec. 15, 1956	10 (l)	Dec 15, 1956					Feb 14, 1958
11-CC-11, 12.	*Longshoremen, International Association, Local 1422 (Charleston Stevedoring Co et al).	Jan 3, 1957	10 (l)			(1)		Oct. 16, 1957	Aug 1, 1957.
4-CC-81-83	*Teamsters, Highway Truck Drivrs & Helpers, Local 107 (Coastal Tank Lines et al)	Jan. 15, 1957	10 (l)			Feb 2, 1957		Sept 6, 1957	July 24, 1957
2-CC-407	Garment Workers, Ladies, Local 155 (Packard Knitwear, Inc.)	Jan. 15, 1957	10 (l)				Feb 19, 1957		July 10, 1957.
8-CC-51-61	*Teamsters, Locals 24, 407, et al. (A C. E. Transportation Co).	Jan 21, 1957	10 (l)	Feb. 21, 1957		Jan 31, 1957		June 23, 1958	May 26, 1958.
12-CC-3	Electrical Workers, Local 349 (Biscayne Television Corp.)	Jan. 22, 1957	10 (l)			Jan 28, 1957		Nov. 26, 1957	Mar 20, 1957 (I R compliance)
5-CC-70	Hod Carriers, Local 980 (The Kroger Co).	Jan. 23, 1957	10 (l)			(1)		Jan. 2, 1958	Nov. 12, 1957.
10-CC-287, 288, CD-76, 77.	Sheet Metal Workers and Local 48 et al (Gadsden Heating & Sheet Metal)	Jan 31, 1957	10 (l)			Feb. 19, 1957		Dec. 18, 1957	July 26, 1957.
5-CC-71	Seafarers, Local 9, MEBA Local 11 (American Coal Shipping).	Feb. 7, 1957	10 (l)			Apr. 2, 1957			Dec 14, 1957.
2-CC-409	Garment Workers, Ladies, Local 602 (United Parcel Service of New York, Inc.).	Feb. 13, 1957	10 (l)			(1)		Sept 3, 1957	Settled.
24-CC-44, 46.	Longshoremen, District Council of Puerto Rico, et al (Editorial "El Imparcial, Inc" & Puerto Rico Steamship Association)	Mar. 6, 1957	10 (l)	Mar 6, 1957	Mar 6, 1957	Mar 11, 1957 (consent)		Oct. 1, 1957	Aug. 2, 1957.
9-CC-93	*Teamsters, Local 175 (McJunkin Corp.).	Mar. 11, 1957	10 (l)			(1)		Nov. 11, 1957	July 5, 1957
10-CC-308	Engineers, Operating, Local 926 (Armco Drainage & Metal Products).	Mar. 11, 1957	10 (l)			(1)		Apr 16, 1958	Mar. 24, 1958

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958—Continued

Case No	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
17-CC-57	*Teamsters, Building Materials and Construction, Ice and Coal Drivers, Local 659 (Associated General Contractors, Employers Association of Omaha, and Wilson Concrete Co)	Mar 12, 1957	10 (l)			(1)		Sept. 4, 1957	July 5, 1957
21-CC-257	Clothing Workers, Los Angeles Joint Board (Encino Shirt Co)	Mar 13, 1957	10 (l)			(1)		Apr. 11, 1958	July 1, 1957
14-CC-101	Machinists, District 9 (Concrete Transport Mixer)	Mar 25, 1957	10 (l)			(1)		Jan 29, 1958	Settled
13-CC-135-137	Barbers, Journeymen Barbers, Hairdressers, Cosmetologists & Proprietors (Chicago & Illinois Hairdressers).	Mar. 27, 1957	10 (l)			July 10, 1957			Settled.
5-CC-75, CD-24.	Plumbers, Local 5 (Construction Contractors Council)	Mar 28, 1957	10 (l)			(1)		Nov. 20, 1957	Dismissed.
5-CC-74	Engineers, Operating, Engineers Local 137, and Hod Carriers, Local 194 (Harry T Campbell Sons Corp).	Apr. 1, 1957	10 (l)			(1)		Nov. 5, 1957	May 21, 1957.
13-CC-131	*Teamsters, General Chauffeurs, Sales Drivers & Helpers Union, Local 423 (Gas Dealers Forum of Aurora)	Apr. 11, 1957	10 (l)			(1)		Sept. 19, 1957	Settled.
3-CC-64, CD-26.	Bricklayers, Local 11 (Building Trades Employers' Division of The Builders Exchange)	Apr. 16, 1957	10 (l)			(1)		Sept. 24, 1957	Withdrawn.
21-CC-258	*Teamsters, New Furniture and Appliance Drivers Warehousemen and Helpers, Local Union 196 (Biltmore Furniture Manufacturing Co.).	Apr. 18, 1957	10 (l)			May 8, 1957			June 30, 1958.
2-CD-126 (amended to include CD-140, 141).	Lathers, Local 46 (Jacobson & Co., Inc).	Apr. 25, 1957 [3]	10 (l)			May 1, 1957		May 19, 1958	Feb. 19, 1958.
24-CC-49	Longshoremen, Local 1901 (Puerto Rico Steamship Co)	May 2, 1957	10 (l)			May 8, 1957 (consent)		Mar. 6, 1958	Nov. 26, 1957.
9-CC-96	Bricklayers, Local 5 (Clark Construction Co).	May 7, 1957	10 (l)			(1)		Oct. 11, 1957	Settled
7-CC-58	Congress of Industrial Organizations, Jackson City Council (Sink Co).	May 13, 1957	10 (l)			(1)		Sept. 24, 1957	Settled.

2-CC-411, 412	Sheet Metal Workers, Local 28 (Flexible Tubing Corp & Wire-mold Co.).	May 21, 1957	10 (l)			(1)		Sept. 24, 1957	Withdrawn.
2-CD-146	Electrical Wkrs, Local 1212 (Columbia Broadcasting Corp)	May 24, 1957	10 (l)			July 1, 1957			
9-CC-100	Meatcutters, Local 227 (Gordon Foods, Inc.).	May 24, 1957	10 (l)			May 29, 1957 (consent)		Nov. 8, 1957	Withdrawn.
6-CC-132	Carpenters, District Council (Wendnagel & Co).	June 10, 1957	10 (l)			(1)		Nov. 12, 1957	Settled.
17-CC-59	Plumbers, Local 8 (United Contractors & Kruse Plumbing Co.).	June 18, 1957	10 (l)			(1)		Feb. 5, 1958	Oct 29, 1957 (I. R. compliance).
2-CC-420, CD-148.	Electrical Workers, Local 3 (Brewery Dry Dock Co)	June 20, 1957	10 (l)			July 25, 1957		Feb. 28, 1958	Withdrawn.
2-CC-424	Electrical Workers, Local 463 (Telechrome Manufacturing Corp.).	June 20, 1957	10 (l)			(1)		Feb. 28, 1958	Nov. 11, 1957.
30-CC-30	Brewery Workers, Local 366 (Adolph Coors Co)	June 25, 1957	10 (l)			July 29, 1957			
2-CC-436	*Teamsters, Eastern Conference of Teamsters, Local 391 Winston-Salem, N. C, and Local 863 of Newark, N J., et al. (Holly Farms Poultry Co).	July 3, 1957	10 (l)			(1)		Oct. 18, 1957	Withdrawn.
13-CC-139, CD-46.	Roofers, Local 11 (Fry & Sons)	July 8, 1957	10 (l)			(1)		Dec. 13, 1957	Nov. 26, 1957.
10-CC-315	*Teamsters, Local 515 (Chattanooga Warehouse & Cold Storage Co).	July 9, 1957	10 (l)	July 12, 1957	July 31, 1957	July 31, 1957			
4-CC-86	*Teamsters, Local 596 (Bilt-Well Boat Trailer Co.).	July 11, 1957	10 (l)			(1)		Jan. 9, 1958	Settled.
13-CB-505	*Mine Workers, District 50, Region 42, District 50, United Mine Workers of America, Independent and Westclox Workers Local 12573, District 50, United Mine Workers of America (General Time Corp, Westclox Division).	July 11, 1957	10 (j)			July 26, 1957		Nov. 4, 1957	Nov. 15, 1957.
3-CC-69, 70	*Teamsters, Local 558 (Colonial Super Markets et al).	July 15, 1957	10 (l)			(1)		Dec 31, 1957	Settled.
9-CC-102, CD-30, CB-353.	Parkersburg Building & Construction Trades Council et al. (Howard Price & Co)	July 16, 1957	10 (l)			July 19, 1957 (consent)			Jan. 23, 1958.
14-CD-71	*Teamsters, Local 610, and St. Louis Paper Handlers Local 16 (Pulitzer Publishing Co).	July 16, 1957	10 (l)			(1)		Aug. 1, 1957	Withdrawn.
39-CC-37	*International Die Sinkers Conference and its Lodge 410 (General Metals Corp).	July 18, 1957	10 (l)			(1)			June 4, 1958
2-CC-432	Engineers, Operating, Locals 30, 30A, and 30B (Zinsser & Co., Inc).	July 18, 1957	10 (l)			(1)			Nov. 6, 1957.
21-CC-270	Carpenters, Local 929, et al. (Mengel Co et al).	July 23, 1957	10 (l)			(1)		Mar. 31, 1958	June 30, 1958.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
17-CC-66	*Teamsters, Local 696 and Manhattan Trades and Labor Assembly (Walters Sands Co, Inc).	July 24, 1957	10 (l)			(1)		Nov. 21, 1957	Oct. 18, 1957.
10-CC-316	*Teamsters, Local 515 (Baggett Transportation Co).	July 24, 1957	10 (l)			Aug 6, 1957			
33-CC-16	Atomic Projects & Production Workers Metal Trades Council et al (Associated General Contractors of America, New Mexico Bldg Branch)	July 26, 1957	10 (l)			(1)			Apr. 14, 1958.
36-CC-50	Woodworkers, Local 6-221 (Medford Corp)	July 26, 1957	10 (l)			Aug. 6, 1957		Jan. 27, 1958	Settled.
16-CC-74	*Teamsters, Local 886 (Ryan Freight Lines).	July 30, 1957	10 (l)			(1)		Jan. 15, 1958	Nov. 16, 1957 (I R. compliance)
1-CC-180	Springfield Building & Construction Trades Council et al. (Leo Spear Construction Co.)	July 30, 1957	10 (l)			Aug. 24, 1957		May 29, 1958	Apr. 25, 1958.
13-CC-147	*Teamsters, Local 179 (Alexander Warehouse & Sales)	July 30, 1957	10 (l)			Aug. 7, 1957			
10-CC-317, 318, CD-88, 89.	Sheet Metal Workers, Local 48, and Agent T. E. Reid (Acousti Engineering of Alabama)	Aug 1, 1957	10 (l)	Aug. 1, 1957	Aug 5, 1957	Aug 5, 1957 (consent)			
13-CC-143	*Teamsters, Local 364 (The Light Co)	Aug 2, 1957	10 (l)				Sept. 9, 1957		
1-CC-177	Boston Building & Construction Trades Council et al (J. J Reddington Electric Service).	Aug. 2, 1957	10 (l)			(1)		May 15, 1958	Feb 28, 1958.
32-CC-18	*Teamsters, Local 984 and 667 (Humko Co., Inc).	Aug 5, 1957	10 (l)			Sept. 4, 1957			
21-CC-268, CD-43.	Lathers, Local 252 (James I Barnes Constr).	Aug 8, 1957	10 (l)			Sept. 10, 1957			
2-CC-437	*Teamsters Locals 707 and 1205 (Atlantic-Pacific Manufacturing Corp)	Aug 14, 1957	10 (l)			Sept 24, 1957[4]			
19-CC-101	Plumbers, Local 243 (Haggerty-Messmer)	Aug 14, 1957	10 (l)			(1)		Nov. 13, 1957	Nov. 6, 1957.
15-CC-70	Garment Workers, Ladies (Lillian Russell, Inc).	Aug 14, 1957	10 (l)			Aug 22, 1957		Nov 14, 1957	Withdrawn.
2-CD-150	Electrical Workers and Local 166 (General Dynamics Corp)	Aug 15, 1957	10 (l)			Sept. 4, 1957		Nov. 20, 1957	Withdrawn.
24-CC-50	Longshoremen, District Council of Puerto Rico (Valencia Service Co)	Aug 22, 1957	10 (l)			(1)		Dec. 27, 1957	Nov. 26, 1957.

16-CC-76, 79.	Machinists Local Lodge 889, Oklahoma State Building Trades Council, and Lawton Building & Construction Trades Council (Freeman Construction Co. et al)	Aug. 26, 1957	10 (1)	Aug. 26, 1957	Sept. 13, 1957	Sept 13, 1957	----------	----------	
16-CC-77, 78.	*National Association Broadcasters, Engineers & Technicians, and Local 48 (Central Plains Enterprizes, Inc).	Aug. 29, 1957	10 (1)	Sept. 4, 1957	Sept 25, 1957	Sept. 25, 1957	----------	----------	
5-CC-87	*Teamsters, Local 639 (Dixie Janitor Supply Co)	Sept. 3, 1957	10 (1)	----------	----------	Nov. 20, 1957	----------	May 14, 1958	Apr. 17, 1958.
6-CC-145	Electrical Workers, Local 5 (Franklin Electric Construction).	Sept. 3, 1957	10 (1)	----------	----------	(1)	----------	----------	
2-CD-155	Plumbers and Local 105 (General Dynamics Corp).	Sept 4, 1957	10 (1)	----------	----------	(1)	----------	Apr. 28, 1958	Withdrawn.
13-CC-151	Typographical Union, Chicago Typographical Union 16 (Well-Linn Printing Co.	Sept. 4, 1957	10 (1)	----------	----------	(1)	----------	Oct. 3, 1957	Withdrawn.
10-CC-342	*Teamsters, Local 728 (Whitley Construction Co)	Sept. 6, 1957	10 (1)	Sept. 6, 1957	Sept. 17, 1957	Sept. 17, 1957	----------	Apr. 18, 1958	Mar. 4, 1958.
39-CC-40	Engineers, Operating, Local 450 (J. E. Cook Steel Co).	Sept. 6, 1957	10 (1)	Sept. 9, 1957	Sept. 17, 1957	Sept. 17, 1957	----------	----------	
18-CC-45	Engineers, Operating Local 49, and Teamsters Local 874 (Osmundson Bros)	Sept 9, 1957	10 (1)	----------	----------	(1)	----------	Feb. 10, 1958	Settled
1-CC-182	Plumbers, Local 53 (Larkin Co)	Sept. 16, 1957	10 (1)	----------	----------	(1)	----------	Jan. 27, 1958	Settled.
10-CC-319	*Teamsters, Local 327 (Algernon Blair Constr).	Sept. 18, 1957	10 (1)	----------	----------	(1)	----------	Jan. 23, 1958	Jan. 6, 1958.
5-CC-88	*Teamsters, Local 246 (Mayco, Inc)	Sept 19, 1957	10 (1)	----------	----------	Oct. 23, 1957	----------	----------	
35-CC-45	*Teamsters, Local 691 (Morgan Drive-Away, Inc)	Sept 20, 1957	10 (1)	----------	----------	Nov. 1, 1957	----------	----------	
22-CC-4	*Teamsters, Milk Drivers & Delivery Union, Local 680 (Crowley's Milk Co , Inc.).	Sept. 25, 1957	10 (1)	----------	----------	(1)	----------	----------	
16-CC-81	*Teamsters, Tulsa General Drivers, Warehousemen & Helpers Union, Local 523 (Cooper Supply Co).	Sept 26, 1957	10 (1)	----------	----------	----------	Oct. 17, 1957	----------	
1-CC-190	Fitchburg Building Trades Council et al (Seppala & Aho Construction)	Oct. 1, 1957	10 (1)	----------	----------	(1)	----------	Mar. 12, 1958	Settled
20-CC-141	*Teamsters, Local 6341 (Devine Storage & Moving).	Oct. 1, 1957	10 (1)	----------	----------	(1)	----------	Apr. 7, 1958	Mar. 28, 1958.
19-CD-29	Carpenters, Local 1849, et al. (Montag-Halvorson-Austin & Associates).	Oct. 4, 1957	10 (1)	----------	----------	(1)	----------	----------	
1-CC-186	Bridge, Structural Iron Workers, Local 501 (Oliver Whyte Co)	Oct 10, 1957	10 (1)	----------	----------	(1)	----------	May 29, 1958	May 8, 1958.
2-CC-444, CD-157-159.	*Teamsters, Local 282 (Building Trades Employers Association of L I., Inc)	Oct. 11, 1957	10 (1)	----------	----------	(1)	----------	June 10, 1958	Mar 24, 1958.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958—Continued

Case No	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
17-CD-25	Carpenters, Local 978, and Hod Carriers, Local 676, et al. (Markwell & & Hartz Contractors)	Oct 12, 1957	10 (l)			Oct 22, 1957			
3-CC-68, 75	*Teamsters, Local 118 (Scobel Chemical Co)	Oct 14, 1957	10 (l)			Dec 27, 1957			
1-CC-184	Carpenters, Local 7, et al (Rogers Heating & Engineering Co)	Oct 18, 1957	10 (l)			(1)		June 9, 1958	Apr 25, 1958.
1-CC-191	Building Construction Trades Council of Metropolitan District, etc (Solimando, M)	Oct. 21, 1957	10 (l)				Oct 24, 1957	Apr 25, 1958	Settled
9-CC-104, 105, CD-31, 32	*Teamsters, Local 697 (R O Wetz Transportation & McJunkin)	Oct 23, 1957	10 (l)			Nov 1, 1957			
7-CC-61, 65-69, 13-CC-159, 161.	Carpenters, Local 998 (Endicott Church Furniture, Inc)	Oct 23, 1957	10 (l)			(1)			
1-CD-47	Plumbers, Local 53 (Larkin Co)	Oct 25, 1957	10 (l)			(1)		Jan 27, 1958	Settled
30-CC-32	Meat Cutters, Local 634 Dennison Poultry & Egg Co)	Oct 28, 1957	10 (l)			(1)		Jan. 30, 1958	Jan 29, 1958.
9-CC-124, 125	Sheet Metal Workers Local 98 (York Corp)	Oct 29, 1957	10 (l)			(1)			
18-CC-44-46	Marine Engineers Local 6, etc (W H. Barber Co)	Oct 31, 1957	10 (l)			(1)		Feb 10, 1958	Settled.
2-CC-443	*Teamsters, Local 815 (Coty, Inc)	Nov. 1, 1957	10 (l)			(1)		Apr 30, 1958	Settled.
33-CC-24	Carpenters, Local 511 (Associated General Contractors, et al)	Nov 4, 1957	10(l)			(1)			June 26, 1958.
39-CC-42	Carpenters, Roofers Local 1425 (Henke & Pillot, Division of Kroger Co.)	Nov 4, 1957	10(l)			(1)			Dec 18, 1957 (I R compliance)
22-CD-5, 6	Engineers, Operating Local 825 (Charles Simkin & Sons, Inc)	Nov 4, 1957	10(l)	Nov 18, 1957	Dec. 30, 1957	Dec 30, 1957			May 7, 1958
15-CC-71	*Seafarers et al (Superior Derrick Corp)	Nov 6, 1957	10(l)			Dec 21, 1957			
11-CA-1071	Darlington Manufacturing Co (Textile Workers).	Nov. 6, 1957	10(j)	Nov. 6, 1957	Nov 27, 1957	Nov 27, 1957 (consent)			Dec 16, 1957
36-CC-51	*Teamsters, Local 324 (Truck Operators League of Oregon)	Nov 14, 1957	10(l)			(1)			
9-CC-126, 129	Hatters (Louisville Cap Co.)	Nov. 15, 1957	10(l)				Dec. 13, 1957		
13-CC-157	Carpenters, Local 1128 (Andersen Corp)	Nov 26, 1957	10(l)			(1)		Feb 4, 1958	Jan 30, 1958
13-CC-158	Carpenter (Del-Mar Cabinet Co , Inc)	Nov 27, 1957	10(l)				Mar 12, 1958		

8-CD-12	*American Wire Weavers Protective Association (The Lindsay Wire Weaving Co)	Nov. 27, 1957	10(l)				Dec. 30, 1957	Mar. 24, 1958	May 18, 1958.
21-CC-279	Bakery Workers, Local 400 (Beaudry Bros. Candy Co)	Dec 2, 1957	10(l)			Dec. 30, 1957		May 12, 1958	Apr. 1, 1958.
3-CC-77	*Teamsters, Local 182 (Alling & Cory Co).	Dec 10, 1957	10(l)			Dec. 16, 1957			
7-CC-67	Carpenters (National Door & Trim Co)	Dec. 11, 1957	10(l)			(1)		Mar 5, 1958	Settled.
17-CC-60	*Teamsters, Locals 554 and 147 (Clark Bros Transfer Co)	Dec 12, 1957	10(l)			(1)			
9-CC-134	*Teamsters, Local 89 (Louisville Cap Co.).	Dec 13, 1957	10(l)			(1)			Settled.
4-CC-92	Retail, Wholesale Employees, District 65 (Cellini Shoes, Inc).	Dec 16, 1957	10(l)			Dec 27, 1957			May 28, 1958
21-CC-281, 282	Electrical Workers, Local 11 (Hydro Co , d/b/a Paul Gordon Corp)	Dec 17, 1957	10(l)			(1)		Apr. 7, 1958	
2-CC-448	Maritime Union (Moore-McCormack Lines, Inc).	Dec 20, 1957	10(l)			Dec 30, 1957			
19-CC-104, 106	Carpenters, Local 2247 (Fuller Paint & Glass Co).	Dec. 27, 1957	10(l)			Jan 6, 1958		June 14, 1958	May 15, 1958.
13-CB-518	*Teamsters, Local 442, 733 (Rudy Schroeder & Son)	Dec. 27, 1957	10(j)			(1)			May 16, 1958.
9-CC-131, 132	Radio Artists (L B. Wilson, Inc)	Dec 30, 1957	10(l)			Jan. 10, 1958			
21-CC-276	*Longshoremen & Warehousemen Union, Fishermen's Union, Local 33 (Seine & Line Fishermen's Union of San Pedro)	Jan 6, 1958	10(l)			(1)		Mar. 31, 1958	Mar. 24, 1958.
2-CC-449	*Teamsters, Local 294 (Bonded Freightways, Inc)	Jan. 14, 1958	10 (l)				Jan. 23, 1958		
9-CC-133	*Teamsters, Local 175 (McJunkin Corp)	Jan. 15, 1958	10 (l)			Feb 17, 1958			
14-CC-114	*Teamsters, Local 688 (Bachman Machine Co).	Jan. 20, 1958	10 (l)	Feb 20, 1958	Apr. 18, 1958	Apr. 18, 1958			
3-CC-80	Plumbers, Local 204 (Vincent J Smith, Inc).	Feb 5, 1958	10 (l)			Feb 12, 1958 (consent)		June 21, 1958	Settled.
1-CC-196	*Teamsters, Local 340 (Viner Brothers, Inc).	Feb 5, 1958	10 (l)				Apr. 1, 1958		
1-CD-49	Typographical Union and Local 165 and its scale committee (Worcester Telegram Publishing Co)	Feb 6, 1958	10 (l)			(5)			
16-CC-84	*Teamsters, Local 886 (Page Airways, Inc).	Feb 7, 1958	10 (l)	Feb. 7, 1958	Feb. 11, 1958	Feb. 11, 1958			
15-CD-8	Typographical Union and Local 27 (Heiter-Stark Printing Co)	Feb 14, 1958	10 (l)	Feb. 14, 1958	Mar. 4, 1958	Mar. 4, 1958			
8-CC-68	Sheet Metal Workers and Locals 70, 65, 5, 105, and 73 (Burt Manufacturing Co).	Feb 17, 1958	10 (l)			Apr 23, 1958			
8-CC-68	Sheet Metal Workers Locals 70, 65, 5, 105, and 73 (Burt Manufacturing Co)	Feb. 17, 1958	10 (j)			Apr. 23, 1958			

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
2-CC-452, CD-161.	Stage Employees, Local 1 (Columbia Broadcasting System)	Feb 18, 1958	10 (l)			Feb. 18, 1958 (consent)			
1-CB-429	Typographical and Local 38 (Haverhill Gazette Co)	Feb. 25, 1958	10 (j)			Mar. 19, 1958 [6]	May 7, 1958	June 6, 1958	
7-CC-70	*Teamsters, Local 458 (Southern States Lumber Co)	Feb. 26, 1958	10 (l)			(1)		June 27, 1958	May 12, 1958.
22-CC-9	Electrical Workers, Local 367, Engineers, Operating, Local 825, et al (Board of Education of the town of Philipsburg)	Feb 28, 1958	10 (l)			Apr. 17, 1958			Withdrawn.
10-CC-373, 374, CD-91, 92	Plumbers, Local 72 (Reeves Ditching & Contracting Co. and Wrenn Bros , Inc).	Mar. 6, 1958	10 (l)			(1)			Settled.
22-CC-10	Steel Workers and Local 3852 (Newark Brass & Iron Foundry)	Mar. 6, 1958	10 (l)			Mar 18, 1958			Settled.
10-CC-375, 376	*Teamsters, Local 728 (Georgia Highway Express).	Mar 10, 1958	10 (l)	Mar. 10, 1958	Mar. 26, 1958	Mar. 26, 1958			
18-CC-48	*Teamsters, Local 116, et al. (W. W. Wallwork Fargo, Inc)	Mar 10, 1958	10 (l)				June 23, 1958		
35-CD-28	Plumbers, Local 157 (Home Packing Co , Inc.).	Mar 14, 1958	10 (l)	Mar. 14, 1958		Mar. 18, 1958 (consent)			June 19,1958
3-CC-83, CD-34	Plasterers, Local 519 (O R Bell)	Mar. 18, 1958	10 (l)			(1)		Apr. 16, 1958	Withdrawn.
18-CC-50	Carpenters, Local 106, and Sheet Metal Workers, Local 45, and Desmoines Building Trades Council, et al. (Fred Maytag II).	Mar 19, 1958	10 (l)			(1)		May 23, 1958	Withdrawn
9-CC-152, 153	Painters, Local 1195, and Charleston Building & Construction Trades Council (Pittsburgh Plate Glass Co.).	Mar 21, 1958	10 (l)			Apr 18, 1958 (Painters only).			
36-CC-52	Machinists, District Lodge 24 (Industrial Chrome Plating Co).	Mar. 21, 1958	10 (l)	Mar 27, 1958	Apr 23, 1958	Apr. 23, 1958			
4-CC-94, 97	Packinghouse Workers, Local 80-A, and Joseph Speight, President, and Joseph Culongello, Business Agent (Campbell Soup Co).	Mar 25, 1958	10 (l)	Mar. 26, 1958	Apr. 2, 1958	Apr 2, 1958 (consent)		June 4, 1958	Withdrawn.
7-CC-70	*Teamsters, Local 458 (Southern States Lumber Co., Inc).	Mar 27, 1958	10 (l)			(1)		June 27, 1958	May 12, 1958.
39-CC-44	Retail Clerks (Montgomery Ward & Co)	Apr 1, 1958	10 (l)			May 19, 1958			

21-CC-280, 287, CD-48	Retail Clerks and Local 770 (Food Employers Council, Inc).	Apr. 3, 1958	10 (1)			May 9, 1958			
4-CC-98	*Teamsters, Local 830 (Delaware Valley Beer Distributors).	Apr. 3, 1958	10 (1)	Apr. 3, 1958	May 1, 1958	May 1, 1958			
12-CC-26	Hod Carriers, Local 1019 (Thad Sizemore)	Apr. 9, 1958	10 (1)			(1)			Settled.
2-CC-455	Electrical Workers, Local 1212 (Joseph P. Blitz Co.).	Apr. 16, 1958	10 (1)			(1)		June 23, 1958	Withdrawn.
22-CC-11	Distillery Workers, Local 1 (Leonard Kreusch, Inc)	Apr. 18, 1958	10 (1)	Apr. 18, 1958	Apr. 23, 1958	Apr. 23, 1958 (consent)			
22-CD-13	Hod Carriers, Local 147 (J. Rich Steers, Inc).	Apr. 21, 1958	10 (1)			(1)			Withdrawn.
2-CC-456, CD-165	*Teamsters, Local 807, et al. (New York Shipping Association, Inc , and its Member Employers).	Apr. 24, 1958	10 (1)	Apr. 24, 1958	Apr. 28, 1958	Apr 28, 1958 (consent)			
7-CC-72	Carpenters, Local 982, et al. (Robert Hawes Co.)	Apr. 24, 1958	10 (1)			May 7, 1958			
33-CB-104	Sheetmetal Workers, Local 49, (New Mexico Sheet Metal)	May 1, 1958	10 (j)			May 9, 1958			
13-CC-168-172, 180	*Longshoremen International Brotherhood Local 19 and M M P. Great Lakes District (Chicago Calumet Co., P. & V Atlas Marine Corp., North Pier Terminal).	May 1, 1958	10 (1)	May 2, 1958	June 17, 1958	June 17, 1958			
22-CC-12	Garment Workers, Ladies, Local 155 (Moreelee Knitting Mills, Inc).	May 1, 1958	10 (1)	May 12, 1958	May 16, 1958	May 16, 1958 (consent)			
2-CC-460, CD-166.	Electrical Workers, Local 203 (General Electric Co.)	May 7, 1958	10 (1)			(1)			
6-CC-157-168.	Butler Building Trades Council, and Carpenters, District Council of Pittsburgh and Vicinity (Fernway Homes, Inc).	May 9, 1958	10 (1)			(1)			Settled.
9-CC-154	Carpenters, Ohio Valley District Council (Door Sales & Installation Co).	May 14, 1958	10 (1)			(1)			Settled.
18-CC-54	*Teamsters, Local 238 (Boyd & Rummelhart Plumbing & Heating)	May 28, 1958	10 (1)			June 6, 1958			
9-CC-157	Electrical Workers, Local 683 (Joseph Skilden & Co , Garwick & Ross, Inc., and Robert W. Setterlin & Sons)	May 28, 1958	10 (1)			(1)			
12-CC-27-29	*Teamsters, Local 79, and J W. Hughes, John Walker, Manuel Fernandez, Agents (Ryder Systems, Inc , Florida Retail owned Grocers, Inc., Barker & Co.).	June 2, 1958	10 (1)			June 6, 1958			
9-CC-155, CD-34.	Plumbers, Local 651 and Lowell Hunt, Business Agent (Maryland Foundation Corp.).	June 4, 1958	10 (1)			(1)			

See footnotes on the following page.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1958—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
18-CC-55	*Teamsters, Warehouse Drivers & Helpers Union, Local 359, and Material Ice & Coal Drivers 221, and Warehouse Employees Local 503 (Ruberoid Co, The).	June 5, 1958	10 (l)			June 20, 1958			Withdrawn.
2-CC-464	*Amalgamated Union, Local 5 UAW Independent (Dynamic Manufacturing Corp).	June 9, 1958	10 (l)						
35-CC-47-51, CD-29-33.	Carpenters, Carpenters Local 1341, and Jake Hall Bros, Agent (Clark Construction Co)	June 9, 1958	10 (l)			(1)			
18-CC-57	Eau Claire and Vicinity Bldg Trades Council, Ralph Moe, Robert Powers (St Bridget's Catholic Congregation, Inc)	June 11, 1958	10 (l)						
1-CD-57	Electrical Workers, Local 90, et al Southern New England Telephone Co)	June 11, 1958	10 (l)						
2-CD-167	*Sailors Union of North America (Mack Klosty & Co, Inc).	June 19, 1958	10 (l)						
22-CC-13	Clothing Workers, Washable Clothing, Sportswear, etc, Local 169 (Max Rubin T/A Made Rite Baby Togs)	June 23, 1958	10 (l)						
2-CB-2216	Electrical Workers, Local 1922 (Mid-Island Electrical Sales Corp, Mid-Island Lighting Fixtures Co, Inc)	June 27, 1958	10 (j)						
22-CC-14, CD-18.	*Teamsters, Local 478 (United States Steel Corp) (United States Steel Supply Division).	June 27, 1958	10 (l)						

*All unions are affiliated with AFL-CIO except those indicated by an asterisk.
[1] Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.
[2] Upon establishment Region 12 case transferred to that region from Region 10.
[3] Amendment to 2-CD-126 counted as new 10 (l) petition because of the reactivation of 10 (k) hearing, 2-CD-126 petition originally filed Aug 1, 1956.
[4] Injunction granted only as to Local 1205.
[5] Injunction granted only as to AFL-CIO Machinists Local Lodge 889.
[6] Hearing suspended pending Board determination under sec 10 (k).
[7] Court initially determined 10 (j) relief warranted, withheld issuance of injunction upon respondents' withdrawal of alleged illegal demands, and dismissed petition when parties resumed negotiations on ground injunctive relief no longer required