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OF THE

TIONAL LABOR RELATIONS BOARD

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ne Board and court decisions on the National Labor Relations Act,
ne statements made herein are of course in no sense official rulings or
ronouncements of the Board.

TABLE OF CONTENTS

DEFINITIONS

GRICULTURAL EMPLOYEES. (*See* § 11.)
COMMERCE. (*See* JURISDICTION.)
EMPLOYEES.
A. IN GENERAL.
1 B. "APPLICANTS" AS EMPLOYEES.
C. WHO HAVE CEASED WORK. [*See* INVESTIGATION AND CERTIFICATION §§ 55–61.8 (as to eligibility of employees who have ceased work).]
1. In general.
2. Prior to effective date of Act.
3. As result of current labor dispute. [*See* §§ 71–81 (as to what constitutes a labor dispute).]
4. As result of unfair labor practices.
5. As result of non-discriminatory lay-off. [*See* §§ 13–20 (as to the effect of intermittent employment).]
6. As result of illness, injury, vacation, military leave, or other causes.
7. As result of discharge for misconduct or breach of contract.
8. Who have subsequently obtained substantially equivalent employment. [*See* REMEDIAL ORDERS § 121 (as to effect of the obtaining of substantially equivalent employment upon reinstatement orders).]
D. AGRICULTURAL EMPLOYEES.
E. OF MULTIPLE OR SUCCESSIVE EMPLOYEES. [*See* §§ 34–41 (as to the "employer" problem).]
F. EFFECT OF INTERMITTENT EMPLOYMENT UPON EMPLOYEE STATUS. [*See* INVESTIGATION AND CERTIFICATION §§ 61.9–69 (as to eligibility of employees as affected by the nature and the tenure of their employment).]
1. Temporary and seasonal employees.
2. Part-time employees.
3. Intermittent and casual employees.
.1 G. MARITIME EMPLOYEES. [*See* INVESTIGATION AND CERTIFICATION § 66 (as to maritime employees eligible to vote).]
H. INDEPENDENT CONTRACTORS.
I. EMPLOYEES ALLIED WITH MANAGEMENT. [*See* UNIT §§ 86–90.5 (as to units confined to special classes of employees); §§ 101–110.9 (as to exclusion or inclusion of employees allied with management); UNFAIR LABOR PRACTICES §§ 11–20 (as to the responsibility of employers for the activities of special classes of employees); §§ 411–420 (as to persons afforded protection under the Act).]
1. In general.
1 2. Supervisory employees.
2 3. Confidential employees.
3 4. Plant-protection employees.
4 5. Stockholders.

DEFINITIONS

ICULTURAL EMPLOYEES. (*See* § 11.)

MMERCE. (*See* JURISDICTION.)

MPLOYEES.

A. IN GENERAL. [*See* LITIGATION DIGEST. EMPLOYEE. *Generally.*]

The statutory definition of an employee as defined in Section 2 (3) of the Act is of wide comprehension, and although anti-union conduct of managerial or supervisory employees has been repeatedly held to be proof that the employer has engaged in unfair labor practices, it does not follow that managerial or supervisory employees are not employees within the meaning of Section 2 (3) of the Act. *Atlantic Greyhound Corp.*, 7 N. L. R. B. 1189, 1196.

The primary consideration in determining whether certain persons are "employees" is whether effectuation of the declared policy and purposes of the Act comprehends securing to the individual the rights guaranteed and protection afforded by the Act, and this matter is not conclusively determined by a contract which adverts to and purports to establish the status of such persons as independent contractors rather than employees, for public interest in the administration of the Act permits an inquiry into the material facts and substance of the relationship. *Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1274, 1275.

B. "APPLICANTS" AS EMPLOYEES.

Person hired but who was "discharged" before he was to have commenced work, *held* to be an employee within the meaning of the Act. *Cape Cod Trawling Corp.*, 23 N. L. R. B. 208. See also: *Knoxville Publishing Co.*, 12 N. L. R. B. 1209, consent decree, enforced as modified, November 8, 1940 (C. C. A. 6).

C. WHO HAVE CEASED WORK. [*See* INVESTIGATION AND CERTIFICATION §§ 55–61.8 (as to eligibility of employees who have ceased work) and LITIGATION DIGEST. EMPLOYEE: *Status continues in spite of.*]

1. *In general.*

3 2. *Prior to effective date of Act.*

Where a strike began before the effective date of the Act, and continued after the Act went into effect, at which time the employer engaged in unfair labor practices, the employees who had ceased work remained employees for the purposes of the Act. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 145 (C. C. A. 9), modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 575.

Standard Lime & Stone Co. v. *N. L. R. B.*, 97 F. (2d) 531, 534, 535 (C. C. A. 4), setting aside 5 N. L. R. B. 106; *Jeffery DeWitt Insulator Co.* v. *N. L. R. B.*, 91 F. (2d) 134, 137 (C. C. A. 4), enforcing 1 N. L. R. B. 618, cert. denied 302 U.S. 731. (Employees who had gone on strike prior to the effective date of the Act retained their status as such within the meaning of Section 2 (3) after the Act had been passed, despite the fact that the employer had resumed operations and warned the strikers that unless they returned to work they would no longer be considered as employees.)

Phelps Dodge Corp., 19 N. L. R. B. 547, enforced as modified 113 F. (2d) 202 (C. C. A. 2), modified and remanded 313 U. S. 177. (Persons who prior to the effective date of the Act went on strike, who continued to strike after the effective date of the Act, and whose jobs were filled before the effective date of the Act, *held* employees.)

Employees laid off prior to effective date of Act and discriminatorily refused reinstatement after the Act had gone into effect, *held* employees within meaning of Section 2 (3). *Radiant Mills Co.*, 1 N. L. R. B. 274, 280, 281. See also: *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1.

Employees furloughed prior to effective date of Act and discriminatorily refused reinstatement after the Act had gone into effect, *held* employees within meaning of Section 2 (3). *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 337.

Persons whose employment with respondent ceased as a result of shut-down of mine due to economic conditions in 1934 [no longer] retained their status as employees at the time the respondent resumed operations in 1937. *Nevada Consolidated Copper Corp.*, 26 N. L. R. B. 1182, enforced 62 S. Ct. 960, reversing (work-relief modification) 122 F. (2d) 587 (C. C. A. 10).

4 3. *As result of current labor dispute.* [*See* §§ 71–81 (as to what constitutes a labor dispute).]

In the absence of statute, the relationship between employer and employee is not completely terminated by a strike,

but the employee acquires a new status which has been described as a "striking employee"; and a "striking employee" is considered an employee within the meaning of the Act. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 144 (C. C. A. 9), modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 575. See also: *Jeffery-DeWitt Insulator Co.* v. *N. L. R. B.*, 91 F. (2d) 134 (C. C. A. 4), enforcing 1 N. L. R. B. 618, cert. denied 302 U. S. 731. *Washougal Woolen Mills*, 23 N. L. R. B. 1.

The Congressional definition of an employee indicates that a worker does not cease to be an employee merely because he has lost or left his job in consequence of a current labor dispute. *Mooresville Cotton Mills* v. *N. L. R. B.*, 94 F. (2d) 61 (C. C. A. 4), enforcing as modified, 97 F. (2d) 959, modifying original opinion and remanding 110 F. (2d) 179 (C. C. A. 4), which enforced as modified 2 N. L. R. B. 952 and 15 *N. L. R. B.* 416. See also: *Louis Hornick & Co.*, 2 N. L. R. B. 983, 995, 996.

Men who cease work because of a labor dispute or because of an unfair labor practice retain the status of employees under the Act. *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879 (C. C. A. 2), enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579. See also: *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, enforced as modified 114 F. (2d) 849 (C. C. A. 7), cert. denied 312 U. S. 680.

Where employees who are members of a labor organization negotiating with their employer go on strike because they are dissatisfied with the state of negotiations, and not because of any unfair labor practice upon the part of the employer, the strikers retain their status as employees as defined in Section 2 (3) since the strike was a consequence of a current labor dispute as provided in Section 2 (9). *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 761 (C. C. A. 9) See also: *Cleveland Worsted Mills Co.*, 43 N. L. R. B. 545, 571.

Sunshine Hosiery Mills, 1 N. L. R. B. 664, 673. (Refusal of striking employees to return to work upon threat of employer to replace them.)

Columbia Radiator Co., 1 N. L. R. B. 847, 858. (Employees ceased work by reason of strike or lock-out.)

United States Stamping Co., 5 N. L. R. B. 172, 189. (Employees joining strike after being relieved of their regular work and being offered other positions.)

Western Felt Works, 10 N. L. R. B. 407, 432. (Return to work of striking employee who subsequently went back on strike upon learning that representations by employer which had induced him to return were untrue.)

Good Coal Co., 12 N. L. R. B. 136, 110 F. (2d) 501 (C. C. A. 6) enforced, 310 U. S. 630, cert. denied. (Refusal of employees to work on Labor Day.)

El Paso Electric Co., 13 N. L. R. B. 213, modified 119 F. (2d) 581 (C. C. A. 5). (Strike provoked partly by employer's unfair labor practices, and partly by employer's breach of agreement to submit questions to the Board.)

Lone Star Gas Company, 18 N. L. R. B. 420, 458. (Employees struck in breach of a collective agreement.)

Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1. (Strike called prior to effective date of Act and current thereafter.)

Precision Castings Co., 26 N. L. R. B. 528. (Strike for recognition.) See also: *Solvay Process Co.*, 26 N. L. R. B. 650. *Interstate Drop Forge Co.*, 35 N. L. R. B. 1067.

Paper, Calmenson & Co., 26 N. L. R. B. 553. (Strike called during non-discriminatory lay-off to force employer to enter into a new contract.)

National Seal Corp., 30 N. L. R. B. 188 enforced 127 F. (2d) 776 (C. C. A. 2). (Employees struck because of employer's refusal to bargain.) See also: *Register Publishing Co., Ltd.*, 44 N. L. R. B. 834.

Wilson & Co., Inc., 30 N. L. R. B. 314 enforced 124 F. (2d) 845 (C. C. A. 7). (Employee who, pursuant to instructions from the union, worked during the strike and on the second day of the strike, acting upon instructions from the union, threatened to go on strike if the employer engaged in certain activities and who the following day was informed by the employer that his services were no longer needed.)

Sullivan Machinery Co., 31 N. L. R. B. 749. (Individuals who during a strike secured temporary employment elsewhere pending their return to work for the company, *held* employees within the meaning of the Act.)

Firth Carpet Co., 33 N. L. R. B. 191 enforced 129 F. (2d) 633 (C. C. A. 2). (Employees struck in protest to the discharge of their fellow employees.)

Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153. (Employees not physically working when strike began.)

Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153. (Striking employees who remained loyal to the union and remained away from work in connection with their dispute with the

respondent are employees within the meaning of Section 2 (3) of the Act notwithstanding the abandonment of the strike by certain persons.) See also: *Washougal Woolen Mills*, 23 N. L. R. B. 1.

Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153. (Application for and receipt of benefits under a State unemployment compensation statute which apparently purported to deny unemployment compensation to strikers, *held* not to constitute an abandonment of the strikers' employee status within the meaning of Section 2 (3) of the Act.)

4. *As result of unfair labor practices.*

Men who cease work because of a labor dispute or because of an unfair labor practice retain the status of employees under the Act. *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879 (C. C. A. 2), enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579.

Cosmopolitan Shipping Co., 2 N. L. R. B. 759, 762–764. (Strike caused by unfair labor practices notwithstanding alleged replacement of striking employees.)

Eclipse Moulded Products Co., 34 N. L. R. B. 785, 808, enforced 126 F. (2d) 576 (C. C. A. 7). (Strike caused by unfair labor practices.)

[*See* UNFAIR LABOR PRACTICES §§ 421–480 (as to acts causing discriminatory termination of employment).]

The status of employees is not terminated during a strike by the fact that checks were sent them marked "paid in full to date" and that other employees were hired to take their places where the strike was a consequence of the employer's unfair labor practice. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 176 (C. C. A. 3) modifying and denying rehearing 6 N. L. R. B. 171, cert. denied 308 U. S. 605.

The status of employees who have been discriminatorily discharged and have thereafter participated in a strike was changed from discharged employees to strikers upon their election to remain on strike because of the employer's continued refusal to recognize the labor organization of which they were members and their rejection of a valid offer of reinstatement made by the employer during the course of the strike. *Harter Corp.*, 8 N. L. R. B. 391, 411, 420. See also: *Ohio Fuel Gas Co.*, 25 N. L. R. B. 519. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1.

[*See* REMEDIAL ORDERS § 116 (as to the effect of change of status upon reinstatement and back-pay orders).]

5. *As result of non-discriminatory lay-off.* [*See* §§ 13–20 (as to the effect of intermittent employment).]

Employees who were active in a strike caused by the unfair labor practices of the employer, and were laid off before the strike because of curtailed production, as distinguished from a discharge, although not physically engaged in work at the time of the beginning of the strike, retain their status as employees and are entitled to reinstatement with back pay along with other striking employees discriminatorily refused reinstatement. *Western Felt Works*, 10 N. L. R. B. 407, 449. See also: *Shenandoah-Dives Mining Co.*, 35 N. L. R. B. 1153, 1175, 1176.

Employees discharged in connection with reorganization of production methods and not since reinstated, and whom the company would give no preference for reemployment over others not former employees, *held* not employees within Section 2 (3) of the Act. *Everite Pump & Mfg. Co., Inc.*, 22 N. L. R. B. 1133.

Status of striking employees following termination of strike upon the employer's agreement in part to continue the strikers not immediately reinstated to their jobs in the status of employees with a preferential claim to reinstatement when vacancies occurred, *held* analogous to that of laid-off employees not presently working for economic reasons. *Wilson & Co.*, 30 N. L. R. B. 314, 334.

If it were assumed that certain individuals were not discriminated against, employer's contention that they were not "employees" within the meaning of Section 2 (3) of the Act, because "a lay-off was considered as a termination of employment," *held* without merit, when it was employer's custom repeatedly to rehire the same individuals after laying them off. *Boswell Co.*, 35 N. L. R. B. 968.

6. *As result of illness, injury, vacation, military leave, or other causes.*

The status of an employee has not been lost because she was absent from work by reason of illness at the time a strike occurred. *American Mfg. Concern*, 7 N. L. R. B. 753,763.

A person who because of an ailment had not worked for the respondent for approximately 9 months prior to a strike, *held* not to have retained the status of an employee at the time of the strike. *Theurer Wagon Works, Inc.*, 18 N. L. R. B. 837, 869. See also : *Lettie Lee, Inc.*, 45 N. L. R. B. 448.

Savannah Sugar Refining Corp., 29 N. L. R. B. 617. (Employee discharged on the basis of medical report, *held* no longer an employee.)

[*See* INVESTIGATION AND CERTIFICATION § 61 (as to employees eligible to vote who are absent because of illness); REMEDIAL ORDERS § 118 (as to effect of illness upon reinstatement and back-pay orders).]

Employee who had been given a leave of absence for a definite period to take another position for the summer, *held* an employee. *Lettie Lee, Inc.*, 45 N. L. R. B. 448.

7. *As result of discharge for misconduct or breach of contract.*

Where a labor dispute exists concerning an interpretation of an employment contract which the employees, by insisting upon their interpretation, have breached, the employer is justified in discharging them and thereby terminating the employment relationship. *N. L. R. B.* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 726 (C. C. A. 6), setting aside 1 N. L. R. B. 546, affirmed 306 U. S. 332.

Strikers who have been discharged for their illegal conduct no longer were employees and could not be considered in determining majority representation. *Fansteel Metallurgical Corp.*, v. *N. L. R. B.*, 98 F. (2d) 375, 382 (C. C. A. 7), setting aside 5 N. L. R. B. 930, modified 306 U. S. 240. See also: *Standard Lime & Stone Co.*, v. *N. L. R. B.*, 97 F. (2d) 531, 535 (C. C. A. 4), setting aside 5 N. L. R. B. 106. *Southern Steamship Co.*, 23 N. L. R. B. 26, enforced (work-relief modification) 120 F. (2d) 505 (C. C. A. 3), reversed and remanded (with instructions to limit decree of enforcement to provisions of order requiring bargaining) 62 S. Ct. 886. ("Strike" which constituted meeting.)

Persons who, in breach of an agreement not to strike, ceased work in connection with a labor dispute regarding terms and conditions of employment within the meaning of Section 2 (9) of the Act remained employees within the meaning of Section 2 (3) of the Act. *Lone Star Gas Co.*, 18 N. L. R. B. 420.

Where an employer introduced evidence that certain employees had been convicted of violating a temporary restraining order as to picketing and accused others of committing acts of violence but did not contend that by reason of the acts complained of, the employer-employee relationship as to the employees in question thereby had automatically terminated, nor that the employees had been discharged, *held* that none of the employees involved in the acts above

mentioned lost his employee status. *Precision Castings Co.*, 26 N. L. R. B. 528.

[*See* REMEDIAL ORDERS §§ 107–110 (as to effect of misconduct upon reinstatement and back-pay orders), UNFAIR LABOR PRACTICES §§ 401–410 (as to employer's right to select or discharge employees), and § 767 (as to effect of misconduct of employees upon employer's duty to bargain).]

10 8. *Who have subsequently obtained substantially equivalent employment.* [*See* REMEDIAL ORDERS § 121 (as to effect of the obtaining of substantially equivalent employment upon reinstatement orders).]

11 D. AGRICULTURAL EMPLOYEES. [*See* LITIGATION DIGEST. EMPLOYEE: *Agricultural labor exemption.*]

The exclusion of "agricultural laborers" in Section 2 (3) of the Act is an occupational exclusion dependent upon the nature of the work performed by the employees involved and not solely upon the nature of the company's operations. *Stark Brothers Nurseries and Orchards Co.*, 40 N. L. R. B. 1243. See also: *Saticoy Lemon Assn.*, 41 N. L. R. B. 243. *Seaboard Lemon Assn.*, 41 N. L. R. B. 248.

Individuals employed by lettuce packers in the packing sheds are not employed as agricultural laborers, since their services are performed in connection with commercial packaging and shipping enterprises. *American Fruit Growers, Inc.*, 10 N. L. R. B. 316, 326–329. See also: *Averill*, 13 N. L. R. B. 411. *Grower-Shipper Vegetable Assn. of Central California*, 43 N. L. R. B. 1389.

Packinghouse employees of a cooperative association of citrus fruit growers are not "agricultural laborers" within the meaning of Section 2 (3) of the Act. *North Whittier Heights Citrus Fruit Assn.*, 10 N. L. R. B. 1269, 1277–1284, enforced 109 F. (2d) 76 (C. C. A. 9), cert. denied 310 U. S. 632, rehearing denied 311 U. S. 724. See also:

Sierra Madre-Iamanda Citrus Assn., 23 N. L. R. B. 143.
Upland Citrus Assn., 24 N. L. R. B. 1136.
Corona Citrus Assn., 25 N. L. R. B. 77.
Jameson Co., 25 N. L. R. B. 64.
Seaboard Lemon Assn., 28 N. L. R. B. 273.
Saticoy Lemon Assn., 28 N. L. R. B. 1214.

Machine shop employees on hop ranch, whose work consisted of manufacturing, maintaining and repairing hop picking machines and maintaining and repairing other agricultural

equipment, *held* to be "employees" within meaning of Section 2 (3) of Act. *Horst Co.*, 23 N. L. R. B. 1193.

Cattle feeders employed to care for and feed cattle in feed lots adjacent to company's packing plant, *held* not to be agricultural laborers within the Act. *Tovrea Packing Co.*, 12 N. L. R. B. 1063, enforced as modified 111 F. (2d) 626 (C. C. A. 9), cert. denied 311 U. S. 668.

Walnut shellers at plants owned and operated by cooperative walnut growers marketing association are not agricultural employees. *California Walnut Growers Assn.*, 18 N. L. R. B. 493.

Greenhouse employees are not agricultural workers within the statutory exception. Such cultivation under artificial conditions is industrial rather than agricultural, as the latter term is commonly understood, as indicated by the artificial and continuous non-seasonal character of production. *Park Floral Co.*, 19 N. L. R. B. 403.

Bauske, 38 N. L. R. B. 435. (Commercial greenhouse employees engaged in cultivating plants and flowers, and in tending to the heating and watering facilities, *held* not to be agricultural laborers within the meaning of the Act.)

Mushroom growers, *held* not to be agricultural laborers within the meaning of the Act since the growing of mushrooms, being very similar to the production which goes on in industrial plants under controlled and artificial conditions at the will of the producer, is not agricultural in nature as that term is commonly understood. The company's operations are not seasonal, do not depend upon climate, temperature, rainfall, or other conditions which affect the growing of crops under ordinary circumstances. *Knaust Brothers, Inc.*, 36 N. L. R. B. 915.

Great Western Mushroom Co., 37 N. L. R. B. 481. (Individuals engaged in the growing, processing, canning, packing, marketing, and shipping of mushrooms, *held* not agricultural laborers.)

Nursery employees, *held* to be agricultural laborers within the meaning of Section 2 (3) of the Act when they performed a variety of tasks regarded as agricultural, *viz*, fertilizing, cultivating, and harvesting crops in open fields under natural conditions; while some work related to the propagation of fruit trees, such as grafting and budding, is performed on a large scale and in a scientific manner, it is nonetheless a familiar agricultural pursuit. *Stark Bros. Nurseries & Orchards Co.*, 40 N. L. R. B. 1243.

Lemon pickers engaged at growers' orchards in the harvesting of lemons, *held* to be agricultural laborers within the meaning of the Act. *Saticoy Lemon Assn.*, 41 N. L. R. B. 243. See also: *Seaboard Lemon Assn.*, 41 N. L. R. B. 248.

[*See* JURISDICTION § 48 (as to enterprises within the scope of the Board's jurisdiction).]

E. OF MULTIPLE OR SUCCESSIVE EMPLOYERS.

[*See* §§ 34–41 (as to the "employer" problem) and LITIGATION DIGEST. EMPLOYER: *Affiliated employers.*]

Employees of two companies operating oil wells are also employees of an individual who has active supervision of the operation of the two companies and engages the employees who are used interchangeably in operating the oil properties of both companies as well as those of the individual. *Bell Oil & Gas Co.*, 2 N. L. R. B. 886, 891, 892.

U. S. Testing Co., Inc., 5 N. L. R. B. 696, 700–701. (Research worker included in unit composed of employer's laboratory workers, where a research foundation reimbursed the employer for the salary paid by it to the research worker, where discretion as to the hiring of the research worker was exercised by a company official, and where the hours, vacation, and conditions of employment of the research worker were determined in the same manner as those of the laboratory workers.)

KMOX Broadcasting Station, 10 N. L. R. B. 479, 486. (Free-lance artists employed by more than one radio broadcasting station, *held* employees of each company for which they work, when they worked on the employer's premises under the supervision of its officials and were paid by it.)

Republic Steel Corp., 26 N. L. R. B. 1244. (Parent corporation and its subsidiary, *held* employers of employees at a mine leased by the subsidiary and managed by the parent.)

Employees who have been discriminatorily refused reemployment by a successor company after being furloughed by its predecessor are employees of the successor within the meaning of the Act where the latter later drew no distinction between employees it had furloughed and those furloughed by the predecessor. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 337.

[*See* §§ 13–20 (as to the effect of intermittent employment upon employee status) and INVESTIGATION AND CERTIFICATION §§ 61.9–69 (as to the eligibility of employees as affected by the nature and tenure of their employment).]

F. EFFECT OF INTERMITTENT EMPLOYMENT UPON EMPLOYEE STATUS. [*See* INVESTIGATION AND CERTIFICATION §§ 61.9–69 (as to eligibility of employees as affected by the nature and tenure of their employment) and LITIGATION DIGEST. EMPLOYEE: *Character of tenure.*]

1. *Temporary and seasonal employees.*

An employer-employee relationship exists between seasonal workers employed in lettuce sheds and the operators of the sheds, where approximately 50 percent of the workers employed by each operator during one season return to work for the same operator during the next season, a great majority of them returning season after season to work for one or another of the operators involved. *American Fruit Growers, Inc.*, 10 N. L. R. B. 316, 329, 330.

Alaska Packers Assn., 7 N. L. R. B. 141, 145–147. (Employer-employee relationship exists between seasonal cannery workers and three employers operating canneries, although they may work for a different company each season, but employee status of individual workers is associated with company employing him during the preceding season.) See also: *Alaska Salmon Industry, Inc.*, 33 N. L. R. B. 727.

Sierra Madre-Lamanda Citrus Assn., 23 N. L. R. B. 143. (Fruit packers who left their employment before the end of the season, and who were given assurances of reinstatement upon return when they had asked for permission to leave, remained employees.)

McLoughlin Mfg. Co., 26 N. L. R. B. 578. (Employees laid off because of seasonal slump in business, *held* to be employees of the company where its policy is to reemploy the same employees from year to year for the work of the peak season.)

Delaware-New Jersey Ferry Co., 30 N. L. R. B. 820. (Seasonal ferryboat workers, *held* employees.)

Persons who are hired and laid off with the fluctuations of production retain or fail to retain their status as employees depending upon whether or not their temporary tenure of employment embraces a reasonably definite expectation of subsequent reemployment, and where an employer had no established custom of preferentially hiring employees laid off during slack periods, the Board found that their employee status ended with the lay-off and that the

subsequent participation in the strike did not continue or revive their employee status. *Reading Batteries, Inc.*, 19 N. L. R. B. 249, 261.

14 2. *Part-time employees.*

Longshoremen in a stevedoring company who have been employed for 75 hours or more during the 6 months immediately preceding the date of the Decision and Direction of Elections are to be considered as regular employees for the purpose of determining whether they are to be included in the appropriate unit. *McCabe, Hamilton & Renny Ltd.*, 3 N. L. R. B. 547, 549.

Employees who have worked in a shore gang performing maintenance and repair work on vessels in port 24 days during the 3 months preceding a given date, are regular employees for the purpose of determining whether they are to be included in the appropriate unit. *International Mercantile Marine Co.*, 3 N. L. R. B. 751, 757.

Writers of weekly columns for a newspaper publisher who are not listed on company's pay roll and receive no guarantee, being paid for what they contribute; and who are not required to perform their work on the company's premises, are regular part-time employees for the purpose of determining whether they are to be included in a unit comprising editorial department employees. *New York Times Co.*, 32 N. L. R. B. 928.

Individual who devoted 60 percent of his working time at home preparing articles which the company bought at a price initially set by him and who spent the remainder of his working time in the company's plant as an hourly paid employee, *held* to be a part-time employee. *Chic Pottery Co.*, 40 N. L. R. B. 83.

20 3. *Intermittent and casual employees.*

Employees who, prior to a strike, were hired on a day-to-day basis by a "shape up" system and did not have continuous employment in the same sense that an employee has in the ordinary industrial plant, *held* employees within the meaning of the Act. *Todd Shipyards Corp.*, 5 N. L. R. B. 20, 38. See also: *United Fruit Co.*, 2 N. L. R. B. 896, 900.

Weinberger Banana Co., Inc., 18 N. L. R. B. 786. (Dock laborers who unloaded boats and packed fruit, and who were paid off after unloading each boat, continued to be employees of the respondents until they quit or were discharged.)

Hoberman, 30 N. L. R. B. 1241. (Casual workers who constitute an integral part of labor used by employer in live poultry business, *held* to be employees.)

Crater Lake Box & Lumber Co., 35 N. L. R. B. 108. (Individuals employed by A who work under the supervision of B whenever their services are not needed by A included with employees of B in an appropriate unit.)

20.1 G. MARITIME EMPLOYEES. [*See* INVESTIGATION AND CERTIFICATION § 66 (as to maritime employees eligible to vote) and LITIGATION DIGEST. EMPLOYEE: *Status continues in spite of*—Expiration of seamen's shipping articles.]

When a ship was laid up for about 3 weeks for extensive repairs, *held* that the employment relationship had ended, when it was the usual practice, under these circumstances, to discharge the crew and recruit a new crew when the repairs were completed. *Calmar Steamship Corp.*, 18 N. L. R. B. 1, 17. See also: *Ore Steamship Corp.*, 29 N. L. R. B. 954, 969.

Although at termination of voyage seamen sign on and off articles, their employment, in the absence of other circumstances, does not thereby terminate but continues from voyage to voyage, as a matter of course, unless their work is unsatisfactory or they leave the ship voluntarily. *Ore Steamship Corp.*, 29 N. L. R. B. 954, 961.

South Atlantic Steamship Co. of Delaware, 12 N. L. R. B. 1367, 1374, enforced as modified 116 F. (2d) 480 (C. C. A. 5), cert. denied 313 U. S. 582, rehearing (on petition for certiorari) denied 314 U. S. 705. See also:

West Kentucky Coal Co., 17 N. L. R. B. 724.

Texas Co., 19 N. L. R. B. 835, 843, modified and remanded 120 F. (2d) 186 (C. C. A. 9).

Isthmian Steamship Co., 22 N. L. R. B. 689, 698, enforced as modified (work-relief and form of notice modifications) 126 F. (2d) 598 (C. C. A. 2).

Southern Steamship Corp., 23 N. L. R. B. 26, enforced (work-relief modification) 120 F. (2d) 505 (C. C. A. 3), reversed and remanded (with instruction to limit decree of enforcement to provisions or order requiring bargaining) 62 S. Ct. 886.

Saginaw Dock & Terminal Co., 23 N. L. R. B. 630.

Wyandotte Transportation Co., 25 N. L. R. B. 336.

Mooremack Gulf Lines, Inc., 28 N. L. R. B. 869.

Texas Co., 42 N. L. R. B. 593.

Waterman Steamship Corp., 7 N. L. R. B. 237, 246, modified 103 F. (2d) 157 (C. C. A. 5), reversed modification of Board's order in 309 U. S. 206, rehearing denied 309 U. S. 696 (ship laid up for repairs). See also: *Interstate Steamship Co.*, 17 N. L. R. B. 376, 378. *United States Lines Co.*, 40 N. L. R. B. 363.

21 H. INDEPENDENT CONTRACTORS.

The primary consideration in determining whether certain persons are "employees" is whether effectuation of the declared policy and purposes of the Act comprehends securing to the individual the rights guaranteed and protection afforded by the Act, and this matter is not conclusively determined by a contract which adverts to and purports to establish the status of such persons as independent contractors rather than employees, for public interest in the administration of the Act permits an inquiry into the material facts and substance of the relationship. *Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1274, 1275.

OCCUPATIONAL CLASSIFICATION

Granite cutters and finishers, *held* employees despite the institution of a new employment system whereby employees allegedly become independent contractors when the character of the work of the employees, its functional relationship to the employer's business, and the extent of the employer's control over the employees continued as before. *Interstate Granite Corp.*, 11 N. L. R. B. 1046.

Fishermen paid in proportion to the selling price of the catch after various expenses are deducted under a custom in the fishing industry known as the "lay" settlement, *held* employees within the meaning of the Act and not joint entrepreneurs with the companies owning the boats on which they were engaged. *Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415, 421. See also: *Cape Cod Trawling Corp.*, 23 N. L. R. B. 208.

Pictorial and lettering worker in automobile body building industry, *held* independent contractor when control was not exercised over the execution of his work, he worked for others, did not have fixed hours, estimated the cost of the work according to the probable time of completion, and billed respondent for work completed. *Theurer Wagon Works, Inc.*, 18 N. L. R. B. 837, 869.

Growers engaged by commercial greenhouse owners, *held* not to have lost their employee status in becoming lessees of their employer when such employees and those under them remained under the supervision of the employer-lessor even though the employee-lessees' compensation was determined on a percentage basis. *Park Floral Co.*, 19 N. L. R. B. 403.

Furrier, former non-union employee, engaged to perform work theretofore performed by employees of the respondents who were discharged for union membership, *held* an employee within the meaning of Section 2 (3), notwithstanding a contract between himself and respondents which terms him an independent contractor. *Reichelt*, 21 N. L. R. B. 262.

Employer-employee relationship, *held* to exist between companies and pilots engaged in piloting their vessels, who are members of an association contracting for their services, where the companies retain the ultimate power of selection or rejection of the pilots proffered by the pilots' association, the sole direction and control of the pilots while at work, and pay their wages. *McCormick Steamship Co.*, 25 N. L. R. B. 587.

Lumber stacking supervisor, *held* to be an employee of the company and not an independent contractor, where the purported contract was oral and an alleged outgrowth of an ordinary hiring by a minor supervisory official; where there was no arm's length bargaining between the alleged contractor and the company; where additional compensation for the services rendered by him had been granted by the company at times of general wage revisions and not as a result of negotiations for the renewal or modification of the alleged contract; where the work performed by him and his crew constituted an integral part of the company's enterprise; where daily instructions were given to him by company representatives concerning the work to be performed by him and the men under his supervision; and where the company's right of control was apparent from the fact that the purported contract existed at will and was not terminable at a fixed date. *Stark Co., James E.*, 33 N. L. R. B. 1076.

Contractors (so designated because paid according to number of cars they unload) are employees of a company engaged in refining copper where they are subject to the call and

control of company, and, as other employees, they are assigned regular pay-roll numbers and receive Social Security benefits. *Phelps Dodge Corp.*, 34 N. L. R. B. 846.

Truck operators utilized by a company engaged in logging operations to haul timber are independent contractors and not employees of the company within the meaning of the Act where they own their own trucks; occasionally haul logs for other timber companies; determine for themselves details of operations; and other than the refusal of the company to continue its relationship with them, are subject to no control by the company, although the company advanced their Workmen's Compensation premiums and Social Security taxes directly to the State, and such payments were subtracted from the compensation otherwise due them. *Berg*, 35 N. L. R. B. 357.

Crossett Lumber Co., 8 N. L. R. B. 440, 475, 476. (Person engaged by a lumber company to haul lumber but not steadily engaged to do this work, who was paid on the basis of the amount of lumber hauled, was required to complete the job within a stated period, operated his own truck, bought his own gas, and did not work under the instructions of the lumber company, *held* an independent contractor.)

Federal Ice & Cold Storage Co., 18 N. L. R. B. 161, 164, 165. (Persons who owned and operated their own trucks and sold at retail ice purchased from the company, *held* not employees of the company where they fixed their own resale price, and carried the risk of loss of their unsold surplus, were free to buy from other producers as well as from the company, determined their own hours of work, and were permitted to remain in business on their accustomed routes even though they entirely ceased buying from the company.

Kelly Co., 34 N. L. R. B. 325. (Individuals who operated their own trucks; who apparently have contracts with other concerns were not on the company's pay roll; were paid at a fixed fee per hundredweight, and in whose behalf no Social Security tax deductions nor provisions for Unemployment Insurance or Workmen's Compensation were made, *held* independent contractors—but where other individual operators were subject to company's direction and care, *held* employees.)

Yasek, 37 N. L. R. B. 156. (Truck drivers operating their own trucks who worked regularly and almost exclusively

for lumber company, and were under its supervision, *held* employees of company.

Murphy, 37 N. L. R. B. 487. (Truck driver who owned one truck and drove that truck on the company's operations, *held* employee where he worked exclusively for the company and it maintained substantial control over his work.)

South Bend Fish Corp., 38 N. L. R. B. 1176. (Truck-driver salesman engaged in wholesale and retail food distribution, *held* an employee and not an independent contractor where he was employed on a commission basis with a guaranteed weekly drawing account, drove a truck owned and maintained by the respondent, made weekly settlements by which he was required to account for all goods received, sales made, cash collected; had written contract of employment; was subject to discharge at will of respondent, and which exercised close supervision over his route, the prices he charged, credit sales made by him, and the manner in which he discharged his duties.)

"Lessor" of mine and "partners," persons hired by "lessor," *held* employees, where right of "lessor" to hire "partners" was subject to approval of employer, and where hours and working conditions of these persons were similar to those of other employees. *Veta Mines, Inc.*, 36 N. L. R. B. 288. See also: *Wilcox Oil & Gas Co.*, 28 N. L. R. B. 79.

Miners and haulers whom respondents engage to carry on their business of mining tiff from their land and transporting it to selling points, *held* employees of the respondent. *Blount*, 37 N. L. R. B. 662.

Pottery model maker who devoted 60 percent of his working time at home preparing models which company bought at price initially set by him, *held* a part-time employee when he spent remainder of his working time in company's plant as an hourly paid employee. *Chic Pottery Co.*, 40 N. L. R. B. 83.

Industrial Classification

INSURANCE

Debit collectors employed by a life insurance company, *held* employees within the meaning of Section 2 (3) of the Act, where they devote their full time to the employer's business, are paid on a fixed salary plus commission basis, collect weekly premiums within an assigned territory under the supervision of its managers and assistant managers, make

regular deposits in the district office of such collections, solicit and write life insurance, and service the policies so written. *Life Insurance Co. of Virginia*, 29 N. L. R. B. 246.

Sun Life Insurance Co., 15 N. L. R. B. 817, 820 (insurance canvassers).

John Hancock Mutual Life Insurance Co., 26 N. L. R. B. 1024 (industrial insurance agents).

Supreme Liberty Life Insurance Co., 32 N. L. R. B. 94 (industrial insurance agents, special agents, and canvassers).

Life Insurance Co. of Virginia, 38 N. L. R. B. 20 (debit collectors).

Metropolitan Life Insurance Co., 43 N. L. R. B. 962 (insurance agents).

MOTION PICTURES

Free-lance artists who performed services for various companies engaged in the production of motion pictures, who were not listed on the regular pay rolls of such companies, and whose work was subject to the supervision and control of the art directors of such companies as a matter of ultimate result rather than in the manner and method of their performance, *held* not employees within the meaning of the Act. *Twentieth Century-Fox Film Corp.*, 32 N. L. R. B. 717.

Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 686–690. (Screen writers employed by motion picture producers, *held* employees of the producer involved rather than independent contractors.)

Paramount Pictures, Inc., 33 N. L. R. B. 447. (Piece-work readers who performed services for various companies engaged in the production of motion pictures, who were not listed on the regular pay rolls of such companies, and who were subject to the supervision and control of the story editors of such companies as a matter of ultimate result rather than in the manner and method of their performance, *held* not employees within the meaning of the Act.)

NEWSPAPER

A supervisor and an outside telephone crew soliciting subscriptions for a newspaper by telephone are employees of a newspaper company notwithstanding that it had entered into a contract with the supervisor wherein such supervisor was named a "contractor," and provided that the supervisor should act independently of the company, and hiring,

firing, and terms of employment of subordinates to be at the sole discretion of the "contractor," where: (1) prior to the execution of the contract the supervisor was employed by the company as one of regular telephone crew managers of the newspaper; (2) after the execution of the contract, the work performed by him, both in character and mode, as well as the authority exercised by him over members of his crew, were substantially the same as that which existed preceding the execution of the contract. *Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1279–1281.

Newsboys engaged in street vending of newspapers, *held* to be employees within the meaning of the Act, although newsboys are not carried on pay roll, absorb losses resulting from poor credit risks, sell competing publications with acquiescence of publishers and retain as earnings difference between amount paid the publisher and the sum received for the newspaper from the public, where publishers allotted corners and spots, furnished company-owned equipment and paraphernalia to facilitate newspaper sales, required newsboys' attendance at their posts and attention to duty within customary limits during relatively definite hours, limited earnings by the establishment of a fixed "wholesale" and retail price for the newspaper, afforded a return privilege for unsold papers with certain exceptions, supervised the newsboys' selling activities, and disciplined them in connection with their performance in order to increase newspaper circulation. *Stockholders Publishing Co., Inc.*, 28 N. L. R. B. 1006.

Houston Chronicle Publishing Co., 28 N. L. R. B. 1043. (Newsboys, *held* not employees of a newspaper company within the meaning of the Act where the company exercises no supervision over their activities on the street with respect to the manner and methods used in newspaper vending.)

Motor route drivers who delivered newspapers to subscribers, made collections from such subscribers, and devoted time and effort toward the securing of new subscribers, *held* employees of the newspaper and not independent contractors, notwithstanding the fact that such drivers had entered into a so-called "dealer's contract" with the newspaper company which provided that the company will sell the newspapers to such drivers, payments for such papers purchased to be paid monthly without deduction for ones not resold, where the drivers had no real interest in the

business and good will represented by the subscription list since the business and good will are the property of the company available at any time to its exclusive enjoyment by termination of the driver's contract; the drivers cannot act as employees of representatives of any competing publisher without the company's assent but must devote their efforts to securing new subscribers to the company's newspaper; and, in addition to a weekly allowance for car expense and carriage of bundles, their compensation is analogous to earnings measured by the number of subscription deliveries rather than profit from an independent business. *Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1272–1275.

Tribune Publishing Co., 35 N. L. R. B. 690. (Motor route and bundle route drivers who operate under a contract with the company, *held* employees.)

Newspaper carriers who delivered papers to subscribers, *held* employees of the newspaper company and not independent contractors in view of the fact that they performed an integral part of the company's business; that the company supplied a large part of the instrumentalities by which their work was performed; that it controlled the purchase and resale price of the newspapers and limited the activities of the carriers to specific routes, thus rendering their renumeration more analogous to wages or salesmen's commissions than to profits from an independent enterprise; and that through the provisions of form contracts and additional rules promulgated by the company, the latter exercised a degree of control consistent only with an employer-employee relationship. *Constitution Publishing Co.*, 29 N. L. R. B. 105.

Supervisors of street-corner boys and news dealers employed by a newspaper publisher, *held* employees within the meaning of the Act despite company's contention that they were independent contractors because of a change in the method of their payment where the company controlled and directed their activities and there was no substantial change in the character of their work nor in their functional relations to the company's business. *Post-Standard Co.*, 34 N. L. R. B. 226.

District managers who exercised control over checkmen and newsboys on behalf of publisher, *held* to be employees of the publisher and not independent contractors when the method used by the publisher in payment for their services

namely, minimum guarantee plus profit, was a variant of the bonus or commission system typical of nearly all mercantile business. *Hearst Publications, Inc.*, 25 N. L. R. B. 621 and 39 N. L. R. B. 1256.

I. EMPLOYEES ALLIED WITH MANAGEMENT. [*See* UNIT §§ 86–90.5 (as to units confined to special classes of employees); §§ 101–110.9 (as to exclusion or inclusion of employees allied with management); UNFAIR LABOR PRACTICES §§ 11–20 (as to the responsibility of employers for the activities of special classes of employees) §§ 411-420 (as to persons afforded protection under the Act) and LITIGATION DIGEST. EMPLOYEE: *Supervisory employee.* EMPLOYER; *Who may bind E.*]

24 1. *In general.*

Employees allied with management possess a dual employee capacity; when acting as employees within the meaning of Section 2 (2) of the Act they are entitled to exercise the rights guaranteed under the Act; however as management representatives, the employer is responsible for the impact of their supervisory authority upon the freedom of their subordinates to self-organization and as such may not engage in proscribed conduct. *Sherwin-Williams Co.*, 37 N. L. R. B. 260.

24.1 2. *Supervisory employees.*

A supervisory employee in relation to his employer is an employee within the meaning of Section 2 (3) of the Act. *Hazel-Atlas Glass Co.*, 34 N. L. R. B. 346, enforced as modified 127 F. (2d) 109 (C. C. A. 4), petition for rehearing denied 127 F. (2d) 118 (C. C. A. 4). See also:

Skinner & Kennedy Stationery Co., 13 N. L. R. B. 1186, enforced 113 F. (2d) 667 (C. C. A. 8), rehearing denied August 16, 1940.

Atlantic Greyhound Corp., 7 N. L. R. B. 1189.

Sherwin-Williams Co., 37 N. L. R. B. 260.

Union Collieries Coal Co., 44 N. L. R. B. 165.

24.2 3. *Confidential employees.*

Employees who were allegedly entrusted with confidential matter, *held* employees. *Bull Dog Electric Products Co.*, 22 N. L. R. B. 1043.

24.3 4. *Plant-protection employees.*

Plant-protection employees, or patrolmen, *held* to be employees within the meaning of the Act where nothing in their duties is found to warrant depriving them of the right to

self-organization and collective bargaining. *General Motors Corp.*, 39 N. L. R. B. 1108. See also: *Bendix Products Corp.*, 15 N. L. R. B. 965 (policemen). *Yellow Truck & Coach Mfg. Co.*, 39 N. L. R. B. 14 (patrolmen). [*See* § 25 (as to plant-protection employees subject to military authority).]

§ 24.4 5. *Stockholders.*

That an employee may also have the rights and privileges of a stockholder is, of itself, not sufficient to debar him from availing himself, in his capacity as employee, of the rights and privileges of an employee under the Act. *Olympia Shingle Co.*, 26 N. L. R. B. 1398.

§ 24.5 6. *Employees intimately related to employer or officers thereof.*

§ 24.6 7. *Others.*

§ 25 J. EMPLOYEES SUBJECT TO MILITARY AUTHORITY.

Company's contention that War Department directive making plant-protection employees at plants producing war materials, civilian auxiliaries of the military police, changed their employment status so that they were no longer "employees" within the meaning of the Act, found without merit. *Chrysler Corp.*, 44 N. L. R. B. 881. See also:

Campbell Soup Co., 45 N. L. R. B. 6.
Johns-Manville Products Corp., 45 N. L. R. B. 33.
Sherwin-Williams Defense Corp., 45 N. L. R. B. 46.
Ford Motor Co., 45 N. L. R. B. 70.
Royal Typewriter Co., Inc., 45 N. L. R. B. 291.
United States Cartridge Co., 45 N. L. R. B. 350.
Otis Elevator Co., 45 N. L. R. B. 419.
Curtiss-Wright Corp., 45 N. L. R. B. 592.
Westinghouse Electric & Mfg. Co., 45 N. L. R. B. 776.
Curtiss-Wright Corp., 45 N. L. R. B. 1268.

§ 30 K. OTHER EMPLOYEES.

Indentured apprentices, employed under contracts subject to approval of State industrial commission, *held* to be employees who might designate collective bargaining representatives within the meaning of Sections 2 (3) and 9 (a) of the Act despite contention of company and intervening labor organization that they were in effect wards of the State and not proper subjects for collective bargaining representation. *Vilter Mfg. Co.*, 44 N. L. R. B. 232.

EMPLOYER.

A. IN GENERAL.

B. GOVERNMENTAL SUBDIVISIONS. [*See* JURISDICTION §§ 10, 85 (as to enterprises within the scope of the Board's jurisdiction) and LITIGATION DIGEST. EMPLOYER: *Special types of employer*—United States or State Governments.]

1. *Maritime.*

A steamship line operated directly by a branch of the United States Government is not an employer, within the meaning of the Act. *American France Line*, 12 N. L. R. B. 766, 769.

Company engaged in the operation of vessels under time charters issued by the Maritime Commission, *held* an employer within the Act, when these vessels were formerly owned by the company and were requistioned by the Commission, and when the company hires, discharges, pays, and in all respects acts as an employer of the personnel on the vessels. *American Hawaiian S. S. Co.*, 41 N. L. R. B. 425. See also: *Cosmopolitan Shipping Co., Inc.*, 2 N. L. R. B. 759, 761. *American France Line*, 12 N. L. R. B. 766, 769. *International Freighting Corp.*, 12 N. L. R. B. 785, 786.

2.1 2. *Banking.*

A privately owned national bank which was a depository for United States funds and which was subject to the rules and regulations imposed upon such banks by the several Governmental agencies having supervision over their affairs, found to be an employer within the meaning of Section 2 (2) of the Act. *Bank of America National Trust & Savings Assn.*, 14 N. L. R. B. 207.

2.3 3. *Mail transportation.*

Company engaged in transporting mail under contract with United States Government, *held* an employer within the meaning of the Act. *Carroll*, 29 N. L. R. B. 343, enforced 120 F. (2d) 457 (C. C. A. 1). See also: *Gregory*, 31 N. L. R. B. 71, enforced Dec. 2, 1941 (C. C. A. 5). *New York Mail & Newspaper Transportation Co.*, 4 N. L. R. B. 1066.

2.3 4. *Harbors and docks.*

A harbor district formed pursuant to a general State law providing for the formation and administration of districts for the improvement or development of harbors is a political subdivision of the State, and not an employer within the meaning of Section 2 (2) of the Act. *Oxnard Harbor District*, 34 N. L. R. B. 1285. *Mobile Steamship Assn.*, 8

N. L. R. B. 1297, 1305, 1318. (A dock commission created as an agency through which a State might accomplish the acquisition, construction, maintenance, and operation of harbors, seaports, and related facilities within its boundaries is not an employer, within the meaning of the Act.)

32.9 5. *Other activities.*

Non-profit corporation operating a Federal Reclamation Project is not the United States Government within the meaning of Section 2 (2) of the Act where the Government has no substantial control or supervision of the company's affairs. *Salt River Valley Water Users Assn.*, 32 N. L. R. B. 460.

Company leasing cannery from United States Government (Secretary of Interior), *held* to be an employer within the meaning of the Act. *Alaska Salmon Industry, Inc.*, 33 N. L. R. B. 727.

Private persons operating cafeterias in Government buildings, *held* employers within the meaning of the Act. *Dickson*, 41 N. L. R. B. 1230. *Welfare Assn. of U. S. Dept. of Agriculture*, 45 N. L. R. B. 285.

33 C. EMPLOYERS SUBJECT TO JURISDICTION OF OTHER FEDERAL AGENCIES. [*See* JURISDICTION §§ 8, 10 (as to effect of other statutes in Board's jurisdiction).]

A corporation owning a railroad operating as a common carrier and in connection therewith certain docks is not an employer, within the meaning of the Act, since it is subject to the Railway Labor Act. *Mobile Steamship Assn.*, 8 N. L. R. B. 1297, 1305, 1318.

An employer subject to the Railway Labor Act may be an employer within the meaning of the Act as to non-common carrier activities. *Heyward*, 18 N. L. R. B. 542.

D. COMPOSED OF MORE THAN ONE INDIVIDUAL OR CORPORATION. [*See* LITIGATION DIGEST. EMPLOYER: *Affiliated employers.*]

34 1. *In general.*

An individual owner and operator of oil wells is an employer, together with two companies similarly engaged, where he has active supervision of the operations of the two companies, and engages the employees who are used interchangeably in operating the properties of both companies as well as those of his own, with no distinction in their work other than that separate time sheets are maintained and separate

pay checks issued. *Bell Oil & Gas Co.*, 2 N. L. R. B. 886, 892.

2. *Enterprises operating under common control.*

a. In general.

Whoever in the capacity of an employer controls the employer-employee relations in an integrated industry is an employer for the purpose of determining the extent of the appropriate unit, and it can make no difference in determining what constitutes such a unit whether there be two employers of one group of employees or one employer of two groups of employees, despite the contention of an employer that the Board could not group the employees of two nominally independent but in fact commonly controlled enterprises into a single unit on the ground that Sections 2 (1) and (2) of the Act are intended only to prevent an employer from evading the Act by acting through an agent. *N. L. R. B.* v. *Lund*, 6 N. L. R. B. 423, enforced and remanded 103 F. (2d) 815 (C. C. A. 8).

b. Stock control.

A parent holding company which owned all the capital stock of two subsidiaries which had engaged in unfair labor practices, *held* an employer within the meaning of Section 2 (2) in relation to the employees of such subsidiaries where the parent company actively participated in, helped to formulate, and directed their labor policies. *Todd Shipyards Corp.*, 5 N. L. R. B. 20, 25, 39.

Pennsylvania Greyhound Lines, Inc., 1 N. L. R. B. 1, 44, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3) (two companies functioning as an integrated system). See also: *Johnson*, 41 N. L. R. B. 263.

Waggoner Refining Co., Inc., 6 N. L. R. B. 731, 737–739 (trust estate and corporation under common stock control and operating as integrated system).

Crossett Lumber Co., 8 N. L. R. B. 440, 493, 494 (lumber company and railroad both commonly controlled through stock ownership and with interlocking directorate).

Sterling Corset Co., Inc., 9 N. L. R. B. 858, 861 (two companies operated under common control with legal title to stock of one company vested in wives of officers and stockholders of the other company).

Calco Chemical Co., Inc., 13 N. L. R. B. 34 (parent corporation and wholly owned subsidiary).

Press Co., Inc., 13 N. L. R. B. 630, 633; enforced 118 F. (2d) 937, reh. denied 118 F. (2d) 954 (App. D. C.), cert. denied 313 U. S. 595 (parent corporation and partly owned subsidiary).

Republic Creosoting Co., 19 N. L. R. B. 267, 272 (legal and beneficial ownership of the capital stock nearly identical).

Republic Steel Corp., 26 N. L. R. B. 1244 (parent corporation and subsidiary managed by the parent).

Chrysler Detroit Co., 38 N. L. R. B. 313 (parent corporation found to be employer of subsidiary's employees in a representation proceeding). See also: *Crucible Steel Co.*, 45 N. L. R. B. 812.

Where two subsidiaries of a parent holding company operate as a single closely integrated enterprise under a common management and with common supervision and control of their labor policies, both occupy the status of an employer with respect to the employees of each. Holding company, however, not a proper party as it neither controlled nor was responsible for labor policy and had committed no unfair labor practice. *Middle West Corp.*, 28 N. L. R. B. 540.

Jamestown Metal Equipment Co., Inc., 17 N. L. R. B. 813 (complaint dismissed as to parent corporation of wholly owned subsidiary, in the absence of showing direction and control of labor and business policies of the subsidiary.) See also: *Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310.

35.2 c. Interlocking directorate.

Three interlocking corporations, one of which manufactured the products; another bought the raw materials and sold the products; and the other owned the manufacturing plant and supplied it with maintenance employees, *held* to constitute an integrated enterprise and to be employers of employees at manufacturing plant. *Lewittes & Sons, Inc.*, 33 N. L. R. B. 29.

Mackay Radio Corp. of Delaware, Inc., 5 N. L. R. B. 657, 658–660 (two companies occupying same office and operating under interlocking directorate).

Crossett Lumber Co., 8 N. L. R. B. 440, 493, 494 (lumber company and railroad both commonly controlled through stock ownership and with interlocking directorate).

Press Co., Inc., 13 N. L. R. B. 630, 634, enforced 118 F. (2d) 937 (December 9, 1940), reh. denied 118 F. (2d) 954 (App. D. C.), cert. denied 313 U. S. 595 (both corporations had

same individuals acting as president, vice president, and secretary).

Republic Creosoting Co., 19 N. L. R. B. 267, 272 (both corporations had same individuals acting as president and secretary).

White Horse Pike Bus Co., Inc., 34 N. L. R. B. 178 (both corporations had the same individuals acting as president, treasurer, and general manager).

Monteith Bros. Co., 34 N. L. R. B. 896 (board of directors of each corporation identical in composition).

Cincinnati Gas & Electric Co., 35 N. L. R. B. 1188 (several utility companies having common officers and directors);

5.3 d. Contract or other arrangement.

Contracting parties, one of whom was vested with complete control of employment and the other who controlled places where employees worked, supplied the funds for their pay, retained control over employment to the extent that persons it objected to were not hired and who supervised and inspected the work, *held* employers within the meaning of Section 2 (2). *Sierra Madre-Lamanda Citrus Assn.*, 23 N. L. R. B. 143.

American Scale Co., 19 N. L. R. B. 124. (Where the company caused its foundry, a department of its manufacturing plant, to be operated by an individual as an alleged independent contractor under a written agreement, both the company and the individual, *held* to be employers of the foundry workers, the individual because he employed, paid, and had full supervision over the said employees, the company because it owned and otherwise controlled the foundry, furnished all raw materials and bought all useable products of the foundry, governed the quality of such products, carried workmen's compensation insurance on foundry employees, reported their income for income tax purposes, and for a nominal fee performed the office work of the alleged independent contractor.)

Condenser Corp. of America, 22 N. L. R. B. 347, enforced as modified 128 F. (2d) 167 (C. C. A. 3). (Two corporations occupying single plant, the first performing all manufacturing operations and paying all production employees, the second corporation purchasing all materials used by first and purchasing all finished products manufactured by first; inter-corporation charges made substantially at cost, including cost of labor, to each corporation and evidenced by bookkeeping entries; officers of second

corporation discharged and reinstated several individuals ostensibly employees of the first; parallel labor activities of officers of both corporations in dominating and supporting one labor organization and in interfering with another; *held* that both corporations functioned together as single integrated enterprise and that both are employers of all the individuals ostensibly employees only of manufacturing (first) corporation.) See also: *Republic Creosoting Co.*, 19 N. L. R. B. 267. *Monteith Bros. Co.*, 34 N. L. R. B. 896.

M. F. A. Milling Co., 26 N. L. R. B. 614. (Farmers' association, which controlled policies of respondent milling company, but which had not exercised such control, *held* not an employer within the meaning of the Act.)

Solvay Process Co., 26 N. L. R. B. 650. (Company that owned and managed plant in which employees of alleged independent contractor worked, was the sole source of the money with which they were paid, and maintained some control over personnel and production, *held* the employer of such workers.)

Wilcox Oil & Gas Co., 28 N. L. R. B. 79. (Operators of a company's properties under a contract which purported to be a lease but which gave the company power to control the operations, *held* that both company and operators were employers.)

Deep River Timber Co., 37 N. L. R. B. 210. (Company *held* to be the employer of workmen employed by alleged contractors when their work is interrelated with company's operations and when company had contracted to assume responsibility for their wages and working conditions.) See also: *Alco Feed Mills*, 41 N. L. R. B. 1278.

3. *Employer associations, individuals or companies, or groups acting for or in the interest of an employer.* [*See* UNFAIR LABOR PRACTICES §§ 4–10 (as to employer's responsibility for the acts of parties succeeding to or acting in the interest of the employer).]

40 a. In general.

The word "persons" as used in Section 10 (c) which provides that if the Board is of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice it may issue an order and take affirmative action in regard to such person, includes the word "employer" as used in Section 2 (2), which provides that "employer" includes any person acting in the interest of an employer

directly or indirectly. *N. L. R. B.* v. *Hearst*, 2 N. L. R. B. 530, enforced 102 F. (2d) 658, 663.

McGoldrick Lumber Co., 19 N. L. R. B. 887; (Labor organizations not considered "employers" within the meaning of Section 2 (2) of the Act even though they may be acting in the interest of an employer.)

40.1 b. Employer associations.

Employer association not authorized generally to control labor policies or handle employment problems among its members is not an employer within the meaning of the Act. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 692–696.

The Board may find an appropriate unit composed of the employees of a number of companies associated together in several employer associations since the Act expressly gives to the Board the authority to decide that the "employer" unit is a unit most appropriate for purposes of collective bargaining and the Act includes within the term employer "any person acting in the interest of an employer, directly or indirectly," and within the term person "one or more . . . associations . . . " *Shipowners' Associations of the Pacific Coast*, 7 N. L. R. B. 1002, 1024, 1025, review of decision and direction of election denied, 308 U. S. 401, affirming 103 F. (2d) 933 (App. D. C.). See also: *Mobile Steamship Corp.*, 8 N. L. R. B. 1297, 1311, 1312.

Employer association of mine operators which assists its members in the conduct of their respective businesses, especially in the handling of their labor relations, *held* an employer within the Act, since Section 2 (1) of the Act provides that the term person includes "association"; Section 2 (2) provides that the term employer includes "any person . . . acting directly or indirectly . . . in the interest of an employer"; and Section 2 (3) defines the term "employee" to include "any employee, and shall not be limited to the employees of a particular employer." *Williams Coal Co.*, 11 N. L. R. B. 579.

Although having no formal organization, a group of employers who, for a long period of years functioned collectively through conferences, committees, and a board of conciliation in collective bargaining relations with a labor organization, may constitute an employer within the meaning of the Act. *Stevens Coal Co.*, 19 N. L. R. B. 98.

Alston Coal Co., 13 N. L. R. B. 683 (mine operators). See also: *Canisteo Mining Co.*, 39 N. L. R. B. 8.

Federated Fishing Boats, Inc., 15 N. L. R. B. 1080 (fishing boat operators).

Monterey Sardine Industries, Inc., 26 N. L. R. B. 146 and 731 (fishing operators).

Seaboard Lemon Assn., 28 N. L. R. B. 273 (non-profit cooperative agricultural marketers). See also: *Grower-Shipper Vegetable Assn. of Central California*, 43 N. L. R. B. 1389.

National Dress Mfg. Assn., Inc., 28 N. L. R. B. 386 (garment manufacturers).

Saticoy Lemon Assn., 28 N. L. R. B. 1214 (non-profit cooperative agricultural marketers).

Lewis Lumber Co., 29 N. L. R. B. 1090 (lumber operators). See also: *Westfir Lumber Co.*, 29 N. L. R. B. 1105. *Booth-Kelly Lumber Co.*, 30 N. L. R. B. 7.

Metal Covered Door & Window Mfg. Assn., 32 N. L. R. B. 586 (metal products manufacturers). See also: *Washington Metal Trades, Inc.*, 43 N. L. R. B. 158.

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668 (ship owners).

Alaska Salmon Industry, Inc., 33 N. L. R. B. 727 (salmon canners).

Northern Electrotype Co., 36 N. L. R. B. 832 (electrotypers).

40.2 c. Individuals or companies as *alter ego* or acting in the interest of employers.

Individual who had important part in forming corporation, who was principal creditor and source of working capital of corporation, and who controlled its business and labor policies, *held* to act "in the interest of" the corporation and to be joint employer of corporation's employees although he was not an officer, director, or employee of corporation. *Sussex Dye & Print Works, Inc.*, 34 N. L. R. B. 625.

Hoosier Veneer Co., 21 N. L. R. B. 907, 936, enforced as modified 120 F. (2d) 574 (C. C. A. 7), cert. denied 314 U. S. 647 (received of a corporation).

Schieber, 26 N. L. R. B. 937 (president of a corporation).

Wilcox Oil & Gas Co., 28 N. L. R. B. 79 (contractor corporation).

National Lumber Mills, Inc., 37 N. L. R. B. 700 (plant manager who controlled common production and labor policies of two corporate respondents.) See also: *Adel Clay Products Co.*, 44 N. L. R. B. 386.

Sanco Piece Dye Works, Inc., et al., 38 N. L. R. B. 690 (president, general manager, and one of principal stockholders of company leasing space to other respondents).

Johnson, 41 N. L. R. B. 263. (Individual who exercised ultimate control in the management of three interrelated companies, including the hiring of supervisory employees and the determination of wage rates and other conditions of employment, *held* an employer within the meaning of the Act.)

Springfield Woolen Mills Co., 41 N. L. R. B. 921. (Individual operating store located opposite respondent's mill, having no official connection with or financial interest in respondent, or any voice in the conduct of its business or in the formulation of its labor policies, or any authority to act for it in any way, and whose activities in opposing union were not instigated by respondent but arose because of his belief that respondent's mill might close down if union came in, and his business would suffer, *held* not to have been acting in the interest of employer in opposing union and not to be an employer within the meaning of the Act.)

Wright Products, Inc., 45 N. L. R. B. 509. (Individual who acted as factory superintendent with complete authority over employees of corporation involved, for which service he received as compensation free use of space for his own business and dwelling and use at cost of corporation's personnel and equipment when necessary to supplement his own, *held* in his capacity as superintendent to be an employer of the corporation's employees within the meaning of Section 2 (2) of the Act.)

McLachlan & Co., Inc., 45 N. L. R. B. 1113. (Individual employed by respondent corporations to advise them in all matters pertaining to labor relations.)

A company engaged in the packing of fruit and vegetables is an employer of warehouse labor not only in its own plant, but in an adjacent plant of a second company, where the warehouse labor of both plants is operated as a unit, the general superintendent of the first company is in charge of employment at both, where the employees are interchanged between the plants as necessities for their services are required and the employees are paid by the first company and reimbursed by the second company to the extent that services have been rendered for the benefit of the latter. *Santa Cruz Fruit Packing Co.*, 1 N. L. R. B. 454, 463, 464,

enforced as modified 303 U. S. 453, affirming 91 F. (2d) 790 (C. C. A. 9).

Bell Oil & Gas Co., 1 N. L. R. B. 562, 580, set aside 98 F. (2d) 406 (C. C. A. 5), rehearing denied 98 F. (2d) 870 (company owning and operating plant jointly with two other companies and acting for itself and as agent for the companies with respect to personnel and labor relations).

Hopwood Retinning Co., Inc., 4 N. L. R. B. 922, 932–935, enforced as modified 98 F. (2d) 97 (C. C. A. 2), contempt citation granted 104 F. (2d) 302 (one company as *alter ego* of another).

Manville Jenckes Corp., 30 N. L. R. B. 382 (subsidiary-parent). See also: *Standard Oil Co.*, 43 N. L. R. B. 12, 58, 59.

Long Lake Lumber Co., 34 N. L. R. B. 700 (corporation as *alter ego* of an individual).

Brown-McLaren Mfg. Co., 34 N. L. R. B. 984 (one corporation as *alter ego* of another).

10.3 d. Informal groups. [*See* LITIGATION DIGEST. EMPLOYER: *Who may bind E*—Outsiders.]

Institutional respondents, *held* employers of employees of companies within the meaning of Section 2 (2) of the Act, despite their contentions that they are so-called "civic" organizations, since by their participation as agents of the companies in the unlawful scheme pursuant to which an "inside" organization was formed, controlled, and supported, they acted "directly or indirectly" in the interest of the companies. *Sun Tent-Luebbert Co.*, 37 N. L. R. B. 50. See also : *Kirk*, 41 N. L. R. B. 807. *Milan Shirt Mfg. Co.*, 22 N. L. R. B. 1143, enforced as modified (work-relief modification) 125 F. (2d) 376 (C. C. A. 6). (Respondent, corporate landlord, stockholders of which were local business men who incorporated to secure location of manufacturing plant in town, *held* not to have acted in interest of respondent employer.) *Kausel Foundry Co.*, 28 N. L. R. B. 906 (committee acting in behalf of several foundries including the company).

[*See* UNFAIR LABOR PRACTICES § 3 (as to the responsibility of employer for the acts of outside persons or groups).]

11 E. SUCCESSORS. [*See* LITIGATION DIGEST. EMPLOYER: *Change of status or legal personality.*]

No change in employer-employee relationship, *held* to have resulted from acquisition by one of two corporate enterprises, under identical ownership and control, of the other's

assets and business where both corporations were so interrelated as to be jointly and severally liable for unfair labor practices of both and where, within the Act, the one was a successor to the other. *Norwich Dairy Company, Inc* 25 N. L. R. B. 1166. See also:

National Supply Co., 16 N. L. R. B. 304.
Weinberger Banana Co., Inc., 18 N. L. R. B. 786.
Beckerman Shoe Corp., 21 N. L. R. B. 1222.
Bloomfield Mfg. Co., 22 N. L. R. B. 83.
Schieber, 26 N. L. R. B. 937.
Carpenter Baking Co., 29 N. L. R. B. 60.
Jergens Co. of California, 43 N. L. R. B. 457.
Steiner, 43 N. L. R. B. 1384.
Adel Clay Products Co., 44 N. L. R. B. 386.
Hancock Brick & Tile Co., 44 N. L. R. B. 920.
Red Diamond Mining Co., 44 N. L. R. B. 1234.

[*See* REMEDIAL ORDERS § 6 (as to effect of change of employer identity on scope of Order).]

F. INDEPENDENT CONTRACTORS. [*See* § 35.3 (as to the employer status of contracting parties operating enterprises under common control), and § 40.2 (as to the employer status of an independent contractor when acting in the interest of an employer).]

An employee of a meat packing company, and not the company itself, *held* an employer of plant cleaners who perform services for the company where the plant cleaners are hired under a contract between the company and the employee in question by the terms of which the latter had the right to hire and discharge the plant cleaners without the approval of the company and the duty of supervising their activities, notwithstanding the fact that the weekly salaries of the plant cleaners were paid by the company. *Armour & Co.*, 5 N. L. R. B. 975,979. Cf. *Butter Bros.*, 41 N. L. R. B. 843. (Employer, which by contract let out its maintenance work to an individual but continued to exercise control over the maintenance employees and dominated the labor policies of the "contractor," *held* to have assumed jointly with the "contractor" the role of employer of such employees within the meaning of the Act.)

Trucking and booming employees of independent contractors not included in unit with employees of logging company, where the independent contractors exercised complete supervision over their operations and their employees. *Markham & Callow, Inc.*, 13 N. L. R. B. 963.

G. TRUSTEES AND RECEIVERS. [*See* §§ 40, 40.2, JURISDICTION § 14, and REMEDIAL ORDERS § 6 (as to the effect of the Bankruptcy Act and proceedings thereunder), and LITIGATION DIGEST. EMPLOYER: *Special types of employer.*]

§ 50 H. OTHER EMPLOYERS.

V. EMPLOYMENT.

§ 51 A. IN GENERAL.

B. REGULAR AND SUBSTANTIALLY EQUIVALENT EMPLOYMENT. [*See* REMEDIAL ORDERS § 121, and LITIGATION DIGEST. EMPLOYEE: *Status continues in spite of*—Regular and substantially equivalent employment.]

VI. LABOR DISPUTE.

§ 71 A. IN GENERAL. [*See* LITIGATION DIGEST. LABOR DISPUTES: *Constituted by Generally.*]

B. CURRENCY OF LABOR DISPUTE. [*See* LITIGATION DIGEST. LABOR DISPUTES: *Currency of dispute.*]

§ 72 1. *In general.*

Among the criteria for determining whether a strike continued in existence were the employer's filling of positions left vacant by the strikers, his resumption of normal operations, and the continuance of concerted strike activities by the workers. *Standard Insulation Co., Inc.*, 22 N. L. R. B. 758, 766. See also: *Standard Lime & Stone Co.*, 17 N. L. R. B. 147, 152, 153. *Phelps Dodge Corp.*, 19 N. L. R. B. 547.

§ 72.1 2. *When deemed "current."*

Alabama Mills, Inc., 2 N. L. R. B. 20, 33. (Labor organization continued negotiating with the employer for the reopening of the plant and the return of the strikers.)

Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1113. (Although partially broken by reason of the fact that some of the employees had returned to work, plant did not operate with its full complement of workers, and picketing was continued by those employees who did not return to work.)

National Motor Bearing Co., 5 N. L. R. B. 409, 434, modified 105 F. (2d) 652 (C. C. A. 9). (Continuance of picketing following lock-out.)

Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1. (Pendency of settlement negotiations, although strikers had been replaced and picket line was dispersed and production fully resumed.)

Solvay Process Co., 26 N. L. R. B. 650. (Inability of the company to continue operations.)

2.2 3. *When not deemed "current."*

Standard Lime & Stone Co., 17 N. L. R. B. 147. (Replacement by other workers; absence of strike activities during a period of 4 years; and lack of continuous litigation of the labor dispute during this period.)

Standard Insulation Co., 22 N. L. R. B. 758, 766. (Lack of concerted activities despite continuance in good standing of the union's charter and of its membership, and pendency of representation proceedings instituted subsequent to termination of strike.)

Kroger Grocery & Baking Co., 27 N. L. R. B. 250. (Strike terminated by the union.)

Mooremack Gulf Lines, Inc., 28 N. L. R. B. 869. (Pickets withdrawn, employers informed of termination of strike, and striking employees instructed to go back to their jobs.)

C. STRIKE. [*See* LITIGATION DIGEST. EMPLOYEE: *Status continues in spite of;* Strike. LABOR DISPUTES: *Strikes.*]

3 1. *In general.*

The action of several employees in calling upon the employer to protest the discharge of a fellow-employee, and their refusal to return to work until their interview had been completed was in effect a strike. *National New York Packing & Shipping Co., Inc.*, 1 N. L. R. B. 1009, 1018, enforced 86 F. (2d) 98 (C. C. A. 2).

A strike is a controversy concerning terms, tenure, and conditions of employment and is a labor dispute within the meaning of Section 2 (9) when called because of the failure of an employer and a labor organization to come to an agreement concerning wages and working conditions. *Mackay Radio & Telegraph Co.*, 2 N. L. R. B. 500, 515.

A strike exists when a group of employees ceases work in order to secure compliance with a demand for higher wages, shorter hours, or other conditions of employment, the refusal of which by the employer has given rise to a labor dispute; and this is unaffected by the fact that the group may not have considered its action a strike, that it occurs at a time when work would have ceased if the demands of the employees for a shorter working day had been granted, or that the group wished to return the next day to work a number of hours equal to that in the shorter working day demanded, since a refusal to work the number of hours required by an employer is tantamount to an absolute refusal to work. *American Mfg. Concern*, 7 N. L. R. B. 753,

759. See also: *Harnischfeger Corp.*, 9 N. L. R. B. 676, 686. *C. G. Conn, Ltd.*, 10 N. L. R. B. 498, 505, set aside 108 F. (2d) 390 (C. C. A. 7).

Where a strike, caused by the unfair labor practices of the employer, was called off for 1 day, pursuant to a strike settlement in which the minds of the parties never met, the walkout the next day was not a new strike but a continuation of the first strike. *Elkland Leather Co.*, 8 N. L. R. B. 519, 553, 554, enforced 114 F. (2d) 221 (C. C. A. 3), cert. denied 311 U. S. 705.

A strike is a temporary stoppage of work by a group of employees in order to express a grievance or to enforce a demand. *Cudahy Packing Co.*, 29 N. L. R. B. 837.

Stoppages of work constituted a strike, when the union notified the employer of its action to strike unless the employer observed the provisions of the Act, and thereafter negotiated on behalf of the persons who had ceased work as a result of the labor dispute; employer's contention that the stoppage was not a strike because employees quit to secure employment elsewhere and there was absent a picket line, found without merit. *Fiss Corp.*, 43 N. L. R. B. 125.

74 2. *Sit-down.*

The right to strike guaranteed by Section 13 of the Act plainly contemplates a lawful strike—the exercise of the unquestioned right to quit work—but does not include an illegal seizure of premises in order to prevent their use by the employer in a lawful manner, and thus by acts of force and violence to compel the employer to submit. *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 256, modifying 5 N. L. R. B. 930, and modifying 98 F. (2d) 375 (C. C. A. 7). See also:

Reading Batteries, Inc., 19 N. L. R. B. 249, 260.
Lansing Co., 20 N. L. R. B. 434, 444.
Swift & Co., 21 N. L. R. B. 1169, 1188.
Aladdin Industries, 22 N. L. R. B. 1195, 1216.

Southern S. S. Co., 316 U. S. 31, reversing and remanding 120 F. (2d) 505 (C. C. A. 3), enforcing 23 N. L. R. B. 26. (Contention that strike constituted mutiny, upheld.)

Stoppages of work which did not involve seizure or destruction or damage to employer's property with resultant financial loss to the employer, *held* not sit-down strikes or "an outlaw enterprise." *Cudahy Packing Company*, 29 N. L. R. B. 837.

Stewart Die Casting, 14 N. L. R. B. 872, 896. (Sit-down strike devoid of violence or destruction of property and a prompt and peaceful evacuation of the plant when the police authorities took charge.)

[*See* § 8 (as to effect of misconduct upon employee status).]

3. *Partial strike.*

A refusal to work overtime is, in effect, a partial strike. *Harnischfeger Corp.*, 9 N. L. R. B. 676, 686. See also: *American Mfg. Concern*, 7 N. L. R. B. 753, 759.

Refusal of employees to accept position vacated by discriminatory removal of leader of employee activities, *held* analogous conduct to a partial strike. *Niles Fire Brick Co.*, 30 N. L. R. B. 426.

Refusal of employees to do the work of the strikers because of their sympathy with the strikers is not an act of insubordination, but is in the nature of a partial strike. *Rapid Roller Co.*, 33 N. L. R. B. 557, enforced 126 F. (2d) 452 (C. C. A. 7).

[*See* UNFAIR LABOR PRACTICES § 406 (as to employer's right to discharge employees for refusal to obey legitimate orders).]

D. OTHER LABOR DISPUTES.

A controversy over seniority rights, dealt with in a contract of employment, is a current labor dispute within the meaning of Section 2 (9) of the Act. *N. L. R. B.* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 726, (C. C. A. 6), setting aside 1 N. L. R. B. 546, affirmed 306 U. S. 332.

The refusal of employees, engaged as marine engineers, to sail the vessel on which they worked, because they believed the remaining members of the crew were incompetent, constitutes a labor dispute, within the meaning of Section 2 (9). *Southgate Nelson Corp.*, 3 N. L. R. B. 535, 542.

Refusal by employees to work on Labor Day constitutes a current labor dispute with respect to terms and conditions of employment. *Good Coal Co.*, 12 N. L. R. B. 136, enforced 110 F. (2d) 501 (C. C. A. 6), cert. denied 310 U. S. 630.

A dispute involving the discharge or demotion of a supervisor objectionable to the employees constitutes a labor dispute within the meaning of Section 2 (9). *Aladdin Industries, Inc.*, 22 N. L. R. B. 1195, 1216, enforced as modified 125 F. (2d) 377 (C. C. A. 7), cert. denied 62 S. Ct. 1311.

Stoppages of work pursuant to a program planned and executed by the union in support of its position in a dispute

with the employer respecting conditions of work, constituted collective union activity. *Cudahy Packing Co.*, 29 N. L. R. B. 837.

VII. LABOR ORGANIZATION. [*See* § 92 (as to a labor organization as a representative), and INVESTIGATION AND CERTIFICATION §§ 81–83.9 (as to organizations which may participate in an election).]

§ 82 A. EMPLOYER-DOMINATED ORGANIZATIONS.

An employees' association is a labor organization, within the meaning of Section 2 (5) where the association is a mechanism for the handling of grievances, notwithstanding the fact that it is employer-dominated, and participation of employees is futile. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 14, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

The definition of a labor organization found in Section 2 (5) of the Act is broad enough to embrace an organization which is dominated or interfered with or to which an employer contributes financial or other support within the meaning of Section 8 (2). *Atlanta Woolen Mills*, 1 N. L. R. B. 316, 333.

The term labor organization as used in Section 2 (5) is not in its ordinary meaning but in a special and technical sense solely for the purpose of statutory draftsmanship and to make the prohibition of Section 8 (2) all inclusive, and embraces an employee-representative plan, notwithstanding the contention of the employer that the plan is not a membership society capable of acting as a legal entity in that it has no members and no existence of any kind as an artificial person but is merely an aggregate of practices, for the prohibition of Section 8 (2) was intended to apply to any device which would tend to displace, or masquerade as, a genuine labor organization, whether it was itself such a genuine organization or not. *International Harvester Co.*, 2 N. L. R. B. 310, 353. See also: *American Rolling Mill Co.*, 27 N. L. R. B. 441, 452, enforced as modified 126 F. (2d) 38; and 43 N. L. R. B. 1020, 1046.

Employees' committee formed by employer and existing for the purpose of presenting grievances is a labor organization within the meaning of Section 2 (5) of the Act. *Monteith Bros. Co.*, 34 N. L. R. B. 896.

[*See* INVESTIGATION AND CERTIFICATION §§ 22, 43 (as to effect of a contract or prior determination as a bar to a representation proceeding when contracting union or certified representative was subsequently found to be employer-dominated).]

83 B. "BACK-TO-WORK" ORGANIZATIONS.

Employee associations secretly formed by an employer as part of a "back-to-work" movement during a period of a strike and shut-down of its plant are labor organizations within the meaning of Section 2 (5) where employees participate in the activities of the organizations which exist for the purpose of reopening the plant, a matter which concerns working conditions and labor disputes.

Remington Rand, Inc., 2 N. L. R. B. 626, 731, enforced as modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576. Cf. *International Harvester Co.*, 2 N. L. R. B. 310, 353. *Republic Steel Corp.*, 9 N. L. R. B. 219, 327, modified 107 F. (2d) 472 (C. C. A. 3), (denied certiorari) and granted limited certiorari (as to work-relief provisions) 309 U. S. 684, upon rehearing of, vacated 310 U. S. 655. *Reed & Prince Mfg. Co.*,12 N. L. R. B. 944, enforced as modified 118 F. (2d) 874 (C. C. A. 1), cert. denied 313 U. S. 595.

84 C. SOCIAL ORGANIZATIONS. [*See* § 82 (as to employer dominated organizations).]

An organization is a labor organization, within the meaning of Section 2 (5), and not merely a social club where its constitution and bylaws provide that its purpose is to deal with the management on questions relating to wages, working conditions, and further provide that although any member may join any other labor organization, by so doing he automatically has resigned from the organization in question, and that no member of any other labor organization is eligible to membership; and the fact that the organization never took up any grievances with the management or negotiated with it concerning labor conditions does not alter its status as a labor organization. *Wallace Mfg. Co., Inc.*, 2 N. L. R. B. 1081, 1086, 1087, 1091, enforced 95 F. (2d) 818 (C. C. A. 4).

An employees' club, whose activities are purely social in character and to which all employees, their wives and children belong, and to which no dues are paid, is not a labor organization, within the meaning of the Act. *Triplett Electrical Instrument Co.*, 5 N. L. R. B. 835, 847. See also: *Emerson Radio & Phonograph Corp.*, 43 N. L. R. B. 613.

An employees' club existing primarily for social and recreational purposes, that has discussed wages, working conditions, and grievances with the respondent's manage-

ment, *held* a labor organization within the meaning of Section 2 (5) of the Act. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1. See also *Nelson Mfg. Co., C.*, 15 N. L. R. B. 1051 enforced 120 F. (2d) 444 (C. C. A. 8).

General Electric Co., 43 N. L. R. B. 453. (A social organization which occasionally engaged in bargaining functions in behalf of its members, *held* not to exist primarily as a labor organization.)

An organization which promoted the formation of an active grievance committee is a labor organization although it may be called a social club. *B. Z. B. Knitting Co.*, 28 N. L. R. B. 257.

5 D. JOINT COUNCILS, FEDERATIONS, OR OTHER ORGANIZATIONS ACTING IN A REPRESENTATIVE CAPACITY.

State labor federations are labor organizations, within the meaning of the Act. *General Shoe Corp.*, 5 N. L. R. B. 1005, 1007.

A local joint executive board, consisting of representatives elected by each of three locals of a labor organization empowered to adjust differences between the locals and employers and to enforce wage scales and hours adopted by the locals after approval by the board, is a labor organization, within the meaning of the Act. *Hamilton Realty Corp.*, 10 N. L. R. B. 858, 860, 861.

A group of employees who elected an individual to discuss wages with the respondent, *held* to be a labor organization within the meaning of Section 2 (5) of the Act. *Tovrea Packing Co.*, 12 N. L. R. B. 1063, enforced as modified 111 F. (2d) 626 (C. C. A. 9), cert. denied 311 U. S. 668.

"Plan for Collective Bargaining and Profit Sharing" which provided in part for a trustee to be elected by employees to represent them in bargaining, *held* to be a labor organization within Section 2 (5) of the Act. *Duffy Silk Co.*, 19 N. L. R. B. 37.

An organization formed for the purposes of collective bargaining, *held* a labor organization within the meaning of Section 2 (5). *Remington Rand, Inc.*, 31 N. L. R. B. 490.

6 E. ORGANIZATIONS IN ABSENCE OF FORMALLY PERFECTED STRUCTURE.

A local union is a labor organization within the meaning of Section 2 (5) of the Act, although a charter has not yet

been issued to it by its parent organization, and it has not adopted a constitution and bylaws. *Aeolian-American Corp.*, 8 N. L. R. B. 1043, 1045.

Failure to adopt a constitution or bylaws or to comply with similar matters of internal organization, does not preclude the formation or existence of a labor organization, within the meaning of the Act, where in fact an organization participated in by employees for the purposes defined in Section 2 (5) is formed or exists. *Universal Match Corp.*, 23 N. L. R. B. 226. See also:

Pueblo Gas & Fuel Co., 23 N. L. R. B. 1028, 1035.
Monteith Bros., Inc., 34 N. L. R. B. 896, 902–3.
Yellow Truck & Coach Mfg. Co., 39 N. L. R. B. 14, 17.
Atlas Powder Co., 43 N. L. R. B. 757.
Steiner, 43 N. L. R. B. 1384.
Phillips Petroleum Co., 45 N. L. R. B. 1318.

Where a number of employees retained an attorney, organized themselves into a body, drafted and discussed a proposed constitution and bylaws for an organization, elected temporary officers, and adopted a name, and where a substantial number of employees signed cards designating this organization to represent them in collective bargaining, *held* sufficient to establish a labor organization within the meaning of the Act. *George W. Borg Corp.*, 25 N. L. R. B. 481.

The fact that an organization has not held meetings or collected dues, *held* not determinative of the question as to whether it is a labor organization entitled to exercise the privileges of a labor organization under the Act. *Gartland-Haswell Foundry Co.*, 26 N. L. R. B. 1270.

37 F. DORMANT OR DEFUNCT ORGANIZATIONS.

An unaffiliated organization which adopted a constitution and bylaws, elected officers and collected dues and to which a substantial number of employees made application for membership but which suspended the collection of dues and temporarily discontinued meetings following company's refusal to recognize it was and is a labor organization within the meaning of Section 2 (5) of the Act despite contentions of a competing organization that it has ceased to function as a labor organization. *Lakeview Lumber Co.*, 35 N. L. R. B. 96. See also: *Buzard-Burkhart Pine Co.*, 35 N. L. R. B. 203. *Texas Co.*, 43 N. L. R. B. 250. *Bob-Lo Excursion Co.*, 44 N. L. R. B. 449.

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[*See* INVESTIGATION AND CERTIFICATION §§ 34, 43 (as to effect of contract or prior determination as a bar to a representation proceeding when contracting union or certified representative subsequently became dormant or defunct); REMEDIAL ORDERS §§ 53, 100, 163 (as to issuance of remedial orders when employer is found to have dominated an organization or refused to bargain with an organization which subsequently became dormant or defunct).]

G. "SCHISM" IN ORGANIZATIONS.

Schism in ranks of labor organization results in creation of two rival organizations. *Chrysler Corp.*, 13 N. L. R. B. 1303. See also:

Motor Products Corp., 13 N. L. R. B. 1320.
Briggs Mfg. Co., 13 N. L. R. B. 1326.
Brewster Aeronautical Corp., 14 N. L. R. B. 1024.
Toledo Steel Tube Co., 15 N. L. R. B. 837.
Willys Overland Motors, Inc., 15 N. L. R. B. 864.
City Auto Stamping Co., 15 N. L. R. B. 1032.
North American Aviation, Inc., 19 N. L. R. B. 222.

[*See* INVESTIGATION AND CERTIFICATION §§ 5, 34, 42 (as to effect of contract or prior determination as a bar to a representation proceeding when there subsequently arose a "schism" in the contracting or certified organization).]

H. OTHER ORGANIZATIONS.

Organization in which employees participate, and whose purposes include dealing with employer concerning grievances and arbitration of differences, *held* a labor organization, although it had allegedly anti-labor purposes and objectives. *Lawson Mfg. Co.*, 19 N. L. R. B. 756, 759.

Organization in which the employees reported grievances and discussed conditions of employment and through which they made representations to the employer for the correction of particular grievances and the improvement of working conditions and which the employer recognized and dealt with as a labor organization, *held* a labor organization within the meaning of Section 2 (2) of the Act notwithstanding employer's contention that it was a social and not a labor organization. *Precision Castings Co.*, 30 N. L. R. B. 212.

Organization having as its stated purpose support of an Employee Representation Plan and opposition to an "outside" organization, *held* a labor organization within the meaning of the Act where it had designated employee representatives under the Plan as its representatives for

collective bargaining; alleged in its various pleadings that it is a labor organization; and where the employer stated in its exceptions that "it has functioned and is functioning as a labor organization." *Weirton Steel Co.*, 32 N. L. R. B. 1145.

Labor organizations which represented cannery employees of fish canning company are not disqualified from serving this function under the Act because officers of the respective organizations also represent fishermen who are not employees of the company and cannot be represented by labor organizations within the meaning of the Act. *Columbia River Packers Assn.*, 40 N. L. R. B. 246.

See also: *Columbia River Packers Assn.* v. *Hinton*, 62 S. Ct. 520. (Where it was *held* that fishermen were joint entrepreneurs.)

91 VIII. PERSON.

The term "persons" as used in Section 10 (c) includes the term "employer" as used in Section 2 (2), which provides that "employer" includes any person acting in the interest of an employer directly or indirectly. *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 663 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

A labor organization is a "person" as defined in Section 2 (1). *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, 9 N. L. R. B. 742, 11 N. L. R. B. 848; direction of election set aside 105 F. (2d) 589 (C. C. A. 6); reversed 308 U. S. 413; vacated 105 F. (2d) 598, 110 F. (2d) 661.

92 IX. REPRESENTATIVES. [*See* §§ 82–90 (as to labor organization as a representative).]

The Board is not concerned with whether certain organizations alleging to represent employees do or do not exist as labor organizations, since Section 9 of the Act refers not to "labor oragnizations" but to "representatives for the purposes of collective bargaining." *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 642, 643.

American Furniture Co., 4 N. L. R. B. 710, 712, 713. (The Act does not limit the employees' choice of representatives to labor organizations in which they participate as members or otherwise since the Act defines "representatives" to include any individual or labor organization, and therefore the contention of the employer that a central organization could not be designated as a collective bargaining agency, because no local union of the employees of the company had been chartered cannot be sustained.)

General Motors Corporation, Frigidaire Division, 39 N. L. R. B. 1108. (Since Act accords employees the right to designate as their representative any individual or labor organization, Board *held* without merit employer's contention that petition should be dismissed because no formal organization had been formed to act in their behalf by international union with whom employees affiliated themselves, when employees involved have operated for some time under "formal aegis" of a local affiliated with the international which had been previously certified as representative of other of company's employees.

Since Section 9 of the Act provides only for certification by the Board of "representatives" designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, the term "representatives" being defined by Section 2 (4) of the Act to include "any individual or labor organization," and since certification under the Act is appropriate only when the process of collective bargaining is to be carried on, not by the majority of the employees themselves, but by individuals or a labor organization whom the majority designated, *held* that no question concerning representation had arisen where the petitioners, constituting a group of employees, had not formed and designated as their representative any organization, agency, employee representation committee or plan, or any individual to act for them. *Solar Varnish Corp.*, 36 N. L. R. B. 1101.

An organization may be the representative for groups of employees having diverse interest and constituting separate appropriate units, for the Act guarantees all employees the freedom of self-organization and the designation of bargaining representatives is left to "their own choosing." *Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973. See also: *Chrysler Corp.*, 44 N. L. R. B. 881. *Bethlehem Steel Co.*, 45 N. L. R. B. 92.

[*See* EVIDENCE § 23 (as to the admissibility of matters affecting the internal affairs of labor organizations); PRACTICE AND PROCEDURE §§ 16–17.9 (as to the effect of jurisdictional disputes between affiliated but competing labor organizations in representation proceedings); and INVESTIGATION AND CERTIFICATION §§ 81–83.9 (as to who may participate in an election).]

JURISDICTION

SCOPE OF JURISDICTION.

C. KIND, CHARACTER, OR CLASSIFICATION OF ENTERPRISES WITHIN SCOPE OF BOARD'S JURISDICTION.

SCOPE OF JURISDICTION.

C. KIND, CHARACTER, OR CLASSIFICATION OF ENTERPRISES WITHIN SCOPE OF BOARD'S JURISDICTION—Con.

9. Enterprises local in character but forming an integral part of interstate operations conducted by others.
1 a. In general.
1.1 b. Manufacutring, producing, and processing.
1.2 c. Wholesaling, jobbing, and retailing operations.
d. Natural resources and agricultural products.
1.3 (1) Preparing, processing, and packing agricultural products, or the artificial production thereof.
1.4 (2) Mining, lumbering, quarrying, oil, gas producing, refining and/or related enterprises.
1.9 e. Other enterprises.
2 10. Operations within the District of Columbia or any territory.
3 11. Operations in single State but resulting in shipments through any other State, territory, District of Columbia, or foreign country.
4 12. Insurance, banking, and related enterprises.
5 13. Enterprises owned and controlled by the Federal government and operated for its account.
0 14. Other enterprises.

JURISDICTION

NATURE AND PURPOSE OF THE ACT: Sections 1, 7.

A. IN GENERAL.

Discrimination and coercion for the purpose of preventing the free exercise of the right of employees to self-organization and representation is a proper subject for Congressional prohibition. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998.

The declared purpose of the Act is to diminish the causes of labor disputes burdening and obstructing interstate commerce, and its provisions apply only to such commerce. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 44, enforcing 11 N. L R. B. 105, and reversing 88 F. (2d) 154.

The history and language of the Act show that its purpose was to protect interstate commerce by securing to employees the rights established by Section 7. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265, 266, enforcing 1 N. L. R. B. 1, and reversing 91 F. (2d) 178 (C. C. A. 3).

The object of the National Labor Relations Act is to provide reasonable preventive measure to protect interstate and foreign commerce, which Congress was entitled to provide. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 222, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

By virtue of Section 10 (a) of the Act, the Board has been made the exclusive agency for the purpose of ascertaining and preventing unfair labor practices. *Amalgamated Utilities Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 264, denying application for contempt order, and affirming 106 F. (2d) 991 (C. C. A. 2).

The purpose of the Act is to prevent unfair labor practices by employers engaged in interstate commerce, and not to interfere in the field of intrastate commerce in which Congress has no power to intrude. *Foster Bros. Mfg. Co.* v. *N. L. R. B.*, 85 F. (2d) 984, 986, reversing 1 N. L. R. B. 880, rehearing denied 90 F. (2d) 948.

The Act fixes no tenure of employment and gives no cause of action for discharge. *Agwilines, Inc.* v. *N. L. R. B.*, 87 F. (2d) 146,-151 (C. C. A. 5), modifying 2 N. L. R. B. 1.

The primary purpose of the Act is to obviate appeals to brute force which often accompany labor disputes. *N. L. R. B.* v. *Delaware-New Jersey Ferry Co.*, 90 F. (2d) 520 (C. C. A. 3), setting aside 1 N. L. R. B. 85, cert. denied 302 U. S. 738.

The Act is highly remedial in character and is entitled to a broad and liberal construction; and it is hardly to be presumed that Congress should have intended its provisions to have no application to disputes pending at the time it went into effect. *Jeffrey-DeWitt Insulator Co.*, v. *N. L. R. B.*, 91 F. (2d) 134, 139 (C. C. A. 4), enforcing 1 N. L. R. B. 618, cert. denied 302 U. S. 731.

The Act is not designed to force adjustment of disputes, and each party is left to use its own economic strength in all lawful ways to promote its advantage. *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879 (C. C. A. 2), enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579.

The Act is designed primarily as a preventive measure, and actual stoppage or impairment of commerce is not required before the Board is authorized to act, for since Congress has declared what practices have the intent or necessary effect of impairing, burdening, or obstructing commerce, the determination is conclusive, and once the practices are shown to take place in an industry whose products enter interstate commerce in substantial degree, the Board has the power to correct them. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 495 (C. C. A. 9), enforcing 3 N. L. R. B. 140, cert. denied 306 U. S. 643. See also: *Clover Fork Coal Co.*, 97 F. (2d) 331 (C. C. A. 6), enforcing 4 N. L. R. B. 202. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, enforcing 1 N. L. R. B. 503 and reversing 83 F. (2d) 998.

It is not the sole purpose and end of the Act to pave the way for and prevent interference with the initial exercise of the right of collective bargaining which Section 7 guarantees to employees, and so where that right was exercised and it resulted in a collective contract between the employer and the employees, the Board had jurisdiction to deal with the subsequent discriminatory discharge of an employee in violation of that contract. *N. L. R. B.* v. *Newark Morning Ledger Co.*, 120 F. (2d) 266, modified 120 F. (2d) 262, cert. denied 314 U. S. 693, enforced 21 N. L. R. B. 988.

[*See* LITIGATION DIGEST. COMMERCE: *"Affecting" com*
NLRA: *Relationship to other legislation.*]

§ 2 B. CHARACTER OF RIGHTS CONFERRED.

As between employer and employee the statute conf
right of action triable by a jury or otherwise; no pro
in it authorizes an employee to make claim; the Ac
not purport to confer private rights, for the proceec
not a private one to enforce a private right but a
procedure looking only to public ends for the purp
maintaining and furthering industrial amity and prev
industrial war. *Agwilines* v. *N. L. R. B.*, 87 F. (2d
150 (C. C. A. 4), modifying 2 N. L. R. B. 1. See
Amalgamated Utilities Workers v. *Consolidated Ediso*
309 U. S. 261, affirming 106 F. (2d) 991 (C. C. A. 2

C. PROCEDURAL PROVISIONS. (*See* PRACTICE
PROCEDURE.)

D. CONSTRUCTION OF TERMS. (*See* DEFINIT

II. AS AFFECTED BY FEDERAL OR LOCAL LAWS, JUDI
PROCEEDINGS, OR AGREEMENTS: Section 1

A. FEDERAL OR LOCAL LAWS.

§ 6 1. *In general.*

The question whether alleged unfair labor practices ac
threaten interstate or foreign commerce in a subs
manner is of necessity presented where employers a
themselves engaged in such commerce and the autho
the Board is invoked to protect that commerce from
ference or injury arising from the employers' intr
activities, and the question should be determined i
of all the circumstances including the bearing and
of any protective action to the same end already
under State authority. *Consolidated Edison C*
N. L. R. B., 305 U. S. 197, 223, modifying 4 N. L. R.
and modifying 95 F. (2d) 390 (C. C. A. 2).

Exercise of the Federal power to protect interstate and f
commerce is not dependent upon State action an
not need to await the exercise of State authority. C
idated Edison Co. v. *N. L. R. B.*, 305 U. S. 197
modifying 4 N. L. R. B. 71, and modifying 95 F. (2
(C. C. A. 2).

The enactment of Federal Highway Aid Act, 42 Sta
held not to affect Board's jurisdiction over a co
engaged in road construction. *Isbell Constructio*
27 N. L. R. B. 472, 485.

2. *State labor relations statutes.*

The enactment of a State labor relations law cannot override, add to or detract from, the constitutional authority of the Federal Government to regulate and protect interstate commerce. *Consolidated Edison Co.*, v. *N. L. R. B.*, 305 U. S. 197, 223, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

State public utility and labor laws, *held* not to affect Board's jurisdiction where local legislation contains no comprehensive provisions for supervision of labor relations for employees in intrastate enterprises similar to that established by the Act with respect to interstate or foreign commerce and where no proceedings have been taken under State laws with respect to unfair labor practices alleged in complaint. *Southern Colorado Power Co.*, 13 N. L. R. B. 699, enforced 111 F. (2d) 539 (C. C. A. 10).

3. *Federal or State anti-injunction statutes.*

Congress intended to confer exclusive initial jurisdiction upon the Board to determine the appropriate and lawfully selected bargaining unit for employees, and intended to give the Board alone appropriate machinery for making such determination, and neither the National Labor Relations Act nor the Norris-LaGuardia Act expressly or impliedly confers upon the Federal courts power to determine what is the appropriate and lawfully selected collective bargaining unit for employees. *Fur Workers Union* v. *Zirkin*, 105 F. (2d) 1, 12 (App. D. C. 1939), affirmed 308 U. S. 522.

The provisions of Sections 7, 8 (5), and 9 (a) of the National Labor Relations Act do not render inoperative the earlier provisions of the Norris-LaGuardia Act and thus permit an employer and a labor organization which have entered into a collective agreement to maintain injunction proceedings to restrain a second labor organization from picketing for the purpose of forcing the employer to recognize it where a Federal District Court found that the former organization represented a majority of the employees and the latter did not, on the theory that picketing after a majority of the employees had made a choice of representatives is an unlawful interference with the right of employees to self-organization and collective bargaining and is an unlawful attempt to compel the employer to commit an unfair labor practice, for a Federal District Court has no power to make

findings of fact determinative of the bargaining agency selected by the employees, but the jurisdiction to make such findings resides exclusively in the Board. *Fur Workers Union* v. *Zirkin*, 105 F. (2d) 1, 8–12 (App. D. C. 1939), affirmed 308 U. S. 522.

4. *Other laws.*

Although the Board may take judicial notice of State statutes, it has no authority to determine, upon evidence heard in one of its own proceedings, that a State criminal statute has been violated by employees, whether the issue be raised directly in such a proceeding or indirectly on exceptions to the Trial Examiner's Intermediate Report. *United Aircraft Mfg. Corp.*, 1 N. L. R. B. 236, 252.

Existence of Merchant Marine Act of 1936, providing for the appointment of a marine commission to investigate and fix minimum manning scales, minimum wage scales, and reasonable working conditions on vessels receiving an operating subsidy, *held* not to affect in any manner the jurisdiction of the Board to determine the choice of employees as to representatives for collective bargaining. *Lykes Bros. S. S. Co., Inc.*, 2 N. L. R. B. 102, 111, 112.

New York & Porto Rico S. S. Co., 34 N. L. R. B. 1028; (Neither the navigation laws of the United States nor the shipping articles prescribed thereunder, alone or together, deprive the Board of jurisdiction to proceed against respondents charged with the commission of unfair labor practices.)

Texas Co., 42 N. L. R. B. 593. (Prevention under Act of discrimination by maritime employer against seamen who have engaged in normal and lawful union activity and reinstatement of a maritime employee discriminately discharged, *held* not incompatible with marine safety legislation.)

Jurisdiction taken over subsidiary of a railroad corporation engaged in the operation of vessels in a coastwise service between ports on the eastern coast of the United States notwithstanding the contention of one of the labor organizations involved that the Railway Labor Act is applicable and that the Board, therefore, has no jurisdiction, where the railroad corporation and its subsidiary are maintained and operated as distinct legal entities. *Ocean S. S. Co.*, 2 N. L. R. B. 588, 589, 590.

Frederick R. Barrett, 3 N. L. R. B. 513, 514. (Trial Examiner's denial of motion of employer, engaged as an inde-

pendent contractor in supplying longshoremen for the purpose of unloading coal from interstate freight trains and reloading such coal into interstate vessels, to dismiss complaint on grounds that employer was subject to the jurisdiction of the Railway Labor Act and therefore, by virtue of Section 2 (2) of the National Labor Relations Act, not subject to the jurisdiction of the latter statute, affirmed.

[*See* § 85 (as to enterprises owned, controlled, or requisitioned by the Federal Government and operated for its account), and DEFINITIONS §§ 32–32.4 (as to governmental subdivisions as employers), § 33 (as to employers subject to jurisdiction of other Federal agencies).]

Company's allegation that it could not legally make an employment contract with certain discriminatorily discharged persons under the "contract labor law" 8 U. S. C. A. 136 (h), 139, as these individuals were then citizens of and residents in a foreign country, *held* without merit, for these laws do not affect Board's plenary power under Section 10 to take such affirmative remedial action as would effectuate the purposes of the Act. *Phelps Dodge Refining Corp.*, 37 N. L. R. B. 1059, 1086.

5. *Bankruptcy Act.* (*See* § 14.)

B. JUDICIAL PROCEEDINGS. [*See* EVIDENCE § 42 (as to Board proceedings as *res judicata*) and LITIGATION DIGEST. NLRA: *Relationship to other governmental agencies.* PROCEDURE BOARD: *Generally. Res judicata* not applicable.]

1 1. *Injunction or other proceedings in absence of Board as a party.*

A decree of a Federal District Court requiring specific performance by an employer of an agreement it had entered into with a labor organization, which by its terms provided that the employees either join the organization or have deducted from their wages, sums of money equivalent to its dues, does not preclude the Board's consideration of the validity of the contract or the making of an order invalidating it as violative of the Act, for the power of the Board to prevent unfair labor practices is exclusive and, further, the action in the District Court was a suit between private parties in which the issues concerning a violation of the Act were neither set up in the pleadings, nor considered or decided by the Court. *National Electric Products Corp.*, 3 N. L. R. B. 475, 500–503.

An injunction decree by a State court issued against a labor organization upon a bill of the employer alleging among other things that a strike was caused by the refusal of the employer to sign an agreement with the labor organization, does not preclude a finding by the Board that the strike was caused by a refusal of the employer to bargain collectively nor do the Board's findings fail to grant full faith and credit to the decree; and since the allegation in the bill was immaterial to the relief sought, and since the Board was not a party to the proceedings, the principle of *res judicata* is not applicable under such circumstances. *U. S. Stamping Co.*, 5 N. L. R. B. 172, 184, 185. See also:

Mason Mfg. Co., 15 N. L. R. B. 295, enforced as modified 126 F. (2d) 810 (C. C. A. 9).

Goodyear Tire & Rubber Co., 21 N. L. R. B. 306, 315, enforced in part 129 F. (2d) 661 (C. C. A. 5).

Schieber, 26 N. L. R. B. 937, 958.

Curtiss Wright Corp., 39 N. L. R. B. 992, 1011.

Ruling of Trial Examiner denying motion of employer to dismiss complaint charging unfair labor practices on ground that the issues of fact raised thereby had already been determined adversely to the complaining labor organization by virtue of certain proceedings in equity in a Federal District Court which had resulted in the issuance of a temporary restraining order and a temporary injunction against the labor organization; and further ruling of Trial Examiner denying motion made by employer at beginning of hearing to restrict the proceedings to matters arising after issuance of the temporary injunction, affirmed. *Altorfer Bros. Co.*, 5 N. L. R. B. 713, 714.

Trial Examiner's denial of employer's motion to dismiss allegations of unfair labor practices insofar as they were inconsistent with a decree of a State Circuit Court, *affirmed*, for the issues and parties were not the same and the Court's finding was not binding upon the Board. *Fansteel Metallurgical Corp.*, 5 N. L. R. B. 930, 931, modified 306 U. S. 240, modifying 98 F. (2d) 375 (C. C. A. 7).

The Board is not precluded from determining whether individual contracts of employment entered into between an employer and its employees constitute an unfair labor practice, and from issuing an order based thereon, where a State court in an injunction proceeding instituted by the employer against a labor organization determines that such

contracts are valid, since the power of the Board to prevent unfair labor practices is exclusive and the State court was limited to the issues of whether individual contracts as such were lawful and whether the contracts in question were valid according to their terms. *Williams Mfg. Co.*, 6 N. L. R. B. 135, 143, 144.

An order of a State court in a proceeding to enjoin a labor organization from picketing an employer's plant based upon a truce agreement entered into between the labor organization and the employer providing for the suspension of the strike pending a proposed election, for the return of employees to work, and for the early conduct of negotiations by the employer with the labor organization, cannot operate as a satisfaction of the employer's duty to bargain collectively where the employer was willing to bargain with the labor organization as representative of its members only, for the power of the Board to prevent unfair labor practices is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. *Serrick Corp.*, 8 N. L. R. B. 621, 648, 649, enforced 110 F. (2d) 29 (App. D. C.), affirmed 311 U. S. 72, rehearing denied 311 U. S. 729. See also: *Hill Bus Co., Inc.*, 2 N. L. R. B. 781, 795, 796.

In an unfair labor practice proceeding, a prior determination by a Federal District Court in an injunction suit brought by the respondent against the union in which it was found that the respondent's employees acting unanimously had voluntarily and at all times freely administered and maintained another labor organization, *held* not binding on the Board since under Section 10 (a) of the Act, the Board has the exclusive power to prevent any person from engaging in any unfair labor practice affecting commerce. *Donnelly Garment Co.*, 21 N. L. R. B. 164, 169, remanded for additional evidence 123 F. (2d) 215.

2. *Injunction proceedings or suits against the Board, its members, or agents.*

A district court is without jurisdiction to enjoin the Board from holding hearings on the ground the employer is not engaged in, nor do its activities affect, interstate or foreign commerce, where there is no claim that the provisions of the Act and rules of procedure prescribed for such hearings are illegal, or that the employer was not given sufficient opportunity to answer the Board's complaint, or would be

denied an opportunity to introduce evidence on the allegations made. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 47, denying injunction 11 N. L. R. B. 105, and reversing 88 F. (2d) 154 (C. C. A. 1), and 15 F. Supp. 915 (D. C. Mass.).

A district court is without jurisdiction to enjoin the Board from holding hearings because Congress has vested exclusive jurisdiction in the Board and the Circuit Court of Appeals, as it constitutionally could do since the Act provides for appropriate procedure before the Board and an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board in a review by the Circuit Court of Appeals. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 48, denying injunction 11 N. L. R. B. 105, and reversing 88 F. (2d) 154 (C. C. A. 1), and 15 F. Supp. 915 (D. C. Mass.).

A district court is without jurisdiction to grant an injunction to an employer to enjoin the Board from holding a hearing on the ground the Board lacked jurisdiction and the employer would be subjected to irreparable damage, for no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy is exhausted. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50, 51, denying injunction 11 N. L. R. B. 105, and reversing 88 F. (2d) 154 (C. C. A. 1), and 15 F. Supp. 915 (D. C. Mass.)

In a suit to enjoin the Board from holding hearings, the employer alleged in its bill that it was not engaged in, nor did its activities affect, interstate commerce. Board filed a motion to dismiss. Employer contended that the motion constituted an admission of the allegations in the bill and that such allegations must be accepted as true. *Held*: The motion admits as facts allegations describing the manner in which the business is carried on, but not the legal conclusions from those facts; allegations denying that interstate or foreign commerce was involved were conclusions of law. *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler*, 303 U. S. 54, 57, affirming 91 F. (2d) 730 (C. C. A. 4).

A suit by an employer to enjoin the Board from holding hearings is not moot, even after a hearing has been held, since the Trial Examiner had not yet made his report, nor the Board issued its decision, thus leaving a possibility of

further proceedings. *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler*, 303 U. S. 54, 58, affirming 91 F. (2d) 730 (C. C. A. 4).

3. *Proceedings involving a determination of employee representatives.*

Congress intended to confer exclusive initial jurisdiction upon the Board to determine the appropriate and lawfully selected bargaining unit for employees, and intended to give the Board alone appropriate machinery for making such determination, and neither the National Labor Relations Act nor the Norris-LaGuardia Act expressly or impliedly confers upon the Federal courts power to determine what is the appropriate and lawfully selected collective bargaining unit for employees. *Fur Workers Union* v. *Zirkin*, 105 F. (2d) 1, 12, (App. D. C. 1939), affirmed 308 U. S. 522.

A federal district court has no power to make findings of fact determinative of the lawful selection of a bargaining agency by employees and in so doing terminate a labor dispute concerned with that question, thereby permitting the court to issue an injunction in protection of the choice of the majority so found, unimpaired by the provisions of the Norris-LaGuardia Act, for initial jurisdiction to determine the bargaining agency selected by the employees lies exclusively with the Board. *Fur Workers Union* v. *Zirkin*, 105 F (2d) 1, 12 (App. D. C. 1939), affirmed 308 U. S. 522.

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668; (Pendency of action in Federal District Court brought by petitioning union to set aside Board's certification of intervenor in a system-wide unit, *held* not to bar Board from determining question concerning representation which petitioner alleges to have arisen among certain employees who were included in that system-wide unit.)

4. *Proceedings under Norris-LaGuardia Act, Bankruptcy Act, or other Federal statutes.*

The Board is not enjoined from proceeding and issuing its decision and order by reason of an injunction or stay issued under Section 77B of the Bankruptcy Act for the reorganization of a corporate employer, and a Federal district court has no power under the Bankruptcy Act or any other statute to stay or enjoin the Board from so proceeding; nor is the Board's right to issue a second amended complaint in

such proceeding a question for determination by a district court, but such question may be raised only in the Circuit Court of Appeals to which the Board may apply to compel obedience to its order in the event that the order be against the employer involved in the reorganization. *Englander Spring Bed Co.*, 17 F. Supp. 15. See also: *McKesson & Robbins, Inc.*, 19 N. L. R. B. 778, 781. *Baldwin Locomotive Works*, 20 N. L. R. B. 1100, enforced 128 F. (2d) 39 (C. C. A. 3), rehearing denied 128 F. (2d) 65 (C. C. A. 3). *Ryan Car Co.*, 21 N. L. R. B. 139.

The question of the constitutionality of the Act cannot be raised before a Federal district court considering the effect of a stay issued under Section 77B of the Bankruptcy Act upon a proceeding by the Board against the corporate employer involved, but this question should be raised before the Circuit Court of Appeals to which the Board may apply to compel obedience to its order for it is that Court which has exclusive jurisdiction. *Englander Spring Bed Co., Inc.*, 17 F. Supp. 15.

15 5. *Proceedings before State forums.*

Where a proceeding before the National Labor Relations Board not only was instituted prior to the time a State labor relations act became effective, but no proceedings had been taken under the State act, there has been no exertion of State authority which can be taken to remove the need for the exercise of Federal power to protect interstate and foreign commerce. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 224, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

Rock River Woolen Mills, 18 N. L. R. B. 828. (Where, during the pendency of a representation proceeding before the National Board, a petition for election was filed with and election held by a State Board under the mistaken assumption that the National Board's case was closed, *held* that State Board's action did not constitute a bar to National Board's determination of representatives when neither State Board nor company objected to the present proceeding.)

Fred Rueping Leather Co., 24 N. L. R. B. 1086. (Where, in a case involving concurrent jurisdiction by a State labor relations board and the National Labor Relations Board, a hearing upon unfair labor practice charges had been held before the State labor relations board, the National Labor Relations Board considered charges of unfair labor practices

covering a period subsequent to the hearing before the State board.)

Jacobs, Inc., 32 N. L. R. B. 646. (Where prior unit determination by a State labor board was considered in determining appropriateness of a unit.) See also: *Neenah Mills Products Co.*, 39 N. L. R. B. 191.

Eclipse Moulded Products Co., 34 N. L. R. B. 785, enforced 126 F. (2d) 576 (C. C. A. 7). (Company's contention that complaint should be dismissed because of prior jurisdiction exercised by a State labor relations board, rejected.) See also: *Thompson Products, Inc.*, 35 N. L. R. B. 323.

Northern States Power Co. of Wisconsin, 37 N. L. R. B. 991. (Petition to dismiss representation proceedings until resolution of proceedings before a State labor relations board denied.)

Waterman-Waterbury Co., 38 N. L. R. B. 330. (Prior certification of rival representative by a State labor conciliator, *held* not to bar determination of representatives.)

[*See* INVESTIGATION AND CERTIFICATION § 45 (as to the effect of representation determinations of other governmental agencies on the existence of a question concerning representation).]

Contrary finding of a State court that employer operated under a valid contract, *held* not binding upon the Board since the respondent may not avoid its obligation under the terms of the Act and nullify the rights of employees guaranteed by Congress through reliance on a decree of findings made in a private suit to which the Board was not a party. *Mason Mfg. Co.*, 15 N. L. R. B. 295, 315, modified on denial of rehearing 126 F. (2d) 810 (C. C. A. 9).

Receiver appointed by a State court, *held* to be within jurisdiction of Board, although appointing Court had not consented to the institution of the proceeding. *Hoosier Veneer Co.*, 21 N. L. R. B. 907, 935; enforced 120 F. (2d) 574 (C. C. A. 7), cert. denied 314 U. S. 647.

Employer's contention that the case of one person alleged to have been discriminatorily discharged should be dismissed because of the Division of Unemployment Compensation of the State of Illinois decided, in passing upon his claim for unemployment insurance, that he had been discharged for cause, *held* without merit since the Board has paramount initial jurisdiction over such subject matter. *Davies Co.*,

Inc., 37 N. L. R. B. 631. See also: *United Dredging Co.*, 30 N. L. R. B. 739.

C. AGREEMENTS. [*See* PRACTICE AND PROCEDURE §§ 1–11 (as to effect of agreements purporting to compromise unfair labor practices or settle representation disputes) and LITIGATION DIGEST. ORDERS GENERALLY: *Mootness*: Settlement to which Board is a party. Settlement to which Board is not a party.]

Section 10 (a) of the Act provides that the Board's power to prevent any person from engaging in any unfair labor practices affecting commerce "shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise," and an employer is obligated to reinstate strikers or employees discriminatorily discharged regardless of the fact that it had entered into an agreement with a labor organization representing the employees whereby such employees were to be reinstated within a given period. *Maryland Distillery, Inc.*, 3 N. L. R. B. 176, 188–190.

The power of the Board to prevent an employer from engaging in unfair labor practices is exclusive and unaffected by the fact that the discriminatory acts complained of by a labor organization were settled by the parties. *Consumers' Power Co.*, 9 N. L. R. B. 701, 738, 739, enforced 113 F. (2d) 38 (C. C. A. 6), rehearing denied October 8, 1940.

Although an employee who was discriminatorily discharged may have a cause of action for breach of a contract under which the employer covenanted not to "discharge or otherwise discriminate against any employee because of . . . [union] membership or . . . activity . . .," the Board in the exercise of its discretion may determine whether public interest requires it to act and may order reinstatement with back pay, for the existence of such private right in the employee in no way affects the public right or the exclusive jurisdiction of the Board to enforce it, since under Section 10 (a) the power of the Board to prevent unfair labor practices "shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." *N. L. R. B.* v. *Newark Morning Ledger Co.*, 120 F. (2d) 266, modified 120 F. (2d) 262, cert. denied 314 U. S. 693, enforced 21 N. L. R. B. 988. See also: *Merrimack Mfg. Co.*, 31 N. L. R. B. 965.

Motion to dismiss complaint on the ground that the facts alleged in the complaint could not lead to or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, because the contract between the respondent and the union provided that disputes shall be arbitrated and that there shall therefore be no strikes or lockouts during the term of the contract, denied for under Section 10 (a) of the Act the power of the Board to prevent unfair labor practices affecting commerce cannot be limited "by agreement . . ., or otherwise." *North American Aviation, Inc.*, 44 N. L. R. B. 604

ESTABLISHMENT OF JURISDICTION.

A. ADMISSION OR STIPULATION.

In a representation proceeding the Board assumed jurisdiction over a company nationally known as one of the largest producers of aluminum when the parties stipulated that in view of its admission that it was engaged in interstate commerce, they would waive specific facts and figures concerning the extent to which it was engaged in interstate commerce and substitute in lieu thereof company's admission that its business involved considerable sums of money and that a substantial proportion of its products from the plant involved were shipped to points outside the State. *Aluminum Co.*, 35 N. L. R. B. 957. See also: *Metal Process Corp.*, 29 N. L. R. B. 356.

.5 B. FAILURE TO DEVELOP EVIDENCE.

Pursuant to decree of the Circuit Court setting aside and remanding Board's decision and order dismissing complaint on ground that the facts appearing in the record then before the Board were "not sufficiently developed to afford a basis for determining whether or not the operations of the respondent affect commerce, within the meaning of the Act," Board reopened the record for the purposes noted in the decree to determine the issue of interstate commerce. *Protective Motor Service Co.*, 40 N. L. R. B. 967. See also: *San Diego Ice and Cold Storage Co.*, 17 N. L. R. B. 422. *Yellow Cab & Baggage Co.*, 17 N. L. R. B. 469. (Complaint was dismissed without prejudice because of lack of evidence to sustain the jurisdiction of the Board.)

SCOPE OF JURISDICTION: Section 2 (6), (7).

A. IN GENERAL.

Congress may exercise control over activities which are intrastate in character when separately considered but which have such a close and substantial relation to inter-

state commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, their industrial relations constitute a field into which Congress may enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, enforcing 1 N. L. R. B. 998, and reversing 83 F. (2d) 998 (C. C. A. 5).

The Act confers upon the Board exclusive initial power to make an investigation, but provides for judicial review by the Circuit Court of Appeals and therefore it does not purport to leave the determination of its own jurisdiction wholly to the Board. *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler*, 303 U. S. 54, 57, affirming 91 F. (2d) 730.

The Act does not impose collective bargaining on all industry regardless of effects upon interstate or foreign commerce, but purports to reach only what may be deemed to obstruct or burden such commerce. *Consolidated Edison Co.* v. *N. L. R. B.*, 95 F. (2d) 390, 393 (C. C. A. 2), affirming 4 N. L. R. B. 71, modified 305 U. S. 197.

The jurisdiction of the Board extends only to unfair labor practices "affecting commerce," as defined in the Act, and Section 10 does not grant it authority to issue orders concerning unfair labor practices in general. *N. L. R. B.* v. *Idaho-Maryland Mines Corp.*, 98 F. (2d) 129, 130 (C. C. A. 9), setting aside 4 N. L. R. B. 784. See also: *Cactus Mines Co.*, 21 N. L. R. B. 677.

Motion to dismiss complaint by employer, admittedly engaged in interstate commerce, on ground that an employee, out of whose discharge the complaint arose, had been employed in only one stage of the manufacture of its products, and in such capacity no connection with its interstate activities in the importation of raw materials or in the exportation of its finished products, and, hence, his employment or discharge was not subject to the control or supervision of the Board under the provisions of the Act, *denied*. *Crescent Bed Co., Inc.*, 9 N. L. R. B. 433, 434.

The term "trade" is equivalent to occupation, employment, or business whether manual or mercantile. *Bliss Properties*, 30 N. L. R. B. 1062. See also: *N. L. R. B.* v. *Willard, Inc.*, 98 F. (2d) 244 (App. D. C.), enforcing 2 N. L. R. B. 1094.

[*See* LITIGATION DIGEST. COMMERCE: "*Affecting*" *commerce.*]

B. SPECIFIC CRITERIA.

1. *Test of immediacy.*

Activities in relation to productive industry, although the industry when separately viewed is local, may have such a close and intimate effect upon interstate commerce as to bring the subject within the reach of Federal power. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 38, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

The constitutional validity of the Act has been upheld upon the well-established principle that the close and intimate effect which brings interstate commerce within the reach of Federal power may be due to activities in relation to productive industry, although that industry when separately viewed is local. *Santa Cruz Fruit Packing Co.*, v. *N. L. R. B.*, 303 U. S. 453, 464, modifying 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

Industrial disputes in an industry or business engaged in interstate commerce may, and frequently do, burden and interrupt the flow of such commerce, and the removal of a fact determined by experience to be the cause of such disturbances, from an instrumentality of commerce, or from a business engaged in interstate commerce, or from a business truly constituting a "throat" through which the current of commerce flows, is within the power of Congress because it directly affects interstate commerce. *N. L. R. B.* v. *Associated Press*, 85 F. (2d) 56, 59 (C. C. A. 2), enforcing 1 N. L. R. B. 788, affirmed 301 U. S. 103.

The disruptive results of a strike in completely stopping, not only the activities of a repressure system, but those of a pipe line system, which carried oil across State lines to a refinery, and of the refinery itself, leave no doubt that labor disputes among the employees of the repressure plant affected interstate commerce within the scope and meaning of the Act. *Bell Oil & Gas Co.* v. *N. L. R. B.*, 91 F. (2d) 509, 512 (C. C. A. 5), modifying 2 N. L. R. B. 577.

The use which some of their customers who are engaged in interstate commerce make of the electric energy and steam purchased from an integrated system of utility companies engaged in business in the City and State of New York furnishes a ground upon which the Board may claim jurisdiction. *Consolidated Edison Co.* v. *N. L. R. B.*, 95 F. (2d) 390, 394 (C. C. A. 2), enforcing 4 N. L. R. B. 71, modified 305 U. S. 197.

The test of jurisdiction is the immediacy and directness of the effect of industrial strife upon interstate commerce, and unfair labor practices fall within the scope of the Act because experience teaches that generally, if not in particular instances, they lead to such strife. *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331, 334 (C. C. A. 5), enforcing 4 N. L R. B. 202.

It is the prevention of strikes which, if they occur, will directly and immediately burden or obstruct interstate commerce, that furnishes the ground for the exercise of Congressional power. *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331, 334 (C. C. A. 6), enforcing 4 N. L. R. B. 202.

Employer engaged in mining coal contended that Board was without jurisdiction, since employer was neither engaged directly in interstate commerce nor was its business integrated on a national scale whereby a flow of commerce could be established, and that its activities could not be regulated as affecting interstate commerce unless the immediacy and directness of their impact upon such commerce were shown. *Held*: Contention overruled. Interference with the right of self-organization guaranteed by the Act leads to industrial strife which has an immediate effect upon interstate commerce, and such an effect may result in the case of an industry purely local in its primary activity as well as in that of an industry nationally organized. *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331, 333, 334 (C. C. A. 6), enforcing 4 N. L. R. B. 202.

Where a strike has halted interstate shipments amounting to 17.3 percent of the total daily and Sunday circulation of a newspaper, and such cessation was a direct result of the strike, it is clear that the unfair labor practices which were the cause of such strike directly affect interstate commerce. *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of employees, or department involved, to commerce; Relationship*

of employer's operations to commerce; Relationship of labor disputes to commerce; Relationship of ULP to labor disputes and to commerce.]

2. "*Stream of commerce*" *theory.*

Congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce; for the "stream of commerce" theory furnishes but a particular and not an exclusive, illustration of the protective power of Congress, since burdens and obstructions may be due to injurious action from other sources, the fundamental principle being that the power to regulate commerce is the power to enact all appropriate legislation for its protection and advancement. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 36, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

Although there is a break in the complete continuity of the "stream of commerce" by reason of a respondent's manufacturing operations which consist of the receipt of raw materials from other States and the transmission of finished products to all parts of the Nation, the fact remains that the stoppage of those operations by industrial strike would have a most serious effect upon interstate commerce and where the respondent's activities are far-flung it is idle to say that the effect would be indirect or remote. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

The "stream of commerce" theory is but a particular and not an exclusive method of determining the extent of protective power which Congress may exercise over interstate commerce, and the theory is not applicable to the situation of an employer which actually ships 37 percent of its products to other States and foreign countries, even though it derives all its raw materials from the State within which its processing operations are confined. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 464, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

A labor dispute affecting the rewriting staff of an association engaged in the receipt and distribution of news, to and from points within and without the United States, would be a dam to the flow of this news and might, or would, cut off interstate and foreign receipts and transmission, and

therefore, the activities of such an association are subject to Federal regulation. *N. L. R. B.* v. *Associated Press*, 85 F. (2d) 56, 59 (C. C. A. 2), enforcing 1 N. L. R. B. 788, affirmed 301 U. S. 103.

A corporation which performed the daily service of conducting a public auction for the sale of produce for sellers and purchasers from within and without the State, *held* to be engaged in commerce within the Act, for although its service was performed wholly within the State, it was an integral function in the shipment of large quantities of produce from their State of origin to their ultimate destination in other States, and an interruption of the performance of this operation would dislocate the movement of such produce and thereby burden and obstruct commerce, and the free flow of commerce. *Philadelphia Terminals Auction Co.*, 44 N. L. R. B. 454.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of employer's operations to commerce.*]

3. *Receipt from in absence of shipment to other States, or shipment to in absence of receipt from other States.*

Interstate commerce in manufactured articles may be subject to burdens and obstructions which spring from labor disputes, without regard to the origin of the materials used in the manufacturing process. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 465, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

It is immaterial that the greater part of the raw materials and supplies used by an employer in its manufacturing operations are derived from within the State where a great part of its finished products are shipped to other States. *Mooresville Cotton Mills* v. *N. L. R. B.*, 94 F. (2d) 61, 63 (C. C. A. 4), modifying 2 N. L. R. B. 952.

It is not reasonable to conclude that an employer's business is not covered by the Act upon the ground that the greater part of its interstate operations involves the receipt rather than the distribution of information and materials in interstate commerce, for the distinction, insofar as the effect upon interstate commerce is concerned, appears to be irrelevant. *N. L. R. B.* v. *Abell Co.*, 97 F. (2d) 951, 955 (C. C. A. 4), modifying 5 N. L. R. B. 644.

There is no difference in principle between the case in which manufacture precedes and that in which it follows interstate commerce, for if the flow of commerce is obstructed by

labor disputes, it is immaterial from which direction the obstruction is applied. *Newport News Shipbuilding & Dry Dock Co.* v. *N. L. R. B.*, 101 F. (2d) 841, 843 (C. C. A. 4), modifying 8 N. L. R. B. 866, modified 308 U. S. 241. See also: *N. L. R. B.* v. *Suburban Lumber Co.*, 121 F. (2d) 829 (C. C. A. 3), modifying 3 N. L. R. B. 194, cert. denied 314 U. S. 693. *N. L. R. B.* v. *Schmidt Baking Co.*, 122 F. (2d) 162 (C. C. A. 4), enforcing 27 N. L. R. B. 864.

It is immaterial that a company made no shipments of its products into interstate commerce, when it had received a substantial quantity of materials and supplies from outside the State, and contemplated shipment of its products into interstate commerce when and if its products are accepted by the Government. *General Motors Corp.*, 44 N. L. R. B. 513.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of E's operations to commerce.*]

26 4. *Source and character of burdens and obstructions.*

The jurisdiction conferred upon the Board by virtue of Section 10 (a) of the Act purports to reach only what may be deemed to burden or obstruct interstate or foreign commerce, and thus qualified must be construed as contemplating the exercise of control within constitutional bounds; and since the test is the effect upon commerce and not the source of injury, acts which have a burdensome or obstructive effect upon such commerce are not rendered immune because they grow out of labor disputes. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31, 32, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

The power of Congress extends not only to making rules governing sales of products in interstate commerce, but also to the protection of that commerce from burdens, obstructions, and interruptions, whatever may be their source. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 463, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

The principle to be applied in determining the constitutional bounds of the authority conferred upon the Board is the effect upon interstate or foreign commerce, and not the source of the injury. *Consolidated Edison Co.* v. *N. L. R. B.* 305 U. S. 197, 222, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

The jurisdiction of the Board may not be defeated by the contention that if interstate commerce is disrupted, other means exist whereby it may be carried on for the fact that respondent's customers might be able to secure the same services from other processors in the same State if a labor dispute should stop the interstate flow of materials to and from respondent's plants is immaterial. *Pueblo Gas & Fuel Co.* v. *N. L. R. B.*, 118 F. (2d) 304 (C. C. A. 10), enforcing 23 N. L. R. B. 1028; *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318 enforced 4 N. L. R. B. 604 reversing and remanding 106 F. (2d) 119 (C. C. A. 1). See also:

Virginia Ry. Co. v. *System Federation*, 300 U. S. 515, 557.

Cudahy Packing Co. v. *N. L. R. B.*, 17 N. L. R. B. 302 enforced 118 F. (2d) 295 (C. C. A. 10).

N. L. R. B. v. *Henry Levaur, Inc.*, 17 N. L. R. B. 1034, enforced 115 F. (2d) 105 (C. C. A.1), cert. denied 312 U. S. 682.

Hudson Co., 42 N. L. R. B. 536.

Jurisdiction of the Board extends to a local unit of a business interstate in character when it was not separable because of the integration of the operations since wage controversies or unfair labor practices in the local unit would have repercussions in the other divisions of an admittedly interstate character, and strife affecting the interstate commerce in which the company was engaged could be avoided only if the rights of all employees were properly safeguarded. *Virginia Electric & Power Co.* v. *N. L. R. B.*, 115 F. (2d) 414 (C. C. A. 4), setting aside on other grounds 20 N. L. R. B. 911, reversed on another and remanded 314 U. S. 469. See also:

Schmidt Baking Co., 122 F. (2d) 162 (C. C. A. 4) enforcing 27 N. L. R. B. 864 (local baking establishment of a baking company interstate in character).

Texas Co., 21 N. L. R. B. 110 (office building maintenance employees of a national oil company).

Triangle Publications, 39 N. L. R. B. 547 (local distribution employees of racing news publisher).

Butler Bros., 41 N. L. R. B. 843 (office building maintenance employees of a general merchandise wholesaler).

The disturbance of an insurance company's business of making large loans to industry, railroads, public utilities, and consumers' credit enterprises would constitute a burden on the Nation's commercial life, and affect interstate commerce. *John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024.

Notwithstanding that all of the acts and services of a warehouse and cold storage company are performed wholly within the State and that the company had no control over the ultimate destinations of the products serviced, its activities affect commerce, as a major portion of its products serviced flowed into interstate commerce and an interruption of its business by a labor dispute would dislocate and interrupt the movement of such products in interstate commerce. *Security Warehouse & Cold Storage Co.*, 35 N. L. R. B. 857.

[*See* LITIGATION DIGEST. COMMERCE: "*Affecting*" *commerce*; *Relationship of employees, or department involved, to commerce*; *Relationship of E's operations to commerce.*]

7 5. *Size and extent of employer's operations.*

The language of the Act, as shown by the provisions of Section 2 (6) and (7), indicates that Congress has placed no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 606, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

The test of the Board's jurisdiction is not the volume of the interstate commerce which may be affected, but the existence of a relationship of the employer and his employees to the extent that unfair labor practices may lead, or tend to lead, to labor disputes burdening or obstructing it. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 606, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

The power of Congress to regulate interstate commerce is plenary and extends to all such commerce whether it be great or small, and the amount of the commerce regulated is significant only to the extent that Congress may be taken to have excluded commerce of small volume from the operation of its regulatory measure by express provision or fair implication. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 606, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

The Act indicates on its face the intention of Congress to exercise its constitutional power to regulate commerce by the adoption of measures for the prevention or control of unfair labor practices which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce, and given the other needful conditions, commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 607, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

It is not to be supposed that Congress, in attempting Nation-wide regulation of interstate commerce through the removal of the causes of industrial strife affecting it, intended to exclude industries which, though conducted in relatively small units, should contribute in the aggregate a vast volume of interstate commerce. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 607, 608, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

The Act is applicable to a processor who constitutes even a relatively small percentage of his industry's capacity where the materials processed are moved to and from the processor by their owners through the channels of interstate commerce. *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318, enforcing 4 N. L. R. B. 604, reversing 106 F. (2d) 119 (C. C. A. 1)

The Act is not confined in its jurisdiction to industries operating upon a Nation-wide scale but extends to and embraces within its scope all activities, large or small, which are, or which affect "commerce." *Bell Oil & Gas Co.* v. *N. L. R. B.*, 91 F. (2d) 509, 512 (C. C. A. 5), modifying 2 N. L. R. B. 577.

Whether the interference with the operations of a particular corporation through industrial strife will interfere with or check the flow of interstate commerce must depend upon the relation of its operations to the commerce, and where the output of an operator reflects a corporate enterprise of substantial magnitude and the combination of its production and selling activities forbids classing it as a negligible unit, its activities affect commerce within the meaning of the Act. *N. L. R. B.* v. *Crowe Coal Co.*, 9 N. L. R. B. 1149, enforced 104 F. (2d) 633 (C. C. A. 8), cert. denied 308 U. S. 584.

Neither the fact that an employer's business is comparatively small nor the fact that it does not itself control the ultimate

destination of the part of its products that goes immediately and continuously into interstate commerce prevents the application of the Act where an employer engaged in the mining, selling, and distribution of coal produces approximately 267,000 tons of coal annually, 12 percent of which is distributed in other States, for whether an employer is or is not within the Act must be determined by the nature and extent of its activities as shown by evidence, and the court may not apply to an employer the maxim "de minimus non jurat lex" where its business is not a petty or trifling matter. *N. L. R. B.* v. *Crowe Coal Co.*, 104 F. (2d) 633, 639 (C. C. A. 8), enforcing 9 N. L. R. B. 1149. See also: *N. L. R. B.* v. *Suburban Lumber Co.*, 121 F. (2d) 829 (C. C. A. 3), modifying 3 N. L. R. B. 194, cert. denied 314 U. S. 693. *Southern Colorado Power Co.* v. *N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10), enforcing 13 N. L. R. B. 699.

Operations of departments of a respondent other than that at which the unfair practices are alleged to have occurred can be properly considered in determining whether the Board has jurisdiction where the operations of all departments "constitute an interrelated, integrated whole" and a strike at the department at which the alleged unfair practices occurred would have affected all the operations of the employer. *California Cotton Oil Corp.*, 20 N. L. R. B. 540, 545.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of E's operations to commerce.*]

8 6. *Proportion of purchases and sales in interstate commerce in relation to total volume of business.*

The provision in the Act, dealing with unfair labor practices "affecting commerce" (Section 2 (7)), cannot be applied by a mere reference to percentages, and the fact that an employer's sales in interstate and foreign commerce amounted to 37 percent, and not to more than 50 percent, of its production, is not controlling. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 467, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

The Board has jurisdiction over an integrated system of public utility companies, conducting a predominantly intrastate business, where the instrumentalities of interstate and foreign commerce operating within the State are dependent upon the light, heat, and power furnished by the companies, notwithstanding the fact that these activities involve but a small part of the entire service rendered

by the utilities in their extensive business. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 221, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

If any substantial percentage of a product produced in a State enters interstate or foreign commerce, Congress may regulate its production, insofar as it affects the volume to enter such commerce, though such regulation also regulates a larger percentage of product which does not leave the State. *N. L. R. B.* v. *Santa Cruz Fruit Packing Co.*, 91 F. (2d) 790, 793 (C. C. A. 9), modifying 1 N. L. R. B. 454, affirmed 303 U. S. 453.

The unfair labor practices of a publisher of daily and Sunday newspapers in a certain city fall within the purview of the Act where, though a relatively small part of the whole circulation goes outside the State in that 7.75 percent of the morning papers, 1.7 percent of the evening papers, and 7.4 percent of the Sunday papers are shipped to other States, nevertheless, this outside circulation constitutes in itself a sufficient volume of business, and the activities involved in the news gathering are far-flung, advertising is generally solicited throughout the Nation, Sunday editions are printed outside the State, and the raw materials used in all of the publications are derived for the most part from sources outside the State. *N. L. R. B.* v. *Abell Co.*, 97 F. (2d) 951, 954 (C. C. A. 4), modifying 5 N. L. R. B. 644.

That the amount of out-of-State sales as contrasted with the total volume of sales of a retail department store is relatively small is not, *per se*, the controlling factor in determining the Board's jurisdiction, as the test of the Board's jurisdiction is not the percentage of either purchases or sales made outside the State but the effect thereof on commerce. *May Department Stores Co.*, 39 N. L. R. B. 471. See also: *Hudson Co.*, 42 N. L. R. B. 536.

[*See* LITIGATION DIGEST. COMMERCE: *'Relationship of E's operations to commerce.*]

29 7. *Transfer of title or other matters relating to manner, form, or character of sales.*

A cooperative organization engaged in collection, compilation, formulation, and distribution of news from other States and foreign countries, whose operations are conducted without profit and whose services are not sold, the cost thereof being apportioned among its members comprised of representatives of newspapers throughout the United States, is engaged in interstate commerce within

the definition of the Act, for interstate communication of a business nature, whatever the means of such communication, is interstate commerce subject to Congressional regulation, and it is immaterial that respondent does not sell news, does not operate for profit, or that it retains technical title to the news during the interstate transmission. *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 128, enforcing 1 N. L. R. B. 788, and affirming 85 F. (2d) 56 (C. C. A. 2).

Sales to purchasers in other States are not withdrawn from Federal control because the goods are delivered f. o. b. points within the State of origin for transportation. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 463, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9). See also:

Mooresville Cotton Mills v. *N. L. R. B.*, 94 F. (2d) 61, 62 (C. C. A. 4), modifying 2 N. L. R. B. 952.

N. L. R. B. v. *Wallace Mfg. Co.*, 95 F. (2d) 818, 819 (C. C. A. 4), enforcing 2 N. L. R. B. 1081.

Clover Fork Coal Co. v. *N. L. R. B.*, 97 F. (2d) 331, 332 (C. C. A. 6), enforcing 4 N. L. R. B. 202.

Botany Worsted Mills, 4 N. L. R. B. 292, 296, modified and remanded 106 F. (2d) 263 (C. C. A. 3).

The jurisdiction of the Board is not affected merely because the merchandise which a manufacturer ships, instead of being his own, is that of a consignee or his customers in other States. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 608, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

Where interstate commerce is involved in the transportation of material to be processed across State lines to the factory of an employer and in the transportation of the finished product to points outside the State for distribution to purchasers and ultimate consumers, it is immaterial whether shipments are made directly to the employer or to a representative of the company for whom the processing operations are bing carried on and who retains title to the materials, for it is not any the less interstate commerce because the transportation did not begin or end with the transfer of the merchandise transported. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 605, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

Whether an employer engaged in subsurface mining of silver and other metals does its own remilling and smoking, which is an essential part of the process of producing metals, or whether it splits the process between itself and another company is not determinative of the question of jurisdiction, for any arrangement between it and the other company as to title and the incidents of ownership do not disturb the essential fact that the operations of both companies together constitute a direct and continuous flow of commerce across State lines to the mine and market. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1256 enforced 110 F. (2d) 780 (C. C. A. 9), cert. denied 312 U. S. 678, rehearing denied 312 U. S. 714.

Sale and shipment of the entire product of gold bullion across State line to U. S. Government mint, under a licensing arrangement which limits sale to the Government alone, constitutes commerce. *Canyon Corp.*, 33 N. L. R. B. 885, enforced as modified 128 F. (2d) 953 (C. C. A. 8). Cf. *N. L. R. B.* v. *Idaho-Maryland Mines Corp.*, 98 F. (2d) 129 (C. C. A. 9) setting aside 4 N. L. R. B. 784. (Board had no jurisdiction when gold mine operators sold to Government authorities within the State.)

Loss of control and ownership by an oil producer of its oil while the oil was still on its leases through the sale thereof to an oil refiner, *held* not to change the essential fact that its operations affect commerce within the meaning of the Act, when as a result of the refiner's operations, a substantial amount of its oil, although commingled with oil from other producers, flows in interstate commerce either in crude or refined state. *Spandsco Oil & Royalty Co.*, 42 N. L. R. B. 942.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of E's operations to commerce.*]

30 8. *Absence of showing of actual stoppage or impairment of commerce.*

The exertion of Federal power to protect interstate and foreign commerce need not wait until that commerce is disrupted. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 222, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

The Board's jurisdiction can attach before actual industrial strife materializes to obstruct commerce since the purpose of the Act is to protect and foster interstate commerce, and it is not material that the customers of an employer

might be able to secure the same services from other companies in the same State if a labor dispute should stop the flow of materials to and from its plant. *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318 enforcing 4 N. L. R. B. 604, and reversing 106 F. (2d) 119 (C. C. A. 1).

The Act is designed primarily as a preventive measure, and actual stoppage or inpairment of commerce is not required before the Board is authorized to act, for since Congress has declared what practices have the intent or necessary effect of impairing, burdening, or obstructing commerce, its determination is conclusive, and once the practices are shown to take place in an industry whose products enter interstate commerce in substantial degree, the Board has the power to correct them. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 495 (C. C. A. 9), enforcing 3 N. L. R. B. 140, cert. denied 306 U. S. 643.

For additional decisions, *see:*

Sands Mfg. Co., 1 N. L. R. B. 546, 559, set aside 306 U. S. 332, affirming 96 F. (2d) 721 (C. C. A. 6).

Clover Fork Coal Co. v. *N. L. R. B.*, 97 F. (2d) 331, 334 (C. C. A. 6), enforcing 4 N. L. R. B. 202.

Boss Mfg. Co., 11 N. L. R. B. 432, 436, 437, modified and rehearing denied 107 F. (2d) 574 (C. C. A. 7).

Smith, L. C. & Corona Typewriters, Inc., 11 N. L. R. B. 1382.

Rath Packing Co., 14 N. L. R. B. 805, enforced 115 F. (2d) 217.

Houston Pipe Line Co., 28 N. L. R. B. 301.

[*See* LITIGATION DIGEST. COMMERCE: *Relationship of labor disputes to commerce; Relationship of ULP to labor disputes and to commerce.*]

9. *Temporary cessation of business operations.*

Motion of an employer to dismiss the complaint against it (charging that it locked out its employees, and other unfair labor practices) on the ground that, inasmuch as the plant involved was closed for proper business reasons, it had no employees at that plant, hence there was no controversy over which the Board had jurisdiction, but admitting that its business affected commerce when its plant was in operation, *denied. American Radiator Co.*, 7 N. L. R. B. 1127, 1128. See also: *Merrimack Mfg. Co.*, 9 N. L. R. B. 173, 174, 176. *Ray Nichols Inc.*, 15 N. L. R. B. 846. *General Furniture Mfg. Co.*, 26 N. L. R. B. 74.

A question concerning representation, *held* to affect commerce at time of hearing since, despite seasonal cessation of operations, it related to employees in connection with operations which, while prospective, nevertheless involved interstate commerce. *Wyandotte Transportation Co.*, 25 N. L. R. B. 336. See also: *Saginaw Dock & Terminal Co.*, 23 N. L. R. B. 630.

[*See* DEFINITIONS §§ 2–10 (as to the status of employees who have ceased work), and REMEDIAL ORDERS § 14 (as to the effect of cessation of operations).]

32 10. *Element of profit or charitable nature of enterprise.*

A cooperative organization engaged in collection, compilation, formulation, and distribution of news from other States and foreign countries, whose operations are conducted without profit and whose services are not sold, the cost thereof being apportioned among its members comprised of representatives of newspapers throughout the United States, is engaged in interstate commerce within the definition of the Act, for interstate communication is interstate commerce subject to Congressional regulation, and it is immaterial that respondent does not sell news, does not operate for profit, or that it retains technical title to the news during the interstate transmission. *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 138, enforcing 1 N. L. R. B. 788 and, affirming 85 F. (2d) 56 (C. C. A. 2). See also:

North Whittier Heights Citrus Assn., 10 N. L. R. B. 1269, enforced 109 F. (2d) 76 (C. C. A. 9), cert. denied 310 U. S. 632, rehearing denied 311 U. S. 724 (cooperative marketing association).

Utah Poultry Producers Cooperative Assn., 15 N. L. R. B. 534.

Iowa Poultry Producers Marketing Assn., 17 N. L. R. B. 1063.

Sierra Madre-Lamanda Citrus Assn., 23 N. L. R. B. 143.

Producers Produce Co., 23 N. L. R. B. 876.

Upland Citrus Assn., 24 N. L. R. B. 1136.

Olympia Shingle Co., 26 N. L. R. B. 1398.

Polish National Alliance. 42 N. L. R. B. 1375 (organization incorporated as a fraternal benefit society).

Central Dispensary & Emergency Hospital, 44 N. L. R. B. 533 (hospital incorporated as a charitable institution operating in the District of Columbia).

Rutland Court Owners, Inc., 44 N. L. R. B. 587 (cooperative apartment building corporation).

10 11. *Other criteria.*

C. KIND, CHARACTER, OR CLASSIFICATION OF ENTERPRISES WITHIN SCOPE OF BOARD'S JURISDICTION.[1]

11 1. *In general.*

When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, their industrial relations constitute a field into which Congress may enter when it is necessary to protect interstate commerce from the paralyzing consequence of industrial war. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

In passing the Act, Congress did not attempt to deal with particular instances, but with due regard to the constitutional limitations upon grants of Federal power in prohibiting unfair labor practices which affect interstate and foreign commerce, created the National Labor Relations Board for that purpose. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 222, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

The Congressional power extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 605, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

The Board may assume jurisdiction, regardless of the nature of the particular business or activity involved, if a person, no matter what the character of his business is, engaged in an unfair labor practice, for it is the effect of the unfair labor practices on commerce which is the controlling factor. *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), modifying 2 N. L. R. B. 530.

2. *Manufacturing and production.*

12 a. In general.

In considering the purposes of the Act, the fact that employees were engaged in production is not determinative, but the question remains as to the effect upon interstate commerce of the labor practice involved. *N. L. R. B.* v.

[1] For a collection of Board decisions in the enumerated classifications *infra* (§§ 43–90) call the Digest Editor. For a collection of court decisions, see LITIGATION DIGEST: Commerce, *Industry, kind of.*

Jones & Laughlin Steel Corp., 301 U. S. 1, 40, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

The constitutional validity of the Act has been upheld upon the well established principle that the close and intimate effect which brings interstate commerce within the reach of Federal power may be due to activities in relation to productive industry although that industry when separately viewed is local. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 464, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

Interstate commerce may be adversely affected by strikes of the employees of manufacturers who are not engaged in interstate commerce where the cessation of manufacture necessarily results in the cessation of the movement of the manufactured product in such commerce. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, 604, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3).

43 b. Supplies and materials received in interstate commerce.

Even if other grounds for assumption of jurisdiction by the Board were ignored, a sufficient ground exists by reason of the fact that the greater part of the materials used in the construction of vessels for private interests and for the United States Navy is received by an employer in interstate commerce, which would be affected, if the work and construction should be obstructed by industrial strife. *Newport News Shipbuilding & Dry Dock Co.* v. *N. L. R. B.*, 101 F. (2d) 841, 843 (C. C. A. 4), modifying 8 N. L. R. B. 866, modified 308 U. S. 241.

Petroleum Iron Works Co., 4 N. L. R. B. 959, 960, 961; (Oil refinery equipment fabricator received a major portion of raw materials from other States and made and completed all sales and deliveries chiefly to large oil companies within the State.)

Schmidt Baking Co., Inc., 27 N. L. R. B. 864 enforced 122 F. (2d) 162. (Baking establishment received supplies and materials from interstate commerce and sold almost all of its products in intrastate commerce and was operated as part of an integrated interstate enterprise.)

Wilson & Co., Inc., 30 N. L. R. B. 314 enforced 124 F. (2d) 845 (C. C. A. 7). (Branch house of a national meat packer received all of the meat and meat products from other States and sold all of its products within the State to local retail butchers and jobbers.)

Poultrymen's Service Corp., 41 N. L. R. B. 444. (Retailer and miller of feed purchased all of its grain from other States and sold and distributed all of its products to poultry farmers and others within the State.)

Haydu & Sons, Inc., 42 N. L. R. B. 852. (Meat products manufacturer purchased a substantial portion of its raw materials outside the State and sold all of its products within the State; a substantial portion of which was purchased by a national grocery chain for resale solely within the State.)

4 c. Supplies and materials received and finished products transmitted in interstate commerce.

Manufacture, assembly, sale, and distribution of trailers, trailer parts and accessories, more than 50 percent of the supplies and materials being received from other States and more than 80 percent of its production being shipped outside the State. *N. L. R. B.* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 53, 54, 57, enforcing 1 N. L. R. B. 68, and reversing 85 F. (2d) 391 (C. C. A. 6).

Manufacture of men's clothing, 99.57 percent of the raw materials coming from other States and 82.8 percent of the finished garments being shipped to customers in other States. *N. L. R. B.* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 72, 73, 75, enforcing 1 N. L. R. B. 411, 432, and revising 85 F. (2d) 1 (C. C. A. 2) (men's clothing).

Printing establishment which purchased its raw materials from suppliers within the State, but at least 50 percent of these materials were obtained by the suppliers from outside the State, and which sold a substantial portion of its products to customers within the State who thereafter shipped the products outside the State, and was in fact ordered by respondent's customers with the intent of such shipment either as articles of commerce or to aid and facilitate commerce. *Jackson*, 34 N. L. R. B. 194.

45 d. Finished products shipped in interstate commerce.

An employer is engaged in interstate and foreign commerce when 37 percent of its production is shipped in such commerce, even though both its raw materials are derived from and its processing operations are confined to, a single State. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 464, 465, modifying 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

Manufacture of towels, wash cloths, and similar articles where 90 to 95 percent of products are shipped to other

States, although greater part of raw materials and supplies are derived from within the State and there is a technical passing of title to goods at the factory. *Mooresville Cotton Mills* v. *N. L. R. B.*, 94 F. (2d) 61 (C. C. A. 4). 97 F. (2d) 959 (C. C. A. 4) modifying 2 N. L. R. B. 952.

Manufacturer of cotton textiles where raw materials are derived from within the State, fuel and a large part of the machinery required are secured outside the State, and 75 percent of the finished products are shipped to other States, f. o. b. point of manufacture. *N. L. R. B.* v. *Wallace Mfg. Co.*, 95 F. (2d) 818, 819 (C. C. A. 4), enforcing 2 N. L. R. B. 1081.

Operation of clay mines and brick plants, where all materials used in manufacturing process are obtained within State, shipments of machinery are made to the plants from other States, and the total production of bricks is shipped outside the State. *N. L. R. B.* v. *Kentucky Fire Brick Co.*, 99 F. (2d) 89, 91 (C. C. A. 6), enforcing 3 N. L. R. B. 455.

Manufacture of meat products, where livestock slaughtered at the plant is purchased mainly within the State, and about 81 percent of the finished products are shipped to points outside the State. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 244, 245 (C. C. A. 8), modifying 7 N. L. R. B. 986.

Pusey, Maynes & Breish Co., 1 N. L. R. B. 482, 484. (Slaughtering house received 50 to 75 percent of livestock from outside the State and shipped 10 percent of meat products to customers outside the State.)

Printing establishments where less than 1 percent of its raw materials was purchased outside the State and in addition to out-of-State sales amounting to less than one-half of 1 percent, approximately 17 percent was delivered by the company to interstate carriers for shipment for a local purchaser to destinations in other States. *Westerman Print Co.*, 27 N. L. R. B. 1.

46 3. *Processing or servicing materials manufactured by others.*

Processing materials which are shipped by the owners located outside the State to the employer in question as consignee and which after processing are returned to the owners or shipped to customers in other States. *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601, enforcing 1 N. L. R. B. 864 and 4 N. L. R. B. 596, and reversing 98 F. (2d) 615 (C. C. A. 3). See also: *Bradford Dyeing Assn.*, 310 U. S. 318, en-

forcing 4 N. L. R. B. 604, and reversing 106 F. (2d) 119 (C. C. A. 1).

Reconditioning and distributing milk and ice-cream containers where about 23 percent of the containers are transported to and from other States. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 99, 100 (C. C. A. 2), modifying 4 N. L. R. B. 922.

Dyeing and finishing fabrics where, although the owners of the fabrics are located within the State, a large percent of the finished product after processing is shipped outside the State and a large percent of materials used in dyeing and finishing operations is derived from without the State. *Burlington Dyeing & Finishing Co.* v. *N. L. R. B.*, 104 F. (2d) 736, 738 (C. C. A. 4), modifying 10 N. L. R. B. 1.

7 4. *Wholesaling, jobbing, and retailing operations.*

Retailer of lumber and coal where almost all purchases are from outside the State and almost all sales are made within the State. *Suburban Lumber Co.*, 3 N. L. R. B. 194, 195, 196, modified 121 F. (2d) 829 (C. C. A. 3), rehearing denied October 30, 1941, cert. denied 314 U. S. 693. See also: *Green, Inc., R. S.* 33 N. L. R. B. 1184, enforced (*per curiam*) 125 F. (2d) 485 (C. C. A. 4).

Jobber of dry goods where about 70 percent of purchases and 55 percent of sales are made outside the State. *S. Blechman & Sons, Inc.*, 4 N. L. R. B. 15, 17, 18.

Dealers and distributors of automobiles and trailers where all the cars are received from without the State and sales are made within and without the State. *Denver Automobile Dealers Assn.*, 10 N. L. R. B. 1173, 1179–1186.

General merchandise retailer which purchased 60 percent of its goods from outside the State and sold approximately all of the goods within the State. *Hearst Mercantile Co.*, 44 N. L. R. B. 1342. See also:

M. E. Blatt Co., 38 N. L. R. B. 1210.

May Department Stores Co., 39 N. L. R. B. 471.

Marshall Field & Co., 34 N. L. R. B. 1, enforced in part 129 F. (2d) 169 (C. C. A. 7).

Boston Store of Chicago Inc., 37 N. L. R. B. 1140.

5. *Natural resources and agricultural products.*

7.9 a. In general.

There is no difference between coal mined, stone quarried, and fruit and vegetables grown, with respect to the Federal power to protect interstate commerce in the commodities

produced, and the same principle must apply to injurious restraints of interstate trade which are caused by the practices of manufacturers and processors. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 465, enforcing 1 N. L. R. B. 454, and affirming 91 F. (2d) 790 (C. C. A. 9).

8 b. Preparing, processing, and packing agricultural products, or the artificial production thereof.

Packing and canning fruits and vegetables where 37 percent of total production is shipped to other States or foreign countries. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453, 463, modifying 1 N. L. R. B. 546, and affirming 91 F. (2d) 790 (C. C. A. 9).

Packing and shipping lettuce practically all of which is sent to points outside the State. *American Fruit Growers, Inc.*, 10 N. L. R. B. 316, 319–326.

Packing and shipping citrus fruits where from 77 to 85 percent of the total fruit handled is sent to other States. *North Whittier Heights Citrus Assn.*, 10 N. L. R. B. 1269, 1274, enforced 109 F. (2d) 76 (C. C. A. 9), cert. denied 310 U. S. 632, rehearing denied 311 U. S. 724.

Producers of agricultural products under artificial conditions when their activities are considered industrial rather than agricultural. *Park Floral Co.*, 19 N. L. R. B. 404. See also: *Great Western Mushroom Co.*, 27 N. L. R. B. 481. *Knaust Bros. Inc.*, 36 N. L. R. B. 915. *Bauske*, 38 N. L. R. B. 435.

[*See* DEFINITIONS § 11 (as to the construction of the term "agricultural laborer").]

9 c. Mining.

Coal mining where the bulk of the annual production is transported to other States on order of a national coal sales company to which the employer, under the terms of an oral contract, sells all its coal f. o. b. the mines. *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331, 332–334 (C. C. A. 6), enforcing 4 N. L. R. B. 202.

The activities of an employer engaged in the business of mining gold and silver exclusively in one State, which does no smelting or refining of its own, but which transports, sells, and delivers a part of its product by its own airplanes to the United States Mint located in that State, and sells the rest of its product to a refinery also located in that State, does not affect commerce within the mean-

ing of the Act, and this conclusion is not affected by the fact that the metal so delivered is refined by the Government along with gold and silver received from other sources and the refined and commingled product is shipped from time to time by the Government to a mint located in another State. *N. L. R. B.* v. *Idaho-Maryland Mines Corp.*, 98 F. (2d) 129, 131 (C. C. A. 9) setting aside 4 N. L. R. B. 784. Cf. *Canyon Corp.*, 33 N. L. R. B. 885, enforced as modified 128 F. (2d) 953 (C. C. A. 8). (Operators of a gold mine who sold their entire output to the U. S. Government under a licensing arrangement, *held* to be within jurisdiction of the Act, when the product was shipped across a State to the Government authorities.)

Coal mining where 12 percent of the annual production is shipped out of the State and 24 percent is used either in servicing instrumentalities of interstate commerce or producing heat and power necessary to their functioning. *N. L. R. B.* v. *Crowe Coal Co.*, 104 F. (2d) 633, 636–639 (C. C. A. 8), enforcing 9 N. L. R. B. 1149, cert. denied 308 U. S. 584.

Company was engaged in digging sand and gravel from land in and adjoining a river, portions of which were in two States, *Koch Sand & Gravel Co.*, 28 N. L. R. B. 692.

d. Lumbering.

Manufacture and sale of lumber and lumber products where all logging and milling operations are carried on within the State and 90 percent of finished products are shipped outside the State. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 144 (C. C. A. 9), modifying 2 N. L. R. B. 248, cert. denied, 304 U. S. 575.

Logging of timber and operation of sawmill where about 75 percent of the finished products are shipped outside the State. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 20, 21 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

e. Quarrying.

Quarrying limestone and manufacturing cement where all but a small percentage of the raw materials used are derived from local sources and 83 percent of the finished product is shipped outside the State. *Standard Lime & Stone Co.* v. *N. L. R. B.*, 97 F. (2d) 531, 533 (C. C. A. 4), setting aside 5 N. L. R. B. 106.

52 f. Oil. gas producing, or refining operations.

Refining oil where a substantial part of the raw materials and the crude oils used originate outside the State and much of the gasoline, kerosene, and other finished products are distributed to other States. *N. L. R. B.* v. *Louisville Refining Co.*, 102 F. (2d), 678, 679 (C. C. A. 6), modifying 4 N. L. R. B. 844, cert. denied 308 U. S. 568.

Oil producing and refining operations where over 38 percent of annual production is shipped outside the State. *Shell Oil Co. of California*, 2 N. L. R. B. 835, 837–840.

Refining and marketing petroleum products where all the crude petroleum is received from outside the State and 5 to 10 percent of the finished product is shipped outside the State. *National Refining Co.*, 5 N. L. R. B. 794, 795.

52.1 g. Fisheries.

Fishing boat operators who sell catch to fishing exchange or canneries for ultimate destination in other States. *Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415; *Monterey Sardine Industries, Inc.*, 26 N. L. R. B. 140.

52.9 h. Other enterprises.

6. *Transmission or communication of intelligence.*

53 a. In general.

54 b. Printing, publishing, collection, or distribution of news, newspapers, information, advertising, features, periodicals, books, and other matters.

Collection, compilation, formulation, and distribution of news from other States and foreign countries by non-profit-making cooperative association. *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 128, enforcing 1 N. L. R. B. 788, and affirming 85 F. (2d) 56 (C. C. A. 2). See also: *Press Wireless, Inc.*, 28 N. L. R. B. 348.

Publishing daily and Sunday newspapers where, though only 7.75 percent of the morning papers, 1.7 percent of the evening papers, and 7.4 percent of the Sunday papers are shipped to destinations outside the State, nevertheless, the activities involved in the news gathering are far-flung, advertising is generally solicited throughout the Nation, Sunday editions are printed outside the State, and the raw materials used in all of the publications are derived for the most part from sources outside the State. *N. L. R. B.* v. *Abell Co.*, 97 F. (2d) 951, 953–955 (C. C. A. 4), modifying 5 N. L. R. B. 644.

N. L. R. B. v. *Hearst*, 102 F. (2d) 658, 660 (C. C. A. 9), enforcing 2 N. L. R. B. 530. (Publishing daily and Sunday

newspaper where 7.2 percent of the daily circulation, 2 percent of the Sunday circulation and 17.3 percent of the total circulation is delivered outside the State.)

Lebanon News Publishing Co., 37 N. L. R. B. 649, enforced 129 F. (2d) 325 (C. C. A. 3). (Contention of newspaper publisher that it is not within the jurisdiction of the Act because of its small proportion of interstate business, which is 1 percent of its daily publication and 6¼ percent of its semi-weekly publication, *held* without merit in view of its purchase and receipt from interstate commerce of substantial quantities of materials, the regular circulation of its publications outside the State, its membership in and use of the facilities of news distributing services, its use of syndicated material received from outside the State, and its carrying of advertisements placed by concerns operating outside the State.) See also: *Post-Standard Co.*, 39 N. L. R. B. 1308.

Publishing information concerning consumers goods and services by non-profit-making enterprise where over 90 percent of printing was done outside the State and the printed material was mailed to subscribers throughout the United States and in foreign countries. *Consumers' Research, Inc.*, 2 N. L. R. B. 57, 59–61.

Standard & Poor's Corp., 41 N. L. R. B. 373. (Corporation engaged in the preparation and furnishing of statistics, data, and commercial advice as to securities, industry, and commerce which distributed its publications throughout the country.)

Mailing service where most of the orders received were from firms engaged in interstate commerce and 95 percent of the mail was destined to points outside the State. *Globe Mail Service, Inc.*, 2 N. L. R. B. 610, 611–613.

Producer, seller, and distributor of syndicated features, such as comic strips, feature articles, serial stories, and other articles as well as collector and distributor of news and news photos to newspapers and magazines located in every State in the United States, the District of Columbia, and foreign countries, which utilized United States mail, telegraph, and telphone, wires in the distribution of its material. *King Features Syndicate, Inc.*, 23 N. L. R. B. 1174.

Publishing, selling, and distributing of 40 magazines known as "pulps" which were printed by independent printing contractors outside the State, and 30 percent of which were shipped to places outside the States in which they

were printed. *Standard Magazines, Inc.*, 31 N. L. R. B. 285.

Commerce Clearing House, Inc., 21 N. L. R. B. 585. (Corporation engaged in the printing, publishing, and reporting law and which maintained offices in the District of Columbia, all State capitals, principal cities, and foreign countries and which gathered, edited, and disseminated information from all, and to all parts of the United States by mail, telegraph, and teletype. See also: *Prentice-Hall, Inc.*, 39 N. L. R. B. 92.

Racing Publications, Inc., 29 N. L. R. B. 633. (Publishing racing information which was received from outside the State by "wire" and within the State by telephone or messenger where printing materials were purchased outside the State and one-half of its total business, which was in excess of $50,000, was interstate.) See also: *Triangle Publications, Inc.*, 39 N. L. R. B. 547.

American Medical Assn., 39 N. L. R. B. 385. (Printing and publishing of medical pamphlets and magazines by a nonprofit corporation which purchased about 90 percent of its material from outside the State, and shipped about 90 percent of its products by mail to other States.)

Corporation engaged in printing social stationery which purchased about 90 percent of its raw materials outside the State and shipped by mail and other interstate means about 90 percent of its finished products. *Rytex Co.*, 35 N. L. R. B. 792.

55 c. Telephone, telegraph, and radio.

Radio and telegraph communication system where operations extended throughout the United States and foreign countries. *R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109, 1110, 1111.

Radio station where operations extended into two other States. *Marcus Loew Booking Agency*, 3 N. L. R. B. 380, 381–383.

56 d. Motion pictures.

Production, distribution, and exhibition of motion pictures where the prints and negatives were distributed in interstate and foreign commerce and the raw materials used in production, although procured through local distributing companies, originated in other States. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 669–685.

§ 60 e. Other enterprises.

7. *Transportation enterprises interstate in character.*

§ 61 a. In general.

§ 62 b. Motor carriers.

Transportation of passengers and express by motor bus between District of Columbia and Virginia. *Virginia & Maryland Coach Co.*, 301 U. S. 142, 146, enforcing 1 N. L. R. B. 769, and affirming 85 F. (2d) 990 (C. C. A. 4).

New England Transportation Co., 1 N. L. R. B. 130, 135; (interstate bus transportation). See also: *Union Pacific Stages*, 2 N. L. R. B. 471, 474, modified and rehearing denied 99 F. (2d) 179 (C. C. A. 9). *Santa Fe Trail Transportation Co.*, 2 N. L. R. B. 767, 768.

De Camp Bus Lines, 20 N. L. R. B. 250 (intrastate bus line, when subject to same control and operation as that of interstate bus line).

City Service Transit Co., 40 N. L. R. B. 354 (interstate and intrastate bus transportation). Cf. *Pennsylvania Greyhound Lines*, 13 N. L. R. B. 28. (Board did not assert jurisdiction over an interstate and foreign motor carrier.)

Moving and trucking household goods and pianos, where about 10 percent of the employer's business consists of interstate transportation of goods. *Clark & Reid Co., Inc.*, 2 N. L. R. B. 516, 518–520.

Protective Motor Service Co., 40 N. L. R. B. 967. (Company engaged in transporting money and other valuables in armored cars, *held*, engaged in commerce within the meaning of the Act, where 3½ percent of its gross income was derived from interstate transportation of goods; it maintained offices and its salesmen solicited business outside the State; and it served large industrial organizations.) See also: *Cardinale Trucking Corp.*, 5 N. L. R. B. 220, 222. *ET & WNC Motor Transportation Co.*, 30 N. L. R. B. 505; (local and interstate trucking).

§ 63 c. Carriers by air.

§ 64 d. Carriers by water.

Transportation of passengers and freight by steamship between ports in the United States and foreign countries. *Agwilines* v. *N. L. R. B.*, 87 F. (2d) 146, 149, 150 (C. C. A. 5), modifying 2 N. L. R. B. 1. See also: *International Mercantile Marine Co.*, 1 N. L. R. B. 384, 385. *Lykes Bros. S. S. Co., Inc.*, 2 N. L. R. B. 102, 104–106. *Black Diamond S. S. Corp.*, 2 N. L. R. B. 241, 242.

Panama R. R. Co., 2 N. L. R. B. 290, 291, 292 (steamship transportation between United States and foreign countries).

Mobile S. S. Assn., 8 N. L. R. B. 1297, 1304 (transportation of general cargo by barge between ports of three different States).

Detroit Cleveland Navigation Co., 29 N. L. R. B. 176 (inland and foreign operations on Great Lakes).

West Kentucky Coal Co., 31 N. L. R. B. 394 (interstate transportation of coal on barges).

Inter-Island Steam Navigation Co., Ltd., 34 N. L. R. B. 132 (transportation of passengers, freight, and mail by water between the larger islands comprising the Territory of Hawaii).

Mississippi Valley Barge Line Co., 38 N. L. R. B. 206 (barge operations on the Mississippi River).

Coney Island, Inc., 40 N. L. R. B. 766 (inland excursion boat operations).

Transportation of freight in vessels owned by, and operated under agreement with the United States Government and which operate between Atlantic ports and ports of foreign countries. *Southgate Nelson Corp.*, 3 N. L. R. B. 535, 537, 538. See also: *Cosmopolitan Shipping Co.*, 2 N. L. R. B. 759, 760, 761.

e. Pipe lines.

A corporation engaged in the business of transporting oil between several States by pipe lines and subject to the jurisdiction of the Interstate Commerce Commission. *Detroit Southern Pipe Line Co.*, 38 N. L. R. B. 159.

f. Electric transmission lines.

Electric transmission line into which all generating plants of the company pour power to make up a supply which flows across two States. *Appalachian Electric Power Co.*, 38 N. L. R. B. 630.

g. Other enterprises.

8. *Enterprises supplementary to, or in aid of, operattons in or affecting interstate commerce.*

a. In general.

b. Combining and transshipping articles of commerce.

Freight forwarding and combining small shipments into one of several larger shipments to secure bulk rates where 90 percent of the shipments go outside the State. *N. L. R. B.* v. *National New York Packing & Shipping Co.*, 86 F. (2d) 98, 99 (C. C. A. 2), enforcing 1 N. L. R. B. 1009.

c. Public utilities and/or other enterprises performing a similar function.

Public utility system producing electricity, gas, and steam solely within one State where the operations of interstate railroads and steamship companies and telephone, telegraph, and radio systems depend on its services. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 222, 223, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

Appalachian Electric Power Co. v. *N. L. R. B.*, 93 F. (2d) 985, 986 (C. C. A. 4), setting aside 3 N. L. R. B. 240. (Operation of generating plants connected with a main transmission line which electricity is carried to consumers in two States.)

Tennessee Electric Power Co., 7 N. L. R. B. 24, 26–28. (Public utility producing and distributing electrical energy where power was developed at plants in two States, 7 percent of its load was purchased from other States, about 8 percent of its current was transmitted outside the State, and some of its large local customers do an interstate business.)

Water company supplying the needs of local industrial concerns engaged in interstate commerce and interstate railroad companies. *Interstate Water Co., 11 N. L. R. B.* 417.

A wholly owned subsidiary pipe line company, subject to the same direction and control as that of the parent oil producing company engaged in the purchase, sale, and transportation by its pipe line of natural gas (all of which was produced, transported, and consumed as a fuel within the State in which the company was located), which furnished gas to a number of industrial firms engaged in interstate commerce and also to several gas distributing companies which likewise furnished gas to such industrial firms, as well as to several interstate transportation companies, and which used a substantial amount of materials manufactured outside the State but most of which the company purchased within the State. *Houston Pipe Line Co.*, 28 N. L. R. B. 301.

Street transportation division of an electric, steam, and street transportation utility engaged in both interstate and intrastate business. *Columbus & Southern Ohio Electric Co.*, 36 N. L. R. B. 386. See also: *Savannah Electric & Power Co.*, 38 N. L. R. B. 47.

d. Stockyard, warehousing, and terminal services.

Operation of public stockyards where more than 50 percent of livestock received comes from other States and a substantial portion is shipped outside the State. *St. Joseph Stock Yards Co.*, 2 N. L. R. B. 39, 40–42. See also: *St. Paul Union Stockyards Co.*, 38 N. L. R. B. 1049. *Wichita Union Stockyards Co.*, 40 N. L. R. B. 369. *Union Stock-Yards Co. of Fargo*, 40 N. L. R. B. 910.

Stevedoring operations for steamship company engaged in interstate and foreign commerce. *Louisiana Terminal Co.*, 3 N. L. R. B. 574, 575. See also: *Frederick R. Barrett*, 3 N. L. R. B. 513, 515. *Castle & Cooke Terminals, Ltd.*, 28 N. L. R. B. 493. *Shipowners Assn. of the Pacific Coast*, 32 N. L. R. B. 668.

Forwarding agent for steamship companies and companies importing merchandise through a local port where merchandise was transported to the port on vessels carrying general cargo between that port and ports in States other than the State in which the port was located and about 50 percent of it upon being unloaded at the port was shipped by rail and other carriers to States other than the State in which the port was located. *Mobile S. S. Assn.*, 8 N. L. R. B. 1297, 1303–1305. See also: *Estate of Frank Newfield, Inc.*, 34 N. L. R. B. 77.

Delivery of coal to the bunkers of ships engaged in the transportation of cargo and/or passengers between a port and ports of State other than of the State in which the port was located and/or foreign countries. *Mobile S. S. Assn.*, 8 N. L. R. B. 1297, 1303–1305.

Receiving, storing, weighing, compressing, and delivering cotton to ships which carry almost all of the cotton to ports in other States and foreign countries. *Mobile S. S. Assn.*, 8 N. L. R. B. 1297, 1304, 1305.

Warehousing refined oil products which have come to port by ship from ports in other States or foreign countries *Mobile S. S. Assn.*, 8 N. L. R. B. 1297, 1305. See also:

Scobey Fireproof Storage Co., 13 N. L. R. B. 1106; (warehousing).

Hueneme Wharf & Warehouse Co., 28 N. L. R. B. 136; (warehousing).

Anderson, 29 N. L. R. B. 128 (grain storing).

Security Warehouse & Cold Storage Co., 35 N. L. R. B. 857 (cold storage and warehousing).

Hueneme Wharf & Warehouse Co., 39 N. L. R. B. 636; (warehousing).

e. Lighterage and trucking services.

Transportation of freight by trucks to and from local consignors and freight docks of interstate railroad. *Houston Cartage Co., Inc.*, 2 N. L. R. B. 1000, 1001–1003. See also: *Rocks Express Co.*, 3 N. L. R. B. 110, 111, 112.

Operations of an employer engaged both in an intrastate and interstate business of warehousing and handling household goods within the limits of a city and transporting shipments which originate from points without the State where, although its operations were of a mixed character, the same employees were used indiscriminately both in purely local haulage and to a substantial extent for the delivery to destination of interstate shipments, and the business must be considered as a whole. *Wald Transfer & Storage Co., Inc.*, 3 N. L. R. B. 712, 715–717. See also: *Scobey Fireproof Storage Co.*, 13 N. L. R. B. 1106.

General towing and lighterage operations in local harbor. *Curtis Bay Towing Co.*, 4 N. L. R. B. 360, 363–365. See also: *Intercoastal Towing & Transportation Co.*, 31 N. L. R. B. 538 (docking and tugboat operations in local harbor). *Higman Towing Co.*, 32 N. L. R. B. 102 (towboat operations in intercoastal canal). *Merchants & Miners Transportation Co.*, 37 N. L. R. B. 1165 (tugboat operations in local harbor).

f. Construction, servicing, and repairs.

An employer engaged in the business of shipbuilding and repairing steamships and other vessels for private interests and for the U. S. Navy. *Newport News Shipbuilding & Dry Dock Co.* v. *N. L. R. B.*, 101 F. (2d) 841, 843 (C. C. A. 4), modifying 8 N. L. R. B. 866, modified 308 U. S. 241.

Corporation which engaged principally in the construction and repair of roads and highways that formed a segment of a national highway. *Isbell Construction Co.*, 27 N. L. R. B. 472.

Company engaged in dredging, blasting, and clearing channels of navigable waters, and basins and slips in and about harbors. *American Dredging Co.*, 28 N. L. R. B. 714. See also: *United Dredging Co.*, 30 N. L. R. B. 739.

Company engaged in designing, engineering, and supervising the construction of a shipyard. *White Engineering Co.*, 34 N. L. R. B. 83.

§ 77 g. Pipe lines, and repressure operations.

Repressure operations where gas used in production of oil was transported by pipe line from one State to another. *Bell Oil & Gas Co.* v. *N. L. R. B.*, 91 F. (2d) 509, 512 (C. C. A. 5), enforcing 2 N. L. R. B. 577.

A wholly owned subsidiary of an oil producing company engaged in the purchase, sale, and transportation by its pipe line of natural gas, all of which was produced, transported, and consumed as a fuel within the State in which the company was located, which furnished gas to a number of industrial firms engaged in interstate commerce and also to several gas distributing companies which likewise furnished gas to such industrial firms, as well as to several interstate transportation companies, and which used a substantial amount of materials manufactured outside the State but most of which the company purchased within the State. *Houston Pipe Line Co.*, 28 N. L. R. B. 301.

§78 h. Equipment contractors.

Company engaged in furnishing and servicing railroad cars used by interstate shippers. *Mather Humane Stock Transportation Co.*, 27 N. L. R. B. 1188.

§79 i. Protection services.

Detective service furnishing watchmen to various shipping companies engaged in interstate commerce for the purpose of patrolling the docks and guarding freight. *Williams Dimond & Co.*, 2 N. L. R. B. 859, 861, 862.

§79. 1 j. Research and testing services.

Operation of commercial testing laboratory where 90 percent of materials tested were received from and returned to sources outside the State. *U. S. Testing Co., Inc.*, 5 N. L. R. B. 696, 697.

Assaying and analyzing lead and zinc ores and concentrates for mining companies located in three States, which companies sell in excess of 60 percent of their ores in other States. *Cochrane*, 44 N. L. R. B. 617. *Shell Development Co., Inc.*, 38 N. L. R. B. 192; (petroleum production and refining research).

§79. 2 k. Advertising services.

Advertising service, where 99 percent of company's clients were engaged in manufacture, production, sale, and distribution of products sold and transported in interstate commerce. *Sterling Advertising Agency*, 42 N. L. R. B. 281.

1. Communication services.

Operation of pneumatic tubing for the transportation of local, intrastate, interstate, and foreign mail between various United States post offices in the City of New York. *New York Mail & Newspaper Transportation Co.*, 4 N. L. R. B. 1066, 1067, 1068. See also: *Carroll*, 29 N. L. R. B. 343, enforced 120 F. (2d) 457 (C. C. A. 1). *Gregory*, 31 N. L. R. B. 71, enforced December 2, 1941 (C. C. A. 5).

Company operating a local telephone exchange with no interstate connections except that it handled a relatively small percentage of incoming and outgoing interstate calls. *Central Missouri Telephone Co.*, 15 N. L. R. B. 798, enforced 115 F. (2d) 563 (C. C. A. 8). See also: *Wisconsin Telephone Co.*, 12 N. L. R. B. 375. *Northern Ohio Telephone Co.*, 27 N. L. R. B. 613.

m. Other enterprises.

9. *Enterprises local in character but forming an integral part of interstate operations conducted by others.*

a. In general.

Whether an employer engaged in subsurface mining of silver and other metals did its own remilling and smoking, which was an essential part of the process of producing metals, or whether it splits the process between itself and another company which was under contract to purchase the entire output of the employer was not determinative of the question of jurisdiction, for any arrangement between it and the other company as to title and the incidents of ownership did not disturb the essential fact that the operations of both companies together contemplate and constitute a direct and continuous flow of commerce across State lines to the mint and the market. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1256, enforced 110 F. (2d) 780 (C. C. A. 9), cert. denied 312 U. S. 678, rehearing denied 312 U. S. 714.

b. Manufacturing, producing, and processing.

Company engaged in the manufacture of foundry and machine shop products which purchased raw materials from other companies within the State, most of which materials originated outside the State, and sold substantially all of its products within the State, some of which products had an eventual destination outside the State. *Dayton & Waldrip Co.*, 24 N. L. R. B. 780.

Sampson & Murdock Printing Co., 31 N. L. R. B. 609 (job-printing). See also: *Hollister, Inc.*, 33 N. L. R. B. 982.

Belanger, 32 N. L. R. B. 1276 (castings). See also: *Alloy Cast Steel Co.*, 11 N. L. R. B. 61. *Ace Foundry, Ltd.*, 38 N. L. R. B. 392.

Greeley Ice & Storage Co., 35 N. L. R. B. 298 (ice).

Northwestern Photo Engraving Co., 38 N. L. R. B. 813 (photo engraving). See also: *Constitution Publishing Co.*, 39 N. L. R. B. 860.

Tri-State Zinc, Inc., 39 N. L. R. B. 1095 (processing lead and zinc tailings).

Cowell Portland Cement Co., 40 N. L. R. B. 652 (cement).

Mt. Clemens Tool & Gear Works, Inc., 41 N. L. R. B. 770 (automobile parts).

Knott, 44 N. L. R. B. 477 (munitions parts).

31.2 c. Wholesaling, jobbing, and retailing operations.

Purchase and sale of scrap iron and metal where approximately 5 percent of the purchases were made outside the State, all sales were made within the State, and 65 percent of the total sales were made on an f. o. b. basis to a company also within the State which in turn shipped 95 percent of the scrap metal so received to foreign countries. *Tidewater Iron & Steel Co., Inc.*, 9 N. L. R. B. 624, 626, enforced consent decree September 19, 1939.

d. Natural resources and agricultural products.

31.3 (1) Preparing, processing, and packing agricultural products, or the artificial production thereof.

31.4 (2) Mining, lumbering, quarrying, oil, gas producing, refining, and/or related enterprises.

Logging operations where all logs were sold to lumber manufacturers within the State who in turn shipped at least 40 percent of the lumber manufactured from such logs to customers in other States. *Sound Timber Co.*, 8 N. L. R. B. 844, 845, 846. See also:

Crown Zellerbach Corp., 26 N. L. R. B. 1014.
Cleveland-Cliffs Iron Co., 30 N. L. R. B. 1093.
Larson, 35 N. L. R. B. 89.
Deep River Timber Co., 37 N. L. R. B. 210.
Murphy, 37 N. L. R. B. 487.

Oil producer which sold and delivered all of its oil on its own leases to a pipe line operated by an oil refiner which commingled company's oil with that from other producers and caused a substantial amount to flow into interstate commerce. *Spandsco Oil & Royalty Co.*, 43 N. L. R. B. 886.

See also: *McAlbert Oil Co., Inc.*, 21 N. L. R. B. 863. *Fullerton Oil Co.*, 40 N. L. R. B. 504. *Spandsco Oil Co.*, 42 N. L. R. B. 942.

e. Other enterprises.

10. *Operations within the District of Columbia or any territory.*

Operation of night club in the District of Columbia. *Club Troika, Inc.*, 2 N. L. R. B. 90, 91.

Retail sale of new and used automobiles within the District of Columbia. *Nolan Motor Co., Inc.*, 2 N. L. R. B. 357, 359. See also: *Cherner Motor Co.*, 19 N. L. R. B. 609.

Innkeeper operating in the District of Columbia. *Williard, Inc.*, 2 N. L. R. B. 1094, 1097, enforced 98 F. (2d) 244 (App D. C.).

Laundry and dry cleaning establishment in the District of Columbia. *Arcade-Sunshine Co., Inc.*, 12 N. L. R. B. 259, 261, enf'd as modified 118 F. (2d) 49 (App. D. C.), form of notice modified by consent (on rehearing) 118 F. (2d) at 51, cert. denied 313 U. S. 567. See also: *Fradkin*, 36 N. L. R. B. 565. *National Laundry, Inc.*, 36 N. L. R. B. 1204. *Quality & Service Laundry, Inc.*, 39 N. L. R. B. 970.

Company writing ordinary and weekly premium insurance in the District of Columbia and nearby Maryland. *Life Insurance Co. of Virginia*, 24 N. L. R. B. 411. See also: *Eureka Maryland Assurance Corp.*, 17 N. L. R. B. 381. *Sun Life Insurance Co. of America*, 15 N. L. R. B. 817. *Home Beneficial Assn. of Richmond*, 17 N. L. R. B. 1027.

Company engaged in general cafeteria business in the District of Columbia. *S. & W. Cafeteria of Washington, Inc.*, 30 N. L. R. B. 1236. See also: *Dickson*, 41 N. L. R. B. 1230; (Navy Yard cafeteria in D. C.). *Welfare Assn. of the U. S. Dept. of Agriculture*, 45 N. L. R. B. 285; (cafeteria in Government building).

Retail sale of petroleum products in the District of Columbia. *Lord Baltimore Filling Stations, Inc.*, 31 N. L. R. B. 660.

Hospital in the District of Columbia. *Central Dispensary & Emergency Hospital*, 44 N. L. R. B. 533.

A cooperative apartment building corporation in the District of Columbia which acted as agent in behalf of the individual apartment stockholder-owners in the maintenance, leasing, and management of the respective apartments and on its own behalf in the management and maintenance of the building. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587. See also: *Westchester Apartments, Inc.*, 17 N. L.

R. B. 433; (apartment building operators in D. C.). *Bliss Properties*, 30 N. L. R. B. 1062.

Street paving company in the District of Columbia. *Brenizer Trucking Co.*, 44 N. L. R. B. 810.

Lumber products manufactured in the Territory of Alaska. *Independent Lumber Co.*, 26 N. L. R. B. 508.

Fish canning and packing in the Territory of Alaska. *Northern Fisheries, Inc.*, 33 N. L. R. B. 919. See also: *Alaska Salmon Industry, Inc.*, 33 N. L. R. B. 727. *Pacific American Fisheries, Inc.*, 28 N. L. R. B. 244.

Water transportation of passengers, freight, and mail between the larger islands comprising the Territory of Hawaii. *Inter-Island Steam Navigation Co., Ltd.*, 34 N. L. R. B. 132.

3 11. *Operations in single State but resulting in shipments through any other State, territory, District of Columbia, or foreign country.*

Transportation of freight by motor trucks where 90 percent of all hauling originated in the State and consisted principally of articles manufactured in the State, and although the destination of most of the freight was in the State the most frequently used route took the trucks through other States. *D. & H. Motor Freight Co.*, 2 N. L. R. B. 231, 233.

Operation of vessels between the mainland of the State of Massachusetts and the islands of Martha's Vineyard and Nantucket, also within the State of Massachusetts. *International Freighting Corp.*, 3 N. L. R. B. 692, 694, 695.

Transportation of lumber between ports in the same State where the vessels go outside the 3-mile limit. *Shipowners' Assn. of the Pacific Coast*, 7 N. L. R. B. 1002, 1006, 1007, review denied 103 F. (2d) 933 (App. D. C.), affirmed 308 U. S. 401.

4 12. *Insurance, banking, and related enterprises.*

Bank of America National Trust & Savings Assn., 14 N. L. R. B. 207 and 26 N. L. R. B. 198, enforced 130 F. (2d) 624 (C. C. A. 9) (commercial banking).

Newburger, 37 N. L. R. B. 683; (broker of stocks, bonds, and commodities).

New York Stock Exchange, 43 N. L. R. B. 766 (stock exchange).

Metropolitan Life Insurance Co., 43 N. L. R. B. 962 (insurance). See also: *John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024. *Polish National Alliance*, 42 N. L. R. B. 1375.

13. *Enterprises owned and/or controlled by the Federal Government and operated for its account.*

A commercial corporation which was owned, controlled by, and operated for the account of the United States and operated a steamship line, a railroad, and other business enterprises within the Canal Zone. *Panama Railroad Co.*, 2 N. L. R. B. 290, 291.

A steamship company operating vessels owned by the United States Government under an operating agreement between it and the Government. *Cosmopolitan Shipping Co., Inc.*, 2 N. L. R. B. 759, 761, 762. See also:

Southgate-Nelson Corp., 3 N. L. R. B., 535, 537, 538.
Mobile S. S. Assn., 8 N. L. R. B. 1297, 1305, 1318.
American France Line, 12 N. L. R. B. 766, 769.
International Freighting Corp., 12 N. L. R. B. 785, 786.

American Hawaiian S. S. Co., 41 N. L. R. B. 425; (Steamship company whose vessels were requisitioned by the Maritime Commission to be operated by company under time charters issued by Maritime Commission and who also operated a boat under a bare-boat charter assigned to it by the Commission.)

Ordnance manufacturing plants owned by the United States Government and operated on its behalf by private persons.

Westinghouse Electric & Mfg. Co., 38 N. L. R. B. 404, 412.
Day & Zimmermann, Inc., 39 N. L. R. B. 1313, and 41 N. L. R. B. 24.
United States Cartridge Co., 42 N. L. R. B. 191.
Koppers Co., 44 N. L. R. B. 348.
Lukas-Harold Corp., 44 N. L. R. B. 730.

Cafeterias operated in Government buildings by private persons. *Dickson*, 41 N. L. R. B. 1230. *Welfare Assn. U. S. Dept. of Agriculture*, 45 N. L. R. B. 285.

[*See* § 10 (as to effect of Federal or State laws upon Board's jurisdiction) and DEFINITIONS §§ 32–33 (as to Governmental subdivisions as employers).]

14. *Other enterprises.*

EVIDENCE

I. IN GENERAL.
II. JUDICIAL NOTICE.
A. IN GENERAL.
B. PUBLIC DOCUMENTS.
C. CUSTOM AND USAGE.
1. In general.
2. Prevailing industrial practices.
D. FACTS OF GENERAL OR COMMON KNOWLEDGE.
E. JUDICIAL PROCEEDINGS.
F. FEDERAL, STATE, AND LOCAL LAWS.
G. BOARD PROCEEDINGS.
H. OTHER MATTERS.
III. BURDEN OF PROOF.
IV. ADMISSIBILITY.
A. IN GENERAL.
B. BACKGROUND EVIDENCE. [*See* § 17 (as to evidence adduced in prior proceedings), and § 18 (as to unfair labor practices committed prior to settlement agreement).]
1. In general.
2. Matters which occurred prior to the effective date of the Act.
3. Matters not specifically alleged.
C. MATTERS OCCURRING SUBSEQUENT TO FILING OF COMPLAINT.
D. REGULAR AND SUBSTANTIALLY EQUIVALENT EMPLOYMENT.
E. EVIDENCE OF VIOLATION OF 8 (2) IN REPRESENTATION PROCEEDING.
F. EVIDENCE IN 8 (5) PROCEEDING RELATING TO ISSUES RAISED IN PRIOR CERTIFICATION PROCEEDING.
G. EVIDENCE ADDUCED IN PRIOR PROCEEDING.
H. SETTLEMENT NEGOTIATIONS. [*See* PRACTICE AND PROCEDURE §§ 1–11 (as to the effect of agreements purporting to compromise unfair labor practices or settle representation disputes).]
1. Unfair labor practices committed prior to settlement agreement.
2. Evidence of negotiations.
3. Matters occurring during negotiations.
4. Other matters.
I. RELEVANCY AND MATERIALITY.
1. In general.
2. Failure of unfair labor practice to affect employees.
3. Coercive practices of labor organizations in enlisting members.

4. Testimony of employees that they no longer desire labor organization to represent them.
5. Violence or misconduct of employees or representatives.
6. Matters affecting the internal affairs of labor organizations.
7. Other matters.

J. UNSWORN STATEMENTS.
1. Hearsay.
2. Records made in the course of business.
3. Other matters.

K. PARTICULAR KINDS OF EVIDENCE.
1. Economic and statistical data.
2. Best and secondary evidence.
3. Parol evidence.
4. Testimony of expert witnesses.

L. EVIDENCE ILLEGALLY OBTAINED.

M. OTHER EVIDENCE.

V. PRESUMPTIONS.

A. IN GENERAL.

B. FAILURE TO TESTIFY OR PRODUCE EVIDENCE. [*See* PRACTICE AND PROCEDURE § 312 (as to dismissal of complaint when employees alleged to be victims of unfair labor practices fail to appear or to testify).]

C. SPOLIATION AND FABRICATION OF EVIDENCE.

D. ADMINISTRATIVE REGULARITY.

E. OTHER PRESUMPTIONS.

F. FAILURE TO PLEAD. [*See* PRACTICE AND PROCEDURE § 123.]

G. CONTINUANCE OF FACT OR CONDITION. [*See* UNFAIR LABOR PRACTICES § 719.]

VI. PRIVILEGE.

VII. RES JUDICATA. [*See* JURISDICTION §§ 11–20 (as to judicial proceedings as *res judicata*).]

VIII. WEIGHT AND SUFFICIENCY.

A. IN GENERAL.

B. CREDIBILITY OF WITNESSES.
1. Testimony as to the statements of deceased persons.
2. Self-serving declarations.
3. Impeachment.
a. Prior statements.
b. Conviction of crime.
c. Interest and bias.
d. Other methods.
4. Evidence adduced in presence and/or at the instance of employer.
5. As affected by other circumstances.

C. OBSERVATIONS OF TRIAL EXAMINER.

D. OTHER CIRCUMSTANCES.

EVIDENCE

I. IN GENERAL. [*See* LITIGATION DIGEST. EVIDENCE. *On evidence generally.*]

The First Amendment to the United States Constitution does not preclude the Board, as a fact finding body, from making an evidentiary use of speech any more than the Fifth Amendment prohibits it from weighing non-verbal conduct, since words, like other behavior, may be the means through which a violation is accomplished. *Dow Chemical Co.*, 13 N. L. R. B. 993, 1015, enforced as modified 117 F. (2d) 455 (C. C. A. 6). See also: *Ford Motor Co.*, 14 N. L. R. B. 346, 378, enforced as modified 114 F. (2d) 905 (C. C. A. 6), cert. denied 312 U. S. 689. *Ford Motor Co.*, 23 N. L. R. B. 548, 567.

II. JUDICIAL NOTICE. [*See* LITIGATION DIGEST. EVIDENCE: *Consideration of*—Judicial and official notice.]

A. IN GENERAL.

B. PUBLIC DOCUMENTS.

A report of another Governmental agency, Interstate Commerce Commission, although not introduced in evidence, is a public document of which the Board may take judicial notice for the purpose of determining whether the employees of several employers who are parties in representation proceedings constitute a single appropriate unit. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 658, n. 109, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3). *Alma Mills, Inc.*, 24 N. L. R. B. 1, 5; (judicial notice of hearings before a Special Congressional Investigating Committee). See also: *International Harvester Co.*, 29 N. L. R. B. 456. *Sorg Paper Co.*, 25 N. L. R. B. 946.

C. CUSTOM AND USAGE.

1. *In general.*

2. *Prevailing industrial practices.*

Judicial notice may be taken of collective bargaining methods used elsewhere in an industry as an aid in arriving at a determination of an appropriate unit. *American Steel & Wire Co.*, 5 N. L. R. B. 871, 875.

Board will not consider custom as a justification for violating the Act. *Universal Match Co.*, 23 N. L. R. B. 226, 238.

Evidence admitted concerning industrial practice which prevailed in recall of employees following a previous shut-down and the practice adopted at time of alleged unfair labor practices. *Nevada Consolidated Copper Corp.*, 26 N. L. R. B. 1182, set aside 122 F. (2d) 587 (C. C. A. 10), reversed 316 U. S. 105.

Notice taken that employment relation in maritime industry may, and often does, continue despite the expiration of shipping articles or the need for execution of new articles. *North American Motorship Co., Inc.*, 28 N. L. R. B. 607.

Notice taken of the general practice in the shipping industry that a part of the compensation paid by the employer to its seamen consists of maintenance on shipboard. *Cities Service Oil Co.*, 32 N. L. R. B. 1020, enforced July 2, 1942 (C. C. A. 2).

D. FACTS OF GENERAL OR COMMON KNOWLEDGE.

It is common knowledge that in the industrial scene numerous and prolonged strikes have resulted from denial by employers of the rights now guaranteed in Section 7 and from their interference with employees attempting to exercise such rights, and the Board cannot be blind to such knowledge or fail to realize the disruption of commerce that results from such strikes and unrest. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 42, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

It is common knowledge that the availability of means for adjusting individual grievances through group representatives, and the work carried on by such representatives, constitute an important inducement to union affiliation; and, therefore, the furlough of an employee as the result of his activities as chairman of a union grievance committee discourages union membership. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 331.

It is well known that labor spies commonly join labor unions either to report on their activities or for the purposes of sabotage. *Link Belt Co.*, 12 N. L. R. B. 854, 869, enforced as modified 110 F. (2d) 506 (C. C. A. 7), modification of Board's order reversed 311 U. S. 584.

E. JUDICIAL PROCEEDINGS.

The Board may take judicial notice of proceedings in a Federal district court involving specific performance of a collective bargaining agreement which is alleged to have been a result of unfair labor practices on the part of an employer. *National Electric Products Corp.*, 3 N. L. R. B. 475, 500.

Judicial notice may be taken of the fact that strikers have pleaded guilty to and were convicted of unlawful acts during a strike, and it is therefore unnecessary to reopen the record to receive these matters. *Republic Steel Corp.*, 9 N. L. R. B. 219, 389, n. 70, modified 107 F. (2d) 472 (C. C. A. 3) (denied certiorari) and granted limited certiorari (as to work-relief provisions) 309 U. S. 684, upon rehearing of, vacated 310 U. S. 655. See also: *El Paso Electric Co.*, 13 N. L. R. B. 213, 215, modified 119 F. (2d) 581 (C. C. A. 5). *Calmar Steamship Corp.*, 18 N. L. R. B. 1, 4.

F. FEDERAL, STATE, AND LOCAL LAWS.

Though the Board may take judicial notice of State statutes it cannot, upon evidence heard in one of its own proceedings, determine that employees have violated a State criminal statute, whether the issue be raised directly in such a proceeding or indirectly on exceptions to the Trial Examiner's Intermediate Report. *United Aircraft Mfg. Corp.*, 1 N. L. R. B. 236, 252. Cf. *Southern S. S. Co.* v. *N. L. R. B.*, 316 U. S. 31, reversing and remanding 120 F. (2d) 505 (C. C. A. 3) enforcing 23 N. L. R. B. 26. *National Mineral Co.*, 39 N. L. R. B. 344 (State Social Security Regulations).

G. BOARD PROCEEDINGS.

Judicial notice taken of stipulation entered into between Board and a company, settling former case and providing that instant case should be dismissed as to said company. *Milan Shirt Mfg. Co.*, 22 N. L. R. B. 1143, 1160, enforced (work-relief modification) 125 F. (2d) 376 (C. C. A. 6).

The Board's findings and orders are cognizable by it and treated as administratively determined unless and until set aside by a court of competent jurisdiction. *New Idea, Inc.*, 25 N. L. R. B. 265.

Judicial notice taken of prior Board's decision in making findings as to commerce. *Bethlehem Steel Corp.*, 30 N. L. R. B. 1006.

H. OTHER MATTERS.

Judicial notice taken that since hearing, the charging union had reaffiliated itself with a parent organization. *Kramer*, 29 N. L. R. B. 921.

III. BURDEN OF PROOF. [*See* LITIGATION DIGEST EVIDENCE. *Consideration of*—Burden of going forward with proof.]

When one, among other causes, of a strike was the wrongful refusal of the employer to bargain with the representatives of the employees, it rested upon the employer to disentangle the consequences for which it was chargeable from those from which it was immune by showing that negotiations, if undertaken, would have broken down; and if it cannot so show, it is not in a position to object to an order of the Board requiring the reinstatement of striking employees on the ground that the loss of the men's jobs was due to a controversy which the Act does not attempt to regulate. *L. N. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872, (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576. See also: *Standard Lime & Stone Co.* v. *N. L. R. B.*, 97 F. (2d) 531, 535 (C. C. A. 4), setting aside 5 N. L. R. B. 106, *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 176 (C. C. A. 3), modifying and denying rehearing 6 N. L. R. B. 171, cert. denied 308 U. S. 605. *Republic Steel Corp.*, 9 N. L. R. B. 219, 386, modified 107 F. (2d) 472 (C. C. A. 3), denying certiorari) and granting limited certiorari (as to work-relief provisions) 309 U. S. 684, upon rehearing of, vacated 310 U. S. 655.

When an employer refused to reinstate an employee because of his union affiliation or activities, there is a rebuttable presumption that a vacancy exists which the applicant can fill and the burden of negating the existence of such vacancy is on the employer. *National Casket Co., Inc.*, 12 N. L. R. B. 165, 171, enforced as modified 107 F. (2d) 992 (C. C. A. 2).

Complaint dismissed without prejudice as to a parent corporation, when it was not established that an order of the Board would be ineffective unless made to run against the corporation. *Calco Chemical Co., Inc.*, 12 N. L. R. B. 275, 278. See also: *Chamberlain Corp.*, 37 N. L. R. B. 499.

Where disproportionate numbers of union members and officers were included in mass discharges, the employer has burden of offering evidence to negative inference of discrimination. *Woolworth Co., F. W.*, 25 N. L. R. B. 1362, modified 121 F. (2d) 658 (C. C. A. 2). See also: *Montgomery Ward & Co.*, 9 N. L. R. B. 538, enforced as modified 107 F. (2d) 555 (C. C. A. 7). *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, enforced as modified 104 F. (2d) 49 (C. C. A. 8).

Employer held responsible for the distribution on company time and property of a publication advocating collective "cooperation" instead of collective bargaining where it neither denied nor explained the distribution. *Hughes Tool Co.*, 27 N. L. R. B. 836.

It is incumbent on the employer to disclose its basis for the different treatment accorded employees before and after they became active on behalf of the union if it wishes to avoid the inescapable inference that such treatment was motivated by a desire to discourage membership in the union. *Phelps Dodge Corp.*, 28 N. L. R. B. 442. See also: *Montgomery Ward & Co.* v. *N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7), mod'g and enf'g 9 N. L. R. B. 538.

Since the reasons for discharging employees lay wholly within the knowledge of the employer, it is incumbent upon the employer to explain the reasons for the discharges, where the employer has engaged in anti-union conduct. *Phelps Dodge Corp.*, 32 N. L. R. B. 338.

Interlake Iron Corp., 33 N. L. R. B. 613. (The burden rests on an employer to show that a merit-rating system was not used for discriminatory purposes in laying off union members and officers named in the complaint where the merit ratings are not conclusive—in view of the established anti-union bias of the employer and especially of several supervisors who made the ratings—and where the factual basis upon which the various ratings were made was a matter exclusively within the knowledge of the employer.)

Leyse Aluminum Co., 37 N. L. R. B. 839. (In view of employer's demonstrated hostility to the union, it was incumbent upon the employer to explain the reasons for the alleged discriminatory lay-offs.)

IV. ADMISSIBILITY. [*See* LITIGATION DIGEST EVIDENCE. *Admissibility.*]

12 A. IN GENERAL.

State statutes with respect to rules of evidence are not controlling in Board proceedings. *Metal Mouldings Corp.*, 39 N. L. R. B. 107. See also: *Borden Mills, Inc.*, 13 N. L. R. B. 459.

B. BACKGROUND EVIDENCE. [*See* § 17 (as to evidence adduced in prior proceedings), and § 18 (as to unfair labor practices committed prior to settlement agreement) and LITIGATION DIGEST. EVIDENCE: Consideration of—Circumstantial evidence; Events occurring before ULP

alleged; Events occuring before effective date of Act; Events occurring while business in other hands.]

1. *In general.*

It is the Board's province to find the facts, not alone as the direct testimony declares them to be, but as the background, setting, and circumstances under which the testimony was given and the matters testified about transpired, including the interests and motives of those testifying, give color and meaning to the testimony. *Agwilines, Inc.* v. *N. L. R. B.*, 87 F. (2d) 146, 151 (C. C. A. 5), enforcing as modified 2 N. L. R. B. 1.

2. *Matters which occurred prior to the effective date of the Act.*

It is in accord with the duty of the Board to take note of those features of a labor organization that involved participation by the employer in its administration prior to the Act and persisted afterward. *Newport News Shipbuilding & Drydock Co.* v. *N. L. R. B.*, 101 F. (2d) 841, 847 (C. C. A. 4), modifying 8 N. L. R. B. 866, modified 308 U. S. 241.

While the Act applies only to practices of an employer occurring on or after the effective date of the Act, in cases where such practices have their origin in events prior to that date, knowledge of that background of events may be vital to a proper evaluation of the present practices of the employer, and reference to those events may be made whenever it is necessary for the purpose of determining whether or not unfair labor practices have been committed. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B., 1, 7, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

Background evidence concerning proceedings instituted against employer under Section 7 (a) of National Industrial Recovery Act, *held* relevant in evaluating employer's attitude and motives in considering alleged unfair labor practices. *Pick Mfg. Co.*, 35 N. L. R. B. 1334.

For additional decisions where matters which occurred prior to the effective date of the Act were admitted as background, *see:*

Kelly-Springfield Tire Co., 6 N. L. R. B. 325, 329.
Dunbar Glass Corp., 6 N. L. R. B. 789, 791, 792.
Industrial Rayon Corp., 7 N. L. R. B. 878, 885, 891.
Valley Mould & Iron Corp., 20 N. L. R. B. 211, enforced 116 F. (2d) 760 (C. C. A. 7), rehearing denied Jan. 31, 1941, cert. denied 313 U. S. 590.

Standard Oil Co., 25 N. L. R. B. 1190, denied review of, 114 F. (2d) 743 (C. C. A. 8).
Odanah Iron Co., 25 N. L. R. B. 1332.
Link-Belt Co., 26 N. L. R. B. 227.
Texas Co., 26 N. L. R. B. 1059, enforced 119 F. (2d) 23 (C. C. A. 7).
Nevada Consolidated Copper Corp., 26 N. L. R. B. 1182, enforced 316 U. S. 105, reversing (work-relief modification) 122 F. (2d) 587 (C. C. A. 10).
Socony-Vacuum Oil Co., 27 N. L. R. B. 1149.
American Enka Corp., 27 N. L. R. B. 1057, enforced 119 F. (2d) 60 (C. C. A. 4).
Hughes Tool Co., 27 N. L. R. B. 836.
B. Z. B. Knitting Co., 28 N. L. R. B. 257.
Carpenter Baking Co., 29 N. L. R. B. 60.
Kayser & Co., 29 N. L. R. B. 1025.
International Harvester Co., 29 N. L. R. B. 456.
Service Wood Heel Co., 31 N. L. R. B. 1179, enforced in part, and remanded in part, 124 F. (2d) 470 (C. C. A. 1).
Phelps Dodge Corp., 32 N. L. R. B. 338.
Weirton Steel Co., 32 N. L. R. B. 1145.
Minneapolis-Honneywell Regulator Co., 33 N. L. R. B. 263.
Stonewall Cotton Mills, 36 N. L. R. B. 240, modified July 6, 1942 (C. C. A. 5).
McLain Fire Brick Co., 36 N. L. R. B. 1, enforced 128 F. (2d) 393 (C. C. A. 3).
Curtiss-Wright Corp., 39 N. L. R. B. 992.
Carter Carburetor Corp., 39 N. L. R. B. 1269.
New York Merchandise Co., Inc., 41 N. L. R. B. 1078.
Food Machinery Corp., 41 N. L. R. B. 1428.
Elvine Knitting Mills, Inc., 43 N. L. R. B. 695.
Western Cartridge Co., 44 N. L. R. B. 1.
Hancock Brick & Tile Co., 44 N. L. R. B. 920.
Wright Aeronautical Corp., 44 N. L. R. B. 959.

3.1 3. *Matters not specifically alleged.*

Respondent's motion to strike from the record, for want of allegation in the complaint, all evidence adduced with respect to acts and conduct of the respondent through its officers and agents occurring prior to July 1937 which might be held to constitute unfair labor practices under the Act, properly denied as such evidence was admissible

as background in the case. *Newark Morning Ledger Co.*, 21 N. L. R. B. 988, 990, 994, enforced 120 F. (2d) 266, cert. denied 314 U. S. 693.

The acts and conduct of the respondent's predecessor are proper subject for inquiry at the hearing, not in order to impute such conduct to the respondent but as background for the alleged unlawful acts of the respondent. (8 (2) union initiated by respondent's predecessor.) *Keystone Freight Lines*, 24 N. L. R. B. 1153, enforced as modified 126 F. (2d) 414 (C. C. A. 10).

Evidence of incidents not alleged in complaint admitted only to show background circumstances relevant to unfair labor practices which were alleged. *Mahon Co.*, 28 N. L. R. B. 619.

Evidence of discriminatory lay-offs admitted to show causes of strike, although complaint which generally alleged violation of Section 8 (1) did not specifically allege that fact, when issue was fully litigated by parties and no claim of surprise was raised by employer when notified of purpose for which evidence was introduced. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107.

C. MATTERS OCCURRING SUBSEQUENT TO FILING OF COMPLAINT.

Testimony concerning acts committed subsequent to the filing of a charge and the issuance of a complaint has been properly admitted by the Trial Examiner, over objection of counsel for the employer, to corroborate testimony given to support specific allegations of the complaint. *Oregon Worsted Co.*, 3 N. L. R. B. 36, 53, 54, enforced 96 F. (2d) 193 (C. C. A. 9). See also: *M. Lowenstein & Sons, Inc.*, 6 N. L. R. B. 216, 219, contempt proceedings, October 24, 1938 (C. C. A. 2), proceedings for enforcement of 121 F. (2d) 673 (C. C. A. 2). *American Smelting & Refining Co.*, 7 N. L. R. B. 735, 736.

D. REGULAR AND SUBSTANTIALLY EQUIVALENT EMPLOYMENT.

Evidence of regular and substantially equivalent employment is excluded as immaterial in determining reinstatement orders. *Quality Service Laundry*, 39 N. L. R. B. 970.

[*See* REMEDIAL ORDERS § 121 (as to the effect of the securance of regular and substantially equivalent employment upon reinstatement orders).]

15 E. EVIDENCE OF VIOLATION OF 8 (2) IN REPRESENTATION PROCEEDING.

Where there is no charge involving Section 8 (2) in proceedings concerning the investigation and certification of representatives, it is not necessary to consider evidence indicating that the employer has interfered with and dominated a labor organization which is a party to the proceedings. *New England Transportation Co.*, 1 N. L. R. B. 130, 134, 135. See also: *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 642, 643. *Standard Oil Co. of New Jersey*, 8 N. L. R. B. 936, 941. 942. Cf. *Phelps-Dodge Corp.*, 6 N. L. R. B. 624, 630.

Evidence that labor organization previously found to be company-dominated continued to be the choice of the majority of employees excluded where company admitted that it had not complied with Board's previous order to disestablish and post notices. *Kansas City Structural Steel Co.*, 18 N. L. R. B. 291, 293.

In a representation proceeding, pursuant to notice thereof, evidence was taken on the issue of whether one of the labor organizations involved was a successor to or continuation of an organization previously ordered disestablished by the Board. *Dow Chemical Co.*, 32 N. L. R. B. 660. See also: *Le Tourneau*, 36 N. L. R. B. 774; *Western Union Telegraph Co.*, 36 N. L. R. B. 812; *Fletcher Co.*, 41 N. L. R. B. 420; *Swift & Co.*, 41 N. L. R. B. 1251; *Wilson & Co.*, 45 N. L. R. B. 831.

16 F. EVIDENCE IN 8 (5) PROCEEDING RELATING TO ISSUES RAISED IN PRIOR CERTIFICATION PROCEEDING.

While the determination, findings, conclusions, and certification of the Board in a representation proceeding are not *res judicata* in a subsequent complaint proceeding before the Board under Section 10 (b) and (c), it is both the intent of the statute and a sound administrative practice that parties in interest to such representation proceeding cannot try and have heard *de novo* in the subsequent complaint proceeding questions or matters adjudicated in the previous proceeding in the absence of cogent showing of possible error in such prior proceeding. Although the Board in the exercise of its discretion and upon sufficient ground may reexamine such questions or matters, nevertheless it is entitled to treat as administratively decided all such determinations, findings, conclusions, and certi-

fications. This does not mean that parties in the complaint proceeding are deprived of a fair hearing before the Board on material issues. That already has been afforded them in the representation proceeding. Moreover, they are privileged to appeal to the discretion of the Board as above indicated. Nor are they thereby deprived of a judicial review of matters found and determined in the representation proceeding. Upon proceedings in the United States Circuit Court of Appeals on petition to review the order of the Board made in the complaint proceeding, they may bring before that court as part of the record on review the entire record and certification in the representation proceeding, and where, as in another representation proceeding involving such parties, the record in the previous representation case to the extent relevant likewise becomes available for judicial review as part of the record on review. It is unimportant that proceedings under Section 9 (c) do not result in a command to anyone. Administrative determinations may and often do have legal consequences even though they do not command. *Pacific Greyhound Lines*, 22 N. L. R. B. 111, 125. See also: *National Mineral Co.*, 39 N. L. R. B. 344. *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146 aff'g 113 F. (2d) 698 (C. C. A. 8), enf'g 15 N. L. R. B. 515.

G. EVIDENCE ADDUCED IN PRIOR PROCEEDING.

A Trial Examiner has not committed error in granting motion of counsel for Board to permit the record of testimony taken in a previous complaint proceeding against the employer, which the Trial Examiner had recommended be dismissed on jurisdictional grounds, to be incorporated into the record in the present proceeding to the extent that the previous record described the business activities of the employer. *American Potash & Chemical Corp.*, 3 N. L. R. B. 140, 142, 143, enforced 98 F. (2d) 448 (C. C. A. 9), cert. denied 306 U. S. 643.

Stipulation by all parties to proceeding concerning investigation and certification of representatives that the Board should consider all evidence and exhibits submitted in another case, as equally applicable to present case. *Held:* all objections to evidence and testimony adduced in a prior case will be considered to have been made in the present proceeding. *Scottdale Mills*, 4 N. L. R. B. 1, 2. See also: *Georgia Duck & Cordage Mill*, 4 N. L. R. B. 8, 9.

Board excluded from complaint proceedings excerpt of transcript of representation proceedings involving a plant of the company other than plants involved in complaint proceedings which Trial Examiner had admitted over company's objection. *Curtiss-Wright Corp.*, 39 N. L. R. B. 992.

Hoover Co., 12 N. L. R. B. 902, 903. (Record of prior complaint proceeding incorporated by reference in instant complaint proceedings when petition alleged that employee was discharged for testifying in prior proceeding.)

Cudahy Packing Co., 29 N. L. R. B. 830. (Record of prior complaint decision and Regional Director's testimony concerning a conversation with the company's superintendent to the effect that the operations of the plant had not materially changed, utilized as bases of Board's jurisdiction, when company refused to answer subpenas for the purpose of ascertaining facts relating to the company's business.)

Tidewater Express Lines, Inc., 32 N. L. R. B. 792. (Findings made by Board in its previous complaint proceeding considered as background in instant complaint proceeding.)

Chrysler Corp., 39 N. L. R. B. 532. (Pursuant to stipulation, record of prior representation proceeding involving another plant of the company at which there were employees performing similar work, incorporated by reference in instant representation proceeding.)

Southern California Gas Co., 40 N. L. R. B. 256. (Pursuant to agreement records in three earlier representation cases introduced in evidence; findings of jurisdiction based entirely on this evidence.) See also: *Kirk & Son*, 41 N. L. R. B. 807. *Gulf States Utilities Co.*, 42 N. L. R. B. 988.

Pequanoc Rubber Co., 40 N. L. R. B. 541. (Transcript and exhibits introduced in evidence in prior case on charges involving first dominated union received in evidence by agreement of parties at the hearing in a subsequent proceeding involving alleged formation of successor-dominated union, *held* proper.)

H. SETTLEMENT NEGOTIATIONS. [*See* PRACTICE AND PROCEDURE §§ 1–11 (as to effect of agreements purporting to compromise unfair labor practices or settle representation disputes) and LITIGATION DIGEST EVIDENCE: *Admissibility*—Subjects properly excluded. Generally—Negotiations between Bd. attorney and E regarding charges.]

1. *Unfair labor practices committed prior to settlement agreement.*

Evidence concerning unfair labor practices committed prior to an agreement between a labor organization and an employer in settlement of such matters is admissible even though the terms of the settlement are not binding upon the Board. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 912. See also:

Emsco Derrick & Equipment Co., 11 N. L. R. B. 79.
Fein's Tin Can Co., 23 N. L. R. B. 1330, 1333.
Dain Manufacturing Co., 25 N. L. R. B. 821.
Great Western Mushroom Co., 27 N. L. R. B. 352.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.

Fraim Lock Co., 24 N. L. R. B. 1190, 1198. (Evidence of matters prior to stipulation upon which Board issued an order admitted as background.) See also: *Greer Steel Co.*, 31 N. L. R. B. 365.

2. *Evidence of negotiations.*

Evidence of negotiations looking to settlement of complaint proceedings before the Board is properly excluded as immaterial. *Ford Motor Co.*, 23 N. L. R. B. 342, 367.

Evidence, in the form of exhibits, of offers of settlement or compromise introduced by the respondent itself, or by another without its objection, admitted. *Franks Bros. Co.*, 44 N. L. R. B. 898.

3. *Matters occurring during negotiations.*

Part of compromise or settlement negotiations antedating issuance of complaint admitted for limited purpose of showing certain state of facts, although no weight is given to such testimony as a basis of findings of unfair labor practices since offers of settlement or compromise have no probative value as evidence of guilt or liability. *Lexington Telephone Co.*, 39 N. L. R. B. 1130.

4. *Other matters.*

I. RELEVANCY AND MATERIALITY. [*See* LITIGATION DIGEST. EVIDENCE: *Admissibility*—Subjects improperly and properly excluded. *Consideration of*—Burden of going forward—Shifts to E where *prima facie* case established. Signature authenticity on union membership cards. Immaterial or incompetent evidence.]

1. *In general.*

2. *Failure of unfair labor practices to affect employees.*

A Trial Examiner has properly refused to permit an employer to introduce testimony of employees that they had

voted as they had wished at an election directed by the Board and that they had heard no statement by any supervisory employees concerning the election, for the probative value of testimony by employees, particularly upon questioning by counsel for the employer, as to whether their free choice was affected by the employer's activities is so slight and untrustworthy as to be disregarded; and moreover, the fact that certain employees might testify that they had not heard any statements by supervisors concerning the election does not militate against the existence of interference by the employer which would affect the free choice of the employees. *Eagle & Phenix Mills*, 11 N. L. R. B. 361, 370, 371.

Botany Worsted Mills, 4 N. L. R. B. 292 297, 298, modified and remanded 106 F. (2d) 263 (C. C. A. 3). (Not necessary to prove that interrogating employees about their membership in a labor organization had the effect of intimidating them.)

Consumers' Power Co., 9 N. L. R. B. 701, 739, enforced 113 F. (2d) 38 (C. C. A. 6), rehearing denied October 8, 1940 (immaterial that employees who testified concerning acts of employer tending to discourage membership in labor organization were not in fact discouraged).

Emsco Derrick and Equipment Co., 11 N. L. R. B. 79, 87. (Evidence that certain employees voluntarily joined an alleged company-dominated labor organization immaterial.) See also: *Washington Tin Plate Co.*, 16 N. L. R. B. 600, 610. *Donnelly Garment Co.*, 21 N. L. R. B. 164, remanded to adduce additional evidence 123 F. (2d) 215 (C. C. A. 8).

New Era Die Co., 19 N. L. R. B. 227, enforced as modified 118 F. (2d) 500 (C. C. A. 3) memorandum decision on settlement of decree April 4, 1941 (C. C. A. 3). (Testimony of employees that they freely and voluntarily signed a petition circulated by respondent designed to reveal whether employees desired an open shop or a union shop, irrelevant and immaterial when the petition was accompanied by coercive remarks.)

New Era Die Co., 19 N. L. R. B. 227, enforced as modified 118 F. (2d) 500 (C. C. A. 3) memorandum decision on settlement of decree April 4, 1941 (C. C. A. 3). (Testimony that a majority of employees freely and voluntarily revoked their designations of a bargaining representative is immaterial when the revocations took place after

respondent expressed its opposition to the bargaining representative and had refused to bargain with it.)

International Harvester Co., 29 N. L. R. B. 456. (Request denied for "evidentiary" election to determine whether employees desired to be represented by alleged company-dominated labor organizations, since such evidence is irrelevant to determination of company domination.)

Swift & Co., 30 N. L. R. B. 550, enforced as modified July 10, 1942 (C. C. A. 8). (Failure of employees who testified concerning anti-union conduct of employer to testify that they were in fact interfered with, restrained, or coerced thereby, and then continued membership in labor organization opposed by employer, is clearly not decisive in determining whether acts of respondent constituted interference, restraint, or coercion, within the meaning of the Act.)

Phelps Dodge Corp., 32 N. L. R. B. 338. (Immaterial that employees who served on dominated organization's board never felt that employer "attempted to dominate or influence their activities in connection with their serving on the board.")

Marshall Field & Co., 34 N. L. R. B. 1, enforced consent decree February 26, 1942 (C. C. A. 7). (Immaterial that employees testified that they were not intimidated by remarks of supervisory employees attributable to employer.)

National Mineral Co., 39 N. L. R. B. 344. (Testimony by employees that the respondent's acts did not intimidate them from voting carries little or no weight, especially in view of the respondent's anti-union bias.)

Rieke Metal Products Corp., 40 N. L. R. B. 867. (Employer found to have engaged in conduct prohibited by the Act testimony concerning the effect or lack of effect of the employer's coercion on individual employees or groups of employees, *held* immaterial.)

3. *Coercive practices of labor organizations in enlisting members.*

Trial Examiner's exclusion of evidence of the use of intimidation and coercion by a labor organization to enlist members, affirmed where the organization had secured a majority and the employer had refused to bargain collectively with it prior to the time the alleged intimidation and coercion occurred. *National Motor Bearing Co.*, 5 N. L. R. B. 409, 438, modified 105 F. (2d) 652 (C. C. A. 9). See also: *Dela-*

ware-New Jersey Ferry Co., 30 N. L. R. B. 820, enforced as modified 128 F. (2d) 130 (C. C. A. 3).

Ruling of Trial Examiner excluding evidence purporting to show *physical coercion* on the part of a labor organization against persons refusing to sign its membership cards on the ground that such evidence did not refer to any cards introduced in evidence by the organization *overruled* since the testimony of persons not signing cards might be of such nature as to show that persons who signed cards were coerced and such evidence is proper with regard to the issue as to whether an election should be held. *Fisher Body Corp.*, 7 N. L. R. B. 1083, 1092. See also: *Armour and Co.*, 14 N. L. R. B. 682, 686. *American Bridge Co.*, 38 N. L. R. B. 624.

Application for subpenas properly rejected, when they were to be used for the purpose of examing each employee as to whether his signature on the union application card was genuine, and whether it was procured by veiled threats, coercion, and misrepresentation, for the organizers had merely told non-union employees that if they delayed in joining they would be charged a higher initiation fee later on, and if they failed to join they would lose their jobs when the union obtained a closed shop.

Dahlstrom Metallic Door Co., 11 N. L. R. B. 408, 412, enforced 112 F. (2d) 756 (C. C. A. 2). See also:

Texas Mining & Smelting Co., 13 N. L. R. B. 1163, enforced as modified 117 F. (2d) 86 (C. C. A. 5), rehearing denied February 1, 1941.

Delaware-New Jersey Ferry Co., 30 N. L. R. B. 820, enforced as modified 128 F. (2d) 130 (C. C. A. 3).

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.

Ellis-Klatscher & Co., 40 N. L. R. B. 1037.

Fiss Corp., 43 N. L. R. B. 125.

21 4. *Testimony of employees that they no longer desire labor organization to represent them.*

Testimony of employees to the effect that they no longer wish the only labor organization involved to represent them for the purposes of collective bargaining, is of questionable probative value where adduced in the presence and at the instance of the employer, but in the absence of other showing of coercion, this evidence casts some doubt on the labor organization's claim of majority representation. *May Knitting Co., Inc.*, 9 N. L. R. B. 938, 942.

Change in the desires of employees regarding membership in the union following unfair labor practices on the part of the employer cannot be given weight particularly when the employees were called as witnesses by the respondent whose anti-union feelings had been clearly demonstrated. *Levy, Hyman S.*, 11 N. L. R. B. 964, 972. See also: *Botany Worsted Mills*, 41 N. L. R. B. 218.

5. *Violence or misconduct of employees or representatives.*

Evidence tending to prove threats of sabotage and further sitdown strikes by members of a ship's crew, *held* admissible to show that threats had been communicated to the officers of the ship, and it is immaterial whether the threats were actually uttered if they were communicated to the officers, and were believed and acted upon by them in discharging and refusing to reinstate the members of the crew. *Peninsular & Occidental Steamship Co.* v. *N. L. R. B.*, 98 F. (2d) 411, 414 (C. C. A. 5), setting aside 5 N. L. R. B. 959, cert. denied 305 U. S. 653.

Evidence of violence on the part of striking employees is irrelevant with regard to an issue of whether or not an employer has refused to bargaining within the meaning of the Act.

Consumers' Research, Inc., 2 N. L. R. B. 57, 73. See also:

Rabhor Co., Inc., 1 N. L. R. B. 470, 477, 478.

N. L. R. B. v. *Remington Rand, Inc.*, 2 N. L. R. B. 626, enforced as modified 94 F. (2d) 862, 872, 873 (C. C. A. 2), cert. denied 304 U. S. 576.

Fansteel Metallurgical Corp., 5 N. L. R. B. 930, set aside 98 F. (2d) 375 (C. C. A. 7), modified 306 U. S. 240.

Federal Carton Corp., 5 N. L. R. B. 879, 886.

Kuehne Mfg. Co., 7 N. L. R. B. 304, 321.

Inland Steel Co., 9 N. L. R. B. 783, 802, set aside in part and remanded, 109 F. (2d) 9 (C. C. A. 7).

Evidence of acts of violence committeed by strikers is relevant on the issue of whether it would effectuate the policies of the Act to order their reinstatement, and the Board will consider evidence of convictions and pleas of guilty of acts of violence committed by individual strikers in connection with the strike, but it will not attempt to try accusations of violence which did not result in convictions or sentences upon pleas of guilty. *Republic Steel Corp.*, 9 N. L. R. B. 219, 387, and see *id.* at 392, 393, 399, modified 107 F. (2d) 472 (C. C. A. 3), (denied certiorari) and

granted limited certiorari (as to work-relief provisions) 309 U. S. 684, upon rehearing of, vacated 310 U. S. 655. See also:

N. L. R. B. v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948, 953 (C. C. A. 7), setting aside 1 N. L. R. B. 181, affirmed 306 U. S. 292.

Mackay Radio & Telegraph Co., 1 N. L. R. B. 201, 232, 233, enforced 304 U. S. 333, reversing 87 F. (2d) 611 (C. C. A. 9) and 92 *id.* 761 (C. C. A. 9).

N. L. R. B. v. *Oregon Worsted Co.*, 96 F. (2d) 193, 195 (C. C. A. 9), enforcing 1 N. L. R. B. 915 and 3 N. L. R. B. 36.

N. L. R. B. v. *Sands Mfg. Co.*, 306 U. S. 332, setting aside 1 N. L. R. B. 546, affirming 96 F. (2d) 721 (C. C. A. 6).

N. L. R. B. v. *Kentucky Fire Brick Co.*, 3 N. L. R. B. 455, enforced 99 F. (2d) 89, 92, 93 (C. C. A. 6), rehearing denied Oct. 12, 1938.

Biles-Coleman Lumber Co., 4 N. L. R. B. 679, 704, 705, enforced 98 F. (2d) 18 (C. C. A. 9).

Louisville Refining Co., 4 N. L. R. B. 844, 874, enforced as modified, 102 F. (2d) 678, cert. denied 308 U. S. 568.

N. L. R. B. v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 258, modifying 98 F. (2d) 375 (C. C. A. 7), and modifying 5 N. L. R. B. 930.

Standard Lime & Stone Co. v. *N. L. R. B.*, 5 N. L. R. B. 106, set aside 97 F. (2d) 531, 536 (C. C. A. 4).

United States Stamping Co., 5 N. L. R. B. 172, 188, 189.

N. L. R. B. v. *Colten & Colman*, 105 F. (2d) 179, 183 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

Stackpole Carbon Co. v. *N. L. R. B.*, 6 N. L. R. B. 171, enforced as modified 105 F. (2d) 167 (C. C. A. 3), rehearing denied with opinion at p. 179, cert. denied 308 U. S. 605.

Elkland Leather Co., 8 N. L. R. B. 519, enforced 114 F. (2d) 221 (C. C. A. 3), cert. denied 311 U. S. 705.

Harnischfeger Corp., 9 N. L. R. B. 676, 689.

Goodyear Tire & Rubber Co. of Alabama, 21 N. L. R. B. 306, 311.

Southern S. S. Co. v. *N. L. R. B.*, 316 U. S. 31, reversing and remanding 120 F. (2d) 505 (C. C. A. 3), enforcing 23 N. L. R. B. 26.

Acme-Evans Co., 24 N. L. R. B. 71, 100, 118, enforced June 15, 1942 (C. C. A. 7).

A Trial Examiner's order striking from the answer of the employer allegations which charged that a national labor organization with which the labor organization involved was affiliated, was engaged in a Nation-wide illegal conspiracy to seize plants in various parts of the country, including the plant of the employer, and denying the application for the issuance of subpenas to compel the attendance of officers of the national labor organization as witnesses and the production of its records and the attendance of certain law-enforcing officers to sustain these allegations, affirmed. *Serrick Corp.*, 8 N. L. R. B. 621, 624, enforced 110 F. (2d) 29 (App. D. C.), affirmed 311 U. S. 72, rehearing denied 311 U. S. 729.

Stokely Bros. & Co., Inc., 15 N. L. R. B. 872, 874: (Evidence in a representation proceeding that would prove that the union had plans to commit acts of violence, properly excluded as irrelevant when respondent's counsel refused to take a position as to the purpose for which this evidence was offered.)

3 6. *Matters affecting the internal affairs of labor organizations.*

An employer has no justification for violating the Act because a labor organization may not have conducted its affairs in parliamentary fashion, nor has it the right to pass judgment on what has occurred at meetings of the labor organization, for it is neither the business of the Board nor the employer to inquire into the manner in which labor organizations conduct their internal affairs. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 142, 143.

Trial Examiner's ruling that evidence as to whether a labor organization was, at the time of alleged unfair labor practices, affiliated with a national labor organization was immaterial, and that evidence as to whether the organization had proper jurisdiction over the jobs in question was likewise immaterial, in considering the question of whether the employer had engaged in unfair labor practices, affirmed. *Star Publishing Co.*, 4 N. L. R. B. 498, 500, enforced 97 F. (2d) 465 (C. C. A. 4).

Conduct in counting a strike vote is a matter of concern only to a labor organization and its members, and it is not the province of the employer or the Board to delve into such internal affairs of the organization. *Sunshine*

Mining Co., 7 N. L. R. B. 1252, 1264, enforced 110 F. (2d) 780 (C. C. A. 9), rehearing denied 312 U. S. 714, cert. denied 312 U. S. 678.

Ruling of a Trial Examiner in a complaint proceeding excluding evidence bearing on the selection of a bargaining committee for a labor organization certified by the Board in a previous representation proceeding affirmed, since the method of selecting such a committee is purely an intra-union matter. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 956, enforced 111 F. (2d) 814 (C. C. A. 5), rehearing denied July 24, 1940, cert. denied 311 U. S. 723.

Titan Metal Mfg. Co., 5 N. L. R. B. 577, 591, enforced 106 F. (2d) 254 (C. C. A. 3), cert. denied 308 U. S. 615; (Evidence to prove illegality of strike because labor organization involved did not follow procedure required by constitution of its parent affiliate inadmissible in proceeding charging employer with commission of unfair labor practices.) See also: *Barrett*, 3 N. L. R. B. 513, 516. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 143.

Where existing contract asserted by intervenor to be a bar to an investigation of representatives had been executed by a duly designated union bargaining committee, Board did not inquire whether the committee observed the by laws of the union in executing the contract. *Eaton Mfg. Co.*, 29 N. L. R. B. 53.

Employer *held* not to have been unfairly limited or prejudiced because it was prevented from attempting to impeach the testimony of a witness for the Board on a collateral matter, not relevant to the issues of the proceedings, by inquiry into the internal affairs of the union. *Delaware-New Jersey Ferry Co.*, 30 N. L. R. B. 820, enforced as modified April 29, 1942 (C. C. A. 3).

3.9 7. *Other matters.*

Evidence of an employer's history of collective bargaining with a union and its satisfactory relations with unions is relevant in determining whether the employer was influenced by anti-union motives in discharging one of its employees. *Emerson Electric Mfg. Co.*, 13 N. L. R. B. 448.

Although complaint did not allege that the respondent had engaged in unfair labor practices within the meaning of Section 8 (3), testimony concerning discrimination against an employee, because of his union membership and activity, was admitted and considered solely for its bearing on the question of domination, interference, and support of the

alleged employer-dominated organization. *Poultry Producers of Central California*, 25 N. L. R. B. 347.

Ruling of Trial Examiner rejecting employer's offer of proof as part of its defense to charges of discrimination to the effect that many members of charging union are employed by it overruled. *Cudahy Packing Co.*, 27 N. L. R. B. 118.

Evidence of alleged attempt by Board representatives to coerce employer into reemploying discriminatorily discharged employees excluded as irrelevant in unfair labor practice proceeding. *Wilcox Oil & Gas Co.*, 28 N. L. R. B. 79.

Drafts of an agreement exchanged between an employer and an alleged dominated union, *held* material on course of dealings between the parties. *Square D Co.*, 41 N. L. R. B. 693.

An offer to prove that employees wanted an organization prior to a certain date, properly excluded by Trial Examiner as having no probative value to establish a designation as required by Section 9 (a) of the Act and at most could only show a subjective desire of employees. *Premo Pharmaceutical Laboratories, Inc.*, 42 N. L. R. B. 1086.

J. UNSWORN STATEMENTS. [*See* LITIGATION DIGEST. EVIDENCE: *Consideration of;* Common law evidence not required.]

4 1. *Hearsay.*

Mere uncorroborated hearsay or rumor does not constitute substantial evidence. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 230, modifying 4 N. L. R. B. 71 and modifying 95 F. (2d) 390 (C. C. A. 2).

While the provisions of Section 10 (c) do not mean that mere rumor will serve to support a finding of the Board, nevertheless, hearsay may do so, at least if more is not conviently available, and if the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 873 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

The fact that some of the evidence upon which a finding of the Board was based was hearsay furnishes no ground for objection. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 3 N. L. R. B. 140, enforced 98 F. (2d) 488 (C. C. A. 9), cert. denied 306 U. S. 643.

Reports of doctor on physical condition of discharged employee, which were relied on by employer in considering

reinstatement of employee, are admissible although doctor did not testify at the hearing. *Nekoosa-Edwards Paper Co.*, 11 N. L. R. B. 446.

Newspaper clippings and affidavits introduced as probative of the facts recited therein and not for the purpose of impeachment, *held* inadmissible. *Lindeman Power & Equipment Co.*, 11 N. L. R. B. 868. See also: *Cudahy Packing Co.*, 15 N. L. R. B. 676, 677, 701, enforced as modified 116 F. (2d) 367 (C. C. A. 8), rehearing denied Jan. 10, 1941. *Goodyear Tire & Rubber Co. of Alabama*, 21 N. L. R. B. 306, 312, enforced in part July 6, 1942 (C. C. A. 5).

Affidavits of certain of respondent's supervisors setting up affirmative defenses to the charges of discrimination and filed as part of the answer, entitled to no evidentiary weight, there being no showing or claim that the witnesses were unavailable. *Cudahy Packing Co.*, 15 N. L. R. B. 676, 677, 701, enforced as modified 116 F. (2d) 367 (C. C. A. 8), rehearing denied Jan. 10, 1941.

§ 24.1 2. *Records made in the course of business.*

Entries made in course of business purporting to show reason for employees' separation from employment, *held* admissible. *Mountain City Mill Co.*, 25 N. L. R. B. 397.

§ 24.9 3. *Other matters.*

K. PARTICULAR KINDS OF EVIDENCE. [*See* LITIGATION DIGEST. EVIDENCE: *Admissibility*—Best evidence rule; Expert testimony. *Consideration of*—Common law evidence not required; Best evidence rule; Opinion evidence; Economic data.]

§ 25 1. *Economic and statistical data.*

Ruling of Trial Examiner excluding document containing an analysis of strikes and lock-outs, prepared by the Bureau of Labor Statistics, United States Department of Labor, and printed by the United States Government Printing Office, on ground it was not a certified copy reversed, for the document was relevant and material on the issues of unfair labor practices affecting commerce, and is an official publication of the United States Department of Labor and therefore admissible in evidence. *Alabama Mills, Inc.*, 2 N. L. R. B. 20, 22.

The propriety of introducing in evidence economic data obtained from Governmental or other authoritative sources is well settled, and a publication of the Division of Economic Research of the Board containing general eco-

nomic and historical data and statistical tables relating to the effect of labor relations in a given industry upon interstate commerce is admissible in evidence. *N. L. R. B.* v. *Crowe Coal Co.*, 9 N. L. R. B. 1149, enforced 104 F. (2d) 633 (C. C. A. 8), cert. denied 308 U. S. 584.

Economic data on history of access by maritime union representatives on board vessels, *held* admissible when issue of "interference" with such practice was involved. *Cities Service Oil Co.*, 25 N. L. R. B. 36, enforced in part, and set aside in part 122 F. (2d) 149 (C. C. A. 2).

Report from an insurance company relative to the abnormal accident rate existing at respondent's plant and the corresponding increase in the premium rates necessitated thereby, admitted as an exhibit, when the employer contended that the person alleged to be discriminatorily discharged, was discharged for violation of known safety rules. *American Sheet Metal Works*, 41 N. L. R. B. 1383.

6 2. *Best and secondary evidence.*

Ruling of Trial Examiner, excluding proof by employer that reprints of a newspaper article were ordered by it only after the articles had appeared in the newspaper on the ground that the best evidence as to the fact in question had already been introduced by order slips of the publishing company which were made in the regular course of business and by the testimony of an employee who made out the order slips, affirmed. *Stackpole Carbon Co.*, 6 N. L. R. B. 171, 183, 184, modified 105 F. (2d) 167 (C. C. A. 3), cert. denied 308 U. S. 605.

Petitions authorizing the union to represent the signers for the purposes of collective bargaining only and not an assumption of membership in the union, *held* competent evidence when the issue was whether a majority had designated the union as their bargaining agent and not whether a majority of the employees were members of the union. *Hydril Co. of California*, 13 N. L. R. B. 507, 511.

Schedules prepared by company showing percentages of time spent by supervisory employees on non-supervisory duties, *held* best evidence upon which to determine whether or not particular employees fall within rule making supervisory employees devoting one-half or more time to duties of a non-supervisory nature eligible to vote. *Leviton Mfg. Co., Inc.*, 27 N. L. R. B. 735.

27 3. *Parol evidence.*

Parol evidence is admissible for the purpose of showing that employees who signed application cards for membership in a labor organization were applying for membership in the local organization, although the cards bore the designation of the national organization. *Delaware-New Jersey Ferry Co.*, 1 N. L. R. B. 85, 93, set aside 90 F. (2d) 520 (C. C. A. 3), cert. denied 302 U. S. 738.

The parol evidence rule does not apply to a proceeding under the Act and all testimony with regard to a written memorandum entered into between a labor organization and employer in settling a strike is admissible. *Maryland Distillery, Inc.*, 3 N. L. R. B. 176, 190.

30 4. *Testimony of expert witnesses.*

Expert testimony of Board's Chief Economist concerning access to personnel on board vessel, *held* admissible. *Cities Service Oil Company et al.*, 25 N. L. R. B. 36, 38, enforced in part, and set aside in part 122 F. (2d) 149 (C. C. A. 2); see footnote 2 in Board report for collection of cases involving judicial recognition of Board's Chief Economist's expertness in labor relations.

30.5 L. EVIDENCE ILLEGALLY OBTAINED.

Illegally obtained evidence admissible where it does not appear that any Government agent acted in collusion with culpable person in securing the evidence, thereby violating some provision of the United States Constitution, and where it does not appear that obtaining the document or revealing its contents violated any Federal statute. *Jergens Co. of California*, 43 N. L. R. B. 457.

31 M. OTHER EVIDENCE.

Where the complaint is not amended to include the charges in an amended intervening petition filed by a labor organization, evidence introduced in proof of additional charges is admissible only insofar as it falls within the allegations of the complaint. *Falk Corp.*, 6 N. L. R. B. 654, 656, enforced 308 U. S. 453, reversing 106 F. (2d) 454 (C. C. A. 7).

Objection to certain evidence apparently based upon the theory that the complaint and proof introduced in support thereof are strictly limited to matters specifically set forth in the charges, *held* untenable. *Bierner*, 20 N. L. R. B. 673, 676. [*See* PRACTICE AND PROCEDURE § 91 (as to nature, scope, and function of charge).]

Evidence taken prior to receipt by some parties of complaint and notice of hearing and prior to appearance of such parties at hearing and as to which such parties had no opportunity to cross-examine, disregarded with respect to such parties. *Condenser Corp. of America*, 22 N. L. R. B. 347, 355, enforced as modified 128 F. (2d) 67 (C. C. A. 3).

A notice by the respondent to its employees, which it had posted on a certain date, and which stated that the respondent had disestablished a labor organization and that the respondent would not interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, improperly excluded as an exhibit. *Phillips Petroleum Co.*, 23 N. L. R. B. 741, 743.

Agreement between respondent and union, which was not formally offered as an exhibit through inadvertence, but was incorporated in respondent's answer and continually referred to by all parties, considered as part of record. *Aluminum Goods Mfg. Co.*, 25 N. L. R. B. 1004, enforced as modified in 125 F. (2d) 353 (C. C. A. 7).

Trial Examiner's rejection of union's offer of proof that it had changed its name and affiliation reversed and allegations thereof accepted as true after parties served with notice had not shown cause why such action should not be taken. *General Motors Corp.*, 28 N. L. R. B. 744.

Board reversed without comment Trial Examiner's ruling (made after close of hearing) admitting in evidence testimony contained in transcript of hearing before State Commission of Workmen's Compensation. *Armour & Co.*, 32 N. L. R. B. 536, enforced June 22, 1942 (C. C. A. 10).

V. PRESUMPTIONS [*See* LITIGATION DIGEST. EVIDENCE: *Consideration of*—Burden of going forward; Failure to sustain; Non-production of material evidence or witness. *Sufficiency*—Presumptions and inferences.]

2 A. IN GENERAL

3 B. FAILURE TO TESTIFY OR PRODUCE EVIDENCE. [*See* PRACTICE AND PROCEDURE § 312 (as to dismissal of complaint when employees alleged to be victims of unfair labor practices fail to appear or to testify), and INVESTIGATION AND CERTIFICATION § 109 (as to the effect of failure to appear and/or produce evidence on objections to an Intermediate [election] Report).]

The reason an employer may have had for refusing to reinstate some of its employees who went out on strike lay exclusively within its own knowledge, and where it failed

to show what such reasons were, a presumption of discrimination arose, even though the burden remained upon the Board. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872 C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576. See also: *Montgomery Ward & Co., Inc.* v. *N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7) modifying and enforcing as modified 9 N L. R. B. 538. *Woolworth Co.*, 25 N. L. R. B. 1362, 1374.

The refusal of the witness at a hearing to answer any question which has been ruled to be proper shall be ground for the striking out of all testimony previously given by such witness on related matters pursuant to Article II, Section 31, of Board's Rules and Regulations—Series 2. *Reliance Mfg. Co.*, 28 N. L. R. B. 1051. See also: *Metal Mouldings Corp.*, 39 N. L. R. B. 107.

5 C. SPOLIATION AND FABRICATION OF EVIDENCE.

Company personnel records found to have been falsified in several instances, *held* not reliable in other instances, where contrary to credible testimony. *Ford Motor Co.*, 26 N. L. R. B. 322, enforced as modified 119 F. (2d) 326 (C. C. A. 5), rehearing denied May 31, 1941.

Testimony of employees that they had not signed designation cards although viewed with suspicion where adduced in the presence and at the instance of the employer, is accepted as true; such testimony, however, *held* not to cast doubt upon the validity of the other cards in evidence. *Sanco Piece Dye Works, Inc., et al.*, 38 N. L. R. B. 690, 708.

Stolle Corp., 13 N. L. R. B. 370, 376. (Where the Board although finding certain inaccuracies in the purported dates of applications, *held* without merit respondent's contention that all the applications were necessarily valueless.)

36 D. ADMINISTRATIVE REGULARITY. [*See* LITIGATION DIGEST PROCEDURE BOARD. *Decision*—Administrative regularity, presemption of.]

In affirming a ruling of Trial Examiner, denying company's motion for continuance of representation proceedings pending judicial review by Circuit Court of Appeals of a prior Decision and Order of Board in a complaint case, *held* that there is no reason for withholding administrative action upon the assumption that the Decision and Order will not be sustained on review. *New Idea, Inc.*, 25 N. L. R. B. 265.

E. OTHER PRESUMPTIONS.

Evidence that a labor organization refused to agree to a wage revision proposed by the employer, and that statements signed by employees during working hours, at the desks of supervisory officials, stating that the employees were members of the organization, that they desired it to represent them for collective bargaining, that they were not forced to join the organization by threats or fear, and that they believed their interests could be better served by the organization than by an outside labor organization, is not sufficient to rebut a finding that the organization is employer-dominated, for an organization which is normally entirely under the control of the employer may well get out of hand if a wage reduction is proposed, and the signed statements are of no value because the method by which they were procured is in itself sufficient to cast doubt upon the genuineness of the signatories' belief in the statement signed. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 112–114.

When an employer refuses to reinstate an employee because of his union affiliation or activities, there is a rebuttable presumption that a vacancy exists which the applicant can fill and the burden of negating the existence of such vacancy is on the employer. *National Casket Co., Inc.*, 12 N. L. R. B. 165, 171, enforced as modified 107 F. (2d) 992 (C. C. A. 2).

A labor organization is presumed lawful in the absence of a contrary showing. *American-West African Lines, Inc.*, 21 N. L. R. B. 691.

Presence of supervisory employee on busy street in neighborhood of union meeting place, *held* not to give rise to inference that he was spying on union activities, where testimony of alleged admissions of such conduct attributed to said supervisor were not sufficiently corroborated. *Woolworth Co.*, 25 N. L. R. B. 1362, modified 121 F. (2d) 658 (C. C. A. 2).

The mere allegation that agents of the Board prevented police officers from stopping alleged "misconduct" of the union during an election, *held* not a sufficiently strong showing of reasonable probability to rebut the presumption that officers of the law perform their duties. *Cudahy Packing Co.*, 26 N. L. R. B. 749.

There is a strong presumption that employees who cast a ballot in an election understand their action. *North American Motorship Co.*, 28 N. L. R. B. 607.

There is a presumption that the signing by maritime employees of shipping articles for a new voyage does not involve a replacing of ship personnel. *North American Motorship Co.*, 28 N. L. R. B. 607.

Application cards submitted by the union will be presumed by the Board to bear names of employees of the company and to constitute sufficient proof of union's designated authority to represent company's employees where the company refuses to furnish a list of the names of its employees or otherwise make available to the Board and the parties relevant employment records. *City Machine & Tool Co.*, 36 N. L. R. B. 1257, 1260. See also: *Somerset Shoe Co.*, 5 N. L. R. B. 486, 490, remanded 111 F. (2d) 681 (C. C. A. 1).

It is an established principle of democratic elections that nonparticipants are presumed to assent to the will of the majority of those voting. *National Mineral Co.*, 39 N. L. R. B. 344.

F. FAILURE TO PLEAD. [*See* PRACTICE AND PROCEDURE § 123.]

G. CONTINUANCE OF FACT OR CONDITION. [*See* UNFAIR LABOR PRACTICES § 719.]

1 VI. PRIVILEGE.

Testimony concerning employees advocating a strike in the event an election was not held is admissible, notwithstanding the witness refused to reveal the names of the employee advocating the strike, for such refusal is justified since it is the policy of the Board not to expose workers to possible discrimination for advocating resort to legitimate labor activity. *Samson Tire & Rubber Corp.*, 2 N. L. R. B. 148, 157.

Dictation by an employer to his secretary concerning union activities of other employees, *held* not to be within any recognized category of privileged communications, and no infringement of the constitutional guarantees. *Press Co., Inc.*, 13 N. L. R. B. 630, enforced 118 F. (2d) 937, rehearing denied 118 F. (2d) 954 (App. D. C.), cert. denied 313 U. S. 595.

Where the union introduced in evidence a typewritten list of its members and the dates on which they enrolled and its ledger from which the list was compiled for the limited

purpose of permitting the respondent to check the accuracy of the list, *held* that respondent's request for a subpena directing the production of the ledger was improper since union records are of a confidential nature, and their production ought not to be lightly required over the union's objection. *Charles Banks Stout*, 15 N. L. R. B. 541, 548. See also:

Cherry Cotton Mills, 11 N. L. R. B. 478.
Link-Belt Co., 26 N. L. R. B. 227.
Berkshire Knitting Mills, 37 N. L. R. B. 926.
Siskin, 41 N. L. R. B. 187.

Refusal by Trial Examiner to compel Board's counsel to produce pretrial statement made by Board's witness, on demand of respondent, affirmed. *Cudahy Packing Co.*, 27 N. L. R. B. 118.

[*See* PRACTICE AND PROCEDURE § 226 (as to the issuance of subpenas involving the internal affairs of a labor organization).]

2 VII. RES JUDICATA. [*See* JURISDICTION §§ 11–20 (as to judicial proceedings as *res judicata*) and LITIGATION DIGEST PROCEDURE BOARD. *Generally—Res judicata*not applicable.]

The doctrine of *res judicata* does not prevail by reason of a Regional Director's dismissal of charges alleging unfair labor practices pursuant to an agreement between an employer and the complaining labor organization purporting to settle or compromise these charges where the charges were dismissed before hearing was reached and without opportunity for adjudication of the merits. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 911, 912. See also: *Halff*, 16 N. L. R. B. 667. *Shuron Optical Co.*, 11 N. L. R. B. 859. *Standard Oil Co.*, 43 N. L. R. B. 12.

The Board's findings and orders are treated as administratively determined unless and until set aside by a court of competent jurisdiction. *New Idea, Inc.*, 25 N. L. R. B. 265.

Evidence offered by intervenor in representation proceeding to prove that certain employees should be eligible to vote in election because company discriminated against them in hiring excluded, where Board had previously dismissed charges filed by intervenor involving same issue. *Mine "B" Coal Co.*, 29 N. L. R. B. 405.

Employer domination of a labor organization in violation of Section 8 (2) had not been "reviewed and adjudicated" by reason of the court's refusal to enforce the Board's

Order in a prior proceeding following the Board's
on remand of the proceedings that the union had
majority to an organization dominated by the e
since it was not charged in that proceeding t
employer violated Section 8 (2), the issue on the re
proceeding having related solely to an 8 (5) Order
ware-New Jersey Ferry Co., 30 N. L. R. B. 820, enf
modified 128 F. (2d) 130 (C. C. A. 3).

Evidence of unfair labor practices which occurred
Decision and Order based on stipulation used in con
other unfair labor practices not at issue in prior pro
Southern Mfg. Co., 32 N. L. R. B. 141. See als
Steel Co., 31 N. L. R. B. 365.

Prior certification of an organization, *held* not to es
Board from finding that an employer has violated
8 (2) with respect to that organization. *Interla
Corp.*, 33 N. L. R. B. 613.

(*See* § 15 (as to evidence of violation of Section 8
representation proceedings).]

Affirmative defense that present proceeding alleging
tion of Section 8 (2) is barred because such all
could have or should have been litigated in pri
plaints alleging violations of Sections 8 (1) and
held without merit. *Thompson Products, Inc.*, 3
R. B. 1033.

Evidence with respect to events occurring prior to
Board proceeding in which the employer and unio
cipated and in which there were allegations of dis
tion with respect to some of the persons on whos
charges were filed in instant case, admitted when
instant case were different from those in the two p
cases. *Marlin-Rockwell Corp.*, 39 N. L. R. B. 501

§ 43 A. IN GENERAL.

It is the Board's province to find the facts, not alon
direct testimony declares them to be, but as th
ground, setting, and circumstances under which t
mony was given and the matters testified about tra
including the interests and motives of those testify
color and meaning to the testimony. *Agwilines,
N. L. R. B.*, 87 F. (2d) 146, 151 (C. C. A. 5), m
2 N. L. R. B. 1.

The possibility of drawing either of two inc
inferences from the evidence does not prevent th
from drawing one of them, and if the findings of th

are supported by evidence, the courts are not free to set them aside even though the Board could have drawn different inferences. *N. L. R. B.* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, reversing 122 F. (2d) 587 (C. C. A. 10), setting aside 26 N. L. R. B. 1182.

N.L.R.B. v. *Cities Service Oil Co.*, 129 F.(2d) 933 (C.C.A.2), enforcing 32 N.L.R.B. 1020; (Where there was substantial evidence in support of a finding that employees were discharged because of their support of the union and their refusal to join a company-dominated union, although there was evidence that the employees had broken company regulations, the Board is best fitted to understand and evaluate the conflicting evidence, and the court cannot say that the Board erred in finding that the reasons assigned by the respondent were only pretexts.)

B. CREDIBILITY OF WITNESSES. [*See* LITIGATION DIGEST EVIDENCE. *Consideration of*—Credibility of witnesses.]

1. *Testimony as to the statements of deceased persons.*

In considering the weight to be given a witness' testimony concerning statements of a deceased person, the Board, mindful that evidence of statements of deceased persons should be subject to the closest scrutiny and received with caution, accepted such statements as substantially true since the witness' testimony in this connection was positive, clear, and unequivocal and substantially corroborated in many instances by other witnesses, including some of those called by the respondent. *Reynolds Wire Co.*, 26 N. L. R. B. 662, enforced (work-relief modification) 121 F. (2d) 627 (C. C. A. 7). See also: *Montgomery Ward & Co., Inc.*, 31 N. L. R. B. 786. *Metal Mouldings Corp.*, 39 N. L. R. B. 107.

2. *Self-serving declarations.*

That documents offered as evidence are self-serving does not necessarily mean that they are false, but it does impair their evidentiary value. *Cudahy Packing Co.*, 27 N. L. R. B. 118.

3. *Impeachment.*

a. Prior statements.

Affidavits made by witnesses prior to their testifying, may be admitted for the purpose of impeachment and not as probative of the facts recited therein. *Goodyear Tire & Rubber Co. of Alabama*, 21 N. L. R. B. 306, 312, enforced

in part July 6, 1942 (C. C. A. 5). See also: *Dix Coach Corp.*, 25 N. L. R. B. 869.

Beckerman Shoe Corp. & Kutztown, 43 N. L. R. (None of the testimony of a witness was relie when in a subsequent hearing he admitted recanti extrajudicial statement some of the testimony gi prior hearing and declined upon constitutional gr state whether the prior testimony or subsequent st was true.)

§ 53 b. Conviction of crime.

Testimony as to criminal acts, arrests, or indictm not as to convictions improper for "it carries the of subjecting the witness to suspicion without giv an opportunity to clear it away." Wigmore on E 2d Ed., Vol. 11, § 982, p. 366. *Universal Ma* 23 N. L. R. B. 226, 236. See also: *Cherry River Lumber Co.*, 44 N. L. R. B. 273.

State statute disqualifying witnesses convicted of *held* inapplicable to proceedings before the Boa consideration given to witness' conviction in dete credibility, and the Board accepted his testim credible when it was uncontradicted in part and co with the testimony of other witness. *Borden Mil* 13 N. L. R. B. 459. See also: *Allsteel Products M* 16 N. L. R. B. 72, 78.

Evidence of a witness' conviction of assault and bat driving an automobile while intoxicated, *held* inad as irrelevant to the veracity of the witness. Evide witness' conviction of petit larceny, *held* admis relevant to the veracity of the witness. *Goodyear Rubber Co. of Alabama*, 21 N. L. R. B. 306, 312, in part July 6, 1942 (C. C. A. 5). See also: *A Laundry Machinery Co.*, 45 N. L. R. B. 355.

The fact that a witness was convicted of a crime necessarily impeach his credibility, and the Board cept or reject his testimony in the light of the oth and circumstances. *Tulsa Boiler & Machinery* N. L. R. B. 846, 853.

Board considered a witness' plea of guilty (witness h indicted for forgery but paroled after a plea of gu evaluating his credibility and relied on none of h mony except that which was corroborated by otl nesses or that which was undenied. *Chamberlain* 37 N. L. R. B. 499.

54 c. Interest and bias.

Testimony of a supervisory employee to the effect that an official of the employer stated during a conference that he expected the employees to continue without joining a labor organization which was then carrying on an organizational campaign, and that the officials of the labor organization were not reputable is given added weight by reason of the fact that the employee in question was not a member of any labor organization and that his testimony was wholly inimical to his own interests. *Montgomery Ward & Co., Inc.*, 4 N. L. R. B. 1151, 1156, remanded for new hearing, 103 F. (2d) 147 (C. C. A. 8).

In making its findings relating to the credibility of certain witnesses and their testimony, the Board has taken into account, *inter alia*, the financial or other interests of the witnesses in the outcome of the proceeding. *Goodyear Tire & Rubber Co. of Alabama*, 21 N. L. R. B. 306, 320, enforced in part July 6, 1942 (C. C. A. 5).

Fact that witness was disinterested in subject matter of proceeding and testified under subpena renders the testimony of such witness more credible. *General Aniline Works, Inc.*, 26 N. L. R. B. 491.

Testimony of witness not credited, unless corroborated by other witnesses or by well established surrounding circumstances, when Board was of opinion that that witness was more interested in winning a decision for the union than in disclosing all of facts relevant to the case. *Security Warehouse & Cold Storage Co.*, 35 N. L. R. B. 857.

Testimony of a disinterested witness acceptable despite the fact that stipulated testimony contradicts him, since such person, not being connected with either the union or the company, had no motive for testifying other than accurately. *Phelps Dodge Refining Corp.*, 38 N. L. R. B. 555.

Although a witness may have been motivated in giving his testimony by a desire for revenge, *held* in view of corroborating circumstances, that the possibility of such motivation does not destroy his credibility. *Metal Mouldings Corp.*, 39 N. L. R. B. 107.

Credibility of a witness, *held* impaired where much of her testimony was badly shaken on cross-examination, was self-contradictory and improbable, and where she admitted that she testified on behalf of the employer because she was thinking of herself and her job. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107.

§ 59 d. Other methods.

Ruling of Trial Examiner excluding from evidence affidavits of employee who testified for the Board, to the effect that he had committed defalcations of the employer's funds and that he promised to make restitution therefor, overruled, although it cannot be taken as completely impeaching the testimony of the witness in question, particularly in view of the fact that the employer itself had retained the witness in its employ for more than 3 years since the defalcations were admitted. *Lowenstein & Sons, Inc.*, 6 N. L. R. B. 216, 219, 220, contempt proceedings 121 F. (2d) 673 (C. C. A. 2).

Testimony in regard to alleged acts of violence and misconduct on part of union, admitted only where offered to effect the credibility of particular witnesses. *Cherry River Boom & Lumber Co.*, 44 N. L. R. B. 273.

§ 60 4. *Evidence adduced in presence and/or at the instance of employer.*

Statements signed by employees during working hours, at the desks of supervisory officials, stating that the employees were members of the organization, that they desired it to represent them for collective bargaining, that they were not forced to join the organization by threats or fear, and that they believed their interests could better be served by the organization than by an outside labor organization, are of no value because the method by which they were procured is in itself sufficient to cast doubt upon the genuineness of the signatories' belief in the statement signed. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 112–114.

Change in the desires of employees regarding membership in the union following unfair labor practices on the part of the employer cannot be given weight particularly when the employees were called witnesses by the respondent whose anti-union feelings had been clearly demonstrated. *Levy*, 11 N. L. R. B. 964, 972. See also: *Botany Worsted Mills*, 41 N. L. R. B. 218.

Although employees are safeguarded against discrimination resulting from testimony given under the Act by Section 8 (4), evidence of renunciation of union authorizations in the presence and at the instance of the employer, uncorroborated by other facts, is of doubtful verity and of little evidential value, since the polling of witnesses under such circumstances is likely to interfere with a free expression

of choice of representatives. *Manville Jenckes Corp.*, 30 N. L. R. B. 382.

Board gave no weight to signed statements purporting to exonerate employer of charges of discrimination committed against reinstated strikers who were found to have quit as a result thereof, where employer induced these employees to sign such statements as a condition of reemployment and where such statements were secured for the purpose of bolstering its defense. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107.

Company's president impeached by his implausible explanation for the termination of certain employees. Plant superintendent's veracity impugned by his false explanation of the termination of an employee. *Beckerman Shoe Corp. of Kutztown*, 43 N. L. R. B. 435.

69 5. *As effected by other circumstances.*

The testimony of employees who are still employed, where it is similar to that given by discharged employees, adds weight to the evidence, for it is not likely that they would testify falsely about their present employer. *Missouri-Arkansas Coach Lines, Inc.*, 7 N. L. R. B. 186, 203.

In considering the weight to be given to "Separation Notices" the Board found that employees had not authorized or ratified reasons assigned thereon for their separation from employment but obtained such notices merely as a requisite to securing State unemployment compensation during the period of the strike. *Mountain City Mill Co.*, 25 N. L. R. B. 397.

The fact that a witness evaded service of subpena does not automatically render his testimony entirely unworthy of belied. *Reliance Manufacturing Co.*, 28 N. L. R. B. 1051, enforced as modified 125 F. (2d) 311 (C. C. A. 7), rehearing denied, February 12, 1942.

Officials' denials of anti-union statements not credited, in view of employer's general anti-union conduct. *Heilig Bros. Co.*, 32 N. L. R. B. 505, enforced 123 F. (2d) 734 (C. C. A. 3), cert. denied 62 S. Ct. 1294.

Superintendent's denials of anti-union statements not credited, in view of his misconception of union activity. *Heilig Bros. Co.*, 32 N. L. R. B. 505, enforced 123 F. (2d) 734 (C. C. A. 3), cert. denied 62 S. Ct. 1294.

Cross-examination of employees concerning details of filling in and delivery of union cards, under the circumstances, *held* not to have impaired the credibility of their testimony

that they designated the union. *Heilig Bros. Co.*, 32 N. L. R. B. 505, enforced 123 F. (2d) 734 (C. C. A. 3), cert. denied 62 S. Ct. 1294.

Misstatements by witness, *held* not to reflect upon his credibility. *Pick Manufacturing Co.*, 35 N. L. R. B. 1334.

No weight attached to the testimony of a witness who had been drinking considerably on the occasion concerning which he testified. *Fentress Coal & Coke Co.*, 44 L. N. R. B. 1033.

C. OBSERVATIONS OF TRIAL EXAMINER.

Weight is to be accorded to the findings of the Trial Examiner who, from his observation of the demeanor of witnesses, has an opportunity to form a trustworthy opinion of their credibility. *Fashion Piece Dye Works, Inc.*, 6 N. L. R. B. 274, 279, enforced 100 F. (2d) 304 (C. C. A. 3). See also: *National Casket Co., Inc.*, 12 N. L. R. B. 165, 172, enforced as modified 107 F. (2d) 992 (C. C. A. 2).

Where there is conflict in the testimony of different witnesses as to whether a statement was made, Board will give weight to findings of Trial Examiner in his Intermediate Report in determining credibility of various witnesses. *Walworth Co., Inc.*, 21 N. L. R. B. 1302, enforced as modified 124 F. (2d) 816 (C. C. A. 7).

Where two separate hearings were conducted by different Trial Examiners and neither filed an Intermediate Report, the Board reached its conclusions on the recorded stenographic transcript without the benefit of observation of the demeanor of the witnesses. *Condenser Corp. of America*, 22 N. L. R. B. 347, enforced as modified 128 F. (2d) 67 (C. C. A. 3).

Testimony of a Board witness whose veracity was questioned by the Trial Examiner and who was impeached by testimony which impressed the Trial Examiner as truthful, is accepted as true only where uncontradicted, against his interest, or in accord with other testimony found to be true. *Merit Clothing Co.*, 30 N. L. R. B. 1201.

Board gave no weight to Trial Examiner's resolution of conflicts in testimony, despite fact that the Trial Examiner had the opportunity at the hearing to observe the witnesses, when record afforded no basis for believing two witnesses in one respect when contradicted by two other witnesses and for accepting the testimony of the latter

witnesses in another respect, when contradicted by the former witnesses. *Bahan Textile Machinery Co.*, 43 N. L. R. B. 97.

D. OTHER CIRCUMSTANCES.

A list of allegedly inefficient employees which was prepared by an employer after it had received notice of hearing on complaint alleging wrongful refusal to reinstate employees and other unfair labor practices is of little probative value where the defense of inefficiency is not supported by other evidence. *Ford Motor Co.*, 23 N. L. R. B. 342.

INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

I. EXISTENCE OF QUESTION CONCERNING REPRESENTATION.

A. NATURE OF QUESTION—FACTORS CONSIDERED.

1. In general.
2. Substantial designation.
3. Demand and/or refusal to bargain collectively.
4. Existence of controversy and usefulness of proceeding. [*See* PRACTICE AND PROCEDURE §§ 321–340 (as to the dismissal of petition for various reasons).]
5. Other factors.
6. Jurisdictional disputes between affiliated but competing labor organizations. [*See* PRACTICE AND PROCEDURE §§ 16, 17.]

B. HOW QUESTION MAY ARISE—ILLUSTRATIVE CASES.

1. Dispute as to appropriate unit.
2. Denial of employment relationship within the Act.
3. Refusal to accord full recognition or request that certification be obtained.
4. Conflicting claims of rival representatives.
5. Failure, refusal, or inability of representative to prove authority.
6. Strike for recognition.
7. Agreement.
8. Failure to controvert allegation that question exists.
9. Failure to reply to, refusal to accept, or return of communications.
10. Inconclusiveness of election.
11. Board's Order.
12. Other circumstances.

C. EFFECT OF EXISTING CONTRACT.

1. In general.
2. Nature of contract.
   a. "Invalid contracts."
      (1) With representative which is not a free choice.
      (2) With representative which does not represent a majority.
      (3) Others.
   b. Scope of unit.
   c. Granting less than, not granting, or deferring exclusive recognition.
      (1) With individual employees.
      (2) Providing for representation for members only.
      (3) Deferring recognition.
      (4) Others.
   d. Duration.
      (1) For undue length of time.
      (2) For reasonable length of time.
      (3) For indefinite duration. (*See also* § 25.3)
      (4) Expired or about to expire. (*See also* § 25.2)

3. Eligibility of employees who have ceased work. [*See* DEFINITIONS §§ 2–10 (as to employee status).]

§ 55 a. In general.

§ 56 b. Striking employees and employees hired to replace striking employees.

c. Employees who have been non-discriminatorily laid off. [*See* §§ 62–64 (as to the eligibility of temporary, seasonal, part-time, intermittent, and casual employees).]

§ 57 (1) In general.

(2) Factors considered.

§ 57.1 (a) Seniority status.

§ 57.2 (b) Preferential list.

§ 57.3 (c) Practice or policy.

§ 57.4 (d) Contemplated increase or resumption of operations.

§ 57.5 (e) Availability for employment.

§ 57.9 (f) Other factors.

§ 58 d. Employees who have quit or have been discharged for cause.

§ 59 e. Employees alleged or found to have been discriminatorily discharged or laid off.

§ 61 f. Employees temporarily absent because of illness, injury, vacation, military leave, or other causes. [*See* DEFINITIONS § 7 (as to the status of employees who have ceased work because of illness or injury).]

§ 61.8 g. Others.

h. As a result of discharge for violence or breach of contract. (*See* DEFINITIONS § 8.)

4. Eligibility of employees as affected by the nature and the tenure of their employment. [*See* DEFINITIONS §§ 13–20 (as to the effect of intermittent employment).]

§ 61.9 a. In general.

b. Temporary and seasonal employees. [*See* §§ 57–57.9 (as to the eligibllity of employees non-discriminatorily laid off).]

§ 62 (1) As affected by the duration of employment. [*See* DEFINITIONS §§ 13–20 (as to the effect of intermittent employment upon employee status).]

§ 62.5 (2) As affected by the recurrency of employment.

§ 63 c. Part-time employees. *See* [DEFINITIONS § 14 (as to the status of part-time employees).]

§ 64 d. Intermittent and casual employees. [*See* DEFINITIONS § 20 (as to the status of intermittent and casual employees).]

§ 65 e. Probationary employees.

§ 66 f. Maritime employees. [*See* DEFINITIONS § 20.1 (as to the status of maritime employees).]

§ 67 g. Contemplated or actual change of duties.

§ 69 h. Others.

i. Employees hired to replace striking employees. (*See* § 56.)

§ 70 5. Other circumstances affecting eligibility to vote.

D. PERIOD WITHIN WHICH ELECTION TO BE HELD.

§ 71 1. Usual practice.

2. As affected by various circumstances.

a. Where employer has been charged with, or has been found to have engaged in unfair labor practices. [*See* § 114 and PRACTICE AND PROCEDURE § 327 (as to practice when unfair labor practices are committed subsequent to Direction of Election but prior to or during the conduct of the election).]

§ 72 (1) In general.

§ 72.1 (2) Abatement of unfair labor practices.

§ 72.2 (3) Waiver.

§ 72.3 (4) Nature, scope, and effect of alleged or committed unfair labor practices.

§ 72.9 (5) Others.

§ 73 b. Curtailment, expansion, or transference of operations.

§ 74 c. Seasonal nature of enterprise.

§ 75 d. Other proceedings.

§ 76 e. Where unit found differs from that proposed.

f. Peculiar industries. [*See* §§ 92–92.9 (as to the conduct of elections in these industries).]

§ 77 (1) Maritime.

§ 77.9 (2) Others.

§ 80 g. Other circumstances.

E. THE BALLOT.

1. Who may participate in the election. [*See* §§ 87–90 (as to form of ballot).]

§ 81 a. In general.

§ 81.5 b. Employer-dominated representatives.

§ 81.9 c. Organizations in formative stage.

§ 82 d. Organizations which limit or enjoin the exercise of rights guaranteed by the Act.

§ 82.9 e. Dormant or defunct organizations.

§ 83 f. Organizations affiliated with same parent admitting to membership employees in the appropriate unit. [*See* § 88 (as to provisions for joint designation).]

§ 83.9 g. Others.

2. Requirement of showing of interest.

§ 84 a. In general—quantum and qualitum of designation.

b. As affected by various circumstances.

§ 85 (1) Prior representative status.

§ 85.1 (2) Opportunity to present claim.

§ 85.2 (3) Desires of parties.

§ 85.9 (4) Others.

§ 86 3. Withdrawal or omission from ballot.

4. Form of ballot. [*See* §§ 81–83.9 (as to who may participate in the election) and § 115 (as to objections to form of ballot following conduct of election).]

§ 87 a. In general.

§ 87.1 b. Provisions for employees not desirous of representation.

§ 88 c. Appearance, form, or substitution of name.

§ 90 d. Other problems.

5. Run-off and repeat elections. (*See* §§ 93, 103.)

F. DIRECTIONS AS TO THE CONDUCT OF ELECTION.

§ 91 1. In general. [*See* §§ 114–125 (as to objections to the manner in which the election is conducted).]

2. Special provisions.

§ 92 a. Maritime elections.

§ 92.9 b. Others.

G. RUN-OFF AND REPEAT ELECTIONS.

1. Run-off elections.

§ 93 a. In general.

b. When directed.

§ 94 (1) Request.

§ 95 (2) Notice to employer.

§ 95.9 (3) Others.

§ 96 c. Eligibility.

§ 99 d. Other circumstances.

e. Form of ballot. (*See* § 93.)

2. Repeat elections.

§ 100 a. In general.

§ 101 b. When directed. [*See* §§ 111–130 (as to the setting aside of an election on valid objection).]

§ 102 c. Eligibility.

§ 103 d. Form of ballot.

§ 105 e. Other circumstances.

H. PROTESTS, EXCEPTIONS, AND OBJECTIONS TO ELECTIONS.

§ 106 1. In general.

2. When considered.

§ 107 a. Filing of objections.

b. Raising substantial and material issues.

§ 108 (1) Prima facie showing.

§ 108.1 (2) Materiality.

§ 108.2 (3) Report on objections.

§ 108.3 (4) Timely objection, estoppel, and/or waiver.

§ 109 3. Failure to appear and/or produce evidence at hearing on objections.

4. Asserted grounds for protests, exceptions, and objections.

§ 112 a. In general.

b. Improper conduct prior to or during conduct of election.

§ 113 (1) By employer. [*See* § 118 (as to right of employer to be present at election) and UNFAIR LABOR PRACTICES § 43 (as to interference with elections as an unfair labor practice).]

§ 113.1 (2) By labor organization.

§ 113.2 (3) By Board agent.

§ 113.3 (4) By outside persons or groups. [*See* § 113, UNFAIR LABOR PRACTICES § 3 (as to the conduct of "others" imputed to the employer).]

c. Objection to the manner in which election was conducted and/or reported.

§ 114 (1) Notice of election.

§ 115 (2) Designations and/or form of ballot. [*See* §§ 87–90 (as to initial determination of form of ballot).]

INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

I. EXISTENCE OF QUESTION CONCERNING REPRESENTATION.

A. NATURE OF QUESTION—FACTORS CONSIDERED.

§ 1 1. *In general.*

Section 7 of the Act provides in part that employees have the right to bargain collectively through representatives of their own choosing. Section 9 (a) provides "Representatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ." Thus both sections 7 and 9 (a) unmistakably indicate that it is for the purposes of collective bargaining that the Act gives employees the right to designate or select representatives. The secret ballot provided for in Section 9 (c) is merely one of the devices which this Board is authorized to employ in ascertaining such representatives for purposes of collective bargaining. It is not the Board's function to hold elections in order to determine whether employees desire individual rather than collective bargaining with their employer. *International Mercantile Marine Co.*, 23 N. L. R. B. 384, 391.

Although Article III, Section 2 (b) of the Board's Rules and Regulations—Series 2 as amended, permits an employer to file a petition where two organizations state conflicting claims as to representation, it makes no provision permitting the employer to request certification in any unit which he may claim to be appropriate; accordingly, such a company's cross-petition was held not to have raised a question concerning representation where the conflict among the labor organizations concerning the appropriateness of the unit proposed by petitioning organization was resolved and no labor organization desired to represent employees in the unit suggested by the company. *National Tube Co.*, 33 N. L. R. B. 1248. See also: *Carnegie-Illinois Steel Corp.*, 34 N. L. R. B. 4

Since Section 9 of the Act provides only for certification by the Board of "representatives" designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, the term "representatives" being defined by Section 2 (4) of the Act to include "any individual or labor organization"—and since certification under the Act is appropriate only when the process of collective bargaining is to be carried on, not by the majority of the employees themselves, but by individuals or a labor organization whom the majority designated, the Board held that no question concerning representation had arisen where the petitioners, constituting a group of employees, had not formed and designated as their representative any organization, agency, employee representation committee or plan, or any individual to act for them. *Solar Varnish Corp.*, 36 N. L. R. B. 1101.

2. *Substantial designation.*

A question concerning representation does not exist where the numerical strength of the petitioning organization requesting certification is unsubstantial. *Allis-Chalmers Mfg. Co.*, 4 N. L. R. B. 159, 169.

Williams Dimond & Co., 2 N. L. R. B. 859, 864 (labor organization claimed to represent only 5 of 65 or 70 employees).

Todd Seattle Dry Docks, Inc., 2 N. L. R. B. 1070, 1079 (large majority of employees were members in rival labor organization).

Century Woven Label Co., 8 N. L. R. B. 665, 669 (membership comprised only one-fourth of employees).

General Electric Co., 15 N. L. R. B. 1018 (where petitioner failed to receive a majority in a prior proceeding in which a rival organization was certified and made a showing in present proceeding less than that which it received in the election). See also: *Continental Roll & Steel Foundry Co.*, 44 N. L. R. B. 1051.

Union Hardware & Metals Co., 31 N. L. R. B. 710 (labor organization claimed 61 out of 209 employees).

Montgomery Ward & Co., 31 N. L. R. B. 912 (petitioning union, only labor organization involved, established that it represented no more than 209 employees in a unit of 924; many of the authorization cards had been signed 4 to 12 months prior to hearing).

General Motors Corp., 35 N. L. R. B. 80 (labor organiz
claimed 105 out of 950 employees).

Western Union Telegraph Co., 35 N. L. R. B. 251 (
organization claimed two out of nine employees).

New Jersey Worsted Mills, 35 N. L. R. B. 1303 (labor or
zation claimed to represent 292 in a unit of 1,430;
authorization cards were signed 4 years prior to hea

Smith, 36 N. L. R. B. 363 (petitioning union, only
organization involved, claimed to represent 217 empl
in a unit of 875; many authorization cards were s
2 years prior to hearing; a few appeared undated).

Commander-Larabee Milling Co., 41 N. L. R. B. 957 (
employees in the alleged unit petitioner subm
23 authorization cards, only 19 of which appeared
names of persons on pay roll).

American Mfg. Co., 41 N. L. R. B. 995 (of 290 employ
alleged unit, petitioner submitted 107 cards, of whi
corresponded to names on specified pay roll).

Public Service Co. of Indiana Inc., 42 N. L. R. B. 639 (
nations by approximately 26 percent of 1319 empl
and company has had continued contractual relatio
a number of years with the rival organization).

Cf. *Remington-Rand, Inc.*, 40 N. L. R. B. 1100 (labor or
zation representing approximately 32 percent of
employees *held* to have made a substantial showing)

[*See* §§ 84–85.9 (as to according intervening organiz
place on ballot and the showing of interest required

A question concerning representation arose with regard
successor organization, irrespective of whether a
successorship was effected, where it was the only
organization in existence claiming to represent empl
of the company and had been designated by a subst
number of employees. *National Mineral Co.*, 25 N
R. B. 3. See also: *Rosiclare Lead & Fluorspar M
Co.*, 41 N. L. R. B. 1143.

Failure of petitioning union to make a more subst
showing of membership among the employees, *hel*
to bar an investigation and certification of represent
in view of the provisions contained in contract with
union compelling membership therein as a conditi
employment and in view of the action taken by the
pany and said union with respect to employees who s

to change their affiliation. *American National Co.*, 27 N. L. R. B. 22. See also:

Ward Baking Co., 21 N. L. R. B. 483.

Phelps Dodge Copper Products Corp., 27 N. L. R. B. 729.

John Engelhorn & Sons, 33 N. L. R. B. 1139.

Oregon Plywood Co., 33 N. L. R. B. 1234.

Northern States Power Co. of Wisconsin, 37 N. L. R. B. 991.

Service Wood Heel Co., Inc., 41 N. L. R. B. 45. (Purported revocation of petitioner when closed-shop contract with competing union was in existence, *held* not conclusive of desires of such employees regarding representation and not to affect petitioner's substantial showing of representation.) See also: *George W. Borg Corp.*, 25 N. L. R. B. 481.

Company's contention that because of nature and method of proof of union's claim to representation, the union had failed to make a substantial showing of representation and therefore no question concerning representation existed, *held* without merit, since proof of authorization is required not as proof of the precise number of employees who desire to be represented by a labor organization, or as a basis for determining the appropriate representative, but simply to provide a reasonable safeguard against the indiscriminate institution of representation proceedings by labor organizations which might have little or no membership in the unit claimed to be appropriate. *Hill Stores, Inc.*, 39 N. L. R. B. 874. See also:

Interlake Iron, 38 N. L. R. B. 139 (objection to oral report of Regional Director and spot check of Trial Examiner).

Cities Service Oil Co., 38 N. L. R. B. 1055 (objection to report of Regional Director).

Superior Sleep-Rite Corp., 39 N. L. R. B. 606 (objection to Regional Director's oral report).

Siskin, 41 N. L. R. B. 187 (failure to disclose designations to employer).

Atlas Powder Co., 43 N. L. R. B. 757 (refusal to permit cross-examination of Regional Director as to petitioner's substantial showing).

General Electric Co., 43 N. L. R. B. 453 (petitioner's submission of a list of paid-up members for the purpose of showing its interest justifying the proceeding, *held* insufficient when

the petitioner did not exist primarily as a labor organization and there was no proof that the employees had designated it as their representative).

Where both the petitioner and a rival union claimed to represent employees of the company, and each had submitted proof of substantial representation in the appropriate unit, a question concerning representation found to exist notwithstanding failure of petitioner to claim a majority since it is sufficient for the petitioner to make a substantial showing, i. e. adequate to raise the probability that it may be selected by a majority. *Simon Bache & Co.*, 39 N. L. R. B. 1216. See also: *Superior Coach Corp.*, 39 N. L. R. B. 926.

Where a labor organization sought to add employees to an existing unit it was required to make a showing of representation among the employees it so sought to be added, no question concerning representation *found* to exist, when among other circumstances, petitioning labor organization failed to show any adherents among the employees it desired to have added to its existing unit. *Libbey-Owens-Ford Glass Co.*, 41 N. L. R. B. 574.

Tidewater Associated Oil Co., 38 N. L. R. B. 582 (in which petitioning union made no such showing).

Armour & Co., 40 N. L. R. B. 238 (in which petitioning union made such showing).

..2 3. *Demand and/or refusal to bargain collectively.*

The existence of a question concerning representation is not necessarily dependent upon whether or not an employer has been asked to bargain collectively and has refused, but in the absence of such request and refusal there must be present other circumstances determinative of the existence of the question, and no such circumstances appear where, upon petition filed by an individual employee in behalf of a labor organization, no showing has been made of a request for collective bargaining or that any labor organization has any present intention of asking the employer to bargain collectively. *J. & A. Young, Inc.*, 9 N. L. R. B. 1164, 1166. See also: *Ohio Steel Foundry Co.*, 6 N. L. R. B. 127, 129. *Johns-Manville Products Corp.*, 7 N. L. R. B. 1055, 1057.

Sheba Ann Frocks, 3 N. L. R. B. 97, 99 (conflicting testimony as to whether or not demand made). [See also: *Fitzgerald Cotton Mills*, 4 N. L. R. B. 1121, 1123.

Granite Finishing Works, 7 N. L. R. B. 364, 365 (denial of motion to dismiss made on ground that no demand was made at time petition was filed). See also: *National Weaving Co.*, 7 N. L. R. B. 916, 918. *Wickwire Spencer Steel Co.*, 18 N. L. R. B. 372, 376.

Averill, 13 N. L. R. B. 411, 420 (rejection of contention that no question exists because union failed to request several of the employers involved to bargain).

Jameson Co., 25 N. L. R. B. 64. (Question concerning representation, *held* to exist irrespective of change in structure of union and failure of successor to request recognition when company's refusal to bargain with predecessor had been on the ground that its employees were not subject to the Act.) See also: *Corona Citrus Assn.*, 25 N. L. R. B. 77.

Wilson & Co. Inc., 25 N. L. R. B. 938. (Failure of the Union to request company to bargain with it at one of the plants involved, *held* not essential where company by its refusal to accede to the request of the union at the other branches indicated its general unwillingness to recognize the union as the statutory representative.)

Genco Mfg. Co., 29 N. L. R. B. 236. (Company's contention that no question concerning representation existed on ground the union had not requested it to bargain rejected where company at hearing contested union's allegation that it represented a majority of the employees.)

General Motors Corp., 39 N. L. R. B. 1108 (denial of motion to dismiss on ground that demand for recognition was made by an affiliate of the petitioning union rather than by petitioning union).

Southern California Gas Co., 41 N. L. R. B. 668. (Question concerning representation, *held* to exist despite failure of union to make demand for recognition where company had in previous cases involving other divisions of its business refused recognition to the union without certification by the Board and at the hearing in the present proceeding gave no indication that it would recognize the union without certification.)

Contention that no question concerning representation existed made on ground union had filed its petition during negotiation and prior to the time company had refused to recognize it as the bargaining agency of the employees, *held* without merit. *Lehigh Portland Cement Co.*, 27

N. L. R. B. 1380. See also: *Nevada-California Electric Co.*, 20 N. L. R. B. 79.

1.3 4. *Existence of controversy and usefulness of proceeding.* [*See* PRACTICE AND PROCEDURE §§ 321–340 (as to the dismissal of petition for various reasons).]

No question concerning the representation of employees has arisen where the employer subsequent to the filing of the petition had granted recognition to, and entered into an oral collective bargaining agreement with, the labor organization seeking certification. *Century Woven Label Co.*, 8 N. L R. B. 665, 668, 669. See also: *General Electric Co.*, 15 N. L. R. B. 1018. *Lipps*, 31 N. L. R. B. 706.

Where there is no longer any basis for assuming that a question concerning representation which might have existed at the time of the filing of the petition still existed at the time of the Board's decision, a petition requesting an investigation and certification of representatives will be dismissed, accordingly where there has been an unusual delay since the filing of the petition, the Board dismissed the petition without prejudice to the filing of a new petition. *American France Line*, 12 N. L. R. B. 766; *Fourth Annual Report* p. 74.

The Board will not proceed with an investigation and determination of representatives where no useful purpose will be served thereby; and so where almost all of a construction company's employees in the unit sought would have been shortly laid off due to the completion of the work in which the company was engaged, the petition was accordingly dismissed. *Fruco Construction Co.*, 38 N. L. R. B. 991.

Growers-Shippers Labor Committee of Imperial Valley, 39 N. L. R. B. 754 (where in a seasonal industry, the season was almost at an end, the same employers did not operate each year, and there was a substantial turn-over of employees from season to season, petition was dismissed).

1.9 5. *Other factors.*

6. *Jurisdictional disputes between affiliated but competing labor organizations.* (*See* PRACTICE AND PROCEDURE §§ 16, 17.)

B. HOW QUESTIONS MAY ARISE—ILLUSTRATIVE CASES.

1. *Dispute as to appropriate unit.*

A question concerning representation of employees has arisen where a labor organization seeks to bargain only for the employees in offices located in three different cities while the employer claims that it considers these offices together with offices situated in other cities as one unit, and will not bargain except on that basis. *Associated Press*, 5 N. L. R. B. 43, 45.

A question concerning representation of employees has arisen where, although an employer has not refused to negotiate with a petitioning labor organization, its insistence at the hearing upon bargaining units which conflict with those contended for by such organization gives rise to such question. *Phelps-Dodge Corp.*, 6 N. L. R. B. 624, 628.

A question concerning representation has arisen where two labor organizations have advanced conflicting claims and a dispute existed concerning the appropriate unit or units and the representation of employees within such unit or units. *Falk Corp.*, 6 N. L. R. B. 654, 665, enforced 308 U. S. 453, reversing 106 F. (2d) 454 (C. C. A. 7), which modified 102 F. (2d) 383.

Question concerning representation found to exist when company contended that the unit previously determined by Board was appropriate and would not recognize petitioner as the representative of a smaller unit. *Globe Newspaper Co.*, 31 N. L. R. B. 916. See also: *Bethlehem Steel Co.*, 39 N. L. R. B. 1230.

Question concerning representation, *held* to exist where, following a series of postponements of the resolution of the question in the original representation proceedings because of unfair labor practices alleged to have been committed by the company, petitioner's request for recognition in a divisional unit was refused by the company on the ground that it was bound by Board's previous finding that a system-wide unit was appropriate and that it could not recognize the union until required to do so by Board. *Pacific Gas & Electric Co.*, 40 N. L. R. B. 591.

Question concerning representation, *held* to exist where company denied the appropriateness of a unit comprising employees which had been excluded from the industrial unit for which petitioner was certified. *Great Lakes Engineering Works*, 40 N. L. R. B. 1254.

Question concerning representation, *held* to exist where company refused to accord petitioner recognition because of prior certification of rival union for a unit ostensibly covering employees involved. *Pennsylvania Shipyards, Inc.*, 40 N. L. R. B. 1300.

Question concerning representation, *held* to exist where company disputed the appropriateness of consolidating several groups of employees previously found to constitute separate appropriate units. *Armour & Co.*, 40 N. L. R. B. 1333.

3 2. *Denial of employment relationship within the Act.*

A question concerning the representation of the licensed marine engineers employed on vessels operated by a steamship company under an operating agreement with the United States Government has arisen where the company has refused to deal with the labor organization claiming to represent a majority of the engineers on the ground that it was not the employer of those engineers. *Cosmopolitan Shipping Co., Inc.*, 2 N. L. R. B. 759, 762, 763.

Saginaw Dock & Terminal Co., 23 N. L. R. B. 630 (denial of employment relationship on the ground that it ended with the closing of the navigation season or the termination of a voyage).

Jameson Co., 25 N. L. R. B. 64 (denial of the existence of an employment relationship within the contemplation of the Act on the ground that the packinghouse workers were agricultural laborers).

McCormick Steamship Co., 25 N. L. R. B. 587 (denial of employment relationship on the ground that the persons engaged to pilot the vessels were independent contractors).

Solvay Process Co., 26 N. L. R. B. 650 (denial of the employment relationship on the ground that it terminated when the labor dispute ceased to be current).

Hoberman, 30 N. L. R. B. 1241 (denial of the employment relationship as to all but one person on the ground that they were "extra men").

J. C. White Engineering Co., 34 N. L. R. B. 83 (denial of the employment relationship on the ground that the company was not the employer).

[*See* DEFINITIONS §§ 1–30 (as to employee status) and PRACTICE AND PROCEDURE § 332 (as to dismissal of petition for absence of employment relationship).]

3. *Refusal to accord full recognition or request that certification be obtained.*

A question concerning representation has arisen where an employer has met with a shop committee composed of three members of a labor organization which claimed to represent the employees but the employer had refused to acknowledge that either the shop committee or the labor organization represented a majority of the employees. *Saxon Mills*, 1 N. L. R. B. 153, 154.

Crucible Steel Co. of America, 2 N. L. R. B. 298, 304, 305 (where an employer had refused to meet or recognize agents of a labor organization claiming to represent employees in an appropriate unit on the ground that the employees in that unit were already represented by another labor organization).

Central Truck Lines, Inc., 3 N. L. R. B. 317, 327 (where an employer had entered into a contract with one labor organization and refused to bargain with another labor organization which claimed to represent a majority of the employees in an appropriate unit).

A question concerning representation of employees has arisen where an employer had refused a proposal of the sole labor organization in its plant for a consent election and has insisted instead that the designation of the sole bargaining agency should be made by the certification of the Board. *American Cyanamid & Chemical Corp.*, 2 N. L. R. B. 881, 883.

P. Lorillard Co., Inc., 3 N. L. R. B. 529, 532 (where two labor organizations claim to represent a majority of the company's employees in respective appropriate units and the company has indicated its willingness to bargain collectively with them as sole bargaining agents if the Board certifies that each has been designated as the representatives of a majority of employees in the respective units).

Fairbanks, Morse & Co., 7 N. L. R. B. 229, 232 (where following an election held with the consent of rival labor organizations, an employer recognized and bargained with one of them for all the employees in a unit claimed by that organization to be appropriate, except such employees as the rival labor organization contended should constitute a separate appropriate unit, until such time as their asserted right to separate representation should be determined).

Black & Sons Co., 32 N. L. R. B. 10 (where an employer refused petitioner's request to enter into negotiations concerning a strike which was in existence, on the ground that it had not been certified as the exclusive representative of the employees).

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668 (where employer's association refused to grant petitioning union recognition in three ports on the ground that the Board had certified a rival labor organization in these and other ports).

A question concerning representation of employees has arisen where an employer, although negotiating with a labor organization as the representative of its own members, refused to recognize it as the exclusive bargaining agent of all the employees. *Armour & Co.*, 3 N. L. R. B. 895, 898. *Interlake Iron Corp.*, 6 N. L. R. B. 780, 785 (where an employer's response to requests from two rival labor organizations for recognition as exclusive representative of the employees has been to accord to each recognition as the representative of its members).

A question concerning representation of employees has arisen where an employer refused to bargain collectively with an organization claiming to represent a majority of its employees, giving as a reason that it doubted the organization's claims of representation; for although a refusal to bargain constitutes a violation of Section 8 (5) and the company has refused to bargain, this conduct in a proceeding to determine representation of employees is interpreted as reflecting uncertainty regarding the status of the organization as representative of the employees rather than as evincing an intention willfully to violate the Act. *McKell Coal & Coke Co.*, 4 N. L. R. B. 508, 510.

4. *Conflicting claims of rival representatives.*

Questions concerning the representation of employees have arisen where the employer is uncertain as to which of several rival labor organizations represent the employees in view of the conflicting nature of the claims made concerning them. *N. Y. & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595, 597.

A question concerning the representation of employees has arisen where the employers have refused to formally recognize a shift in affiliation and change in the name of a labor organization holding contracts with them covering

the employees. *Shipowners' Assn. of the Pacific Coast,* 7 N. L. R. B. 1002, 1026–1028.

A question concerning representation of employees has arisen where the members of labor organizations A and B which had written agreements with the employer changed their affiliation to labor organization C which claimed that by virtue of the change of affiliation it represented a large majority of the employees and, as the new representative of the employees was the successor in interest to A and B, and the two latter organizations, while not claiming to represent a majority of the employees, contended that they have sufficient membership in the area to comply with the terms of the contracts, and demanded that the contracts be enforced. *Brown-Saltman Furniture Co.,* 7 N. L. R. B. 1174, 1176, 1177. See also:

Goldenberg, 7 N. L. R. B. 1213, 1215.

Gowanus Towing Co., Inc., 8 N. L. R. B. 829, 822–824.

Brenizer Trucking Co., 44 N. L. R. B. 810.

Harbison-Walker Refractories Co., 44 N. L. R. B. 816.

Chrysler Corp., 13 N. L. R. B. 1303 (when there was a schism in an organization and the company refused to recognize petitioner and would not state whether it would recognize either offspring organization separately or both together and would not agree to a consent election). See also: *Abinante & Nola Packing Co.,* 26 N. L. R. B. 1288 (where a substantial number of employees were shifting their allegiance back and forth between the petitioning union and its rival).

Monroe Calculating Machine Co., 29 N. L. R. B. 653 (where the company bargained with one faction of the union and refused to bargain with the other).

[*See* DEFINITIONS § 88 (as to the effect of a "schism" in a labor organization).]

5. *Failure, refusal or inability of representative to prove authority.*

A question concerning representation has arisen where an employer refused to accept the claim of a labor organization that it represented a majority without proof being submitted and the labor organization refused to reveal the names of its members for fear of possible reprisals, and requested that an election be held among the employees to determine the question of representation. *Proximity Print Works,* 7 N. L. R. B. 803, 812.

Chrysler Corp., 1 N. L. R. B. 164, 170 (where an employer had refused to accede to the labor organization's claim of representation, and doubt existed as to the number of employees in the unit as a result of the labor organization's unwillingness to expose its membership to the employer).

Consolidated Aircraft Corp., 2 N. L. R. B. 772, 777, 778. (Labor organization claiming majority refused to reveal names of its members and rival labor organization claimed to represent a substantial number of employees.)

H. E. Fletcher Co., 5 N. L. R. B. 729, 738, enforced 108 F. (2d) 459 (C. C. A. 1), cert. denied 309 U. S. 678 (where an employer refused to confer with a labor organization unless it divulged complete details with respect to the members it claimed to represent).

Capitol Milling Co., 28 N. L. R. B. 1221 (refusal to grant recognition to union until the union could furnish evidence that it represented a majority).

Post-Standard Co., 32 N. L. R. B. 226 (refusal to grant union recognition until it furnished proof that it represented a majority within the appropriate unit).

Telegram Publishing Co., 41 N. L. R. B. 662 (refusal of union requesting recognition to submit a showing of designations).

6. *Strike for recognition.*

A question concerning the representation of employees has arisen where an employer had repeatedly refused to acknowledge the claim of a labor organization that it represented a majority of the employees, and the organization called a strike which was still in effect at the time of the hearing, over three and one-half months later. *Saxon Mills*, 1 N. L. R. B. 153, 154.

A question concerning representation of employees has arisen where the sole labor organization involved so alleged in its petition the record contained no facts which tended to controvert this allegation, and a strike was in progress at the employer's mill at the time of the hearing. *Edna Cotton Mills Corp.*, 5 N. L. R. B. 709, 711.

7. *Agreement.*

A question concerning representation of employees has arisen where it was stipulated by the employer and two contesting labor organizations that the employer had no knowledge as to which organization represented a majority and that the employer questioned particularly the claim of one organization; the employer refused to recognize

representatives of either organization as representatives of all employees but would bargain for members only; and all parties have stipulated that an election was desired. *West Virginia Pulp & Paper Co.*, 3 N. L. R. B. 675, 678.

A question concerning representation of employees has arisen where the employer and the sole labor organization involved have so stipulated. *New York Mail & Newspaper Transportation Co.*, 4 N. L. R. B. 1066, 1068.

Question concerning representation, *held* to exist when proceeding was instituted pursuant to an agreement that whenever any of the unions claimed recognition as the exclusive bargaining agent for any of the company's debit collectors, such claim should be resolved in a proceeding before the Board. *Life Insurance Co. of Virginia*, 38 N. L. R. B. 20, 24.

8. *Failure to controvert allegation that question exists.*

A question concerning representation of employees has arisen where an allegation in the petition that the employer had refused to bargain collectively until the labor organization was certified by the Board, had not been controverted. *Tidewater Associated Oil Co.*, 5 N. L. R. B. 954, 956. See also: *Edna Cotton Mills Corp.*, 5 N. L. R. B. 709, 711. *Jacobs, Inc.*, 32 N. L. R. B. 646, 648. *Westinghouse Electric & Mfg. Co.*, 35 N. L. R. B. 756, 758.

9. *Failure to reply to, refusal to accept, or return of communications.*

A question concerning representation has arisen when company failed to reply to union's written request for a collective bargaining conference. *Cudahy Packing Co.*, 29 N. L. R. B. 830.

Wilson & Co., Inc., 26 N. L. R. B. 1353 (union's letter for conference concerning recognition unanswered).

All Steel Welded Truck Corp., 31 N. L. R. B. 191. (Although union notified the company by letter of its claim to majority representation and requested recognition and collective bargaining conference, the company neither bargained with the union nor expressed any willingness to do so.)

Pittsburgh Plate Glass Co., 31 N. L. R. B. 468 (failure to answer union's letter requesting recognition).

Eclipse Lawn Mower Co., 43 N. L. R. B. 1178. (Where company in effect refused to recognize union by its failure to answer union's request made by registered mail and

its failure at hearing to state its position with respect to the demand.) See also: *Crescent Mfg. Co.*, 42 N. L. R. B. 529.

[*See* § 4 (as to the effect of a refusal to accord recognition).]

1 10. *Inconclusiveness of election.*

A question concerning representation existed where none of the choices on ballot in consent election received a majority but the number of ballots cast indicated that a majority of those who voted desired collective bargaining. *United States Smelting, Refining & Mining Co.*, 27 N. L. R. B. 383, 386.

Consumers Power Co., 25 N. L. R. B. 280, 283; (Board election).

De Soto Creamery & Produce Co., 39 N. L. R. B. 601, 603; (State Board election).

Portland Forge & Foundry Co., 40 N. L. R. B. 21, 23 (Consent election).

[*See* § 93 (as to when run-off elections are directed); §§ 43, 45 (as to the effect of proceedings not resulting in the selection of a statutory representative) and §§ 93, 101 (as to when run-off and repeat elections are directed).]

2 11. *Board's Order.*

A question concerning representation of employees has arisen where a labor organization claimed to represent a majority of the employees, and the Board had previously ordered the employer to cease and desist from bargaining collectively with any labor organization unless and until such labor organization had been selected in an election conducted by the Board as the bargaining agent of the employees, and no such election had been conducted. *Canadian Fur Trappers Corp.*, 4 N. L. R. B. 904, 907.

[*See* REMEDIAL ORDERS § 28 (as to orders requiring employer to cease recognizing assisted labor organizations until certified by the Board).]

0 12. *Other circumstances.*

C. EFFECT OF EXISTING CONTRACT.

1 1. *In general.*

In a representation proceeding the Board does not determine the rights of parties under an existing contract but only considers the contract insofar as it affects the determination of representatives. *Chrysler Corp.*, 13 N. L. R. B. 1303.

2. *Nature of contract.*

a. "Invalid contracts."

2 (1) With representative which is not a free choice.

A contract entered into with a labor organization assisted by the unfair labor practices of an employer *held* no bar to an investigation and certification of representatives. *Stone Knitting Mills*, 3 N. L. R. B. 257, 262. See also: *Pacific Greyhound Lines*, 4 N. L. R. B. 520, 533.

Pacific Greyhound Lines, 9 N. L. R. B. 557, 561–571. (No bar where contract succeeded prior agreements previously found to have been executed as result of unlawful assistance rendered by employer and proceedings were instituted prior to date notice of termination was required.)

Contract entered into between employer and a labor organization found to be employer-dominated *held* no bar to an investigation and certification of representatives. *Eagle Mfg. Co.*, 6 N. L. R. B. 492, 504, 505, modified 99 F. (2d) 930 (C. C. A. 4). See also: *Phelps Dodge Refining Corp.*, 41 N. L. R. B. 1016.

Precision Castings Co., Inc., 26 N. L. R. B. 528. (No bar where prior to execution of contract company had notice of petitioner's claim of representation and of charges filed alleging violation of Section 8 (2) with respect to the contracting union, and where said contract was executed after the petition was filed without proof that the contracting union presented a majority.)

Although in a complaint proceeding an employer-conducted election was found not to violate Section 8 (1), Board stated that contract entered into with the winning organization would not bar an investigation and certification of representatives if a petition therefor were filed, since the results of an election conducted by an employer cannot be relied upon as an accurate and independent expression by the employees of their free choice of representatives. *J. Wiss & Sons Co.*, 12 N. L. R. B. 601, 615.

2.1 (2) With representative which does not represent a majority.

The existence of certain closed-shop contracts between a labor organization and certain employers involved in representation proceedings, *held* not a bar to any action which the Board may take in the proceedings where virtually no employees of the employer concerned were members of the organization at the time it secured the contracts. *McKesson & Robbins, Inc.*, 5 N. L. R. B. 70, 81. See also:

Chas. Cushman Shoe Co., 2 N. L. R. B. 1015, 1032.

American-West African Line, Inc., 4 N. L. R. B. 1086, 1089.
Stratbury Mfg. Co., 12 N. L. R. B. 618, 620.
Illinois Moulding Co., 35 N. L. R. B. 827.
Knight, 39 N. L. R. B. 148.

Philadelphia Inquirer Co., 31 N. L. R. B. 26. (No bar where contracting union did not represent a majority of employees at the time of the execution of the contract and had not attempted to bargain under the contract on behalf of such employees.)

Thompson Products, Inc., 35 N. L. R. B. 323. (Contract executed between the company and a rival union following its certification by a State Labor Board *held* no bar where the circumstances surrounding the pay-roll check conducted by the State Labor Board did not establish that the union represented a majority of the employees in an appropriate unit, and where the company had knowledge of the petitioner's claim and of the filing of the petition with Board prior to the execution of the contract.)

Erasmus Atlass, Inc., 35 N. L. R. B. 447. (Closed-shop contract *held* no bar, where there was doubt as to the majority representation of the contracting union, and petitioning union had given notice of its claim prior to consummation of contract.)

Renewed contract held no bar when at time of renewal upon failure of employer to serve notice of abrogation prior to annual expiration date there was substantial doubt as to whether the labor organization represented a majority of the employees. *Colonie Fibre Co., Inc.*, 9 N. L. R. B. 658, 660.

American France Line, 7 N. L. R. B. 79, 81–84. (No bar where contracting labor organization did not represent a majority either at time the contract was executed 6 weeks prior to institution of proceedings or at time it was automatically renewed just prior to Board elections.)

Cohen & Co., Inc., 30 N. L. R. B. 31. (No bar where there was doubt as to the majority designation on the dates the successive contracts were executed.)

2.9 (3) Others.

3 b. Scope of unit.

The existence of a contract providing for representation of employees in a unit differing from that found by the Board to be appropriate, *held* not to constitute a bar to an investigation and certification of representatives. *Kinnear Mfg. Co.*, 4 N. L. R. B. 773, 775–777.

Wilmington Transportation Co., 4 N. L. R. B. 750, 753, 754. (No bar where agreement not applicable to employees in unit found appropriate and executed after notice of hearing.)

A contract covering only the colored employees of the company is not a bar to a present determination of representatives, inasmuch as the Act does not permit the establishment of a bargaining unit based solely on distinctions of color. *Crescent Bed Co., Inc.*, 29 N. L. R. B. 34.

[*See* UNIT § 151 (as to proposed exclusions based solely on race or sex).]

Existing contract with industrial organization previously certified for an industrial unit *held* no bar to a determination of representation among craft employees when neither unit described in the certification or terms of the contract specifically included or excluded craft employees and the latter were not hired until approximately 1 year after the contract was executed. *General Motors Corp.*, 45 N. L. R. B. 864. See also: *General Motors Corp.*, 44 N. L. R. B. 513.

c. Granting less than, not granting, or deferring exclusive recognition.

(1) With individual employees.

Agreements providing for a wage increase, signed by individual employees do not constitute a bar to an election, since they do not in any manner affect the question of representation or collective bargaining, and the fact that a definite wage had at one time been agreed upon in writing does not prevent later collective bargaining in respect to wages or any other matters. *New England Transportation Co.*, 1 N. L. R. B. 130, 137.

Agreements signed individually by a majority of the employees in an appropriate unit which provide for the handling of controversial matters by employees and management through the medium of an inside labor organization, do not prohibit the employees from changing their representatives and do not constitute a bar to an election, for employees are free to change their representatives while at the same time continuing the existing agreements under which the latter must function; and since parties may bargain with respect to the terms of existing contracts, the newly chosen representatives are free to bargain concerning changes in the existing arrange-

ments. *New England Transportation Co.*, 1 N. L. R. B. 130, 136–139.

The fact that an employee signs an individual contract providing for wages, hours, and conditions of employment cannot be held to reflect the desires of such employee regarding representation and does not constitute any bar to collective bargaining on his behalf. *Gates Rubber Co.*, 8 N. L. R. B. 303, 306.

Contract designating a bargaining committee of three employees to represent employees in all their relationships to company, but which specifically states that it is an agreement between each of employees and company, is not such a collective bargaining contract as to constitute a bar to a determination of representatives. *Item Co., Ltd.*, 31 N. L. R. B. 278.

For additional cases dealing with contracts executed with individual employees that were held not to bar a determination of representatives, *see:*

Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 697.
Dain Mfg. Co., 29 N. L. R. B. 526.
Western Cartridge Co., 31 N. L. R. B. 888.
Case Co., J. I., 38 N. L. R. B. 522.

[*See* UNFAIR LABOR PRACTICES § 710 (as to effect of contracts executed with individual employees upon an employer's statutory obligation to bargain collectively).]

4.1 (2) Providing for representation for members only.

Contracts granting recognition to three labor organizations as representatives of their respective members only do not preclude an investigation and certification of representatives initiated upon petition filed by another labor organization which is not a party to the contracts in question. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 646.

McKesson & Robbins, Inc., 5 N. L. R. B. 70, 81 (no bar where contract recognized labor organization as representative of its members only in plants of the employer where its membership did not constitute a majority of the employees and petition filed by rival labor organization).

Pressed Steel Car Co., Inc., 7 N. L. R. B. 1099, 1101, 1102 (no bar where contract granted recognition for members only and petition filed by rival labor organization prior to date automatic renewal would become effective in absence of notice to terminate).

Reading Transportation Co., 10 N. L. R. B. 15, 20. (No bar where contract terminable upon 30 days' notice is altered

by supplementary agreement providing for recognition of contracting organization as representatives of its members only and petition filed by rival labor organization.)

Kentucky Fire Brick Co., 19 N. L. R. B. 532 (contract covering only members of the contracting union and terminable on 20 days' notice by either party, no bar).

See also:

Birmingham Tank Corp., 25 N. L. R. B. 1306.

Capital City Products Co., 28 N. L. R. B. 1249.

Acme White Lead & Color Works, 29 N. L. R. B. 1158.

Lowe Bros. Co., 32 N. L. R. B. 369.

Tennessee Coal, Iron & Railroad Co., 39 N. L. R. B. 402. (Contract recognizing intervening union as representative of its members only in and about company's plants, *held* not to bar a determination of representatives among employees in a plant which the company had not contemplated acquiring at the time the contract was executed.)

A contract granting recognition to a labor organization as representative of its members only does not constitute a bar to an investigation and certification of representatives instituted upon petition filed by the contracting labor organization. *White Sewing Machine Corp.*, 10 N. L. R. B. 802, 804. See also: *Northrop Corp.*, 3 N. L. R. B. 228, 235.

City Auto Stamping Co., 3 N. L. R. B. 306, 311. (No bar where petition filed by one of two contracting labor organizations granted recognition as representatives of their respective members only.)

General Mills, Inc., 3 N. L. R. B. 730, 736 (no bar where petitions filed by two rival labor organizations, one of which was party to contract recognizing it as representative of its members only and providing for exclusive recognition upon proof of majority).

Hillsdale Steel Products Co., 30 N. L. R. B. 623 (no bar where contracts with petitioner and rival union granted recognition for members only).

Electric Auto-Lite Co., 40 N. L. R. B. 1345. (Members-only contract with local of petitioning union, *held* no bar.)

4.2 (3) Deferring recognition.

Purporting bargaining agreement between the company and the union by which consideration of recognition was deferred 6 months, *held* not an exclusive bargaining contract to bar an investigation and certification of representatives, since under the Act the company had no right to refuse recognition to the duly selected representative of the

majority of its employees, and the bargaining committee of the union could not waive the statutory right of the employees to choose representatives. *Hardy Mfg. Corp.*, 30 N. L. R. B. 37, 40.

24.9 (4) Others.

Agreement entered into with a "Committee" purporting to represent employees of the company did not constitute a bar to a determination of representatives where among other considerations it did not recognize the "Committee" as an exclusive bargaining representative. *Service Products Corp.*, 37 N. L. R. B. 374.

d. Duration.

25 (1) For undue length of time.

A 5-year contract does not constitute a bar to an investigation and certification of representatives where a year has already expired and the evidence raises a substantial question as to whether the employees involved desire the contracting labor organization to continue to represent them, for employees should not be precluded from having the opportunity to select new representatives for collective bargaining for a period as long as 5 years. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 696, 697.

Columbia Broadcasting System, Inc., 8 N. L. R. B. 508, 511, 512 (5-year contract in effect for more than 1 year, no bar).

M. & J. Tracy Inc., 12 N. L. R. B. 936, 940 (3-year contract in effect for more than 2 years, no bar).

Riverside and Fort Lee Ferry Co., 23 N. L. R. B. 493, 496 (3-year contract in effect for more than 1 year, no bar).

Rosedale Knitting Co., 23 N. L. R. B. 527, 529 (3-year contract in effect for 1½ years, no bar).

Kahn & Feldman, Inc., 30 N. L. R. B. 294 (contract for 2 years in effect more than a year, no bar).

Knight, 39 N. L. R. B. 148 (contract for more than 2 years no bar where it has run for more than 1 year).

Wichita Union Stockyards Co., 40 N. L. R. B. 369, 372 (3-year contract in effect for more than 1 year, no bar).

Los Angeles Shipbuilding & Drydock, Co., 40 N. L. R. B. 1150 (for the period of national emergency and/or the period of 2 years, whichever is longer in effect for 1 year, no bar).

25.1 (2) For reasonable length of time.

No question concerning representation of employees has arisen, notwithstanding the contention of a labor organization that the sole motive for the execution of a contract

between a rival labor organization and the employer was to prevent the objecting organization from organizing employees where: (1) the contract to remain in effect for 1 year, was not for such a long period as to be contrary to the purposes and policies of the Act; (2) it was a renewal of an earlier agreement entered into between the parties, following a consent election conducted by the Board; (3) it was made at a time when the labor organization represented a majority of employees in the appropriate unit; and (4) membership in the organization when the contract was executed was not induced by any action defined in the Act as an unfair labor practice. *National Sugar Refining Co., of N. J.*, 10 N. L. R. B. 1410, 1415. See also:

American Hair & Felt Co., 15 N. L. R. B. 572.
Bon Ton Curtain Co., 20 N. L. R. B. 462.
Lewis Bolt & Nut Co., 23 N. L. R. B. 708.
Hart Co., Inc., Leo, 26 N. L. R. B. 125.
Eaton Manufacturing Co., 29 N. L. R. B. 53.
Detroit & Cleveland Navigation Co., 29 N. L. R. B. 176.
Pressed Steel Car Co., 36 N. L. R. B. 560.
Madden, 42 N. L. R. B. 885 (Board indicated it would entertain a new petition shortly before the expiration of the first year of a 2-year contract).

In furtherance of the purposes of the Act to attain stabilized labor relations in industry through collective bargaining agreements, *held* closed-shop contracts for a 2-year period which are typical of the industry constitute a bar to an investigation and certification of representatives despite a change of affiliation by a substantial number of members of the contracting unions to the petitioning union. *Owens-Illinois Pacific Coast Co.*, 36 N. L. R. B. 990.

Automatic renewal contract, renewable for yearly terms subject to defeasance upon 60 days' notice, *held* a bar to a determination of representatives during its renewed term, when no notice of termination was given by contracting parties prior to its renewal date and rival union's claim to representation (by filing a petition) although given prior to the effective date of the renewed contract had not been given until after the renewal clause had taken effect. *Mill B., Inc.*, 40 N. L. R. B. 346.

[*See* § 25.3 (as to effect of contract about to expire), § 33 (as to effect of notice prior to execution of contract when rival union's showing of representation did not create a substantial doubt as to contracting union's majority), § 34

(as to effect of loss of majority by or identity of representative during the term of the contract), and §§ 41–45 (as to the effect given to prior conclusive determinations).]

§ 25.2 (3) For indefinite duration. (*See also* § 25.3.)

A contract terminable on 30 days' notice in effect for more than 3 years, *held* no bar to a petition for investigation and certification of representatives. *American Radiator & Standard Sanitary Corp.*, 35 N. L. R. B. 172.

American Coach & Body Co., 28 N. L. R. B. 508 (contract in existence for almost 2 years terminable at any time upon 30 days' notice by either party, no bar). See also: *Gustina Bros. Lumber Co.*, 41 N. L. R. B. 1243.

La-Plant-Choate Mfg. Co., Inc., 29 N. L. R. B. 40 (contract in existence for longer than its original period of 1 year terminable thereafter upon 30 days' notice by either party, no bar). See also:

United States Rubber Co., 30 N. L. R. B. 1074.

Los Angeles Brick & Clay Products Co., 37 N. L. R. B. 539.

Phelps Dodge Refining Corp., 40 N. L. R. B. 1159.

Allegheny Ludlum Steel Corp., 40 N. L. R. B. 1285.

General Motors Corp., 33 N. L. R. B. 41 (contract terminable on 60 days' notice in effect nearly a year, no bar). See also: *Todd-Johnson Dry Docks, Inc.*, 10 N. L. R. B. 629, 632. *General Motors Corp.*, 32 N. L. R. B. 249.

Link-Belt Speeder Co., 37 N. L. R. B. 889 (contract, the definite term of which was about to expire and was thereafter terminable upon 30 days' notice, no bar).

§ 25.3 (4) Expired or about to expire. (*See also* § 25.2.)

A contract entered into by an employer with one of the labor organizations involved in a proceeding to determine representatives of employees does not constitute a bar to a determination of the issues where the contract was to terminate at the end of the first day period in the month following the date of the Board's decision. *Sandusky Metal Products, Inc.*, 6 N. L. R. B. 12, 14. See also: *Martin Bros. Box Co.*, 7 N. L. R. B. 88, 91.

Black Diamond Steamship Corp., 2 N. L. R. B. 241, 245 (contract subject to termination slightly more than 2 months after decision).

Atlantic Footwear Co., Inc., 5 N. L. R. B. 252, 253, 254 (contract to expire in less than a month after decision, *held* no bar). See also:

Martin Bros. Box Co., 7 N. L. R. B. 88, 91.

Brown-Saltman Furniture Co., 7 N. L. R. B. 1174, 1176.
Quality Furniture Mfg. Co., 8 N. L. R. B. 850, 853.
H. Margolin & Co., Inc., 9 N. L. R. B. 952, 955.
Bull Steamship Co., 36 N. L. R. B. 99.

Contract covering seasonal employees, *held* no bar to a determination of representatives when it would have expired several months after the decision, current working season had nearly ended, and new season would not begin until after the contract had expired. *F. E. Booth & Co.*, 10 N. L. R. B. 1491, 1494, 1495.

Contract in effect for a period less than a year, having about 3 months to run, *held* not to preclude a determination of representatives for the purpose of designating a representative to negotiate a new contract to succeed contract in effect. *Houde Engineering Corp.*, 36 N. L. R. B. 587. See also:

Chrysler Motors Parts Corp., 38 N. L. R. B. 1379 (3 months to run).
United States Rubber Co., 41 N. L. R. B. 1005 (2 months to run).
Dain Mfg. Co., 41 N. L. R. B. 1056 (4 months to run).

Contract which expired prior to the issuance of the decision but which was extended for an additional year subsequent to the filing of the petition, *held* no bar to a determination of representatives. *Philadelphia Dairy Products Co., Inc.*, 36 N. L. R. B. 737. See also: *Superior Coach Corp.*, 39 N. L. R. B. 926.

Contract which was terminated by a person with apparent authority to act for the contracting union *held* no bar to a determination of representatives. *Lone Star Cement Corp.*, 37 N. L. R. B. 997. See also: *Consolidated Chemical Industries, Inc.*, 44 N. L. R. B. 985.

Western Foundry Co., 41 N. L. R. B. 301 (year-to-year contract containing an automatic renewal clause, no bar where Board found that one of the parties had given requisite termination notice).

e. To which petitioning representative is a party. [*See* § 38 (as to waiver of contract as a bar to the proceeding when petitioner was not a party to the contract).]

No question concerning the representation of employees has arisen, where an employer subsequent to the filing of the petition had granted recognition to, and entered into an oral collective bargaining agreement with, the labor

organization seeking certification. *Century Woven Label Co.*, 8 N. L. R. B. 665, 668, 669.

[*See* § 1.3 (as to the necessity that there be a controversy) and PRACTICE AND PROCEDURE § 326 (as to dismissal of petition when parties resolve the question concerning representation).]

An agreement between an employer and the sole labor organization involved, *held* not to constitute a bar to representation proceedings where there is no showing that at the time of the execution of the agreement the union represented a majority in the appropriate unit and the agreement contains no provision by which the company recognized the union as the exclusive representative. *Forest City Mfg. Co.*, 27 N. L. R. B. 110.

White Star Lumber Co., 25 N. L. R. B. 363. (A contract for less than exclusive recognition for an indefinite duration terminable upon 30 days' notice by either party, *held* not to be a bar when the petitioner was a contracting party and the contract was in effect for more than 2 years.)

Borg Warner Corp., 28 N. L. R. B. 1209. (Contracts with petitioner and rival union for members only subject to termination in the event that the Board should certify some labor organization, *held* no bar.)

North Electric Mfg. Co., 41 N. L. R. B. 944. (Contract executed with petitioner after notice of rival claim, subject to settlement of representation dispute—company's position at the time of execution being that it would execute a permanent agreement with petitioner when such dispute was settled—*held* no bar in view of the temporary nature of the agreement and the fact that the contracting union filed the petition.)

[*See* §§ 24–24.9 (as to contracts which grant less than, fail to grant or defer exclusive recognition).]

27 f. Expressly subject to or conditioned on Board action or subject to termination upon subsequent designation of other representatives.

A closed-shop contract which provided for an election to determine the bargaining agent of the employees, thus suspending the application of the contract until the Board had issued its certification, *held* not to constitute a bar to a determination of representatives. *Southern Chemical Cotton Co.*, 3 N. L. R. B. 869, 876.

Northwest Publications, Inc., 9 N. L. R. B. 529, 532 (no bar where closed-shop contract conditioned upon determina-

tion of issues raised by petition filed with Board). See also: *National Metal-Art Mfg. Co., Inc.*, 37 N. L. R. B. 561. *Joyce, Inc.*, 40 N. L. R. B. 509.

General Electric Co., 9 N. L. R. B. 1213, 1215 (no bar where contract expressly predicated recognition by employer upon certification by the Board).

Columbia River Packers Assn., Inc., 40 N. L. R. B. 246 (no bar where closed-shop contract contemplated an election before it should become effective).

A contract granting exclusive recognition to a labor organization as long as it represented a majority of the employees, *held* not to constitute a bar to an investigation and certification of representatives where a number of the employees withdrew from the contracting organization and formed a new union which claimed to represent a majority. *Farr Alpaca Co., Inc.*, 9 N. L. R. B. 1208, 1210.

Consolidated Aircraft Corp., 7 N. L. R. B. 1061, 1064 (no bar where contract provided for definite term or until a majority of the employees should elect other representatives).

A contract between an employer and a labor organization recognizing the latter as exclusive representative of the employees *held* not to constitute a bar to a claim by a second labor organization of majority representation where the agreement provided that it was to be effective until a given date or until such earlier date as it be determined under the Act that the labor organization which was a party to the contract was no longer entitled to act as bargaining agent. *Monument Mills*, 10 N. L. R. B. 347, 349.

Markham & Callow, Inc., 13 N. L. R. B. 963 (no bar where contract was extended "until such time as the National Labor Relations Board makes a decision as to the proper bargaining agency").

Willys Overland Motors, Inc., 35 N. L. R. B. 549 (no bar where contract was terminable upon Board's designation of other collective bargaining representatives). See also: *Universal Products, Inc.*, 20 N. L. R. B. 288. *Steel Storage File Co.*, 27 N. L. R. B. 210.

Gulf Refining Co., 25 N. L. R. B. 745 (no bar where contract was terminable on 1 month's notice, or notice by Board's Regional Director that contracting union no longer represented a majority in the unit covered by the contract).

Frank Bros. Mfg. Co., Inc., 40 N. L. R. B. 1143 (no bar, where in settlement of a labor dispute company, petitioner, and contracting union, entered into an agreement to be bound by Board's decision in pending proceeding).

28 g. Working agreements, statements of policy, or other informal arrangements.

The posting of a notice by an employer reciting terms of an agreement between the employer and a labor organization is a unilateral act which does not constitute the formation of a contract and does not affect a question concerning representation of employees where the notice itself contained no reference to the labor organization, did not call for its assent, and required only the signature of the employer. *Daily Mirror, Inc.*, 5 N. L. R. B. 362, 366.

Union Switch & Signal Co., 30 N. L. R. B. 922. ("Notice" to employees relating to working conditions signed only by the company and subject to any amendment by the company on 30 days' notice to the union, even though regarded by the union as a collective contract, *held* no bar to an investigation and certification because of company's unilateral power to amend or revoke.)

An oral agreement of an indefinite term and character extending a prior written agreement between an employer and a labor organization cannot preclude an investigation and determination of representatives by the Board. *Seiss Mfg. Co.*, 7 N. L. R. B. 481, 483.

Gulf Oil Corp., 36 N. L. R. B. 1003. (contract continued by oral agreement pending execution of another agreement, no bar).

Oral "working agreement" which at most was an understanding that the labor organization would be treated with as representing the employees within its jurisdiction, no bar. *Armour & Co.*, 16 N. L. R. B. 334.

31 h. Others.

3. *As affected by various circumstances.*

32 a. In general.

33 b. Entered into or renewed after institution of proceedings or after notice to employer of claims of rival representative.

A closed-shop agreement entered into between an employer and a labor organization after a second labor organization had filed a petition for investigation and certification of representatives *held* not to constitute a bar to the proceedings where, although the agreement had been retroactively

dated to take effect prior to the filing of the petition, the parties thereto had knowledge of the filing. *California Wool Scouring Co.*, 5 N. L. R. B. 782, 785.

For decisions in which contracts were entered into subsequent to notice and/or institution of proceedings and held no bar *see*:

Minneapolis-Moline Power Implement Co., 14 N. L. R. B. 920.
Peoples Gas Light and Coke Co., 15 N. L. R. B. 1024.
Wickwire Spencer Steel Co., 18 N. L. R. B. 372.
Precision Castings Co., Inc., 26 N. L. R. B. 528.
Elk Tanning Co., 26 N. L. R. B. 740.
United Steel and Wire Co., 28 N. L. R. B. 761.
National Distillers Products Corp., 28 N. L. R. B. 1260.
Solvay Process Co., 29 N. L. R. B. 24.
Monroe Calculating Machine Co., 29 N. L. R. B. 653.
General Dry Batteries, Inc., 29 N. L. R. B. 1017.
Armbruster, 30 N. L. R. B. 457.
Erie City Iron Works, 30 N. L. R. B. 469.
Union Asbestos and Rubber Co., 31 N. L. R. B. 987.
Georgia Power Co., 32 N. L. R. B. 692.
General Motors Corp., 33 N. L. R. B. 41.
Malden Electric Co., 33 N. L. R. B. 78.
Westinghouse Electric and Mfg. Co., 33 N. L. R. B. 97.
General Cable Co., 33 N. L. R. B. 328.
American Furniture Co., 33 N. L. R. B. 816.
Heller Bros. Co., 33 N. L. R. B. 833.
Engelhorn & Sons, 33 N. L. R. B. 1139.
Consolidated Laundries Corp., 34 N. L. R. B. 476.
Oberdorfer, 34 N. L. R. B. 683.
Willamette Valley Lumber Co., 35 N. L. R. B. 805.
Ford Motor Co., 35 N. L. R. B. 1082.
Columbus & Southern Electric Co., 36 N. L. R. B. 386.
Byer, 36 N. L. R. B. 844.
Deep River Timber Co., 37 N. L. R. B. 210.
General Motors Co., 37 N. L. R. B. 616.
Interlake Iron Corp., 38 N. L. R. B. 146.
Liquid Carbonic Co., 38 N. L. R. B. 1069.
Columbian Bronze Corp., 39 N. L. R. B. 156.
Detroit Plating Industries, 39 N. L. R. B. 315.
Portland Forge & Foundry Co., 40 N. L. R. B. 21.
Phelps Dodge Corp., 40 N. L. R. B. 180.
Globe Mills, Inc., 41 N. L. R. B. 94.
Sterling Engine Co., 41 N. L. R. B. 191.

For decisions in which contracts were amended, modified, extended or supplemented after notice and/or institution of proceedings and held no bar *see*:

Garod Radio Corp., 29 N. L. R. B. 184.
United Scientific Laboratories, 29 N. L. R. B. 198.
Vincent Steel Process Co., 32 N. L. R. B. 991.
Textileather Corp., 35 N. L. R. B. 7.
Grant Storage Batteries Co., 35 N. L. R. B. 453.
Philadelphia Dairy Products Co., Inc., 36 N. L. R. B. 737.
Walgreen Co., 37 N. L. R. B. 764.
Superior Coach Corp., 39 N. L. R. B. 926.
Long-Bell Lumber Co., 41 N. L. R. B. 389.
Bucyrus-Erie Co., 41 N. L. R. B. 939.

A contract for 1 year entered into between an employer and labor organization A after a petition for investigation and certification of representatives had been filed by labor organization B constitutes a bar to the proceedings where employees whom B claimed to represent participated in a strike called by A after the petition had been filed and favored the contract which resulted therefrom. *Superior Electrical Products Co.*, 6 N. L. R. B. 19, 21, 22.

Where petitioner made only an oral claim of a majority prior to the execution of the contract with a rival labor organization but filed the petition after the consummation of the contract, and petitioner's showing of representation did not create a substantial doubt concerning the contracting union's majority at the time the contract was made or at the time of the filing of the petition, *held* as a matter of policy under the Act and in the interest of the stability of collective bargaining agreements, the Board should not make a new determination of representatives. *Hettrick Mfg. Co.*, 25 N. L. R. B. 722.

General Motors Corp., 35 N. L. R. B. 80. (Subsisting contract with rival union entered into with notice of petitioning union's claim *held* to have constituted a bar to an election where petitioning union failed to show that it represented more than 105 of the 950 employees in the unit at the time of the signing of the contract and contracting union showed that it represented more than 850 of the approximately 950 employees at the time the contract was executed.)

Central Foundry Co., 42 N. L. R. B. 265. (Closed-shop contract in effect for a month and a half which was entered into after Regional Director had certified contracting

union's majority following an agreed pay-roll check, *held* a bar to a determination of representatives although prior to Regional Director's report but subsequent to the pay-roll check, petitioning organization had notified company of its claim to representation, when its claim did not create a substantial doubt as to impair contracting union's majority.)

Contract *held* no bar to existence of question concerning representation where the company was put on notice of the representation claims of a rival union and of its filing a petition while the matter of negotiating a new contract was in abeyance. *Certain-Teed Products Corp.*, 28 N. L. R. B. 915. See also: *International Harvester Co.*, 36 N. L. R. B. 520. *Anderson*, 40 N. L. R. B. 853. *New Jersey Broadcasting Corp.*, 41 N. L. R. B. 1221.

Contract entered into after filing of petition with Board, *held* a bar to a determination of representatives where executed pursuant to a written agreement made prior to the institution of proceedings before the Board and before conflicting claims to representation arose. *Hatfield Wire & Cable Co.*, 30 N. L. R. B. 360.

A contract between an employer and a labor organization containing a provision for automatic renewal unless notice of termination were given at least 60 days in advance of its expiration date, *held* not to constitute a bar to an investigation and certification of representatives where a rival labor organization requested the employer to recognize it and filed a petition prior to the date notice of termination was required. *Pacific Lumber Inspection Bureau*, 7 N. L. R. B. 529, 532.

For decisions in which contracts were renewed subsequent to notice and/or institution of proceedings and held no bar *see:*

American France Line, 7 N. L. R. B. 1.
Steel Car Co., Inc., 7 N. L. R. B. 1099.
Colonie Fibre Co., Inc., 9 N. L. R. B. 658, 660.
Kingan & Co., 12 N. L. R. B. 1327.
Irving Shoe Co., 26 N. L. R. B. 468.
Quality Aluminum Casting Co., 26 N. L. R. B. 516.
Espey Mfg. Co., 26 N. L. R. B. 910.
First National Stores, Inc., 26 N. L. R. B. 1275.
American National Co., 27 N. L. R. B. 22.
Dominion Electrical Mfg. Co., Inc., 27 N. L. R. B. 722.
Phelps Dodge Copper Products Corp., 27 N. L. R. B. 729.

Cudahy Packing Co., 28 N. L. R. B. 369.
Ansley Radio Corp., 28 N. L. R. B. 785.
Insuline Corp. of America, Inc., 28 N. L. R. B. 809.
Sbicca, Inc., 30 N. L. R. B. 60.
Radio Wire Television, Inc., 30 N. L. R. B. 930.
McLouth Steel Corp., 30 N. L. R. B. 1000.
Great Atlantic & Pacific Tea Co., 33 N. L. R. B. 1103.
Lakey Foundry and Machine Co., 34 N. L. R. B. 677.
General Fire Truck Corp., 34 N. L. R. B. 748.
Mitchell Battery Co., 35 N. L. R. B. 198.
Weinfield, 35 N. L. R. B. 257.
Rappaport, 36 N. L. R. B. 484.
Kingan & Co., Inc., 37 N. L. R. B. 716.
Cudahy Packing Co., 38 N. L. R. B. 1009.
Carey Mfg. Co., 39 N. L. R. B. 769.
Price Bros., Co., 39 N. L. R. B. 904.
Hall Mfg. Co., 40 N. L. R. B. 14.
Firestone Tire and Rubber Co., 40 N. L. R. B. 71.
General Motors Corp., 40 N. L. R. B. 1233.
Pressed Steel Car Co., 41 N. L. R. B. 1.
Service Wood Heel Co., Inc., 41 N. L. R. B. 45.

Automatic renewal contract, renewable for yearly terms subject to defeasance upon 60 days' notice, *held* a bar to a determination of representatives during its renewed term, when no notice of termination was given by contracting parties prior to its renewal date and rival union's claim to representation (by filing a petition) although given prior to the effective date of the renewed contract had not been given until after the renewal clause had taken effect. *Mill B, Inc.*, 40 N. L. R. B. 346, reversing *American Oak Leather Co.*, 31 N. L. R. B. 1155. Cf. *Wichita Union Stockyards Co.*, 40 N. L. R. B. 369. (A supplementary agreement made prior to date fixed for reopening negotiation, *held* not to constitute a bar, when the claim to representation was made subsequent to the supplementary agreement, but prior to the established negotiating period.)

c. Question as to representative status of organization arising from inactivity, change in affiliation, "schism", repudiation, or otherwise.

A contract containing a provision for cancelation by either party upon 15 days' notice, *held* not to constitute a bar to an investigation and certification of representatives where the contracting labor organization became inactive and abandoned all efforts to represent the employees who

had transferred their allegiance to the petitioning organization. *Sound Timber Co.*, 8 N. L. R. B. 844, 846, 847. See also:

United Stove Co., 30 N. L. R. B. 305.
Armstrong Rubber Co., 35 N. L. R. B. 368.
Food Machinery Corp., 36 N. L. R. B. 491.
Godchaux Sugars Inc., 36 N. L. R. B. 926.
Sealed Power Corp., 41 N. L. R. B. 1225.

Hueneme Wharf & Warehouse Co., 39 N. L. R. B. 636. (Contract with defunct union, *held* no bar, notwithstanding its purported "assignment" to petitioner.)

Contract with organization which has split into two factions, *held* not to constitute a bar to a determination of representatives when both factions claimed the right to represent the employees and company refuses to deal with either organization. *Brewster Aeronautical Corp.*, 14 N. L. R. B. 1024. See also: *National Tea Co.*, 35 N. L. R. B. 340.

[*See* DEFINITIONS § 88 (as to effect of a "schism" in a labor organization).]

A contract with a union which had held no meetings, collected no dues, had not met with the company on any grievance, had no membership among employees except its acting officers at the time of its renewal, *held* no bar to a determination of representatives. *Dominion Electrical Mfg. Co., Inc.*, 27 N. L. R. B. 722.

Connor Lumber & Land Co., 27 N. L. R. B. 306 (no bar, where company had not dealt with union pursuant to the contract for over a year).

National Battery Co., 28 N. L. R. B. 826 (no bar, where continued existence of contracting labor organization was in doubt).

Fischer Lumber Co., Inc., 31 N. L. R. B. 828 (no bar, where the contracting union was no longer in existence as a functioning representative of employees under the contract). See also:

Monark Battery Co., Inc., 35 N. L. R. B. 24.
Sloss-Sheffield Steel & Iron Co., 37 N. L. R. B. 134.
All Steel Welded Truck Corp., 37 N. L. R. B. 521.
Fraim Lock Co., 39 N. L. R. B. 202.

In furtherance of the purposes of the Act to attain stabilized labor relations in industry through collective bargaining agreements, a closed-shop contract of reasonable duration (1 year) constituted a bar to an Investigation and Certification of Representatives despite a change of affiliation

by a substantial number of members of the contracting union to the petitioning labor organization. *Douglas and Lomason Co.*, 34 N. L. R. B. 69.

Since a primary purpose of the Act is to stabilize industrial relations by means of collective agreements, and increases in number of employees is a normal occurrence, particularly in time of industrial activity, a contract under which parties have been operating, had approximately 5 months to run until its first year term would have expired, *held* a bar to a determination of representatives during that term, although the number of employees had increased from 1,469 at the date of prior Board election, to 2,274 at the date of certification of contracting union, following which contract was executed, and to 2,483 at the time of the pay-roll date preceding the present hearing. *Pressed Steel Car Co., Inc.*, 36 N. L. R. B. 560, 563.

A contract with an organization expressly waiving right to represent employees, *held* not to constitute a bar to a determination of representatives. *Fruehauf Trailer Co.*, 37 N. L. R. B. 757. See also: *Western Cartridge Co.*, 31 N. L. R. B. 888. *Continental Products, Inc.*, 36 N. L. R. B. 527.

An existing preferential hiring contract covering in terms all employees, but operating in fact to cover only some employees, *held* to constitute no bar to an investigation and election among employees not benefited by the operation of such contract. *American Warming & Ventilating Co.*, 38 N. L. R. B. 515. See also: *Philadelphia Inquirer Co.*, 31 N. L. R. B. 26.

Chapman Valve Mfg. Co., 40 N. L. R. B. 800, (Contract executed 9 months prior to filing of petition and which was opened for negotiations for a unit larger than that covered by the contract, *held* no bar to an investigation and certification of representatives.)

[*See* § 23 (as to effect of contract which was not intended to include employees in newly proposed unit).]

Where the original contracting union was no longer in existence and the identity of its successor, if any, was a matter of unresolved dispute between the rival claimants, *held* that the contract did not constitute a bar to a proceeding for the determination of representatives. *Atlantic Waste Paper Co., Inc.*, 45 N. L. R. B. 1087. See also:

Hazelton Brick Co., 44 N. L. R. B. 222.

Brenizer Trucking Co., 44 N. L. R. B. 810.

Harbison-Walker Refractories Co., 44 N. L. R. B. 816 and 1280.

Swank's Sons, 44 N. L. R. B. 1270.

National Lead Co., 45 N. L. R. B. 182.

[*See* § 41 (as to prior certification as a bar to a determination of representatives when it has been in effect for less than 1 year and there has been a change in the representative status of the bargaining agent), UNFAIR LABOR PRACTICES § 492 (as to effect of loss of majority after execution of closed-shop contract upon validity of such contracts within proviso of Section 8 (3), and UNFAIR LABOR PRACTICES § 780 (as to the duty to bargain when prior certification has been in effect for less than 1 year and there has been a loss of majority).]

d. Waiver of contract as a bar. [*See* § 26 (as to waiver of contract as a bar to the proceeding when the petitioner was a contracting party).]

A closed-shop contract made by an employer with a labor organization, *held* not to constitute a bar to a determination of representatives when the contracting labor organization recognized this fact in its motion for intervention, and the employer indicated that it entertained the same view by entering into an agreement with a second labor organization in which it agreed to an election to determine the bargaining agent of its employees, thus suspending the application of its closed-shop contract until the Board issued its certification. *Southern Chemical Cotton Co.*, 3 N. L. R. B. 869, 876. See also: *Postal Telegraph-Cable Corp.*, 9 N. L. R. B. 1061, 1067.

Chapman Valve Mfg. Co., 40 N. L. R. B. 800. (Contract executed 9 months prior to filing of petition and which was opened for negotiations for a unit larger than that covered by the contract, *held* no bar to an investigation and certification of representatives.)

Where among other circumstances a closed-shop contract was not pleaded as a bar by either party to the contract to a proceeding for the investigation and certification of representatives, *held* not to constitute a bar to the proceeding. *Cardinale Macaroni Mfg. Co., Inc.*, 29 N. L. R. B. 1145. See also:

National Copper & Smelting Co., 30 N. L. R. B. 973.

Lowe Bros. Co., 32 N. L. R. B. 369.

Shipowners' Assn. of the Pacific Coast, 32 N. L. R. B. 668.

General Motors Corp., 36 N. L. R. B. 893.

H. Rousseau & Sons, Inc., 25 N. L. R. B. 1116 (no bar, where contracting parties agreed that closed-shop contract "be suspended" pending the outcome of election to determine representatives).

[*See* § 27 (as to the effect of contracts made subject to or conditioned on Board action, or subject to termination upon subsequent designation of other representatives).

0 e. Other circumstances.

Order of State Court requiring company to employ only members of one of the unions involved pursuant to terms of a closed-shop contract, *held* no bar in present representation proceedings instituted by another union where closed-shop contract had been in effect for more than 1 year at the time of the issuance of the State Court Order and institution of present proceedings, for the Court order stemmed from the contract and created no new rights or obligations. *Presto Recording Corp.*, 34 N. L. R. B. 28.

D. EFFECT OF PRIOR DETERMINATIONS.

1. *By Board or its agents.*

1 a. Proceedings in which no question concerning representation was found to exist.

Petition filed 1 day after dismissal of prior petition involving same petitioner entertained when petitioner greatly increased its membership and secured a substantial number of authorizations. *Smith Cabinet Mfg. Co.*, 38 N. L. R. B. 957.

2 b. Selection of a statutory representative resulting in certification.

A consent election conducted by an agent of the Board less than 2 weeks prior to the filing of the petition, *held* decisive of the issues involved in a representation proceeding. *National Sugar Refining Co. of New Jersey*, 4 N. L. R. B 276, 278, 279. See also: *Godchaux Sugars, Inc.*, 12 N. L. R. B. 568, 582.

A certification of representatives issued by the Board 10 months before a labor organization other than the one certified filed a petition for investigation and certification, 1 day short of a year prior to the hearing, and over a year before the decision, *held* not to constitute a bar to a new choice of representatives. *New York & Cuba Mail Steamship Co.*, 9 N. L. R. B. 51, 53.

See also:

La Plant-Choate Mfg. Co., Inc., 29 N. L. R. B. 40.

Libbey-Owens-Ford Glass Co., 31 N. L. R. B. 243.
General Motors Corp., 33 N. L. R. B. 41.
Standard Oil Co. of New Jersey, 35 N. L. R. B. 750.
Interlake Iron Corp., 38 N. L. R. B. 139.
Pressed Steel Car Co., Inc., 41 N. L. R. B. 6.

Todd-Johnson Drydocks, Inc., 10 N. L. R. B. 629, 632. (A certification issued by a Regional Director of the Board as a result of a consent election more than a year prior to a hearing, *held* not to constitute a bar to an investigation and certification of representatives.) See also: *Wickwire Spencer Steel Co.*, 18 N. L. R. B. 372. *Warner Bros. Pictures, Inc.*, 27 N. L. R. B. 48. *Monroe Calculating Machine Co.*, 29 N. L. R. B. 658.

United States Rubber Co., 41 N. L. R. B. 1005. (Prior certification by Board, operative for nearly a year, at time of issuance of decision, *held* no bar.) See also: *Dain Mfg. Co.*, 41 N. L. R. B. 1056.

A question concerning representation of employees has not been resolved by reason of a consent election conducted by a Regional Director among the employees in an appropriate unit where the results of an election requested in the present proceedings would not be determined until a year after the results of the previous consent election had been announced. *Waterman Steamship Corp.*, 10 N. L. R. B. 1079, 1082.

Where a labor organization mistakenly understood that it was unnecessary for it to intervene in a proceeding for an investigation and certification of representatives, as a result of assurances extended by a Board agent, *held* that the prior certification did not preclude a subsequent determination although less than a year had elapsed. *Willys Overland Motors, Inc.*, 15 N. L. R. B. 864; Fifth Annual Report, p. 55.

Departure from usual practice of refusing to entertain a petition within 1 year after certification of representatives by Board, indicated when plant was expected greatly to expand its working staff within a comparatively short time. *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 412. See also: *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 404. *South Portland Shipbuilding Corp.*, 39 N. L. R. B. 485. *Atlas Powder Co.*, 41 N. L. R. B. 127.

In the interest of stability of collective bargaining relations, certification if a representative by a Regional Director

following a consent election will not be disturbed despite repudiation of such representative by a "dissident faction" when less than a year has elapsed since such certification, and the certified representative continues in existence. *Monarch Aluminum Mfg. Co.*, 41 N. L. R. B. 1.

Previous consent card checks conducted by the Regional Director 8 months prior to present proceeding resulting in the designation of a representative, subsequent bargaining negotiations based thereon, and existing contract, *held* not to constitute a bar to a determination of representatives, because of the rapid and continuing increase in the number of employees and the terminable nature of the contracts. *Atlas Powder Co.*, 41 N. L. R. B. 127.

[*See* §§ 25.1 and 34 (as to effect of existing exclusive contracts which are of reasonable duration and the effect of changes of representative status of contracting organization during term of contract).]

43 c. Elections, cross checks, or other procedures not resulting in the selection of a statutory representative.

A question concerning representation has not been resolved by reason of the results of a consent election conducted under the supervision of a Regional Director of the Board where a labor organization found to be employer-dominated was given a place on the ballot. *S. Blechman & Sons, Inc.*, 4 N. L. R. B. 15, 22. See also: *Heller Bros. Co.*, 7 N. L. R. B. 646, 657 (employer conducted election in which company-dominated labor organization given place on ballot).

A question concerning representation has not been resolved where one labor organization proposing an industrial unit began to bargain with the employer on that basis following a consent election held after the petition had been filed, and ballots cast for another labor organization which claimed that certain employees constituted a separate craft unit, had been segregated pending determination of the propriety of its claim by the Board. *Armour & Co.*, 5 N. L. R. B. 535, 537, 538.

There is no merit to a contention by one of two labor organizations involved in a representation proceeding, that a comparison of membership cards with the employer's pay roll made by the Regional Director after the filing of the petition and prior to the hearing operated as a certification and that no election is necessary, since the check was purely informal and was undertaken merely as a conven-

ience to the parties, and the predication of eligibility to vote upon a pay roll of a more recent date than that suggested by the two labor organizations involved will more accurately reflect the desires of the employees. *Rex Mfg. Co., Inc.*, 7 N. L. R. B. 95, 100.

The Board is not precluded by a consent election from determining the bargaining representatives of employees where the employer interfered with, restrained, and coerced the employees in connection with the election. *United Carbon Co., Inc.*, 7 N. L. R. B. 598, 614.

Wilson H. Lee Co., 19 N. L. R. B. 750. (An election conducted by a Regional Director, *held* not a bar when more than a year had elapsed and when the company engaged in interference, restraint, and coercion with respect to the election.)

A question concerning representation of employees has not been resolved by a consent election held upon the agreement of all parties under the supervision of the Regional Director where the agreement for such election contained a provision prohibiting formal electioneering on the day of the election but failed to establish machinery for settling protests based on alleged violations of that provision; nor is it the function of the Board to pass upon the merits of a protest filed by one of the participating labor organizations, alleging a violation of the provision in question. *Minneapolis-Moline Power Implement Co.*, 7 N. L. R. B. 840, 842, 843.

An election conducted by direction of the Board less than 6 months prior to the date a petition for investigation and certification of representatives was filed and which did not result in a certification of representatives, does not constitute a bar to the proceedings for the purpose of determining representatives for a unit composed of all the employees where only one group of the employees had been permitted to participate in the election. *Pacific Greyhound Lines*, 9 N. L. R. B. 557, 569.

Marlin-Rockwell Corp., 5 N. L. R. B. 206, 210, 211. (A question concerning representation has not been resolved by a consent election conducted under the direction of a representative of the Board where a large number of employees who would otherwise have done so failed to vote on account of delay in the opening of the polls and the employees who were eligible to vote at the consent election

differed somewhat from the employees in the unit found to be appropriate.)

Consent election held 4 months before filing of petition in which the present petitioner failed to secure a majority, *held* not to constitute a bar to a present determination of representatives where no representative was chosen in the prior election and in view of the fact that a majority of the company's employees have since indicated a desire for representation by the petitioner. *New York Central Iron Works,* 37 N. L. R. B. 894. See also: *Detroit Nut Co.,* 39 N. L. R. B. 739.

Chrysler Corp., 37 N. L. R. B. 877. (Election conducted by Board 5 months prior to the filing of the petition, *held* no bar to a present determination of representatives where the election did not result in the selection of any bargaining representative and where the petitioner since that time had obtained additional designations constituting a majority in the proposed unit.) See also: *Armour & Co.,* 32 N. L. R. B. 422. *Jones & Laughlin Steel Corp.,* 34 N. L. R. B. 95. *Lehigh Portland Cement Co.,* 38 N. L. R. B. 308.

Consent election conducted less than a year from the filing of the petition *held* not to bar the determination of representatives notwithstanding a restrictive provision in the agreement, allegedly sanctioned by the Regional Director (parties agreed to be bound by the results of the election at least for 1 year), since such provision must be denied effect inasmuch as it is *contra* to the policy of the Act which is to encourage the practice and procedure of collective bargaining, and although the Board's policy is against disturbing agreements in which its agents have participated or to which they have lent their approval, such policy does not extend to a situation in which enforcement of the agreement would defeat the rights guaranteed in the Act. *Automatic Products Co.,* 40 N. L. R. B. 941. See also: *Southport Petroleum Co. of Delaware,* 39 N. L. R. B. 257 (for restrictive provision in consent election in which no Board agent participated).

[*See* §§ 111–130 (as to protests, exceptions, and objections to elections).]

45 2. *By other governmental agencies or disinterested third parties.* [*See* JURISDICTION §§ 7, 15 (as to the effect of state labor relations laws and proceedings thereunder or deter-

minations by other governmental agencies on Board's jurisdiction).]

Prior election held by Wisconsin Employment Relations Board in which union received less than a majority, *held* not to foreclose investigation where the election had been conducted by the Wisconsin Board under a mistaken assumption that prior proceedings pending before the National Board were closed, and where neither the Wisconsin Board nor the company object to the present investigation. *Rock River Woolen Mills*, 18 N. L. R. B. 828.

Prior certification of rival representative by State Labor Conciliator, *held* no bar to present proceeding, where no election was held by the Conciliator, the company did not receive formal notice of hearing, and where the prior certification was not specifically urged as a bar. *Waterman-Waterbury Co.*, 38 N. L. R. B. 330.

Prior election conducted by a Conciliator of Department of Labor, which did not result in the selection of a bargaining agency, *held* no bar to a determination of representatives on petition filed 4 months from date of election, where petitioner submitted recent authorizations of a substantial number of employees in the appropriate unit. *Cities Service Oil Co.*, 42 N. L. R. B. 45.

6 3. *Employer-sponsored elections.*

The results of an election conducted by an employer are to be disregarded, even in the absence of exceptions to the balloting, for experience has shown that the presence of supervisory employees at the polls, the holding of the election on the employer's property, the possiblity of hidden identification marks on the ballot, taken together with prior manifestations of preference for a particular labor organization preclude the casting of a ballot which registers the free and independent choice of the employee. *Heller Bros. Co. of Newcomerstown*, 7 N. L. R. B. 646, 657. See also:

Stimson Lumber Co., 2 N. L. R. B. 568, 570.
Northrop Corp., 3 N. L. R. B. 228, 234.
J. Wiss & Sons Co., 12 N. L. R. B. 601, 615.
Crystal Springs Finishing Co., 12 N. L. R. B. 1291, 1296.

0 4. *Other determinations.*

An informal election conducted by the bargaining committee of a labor organization just prior to the time a rival labor organization filed a petition for an investigation and cer-

tification of representatives does not constitute a bar to the proceedings where the two organizations involved were separated by only one vote, and it was not shown that the election was within the unit found to be appropriate. *Diamond Iron Works*, 6 N. L. R. B. 94, 97.

II. RESOLVING THE QUESTION CONCERNING REPRESENTATION.

A. WHEN ELECTION NECESSARY.

1 An election by secret ballot will best effectuate the policies of the Act in determining a question concerning representation, notwithstanding the fact that one of the labor organizations introduced in evidence membership cards and petitions signed by a majority of the employees, where conflicting claims exist as to which of two labor organizations, each designated by a substantial number of employees, is entitled to represent all of the employees in an appropriate unit, and the employer and one of the labor organizations request that the question be resolved by means of an election, for under such circumstances, the bargaining relations which result will be more satisfactory from the beginning if the doubt and disagreement of the parties regarding the wishes of the employees is, as far as possible, eliminated. *Cudahy Packing Co.*, 13 N. L. R. B. 526, 531, 532. Cf. *Vanadium Corp. of America*, 13 N. L. R. B. 836, 839.

Where the sole labor organization involved in proceedings concerning an investigation and certification of representatives has offered evidence in support of its claim that a majority of the employees have designated it as their collective bargaining agent and requests certification on the proof offered, but the employer contests the organization's claims and requests an election, such an election is to be held, for although in the past representatives have been certified without an election upon proof of majority submitted at the hearing, nevertheless experience indicates that under the circumstances of the case any negotiations entered into pursuant to a determination of representatives by the Board will be more satisfactory if all disagreements between the parties regarding the wishes of the employees have been, as far as possible, eliminated. *Armour & Co.*, 13 N. L. R. B. 567, 572. Cf. *Vanadium Corp. of America*, 13 N. L. R. B. 836, 839.

Bohn Aluminum & Brass Corp., 41 N. L. R. B. 1012. (Notwithstanding stipulation of parties at hearing that union might be certified without an election, election directed where neither Regional Director nor Trial Examiner checked union's claim to representation.)

B. WHEN ELECTION UNNECESSARY.

A labor organization has adduced sufficient proof of majority to be certified on the basis of the record and without the necessity of holding an election where it introduced in evidence membership cards signed by a majority of the employees in an appropriate unit, the signatures were established as authentic, the cards themselves were available for inspection by all parties during the hearing, and the employer did not question either the proof offered or the claim of the organization that it represented a majority. *Vanadium Corp. of America*, 13 N. L. R. B. 836, 839. Cf. *Cudahy Packing Co.*, 13 N. L. R. B. 526, 531. *Armour & Co.*, 13 N. L. R. B. 567, 572.

Santa Fe Trail Transportation Co., 2 N. L. R. B. 767, 770. (Majority admitted by stipulation between employer and sole labor organization.)

Ohio Foundry Co., 3 N. L. R. B. 701, 705. (Adequate proof of majority predicated upon stipulation between all the labor organizations involved, and not objected to by employer, that one of the labor organizations had 100 percent membership among employees in appropriate unit.)

Hat Corp. of America, 3 N. L. R. B. 931, 935. (Adequate proof of majority based on stipulation entered into between counsel for all the parties.)

P. Lorillard Co., 21 N. L. R. B. 1076. (When a clear majority of employees within appropriate unit had testified at hearing concerning their choice of bargaining representatives the union was certified on basis of testimony.)

Philadelphia Inquirer Co., 31 N. L. R. B. 26. (Although separate elections were ordered among several groups of employees to determine whether or not they desired inclusion in the general unit an election was unnecessary among remaining employees whose inclusion in the unit was not disputed and who, according to a stipulation, had designated as representative the only organization claiming to represent them.)

Standard Forgings Corp., 31 N. L. R. B. 61. (Where a Globe election was directed for one craft in the company's plant and thereafter the industrial union, pursuant to

permission granted by the Direction of Election, withdrew from the ballot, the Board certified the craft union upon the basis of a stipulation between the company and the craft union which recited that the craft union represented all the employees of that craft.)

Merchants & Miners Transportation Co., 37 N. L. R. B. 1165. (All employees in the appropriate unit had designated the petitioner as their representative.)

Overmyer, 41 N. L. R. B. 979. (Pursuant to stipulation entered into following Direction of Election wherein parties agreed that all employees in the unit were members of the union and further stipulated that Board might certify on the record, election unnecessary.)

C. DETERMINING ELIGIBILITY TO VOTE. [*See* §§ 127–127.9 (as to eligibility when raised as an objection to an election report).]

§ 53 1. *In general.*

The Board has adopted no fixed rule relative to the date to be used for the determination of the eligibility of employees to vote in an election, but has considered the circumstances existing in each case and endeavored, so far as possible, to extend the privilege of voting to all persons with sufficient employee status to fall within the appropriate unit and have an interest in the selection of a bargaining representative. *Fourth Annual Report*, p. 76.

2. *Selection of pay-roll date.*

§ 53.1 a. Usual practice.

Employees on the pay roll for the period immediately preceding date of Direction of Election are eligible to vote. *Chase Brass & Copper Co., Inc.*, 4 N. L. R. B. 47, 51, 52.

b. As affected by various circumstances.

§ 53.2 (1) Closed-shop contract.

Eligibility to vote determined as of the date, during the pendency of the representation proceeding, on which a closed-shop contract expired and as of which such contract was renewed. *Ansley Radio Corp.*, 28 N. L. R. B. 785. *Insuline Corp. of America, Inc.*, 28 N. L. R. B. 809. See also: *Radio Wire Television, Inc.*, 30 N. L. R. B. 930. *Cudahy Packing Co.*, 38 N. L. R. B. 1009. *Philip Carey Mfg. Co.*, 39 N. L. R. B. 769.

Weinfeld, 35 N. L. R. B. 257. (Eligibility determined by pay roll immediately preceding the termination date of a closed-shop contract.)

Eligibility determined on the basis of the pay roll immediately preceding the execution of a contract where it was possible that the contract might influence new employees to join the contracting union. *General Dry Batteries, Inc.*, 29 N. L. R. B. 1017. See also:

Armbruster, 30 N. L. R. B. 457.
Engelhorn & Sons, 33 N. L. R. B. 1139.
Erasmus, Atlass, Inc., 35 N. L. R. B. 447.
Cordiano Can Co., Inc., 38 N. L. R. B. 905.
Nelson Co., Inc., 39 N. L. R. B. 1168.
New Jersey Broadcasting Corp., 41 N. L. R. B. 122.

Textileather Corp., 35 N. L. R. B. 7. (Eligibility directed to be determined by a pay roll preceding execution of supplemental agreement providing for a closed shop.)

Juilliard & Co., Inc., 39 N. L. R. B. 933. (Eligibility determined by pay roll preceding execution of closed-shop contract although contracting union asserted it would not request enforcement of closed-shop provision when no evidence was introduced that company would refrain from enforcing provision in question.)

Wolfsheim & Sachs, Inc., 42 N. L. R. B. 232. (Eligibility determined as of day when strike began, when closed-shop contract entered into with striking organization subsequent to settlement of strike and during pendency of proceeding became effective as of the day plant reopened.)

When the contract entered into subsequent to the filing of the petition contained a provision for preferential hiring and the work at the plant was interrupted by strikes of competing unions at the time of filing the petition and thereafter, the Board determined eligibility by the pay-roll period immediately preceding the work interruption. *Cluett, Peabody & Co., Inc.*, 31 N. L. R. B. 505.

(2) Desires of parties.

While it is ordinarily advisable to use a current pay roll to determine eligibility to vote in an election designed to settle a representation dispute, where the dispute relates to an earlier period and the disputants have agreed to its determination as of that time, *held* that settlement of the dispute can best be achieved by acting in accordance with the desires of the parties. *Garod Radio Corp.*, 29 N. L. R. B. 184; *Fada Radio & Electric Co., Inc.*, 29 N. L. R. B. 191; *United Scientific Laboratories, Inc.*, 29 N. L. R. B. 198.

Southern Indiana Gas & Electric Co., 28 N. L. R. B. 960. (Board approved pay roll agreed to by parties when such pay roll was reasonably current and its use will facilitate determination of questions of eligibility which might arise at the election.)

Asheville Cotton Mills, 30 N. L. R. B. 43. (Although parties agreed to an earlier pay roll, current pay roll directed to be used where no reason appeared for not adopting a more current eligibility date.)

Spach Wagon Works, Inc., 31 N. L. R. B. 149. (In view of lapse of time since pay roll agreed to by parties, the Board in accordance with its usual practice directed eligibility to be determined by a current pay roll.)

Standard Magazines, Inc., 31 N. L. R. B. 285. (Pay roll requested by the union directed to be used since it is sufficiently recent to be practical in determining eligibility.)

Alabama Drydock & Shipbuilding Co., 39 N. L. R. B. 954. (Eligibility determined in a manner which parties agreed is a proper test to apply to determine eligibility in view of unusual employment conditions at plant involved.)

3.4 (3) Seasonal nature of enterprise.

Employees on pay roll as of date of hearing requested by union for the reason that such date was at the height of the shipping season of the companies engaged in the transportation of freight by steamships on the Great Lakes, to govern eligibility. *American Steamship Co.*, 27 N. L. R. B. 584.

Saginaw Dock & Terminal Co., 23 N. L. R. B. 630. (Pay roll as of date when company's ships were last in operation during prior navigation season used to determine eligibility inasmuch as full fleet was then in operation with normal personnel and in view of customary reemployment of unlicensed seamen.)

Ohio Match Co., 28 N. L. R. B. 433. (Where owing to the seasonal nature of logging operations no employees are employed during the winter, the Board in accordance with the agreement of the parties directed the election to be held the following season during a period of normal operations and provided that employees on pay roll during said period be eligible to vote.)

Meadow Valley Lumber Co., 32 N. L. R. B. 115. (In seasonal enterprise eligibility to vote ordered to be determined on basis of employees on pay roll immediately preceding

election to be held when company resumes normal operations.) See also: *Big Lakes Box Co.*, 31 N. L. R. B. 271.

Lindsay Cooperative Citrus Assn., 33 N. L. R. B. 549; *Kroells Bros., Ltd.*, 33 N. L. R. B. 553. (Where company engaged in packing oranges packs fruit during two seasons and the parties stated they desired the election to be held during the first season, the Board gave effect to the desires of the parties and directed that the election be held at the peak of the first season, the exact date to be determined by the Regional Director, and that eligibility be determined by the pay roll for the period immediately preceding the date of the election.)

Woodbridge Vineyard Assn., 37 N. L. R. B. 454. (Eligibility directed to be determined by pay roll on agreed date since names of most seasonal employees would not appear on current pay roll.)

Bruce Church Co., 38 N. L. R. B. 1401. (Last full pay roll prior to shut-down until spring season used to determine eligibility where company's operations were seasonal.)

Hueneme Wharf & Warehouse Co., 39 N. L. R. B. 636. (Pay roll at peak of season of company engaged in seasonal work directed to determine eligibility.) See also *Rock Hill Body Co.*, 32 N. L. R. B. 986. *Columbia River Packers Assn., Inc.*, 40 N. L. R. B. 246.

[See §§ 57–57.9 (as to the eligibility of employees who have been laid off) §§ 62–62.5 (as to the eligibility of temporary and seasonal employees) and § 66 (as to the determination of eligibility in the maritime industry).]

3.5 (4) Curtailment or expansion of operations.

Pay-roll date preceding Direction of Election used, notwithstanding that one of the unions involved urged use of pay roll for period since about 9 months earlier on the ground that since that time the number of employees had more than doubled, where the business of the employer had been steadily increasing and employees hired during such period were employed on a permanent basis. *Steel Storage File Co.*, 27 N. L. R. B. 210. See also:

Celluloid Corp., 25 N. L. R. B. 711.
Bunte Bros., 30 N. L. R. B. 132.
Hewitt Rubber Corp., 31 N. L. R. B. 982.
Lehon Co., 34 N. L. R. B. 313.

Pay-roll period prior to date company suspended normal operations because of raw materials rationing order *used*

to determine eligibility. *Ladoga Canning Co.*, 41 N. L. R. B. 51. See also: *Borden Mills, Inc.*, 31 N. L. R. B. 767.

A request by the petitioner that eligibility should be determined by the pay-roll period for the week before the company started moving its plant *granted*, notwithstanding the company's contention that the number of employees transferred would depend on their willingness to make the change, and that the total number of workers would be less than in the old location. *Food Machinery Corp.*, 36 N. L. R. B. 491.

[*See* §§ 57–57.9 (as to the eligibility of employees who have been laid off) and §§ 62–64 (as to the eligibility of temporary, seasonal, part-time, intermittent, and casual employees).]

3.9 (5) Strike.

Pay roll preceding date of strike to determine eligibility where strike was still in progress and record did not disclose that any new employees had been hired. *Armour & Co.*, 36 N. L. R. B. 306. See also: *Kelly Co.*, 34 N. L. R. B. 325. *Frankel Bros. & Co., Inc.*, 42 N. L. R. B. 781.

[*See* § 56 (as to the eligibility of striking employees and employees hired to replace striking employees).]

4 (6) Where employer is alleged to have engaged or has engaged in unfair labor practices.

Where the date for holding an election is postponed until the effects of an employer's unfair labor practices have dissipated sufficiently to permit a free choice of representatives, the pay-roll date to be used in ascertaining the eligibility of employees to vote will be determined at the time the election is directed. *West Kentucky Coal Co.*, 10 N. L. R. B. 88, 131. *Eagle & Phenix Mills*, 11 N. L. R. B. 361, 371. See also: *Standard Oil Co.*, 25 N. L. R. B. 1190. *Wilson & Co., Inc.*, 26 N. L. R. B. 1353. *Illinois Electric Porcelain Co.*, 31 N. L. R. B. 101.

Pay-roll date preceding Direction of Election used, notwithstanding that intervenor urged use of pay roll preceding period within which employer allegedly engaged in unfair labor practices where at the time of the filing of the petition, the complaint proceeding charging the employer with the above-mentioned unfair labor practices was settled pursuant to a stipulation entered into by the employer, the intervenor, and a representative of the Board. *Steel*

Storage File Co., 27 N. L. R. B. 210. See also: *Dravo Corp.*, 39 N. L. R. B. 846.

Although petitioner requested eligibility to be determined by a pay roll as of the date it requested recognition—on which date it alleged the company committed unfair labor practices—the Board directed a current pay roll to be used where there was no proof of these assertions and the union indicated that it was not going to file charges. *Craddock Furniture Co.*, 31 N. L. R. B. 187.

[*See* § 59 (as to the eligibility of employees alleged or found to have been discriminatorily discharged or laid off).]

4.9 (7) Other circumstances.

Ford Motor Co., 30 N. L. R. B. 985. (Eligibility to vote determined by pay roll for entire month preceding Direction of Election when it appeared that the company kept no pay-roll list and that employees although paid every 2 weeks were not paid on the same day but some were paid every day.)

French & Hecht Co., Inc., 31 N. L. R. B. 49. (Pay roll preceding date company withdrew its assent to a consent election to determine eligibility.)

(8) Run-off and repeat elections. (*See* §§ 96, 102.)

3. *Eligibility of employees who have ceased work.* [*See* DEFINITIONS §§ 2–10 (as to employee status).]

5 a. In general.

6 b. Striking employees and employees hired to replace striking employees.

Employees whose work had ceased as a result of strike, not caused by unfair labor practices, lost their employee status after such strike was no longer deemed a current labor dispute and were not thereafter eligible to participate in employee elections. *Standard Lime & Stone Co.*, 17 N. L. R. B. 147, 153.

Upon request by petitioning union unopposed by the company or the other labor organization involved, persons hired to fill the places of striking employees, *held* not eligible to vote. *Bebry Bedding Corp.*, 27 N. L. R. B. 335.

Where the company, petitioner, and an opposing organization entered into an agreement for a consent election, and it was further agreed that eligibility to vote should be determined on the basis of a specified pay roll, and where the opposing organization and the company subsequently withdrew from the agreement whereupon a strike was

called by the petitioning labor organization, Board directed that the pay-roll date which parties agreed upon to settle the question concerning representation be used to determine eligibility; accordingly persons hired since the strike began, *held* ineligible to vote. *Eastern Box Co.*, 30 N. L. R. B. 673.

L-U-C-E Manufacturing Co., 40 N. L. R. B. 384. (When the company and the contracting union had agreed subsequently to the filing of petition in settlement of a strike to preserve the *status quo* for the determination of the question of representation, eligibility of employees was determined by the pay-roll period immediately preceding the filing of the petition; striking employees and new employees hired at such time, *held* eligible to vote.

Persons hired during strike and retained as permanent employees after strike was settled, and reinstated strikers, *held* eligible to vote in election. *Moulton Ladder Mfg. Co.*, 31 N. L. R. B. 665. See also: *National Mineral Co.*, 21 N. L. R. B. 3. *New England Collapsible Tube Co.*, 37 N. L. R. B. 568. Cf. *Greene, Tweed & Co.*, 29 N. L. R. B. 1166.

Persons hired after the commencement of a non-unfair labor practice strike to replace striking employees, *held* eligible to participate in an election among the employees in the appropriate unit. *Rudolph Wurlitzer Co.*, 32 N. L. R. B. 163. Cf. *A Sartorius & Co., Inc.*, 10 N. L. R. B. 493.

Notwithstanding company's contention that striking employees should not vote since, as seasonal employees, they would have been laid off even if there were no strike, the Board, *held* that such employees are entitled to participate in the selection of the bargaining agent inasmuch as they retain their status as employees whether they are considered as employees who ceased work in connection with a current labor dispute or as employees laid off by virtue of the seasonal nature of their employment. *Lilly Dache, Inc.*, 33 N. L. R. B. 121.

Where company had agreed in settlement of strike that all strikers would be returned to their employment when work for which they were suited was available, striking employees who had not returned to work (except those who had been offered and had refused reinstatement), *held* eligible to participate in election, since they had a reasonable expectancy of reinstatement and were in a class with employees temporarily laid off. *Duncan Electric Mfg.*

Co., 40 N. L. R. B. 64. See also: *All Steel Welded Truck Corp.*, 37 N. L. R. B. 521. *Nelson Co., Inc.*, 39 N. L. R. B. 1168.

Paul Finkelstein Sons, Inc., 13 N. L. R. B. 727. (Employees first hired when other employees were on strike, *held* eligible to vote, over objection of only union involved, where a list of employees stipulated as eligible to vote included other employees also first hired during strike.)

Tennessee Copper Co., 25 N. L. R. B. 218. (Persons hired during strike in the positions regularly held by striking employees, *held* eligible to vote where, pursuant to a strike settlement agreement, strikers agreed to preferential status for reemployment.)

Thorrez & Maes Mfg. Co., 39 N. L. R. B. 693. (Striking employees and employees hired during strike although not presently employed, who retain their places on a seniority list set up pursuant to a settlement agreement, considered as temporarily laid-off employees and, *held* eligible to vote.)

c. Employees who have been non-discriminatorily laid off. [*See* §§ 62–64 (as to the eligibility of temporary, seasonal, part-time, intermittent, and casual employees).]

(1) In general.

Employees in the appropriate unit who have been temporarily laid off and not discharged retain their employee status and are eligible to vote in an election directed by the Board. *Danahy Packing Co., Inc.*, ? N. L. R. B. 354, 358.

(2) Factors considered.

(a) Seniority status.

Where the number of employees at work in the company's plant fluctuated and employees were laid off and recalled to work on the basis of seniority, *held* all regular employees eligible to vote in the election, whether or not at work in plant at time of election, who were employed in the plant during year preceding the date of Direction of Election and who at that date held seniority, as delimited by the company's practice. *Teleradio Engineering Corp.*, 26 N. L. R. B. 853. See also: *Item Co., Ltd.*, 31 N. L. R. B. 278.

Diamond Iron Works, 6 N. L. R. B. 94, 98. (Employees not at work at time of decision but who had acquired seniority status entitling them to preference as to rehiring, *held* eligible to vote.)

International Shoe Co., 14 N. L. R. B. 1140. (Employees who had been laid off for less than 6 months, whose group

insurance and seniority rights had been continued by company for 6 months after their lay-off, *held* entitled to vote in election for bargaining representative.)

Rock River Woolen Mills, 18 N. L. R. B. 828. (Employees who were laid off due to the installation of new machinery, *held* ineligible to vote although some of these employees were on the company's seniority list and would have been recalled if work became available, when their chances of reemployment were "quite remote.") See also: *Archer-Daniels Midland Co.*, 27 N. L. R. B. 1310.

Consumers Power Co., 25 N. L. R. B. 280. (Laid-off employees who had seniority rights under the terms of contracts between the company and the two unions, *held* eligible to vote although there was little likelihood of expansion of company's personnel since such employees who might wish to claim reinstatement in case of normal turnover had an interest in the selection of collective bargaining agents through whom such claims might be made.)

Standard Oil Co., 40 N. L. R. B. 1233. (Employees who were laid off in the spring, but who maintained their seniority and were to be recalled in the fall, *held* eligible to vote.)

7.2 (b) Preferential list.

Employees laid off but placed upon a list referred to by the employer when work is available, *held* eligible to vote. *Fedders Mfg. Co., Inc.*, 7 N. L. R. B. 817, 823, 824; *Marlin-Rockwell Corp.*, 8 N. L. R. B. 670.

DeVilbiss Co., 18 N. L. R. B. 187. (Employees who previously worked for the employer and were on a "recall list," although likely to be laid off in a short time, *held* eligible to vote.)

Bridges, 29 N. L. R. B. 1151. (Employees whose names appeared on a preferential rehiring list agreed to by the company and one of the unions involved and who had not since the list was made refused or failed to accept an offer of reinstatement made pursuant thereto, *held* eligible to vote.) See also: *Union Parts Mfg. Co., Inc.*, 41 N. L. R. B. 1173.

International Shoe Co., 36 N. L. R. B. 1173. (Laid-off employees who were on a preferential hiring list, *held* eligible to vote when they were placed on such a list for 1 year from the time of their lay-off.)

7.3 (c) Practice or policy.

Company, when laying off employees because of a slack period of business or for reasons other than extreme incompetence, made no notation in its records of whether such employees would be recalled, *held* in view of company's policy of restoring seniority rights and other privileges to employees recalled within 60 days, that employees laid off for a period not exceeding 60 days before issuance of Direction of Election be eligible to vote. *Hummer Mfg. Co.*, 26 N. L. R. B. 27.

Standard Oil Co. of New Jersey, 23 N. L. R. B. 860. (Seamen laid off as result of the passage of the Neutrality Act, *held* eligible to vote when company was "conscientiously" seeking to rehire all of these employees.)

Paraffine Companies, Inc., 25 N. L. R. B. 752. (Where employer closed a whole department but stated its desire to reopen, with same personnel, after question concerning representation was settled, employees in department on day before it was closed, *held* to constitute list of those eligible to vote in election.)

Massillon Aluminum Co., 27 N. L. R. B. 165. (Laid-off employees, *held* not eligible to vote, when there was no evidence showing whether or not employees were laid off in accordance with any principle of seniority, when there was no showing with respect to the company's past practice in rehiring laid-off employees, and when it appeared that laid-off employees had no claim to their former positions.)

Swift & Co., 27 N. L. R. B. 903. (Employees with less than 2 years' seniority and laid off less than 9 months, *held* eligible to vote, where it was the company's policy to rehire these man before hiring new employees.)

Covington Weaving Co., 31 N. L. R. B. 1145. (Laid-off employees who had not been rehired by the company and who had not previously been unavailable or refiused reemployment, *held* to be employees temporarily laid off and eligible to vote in the election in view of the company's rehiring policy already carried out and its admitted intention to reemploy, if possible, those not already placed.)

Sunbeam Electric Mfg. Co., 34 N. L. R. B. 831. (Laid-off employees, *held* eligible to vote despite company's contention that they had no claim to future employment and were no longer employees where the record showed that

although they did not have seniority status under the company's rules, they were taken back before new employees were hired when conditions permitted.)

Northern Indiana Brass Co., 36 N. L. R. B. 581. (Employees "separated" because of lack of essential materials, *held* eligible to vote, notwithstanding company's contention that they were discharged rather than laid off, where the company, although maintaining no preferential hiring list, gave preference to persons previously employed.)

Hay Co., 40 N. L. R. B. 1022. (Where boat was laid up but might be returned to service, in which case company would rehire all of the crew available, *held* employees of the boat not permanently employed elsewhere eligible to vote, and considered as employees temporarily laid off.)

57.4 (d) Contemplated increase or resumptions of operations.

Employees laid off because of decline in business but who would be likely to return should business increase, *held* eligible to vote. *Metropolitan Engineering Co.*, 8 N. L. R. B. 670, 674, 675.

Armour & Co., 4 N. L. R. B. 951. (Employees laid off as result of demolition of plant, *held* not eligible to vote where possibility of their reemployment was dependent upon construction of new plant which would take about 15 months.)

Rock River Woolen Mills, 18 N. L. R. B. 828. (Employees who were laid off due to the installation of new machinery *held* ineligible to vote although some of these employees were on the company's seniority list and would have been recalled if work became available, when their chances of reemployment were "quite remote.")

Armbruster, 30 N. L. R. B. 457. (Employees on pay roll prior to the execution of a closed-shop contract which was entered into after the institution of proceedings and persons who although not on that pay roll were on a pay roll which reflected employment just prior to the extensive lay-offs occasioned by the completion of the company's first defense contract, *held* eligible to vote, since most of these persons laid off had been recalled for work on a second defense contract.)

Johnston Glass Co., Inc., 30 N. L. R. B. 629. (Employees laid off, *held* eligible to vote when company contemplated an increase in business which would necessitate the recall of all employees laid off.)

Fuld & Hatch Knitting Co., 30 N. L. R. B. 1133. (Employees who had been laid off, having a reasonable expectancy of being rehired in the future when the operations of the company increased, *held* to fall within the categories of employees temporarily laid off and eligible to vote.)

Roebling's Sons Co., 31 N. L. R. B. 160. (Employees laid off when company discontinued the manufacture of certain goods, *held* ineligible to vote when company did not contemplate a resumption of such manufacturing.)

Chrysler Corp., 37 N. L. R. B. 877. (Employees laid off because of curtailment due to the defense program, *held* only temporarily laid off and eligible to vote where company anticipated that work of Government orders would make it possible to rehire them.)

7.5 (e) Availability for employment.

Employees on pay roll for specified 4-month period, *held* eligible to vote where business was done on single-job contract basis with consequent fluctuation in number of employees, and employees included were considered by employer as currently available for work. *Alaska Drydock & Shipbuilding Co.*, 5 N. L. R. B. 149, 156.

Laid-off employee who secured another, but inferior position, *held* eligible to vote when he expressed preference for a job with the company. *American Steel Scraper Co.*, 21 N. L. R. B. 218.

City Auto Stamping Co., 3 N. L. R. B. 306. (Laid-off employees who appeared on seniority list, *held* eligible to vote even though they may have been working elsewhere at time of election.) See also: *Paragon Rubber Co.*, 6 N. L. R. B. 23, 27.

Wadsworth Watch Case Co., 21 N. L. R. B. 476. (Laid-off employees who obtained employment elsewhere and refused company's offer of reemployment, held ineligible to vote.)

Sullivan Machinery Co., 31 N. L. R. B. 749. (Individuals who during a strike secured temporary employment elsewhere pending their return to work for the company and in signing "tool release slips," to secure their tools from the plant, were informed that such slips were not termination slips and were considered by company to be employees as much as any of the strikers, *held* employees within the meaning of the Act and eligible to vote.)

Mueller Brass Co., 39 N. L. R. B. 167. (Laid-off employees not accepting permanent employment elsewhere, *held* eligible to vote.)

Laid-off employees, *held* ineligible to vote although the company kept a list of competent persons laid off with an intent to secure their services at the beginning of the following season, when few such employees were in fact available from year to year for reemployment. *Home Mfg. Co.*, 26 N. L. R. B. 916.

7.9 (f) Other factors.

Walton Lumber Co., 20 N. L. R. B. 573. (Employees assigned as watchmen for another company, which had assumed part of the premises of the company for the purposes of securing a loan, *held* eligible to vote since the employees were expected to return to the company's pay roll upon the termination of the security arrangement.)

Frank Bros. Mfg. Co., Inc., 40 N. L. R. B. 1143. (Laid-off employees having a reasonable expectation of reinstatement in view of an arbitration award, *held* eligible to vote.)

8 d. Employees who have quit or have been discharged for cause.

Employees who have quit or have been discharged for cause since the date determinative of eligibility are not entitled to participate in an election directed by the Board. *Ohio Foundry Co.*, 3 N. L. R. B. 701, 709. See also:

Johns Manville Products Corp., 2 N. L. R. B. 1048, 1053.
Zellerbach Paper Co., 4 N. L. R. B. 348, 356.
Combustion Engineering Co., Inc., 5 N. L. R. B. 344, 356, 357.
Lidz Bros., Inc., 5 N. L. R. B. 757, 761.
Southport Petroleum Co., 8 N. L. R. B. 792, 806.
Pulaski Veneer Corp., 10 N. L. R. B. 136, 157.
Everite Pump & Mfg. Co., 22 N. L. R. B. 1133.
Abinante & Nola Packing Co., 26 N. L. R. B. 1288.
Phelps Dodge Copper Products Corp., 27 N. L. R. B. 729.

Since in 9 (c) proceedings Board cannot determine whether or not employees have been discriminated against, employees whose employment was terminated pursuant to closed-shop contract, *held* ineligible to vote in the event they did not meet the general requirement set forth for eligibility. *Belmont Radio Corp.*, 27 N. L. R. B. 341, 349.

American National Co., 27 N. L. R. B. 22, 26. (Persons discharged pursuant to a valid closed-shop contract, *held* no

longer employees and not entitled to participate in the election.)

Weinfeld, 35 N. L. R. B. 257. (Eligibility of employee discharged pursuant to valid closed-shop contract dependent upon whether he was on the pay roll immediately preceding the termination date of the contract, where such pay roll was adopted to determine eligibility.) See also: *Lloyd & Hollister, Inc.*, 33 N. L. R. B. 982. (Where in the absence of charges having been filed employees who claimed to have been discriminatorily discharged were not permitted to vote.) *White Horse Pike Bus Co., Inc.*, 34 N. L. R. B. 178.

[*See* § 59 (as to eligibility to vote when charges are pending before Board).]

Employees who voluntarily quit because of decline in work expected to follow upon restrictions on the manufacture of automobiles, *held* eligible to vote when company considered them subject to recall in the same manner as employees laid off. *City Machine & Tool Co.*, 36 N. L. R. B. 1257.

9 e. Employees alleged or found to have been discriminatorily discharged or laid off.

Employees who have been found by the Board to have been discriminatorily discharged and whom the employer is required to reinstate are eligible to vote in an election. *Lenox Shoe Co., Inc.*, 4 N. L. R. B. 372, 389. See also:

Pulaski Veneer Corp., 10 N. L. R. B. 136, 157.

Trawler Maris Stella, Inc., 12 N. L. R. B. 415, 428.

Federated Fishing Boats of New England & New York, Inc., 15 N. L. R. B. 1080, 1091.

Mine "B" Coal Co., 29 N. L. R. B. 405.

Phelps Dodge Refining Corp., 41 N. L. R. B. 1016.

Employees alleged to have been discriminatorily discharged in charges filed with Board are entitled to vote but their ballots are impounded and not tabulated unless the results of the election make it necessary to do so, in which case further action will await the outcome of the unfair labor practice charges. *Irving Shoe Co.*, 26 N. L. R. B. 468. See also:

Fleischer Studios, Inc., 3 N. L. R. B. 207, 212.

Clyde Mallory Lines, 5 N. L. R. B. 503, 506.

Trawler Maris Stella, Inc., 12 N. L. R. B. 415, 428.

Ford Motor Co., 30 N. L. R. B. 985.

Rudolph Wurlitzer Co., 32 N. L. R. B. 163.
National Tea Co., 35 N. L. R. B. 340.
Snow Co., 40 N. L. R. B. 400.
Western Foundry Co., 41 N. L. R. B. 594.

[*See* § 122 (as to the counting of ballots cast by employees hired to replace employees alleged to have been discriminated against).]

[QUERY: Effect of regular and substantially equivalent employment prior or subsequent to Direction of Election on the eligibility to vote of persons who have ceased work as a result of an unfair labor practice. *See:* REMEDIAL ORDERS § 121 (as to effect of regular and substantially equivalent employment on reinstatement).]

61 f. Employees temporarily absent because of illness, injury, vacation, military leave or other cause. [*See* DEFINITIONS § 7 (as to the status of employees who have ceased work because of illness or injury).]

Employees on sick or other leave during period determinative of eligibility but still considered as employees by the company and on its pay roll, *held* eligible to vote in election directed by the Board. *R. C. A. Mfg. Co., Inc.*, 2 N. L. R. B. 159, 165. See also: *Johns Manville Products Corp.*, 2 N. L. R. B. 1048, 1053.

Great Lakes Engineering Works, 3 N. L. R. B. 825, 832. (An employee who had been injured prior to the date determining eligibility of voters and therefore was not on the pay roll for that date, but who was drawing compensation and who had been assured reemployment upon his recovery, *held* eligible to vote in an election directed by the Board. See also: *American Cyanamid & Chemical Corp.*, 11 N. L. R. B. 803. *Armour & Co.*, 36 N. L. R. B. 306.

Pennsylvania Shipping Co., 10 N. L. R. B. 1383. (Persons permanently employed but on vacation, *held* entitled to vote in an election directed by the Board, but persons temporarily employed for the purpose of relieving permanent employees, *held* not eligible to participate in the election.) See also: *Tide Water Associated Oil Co.*, 38 N. L. R. B. 582.

Wilson & Co., 14 N. L. R. B. 283. (Employees who had not worked for periods of 4 to 12 months because of injury or illness but were still carried on company's pay roll, *held* eligible to vote when there was no showing that they would not be able to resume the same type of work they

last performed prior to their illness or injury. See also: *Southern Chemical Cotton Co.*, 3 N. L. R. B. 869, 876, 877.

American Potash & Chemical Corp., 28 N. L. R. B. 236. (Employees whose names appeared on the suspense list, an inactive pay roll maintained by the company of employees ill or on vacation and who will be reemployed if they return to work within 6 months, *held* eligible to vote.)

Farr Spinning & Operating Co., Inc., 29 N. L. R. B. 726. (Permanent employees on leave of absence, *held* eligible to vote.)

Western Union Telegraph Co., 30 N. L. R. B. 1181. (Employees of a company engaged in telegraph operations who are listed on company's pay roll as furloughed, absent because of illness or "detailed to patron," *held* eligible to vote since they are considered by the company as employees and have a reasonably expectancy of returning to work.)

Western Union Telegraph Co., 32 N. L. R. B. 210. (Employee whose name was listed upon pay roll, but whose return to work was doubtful because of the nature of injury suffered, *held* ineligible to vote.)

Ralston Purina Co., 41 N. L. R. B. 579. (Employee absent from work 178 days because of illness, who was carried on pay roll and would be recalled in event of recovery, *held* eligible to vote.)

Employees who had voluntarily applied for and were inducted into military training under the provision of the Selective Training and Service Act of 1940, *held* eligible to vote since that statute makes no distinction in its provisions relating to restoration of employment between those persons who have volunteered for induction and those who have been inducted by operation of the selective service machinery. *Marcalus Mfg. Co., Inc.*, 33 N. L. R. B. 107.

Volney Felt Mills, Inc., 36 N. L. R. B. 839. (Employee who had been in the company's employ but 6 days prior to induction in the military service, *held* ineligible to vote.)

Wilson & Co., 37 N. L. R. B. 944. (Where prior practice of "mail balloting" by employees in active military service or training was discontinued and eligibility provisions in Direction of Election was construed to mean that only those employees who appear in person at the polls to cast a ballot are eligible to vote.)

Rudolph Wurlitzer Co., 41 N. L. R. B. 1074. (Parties' stipulation that a certain pay roll be used to determine eligibility denied effect insofar as it deprived persons in the armed forces of the right to vote.)

[*See* § 62 (as to eligibility of persons hired temporarily to replace permanent employees on leave of absence).]

61.8 g. Others.

h. As a result of discharge for violence or breach of contract. (*See* DEFINITIONS § 8.)

4. *Eligibility of employees as affected by the nature and the tenure of their employment.* [*See* DEFINITIONS §§ 13–20 (as to the effect of intermittent employment).]

61.9 a. In general.

b. Temporary and seasonal employees. [*See* §§ 57–57.9 (as to the eligibility of employees non-discriminatorily laid off).]

62 (1) As affected by the duration of employment. [*See* DEFINITIONS §§ 13–20 (as to the effect of intermittent employment upon employee status).]

Employees constituting two reserve boards maintained by an employer for temporary service who, while regularly employed as truck drivers, act as temporary motor bus drivers during emergency periods, *held* eligible to vote together with other employees in an appropriate unit comprising motor bus drivers. *Reading Transportation Co.*, 10 N. L. R. B. 15, 22, 23.

Union Premier Food Stores, Inc., 11 N. L. R. B. 270, 280. (Part-time workers in retail food stores who have been employed during part of the 3 of the 4 weeks immediately preceding the date of the Direction of Election, *held* eligible to vote when considered as regular part-time employees, and not as temporary employees.)

DeVilbiss Co., 18 N. L. R. B. 187. (Employees, never previously employed, hired after a strike in order to reduce a backlog of unfilled orders accumulated during the strike, and likely to be laid off in a short time, *held* ineligible to vote.)

Oberdorfer, 34 N. L. R. B. 1234. (An employee who began his employment in June and expected to terminate it at the end of August and return to school, *held* not to have sufficient expectation of continued employment to be eligible to vote in an election ordered within 30 days after August 21.) See also: *Oregon Plywood Co.*, 33 N. L. R. B. 1234.

Schiff Co., 36 N. L. R. B. 575. (Temporary employees in a

warehouse of a retail shoe company, *held* eligible to vote when the business of the company was highly seasonal and the average temporary employee worked from 4 to 6 months at a time.)

Kingan & Co., Inc., 37 N. L. R. B. 716. (Employees who worked approximately one-third as much as regular employees, but who performed an indispensable part of the company's operations, and who had been included in past collective bargaining, *held* eligible to vote.)

Western Union Telegraph Co., 38 N. L. R. B. 483. (Employees who worked during seasonal peak periods, and were advised that their work was to be temporary, *held* ineligible to vote when they had little, if any, expectancy of regular employment.)

Persons permanently employed but on vacation, *held* entitled to vote in an election directed by the Board, but persons temporarily employed for the purpose of relieving permanent employees, *held* ineligible to participate in the election. *Pennsylvania Shipping Co.*, 10 N. L. R. B. 1380, 1383. See also: *Texas Co.*, 4 N. L. R. B. 182, 186. *Rousseau & Sons, Inc.*, 25 N. L. R. B. 1116. *Armour & Co.*, N. L. R. B. 154.

Continental Mills, 30 N. L. R. B. 82. (New employees hired to replace "regular" employees who were ill, *held* eligible to vote, where the company although not considering them regular employees expected gradually to absorb them due to the expanding volume of its business.)

Youngstown Steel Door Co., 31 N. L. R. B. 555. (New employees hired to replace laid-off employees who failed to return to work after being given an opportunity to do so, *held* eligible to vote where they were hired on a permanent basis and, except as to vacations and certain similar privileges, have all the rights and privileges of old employees.)

International Harvester Co., 32 N. L. R. B. 16, 25, 33, 40, 49, 58. (Persons hired to replace employees who had been inducted into military or naval training or service of the United States, *held* eligible to vote since they worked under the same conditions as all other employees of the company and had prospects of continued employment.)

Employees of manufacturer of canned goods hired during the tomato season, *held* eligible to vote in an election directed by Board, notwithstanding that the sole union involved contended they were temporary and seasonal employees,

when due to increased production most of these employees will be employed throughout the year. *Campbell Soup Co.*, 27 N. L. R. B. 396.

Atlas Tool & Mfg. Co., 27 N. L. R. B. 182. (Persons employed by the company for an aggregate period of less than 1 month, and not working at time of hearing, considered temporary employees rather than employees temporarily laid off, and hence, *held* not eligible to vote, when no prediction would be made as to whether the temporary increase in the company's business which gave rise to their employment would again occur.)

Continental Mills, 30 N. L. R. B. 82. (New employees hired to replace "regular" employees who were ill, *held* eligible to vote, where the company although not considering them regular employees expected gradually to absorb them due to the expanding volume of its business.)

62.5 (2) As affected by the recurrency of employment.

Seasonal employees who seldom return to work from season to season are not eligible to vote in an election conducted by the Board. *New York Handkerchief Co.*, 5 N. L. R. B. 703, 705.

Midwest Mfg. Co., 26 N. L. R. B. 172. (Employees, of a company whose business was seasonal, who had not worked for a period of 30 days, *held* ineligible to vote when they ordinarily did not return to work the following year.)

Cardinale Macaroni Mfg. Co., Inc., 29 N. L. R. B. 1145. (Extra employees without substantial prospect of reemployment by the company, *held* ineligible to vote.)

Columbus & Southern Ohio Electric Co., 36 N. L. R. B. 386. (Extra common laborers hired during summer season by an electric, street transportation and steam utility company, for the removal of streetcar tracks, *held* ineligible to vote, when the company made no effort to rehire such persons.)

Western Union Telegraph Co., 38 N. L. R. B. 766. (Temporary employees whom the Company did not expect to reemploy after the holiday season, *held* not eligible to vote.)

Seasonal employees on the pay roll during any 4 weeks in 3 peak months, *held* eligible to vote in an election directed by the Board where approximately 80 percent of their number were reemployed from season to season. *National Distillers Products Co.*, 5 N. L. R. B. 862, 865.

Standard Oil Co. of New Jersey, 8 N. L. R. B. 936, 941. (Employees who worked for a total of 24 days in a 3-month period, *held* eligible to vote when the business was seasonal

in nature, the period chosen was one of normal business operations, and the employees involved relied on this work as their main source of livelihood.)

Syracuse Ornamental Co., 20 N. L. R. B. 877. (Seasonal employees who were likely to be reemployed in the next season, *held* to have such an interest in working conditions as to entitle them to vote.)

California Cotton Oil Corp., 26 N. L. R. B. 715. (Seasonal employees, *held* eligible to vote although company sent out no notices to employees upon each seasonal resumption of operations when the company intended to and did rehire its old employees if they were satisfactory in the past season and a substantial number of employees returned season after season.)

Teleradio Engineering Corp., 26 N. L. R. B. 853. (Where the number of employees at work in the company's plant fluctuated and employees were laid off and recalled on the basis of seniority, all regular employees, *held* eligible to vote in the election, whether or not at work in the plant at the time of the election provided they were employed in the plant during the year preceding the date of the Direction of Election and at that date had seniority, as delimited by the company's practice.)

Houston Pipe Line Co., 28 N. L. R. B. 301. (Temporary employees hired by the company from time to time to assist on specified jobs, upon completion of which their respective engagements were terminated, who had passed company's physical examination, and had worked a specified period, constituted a fairly well-defined group with reasonable prospects of being reemployed by the company for temporary work, and hence, *held* eligible to vote in the election.)

Medford Corp., 30 N. L. R. B. 256. (Employees who were rehired from year to year if available and were laid off when work was completed unless there were vacancies which they could fill, in which case they were given preference to available positions, *held* eligible to vote.)

Kalamazoo Creamery Co., 34 N. L. R. B. 101; *Armour & Co.*, 33 N. L. R. B. 154. (Temporary employees composed mostly of students on vacation hired by the company for the seasonal increase in business during the summer months, *held* eligible to vote since the company endeavored to employ the same individuals each year; but a student who had been previously employed during his vacations

and was to return after his graduation as a permanent employee outside scope of the unit, *held* ineligible to vote.)

§ 63 c. Part-time employees. [*See* DEFINITIONS § 14 (as to the status of part-time employees).]

Part-time workers in retail food stores who had been employed during part of 3 of the 4 weeks immediately preceding the date of the Direction of Election and were considered as regular part-time employees, and not as temporary employees, *held* eligible to vote in an election directed by the Board. *Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270, 280.

KMOX Broadcasting Station, 10 N. L. R. B. 479, 485–487. (Employees of a radio broadcasting station in unit composed of actors, singers, and announcers, who performed before the microphone in any regular program during a 3-month period, *held* eligible to vote in an election directed by the Board.)

Covington Weaving Co., 31 N. L. R. B. 1145. (Part-time employee-students, *held* eligible to vote when they engaged in a substantial amount of production work and in the normal course of events would become full-time production workers.)

Montgomery Ward & Co., Inc., 38 N. L. R. B. 297. (Part-time employees who had been employed in the appropriate units for 60 days prior to the stipulated pay-roll date, *held* eligible to vote.)

§ 64 d. Intermittent and casual employees. [*See* DEFINITIONS § 20 (as to the status of intermittent and casual employees).]

Screen writers who frequently shifted their employment among motion picture companies and who were not currently employed and who had no definite expectancy of regularly recurring employment with the company for whom they previously performed services, *held* not eligible to participate in an election directed by the Board; but writers who were currently employed at the time of the Direction of Election, *held* eligible to vote as employees of the company for whom they were then performing services. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 699.

Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 699. (Screen writers of motion picture companies whose services had temporarily been assigned to a company other than the one which employed them, *held* eligible to vote as employees of the company which contracted for their services.)

Employees of fish canneries who frequently shift from one company to another, *held* eligible to vote in an election directed by the Board, provided that they were employed by one or more of the companies involved on 6 days during the period of the preceding season, each worker voting with the employees of the company which employed him on the greatest number of days during that period, or in the event that he had been employed the same number of days by two or more companies, with the employees of the company which last employed him, any such period of time to be computed by days, the number of hours of employment per day not being considered. *F. E. Booth & Co.*, 10 N. L. R. B. 1491, 1499. See also: *Western Fisheries*, 17 N. L. R. B. 364. *Columbia River Packers Assn.*, 40 N. L. R. B. 246.

Monon Stone Co., 10 N. L. R. B. 64, 73, 74. (Employees who constantly shift from one employer to another, *held* eligible to participate in elections, if they had worked for at least 60 days during the prior year for any or all of the several employers involved, the votes to be cast as employees of the employer for whom they had worked the greatest period of time.)

American Fruit Growers, Inc., 10 N. L. R. B. 136, 332. (Packing-shed workers who frequently shifted their employment from one to another of the employers involved, *held* eligible to vote in an election directed by the Board as employees of the particular employer for whom they were working at the time of the Direction of Election.)

Donovan Lumber Co., 10 N. L. R. B. 634, 650. (Employees who had worked for one company until its operations ceased and thereafter worked for another company, also involved in the proceedings, until its operations ceased, *held* eligible to vote only as employees of the company which first ceased operations.)

Stockholders Publishing Co., Inc., 28 N. L. R. B. 1006. (In elections directed among newsboys of four companies, *held* that newsboys employed by two or more of the companies within appropriate units shall be entitled to vote in two or more elections as the case may be.)

Western Union Telegraph Co., 30 N. L. R. B. 679, 1181. ("Other employment employee" i. e. a person regularly employed by an employer other than the company but who occasionally performed work for the company, *held* ineligible to vote.)

Casual employees of a company which followed no seniority or other rule in hiring or rehiring these employees and employed whomever happened to be available when the need arose, *held* eligible to vote. *Bisbee Linseed Co.*, 34 N. L. R. B. 272. See also: *Hoberman*, 30 N. L. R. B. 1241.

Hawk & Buck Co., Inc., 12 N. L. R. B. 230, 234. ("Irregular" employees who in all probability, would be employed in future, *held* eligible to vote.)

Lihue Plantation Co., Ltd., 19 N. L. R. B. 139. (Casual employees who were employed by the company for 200 hours in 9 months, *held* eligible to vote.)

Western Union Telegraph Co., 30 N. L. R. B. 679. ("Unassigned" employees, i. e., employees who were assigned to work on a day-to-day basis and who worked a substantial number of hours and had an expectation of becoming regular employees, *held* eligible to vote in accordance with the desires of the parties.)

Western Union Telegraph Co., 35 N. L. R. B. 797. (Messengers irregularly employed, *held* ineligible to vote.)

Columbian Carbon Co., 38 N. L. R. B. 1060. ("Extra" construction employees who had worked at least 50 percent of the time during the 3-month period preceding the date of the Direction of Elections, *held* eligible to vote.)

Hay Co., 40 N. L. R. B. 1022. (Pursuant to agreement of parties, each relief man who had worked on two boats, taking the place of an employee on regular monthly leave, *held* eligible to vote on boat on which he was working at the time of election. Relief man not working at time of election, *held* eligible to vote on boat on which he last worked.)

[*See* § 66 (as to maritime employees intermittently and casually employed).]

65 e. Probationary employees.

Newly hired employees who had not prior to the eligibility date passed the 2-week trial period, which they were subject to before they were considered regular employees, *held* ineligible to vote. *Ansley Radio Corp.*, 28 N. L. R. B. 785.

Electric Auto-Lite Co., 40 N. L. R. B. 1345. (Probationary employees with less than 90 days' employment, *held* ineligible to vote in view of the different character of work to be performed in the future, and the fact that under an existing contract with the labor organization the company's decision as to their suitability for employment was final.)

Probationary employees, *held* eligible to vote notwithstanding company's request that they should not be permitted to

vote when there was no substantial difference between the status of probationary employees and that of regular employees. *Nineteen Hundred Corp.*, 32 N. L. R. B. 327. See also:

Rappaport, 36 N. L. R. B. 484.
Western Union Telegraph Co., 36 N. L. R. B. 1209.
Western Union Telegraph Co., 37 N. L. R. B. 166.
New York Central Iron Works, 37 N. L. R. B. 894.
Western Union Telegraph Co., 38 N. L. R. B. 492.

Electric Auto-Lite Co., 40 N. L. R. B. 1345. (Probationary employees who had been in the employ of the company for more than 90 days prior to their lay-off, *held* eligible to vote since they had established seniority rights in the plant.)

f. Maritime employees. [*See* DEFINITIONS § 20.1 (as to the status of maritime employees).]

In elections to be held among the licensed engineers of a steamship company, persons eligible to vote were those engineers who had been employed as engineers on any vessel operated by the company at any time between the date of the filing of the petition and the date of the Direction of Election and who also made the round trip voyage on the respective vessels of the company at the conclusion of which the election was to be held. *International Mercantile Marine Co.*, 1 N. L. R. B. 384, 391, 392. See also:

Black Diamond Steamship Corp., 2 N. L. R. B. 241, 246.
Swayne & Hoyt, Ltd., 2 N. L. R. B. 282, 287.
Grace Line, Inc., 2 N. L. R. B. 369, 376.
Ocean Steamship Co., 2 N. L. R. B. 588, 592.
N. Y. & Cuba Mail Steamship Co., 2 N. L. R. B. 595, 600, 605.
American-West African Line, Inc., 4 N. L. R. B. 1086, 1092.

Lykes Bros. Steamship Co., Inc., 2 N. L. R. B. 102, 109. (Licensed deck officers and licensed engineers of 58 vessels, persons eligible to vote were those deck officers and licensed engineers who had been employed as such on vessels at any time between the date on which the first petition for investigation and certification of representatives was filed, and the date of the Direction of Election and who had also signed articles to make the round-trip voyage on vessels which were posted with notices of elections by the Regional Director.)

International Mercantile Marine Co., 2 N. L. R. B. 971, 975. (Unlicensed personnel employed by a steamship company and its two affiliated companies in their deck, engine, and stewards' departments, persons eligible to vote were those who had been employed on a ship when it was posted with the notice of election and who were still employed in such capacity at the time balloting took place.) *International Freighting Corp.*, 3 N. L. R. B. 692, 697.

Tide Water Associated Oil Co., 38 N. L. R. B. 582. (Persons who were employed at the time vessel was posted with the notice of election and who were employed at the time balloting, *held* eligible to vote pursuant to agreement by parties.)

In elections involving various classes of dock employees, all regular employees on the pay roll immediately preceding the date of Direction of Election whether working or not on that particular day, and all casual employees working for the employer on that particular day, even though they may have previously cast ballots as employees of any of the other employers involved, *held* eligible to vote. *Luckenbach Steamship Co., Inc.*, 2 N. L. R. B. 181, 190.

In elections to be held among licensed personnel of a steamship company, persons eligible to vote were: (1) those employed in a licensed capacity at any time between the date of the filing of the original petition for investigation and certification and the date of the Direction of the Election, who in such capacity either made the trip at the conclusion of which balloting occurred or were employed on the day of balloting on one of the tugs; (2) those, employed in a licensed capacity at any time during the year and one-half immediately preceding the date of the Direction of Election, who were employed on the day of balloting, either on a vessel in service or on one out of service, in an unlicensed position only, as a result of the shifting about of the licensed personnel which accompanied the taking of vessels out of service. *Merchants and Miners Transportation Co.*, 2 N. L. R. B. 747, 752, 753.

In elections to be held among the unlicensed personnel of numerous steamship companies employed on ocean-going vessels operating out of Atlantic and Gulf ports (excluding tugs and barges operated in the harbors only), persons eligible to vote were such employees as retained employment within the scope of the unit at the time of balloting and were employed on the vessels involved when those

vessels were posted with notice of the election provided, however, that if any person was transferred from one vessel to another vessel of the same employer during the time the election among the employees of that employer was being held, such person was to be entitled to vote but once. *American France Line*, 3 N. L. R. B. 64, 72.

Marine employees who were not assigned to a ship but were available on the "relieving staff," "stand-by," "leave of absence," "vacation," or "night-relieving staff," *held* eligible to vote in an election directed by the Board. *Standard Oil Co. of New Jersey*, 8 N. L. R. B. 936, 941. See also: *Socony-Vacuum Oil Co., Inc.*, 11 N. L. R. B. 28.

Warehousemen, longshoremen, and similar workers employed by more than one of the companies involved during the period fixed for determining eligibility, *held* eligible to vote in an election directed by the Board, the eligibility of each such employee to be determined by his aggregate employment in all the companies and his vote to be cast with the employees of the company where he has had the greatest amount of employment during the eligibility period. *Mobile Steamship Assn.*, 8 N. L. R. B. 1297, 1319; 9 N. L. R. B. 60, 61, 62.

Grace Line, Inc., 2 N. L. R. B. 369, 375, 376. (Marine engineers who were sometimes interchanged between the companies involved eligible to vote as employees of the company for which they made their last voyage prior to the election.)

g. Contemplated or actual change of duties.

In view of the interchange of employees between the foundry unit found appropriate, and other departments, eligibility to participate in the election afforded to employees who worked in the foundry the greater portion of their time during the 6-month period immediately preceding the date of the Direction of Election. *New Idea, Inc.*, 25 N. L. R. B. 265.

Mason Mfg. Co., 15 N. L. R. B. 295. (Where clerical employees in each of several branch houses constituted appropriate units, certain individuals itinerantly employed at time of hearing allocated for voting purposes to a particular branch house in accordance with company's accounting practice.)

Western Union Telegraph Co., 32 N. L. R. B. 428. ("Detailed" employees who were attached to other offices of the company but were temporarily working among employees in the unit found appropriate, *held* ineligible to vote.)

Two employees transferred to positions within the appropriate unit 2 weeks after the union made its demand for recognition, *held* eligible to vote despite contrary desires of union where no charges of unfair labor practices had been filed and there was no showing that transfers were made for purposes other than efficiency. *American Smelting & Refining Co.*, 33 N. L. R. B. 987. See also: *Commercial Solvents Corp.*, 41 N. L. R. B. 763.

Employee temporarily assigned to other work whom the company intended to restore to his former job in the plant at the end of such assignment, *held* not to fall within the categories of employees excluded from the unit and therefore eligible to vote. *Armour & Co.*, 36 N. L. R. B. 306.

Great Lakes Steel Corp., 15 N. L. R. B. 510. (An employee who had been temporarily transferred to another division of the company, *held* eligible to vote in the election among the employees of his former division.)

Consolidated Paper Co., 21 N. L. R. B. 116. (Employees laid off and temporarily employed in other plants of the company pending recall to plant concerned in present proceeding, *held* eligible to vote in such plant election.)

Chrysler Corp., 36 N. L. R. B. 157. (Clerical employees carried on factory pay roll but temporarily assigned to the office and who were represented by the union as part of the factory unit, *held* ineligible to vote in an election directed among office employees unless they had between the date of the hearing and the date of the Direction of Election been permanently transferred from the factory pay roll to the office pay roll.

Houde Engineering Corp., 36 N. L. R. B. 587. (Employees "transferred" to another subsidiary of a parent company, *held* not eligible to vote where they were engaged solely on defense contracts and it might be impossible to reemploy them should their present employment cease.)

Where it appeared from the record that an employee's supervisory functions would terminate prior to an election and that he would then be transferred to production and maintenance work within the scope of the unit, *held* that his inclusion or exclusion from the unit was to be determined by his employment status shown by the pay roll used to determine eligibility. *Union Parts Mfg. Co., Inc.*, 41 N. L. R. B. 1173.

69 h. Others.

i. Employees hired to replace striking employees. (*See* § 56.)

5. *Other circumstances affecting eligibility to vote.*

Employees whoseinclusion within the appropriate unit remained in doubt, *held* eligible to vote, but their ballots were to be segregated pending determination by the Board of the issue of inclusion. *International Mercantile Marine Co.*, 2 N. L. R. B. 971, 974, 975. See also: *Danahy Packing Co.*, 3 N. L. R. B. 354. *International Freighting Corp.*, 3 N. L. R. B. 692, 697. *Stewart-Warner Corp.*, 43 N. L. R. B. 1233.

Individuals who were found to be employees and not independent contractors and who were properly included in an appropriate unit, *held* eligible to vote notwithstanding that their names were not on the company's pay roll directed to be used for the purpose of determining eligibility to vote. *Tribune Publishing Co.*, 35 N. L. R. B. 690. See also: *Phelps-Dodge Corp.*, 41 N. L. R. B. 140.

D. PERIOD WITHIN WHICH ELECTION TO BE HELD.

1. *Usual practice.*

The Board adheres to the practice of providing in the normal case that the election shall be conducted as promptly as is practicable within the discretion of the Regional Director but not later than 30 days from the date of the Direction of Election. *Luckenbach Steamship Co., Inc.*, 2 N. L. R. B. 181, 190, 191; *Commercial Solvents Corp.*, 41 N. L. R. B. 642, 645.

2. *As affected by various circumstances.*

a. Where employer has been charged with, or has been found to have engaged in unfair labor practices.

[*See* § 113 and PRACTICE AND PROCEDURE § 327 (as to practice when unfair labor practices are committed subsequent to Direction of Election but prior to or during the conduct of the election).]

(1) In general.

The filing of a charge alleging that an employer has engaged in unfair labor practices within the meaning of Section 8 (2) constitutes cause for the postponement of an election until the Board has determined the issues raised by the charge. *American France Line*, 3 N. L. R. B. 64, 75, 76; *Western Union Telegraph Co.*, 32 N. L. R. B. 217.

Unfair labor practices of an employer furnish sufficient reason to defer the date for holding an election until such time as the Board is satisfied that there has been sufficient compliance with its order to dissipate the effects of the unfair labor practices and to permit an election uninfluenced by

the conduct of the employer. *Todd Shipyards Corp.*, 5 N. L. R. B. 20, 25. See also:

Lenox Shoe Co., 4 N. L. R. B. 372, 389.
Williams Mfg. Co., 6 N. L. R. B. 135, 155.
Pressed Steel Car Co., Inc., 8 N. L. R. B. 100, 101.
Hirsch Shirt Corp., 12 N. L. R. B. 553, 564.
California Walnut Growers Assn., 18 N. L. R. B. 493.
American Smelting & Refining Co., 29 N. L. R. B. 360.

Lewittes & Sons, Inc., 40 N. L. R. B. 43. (Where an election was set aside because employer interfered with election, Board provided that it would direct a new election when the Regional Director advised that the time was appropriate.)

.1 (2) Abatement of unfair labor practices.

When charges of unfair labor practices were settled prior to the hearing on the petition, and the time required for the posting of notices would have elapsed on date of issuance of decision, the election was ordered to proceed in accordance with the usual practice. *Gartland-Haswell Foundry Co.*, 26 N. L. R. B. 1270. See also: *Sealy Mattress Co. of Northern California, Inc.*, 31 N. L. R. B. 974.

When a company had engaged in unfair labor practices, no date was set for an election but Board indicated that it would direct an election upon receipt of information from the Regional Director that the circumstances permit a free choice of representatives unaffected by the company's unlawful acts; accordingly an election was directed by Board upon receipt of such information. *American Smelting & Refining Co.*, 29 N. L. R. B. 360, 387 and 40 N. L. R. B. 950.

Condenser Corp. of America, 42 N. L. R. B. 251. (Where an election had been postponed because of employer's unfair labor practices for a period sufficient to permit the employees to consider and determine free from compulsion, restraint and interference which of the labor organizations, if any, they desired as a representative, election directed, under the circumstances upon careful consideration and enforcement of the complaint case.)

At request of petitioning labor organization which contended that it ceased strike activities upon assurance of War Labor Board that an immediate election would be held, Board directed an immediate election which would take place after there would have transpired 30 of the 60 days during which employer was required to post notices pursuant to

stipulation settling unfair labor practices with competing organization despite competing organization's desire that election be postponed until the notices had been posted for the full period provided for by the stipulation. *Marietta Mfg. Co.*, 42 N. L. R. B. 1271.

.2 (3) Waiver.

Request that election be delayed denied where labor organization which made the request had withdrawn, and refused to formally renew, charges of unfair labor practices. *Atalia Mining Co.*, 7 N. L. R. B. 980, 983, 984.

Monterey Sardine Industries, Inc., 26 N. L. R. B. 731. (Election directed in accordance with usual practice when charges were disposed of by stipulation between parties.)

Union Parts Mfg. Co., Inc., 41 N. L. R. B. 1173. (Union's request that election be postponed until wage scale, layoffs, rehirings, and other disputes were settled by an arbitrator pursuant to agreement between the parties which agreement in addition provided for a withdrawal of unfair labor practice charges, *rejected* when the parties stipulated at the prior hearing that the former employees, a subject of the arbitration, should be eligible to vote, provided that they had not refused offers of reemployment.)

Although it is ordinarily the policy of the Board, where an employer has been found to have engaged in unfair labor practices, to postpone an election until sufficient time has elapsed for compliance with the Board's order relative to such activities and for the dissipation of the effects of such unfair labor practices, nevertheless an election may be ordered immediately where all the parties concerned have so requested. *Ward Baking Co.*, 8 N. L. R. B. 558, 570. See also: *Western Union Telegraph Co.*, 23 N. L. R. B. 824.

Borden Mills Inc., 22 N. L. R. B. 81. (Election ordered when request of original charging and petitioning union was made subsequent to original decision, but prior to compliance with Board order.) See also: *California Walnut Growers Assn.*, 20 N. L. R. B. 565.

.3 (4) Nature, scope, and effect of alleged or committed unfair labor practices.

Request of one of the organizations involved that no election be held until such time as pending charges filed by the petitioner alleging that another organization was employer-dominated *denied* inasmuch as the alleged employer-dominated organization, did not claim to represent any

employees in the appropriate unit nor requested its name to appear upon the ballot in the election directed and although served with notice did not appear at the hearing and made no showing of designation or authorization to represent employees in the appropriate unit. *Western Union Telegraph Co.*, 30 N. L. R. B. 1127; 32 N. L. R. B. 210.

Western Union Telegraph Co., 30 N. L. R. B. 1169. (When name of independent labor organization did not appear on ballot because of insufficient membership showing and alleged domination occurred in another division of the company, immediate election was directed.)

American Smelting & Refining Co., 33 N. L. R. B. 987. (Although an election in a prior representation proceeding was postponed with respect to production and maintenance employees of the company because Board found that the company had engaged in certain unfair labor practices, immediate election was directed to be held among the office and clerical employees in absence of union's objection.)

Pacific Gas & Electric Co., 40 N. L. R. B. 591. (Where outstanding charges of unfair labor practices against employer in another division of the company did not substantially affect employees in the division found to constitute an appropriate unit, immediate election was directed.)

The filing of charges was held immaterial in a consideration of a motion to postpone an election, when the Regional Director's refusal to issue a complaint on those charges was sustained by the Board. *Double M Shake & Shingle Co.*, 39 N. L. R. B. 1319. See also: *North Electric Mfg. Co.*, 41 N. L. R. B. 944. *Los Angeles Period Furniture Co.*, 43 N. L. R. B. 327.

72.9 (5) Others.

73 b. Curtailment, expansion, or transference of operations.

Election postponed until such time as may later be determined, where the petitioning labor organization had filed a protest on the ground that it was not named upon the ballot and some of the plants of the employer were closed indefinitely, thus making it impossible to obtain a representative vote. *Showers Bros. Furniture Co.*, 4 N. L. R. B. 585, 591.

When plant was operating with less than a fourth of its anticipated full staff, Board directed an immediate election, since employees then working should not be deprived for several months of their right to bargain

collectively but indicated that since the plant was expected to quadruple the number of employees in a comparatively short time, it would in that event and upon a showing that a question concerning representation exists, entertain a new petition even though a bargaining representative was certified as a result of this proceeding less than 1 year from the filing of this new petition. *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 404; *General Motors Corp.*, 40 N. L. R. B. 825. See also: *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 412. *South Portland Shipbuilding Corp.*, 39 N. L. R. B. 485. *Atlas Powder Co.*, 41 N. L. R. B. 127.

Irwin-Pedersen Arms Co., 45 N. L. R. B., No. 134. (Where only 391 persons were presently employed and company anticipated reaching 50 percent of full complement of 1,500 employees within 6 to 8 weeks, election was postponed until such time within that period when Regional Director reported whether such complement was reached.) Cf. *Lukas-Harold Corp.*, 44 N. L. R. B. 730. (Where question concerning representation was found not to exist and petition was dismissed when an election would be premature in view of limited nature of company's operations and a representative group of employees were not then at work.)

Election which Board deferred until plants resumed normal operations directed to be conducted immediately when it was not predictable when plants would resume normal operations and when parties were desirous of an immediate election. *International Shoe Co.*, 40 N. L. R. B. 1211. See also: *American Can Co.*, 43 N. L. R. B. 838.

Globe Machine & Stamping Co., 3 N. L. R. B. 294, 302. (Elections directed to be held on a specified day where period within which the elections were originally directed to be held had been postponed because of curtailment of employer's operations and subsequently operations reached a level beyond which they probably would not have been increased during the current year.)

c. Seasonal nature of enterprise.

Where the company's business was seasonal, the Board in order to make provision for determining eligibility to participate in the election at a time which would most closely reflect the employment situation at the time of the election, postponed the election until 60 days after the company resumed work. *Willys Overland Motors Inc.*, 15 N. L. R. B. 864.

Ohio Match Co., 28 N. L. R. B. 833. (Where owing to the seasonal nature of logging operations no employees were employed during the winter, the Board in accordance with the agreement of the parties directed the election to be held the following season during a period of normal operations and provided that employees on pay roll during said period be eligible to vote.)

Kesterson Lumber Corp., 30 N. L. R. B. 87. (Possibility of employment of additional men to constitute a second shift within several months, *held* not to constitute grounds for postponement of election, where use of the new shift was dependent upon the volume of fruit crops and where such a shift had not been employed during preceding year.)

Big Lakes Box Co., 31 N. L. R. B. 271. (Where plant operated seasonally and normal production was obtained at the time of the Direction of Election, election was not postponed until full crew would be employed.)

Lindsay Cooperative Citrus Assn., 33 N. L. R. B. 549; *Kroells Bros., Ltd.*, 33 N. L. R. B. 553. (Where company packed fruit during two seasons and the parties stated that they desired the election to be held during the first season, the Board gave effect to the desires of the parties and directed that the election be held at the peak of the first season, the exact date to be determined by the Regional Director, and that eligibility be determined by the pay roll for the period immediately preceding the date of the election.)

Sheffield Farms Co., Inc., 42 N. L. R. B. 1256. (Immediate election directed despite company's contention that it should be postponed because of an impending seasonal shutdown of its operations with a resulting turnover among its personnel upon the resumption of operations, where company's policy of reemploying at least 50 percent of its former employees placed employees laid off in the category of employees temporarily laid off and hence eligible to vote.)

75 d. Other proceedings.

Election postponed until such time as may later be directed where the pendency of a civil action instituted by company against the union prevented a fair election from being conducted. *Perry Truck Lines, Inc.*, 26 N. L. R. B. 423.

Company's request for postponement of election until such time as the Supreme Court of the United States ruled on its petition for writ of certiorari from a decision of the

Circuit Court of Appeals sustaining a Decision and Order of the Board disestablishing an independent union, *held* without merit. *Texas Co.*, 28 N. L. R. B. 590.

e. Where unit found differs from that proposed.

Immediate election directed although unit found appropriate was different from that petitioned for by sole labor organization involved, provided that in the event petitioner notified Board within 5 days of receipt of the Direction of Election that it did not desire an election, petition to be dismissed. *Christian Feigenspan Brewing Co.*, 29 N. L. R. B. 1136. See also:

Hart & Cooley Mfg. Co., 30 N. L. R. B. 119.

May Department Stores Co., 39 N. L. R. B. 471.

Cf. *Quaker Oats Co.*, 24 N. L. R. B. 589; (where Board departed from usual rule and directed that the election be held in not less than 30 days or more than 60 days from date of Direction provided however that it will dismiss petition if within 30 days petitioner does not desire an election).

[*See* § 86 (as to instances of petitioner's withdrawal from ballot when its unit contentions are not upheld and there is an intervenor), and PRACTICE AND PROCEDURE § 325 (as to dismissal of petition upon request of the petitioner when unit found appropriate differs from that petitioned for by the sole labor organization involved).]

f. Peculiar industries. [*See* §§ 92–92.9 (as to the conduct of elections in these industries).]

(1) Maritime.

Maritime elections directed to be held within the discretion of the Regional Director:

International Mercantile Marine Co., 2 N. L. R. B. 971 (foreign and coastwise).

American Steamship Co., 27 N. L. R. B. 584 (Great Lakes).

United States Lines Co., 28 N. L. R. B. 896 (foreign and coastwise).

Tidewater Associated Oil Co., 29 N. L. R. B. 88 (foreign and coastwise).

Farr Spinning & Operating Co., 29 N. L. R. B. 726 (foreign and coastwise).

Ore Steamship Corp., 31 N. L. R. B. 1151 (foreign).

Inter-Island Steam Navigation Co., Ltd., 34 N. L. R. B. 132 (interisland comprising territory of Hawaii).

Maritime elections directed to be held within a specified time:

Luckenbach Steamship Co., Inc., 2 N. L. R. B. 181 (longshore operations—election directed to be held within a period of 4 weeks from date of the Direction).

Williams Dimond & Co., 2 N. L. R. B. 859 (watchman employed by steamship companies—election directed to be held within a period of 4 weeks from date of the Direction).

Higman Towing Co., 32 N. L. R. B. 102 (towboat operations in intercoastal canal—election directed to be held within 30 days from date of the Direction). See also: *Hay Co.*, 40 N. L. R. B. 1022.

Mississippi Valley Barge Line Co., 38 N. L. R. B. 206 (barge operations on the Mississippi River—election directed to be held within 30 days from the date of the Direction).

Coney Island, Inc., 40 N. L. R. B. 760 (excursion boat operations—election directed to be held within 30 days from date of the Direction).

7.9 (2) Others.

Election among employees of a public utility company directed to be held under the direction and supervision of Regional Director who was to determine in his discretion the exact time, places, and the procedure for giving notice of the election and for balloting, since the employees were working in different parts of the State and the record afforded no aid in determining whether the election could be conducted conveniently in a certain specially designated place throughout the area served by the company. *Pacific Gas & Electric Co.*, 3 N. L. R. B. 835, 850. See also:

United Press Assn., 3 N. L. R. B. 344, 352 (news gathering and distributing).

Pacific Greyhound Lines, 4 N. L. R. B. 520, 539 (motor passenger carriers).

Pacific Lumber Inspection Bureau, Inc., 7 N. L. R. B. 529, 534 (lumber inspection association).

Consumers Power Co., 9 N. L. R. B. 742, 751, enforced 308 U. S. 413, reversing 105 F. (2d) 598 (electric utility).

Postal Telegraph-Cable Corp., 9 N. L. R. B. 1060 (Nationwide telegraph system).

Salt River Valley Water Users Assn., 32 N. L. R. B. 460 (land reclamation).

g. Other circumstances.

E. THE BALLOT.

1. *Who may participate in the election.* [*See* §§ 87–90 (as to form of ballot).]

a. In general.

In order to permit employees a free choice of representatives, the Board places on the ballot all bona fide labor organizations having any substantial interest in the proceeding. *Sixth Annual Report*, p. 59.

b. Employer-dominated representatives.

A labor organization claimed to be employer-dominated is entitled to a place on the ballot in the absence of a charge filed and complaint issued under Section 8 (2). *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 642, 643, 647. See also: *Mosinee Paper Mills*, 1 N. L. R. B. 393, 399. *Standard Oil Co. of New Jersey*, 8 N. L. R. B. 936, 941, 942.

Phelps Dodge Corp., 6 N. L. R. B. 624, 630. (A labor organization is not entitled to a place on the ballot, notwithstanding the absence of a charge filed and complaint issued under Section 8 (2), where the articles governing the existence of the organization on their face evidence the complete subjection of the organization to the employer.)

A labor organization which the Board has found to be dominated by the employer is not entitled to a place on the ballot in a proceeding concerning investigation and certification of representatives. *S. Blechman & Sons, Inc.*, 4 N. L. R. B. 15, 24. See also:

H. E. Fletcher Co., 5 N. L. R. B. 729, 739.
Ingram Mfg. Co., 5 N. L. R. B. 908, 927.
Simplex Wire & Cable Co., 6 N. L. R. B. 251, 260.
Marks Bros. Co., 7 N. L. R. B. 156, 168.
Keystone Mfg. Co., 7 N. L. R. B. 172, 178.
Swift & Co., 7 N. L. R. B. 287, 300.
Metropolitan Engineering Co., 8 N. L. R. B. 670, 675.
Consumers Power Co., 9 N. L. R. B. 742, 749, 750 enf'd 308 U. S. 413, rev'g 105 F. (2d) 598.
Kansas City Structural Steel Co., 18 N. L. R. B. 291.
Colorado Fuel & Iron Corp., 29 N. L. R. B. 541.

New Idea, Inc., 25 N. L. R. B. 265. (Organization found dominated excluded from ballot during pending judicial enforcement of Board's order.) See also: *Western Union Telegraph Co.*, 23 N. L. R. B. 824.

Although the Board in a representation proceeding does not determine whether or not a labor organization is company-dominated, it will pursuant to notice served upon the parties receive evidence at the hearing to determine whether or not one of the labor organizations is a successor to an organization previously ordered to be disestablished because of company-domination; and so where the Board found that the organization alleged to be a successor-dominated organization was not so in fact, it was accorded a place on the ballot. *Dow Chemical Co.*, 32 N. L. R. B. 660; *Western Union Telegraph Co.*, 36 N. L. R. B. 812.

Phelps Dodge Refining Corp., 41 N.L. R. B. 1016. (Where although petitioner claimed that a national affiliated organization was a successor to previously found company-dominated organization, but had filed no charge, Board placed that organization on ballot, when the petitioner waived company's non-compliance with Board's order for the purposes of the election.)

Wilson & Co., Inc., 45 N. L. R. B., No. 126. (Where an organization was found to be a continuation of, and successor to, a dominated organization previously ordered dissolved by the Board, and not accorded a place on ballot.)

§ 81.9 c. Organizations in formative stage.

A union at the time of the hearing which was still in its formative stage and presented evidence that it represented only 200 out of unit of 2,400 employees, *held* not to have such a sufficient interest in the proceedings to entitle it to a place on the ballot in the election directed. *American Enka Corp.*, 28 N. L. R. B. 423.

§ 82 d. Organizations which limit or enjoin the exercise of rights guaranteed by the Act.

An organization which did not believe that any organization should be certified as an exclusive bargaining agency but that each organization should represent its own members only, not accorded a place on ballot, for placing the name of such organization upon the ballot would be a nullity. *Southern California Gas Co.*, 10 N. L. R. B. 1123.

An undominated labor organization, accorded place on ballot, although its declared purposes and objectives as set forth in its constitution prohibited all strikes. *Lawson Mfg. Co.*, 19 N. L. R. B. 756.

§ 82.9 e. Dormant or defunct organizations.

An organization which formerly had some members among the employees but subsequently became inactive, *held* not

entitled to a place on the ballot. *General Cigar Co., Inc.*, 6 N. L. R. B. 71, 81. See also: *Ford Motor Co.*, 30 N. L. R. B. 985. *Fischer Lumber Co., Inc.*, 31 N. L. R. B. 828.

Western Union Telegraph Co., 38 N. L. R. B. 483. (Organization which appeared on ballot in original election and secured substantial designation therein excluded from repeat election where it had ceased its activities and was "no longer an organization.")

Saint Paul Union Stockyards Co., 39 N. L. R. B. 262. (A labor organization no longer in existence following Decision and Direction of Election excluded from the ballot upon motion of petitioner.)

When evidence of a substantial but inconclusive nature as to the continued functioning of a labor organization having an existing contract with the company was shown, the Board although finding that the contract did not bar a determination of a question concerning representation, placed that organization on the ballot to afford the employees an opportunity to select it as their collective bargaining representative. *National Battery Co.*, 28 N. L. R. B. 286. See also: *Waterman-Waterbury Co.*, 38 N. L. R. B. 330.

Western Union Telegraph Co., 34 N. L. R. B. 579. (Where a union failed to appear at continued hearing and the record indicated that said union had been dissolved during the continuance, its name was omitted from ballot, but leave was granted to have its name placed upon the ballot upon application, in view of the inconclusive nature of the testimony as to its dissolution.)

Union Stock Yards Co. of Fargo, 40 N. L. R. B. 910 (Union which formerly had been employees' bargaining representative, but which was not served with notice and did not appear at the hearing, excluded from the ballot unless within 5 days it should notify the Regional Director of a desire to participate in the election where it was not clear whether or not it had ceased to function as a labor organization representing the employees of the company.)

Automatic Products Co., 40 N. L. R. B. 941 (Union served with notice of proceedings, but not appearing at hearing, *excluded* from ballot unless within 5 days it should notify the Regional Director of a desire to participate in the election, where the record was not clear as to whether or not it was still functioning as a labor organization representing employees of the company.) See also: *Joyce, Inc.*, 40 N. L. R. B. 509.

3 f. Organizations affiliated with same parent admitting to membership employees in the appropriate unit. [*See* § 88 (as to provisions for joint designation).]

Although two affiliates of the same parent were both seeking to represent employees in a craft group, the Board permitted both of them to appear on the ballot, despite its policy against entertaining jurisdictional disputes, inasmuch as a third union unaffected by this dispute, was seeking a determination of representatives, and since to keep them off the ballot, adherents of the affiliates would be obliged to vote against representation; however, the Board indicated, that in the event either of the affiliates were chosen, the certification would mean that an affiliate of the parent was certified as the exclusive representative in the unit, and not that the affiliate was authorized by the parent to assert jurisdiction over the employees. *Long-Bell Lumber Co.*, 16 N. L. R. B. 892, 899.

Union Premier Food Stores, Inc., 10 N. L. R. B. 370, 11 N. L. R. B. 270 (International placed on ballot when the respective jurisdictions of the locals of one of the unions involved did not include all the areas in which the election was to be held, so that if the international were designated as bargaining representative it could determine through its own procedure what local or locals affiliated with it should effectuate the bargaining.)

Celluloid Corp., 25 N. L. R. B. 711. (Request of intervenor, acceded to by a federal local union also party to the proceedings, both affiliated with the same parent that they be jointly designated on the ballot as the parent because of a jurisdictional dispute between the two organizations concerning certain of the employees in the unit, *granted* over objection of the petitioning industrial union, for by placing the name of parent on the ballot, the jurisdictional dispute could be settled between the competing unions in the event the parent won the election.)

Board excluded original petitioning union from ballot in sealed election among craft employees not previously determined to constitute an appropriate unit and who had been included in the unit found appropriate in the original decision, when original petitioning union by filing motion to amend the petition indicated that it did not desire to oppose the craft union. Further to do so would place the Board in a position of determining a jurisdictional dispute

between unions affiliated with the same parent body. *Leviton Mfg. Co.*, 27 N. L. R. B. 741.

In a Globe election directed to determine whether certain employees should be part of industrial or craft unit, Board assumed that coaffiliate of craft union which was competing with another industrial union for representation of the industrial unit would not desire to contest the claim of the craft to represent the disputed group and accordingly excluded its name from the ballot. *Chapman Valve Mfg. Co.*, 40 N. L. R. B. 800.

[*See* PRACTICE AND PROCEDURE §§ 16–17.4 (as to effect of a jurisdictional dispute on Board's assumption of jurisdiction).]

.9 g. Others.

Individuals who had been designated by employees in an appropriate unit to represent them for collective bargaining purposes, placed on ballot. *Robinson-Ransbottom Pottery Co.*, 27 N. L. R. B. 1093.

2. *Requirement of showing of interest.*

a. In general—quantum and qualitum of designation.

A labor organization was excluded from the ballot because of its failure to show that it had been designated by any employees within the appropriate unit as their bargaining representative. *Seas Shipping Co., Inc.*, 27 N. L. R. B. 460. See also:

Remington Rand Inc., 31 N. L. R. B. 490.
Black & Sons, 32 N. L. R. B. 10.
Industrial Rayon Corp., 33 N. L. R. B. 680.
Double M Shake and Shingle Co., 39 N. L. R. B. 1319.

An intervening union was accorded a place on the ballot, despite objection by petitioning union thereto on ground that it had not shown a substantial interest in the proceedings, inasmuch as an election was to be conducted, and it had made some showing of membership. *Harvill Aircraft Die Casting Corp.*, 28 N. L. R. B. 417. See also:

American Oil Co., 33 N. L. R. B. 323.
E. P. Dutton & Co., 33 N. L. R. B. 761.
Marshall Field & Co., 35 N. L. R. B. 1200.
Edward Valve & Mfg. Co., 37 N. L. R. B. 428.
Remington-Rand Inc., 40 N. L. R. B. 1100.

A labor organization which had submitted membership cards dated 3 or more years before the hearing and which made no showing of current designation or authorization by employees and failed to secure new members, collect dues,

hold meetings, or otherwise function as a bona fide labor organization for a considerable period of time during which it was free to do so, was not accorded a place on the ballot. *Ford Motor Co.*, 30 N. L. R. B. 985.

Donner-Hanna Coke Corp., 31 N. L. R. B. 1139. (No provision made on ballot for intervening organization which had not made a sufficient showing of current designation by employees of the company.)

A labor organization which did not appear at the hearing, accorded place on the ballot with permission to withdraw its name upon request where a report of the Regional Director showed that it represented a substantial number of the employees. *Reliance Regulator Corp.*, 32 N. L. R. B. 157. See also: *Saint Paul Union Stockyards Co.*, 38 N. L. R. B. 1049.

Amalgamated Leather Companies, Inc., 27 N. L. R. B. 1160. (Labor organization not entitled to a place on the ballot, where it did not participate in the proceedings, and there was no evidence tending to show that it had a substantial membership among employees in the unit.)

Kennecott Copper Corp., 40 N. L. R. B. 986. (A labor organization was accorded a place on ballot upon request made to Regional Director when the authorization evidence which it had submitted was sufficient to entitle it to a place upon the ballot although insufficient to warrant its intervention.)

Organization asserting that it had an "organizational interest" in the employees involved, not accorded place on ballot since a general interest is not sufficient to warrant an organization's participation in an election. *Thomasville Chair Co.*, 37 N. L. R. B. 1017.

Western Union Telegraph Co., 32 N. L. R. B. 260. (No provision made on ballot for a labor organization which claimed a "potential membership" among the employees in the unit, where it had not submitted documentary evidence to support its claim.)

Interstate Drop Forge Co., 35 N. L. R. B. 1067. (An organization which made a jurisdictional claim but no representation showing, not accorded place on ballot.)

Thompson Products, Inc., 40 N. L. R. B. 407. (Organization claiming an interest in the proceeding on its "long history of existence" and whose participation in the election was not objected to by the opposing organization, accorded place on ballot notwithstanding objection of company that

it should have been dismissed as a party, because of its failure to show any substantial interest.)

Submission of cards by a labor organization bearing the name of a union which it claimed had relinquished to it all its interests although not conclusive proof that the employees had intended to designate the successor as their representative, *held* to constitute a sufficient showing to entitle that organization a place on the ballot, for the election would resolve any question as to the scope of the designation. *Beatrice Creamery Co.*, 41 N. L. R. B. 1197. See also: *Belmont Products Co.*, 42 N. L. R. B. 485.

b. As affected by various circumstances.

(1) Prior representative status.

A labor organization which did not participate in the proceeding, accorded a place on the ballot inasmuch as it was, until 8 weeks prior to the Decision, recognized in a contract with the company, as the exclusive bargaining representative of the company's employees. *Southern Car & Mfg. Co.* 29 N. L. R. B. 1061. See also:

Kahn & Feldman, Inc., 30 N. L. R. B. 294.
Monark Battery Co., 35 N. L. R. B. 24.
Armstrong Rubber Co., 35 N. L. R. B. 368.
General Motors Corp., 36 N. L. R. B. 439.
National Metal-Art Mfg. Co., Inc., 37 N. L. R. B. 561.
Westinghouse Electric & Mfg. Co., 38 N. L. R. B. 404, 412.

(Organization which made no documentary showing of representation, but which based its claim of interest on contracts with the company covering employees at other plants, not accorded place on the ballot.)

A union which had not appeared at the hearing, but which was found to have a substantial interest in the proceeding by virtue of reference made at the hearing, of the complaint proceedings which it had instituted against the company, accorded place on ballot, with leave to withdraw upon filing request within 5 days. *Hygrade Food Products Corp.*, 37 N. L. R. B. 305.

A union which had been previously certified by the Board, but which had not appeared at the hearing, accorded place on the ballot upon filing request within 5 days. *General Foods Corp.*, 37 N. L. R. B. 481. See also: *Bethlehem Steel Co.*, 40 N. L. R. B. 922.

Two competing unions accorded place on ballot in an election directed among craft employees, notwithstanding objection

by petitioning craft union when they had made some showing of representation in a previous election directed among the craft group and no representative was chosen. *Dain Mfg. Co.*, 38 N. L. R. B. 528.

§ 85.1 (2) Opportunity to present claim.

Where full opportunity is afforded an organization for the timely presentation of *prima facie* proof of representation the Board will reject all offers of proof of representation made after the close of the hearing, since expeditious investigation and certification of representatives is essential to the proper administration of the Act. *American Woolen Co.*, 32 N. L. R. B. 8.

Campbell Transportation Co., 36 N. L. R. B. 1030. (A labor organization which was not served with notice and did not participate in the proceeding but asserted following the hearing that it represented certain employees involved and requested that its name appear on the ballot if the Board should order an election, afforded an opportunity to intervene and a place on the ballot, provided it submitted proof of a substantial interest to Regional Director within 10 days.)

Western Union Telegraph Co., 38 N. L. R. B. 83. (Labor organization not participating in proceeding which notified Regional Director that it claimed a substantial interest and desired to participate in the election, not accorded place on ballot when it was served with notice of the proceeding and was given an opportunity to present evidence of its membership.)

§85.2 (3) Desires of parties.

A labor organization accorded place on ballot even though it refused to submit evidence in support of membership claims when company and competing bona fide union agreed it might appear on ballot. *Leviton Mfg. Co., Inc.*, 27 N. L. R. B. 735.

Thompson Products, Inc., 40 N. L. R. B. 407. (Organization claiming an interest in the proceeding on its "long history of existence" and whose participation in the election was not objected to by the opposing organization, accorded place on ballot notwithstanding objection of company that it should have been dismissed as a party, because of its failure to show any substantial interest.)

§ 85.9 (4) Others.

Fruehauf Trailer Co. of California, 37 N. L. R. B. 757. (Organization which made no showing of representation

at the hearing, accorded place on the ballot jointly with another union with leave to withdraw upon notice within 5 days when it had conducted joint organizational campaign with that union among employees in the unit.)

Automatic Products Co., 40 N. L. R. B. 941. (Union which had retarded its organizational activites on the assumption that the company was bound by a consent election agreement, accorded place on ballot despite petitioner's contention that it should be excluded from ballot because of its small showing of representation.)

3. *Withdrawal or omission from ballot.*

Request of intervening labor organization that the Board withdraw its name from a ballot in an election to determine the representative of majority of employees *granted*. *A. Zerega's Sons, Inc.*, 5 N. L. R. B. 496, 501, 502. See also:

Johns-Manville Products Co., 2 N. L. R. B. 1048, 1054.
General Steel Castings Corp., 3 N. L. R. B. 779, 791.
Mergenthaler Linotype Co., 6 N. L. R. B. 671, 676, 677.
General Electric Co., 29 N. L. R. B. 169.
Remington-Rand, Inc., 40 N. L. R. B. 1105.

Sonneborn Sons, Inc., 31 N. L. R. B. 431. (Petitioner's request to withdraw from the election granted, but request to withdraw petition denied when intervening organization on ballot had not requested a withdrawal.) See also:

Hardy Metal Specialties, Inc., 35 N. L. R. B. 179.
Willys Overland Motors, Inc., 39 N. L. R. B. 408. (Petition dismissed when petitioner notified Board of its desire not to appear on ballot and intervenor did not desire an election.)

Intervening labor organization whose contentions as to the appropriate unit were not upheld, permitted to withdraw its name from the ballot, if it should so desire, by notifying Regional Director within 5 days from date of Direction of Election. *Willys Overland Motors, Inc.*, 9 N. L. R. B. 924, 934; *Texas Co.*, 37 N. L. R. B. 932.

Long-Bell Lumber Co., 29 N. L. R. B. 586. (Crafts affiliated with the same parent organization which urged separate units for employees found to constitute a single unit placed on the ballot as joint representatives affiliated with the parent with option of any of the organizations to withdraw upon request.) See also: *Weyerhaeuser Timber Co.*, 29 N. L. R. B. 571. *A. E. Staley Mfg. Co.*, 31 N. L. R. B. 946. *Hughes Tool Co.*, 33 N. L. R. B. 557.

General Electric Co., 29 N. L. R. B. 1066. (Intervening labor organization whose contentions as to appropriate unit were not upheld and which did not desire to be placed on ballot, excluded from ballot; however, permission granted to have its name placed on ballot if it so notified Regional Director within 10 days from the date of the Direction of Election.) See also: *National Erie Corp.*, 38 N. L. R. B. 638.

Western Union Telegraph Co., 34 N. L. R. B. 579. (Petitioning labor organization whose unit contentions were not upheld permitted to withdraw from ballot when there were intervenors.)

Border City Mfg. Co., 36 N. L. R. B. 678; *Arkwright Corp.*, 36 N. L. R. B. 687. (Notwithstanding the request of craft unions not to appear on the ballot in the event a plant-wide unit was found appropriate, the Board directed that the name of the parent of these "crafts" or locals be placed on the ballot, to be followed by that of the "crafts" in brackets with permission of the parent and/or any of the "crafts" to withdraw upon request, since the history of organization indicated that their parent organization had an interest in the proceeding by reason of the affiliation of the "crafts" or locals.)

A labor organization permitted to withdraw from the ballot if if should so desire by filing request with Board within 10 days from date of Direction of Election, where it had indicated its intention at the close of the hearing of withdrawing from the proceeding if no complaint were issued upon charges it was prepared to file alleging a violation of Section 8 (2), and thereafter filed such charges upon which the Regional Director declined to issue a complaint and was affirmed in his action by the Board. *Cities Service Oil Co.*, 10 N. L. R. B. 954, 957. See also: *Yale & Towne Mfg. Co.*, 27 N. L. R. B. 967.

Paraffine Companies, Inc., 25 N. L. R. B. 752. (Labor organization permitted to withdraw from the ballot if it should so desire by filing request with Board within 5 days from date of Direction of Election, where it indicated at the hearing that it was uncertain whether it desired to be placed on the ballot in the event of an election.) See also: *Estate of Frank Newfield, Inc.*, 34 N. L. R. B. 77. *Ohio Public Service Co.*, 36 N. L. R. B. 1269.

Leviton Mfg. Co., 27 N. L. R. B. 735. (Labor organization which desired to reserve the right to withdraw its name from the ballot prior to the holding of an election, placed

on ballot; Regional Director authorized to make deletion if decision was communicated to him within 24 hours of receipt of Direction of Election.) See also: *Ohio Public Service Co.*, 36 N. L. R. B. 1269; (within 5 days).

Shaw Lumber Co., 28 N. L. R. B. 818. (Intervening union permitted to withdraw name from ballot if it should so desire by filing request with the Board within 10 days from date of Direction of Election where it declined to indicate at the hearing whether or not it desired to be placed on ballot in the event an election was held.) See also:

Transformer Corp. of America, 26 N. L. R. B. 476.
General Electric Co., 29 N. L. R. B. 126.
United Stove Co., 30 N. L. R. B. 305.
Killefer Mfg. Corp., 31 N. L. R. B. 406.
Estate of Frank Newfield Inc., 34 N. L. R. B. 77.

[*See* PRACTICE AND PROCEDURE §§ 151, 152 (as to the withdrawal of the petition), and § 325 (as to dismissal of petition when unit contentions are not upheld).]

4. *Form of ballot.* [*See* §§ 81–83.9 (as to who may participate in the election) and § 115 (as to objections to form of ballot following conduct of election).]

a. In general.

The Board arranges the ballot so that employees will be free to select or to reject accurately representatives for collective bargaining. *Fourth Annual Report*, p. 79.

No provision on ballot will be made to indicate a choice for individual bargaining since it is not the function of the Board to hold elections in order to determine whether employees desire individual rather than collective bargaining with their employer. Both Sections 7 and 9 (a) unmistakably indicate that it is for the purposes of collective bargaining that the Act gives employees the right to designate or select representatives. The secret ballot provided for in Section 9 (c) is merely one of the devices which the Board is authorized to employ in ascertaining such representatives for purposes of collective bargaining. *International Mercantile Marine Co.*, 1 N. L. R. B. 384, 391.

1 b. Provisions for employees not desirous of representation.

Joint motion by both labor organizations involved to amend Direction of Election by striking the words "or by neither" from the ballot, *denied* since the inclusion of such words is necessary in order to made sure that the votes recorded for

a particular representative expresses a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives (expressly overruling *Matter of International Mercantile Marine Co.*, 1 N. L. R. B. 384, 390, 391, to the extent it expresses a contrary view) for neither refraining from voting or the casting of a blank ballot constitutes an unambiguous expression of the desire for no representation, since employees who do not vote are presumed to acquiesce in the choice of the majority who do, while the casting of a blank ballot is regarded as a failure to vote by one qualified to do so. *Interlake Iron Corp.*, 4 N. L. R. B. 55, 59–62. See also:

John Morrell & Co., 4 N. L. R. B. 436, 441.

General Cigar Co., Inc., 6 N. L. R. B. 71, 81.

LeBlond Machine Tool Co., 22 N. L. R. B. 465; (Board's practice in run-off elections of providing place on ballot to vote against either of competing labor organizations abandoned and no provision made to vote for "neither").

8 c. Appearance, form, or substitution of name.

Where one of two labor organizations is undergoing a reorganization which may result in a change in its name, directed that it be designated by its new name, if that be furnished in sufficient time prior to the election, or, if no such name be furnished within that time, the original name of the organization be placed on the ballot with the additional phrase "or its successor," plus the further designation of the parent body with which each of the two organizations is affiliated. *American France Line*, 3 N. L. R. B. 64, 77, 78.

The name of a labor organization may properly be substituted in representation proceedings for the name of its predecessor and may appear on the ballot in lieu of the name of that predecessor. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 700. See also:

International Freighting Corp., 3 N. L. R. B. 692, 699.

Showers Bros., Furniture Co., 4 N. L. R. B. 585, 592, 593.

Alabama Mills, 14 N. L. R. B. 257.

Cherner Motor Co., 19 N. L. R. B. 609.

Post Standard Co., 34 N. L. R. B. 226.

Verson Allsteel Press Co., 41 N. L. R. B. 209.

At request of the "locals," a Council of which such locals were members was placed on ballot instead of the locals,

when they desired to bargain as a single industrial unit and the Board found such unit appropriate. *Blue Diamond Corp., Ltd.*, 18 N. L. R. B. 730.

Elliott Bay Lumber Co., 8 N. L. R. B. 753, 760. (In elections involving rival labor organizations, two of which are affiliated with the same parent organization, and together, admit to membership the employees in the appropriate unit, ballot directed to provide a choice of (1) one labor organization; (2) the two affiliated labor organizations; or (3) neither.) See also:

Weyerhaeuser Timber Co., 29 N. L. R. B. 571.
Long-Bell Lumber Co., 29 N. L. R. B. 586.
Staley Mfg. Co., 31 N. L. R. B. 946.
Shevlin-Hixon Co., 33 N. L. R. B. 368.
Hughes Tool Co., 33 N. L. R. B. 1089.
American Radiator & Standard Corp., 35 N. L. R. B. 172.
Pan American Refining Corp., 35 N. L. R. B. 725.
Sagamore Mfg. Co., 39 N. L. R. B. 909.

General Motors Corp., 25 N. L. R. B. 698. (Inasmuch as the Board denied the units urged by craft unions affiliated with the same parent and found that the units urged by them properly constituted one unit, the Board directed that the parent should appear on the ballot.) See also: *Gibbs Gas Engine Co.*, 42 N. L. R. B. 272.

Parent organization and not affiliate in behalf of whom parent organized and represented employees involved, placed on ballot since it had appeared on ballot in prior consent election and since neither parent nor affiliate expressed its preference, however, provision made for different choice upon request within 5 days. *Portland Forge & Foundry Co.*, 40 N. L. R. B. 21.

Decisions in which the request of participants that their names appear on ballot in a certain form were granted:

Kelsey Hayes Wheel Co., 29 N. L. R. B. 735.
Metropolitan Body Co., 30 N. L. R. B. 463.
Oregon Plywood Co., 35 N. L. R. B. 12.
United Aircraft Products, Inc., 36 N. L. R. B. 1198.
Cincinnati Concrete Pipe Co., 37 N. L. R. B. 360.
General Machinery Corp., 39 N. L. R. B. 779.
Rockwood Alabama Stone Co., 40 N. L. R. B. 790.

d. Other problems.

5. *Run-off and repeat elections.* (*See* §§ 93, 103.)

F. DIRECTIONS AS TO THE CONDUCT OF DIRECTION.

91 1. *In general.* [*See* §§ 114–125 (as to objections to the manner in which the election was conducted).]

Election directed to be held under the direction and supervision of Regional Director as agent of the Board. *Wayne Knitting Mills, Inc.*, 1 N. L. R. B. 53, 55; *Gate City Cotton Mills*, 1 N. L. R. B. 57, 67.

2. *Special provisions.*

92 a. Maritime elections.

In elections held among licensed engineers of a steamship company and its 3 affiliates, *directed* in view of the circumstances, that the vessels have different sailing dates, their personnel is unknown until just prior to the time of sailing, their voyages may last 2 or 3 months, and the employees may be in port but 2 or 3 days, that notice of the election, a sample ballot, and an eligibility list be posted as soon as is convenient on each vessel of the company before it leaves the home port on the first trip, if possible, next following the date of the issuance of the decision and that they remain in view until the election is held; and further, that the ballots be cast in the presence of a representative of the Board upon the return of each vessel to the home port at the time and place that the engineers are paid by the companies. *International Mercantile Marine Co.*, 1 N. L. R. B. 384, 391. See also:

Black Diamond Steamship Corp., 2 N. L. R. B. 241, 245.
Grace Line, Inc., 2 N. L. R. B. 369, 376.
Agwilines, Inc., 2 N. L. R. B. 390, 394, 395.
Ocean Steamship Co., 2 N. L. R. B. 588, 591.
N. Y. & Cuba Mail Steamship Co., 2 N. L. R. B. 595, 600.

In elections involving unlicensed personnel of 58 vessels operating out of Gulf ports, Regional Director granted discretion to ballot a vessel either when (1) the vessel returned to its home port; (2) at the first or second Gulf port of call in the case of vessels making such stops; (3) by mailing ballots from a Gulf port of call for employees of a vessel which has sailed from its home port to an address designated by him and under conditions which will protect the secrecy of the ballot; (4) prior to the sailing from the home port or at any other Gulf port of call in the case of vessels engaged in the "Far East trade." *Lykes Bros. Steamship Co., Inc.*, 2 N. L. R. B. 102, 108.

In elections held among licensed personnel employed by a steamship company (in addition to the issuance of directions concerning the conduct of the elections on the

company's vessels in service), *directed* that notices of election, a sample ballot, an eligibility list, and a notice of time and place of balloting be posted on each of the company's tugs and on each of its vessels out of service as soon as possible following the issuance of the Direction of Elections, and that they remain posted for a period of at least 2 days after which balloting shall be conducted at a time and place designated by the Regional Director. *Merchants & Miners Transportation Co.*, 2 N. L. R. B. 747, 752. See also: *Higman Towing Co.*, 32 N. L. R. B. 102. *Hay Co.*, 40 N. L. R. B. 1022.

In elections held among the licensed personnel of a steamship company where most of the company's vessels in operation are engaged in making short trips and do not have a home port but their articles are signed for a period of 6 months at many ports, directed that notices of election, a sample ballot, an eligibility list, and a notice of the time and place of balloting be posted on each vessel in operation at a port which is most convenient to the Regional Director on the next trip if possible following the Direction of Election, and that they remain posted until the vessel calls at a port designated by the Regional Director where balloting shall be conducted at a time and place designated by said Regional Director. *Merchants & Miners Transportation Co.*, 2 N. L. R. B. 747, 752, 755.

In elections held among the unlicensed personnel employed by a steamship company and its two affiliated companies in their deck, engine, and stewards' departments, Regional Director granted discretion to determine the exact time, place, and procedure for posting notices of election and for balloting on each ship provided, however, that each ship must be posted with a notice of election, a sample ballot, an eligibility list, and a notice of the time and place of balloting at at least one port of call in the United States prior to the port where balloting is conducted. *International Mercantile Marine Co.*, 2 N. L. R. B. 971, 975.

American France Line, 3 N. L. R. B. 64, 72. (Directed that notice of the time and place of balloting be posted at some port of call in the United States prior to the port where balloting was to be conducted, or, in the event the vessel was to be posted and vote in the same port without an intervening trip, at least 48 hours before balloting was conducted.)

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Where one of the participating labor organizations already had passes granting it access to the company's vessels, the Board in order that the elections may reflect the true desires of the employees as contemplated by Section 9 (c) of the Act, directed the company to afford equal treatment to the agents of all labor organizations involved from date of service of Decisions and Direction of Elections upon the parties until the completion of the voting thereunder. *Isthmian Steamship Co.*, 19 N. L. R. B. 16. See also: *Bull Steamship Co.*, 36 N. L. R. B. 99.

92.9 b. Others.

Election among employees of a public utility company directed to be held under the direction and supervision of Regional Director who is to determine in his discretion the exact time, places, and the procedure for giving notice of the election and for balloting, since the employees are working in different parts of the State and the record affords no aid in determining whether the election can be conducted conveniently in certain specially designated places throughout the area served by the employer; and it is also expressly authorized that the United States mails may be used for such purposes, and that agents, if feasible, may journey through the company's various territorial divisions to conduct elections at appropriate places, collecting the votes in sealed envelopes for delivery to the Regional Director. *Pacific Gas & Electric Co.*, 3 N. L. R. B. 835, 850, 851. See also:

United Press Associations, 3 N. L. R. B. 344, 352; (Secret ballot conducted by mail and cablegram.)

Pacific Greyhound Lines, 4 N. L. R. B. 520, 539.

Consumers Power Co., 9 N. L. R. B. 742, 751, 752, enf'd 308 U. S. 413; rev'g 105 F. (2d) 598.

Pacific Lumber Inspection Bureau, Inc., 7 N. L. R. B. 529, 534.

Salt River Valley Water Users Assn., 32 N. L. R. B. 460.

Practice of "mail balloting" by employees in active military service or training discontinued in view of administrative difficulties in locating such employees, the resulting delay in completion of elections, the issues relating to the ballot and the conduct of the election raised by this form of balloting, and the fact that actual returns from such mail ballots have been relatively small. *Wilson & Co., Inc.*, 37 N. L. R. B. 944.

G. RUN-OFF AND REPEAT ELECTIONS.

1. *Run-off elections.*

a. In general.

Where one of two labor organizations has received a plurality but not a majority of the votes cast in an election directed by the Board and a run-off election has been requested, the Board's past practice of conducting a run-off election by dropping from the ballot the organization receiving the lower number of votes in the initial election, and providing a place on the ballot to vote for or against the labor organization which received the plurality should be changed by providing that the ballot contain the names of both organizations but no place to vote again for "neither," and the organization receiving the higher number of votes in the run-off election will be certified as exclusive bargaining representative. *LeBlond Machine Tool Co.*, 22 N. L. R. B. 465; overruling, *Interlake Iron Corp.*, 4 N. L. R. B. 55, 62; *Aluminum Co. of America*, 12 N. L. R. B. 237, 238, 239.

Walgreen Co., 25 N. L. R. B. 258. (Where subsequent to the issuance of a Direction for a Run-Off Election, one of the organizations requested to have its name omitted from the ballot, the Board directed that the employees be permitted to vote for or against the remaining organization.)

Consumers Power Co., 25 N. L. R. B. 289. (New election ordered, with the names of both unions and a space for "neither" on the ballot, rather than a run-off election with only the names of the two unions, when 17 months elapsed since the first election.)

Where the results of a run-off election conducted among three labor organizations were inconclusive the Board directed a further run-off election eliminating from the ballot the organization receiving the lowest number of votes. *Fairchild Engine & Airplane Corp.*, 33 N. L. R. B. 455. See also: *Swift & Co.*, 37 N. L. R. B. 208.

Where the representatives together receive a majority of the votes cast and the "neither" group fails to receive a plurality, a run-off election is directed in accordance with practice enunciated in "LeBlond" case (*supra*).

Pennsylvania Greyhound Lines, 27 N. L. R. B. 973 (where "neither" received less than either of the representatives involved). See also:

Phelps Dodge Copper Products Corp., 28 N. L. R. B. 167.
Standard Oil Co., 27 N. L. R. B. 378.

Kesterson Lumber Corp., 31 N. L. R. B. 169.
Thompson Products Inc., 35 N. L. R. B. 329.

Fenske Bros., Inc., 26 N. L. R. B. 1391 (where "neither" received more than one representative but less than the other representative). See also: *Delco Radio*, 27 N. L. R. B. 628. *Shaw Lumber Co.*, 30 N. L. R. B. 93. *Brown Co.*, 32 N. L. R. B. 631.

Tucker Duck & Rubber Co., 38 N. L. R. B. 511 (where equal number of votes were cast for rival representatives and a minority voted for "neither"). See also: *Olin Corp.*, 25 N. L. R. B. 278.

Where a majority, plurality, or equal number of votes are cast for the "neither" group, petition dismissed:

Colorado Fuel & Iron Corp., 30 N. L. R. B. 210 (where "neither" group received a majority). See also: *Little & Ives*, 7 N. L. R. B. 12. *Chrysler Corp.*, 32 N. L. R. B. 814. *Dutton & Co.*, 35 N. L. R. B. 577.

Western Union Telegraph Co., 40 N. L. R. B. 623 (where "neither" group received a plurality). See also:
General Motors Corp., 25 N. L. R. B. 258.
Borden Mills, Inc., 32 N. L. R. B. 1270.
Luders Marine Construction Co., 32 N. L. R. B. 1268.
Emil J. Paidar Co., 26 N. L. R. B. 1486.

American Granite Finishing Co., 28 N. L. R. B. 739 (where an equal number of votes were cast for and against the only labor organization involved).

b. When directed.

§ 94 (1) Request.

A run-off election will not be directed and petition for investigation and certification of representatives will be dismissed in the absence of a request for such an election on the part of the labor organization which received a plurality of the votes in the original election. *Waggoner Refining Co., Inc.*, 8 N. L. R. B. 789, 790; *Walker Vehicle Co.*, 9 N. L. R. B. 587, 589, 590; *Armour & Co.*, 28 N. L. R. B. 152.

§ 95 (2) Notice to employer.

An employer who participated in a hearing concerning an investigation and certification of representatives, has no basis for complaint in the fact that it received no notice of the request of a labor organization for, or that no new hearing was held prior to, direction of run-off election, because a run-off election is as much the result of the

hearing, at which all issues have been formulated, as was the original election, and no new issues are involved. *Fedders Mfg. Co., Inc.*, 7 N. L. R. B. 817, 822.

5.9 (3) Others.

6 c. Eligibility.

In run-off elections persons eligible to vote are those employees appearing on the pay roll as of the date found to determine eligibility of voters in the original election, notwithstanding the request of a labor organization that in the run-off election those employees should be eligible who were employed prior to the date determining eligibility in the original election and who are on the pay roll at the date of the run-off election; for the eligibility date in the original election was that stipulated by all the parties and the run-off election is merely a further step in the instant proceeding. *Aluminum Co. of America*, 13 N. L. R. B. 79, 81, 82.

Selby Shoe Co., 16 N. L. R. B. 471. (Eligibility requirements for run-off election was the same as the first election as to employees who subsequently quit or were discharged for cause.)

Standard Oil Co. of New Jersey, 27 N. L. R. B. 380. (Current eligibility date was stipulated.)

Edward Valve & Mfg. Co., Inc., 40 N. L. R. B 1327. (Employee who in first election was in an eligible category but who subsequently but prior to a run-off election was transferred to duties outside scope of unit, *held* not within the appropriate unit and that his ballot was invalid.)

) d. Other circumstances.

e. Form of ballot. (*See* § 93.)

2. *Repeat elections.*

00 a. In general.

01 b. When directed. [*See* §§ 111–130 (as to the setting aside of an election on valid objection).]

The results of an election participated in by two contending labor organizations, *held* not conclusive and repeat election directed where although one of the organizations received a substantial majority of the votes cast, a majority of the employees signed applications for membership in the other organization after the election had been held but prior to the Board's certification. *New York & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595, 605.

Where out of three employees eligible to vote only one employee voted, *held* that balloting failed to result in a

representative vote and accordingly, rather than dismiss petition, Board directed another election to be held among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of this directed election. *Kendall, Jr., S. A.*, 41 N. L. R. B. 395. See also: *Weinberger Sales Co., Inc.*, 28 N. L. R. B. 154; (designated as a "further" election).

[*See* § 131 (as to what constitutes "majority") and § 137 (as to issuance of certification when name or affiliation of elected representative was changed).]

§ 102 c. Eligibility.

In a repeat election, in the absence of agreement between the parties as to the eligibility date, eligibility was determined by pay roll immediately preceding the direction for the repeat election, where more than 6 months had elapsed since the original Direction of Election. *Mack-International Motor Truck Corp.*, 36 N. L. R. B. 870.

Kendall, 41 N. L. R. B. 395. (Where a new election was directed to be held when balloting failed to result in a representative vote in that only one of the three employees eligible to vote had voted, eligibility was determined by the payroll period immediately preceding the date of the direction of this new election.) See also: *Lincoln Mills of Alabama*, 12 N. L. R. B. 1285.

§ 103 d. Form of ballot.

The usual practice of the Board in an ordinary run-off election, using the same pay roll as that followed in the original election, of eliminating from the ballot the name of the organization receiving the least votes is not applicable where a previous election is vacated and a new election based on a much larger pay roll is directed, for under such circumstances all the labor organizations which participated in the prior election are entitled to a place on the ballot. *Lincoln Mills of Alabama*, 12 N. L. R. B. 1285, 1297, 1288. But see: *LeBlond Machine Tool Co.*, 22 N. L. R. B. 465. (Prior practice in run-off elections of eliminating from ballot labor organization which received lower number of votes abandoned, and provision for voting against labor organizations involved eliminated.)

§ 105 e. Other circumstances.

H. PROTESTS, EXCEPTIONS, AND OBJECTIONS TO ELECTIONS.

§ 106 1. *In general.*

2. *When considered.*

07 a. Filing of objections.

A labor organization is not entitled to have the Board review a ruling of the Regional Director concerning a protest to the conduct of an election where no appeal from the Regional Director's ruling was made to the Board and no objections or exceptions were filed to the Intermediate [election] Report. *International Freighting Corp.*, 6 N. L. R. B. 620, 621.

American France Line, 6 N. L. R. B. 669. (Labor organization not entitled to have Board review ruling of Regional Director disallowing labor organization's protest concerning conduct of election where labor organization failed to appeal the ruling.)

Labor organization not entitled to introduce testimony bearing upon its objection to an election, at hearing on exceptions to Intermediate [election] Report where objection had not been filed within time prescribed by Rules and Regulations. *Piedmont Granite Quarries, Inc.*, 11 N. L. R. B. 897, 899.

Pacific Gas & Electric Co., 13 N. L. R. B. 268, 273. (Objections filed 6 days after the issuance of the Intermediate [election] Report have been filed in time, and supplemental objections filed 7 days after the orginal objections, not prejucidial, where 1 day in the 5-day period within which objections must be filed, as provided in the Board's rules, fell on a Sunday.)

b. Raising substantial and material issues.

08 (1) Prima facie showing.

The possibility of a denial of freedom to choose a collective bargaining agency in an election had, should appear reasonably certain before a hearing upon objections to an election be directed. *Quaker Oats Co.*, 27 N. L. R. B. 944. See also: *General Motors Sales Corp.*, 25 N. L. R. B. 92. *Farnsworth Television & Radio Corp.*, 26 N. L. R. B. 85. *Cudahy Packing Co.*, 26 N. L. R. B. 749.

08.1 (2) Materiality.

It is unnecessary to consider exceptions filed by a labor organization participating in an election where they were directed solely to the eligibility of employees whose ballots were challenged by the other participating labor organization, and the objecting labor organization received a majority of the votes cast. *Hubinger Co.*, 4 N. L. R. B. 428, 430.

Volupte, Inc., 25 N. L. R. B. 807. (Participation of ineligible

persons in Board election held insufficient cause to set aside election results, where ballots cast by the ineligibles were not determinative, and where there was no evidence showing that any of the eligible voters were influenced by the voting of the ineligible voters.)

Solvay Process Co., 37 N. L. R. B. 983. (Status of an employee, whose ballot was challenged, not ruled upon unless it became material after the counting of other challenged ballots which were declared valid.) See also: *Solvay Process Co.*, 31 N. L. R. B. 473.

Berkowitz Envelope Company, 40 N. L. R. B. 161 (challenged ballots declared valid directed to be counted since results of election may be affected).

In the absence of some showing of an effect upon the result of the election, a remark by a foreman prior to the election indicating hope that one of the two competing unions would be defeated in the election, *held* not to raise substantial or material issue with respect to the conduct of the ballot. Objection based on this episode overruled. *La Plant-Choate Mfg. Co., Inc.*, 15 N. L. R. B. 485. See also: *Cudahy Packing Co.*, 26 N. L. R. B. 749.

08.2 (3) Report on objections.

Objections of a labor organization to the Intermediate [election] Report on the grounds that the employer had engaged in unfair labor practices regarding the conduct of the election and that certain classes of employees expressly excluded by the Board from the appropriate unit had participated therein *overruled* where: (1) the Regional Director certified that the secret ballot was fairly and impartially conducted, the ballot duly and fairly counted, and statements to such effect from the tellers had been filed with him, and (2) he informed the Board that the objecting labor organization had failed to submit any evidence in support of its objection, although it had been afforded ample opportunity to do so. *R. C. Mahon Co.*, 9 N. L. R. B. 430, 431, 432.

Thompson Products, Inc., 43 N. L. R. B. 1379. (Board *held* that no material or substantial issue as to conduct of election had arisen when union failed to make witnesses available for interview with respect to alleged company interference prior to election.)

08.3 (4) Timely objection, estoppel, and/or waiver.

An employer and a labor organization may not object to the use of a pay roll which had been furnished by the employer

at a hearing to determine those eligible to vote in an election where neither the employer nor the labor organization made any objection to the use of the pay roll at the time of the hearing, and raised the question for the first time in the form of an exception to the Intermediate [election] Report. *Cudahy Packing Co.*, 4 N. L. R. B. 39, 41. See also: *Combustion Engineering Co., Inc.*, 7 N. L. R. B. 123, 124–126. *R. C. Mahon Co.*, 9 N. L. R. B. 430, 431. *Solvay Process Co.*, 31 N. L. R. B. 473.

Paraffine Companies, Inc., 28 N. L. R. B. 973. (Union's protest to the election raised no substantial or material question with respect to the conduct of the ballot or the Election Report when the contentions were considered and rejected by the Board in the original decision.)

An employer may not for the first time raise an objection during a hearing in a complaint proceeding to the conduct of an election which had been previously held upon direction of the Board, where the employer had knowledge of the ground for its objection within the time limit prescribed by the Rules and Regulations, but failed to object within the time so prescribed. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 956.

A labor organization may not object to the conduct of an election on the ground of unlawful interference of an employer where the substance of the objection was investigated in the course of a subsequent complaint proceeding instituted by the objecting organization, and it failed to file exceptions to the Trial Examiner's findings that no unfair labor practices had been committed, for such conduct constitutes an acquiescence in those findings which related to its objections to the election. *Bishop & Co., Inc.*, 13 N. L. R. B. 207, 208, 209.

Alleged improper conduct of company prior to and during election *held* not to provide new material or a substantial issue in view of the insistence of union on an election in spite of the pendency of unfair labor practice proceedings, and of the alleged continuance of the unfair practices. *Precision Castings Co., Inc.*, 27 N. L. R. B. 491.

Objections by a labor organization to the conduct of the ballot and the election report filed within the prescribed period on the grounds that certain persons listed as eligible voters were not eligible to participate overruled when its representative who acted as observer at the election had access to the list of eligible voters and was instructed of the right

to challenge the ballot of any employee named thereon whom he believed was ineligible to vote, and although present when the time the allegedly ineligible voters cast their ballots, neither challenged their ballots nor objected to the inclusion of their names in the list of eligible voters. *American Granite Finishing Co.*, 28 N. L. R. B. 739. See also: *Solvay Process Co.*, 37 N. L. R. B. 983.

International Freighting Corp., 6 N. L. R. B. 271, 272. (A protest although not filed within the 5-day period required by the Rules and Regulations alleging improper sealing of ballot boxes, *held* without merit where it was not made at the time the ballots were counted, for good faith on the part of persons protesting elections requires that protests be made promptly at the time irregularities are disclosed.)

Garod Radio Corp., 32 N. L. R. B. 1010. (Where, until balloting was completed, no request was made to provide special voting facilities for an eligible employee who could not attend the election, because of illness, *held* that he should not be permitted to vote.)

09 3. *Failure to appear and/or produce evidence at hearing on objections.*

In the absence of evidence at the hearing on objections to the Election Report on the question of whether a person employed on eligibility dates had subsequently quit or been discharged for cause, challenged ballot was held valid, notwithstanding finding by Regional Director in the Election Report that the person had quit. *Garod Radio Corp.*, 32 N. L. R. B. 1010.

4. *Asserted grounds for protests, exceptions, and objections.*

12 a. In general.

Sufficient reason for setting aside the results of an election does not exist by the reason of the fact that amendments to the original Direction of Election were entered without notice to the employer, and an opportunity to be heard, where the action of the Board in so doing is within the authority vested in it by Section 9 (c) of the Act and pursuant to the Rules and Regulations; for the employer has not been prejudiced thereby. *Proximity Print Works*, 11 N. L. R. B. 379, 387.

b. Improper conduct prior to or during conduct of election.

13 (1) By employer. [*See* § 118 (as to right of employer to be present at election), and UNFAIR LABOR PRACTICES § 43 (as to interference with elections as an unfair labor practice).]

Sufficient ground for setting aside elections held among employees of a steamship company does not exist by reason of the fact that representatives of the Board and two of the participating labor organizations experienced some delay in securing admission to one of the ships because they did not have a ship-admittance pass, and upon securing admission they discovered aboard a representative of the third labor organization involved whom they alleged stated he had secured admission to the ship by means of a day-to-day company pass, and the company denied that it issued any passes to the third-mentioned labor organization while denying them to either of the first-mentioned labor organizations. *N. Y. & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595, 604, 605.

[*See* § 92 (as to company's duty to afford participants equality of access to vessels in maritime elections).]

Sufficient grounds exist for setting aside an election directed by the Board where, prior to the time the election was held, supervisory employees made statements to the employees which indicated that the employer would shut down its plant and the employees would be discharged if one of the labor organizations won the election. *Tennessee Copper Co.*, 8 N. L. R. B. 575, 578, 579. See also:

Industrial Rayon Corp., 7 N. L. R. B. 878, 900–905.
Eagle & Phenix Mills, 11 N. L. R. B. 361, 370, 371.
Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 747.
Pacific Gas & Electric Co., 13 N. L. R. B. 268, 296, 297.
Cf. *Yale & Towne Mfg. Co.*, 10 N. L. R. B. 1321, 1326 1331, 1344, 1345.

The fact that both labor organizations participating in an election admit to membership foremen not possessing the power to hire and fire and that some of such foremen have joined each organization does not confer upon such foremen-members the privilege to interfere in the selection of employee bargaining representatives, since the employees' right to a choice free from employer interference is absolute and this immunity guaranteed employees by the Act cannot be impaired and diminished by the membership rules of any labor organization. *Tennessee Copper Co.*, 9 N. L. R. B. 117, 119. See also: *Pacific Gas and Electric Co.*, 13 N. L. R. B. 268, 296. *Western Union Telegraph Co.*, 33 N. L. R. B. 183. Cf. *Ward Baking Co.*, 8 N. L. R. B. 558, 565.

[*See* UNFAIR LABOR PRACTICES § 15 (as to effect of supervisory employees' membership in a labor organization on employer's responsibility).]

In the absence of some showing of an effect upon the result of the election, a remark by a foreman prior to the election indicating hope that one of the two competing unions would be defeated in the election, *held* not to raise substantial or material issue with respect to the conduct of the ballot. Objection based on this episode overruled. *La Plant-Choate Mfg. Co., Inc.*, 15 N. L. R. B. 485.

Although the company may well have interfered with the holding of a fair election by engaging in the alleged actions which the Board in a previous proceeding found to constitute unfair labor practices, petition dismissed where no practical purpose could be served by setting aside the election until the Board's Order had been enforced and the effects of the company's unfair labor practices have been dissipated. *Western Union Telegraph Co.*, 26 N. L. R. B. 419.

Sufficient ground exists for setting aside an election where on election day and on the days immediately preceding the election, a plant superintendent made anti-union statements to named employees and where the companies offered an employee a raise in salary with the freedom of the employees to vote without restraint and the election did not constitute a fair test of the union's right to represent employees in the appropriate unit as their statutory representative. *Lewittes & Sons, Inc.*, 40 N. L. R. B. 43.

Moulton Ladder Mfg. Co., 27 N. L. R. B. 44. (Presence of officer of company and company's attorney in the vicinity of the polling place, *held* not to have influenced the result of the election.)

National Mineral Co., 27 N. L. R. B. 432. (Refusal to post election report; refusal to furnish pay roll to determine eligibility; surveillance at polling place despite request to refrain from such conduct.)

Taylor Bedding Mfg. Co., 41 N. L. R. B. 507. (Sufficient reason existed for setting aside an election where the company by a statement which it caused to be printed in a newspaper on the eve of the election which in effect urged employees to vote against the union and collective bargaining acted as if the Board election were a contest between it and the union.)

Fairchild Engine & Airplane Corp., 41 N. L. R. B. 552. (Sufficient cause for setting aside the last of a series of run-off elections, where at a hearing held upon objections filed by petitioning organization it was found that employer interfered with the conduct of the election.)

Houde Engineering Corp., 42 N. L. R. B. 713. (Election vacated and set aside where employer was found to have engaged in unfair labor practices prior thereto.)

United Fur Manufacturers Assn., Inc., 43 N. L. R. B. 369. (Sufficient grounds existed for setting aside a consent election where supervisory officials of the employers directed employees how to vote and indicated that better conditions would prevail if favored union were selected.)

13.1 (2) By labor organization.

Allegations of improper electioneering, fraud, and bribery on the part of a labor organization do not constitute sufficient grounds for setting aside the results of a consent election conducted by an agent of the Board, where the alleged instances of improper electioneering did not create any impediment to the fair conduct of the election, and the one alleged act of fraud and bribery which consisted of an offer to exchange a membership book in one labor organization for that in another organization and a dollar refund, even if it did occur, was not sufficient to nullify the election results. *National Sugar Refining Co. of New Jersey*, 4 N. L. R. B. 276, 278, 279.

Objectionable demeanor on the part of an attorney for one of the labor organizations participating in an election and his repeated entrances into the zone restriced to eligible voters going to and coming from the polling place and to election officials, *held* not to constitute cause for the withholding of a certification based upon the results of the election where there was no evidence that the attorney engaged in any electioneering and the balloting was conducted subject to the constant scrutiny of tellers representing both organizations. *Interlake Iron Corp.*, 6 N. L. R. B. 780, 787.

The objections of one of the labor organizations involved to the election report which alleged in substance that employees were permitted to wear buttons bearing the words "For Higher Wages, Job Security, Vote . . . [a certain union]" in the plant and polling places, and that such acts had a decided effect on the results of the election, overruled

where such campaign buttons had been worn at work and in the polls both prior to and on the date of the election. *La Plant-Choate Mfg. Co., Inc.*, 30 N. L. R. B. 56.

Company's objections to election report which alleged, among other things, that the presence of an organizer for the union as an observer at the election constituted intimidation *overruled* where at the close of the election the company's observer signed a Certification that except as to certain challenges the balloting was fairly conducted; that all eligible voters were given an opportunity to vote their ballot in secret; and that the ballot boxes were protected in the interests of a fair and secret vote. *Carolina Scenic Coach Lines*, 36 N. L. R. B. 1114.

Sufficient cause existed for setting aside an election when one of the competing labor organizations engaged in disorderly conduct and acts of violence during the election campaign to such an extent that the election did not fairly reflect the untrammeled wishes of the employees and did not constitute a fair test of the employees' desires as to representation. *National Tea Co.*, 41 N. L. R. B. 774.

Minneapolis-Moline Power Implement Co., 7 N. L. R. B. 840. (Question concerning representation found to exist after a consent election when one of the competing labor organizations electioneered in violation of agreement and no provision was made for settling protests based on alleged violations of that provision.)

Where the successful local union indulged in electioneering expressing opinions and making promises concerning wages which were contrary to obligations voluntarily undertaken by official spokesmen for the labor movement in an effort to secure the most successful prosecution of the war, *held* that these acts did not constitute such conduct as would coerce employees in their balloting, for although officials of the local had engaged in reprehensible conduct, to refuse to certify the union would in effect, under the guise of penalizing the union officials, disfranchise employees who had freely selected a representative. *Curtiss-Wright Corp.*, 43 N. L. R. B. 795.

113.2 (3) By Board agent.

Alleged statements made at an election by Board agent indicating favoritism to one of two labor organizations not sufficient to warrant a hearing upon objections in absence of allegation or showing that said statements were made,

repeated, or published to persons other than notary employed by Board or otherwise expressed in the presence or within the hearing of others. *Cudahy Packing Co.*, 26 N. L. R. B. 749.

13.3 (4) By outside persons or groups. [*See* § 113, UNFAIR LABOR PRACTICES § 3 (as to the conduct of "others" imputed to the employer).]

c. Objection to the manner in which election was conducted and/or reported.

14 (1) Notice of election.

There is no merit to the contention of an employer that an election directed by the Board was surrounded with secrecy and that insufficient notice thereof was given to employees eligible to participate therein where the first and only information regarding the exact date of the election was sent by mail at the same time to both the employer and labor organization involved, and the employees eligible to vote, with the exception of two whose votes would not have affected the results of the election, were given adequate notice thereof by reason of notices posted at the plant on the preceding day, and while a number of eligible employees did not vote, their failure to do so was not caused by inadequacy in the notice of the election but for other reasons. *Proximity Print Works*, 11 N. L. R. B. 379, 381–386.

Sufficient reason does not exist for setting aside an election directed by the Board on the ground that due notice of the election was not given to persons eligible to vote who were not actually working for the company during the time that the election notices were posted on the company's bulletin board, where the notices of the elections were mailed to the president of the sole labor organization involved, news items concerning the election were published in two local newspapers shortly after the Direction of Election was issued, and the president of the company stated that he did not know of anyone eligible to vote who had failed to learn of the election. *Spring City Foundry*, 11 N. L. R. B. 1286, 1287.

A statement by the master of a vessel on which an election was held that employees did not have sufficient time to study the notice of the election, *held* not to be a sufficient showing to warrant setting aside the election in view of signed statements by said master, Board representative, and union representative, indicating that voters received

118 (5) Observers and election officials.

In absence of consent by the labor organizations involved, employer representatives are not entitled to be present at elections to determine collective bargaining representatives because such presence may prevent a free choice of representatives and the interest of the employer is adequately protected by the Board's requirements for the conduct of the elections. *American France Line*, 4 N. L. R. B. 1140, 1141.

Fedders Mfg. Co., Inc., 7 N. L. R. B. 817, 822. (A Regional Director may at his discretion, where he thinks it consonant with the right of employees, permit non-supervisory employees representing the employer to participate in an election, and his action, upon request of a labor organization seeking certification, in not permitting an employer to have representatives present at a run-off election for the purposes of making challenges is not unreasonable or arbitrary.)

Paragon Rubber Co., 7 N. L. R. B. 965, 966. (Sufficient reason exists for setting aside an election and new election directed where a factory manager of the employer was permitted to act as a teller over the objection of the sole labor organization involved.)

Metro-Goldwyn-Mayer Studios, 8 N. L. R. B. 858, 863. (An employer is in no position to object to the conduct of an election on the ground that it had been excluded from participating in the secret ballot and making challenges, where it made no request any time to have observers, during the balloting or otherwise to participate in the conduct of the election.)

For additional cases where a refusal to permit an employer to have a representative at the balloting was held not an abuse of discretion on the part of representative of the Board:

Marlin-Rockwell Corp., 7 N. L. R. B. 836, 838.
American Radiator Co., 8 N. L. R. B. 505, 506.
Endicott Johnson Corp., 17 N. L. R. B. 1004.
Pennsylvania Greyhound Lines, 26 N. L. R. B. 538.
North American Motorship Co., 28 N. L. R. B. 607.

Sufficient reason does not exist for setting aside the results of an election directed by the Board on the alleged ground that an ineligible voter had acted as an observer at two polling places in contravention of the rules governing the election

notices of election and understood them, and the presumption that employees who cast a ballot in an election understand their action. *North American Motorship Co., Inc.*, 28 N. L. R. B. 607.

115 (2) Designations and/or form of ballot. [*See* §§ 87–90 (as to initial determination of form of ballot).]

Improper designation of nominee labor organization through erroneous inclusion of reference to employer in the designation, *held* to constitute cause for the nullification of the election and the directing of a new election since although the incorrect designation was no more than an inadvertent typographical error it may have unintentionally stigmatized the organization as an employer-dominated union in the minds of some voters. *Walker Vehicle Co.*, 7 N. L. R. B. 827, 833. Cf. *International Harvester Co.*, 5 N. L. R. B. 192, 201.

Company's objection that the ballot used in the election was "indefinite" and "calculated to mislead the voters" because it contained no explanation of the word "neither", *held* without merit since it is the experience of the Board from the conduct of these elections among workers in various industries throughout the country that the word usage and form of the ballot are understood by the voters. *Cudahy Packing Co.*, 26 N. L. R. B. 749.

116 (3) Substitution of sample for official ballots.

Sufficient cause exists for setting aside an election directed by the Board where secrecy of the balloting was not maintained in accordance with the decision of the Board, in that sample ballots not designated as such, which were distributed by an agent for the Board to representatives of the labor organization prior to the election, were attempted to be cast in place and instead of the ballots furnished to the voters by the Board's agent in charge of the balloting. *Pennsylvania Greyhound Lines*, 4 N. L. R. B 271, 272.

117 (4) Location of polling place.

Sufficient reason does not exist for setting aside an election directed by the Board on the ground that the polling place was situated on company property close to the company's office and that one of the labor organizations was prejudiced by the fact that the company officials could observe who voted, when there was no claim that the secrecy of the balloting itself was violated. *Tennessee Copper Co.*, 8 N. L. R. B. 575, 577; 10 N. L. R. B. 1433, 1435.

118 (5) Observers and election officials.

In absence of consent by the labor organizations involved, employer representatives are not entitled to be present at elections to determine collective bargaining representatives because such presence may prevent a free choice of representatives and the interest of the employer is adequately protected by the Board's requirements for the conduct of the elections. *American France Line*, 4 N. L. R. B. 1140, 1141.

Fedders Mfg. Co., Inc., 7 N. L. R. B. 817, 822. (A Regional Director may at his discretion, where he thinks it consonant with the right of employees, permit non-supervisory employees representing the employer to participate in an election, and his action, upon request of a labor organization seeking certification, in not permitting an employer to have representatives present at a run-off election for the purposes of making challenges is not unreasonable or arbitrary.)

Paragon Rubber Co., 7 N. L. R. B. 965, 966. (Sufficient reason exists for setting aside an election and new election directed where a factory manager of the employer was permitted to act as a teller over the objection of the sole labor organization involved.)

Metro-Goldwyn-Mayer Studios, 8 N. L. R. B. 858, 863. (An employer is in no position to object to the conduct of an election on the ground that it had been excluded from participating in the secret ballot and making challenges, where it made no request any time to have observers, during the balloting or otherwise to participate in the conduct of the election.)

For additional cases where a refusal to permit an employer to have a representative at the balloting was held not an abuse of discretion on the part of representative of the Board:

Marlin-Rockwell Corp., 7 N. L. R. B. 836, 838.
American Radiator Co., 8 N. L. R. B. 505, 506.
Endicott Johnson Corp., 17 N. L. R. B. 1004.
Pennsylvania Greyhound Lines, 26 N. L. R. B. 538.
North American Motorship Co., 28 N. L. R. B. 607.

Sufficient reason does not exist for setting aside the results of an election directed by the Board on the alleged ground that an ineligible voter had acted as an observer at two polling places in contravention of the rules governing the election

where the individual in question had not acted as an observer, but only as captain of observers, and no challenged ballots had been cast nor protests made at either polling place. *Pacific Greyhound Lines*, 11 N. L. R. B. 1070, 1071.

Request by the union eliminated in a run-off election to have watchers and representatives present at the designated polling places during the time of the balloting and the counting of the votes in a subsequent run-off election, *granted*. *Aluminum Co. of America*, 14 N. L. R. B. 319, 320.

119 (6) Preparation and checking of eligibility lists.

Sufficient reason does not exist for setting aside the results of an election on the ground that certain persons had been permitted to vote upon signing affidavits as to their eligibility, where the affidavits were used only after the employer had refused to furnish the Regional Director with copies of its pay rolls so that eligibility lists might be made; nor did the use of that method prove injurious to the interest of the labor organizations which participated unsuccessfully in the election, since all parties to the proceedings were given equal opportunity to have watchers at the polls, and at the hearing on the objections to the conduct of the election neither of the losing organizations showed that any person voted who was not eligible to do so. *Chas. Cushman Shoe Co.*, 2 N. L. R. B. 1015, 1030. See also: *Metro-Goldwyn-Mayer Studios*, 8 N. L. R. B. 858, 863. *Cudahy Packing Co.*, 26 N. L. R. B. 749; 27 N. L. R. B. 108. *National Mineral Co.*, 27 N. L. R. B. 432.

Sufficient cause exists for setting aside the results of an election directed by the Board on the ground that the names of a substantial number of eligible employees were erroneously omitted from the eligibility list, for even in the absence of a formal record showing a refusal to permit any of these employees to vote, they would not have been permitted to cast ballots in an election even if they had presented themselves. *Mobile Steamship Assn.*, 11 N. L. R. B. 374,375.

Ballot of an employee whose vote was challenged by the Board's agent on the grounds that when he appeared to vote, his name had already been checked on the list as having voted, was directed to be opened and counted, where none of the observers questioned his eligibility to vote and all had acknowledged that he had not previously voted. *Truscon Steel Co.*, 36 N. L. R. B. 983.

120 (7) Challenging of ballots.

Sufficient reason does not exist for setting aside the results of an election directed by the Board on the ground that challenges as to certain employees had been improperly sustained and that the Regional Director had improperly questioned the voters who were challenged, where the employees in question either did not wish to return to work after a seasonal lay-off or were not included on the list for the pay-roll period agreed on, nor was there any impropriety in the Regional Director's questioning voters who were challenged as to whether they would return to work when and if called. *Paragon Rubber Co.*, 8 N. L. R. B. 690, 692, 693.

Sufficient reason exists for setting aside the results of an election upon objections of the sole labor organization involved on the ground that certain employees were refused ballots where the employees in question were entitled to participate in the voting, even though their eligibility did not appear entirely free from doubt, since the employer may, if it so chooses, protest or challenge their votes, and the protests or challenges thus made may thereafter be reviewed. *Piedmont Granite Quarries, Inc.*, 9 N. L. R. B. 47, 48.

121 (8) Protection of ballot boxes.

Sufficient reason does not exist for setting aside an election directed by the Board on the ground that ballot boxes were improperly sealed where the total number of ballots found in one box improperly sealed tallied exactly with the number of persons checked as having voted at that box, and no protest as to the other boxes was made at the time of the counting of ballots. *International Freighting Corp.*, 6 N. L. R. B. 271, 272.

Attaching vital importance to the maintenance of both complete secrecy and integrity of the ballots in elections conducted by the Board to ascertain employee representatives for the purpose of collective bargaining, the Board with this standard in view found that company's contention that the removal of a seal by Board agents from a partially filled ballot box without the presence of a representative of the company—it having been intended to use a new ballot box for the evening election—impaired the secrecy of the ballot was without merit, where under the circumstances and to avoid confusion because of the number of employees who had already received their ballots, the seal

was removed, where at all times the ballot box was in the custody of the Board agents, and where the company did not challenge the integrity of, and made no showing that, any irregularity in the actual balloting resulted from the conduct of the Board agents. *Sullivan Dry Dock & Repair Corp.*, 39 N. L. R. B. 61.

Tokheim Oil Tank & Pump Co., 26 N. L. R. B. 473. (Objection to election on the ground that a Board agent left the poll during the election, *overruled* when he did so to investigate a routine complaint and took the unmarked ballots with him.)

22 (9) Counting of ballots. [*See* § 133 (as to the effect of blank, void, or spoiled ballots on "majority").]

A ballot marked for both of two labor organizations affiliated with the same parent body should have been counted in computing the total number of votes cast in an election since the ballot separately designated each of the two organizations as well as a third organization affiliated with a rival parent body. *Elliott Bay Lumber Co.*, 9 N. L. R. B. 3, 4.

Moulton Ladder Mfg. Co., 27 N. L. R. B. 44, 46. (An employee who is eligible must have his vote counted irrespective of the desires of the parties. Where "NO" was written upside down in the "YES" column on a ballot and it was considered as a "NO" by the Board's attorney without objection by the parties, directed that it should be considered as a "NO" vote and not as a void ballot.)

Garod Radio Corp., 32 N. L. R. B. 1010. (Ballot marked ". . . [a certain union]" in the box under the name of that union instead of "X" as required by instructions, found clearly to indicate voter's intention and therefore held valid.)

Whiterock Quarries, Inc., 36 N. L. R. B. 395. (Sufficient cause exists for setting aside the results of an election directed by the Board and the ordering of a new election where the counting of the absentee ballots of employees on military leave subsequent to the counting of the ballots of employees who voted at the polls impaired the secrecy of the ballot.) See also: *Truscon Steel Co.*, 36 N. L. R. B. 983.

Objection of union to Regional Director's ruling in denying its request for a counting of absentee ballots which were not returned within the prescribed time sustained as to one

employee who was allotted insufficient time and who returned his ballot as promptly as possible and overruled as to other employees who could have returned their ballots within the prescribed time. *Elkland Leather Co., Inc.*, 35 N. L. R. B. 568.

Where impounded ballots of persons found to have been discriminatorily discharged are directed to be counted, ballots of replacement employees who held positions of discharged employees and who were not on pay roll preceding Direction of Election are directed not to be counted. *Bear Brand Hosiery Co.*, 40 N. L. R. B. 807.

[*See* § 59 (as to initial disposition of ballots cast by employees alleged to have been discriminated against).]

123 (10) Election report.

An employer's contention that the Regional Director had failed to prepare "an Intermediate [election] Report containing a tally of the ballot, his findings and recommendations" as required by the Rules and Regulations and had failed to serve such Intermediate Report on the employer, has no merit where the record shows that a copy of the certification of the official count in the election was handed the employer after the election and that the Regional Director caused to be served on the employer his "certification" in which he found that a labor organization had received a majority of the votes cast in the election and as a result thereof, was the exclusive representative of its employees for the purposes of collective bargaining. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 956.

125 (11) Others.

Company's contention to denial by acting Regional Director of its request that ballots be mailed to seven employees in the active military training or service of the United States *overruled*, for in accordance with Board practice as enunciated in *Wilson & Co., Inc.*, 37 N. L. R. B. 944, while such employees are eligible to vote, they cannot be permitted to vote by mail if elections are to be held in expeditious and orderly fashion. *Semet-Solvay Co.*, 41 N. L. R. B. 1205.

126 d. Failure of labor organization to participate.

Where a labor organization claiming to represent a majority of the employees in a particular plant has refused to participate in a fair and impartial election conducted by the Board for the purpose of determining the accuracy of its claim, it cannot thereafter contest the right of a rival

organization which has made the same claim and has received a majority of the votes cast in such election to be certified as exclusive bargaining agency on the ground that such rival labor organization has not obtained the vote of a majority of all persons eligible to vote. *Chas. Cushman Shoe Co.*, 2 N. L. R. B. 1015, 1034.

The fact that a labor organization whose name appeared on the ballot did not furnish tellers or otherwise participate in an election directed by the Board does not constitute sufficient reason to set aside the results of the election. *Mine B Coal Co.*, 4 N. L. R. B. 316, 322, 323.

A labor organization may not object to the conduct of an election on the ground that it had not been included on the ballot where it failed to enter a formal appearance and took no part in the proceedings although it had received notice of the hearing and its representatives were present, and it further failed to present a request for an amendment to the Direction of Election so that it might appear on the ballot despite the fact that it had been informed by the Regional Office of the proper procedure for presenting such a request to the Board. *Ira S. Bushey & Sons, Inc.*, 5 N. L. R. B. 904, 905, 906.

e. Questions of eligibility. [*See* §§ 53–70 (as to the initial determination of eligibility).]

27 (1) Omission or lack of specification as to employees in unit.

A Regional Director has properly sustained challenges as to ballots cast by persons who are supervisory employees within the meaning of the Direction of Election. *Seiss Mfg. Co.*, 8 N. L. R. B. 389, 390. See also: *Henrietta Mills*, 27 N. L. R. B. 296.

Socony-Vacuum Oil Co., Inc., 36 N. L. R. B. 696. (Board sustained Regional Director's rulings concerning the ballots of certain individuals whom he found were properly challenged since they were clerical, foremen, or engineers and therefore precluded from voting and accordingly dismissed union's objection to said ruling.)

Semet-Solvay Corp., 41 N. L. R. B. 1205. (Contrary to ruling of Acting Regional Director to exclude certain employees employed as watchmen that were deputized by local officials to guard company's plant, Board found that they were within the appropriate industrial unit and directed that their ballots should be counted.)

Phelps-Dodge Corp., 42 N. L. R. B. 288. (Diamond drillers and helpers, who were employees, of an independent

contractor, but who were hired by company's employment agent and were paid by company checks, the amount of their wages being deducted from payments due contractor; who were subject to same working rules, conditions, and supervision as were company's regular employees, and who received the same wages and enjoyed nearly all the rights and privileges of regular employees, *held* to be employees of the Company within the meaning of the Act and eligible to vote; accordingly, their ballots were ordered counted.)

Muncie Elwood Lamp Co., 43 N. L. R. B. 791. (Regional Director's ruling that employee who acted at least part of the time as a group leader and supervisor and who was considered to be a foreman by other employees was a supervisory employee and that consequently, the challenge to his ballot should be sustained, *affirmed.*)

Sufficient cause exists for setting aside the results of an election on the ground that certain employees whose ballots were challenged were ineligible to participate under the terms of the Direction of Election where in many cases the challenges had merit and employees occupying substantially similar positions to those whose ballots were challenged had been permitted to vote. *International Nickel Co., Inc.*, 11 N. L. R. B. 97, 99.

California Cotton Oil Corp., 27 N. L. R. B. 1136. (Regional Director's findings and recommendations contained in the Report on Objections that certain challenged ballots should not be counted for the reason that said employees did not come within the appropriate unit, *overruled* when they were within the general terms of the appropriate unit set forth by the Board in its Direction of Election and other employees in occupations similar to that contested were allowed to vote in the election unchallenged by either party.)

Solvay Process Co., 37 N. L. R. B. 983. (Ballots challenged by one of the unions on the ground that they were cast by employees who were supervisory and hence ineligible to vote, declared valid and directed to be counted, when it was found that they exercised minor supervisory duties and that a number of other employees in a similar capacity had voted without challenge.)

Sufficient reasons exist for setting aside an election where the Direction of Election improperly described the eligible categories of employees by failing to exclude clerical and office employees, when the record disclosed that the parties desired such an exclusion and it was the Board's intention

to exclude them. *Redfern Lace Works, Inc.*, 39 N. L. R. B. 1324.

Upon objection by rival unions as to the disposition of certain challenged ballots, the Board clarified its earlier decision by deciding in which unit certain employees belonged, although their ballots did not affect the outcome of the election. *General Electric Co.*, 27 N. L. R. B. 1082. *United States Lines Co.*, 40 N. L. R. B. 363. (Where Board upon reconsideration of its prior determination that an employee was ineligible to vote, found that he was within the eligible category and directed his vote to be counted.)

Union's objection to election report on the ground that time-study men should have been included in unit under the title "other technical employees" *overruled*, where the union did not seek their inclusion and the Board intended in accordance with its usual practice in similar cases, to exclude them since they did not work under the supervision of the chief engineer as did technical employees. *Art Metal Construction Co.*, 41 N. L. R. B. 1061.

127.1 (2) Employees hired subsequent to selected eligibility date.

Sufficient reason does not exist for setting aside the results of an election directed by the Board on the ground that the Regional Director had improperly excluded employees from voting where the persons so excluded had been employed after the date determined upon as governing eligibility to vote. *Elliott Bay Lumber Co.*, 9 N. L. R. B. 3, 4.

127.2 (3) Employees whose status or function has changed.

Sufficient reason does not exist for setting aside the results of an election on the ground that, while only persons employed as of a specified date were eligible to vote by virtue of the Board's direction, the Regional Director had permitted employees who were temporarily laid off or on temporary leave of absence on that date to vote where the only persons who did vote as a result of the Regional Director's ruling were a small number of men who had been temporarily laid off a few days prior to the eligibility date and who did not draw their last pay until 2 days subsequent to that date. *Chas. Cushman Shoe Co.*, 2 N. L. R. B. 1015, 1030, 1031.

Dreamland Bedding & Upholstery Co., 24 N. L. R. B. 306. (Employee working for another employer at the time of the election, *held* eligible and his ballot ordered counted where

he was one of a list of employees that the company regularly calls when it needs additional help and his employment with the other company was of short duration.)

United States Rubber Co., 32 N. L. R. B. 121. (Ballot cast by an employee on temporary leave of absence and not working during the pay-roll period by which eligibility to vote in the election was determined, *held* valid and directed to be counted.) See also: *Truscon Steel Co.*, 36 N. L. R. B. 983.

United States Lines Co., 40 N. L. R. B. 363. (Radio operators whose names were removed from pay roll used to determine eligibility while vessel was laid up at port for repairs, *held* eligible to vote and their ballots directed to be counted, where they were on the stand-by list for that particular vessel, were not employed elsewhere during the lay-up, and were reassigned to it when it resailed.)

Gatke Corp., 41 N. L. R. B. 915. (Challenged ballots of employees who although their names did not appear on eligibility list, *held* to have been temporarily laid off and to have been in that status on the date which governed voting eligibility, directed to be counted.)

Phoenix Iron Co., 42 N. L. R. B. 344. (Laid-off employees, whom company contended were permanently laid off, but who were found to have been temporarily laid off, *held* eligible to vote.)

Sufficient reason held not to exist for setting aside the results of elections held during a strike on the ground that the Board did not require every voter to show that he had not obtained other regular and substantially equivalent employment, where arrangements had been made for all parties to have watchers at the polls and no showing was made at the hearing on objections to the conduct of the elections that persons who had received such employment did vote. *Chas. Cushman Shoe Co.*, 2 N. L. R. B. 1015, 1032.

[QUERY: Effect of regular and substantially equivalent employment prior or subsequent to Direction of Election on the eligibility to vote of persons who have ceased work as a result of an unfair labor practice—*See*: REMEDIAL ORDERS, § 121 (as to effect of regular and substantially equivalent employment on reinstatement).]

Sufficient reason does not exist for setting aside the results of an election directed by the Board on the ground that certain employees had erroneously been excluded from a list of

those eligible to vote where the employees in question had been dismissed prior to the election and, although they had been given more than 2 months' salary and were placed on a 6-month preferential rehiring list, they had no definite expectation of reemployment, and the only rehiring that might occur would be for the purpose of filling future vacancies. *Milwaukee Publishing Co.*, 12 N. L. R. B. 54, 55.

Garod Radio Corp., 32 N. L. R. B. 1010. (Where, pursuant to a stipulation made at the hearing by the company and the two competing labor organizations, the Board directed that eligibility to vote depend upon employment both on the day of the hearing and on a fixed day prior to the making of a certain closed-shop contract—the invalidity of which was asserted at the hearing by the non-contracting union—*held* employees discharged pursuant to the closed-shop contract prior to the second eligibility date not eligible to vote; such persons employed on both eligibility dates but subsequently discharged pursuant to the closed-shop contract were not "discharged for cause" within the meaning of the stipulation or the Direction of Election, and therefore, eligible to vote.)

Employee who at his own request was permanently transferred to another of the company's offices prior to the Direction of Election, *held* ineligible to vote and that it was proper for the Regional Director not to forward him a ballot. *Christian Feigenspan Brewing Co.*, 32 N. L. R. B. 1282.

Sharp, 40 N. L. R. B. 863. (Employee who although excluded from Decision and Direction because as of that date he was a foreman, *held* eligible to vote and ballot directed to be counted when he no longer held that position, and was listed as a regular employee.)

Edward Valve & Mfg. Co., Inc., 40 N. L. R. B. 1327; (Employee who in first election was in an eligible category but who subsequently but prior to a run-off election was transferred to duties outside scope of unit, *held* not within the appropriate unit and his ballot invalid.)

Union's objection to Regional Director's ruling sustaining the challenged ballot of a person who was temporarily employed in the unit on the pay-roll date used to determine eligibility but who was transferred to the department where he was

regularly employed prior to the date of the election, *overruled. Phelps Dodge Corp.*, 36 N. L. R. B. 657.

Dorset Foods Ltd., 42 N. L. R. B. 618. (Although an employee's change in duties from manual work to office work was occasioned by reduction of operations due to a raw material shortage, *held* this fact alone did not establish that such change was so temporary that employee did not have a sufficient interest to entitle her to participate in the selection of a bargaining representative for office employees, and accordingly, Regional Director's recommendation that her ballot not be counted, *overruled.*)

27.9 (4) Others.

A ballot cast by a voter in the last of a series of run-off elections involving one of the several craft groups among which "Globe" elections were directed has been properly challenged by the Regional Director where the voter in question as a member of a different craft had cast a ballot in one of the prior elections involving employees in another craft group. *Shell Oil Co.*, 10 N. L. R. B. 1370, 1371.

28 f. Objection to appropriateness of unit.

A labor organization may not object to a Decision and Direction of Election on the ground that employees of a given craft were erroneously included within the bargaining unit where the objecting organization had been permitted to intervene in the hearing, but at that time introduced no evidence tending to show that employees in the claimed craft constituted a separate unit, nor did it then make any objection to the unit proposed by the petitioning organization as appropriate. *R. C. Mahon Co.*, 9 N. L. R. B. 430, 431.

Combustion Engineering Co., Inc., 7 N. L. R. B. 123, 124–126. (A labor organization may not change the position which it originally took at the hearing by petitioning the Board to reconsider its Certification of Representatives on the ground that the employees in the unit found to be appropriate should have voted in three separate units where the unit found followed the desires of the labor organization as expressed in the record.) See also: *Atlantic Basin Iron Works*, 6 N. L. R. B. 441, 443.

30 g. Other grounds.

The fact that a streetcar strike on the day of an election prevented certain employees from reporting for work and

from voting does not constitute sufficient reason for setting aside the results of the election. *General Cigar Co., Inc.*, 7 N. L. R. B. 503, 504.

I. CERTIFICATION. [*See* § 52 (as to certification when election unnecessary).]

1. "*Majority.*"

§ 131 a. Construed.

The phrase "the majority of the employees" as used in Section 9 (a) means a majority of the employees who participated in an election, irrespective of the fact that the number of employees actually voting does not constitute a majority of those eligible to vote. *R. C. A. Mfg. Co., Inc.*, 2 N. L. R. B. 159, 178.

New York Handkerchief Co., 7 N. L. R. B. 624; 16 N. L. R. B. 532 enf'd as modified 114 F. (2d) 144 (C. C. A. 7), cert. denied 311 U. S. 704. (Certification following election directed when majority out of 59 employees among 225 eligible voters, voted for labor organization involved and insubstantial participation of employees in the election was due to interference with the election by the employer.)

Aluminum Line, 9 N. L. R. B. 72, 89. (Certification following election directed when only one of two persons eligible voted and cast ballot for labor organization involved.)

Spring City Foundry, 11 N. L. R. B. 1286. (Certification following election directed when majority out of 106 voters among 252 eligible voters, voted for the labor organization involved.)

Butler Specialty Co., 29 N. L. R. B. 430. (Certification following run-off election directed when a majority out of 71 employees among 203 eligible voters, voted for one of the labor organizations involved and the employer refused to cooperate in arrangements for the election, and in the furnishing of a revised eligibility list.)

The principle of collective bargaining presupposes that there is more than one eligible person who desired to bargain and the Act, therefore, does not empower the Board to certify a labor organization where the sole employee involved cast his vote in its favor. *Luckenbach Steamship Co., Inc.*, 2 N. L. R. B. 181, 193. See also: *Mobile Steamship Assn.*, 9 N. L. R. B. 60, 67. *Monogram Pictures Corp.*, 45 N. L. R. B., No. 18. *Producers Releasing Corp.*, 45 N. L. R. B., No. 19.

[*See* UNIT § 3 (as to inappropriateness of unit consisting of one individual).]

Further election directed among casual dock workers and the results of subsequent balloting to be considered with prior election, when 54 out of 540 eligibles participated and thus a representative vote was not obtained. *Weinberger Sales Co.*, 28 N. L. R. B. 154.

Kendall, 41 N. L. R. B. 395. (Where only one of three eligible employees voted, and such vote was cast for the union, *held* that the balloting failed to result in a representative vote and new election directed.) Cf. *Williams Dimond & Co.*, 2 N. L. R. B. 859.

Inspiration Consolidated Copper Co., 44 N. L. R. B. 1160; (Board indicated a reservation of its right to refuse a certification in the event a representative vote was not obtained, when in directing "Globe" elections among several craft groups, it relaxed its customary rule of requiring crafts to show substantial designation.)

132 b. Effect of agreement.

An agreement entered into between an employer and a labor organization, consenting by its terms to an election to be held under the direction of the Board and providing what shall be considered as a majority for determining the results of such an election, does not preclude the Board from applying a contrary interpretation of what is meant by a majority as set forth in the Act. *R. C. A. Mfg. Co., Inc.*, 2 N. L. R. B. 159, 178.

133 c. Effect of blank, spoiled, or void ballots. [*See* § 122 as to improper counting of ballots as an objection to election report.]

Void ballots which are not regarded as having been cast either for or against the sole labor organization which participated in an election cannot be counted as part of the total number of votes cast, for the purpose of determining whether the labor organization had received a majority. *Sorg Paper Co.*, 9 N. L. R. B. 136, 137. See also:

Interlake Iron Corp., 4 N. L. R. B. 55, 61 (blank ballots not counted).

Borg-Warner Corp., 7 N. L. R. B. 340, 343 (spoiled or void ballots not counted).

American Tobacco Co., 10 N. L. R. B. 1171 (blank and void ballots not counted).

134 d. Other matters.

2. *Issuance and amendment of, as affected by various circumstances.*

35 a. Pending determination as to disposition of ballots questioned for employee eligibility. [*See* §§ 127–127.9 (as to questions of eligibility as an objection to election).]

Where the number of ballots cast by employees whose eligibility was questioned before the election but after the issuance of the Board's decision cannot affect the results of the election, a certification may be issued as to the employees other than those in questionable categories, and when the Board has made a final determination as to the status of the employees in such categories, it may, if it finds that any of these groups are to be included within the appropriate unit, issue another certification embodying that finding. *Allis-Chalmers Mfg. Co.*, 5 N. L. R. B. 158, 161.

36 b. Absence of objection to minor irregularities in conduct of election. [*See* §§ 107–108.3 (as to when objections to elections are considered).]

A labor organization is entitled to be certified as representative of employees of a steamship company, notwithstanding failure to observe on 5 of the 70 vessels of the employer a provision in the Direction of Elections that 48 hours elapse between the posting and balloting of a vessel in the event it is posted and balloted in the same port without an intervening trip, where no objection to the conduct of the election was filed by any of the parties to the proceedings, and neither the deductions of the number eligible to vote nor of the number of votes cast on the 5 vessels affects the majority status of the organization. *American France Line*, 6 N. L. R. B. 311, 312.

37 c. Change of name or affiliation of the elected representative.

A labor organization held entitled to be certified as the representative of the employees in an appropriate unit upon the basis of its petition filed with the Board on the day before the election, and reciting that it had succeeded to all of the rights of another labor organization which had filed the original petition for investigation and certification and requesting that it be substituted for the latter organization which upon the election had received the votes of a majority of the employees involved. *Lincoln Mills of Alabama*, 13 N. L. R. B. 86, 90, 91.

Harvill Aircraft Die Casting Corp., 30 N. L. R. B. 735. (Name of organization previously certified changed upon stipulation filed after certification stating that union had changed

its affiliation and when company consented to the change of affiliation subject to the approval of the Board.)

Great Lakes Engineering Works, 36 N. L. R. B. 459. (Following motion by petitioner filed after election for substitution of parties upon its transfer of affiliation, and notice issued and served by Board on parties that it would substitute the name of the petitioner unless sufficient cause to contrary be shown, party was substituted and certified.)

Leviton Mfg. Co., Inc., 39 N. L. R. B. 219. (Successor organization affiliated with same parent as organization certified substituted, where the petitioners, the parent and both affiliates, averred that the parent by whom the original certified union was chartered, issued a charter to the successor organization conferring upon that organization jurisdiction to represent employees of the company.)

Western Union Telegraph Co., 42 N. L. R. B. 568. (In the absence of objection by company and parent organization of certified representative, Board substituted for certified representative the name of the organization with which it had affiliated itself.)

A labor organization denied certification, even though it had received a majority of the votes cast in an election directed by the Board, and petition dismissed in view of lapse of time since the election was held, when as result of a change of parent's name subsequent to the Decision and Direction of Election, disaffection of petitioning local from parent and the appearance of parent's orginal name on ballot without reference to either the local or parent's new name, caused serious doubt as to whether the employees voting intended to designate the local or intended to designate its parent organization irrespective of affiliation of the local to such parent organization. *Pennsylvania Shipping Co.*, 20 N. L. R. B. 599.

The Board certifies a union and not a name. *Walgreen Co.*, 44 N. L. R. B. 1200.

38 d. Repudiation of elected representative.

A labor organization held not entitled to be certified, even though it had received a majority of the votes cast in an election directed by the Board, and a new election was necessary where prior to the Board's certification there had been an apparent change in the wishes of a majority of the employees as disclosed by the fact that they subsequently signed application cards for membership in a second labor

organization which had also participated in the election but had received less than a majority of the votes cast. *N. Y. & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595, 605.

A labor organization which had received a majority of the votes cast in an election *held* entitled to be certified and sufficient ground for setting aside the certification and holding another hearing or election did not exist by reason of the claim of a second labor organization made immediately after the Board had issued its certification that a majority of the employees had authorized it to represent them, where at the time of the hearing on protests to the election, a majority of the employees had not yet applied for membership in the latter organization. *N. Y. & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595, 608.

Although a majority of members in the unit for which the union had been certified voted to change their affiliations, inasmuch as the certification had been in effect for almost a year and to allay doubt on part of company as to the bargaining representative of its employees, motion to amend certification to substitute name of union certified, *denied* without prejudice to filing of a petition for Investigation and Certification of Representatives. *Paramount Pictures, Inc.*, 42 N. L. R. B. 221.

A union selected pursuant to Board election *certified* notwithstanding company's contention that a number of employees had repudiated their vote subsequent to the election, since the results of a free, secret ballot election, must normally be given conclusive effect for a reasonable period if the statutory scheme for the ascertainment of representatives and for the effectuation of collective bargaining is to be operative. *Simmonds Aerocessories, Inc.*, 43 N. L. R. B. 689. See also: *Dorset Foods Ltd.*, 43 N. L. R. B. 390.

139 e. Change or lack of determination of scope of unit.

Motion by organization which had been certified as bargaining agent in several plant units previously found appropriate, to consolidate these units into one appropriate unit, and to be certified as exclusive bargaining representative of such a consolidated unit, *granted*. *Chrysler Corp.*, 17 N. L. R. B. 737 and 42 N. L. R. B. 1145.

Where separate elections were conducted among two groups of employees, group (1) consisting of production and maintenance employees, and group (2) craft employees, to determine whether both groups should constitute a single

unit or separate units, and the votes cast by the craft group were equally divided between the two labor organizations involved, whereas the election in group (1) resulted in a choice of the industrial organization, *held* that no representative would be certified for the craft group, since the election among that group had not resulted in the selection of any bargaining representative and the industrial organization certified for group (1) exclusive of group (2). *Cudahy Packing Co.*, 32 N. L. R. B. 72. See also: *Dain Mfg. Co.*, 32 N. L. R. B. 307. (It was indicated in run-off elections directed among industrial and craft groups that in the event no labor organization received a majority of the votes cast among the craft group that no further election would be held among them; nor shall any representative be certified for them.)

Where separate elections were conducted among two groups of employees, group (1) consisting of production, maintenance, and clerical employees, and group (2) consisting of pattern makers, to determine whether both groups should constitute a single unit, or separate units, Board certified the bargaining agent selected by the employees in group (1) although the results of the election held in group (2) were not as yet known, since these employees constituted a large majority of all the employees in the plant; and when it was subsequently shown that the employees in group (2) desired to be part of group (1), the Board then determined that the single unit was appropriate, vacated the prior certification relating to group (1), and certified the same organization to represent the employees in both groups. *Ford Motor Co.*, 32 N. L. R. B. 1001; 34 N. L. R. B. 436. See also:

Armour & Co., 15 N. L. R. B. 827, 829; 22 N. L. R. B. 818. (A desire for a separate craft unit was subsequently indicated and Board certified a different organization for that group.)

Leviton Mfg. Co., 27 N. L. R. B. 735, 737; 28 N. L. R. B. 22, 24. (Pursuant to stipulation, certification amended to include craft group among those to be represented by the previously certified organization.)

Standard Forgings Corp., 29 N. L. R. B. 290, 294; 31 N. L. R. B. 61, 65.

Cf. *Reeves Pulley Co.*, 23 N. L. R. B. 1270. (Run-off election ordered among employees in a craft unit fol-

lowing Globe election, requested certification by one of rival organizations in residual election unit in which it obtained majority withheld pending determination of appropriate unit or units by run-off election.)

Where the company subsequent to the election but prior to the certification of the union as representative of the employees in certain enumerated departments of the company, established a new department and transferred therein several employees from two of the above-enumerated departments, and where these employees were engaged in similar work, for similar hours, received similar rate of pay, and desired the union to represent them, the Board amended its certification to include the newly formed department. *Chrysler Corp.*, 39 N. L. R. B. 585. See also: *Western Union Telegraph Co.*, 40 N. L. R. B. 587. (Organization certified for a smaller unit pursuant to stipulation, when foremen were excluded from the unit, and when results of election could not have been affected by their ballots in view of the overwhelming majority of votes received by the union.) *Gulf Oil Corp.*, 42 N. L. R. B. 938. (Organization certified for smaller unit pursuant to stipulation, when one of two of company's boats previously found to constitute an appropriate unit ceased to operate.)

40 f. Other circumstances.

g. Necessity of certification upon finding of refusal to bargain in combined "C" and "R" proceedings. (*See* PRACTICE AND PROCEEDING § 328.)

PRACTICE AND PROCEDURE

I. IN GENERAL.

A. EFFECT OF AGREEMENTS PURPORTING TO COMPROMISE UNFAIR LABOR PRACTICES OR SETTLE REPRESENTATION DISPUTES. [*See* JURISDICTION § 20 (as to the effect of compromise agreements on the Board's jurisdiction).]

§ 1 1. In general.

2. In respect to unfair labor practices prior to agreement.

§ 2 a. Where Board agent participated.

§ 3 b. Where no Board agent participated.

§ 10 c. Where employer has failed to abide by terms of agreement.

§ 11 3. In respect to unfair labor practices subsequent to agreement.

§ 12 B. EFFECT OF ACTS OF BOARD AGENTS.

C. EFFECT OF JURISDICTIONAL DISPUTE BETWEEN AFFILIATED BUT COMPETING LABOR ORGANIZATIONS IN REPRESENTATION PROCEEDING. [*See* § 291 (as to reopening of the record to introduce evidence concerning a jurisdictional dispute between labor organizations).]

§ 16 1. In general.

2. As affected by various circumstances. [*See* INVESTIGATION AND CERTIFICATION §§ 83, 88 (as to provision on ballot for organizations affiliated with the same parent).]

§ 17 a. Termination of affiliation.

§ 17.1 b. Relinquishment of claim to employees in dispute.

§ 17.2 c. Existence of labor organization unaffected by the jurisdictional dispute.

§ 17.3 d. Subserviency of competing organization.

§ 17.4 e. Absence of showing of substantial representation.

§ 17.5 f. Failure to substantiate claim of a jurisdictional dispute.

§ 17.6 g. Agreement of parties.

§ 17.9 h. Other circumstances.

II. PARTIES. [*See* § 240 (as to contemptuous conduct of parties), DEFINITIONS §§ 34–50 (as to parties when enterprises operate under common control, act in the interest of another, or succeed to another), INVESTIGATION AND CERTIFICATION § 139 (as to the issuance and amendment of certification when there is a change of name or affiliation of the elected representative), REMEDIAL ORDERS §§ 6–6.4 (as to scope of orders directed with respect to parties succeeding to or acting in the interest of the employer), and UNFAIR LABOR PRACTICES §§ 4–10 (as to the responsibility of parties succeeding to or acting in the interest of an employer).]

A. COMPLAINT PROCEEDINGS.

1. Necessary parties.

§ 18 a. In general.

§ 19 b. Legitimate labor organizations.

PRACTICE AND PROCEDURE

I. IN GENERAL.

A. EFFECT OF AGREEMENTS PURPORTING TO COMPROMISE UNFAIR LABOR PRACTICES OR SETTLE REPRESENTATION DISPUTES. [*See* JURISDICTION § 20 (as to the effect of compromise agreements on the Board's jurisdiction) and LITIGATION DIGEST. ORDERS GENERALLY: *Mootness*—Settlement to which Board is a party; Settlement to which Board is not a party.]

1. *In general.*

The Board will closely scrutinize all agreements purporting to settle or compromise charges of unfair labor practices, and although, in a proper case, particularly if the agreement is concluded with the presence of a governmental representative, it may exercise its discretion and refuse to disturb the settlement, nevertheless, where under the circumstances, it does not believe the agreement has effectuated the policies of the Act, it will not therefore withhold action. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 911.

The power of the Board to prevent an employer from engaging in unfair labor practices is exclusive and unaffected by the fact that the discriminatory acts complained of by a labor organization were settled by the parties. *Consumers' Power Co.*, 9 N. L. R. B. 701, 738, 739, enforced 113 F. (2d) 38 (C. C. A. 6), rehearing denied Oct. 8, 1940.

Whether or not the Board will give effect to a settlement agreement participated in by a Board agent does not depend upon a mechanical application of rigid *a priori* rules but is determined by the exercise of sound judgment based upon the circumstances of each case. *Ohio Calcium Co.*, 34 N. L. R. B. 917.

The Board will not give effect to settlements if the policies of the Act are not thereby effectuated and in determining whether it will effectuate the policies of the Act to give effect to a settlement, the Board necessarily considers events preceding as well as following the settlement. *Marks Products Co., Inc.*, 35 N. L. R. B. 1262.

2. *In respect to unfair labor practices prior to agreement.*

a. Where Board agent participated.

Where agents of Board participate in agreements compromising unfair labor practices, although the Board does not take the position that such agreements estop it from proceeding, it gave effect to the agreements when it would effectuate the policies of the Act and when the employer complied with the terms thereof, because of its belief that effective administration of the Act requires that its agents have the respect and confidence of labor organizations and employers with whom their work brings them in contact. *Shenandoah Dives Mining Co.*, 11 N. L. R. B. 885, 888. See also:

Godchaux Sugars, Inc., 12 N. L. R. B. 568.
Hope Webbing Co., 14 N. L. R. B. 55.
Simplicity Pattern Co., Inc., 16 N. L. R. B. 291, 301.
Wickwire Bros., 16 N. L. R. B. 316, 325.
Decatur Iron & Steel Co., 17 N. L. R. B. 1073, 1077.
Stromberg-Carlson Telephone Mfg. Co., 18 N. L. R. B. 526, 533.
Dunitz, 19 N. L. R. B. 712, 717.
Ideal Electric & Mfg. Co., N. L. R. B. 894, 908.
Corn Products Refining Co., 22 N. L. R. B. 824, 828.
Great Western Mushroom Co., 27 N. L. R. B. 352.

Where the Regional Director and the respondent entered into an agreement whereby the charges were to be withdrawn in return for the respondent's consent to reinstate the employee involved upon application and to post notices of compliance, and the refusal of the union and the complaining employee to approve the terms of the agreement resulted in its not being carried out, Board gave effect to the agreement and dismissed the complaint, when respondent remained willing to fulfill its obligations thereunder and there was no evidence of unfair labor practices subsequent to the date of the agreement. *Decatur Iron & Steel Co.*, 17 N. L. R. B. 1073.

Where employer acted in bad faith by failing to reveal its knowledge of the formation of a successor organization after terms of settlement in which it agreed not to recognize one dominated organization were orally agreed upon but before settlement was formally executed, and where the successor union was formed as a result of its unfair labor practices and was entrenched prior to employer's issuance of agreed settlement notices, *held* policies of the Act would not be effectuated by giving effect to the settlement

agreement. *Marks Products Co., Inc.*, 35 N. L. R. B. 1262. See also: *Sussex Dye & Print Works, Inc.*, 34 N. L. R. B. 625.

Hamel Leather Co., 45 N. L. R. B. 760. (Absence of good faith on part of employer in entering into a settlement agreement as evidenced by its entire course of conduct before and after the agreement, *held* to constitute in itself sufficient ground for disregarding the settlement.)

Board's policy against disturbing agreements in which its agents participated or to which they have lent their approval, does not extend to a situation in which enforcement of the agreement would defeat the rights guaranteed in the Act, and as such a consent-election agreement allegedly drafted and sanctioned by a Regional Director containing a restrictive provision that the union (petitioner in instant proceeding) should not seek recognition for 1 year in the event it lost in the election was *contra* to the policies of the Act in that it discouraged the practice and procedure of collective bargaining, and *held* not to constitute a bar to a determination of representatives. *Automatic Products Co.*, 40 N. L. R. B. 941.

Duffy Silk Co., 19 N. L. R. B. 37, 48. (Participation of Board agent in an agreement for the formation of a "Plan," *held* no restraint on Board where unfair labor practices consisted of the establishment and continued maintenance of a labor organization which by its nature defeated rights guaranteed by the Act.)

Oral agreement purportedly entered into with Board to settle unfair labor practices charges if pay-roll check showed union did not have a majority at time practices were committed, *held* not to preclude Board from determining merits of case, when more than a reasonable time elapsed between proposal and production of the pay roll—employer did not offer pay roll for check till 3½ months after agreement was made—and in the interim parties were negotiating for a different type of settlement. *Fitzpatrick & Weller, Inc.*, 46 N. L. R. B. 28.

b. Where no Board agent participated.

Where no member or representative of the Board has participated in an agreement involving in whole or in part the compromise and settlement of charges of unfair labor practices pending before the Board, the Board is not precluded by such an agreement from determining, in its own discre-

tion, whether under the circumstances of the case it is necessary in order to effectuate the purposes and policy of the Act, to refuse to withhold action on account of such agreement. *Kelly Springfield Tire Co.*, 6 N. L. R. B. 325, 347, 348.

Agreement withdrawing charges given effect when Board was of the opinion that the purposes of the Act would be effectuated thereby. *International Agricultural Corp.*, 16 N. L. R. B. 176, 184.

For additional decisions in which Board did not give effect to settlement agreements, *see*:

Maryland Distillery, Inc., 3 N. L. R. B. 176, 188–190.
Ingram Mfg. Co., 5 N. L. R. B. 908, 911.
Hercules-Campbell Body Co., Inc., 7 N. L. R. B. 431,436.
Crossett Lumber Co., 8 N. L. R. B. 440, 454.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 48.
Prettyman, 12 N. L. R. B. 640, 643, set aside 117 F. (2d) 786 (C. C. A. 6), rehearing denied April 7, 1941.
Klotz, 13 N. L. R. B. 746, 759.
General Motors Corp., 14 N. L. R. B. 113, 160, enforced 116 F. (2d) 306 (C. C. A. 7).
Ford Motor Co., 31 N. L. R. B. 994.
New York & Porto Rico S. S. Co., 34 N. L. R. B. 1028.
Rieke Metal Products Corp., 40 N. L. R. B. 867.

0 c. Where employer has failed to abide by terms of agreement.

Where employer failed to abide by the terms of an agreement participated in by Board agent, *held* that it would not effectuate the policies of the Act to give effect to the agreement and refrain from considering alleged unfair labor practices so compromised. *Phillips Petroleum Co.*, 23 N. L. R. B. 741, 752. See also:

Godchaux Sugars, Inc., 12 N. L. R. B. 568, 577.
Picker X-Ray Corp., 12 N. L. R. B. 1384, 1395.
Allsteel Products Mfg. Co., Inc., 16 N. L. R. B. 72, 82.
Halff, 16 N. L. R. B. 667.
Chambers Corp., 21 N. L. R. B. 808, 820.
Hawk & Buck Co., Inc., 25 N. L. R. B. 837, 852, enforced 120 F. (2d) 903 (C. C. A. 5).
Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1, 16.

For additional decisions where the employer failed to abide by the terms of a settlement agreement and the Board failed to give effect thereto, *see*:

Triplett Electrical Instrument Co., 5 N. L. R. B. 835, 856.

Kelly-Springfield Tire Co., 6 N. L. R. B. 325, 347.
Hepler, 7 N. L. R. B. 255, 265.
Corinth Hosiery Mill, Inc., 16 N. L. R. B. 414, 426.
Chicago Casket Co., 21 N. L. R. B. 235, 252.
Gantner & Mattern Co., 32 N. L. R. B. 773.
Canyon Corp., 33 N. L. R. B. 885.
Pick Mfg. Co., 35 N. L. R. B. 1334.
American Cyanamid Co., 37 N. L. R. B. 578.
Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234.
Northwestern Photo Engraving Co., 38 N. L. R. B. 813.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.
Sartorius & Co., Inc., A., 40 N. L. R. B. 107.

1 3. *In respect to unfair labor practices subsequent to agreement.* Although the Board concededly might not have given effect to an agreement participated in by its agent in view of employer's subsequent commission of unfair labor practices it held that whether or not effect should be given cannot be determined by a mechanical application of rigid *a priori* rules, but must be determined by the exercise of sound judgment based upon all the circumstances of each case and so where the agreement was essentially complied with and the subsequent unfair labor practices were consequent upon a distinctly separable series of events, the Board gave effect to the agreement and dismissed the complaint insofar as it alleged the commission of unfair labor practices prior to the agreement. *Ohio Calcium Co.*, 34 N. L. R. B. 917.

Tulsa Boiler & Machinery Co., 23 N. L. R. B. 846, 850. (Where the principal purpose of a settlement had been effectuated and subsequent unfair labor practices did not constitute such a continuance or resumption of the practices settled by the agreement as to require its disturbance.)

Brown-McLaren Mfg. Co., 34 N. L. R. B. 984. (Ultimate findings regarding acts and statement of employer preceding execution of collective labor contract were withheld where subsequent unfair labor practices did not constitute a resumption or continuance of the practices preceding the execution of the contract.)

2 B. EFFECT OF ACTS OF BOARD AGENTS.

Statement of Regional Director at a conference with employer's representatives that if certain employees mentioned in amended complaint were reinstated he would recommend dismissal of complaint, *held* not a defense to discriminations alleged in complaint where the action of the Regional

Director constituted a personal recommendation not intended as binding on the Board; and when in addition the employer never in any way acted on the basis of what was said at such conference. *Montgomery Ward & Co.*, 31 N. L. R. B. 786.

A notice posted at request of Board agent who was investigating charges, *held* not to have been posted pursuant to a compromise agreement and offers no legal obstacle to Board's requiring the posting of notices advising employees of Board's order and their rights under the Act. *American Smelting & Refining Co.*, 34 N. L. R. B. 968, enforced 128 F. (2d) 345 (C. C. A. 5).

Where a respondent's failure to maintain neutrality was induced in a substantial measure by the advice of a Board agent, *held* that it would not effectuate the policies of the Act to make findings of a violation of the Act, or to issue an order against the respondent based upon its conduct in reli ance on the advice. *Armour Fertilizer Works, Inc.*, 46 N. L. R. B. 629.

16 C. EFFECT OF JURISDICTIONAL DISPUTE BETWEEN AFFILIATED BUT COMPETING LABOR ORGANIZATIONS IN REPRESENTATION PROCEEDING. [*See* § 291 (as to reopening of the record to introduce evidence concerning a jurisdictional dispute between labor organizations).]

16 1. *In general.*

The fact that a question has arisen as to whether a labor organization should be represented through a joint council or as a separate local union constitutes sufficient reason to dismiss its Petition for Investigation and Certification of Representatives since such an issue, involving solely the internal affairs of labor organizations, can best be decided by the parties themselves, and it is preferable that the Board should not interfere. *Aluminum Co. of America*, 1 N. L. R. B. 530, 537, 538.

Curtis Bay Towing Co., 4 N. L. R. B. 360, 366. (Where petitioning and intervening organizations affiliated with the same parent organization claimed jurisdiction over and sought to represent the same employees, Board dismissed the petition.)

American France Line, 12 N. L. R. B. 766, 768. (Petitions of labor organizations for hearing denied where it would involve determination by the Board that the petitioner's

parent body had not properly established a successor organization to it.) See also: *International Freighter Corp.*, 12 N. L. R. B. 785, 787.

Weyerhaeuser Timber Co., 16 N. L. R. B. 902, 911. (Where several organizations affiliated with the same parent organization claimed jurisdiction over and sought to represent the same employees Board would not exercise jurisdiction in the dispute and refused to make any determination with respect to their claims.)

Although the Board has, as a matter of policy, refused to permit rival unions affiliated with the same parent organization to resort to the administrative processes of the Act for settlement of their representation disputes where adequate and appropriate machinery was available to them under the procedures of the parent organization, it exercised jurisdiction, when one of the unions refused to recognize the superior authority of the parent body, since effective resolution of the existing controversy could not be had without resort to the administrative processes of the Act. *Harbison-Walker Refractories Co.*, 43 N. L. R. B. 936; 44 N. L. R. B. 343, 816. See also: *Hazelton Brick Co.*, 44 N. L. R. B. 222.

2. *As affected by various circumstances.* [*See* INVESTIGATION AND CERTIFICATION §§ 83, 88 (as to provision on ballot for organizations affiliated with the same parent).]

a. Termination of affiliation.

Motion to dismiss representation proceedings on the ground that a jurisdictional dispute existed between the two labor organizations involved since they were affiliated with the same parent body denied where, although technically both of the contending labor organizations may be said to be affiliated with the same parent body, one of them had been suspended by the executive council of the parent organization and had thereupon ceased to obey its orders. *Interlake Iron Corp.*, 2 N. L. R. B. 1036, 1037, 1041, 1042.

A contention that an internal dispute has arisen in which the Board should not intervene since one of two labor organizations seeking certification has only been suspended and not expelled from the parent organization is without merit for it is a matter of common knowledge that labor organizations affiliated with a second parent organization, with which the suspended union subsequently became affiliated, have ceased to obey the orders of the first parent organiza-

tion which is a party to the present controversy. *Federal Knitting Mills Co.*, 3 N. L. R. B. 257, 262.

Barrett, 3 N. L. R. B. 513, 516. (Jurisdiction taken despite contention of an international labor organization that the charter of the local organization invoking the jurisdiction of the Board had been revoked.)

McKesson & Robbins, Inc., 5 N. L. R. B. 70, 80. (Jurisdiction taken despite agreement between two labor organizations to submit jurisdictional dispute to parent body, where one of the parties to the agreement subsequently terminated its affiliation with the parent organization.) See also: *Texas Co.*, 4 N. L. R. B. 182, 185.

Where an employer instituted a proceeding to determine which of the rival unions affiliated with the same parent was the collective bargaining representative of the employees involved, the Board took jurisdiction when one of the labor organizations refused to recognize the superior authority of the parent body and rendered the parent's machinery for the resolution of such conflicts inadequate, and hence effective resolution of the conflict could not be had without resorting to the administrative processes of the Act. *Harbison-Walker Refractories Co.*, 43 N. L. R. B. 936, 939. See also: *Hazelton Brick Co.*, 44 N. L. R. B. 222. *Harbison-Walker Refractories Co.*, 44 N. L. R. B. 343, 816.

17.1 b. Relinquishment of claim to employees in dispute.

Existence of a jurisdictional dispute between a labor organization which had filed a petition for investigation and certification of representatives and another labor organization affiliated with the same parent body constitutes cause for dismissal of the petition for investigation and certification where the second-mentioned organization was, through no fault of its own, unaware of the proceedings until after the issuance of the Direction of Election and within a reasonable time thereafter filed its petition for intervention; however, such dismissal is rendered unnecessary by the nominee's agreeing to the exclusion from the unit of the employees involved in the dispute. *American Tobacco Co.*, 2 N. L. R. B. 198, 209–212.

Jurisdiction exercised despite dispute between two labor organizations affiliated with the same parent body over certain employees within the unit, where one of the organizations relinquished its claim to the employees in dispute. *Pacific Greyhound Lines*, 10 N. L. R. B. 659, 660.

17.2 c. Existence of labor organization unaffected by the jurisdictional dispute.

Although two affiliates of the same parent organization were seeking to represent the same employees, the Board ruled that this jurisdictional dispute would not preclude an investigation and certification of representatives in view of the fact that a third union unaffected by the jurisdictional dispute had petitioned for certification. *Long-Bell Lumber Co.*, 16 N. L. R. B. 892, 897. See also: *Campbell, Wyant & Cannon Foundry Co.*, 32 N. L. R. B. 416. *Truscon Steel Co.*, 33 N. L. R. B. 61. *U. S. Gypsum Co.*, 46 N. L. R. B. 23.

Petition dismissed when two of the competing organizations were engaged in a jurisdictional dispute and the other organizations unaffected by the jurisdictional dispute did not make substantial showing of representation. *Houston Shipbuilding Corp.*, 41 N. L. R. B. 638. See also: *Timm Aircraft Co.*, 48 N. L. R. B., No. 60.

17.3 d. Subserviency of competing organization.

Although Board has previously dismissed representation proceedings where two unions subject to discipline by the same parent body have disagreed over the extent of their jurisdiction, it held that, where one of the competing unions is chartered by and subservient to the other, although both are affiliated with the same parent body, the desires of the chartering union should prevail and the subservient union may not properly participate in an election where the employees over which it claims jurisdiction are also within the jurisdiction of the superior union. *Standard Forgings Corp.*, 26 N. L. R. B. 1339.

17.4 e. Absence of showing of substantial representation.

Where a labor organization affiliated with the same parent organization as petitioner claimed jurisdiction over employees in unit proposed by petitioner but failed to show substantial membership among these employees, *held* that such claim did not amount to a jurisdictional conflict of a sort which would bar the Board from determining the merits of the case. *Riverside & Fort Lee Ferry Co.*, 23 N. L. R. B. 493, 497.

Thomasville Chair Co., 37 N. L. R. B. 1017. (Motion to dismiss petition on ground that a jurisdictional dispute existed between two unions involved, *held* without merit where union making claim made no substantial showing of representation.)

Court Square Press, Inc., 46 N. L. R. B. 1078. (Bargaining unit found appropriate in original Decision and Direction of Election in printing industry amended to exclude offset printing pressmen, their helpers and apprentices to coincide with unit originally sought by petitioners when record of further hearing showed that unions involved had no present representation among such employees and to exclude them would obviate the jurisdictional issue pending between competing locals as to who should be awarded such offset printing pressmen.)

.5 f. Failure to substantiate claim of a jurisdictional dispute.

Claim of certain labor organizations affiliated with same parent organization that a jurisdictional dispute existed and that the Board should refuse to entertain the petition of another organization affiliated with the same parent organization, *held* without merit where the said affiliates while claiming to represent employees of the company in their respective proposed units, submitted no evidence to sustain these claims. *Weyerhaeuser Timber Co.*, 30 N. L. R. B. 872.

.6 g. Agreement of parties.

Direction of Election amended to provide that the ballot name as alternatives for the voter, the petitioning labor organization affiliated with parent organization A, a labor organization affiliated with parent organization B, or neither, where: (1) subsequent to the hearing, a letter was received by the Board, signed by representatives of the petitioner and of another labor organization also affiliated with parent A which also claimed to represent some of the employees in the appropriate unit, stating that it was the desire of both organizations that the name of only one affiliate of parent organization A be placed on the ballot and that both organizations would abide by the decision of the Board as to which organization should so appear; (2) thereafter the Board directed that the name of parent A should appear on the ballot as the one opposing the organization affiliated with parent B, since it deemed it advisable to avoid any implication of a determination of any jurisdictional dispute that might exist between the two affiliates of parent A; and (3) the petitioner thereupon protested to the omission of its name from the ballot on the grounds the election would not settle the issue between its two affiliates; nor does the amendment to the Direction of Election attempt to determine a jurisdictional dispute between two organizations

affiliated with and subject to the discipline of a single parent body, for whatever the results of the proceeding, that question remains, so far as the Board is concerned, to be determined by the proper authorities of its parent organization. *Showers Bros. Furniture Co.*, 4 N. L. R. B. 585, 592, 593.

Policies of the Act held best effectuated by proceeding to a determination of a question concerning representation notwithstanding the existence of a jurisdictional dispute between two labor organizations, when parties stipulated that they desired the Board to resolve the controversy since they had referred the matter to their parent organization which had refused to consider or make a determination of the conflicting claims, and there was no other appropriate machinery available for adjudicating the controversy. *Iowa Electric Light & Power Co.*, 46 N. L. R. B. 230.

Jurisdiction exercised although the two labor organizations involved sought to represent the same employees and were affiliated with and subject to the same parent body, when the organizations waived the jurisdictional conflict and urged the Board to resolve the question concerning representation. It was indicated however, that the assumption of jurisdiction or any certification which may result, would not be a holding that either union is the one authorized by the parent to assert jurisdiction over the type of employees involved, but rather that the affiliate certified is the exclusive representative of the employees involved. *Fitzhugh, Inc.*, 47 N. L. R. B. 606. Cf. *Axton-Fisher Tobacco Co.*, 1 N. L. R. B. 604, 611–613; (A jurisdictional dispute between two labor organizations both affiliated with the same parent body constitutes sufficient reason to dismiss their petitions for investigation and certification of representatives, notwithstanding the fact that the employers and the two organizations involved in the proceeding have agreed that the Board has jurisdiction, for the authority and machinery for settling the issues exists in the common parent body of the two organizations and it is best under such circumstances that they be left free to work out their own solutions through the procedure they themselves have established for that purpose.)

.9 h. Other circumstances.

II. PARTIES. [*See* § 240 (as to contemptuous conduct of parties), §§ 320, 340 (as to dismissal of proceeding for non-existence of party). DEFINITIONS §§ 34–50 (as to

parties when enterprises operate under common control, act in the interest of another, or succeed to another), INVESTIGATION AND CERTIFICATION § 139 (as to the issuance and amendment of certification when there is a change of name or affiliation of the elected representative), REMEDIAL ORDERS §§ 6–6.4 (as to scope of orders directed with respect to parties succeeding to or acting in the interest of the employer), UNFAIR LABOR PRACTICES §§ 4–10 (as to the responsibility of parties succeeding to or acting in the interest of an employer), and LITIGATION DIGEST: PROCEDURE BOARD. *Generally*—Jurisdiction to issue decision not lost by prior dissolution; parties entitled to notice and hearing.]

A. COMPLAINT PROCEEDINGS.

1. *Necessary parties.*

8 a. In general.

The proceeding authorized to be taken by the Board under the Act is not for the adjudication of private rights and therefore it has few of the indicia of a private litigation and makes no requirements for the presence in it of any private party other than the employer charged with an unfair labor practice. *National Licorice Co.*, 309 U. S. 350, 362, modifying 7 N. L. R. B. 537 and modifying 104 F. (2d) 655 (C. C. A. 2). See also: *Killefer Mfg. Co.*, 22 N. L. R. B. 484, 491.

Metal Equipment Co., Inc., 17 N. L. R. B. 813, 821; (Complaint dismissed without prejudice as to a parent corporation, when it was not established that an order of the Board would be ineffective unless made to run against it.) See also: *Calco Chemical Co., Inc.*, 12 N. L. R. B. 275, 278. *Chamberlain Corp.*, 37 N. L. R. B. 499, 502.

9 b. Legitimate labor organizations.

The rule that an employer-dominated union is not entitled to notice and hearing has no application to a legitimate labor union; and where a union of the latter kind is involved, it is entitled to notice and hearing before its contract with an employer can be set aside. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 233, modifying 4 N. L. R. B. 71 and modifying 95 F. (2d) 390 (C. C. A. 2).

0 c. Employer-dominated labor organizations.

An order of the Board, requiring an employer to withdraw all recognition from an employer-dominated labor organization and to post notices of compliance, does not run against

the labor organization, and it is therefore not entitled to notice and hearing. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 270, enforcing 1 N. L. R. B. 1, and reversing 91 F. (2d) 178 (C. C. A. 3). See also: *N. L. R. B.* v. *National Licorice Co.*, 104 F. (2d) 655, 657 (C. C. A. 2), modifying 7 N. L. R. B. 537, modified 309 U. S. 350. *N. L. R. B.* v. *Stackpole Carbon Co.*, 6 N. L. R. B. 171 enforced as modified 105 F. (2d) 167 (C. C. A. 3), rehearing denied with opinion 105 F. (2d) at 179, cert. denied 308 U. S. 605.

Armour & Co., 8 N. L. R. B. 1100, 1102, denying injunction restraining election 105 F. (2d) 1016 (C. C. A. 7). (Labor organization alleged to be employer-dominated is not a necessary party and is not entitled to be served with copies of charge and complaint but is under duty to intervene if it desires to participate in hearing.) Cf. *American Numbering Machine Co.*, 10 N. L. R. B. 536, 539.

21 d. Employees.

An order of the Board requiring an employer to cease giving effect to contracts found to have been entered into with individual employees in deprivation of rights guaranteed them by the Act is valid and does not require that the employees be joined as parties. *National Licorice Co.*, 309 U. S. 350, 366, modifying 7 N. L. R. B. 537 and modifying 104 F. (2d) 655 (C. C. A. 2).

Motion by employer to dismiss complaint for the reason, among others, that the employees at one of its plants and the Association of Commerce in the city in which that plant was located were not made parties to the proceedings although necessary thereto because of an existing contract between it and the Association of Commerce requiring it to employ only bona fide residents of the city in the plant, denied for, under the Act, the Board's orders run only against employers, and neither the employees at the plant nor the Association of Commerce need be made parties to complaint proceedings to enable the Board to determine whether the employer has violated the Act or to make an appropriate order against it. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 306, 307, n. 2.

Ruling of Trial Examiner denying motion by employer at conclusion of hearing to strike out testimony of all employees named in the complaint who had testified, except those who had signed the charge, on the ground that they were

not parties to the proceeding, affirmed. *Montgomery Ward & Co.*, 9 N. L. R. B. 538, 540, modified 107 F. (2d) 555 (C. C. A. 7).

Employees who entered into individual agreements with the respondent for the term of 1 year, purporting to be bound to bargain individually with the respondent for the duration of the agreement, *held* not to be indispensable parties to the proceedings concerning the validity of these individual agreements. *Killefer Mfg. Corp.*, 22 N. L. R. B. 484. [*See* §§ 86–90 (as to intervention by individual employees).]

e. Other parties.

The Board itself, representing the United States, is a party in interest in proceedings relating to unfair labor practices under the Act. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 911. See also: *Klotz*, 13 N. L. R. B. 746.

Petitioner, an attorney who represented respondent's employees and claimed an interest in complaint proceedings contending that respondent had not engaged in alleged unfair labor practices, and among other things, alleged that the only purposes of the complaint were to harass and damage the respondent, *held* not a necessary party, because any order of the Board will run, not against the petitioner, but only against the respondent. *Halff*, 16 N. L. R. B. 667, 669.

Where the legal and beneficial ownership of the capital stock of two corporations was nearly identical, they had the same principal officers and their employment policies and management were closely connected, it was proper to consider them as a single integrated enterprise, and to issue one complaint and conduct one hearing to dispose of charges against both corporations. *Republic Creosoting Co.*, 19 N. L. R. B. 267, 272.

Motion to dismiss complaint against labor organizations, granted as they cannot be considered employers even though they may have acted in the interest of an employer. *McGoldrick Lumber Co.*, 19 N. L. R. B. 887, 893.

Where several companies, in the formation and administration of an employee representation plan and its successors in operation at the mines of the said companies, dealt for all the mines collectively and not individually, the companies were properly joined as parties even though each company was an integral unit in respect to mining operations. *Odanah Iron Co.*, 25 N. L. R. B. 1332.

27 2. *Addition or substitution of parties.*

A company alleged to have been organized for the purpose of evading the Act by the employer against whom the original complaint was filed cannot be joined as a party to the proceedings by amendment of the complaint in the absence of a charge filed with the Regional Director or the Board. *N. L. R. B.* v. *Hopwood Retinning Co.*, 4 N. L. R. B. 922 modified 98 F. (2d) 97, 101 (C. C. A. 2), contempt citation granted 104 F. (2d) 302.

Schieber, 26 N. L. R. B. 937. (Amendment of complaint on basis of amended charge during hearing, naming last officers and directors as trustees of dissolved corporation as respondents, *held* proper, when the amended complaint in regard to the unfair labor practices did not differ materially from the original complaint, and copies of the amended complaint accompanied by notice of hearing were duly served upon the respondents.)

Phelps, 45 N. L. R. B. 1163. (Corporation which took over assets of trustee respondent after close of hearing added as a party, when amended charges and an amended complaint were issued against the corporation pursuant to usual Board procedure and supplementary proceedings were instituted to make them a party.)

There is no merit to the contention of an employer that a change in the title of the proceedings by substituting the name of a new labor organization with which the local, filing the charges, subsequently became affiliated, involves a substitution of parties and that the party which had filed the charge no longer exists, for even if true the issues in the case are not affected because the original organization existed at the time of the filing of the charges, the entire structure of the local remained unaltered and it continued with the same members, officers, and bylaws so that it is clear that the organizations are one, and the organization which filed the charge is still in existence, and the employer was at all times aware of the change in affiliation of the organization. *Consumers' Power Co.*, 9 N. L. R. B. 701, 703, 714, enforced 113 F. (2d) 38 (C. C. A. 6), rehearing denied October 8, 1940.

Blechman & Sons, Inc., 4 N. L. R. B. 15, 16, 17. (Change in name and affiliation of labor organization subsequent to filing of charge no cause for dismissal of proceeding where amended charge was filed by the organization under its new

name prior to the hearing.) See also: *Lowenstein & Sons, Inc.*, 6 N. L. R. B. 216, 223, master appointed in contempt proceedings, in connection with order entered by consent on October 24, 1938 (C. C. A. 2), in proceedings for enforcement, 121 F. (2d) 673 (C. C. A. 2).

Air Associates, Inc., 20 N. L. R. B. 356, 358, modified opinion as amended on denial of rehearing, October 15, 1941, 121 F. (2d) 586 (C. C. A. 2). (Motion, made by attorney for union during oral argument to amend pleadings and proceedings to show allegedly correct new name of labor organization, denied without prejudice where attorney for respondent declined to consent to motion on ground he had no knowledge of the facts, and there was no proof in that regard for record.)

Successor parent corporation substituted as a party after the issuance of Board's order as to the predecessor, when it was found that a merger took place in the interim. *Jergens Co.*, 43 N. L. R. B. 457.

§ 30 3. *Failure to designate proper party respondent.*

Complaint dismissed as to allied companies, when the individuals named in the complaint were not employees of those respondents for the period covered by the complaint. *Hearst*, 13 N. L. R. B. 1262, 1265.

Motion to dismiss complaint as to labor organizations named as respondents improperly denied, for even though they may have acted in the interest of an employer, they are not employers within the meaning of the Act. *McGoldrick Lumber Co.*, 19 N. L. R. B. 887, 893.

Complaint against respondent corporation which was in receivership during the period of the unfair labor practices, dismissed when respondent-receiver was in sole charge of the business subject to instructions of receivership court and while officers of the respondent corporation continued in a managerial capacity throughout the period of receivership, it acted at all times as agents for the respondent-receiver and as such was legally incapable of taking any action during period of the receivership. *Hoosier Veneer Co.*, 21 N. L. R. B. 907, 936, enforced 120 F. (2d) 574 (C. C. A. 7), cert. denied 314 U. S. 647. See also: *Grower-Shipper Vegetable Assn. of Central California*, 15 N. L. R. B. 322, 353, 366, modified 122 F. (2d) 368 (C. C. A. 9).

Holding company whose subsidiaries were charged with a violation of the Act, *held* not a proper party to the proceeding where the evidence showed that it neither controlled

nor was responsible for the labor policy of such subsidiaries and had itself committed no unfair labor practices. *Middle West Corp.*, 28 N. L. R. B. 540.

B. REPRESENTATION PROCEEDINGS. [*See* INVESTIGATION AND CERTIFICATION (as to the existence of and the resolution of question concerning representation).]

1. *Necessary parties.*

a. In general.

b. Legitimate labor organizations.

It is necessary to hold an additional hearing on a petition for investigation and certification of representatives where it appears that labor organizations claiming to represent employees directly affected by the investigation were not notified of the proceeding before the Board and did not have an opportunity to be heard. *Union Premier Food Stores, Inc.*, 10 N. L. R. B. 370, 379. See also: *American France Line*, 7 N. L. R. B. 79, 80. *Texas Co.*, 28 N. L. R. B. 594.

[*See* §§ 66–75 (as to intervention of legitimate labor organizations).]

c. Employer-dominated labor organizations.

[*See* § 77 (as to intervention of labor organizations alleged or found to be employer-dominated), § 327 (as to dismissal of petition where a labor organization in representation proceedings is found to be a successor to previously found dominated organization), and INVESTIGATION AND CERTIFICATION § 81.5 (as to exclusion of employer-dominated organization from ballot).]

d. Employer.

Motion by a parent corporation to dismiss the petition insofar as it is named as a party, denied when it owned all the stock of the subsidiary corporation and exercised substantial control over its business and labor policies. *Chrysler Detroit Co.*, 38 N. L. R. B. 313, 317. See also: *Crucible Steel Co.*, 45 N. L. R. B. 812.

e. Employees.

Motion to dismiss representation proceedings on ground that there was a defect in parties in that employees were not served with notice of the hearing, or in the alternative, to suspend the hearing until such time as said employees were made parties and given due notice, denied. *American S. S. Co.*, 27 N. L. R. B. 584.

[See §§ 86–89 (as to intervention of individual employees).]

f. Other parties.

§ 41 2. *Addition or substitution of parties.*

There is not merit to the objection of an emplo amendment of a petition for investigation and tion changing the name of the petitioning labor tion to that of another labor organization on t that such an amendment created an entirely nev ing, where the membership of such other labor or is composed of employees who were formerly m the petitioning labor organization; both labor tions are affiliated with the same parent body; mittee of the petitioning labor organization whi ated with the employer had acted on behalf of employees which the other labor organization in the present proceeding; and the evidence a that at the hearing the other labor organizatio that it represented a majority of the employees. *& Co.*, 6 N. L. R. B. 613, 615.

Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 6 name of a labor organization may properly be su in representation proceedings for the name of cessor and may appear on the ballot in lieu of th that predecessor where subsequent to the he record was reopened to show the change in name

National Candy Co., Inc., 7 N. L. R. B. 1207, 120 stitution on a second amended petition of a pa organization for its local which had filed th petition is proper, despite the objection of an thereto, where the record shows that the pare zation usually negotiates agreements for its locals agreements to which the local is a party must be by the parent organization, for the Rules and R provide that a petition may be filed by any em labor organization acting on his behalf.)

Cherner Motor Co., 19 N. L. R. B. 609, 610. petitioner was succeeded in its jurisdiction to the e in question by another local of the same inte union, successor union substituted for petitioner

National Mineral Co., 25 N. L. R. B. 3. (It was in whether a "valid successorship" was effected substantial number of employees of the comp previously designated the successor union as thei ing agency.)

Jameson Co., 25 N. L. R. B. 64, and *Corona Citrus* N. L. R. B. 77. (Pursuant to a motion made su

to the hearing, one local was ordered substituted for the petitioning local as party petitioner in the proceedings in all respects as if said local had participated in the proceedings provided the substituted local filed with the Board a statement that it assented to the substitution of itself and waived any right of notice and bound itself to the record as made.)

Westinghouse Electric & Mfg. Co., 38 N. L. R. B. 412. (Pursuant to motion made subsequent to issuance of Decision and Direction of Election new local chartered by parent organization for employees involved substituted for local in whose name petition was filed.)

Motion by counsel for newly added employer members of an association of dress manufacturers that the representation proceeding continue with the original parties or that the proceedings be dismissed and a *de novo* proceeding be held, denied. *National Dress Manufacturers' Assn., Inc.*, 28 N. L. R. B. 386.

Motion by union to amend its petition to include prospective employer who held option to purchase under a lease, granted. *Val Vita Food Products, Inc.*, 45 N. L. R. B. 29.

2 3. *Failure to designate proper party employer.*

A Trial Examiner has not erred in overruling motions to dismiss a petition and complaint on the ground that the petition and charge erroneously designated the parent company, a separate legal entity, as the employer, and that, therefore, the subsidiary company had not properly been brought before the Board, where the petition and charge had been amended to substitute the name of the subsidiary company as the employer. *United Carbon Co., Inc.*, 7 N. L. R. B. 598, 600.

Petition dismissed as to a partnership found not to be an employer within the meaning of the Act when corporation succeeded it as owner of business involved. *Steiner*, 43 N. L. R. B. 1384.

0 4. *Others.*

Labor organization, although not served with a notice of the hearing, became a party to the representation proceedings when it entered an appearance, and was treated as a party. *National Gypsum Co.*, 32 N. L. R. B. 976.

C. INTERVENTION. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Generally*—Intervention.]

1. *In general.*

1 a. Nature and purpose.

Committee of business and professional men granted leave to intervene on behalf of themselves and other local citizens and business people for the limited purpose of offering evidence relative to their connection with, and motive in, participation of events referred to in evidence previously adduced at the hearing. *Ely & Walker Dry Goods Co.*, 40 N. L. R. B. 1262.

2 b. Time for applying.

A petition for intervention filed by a labor organization within a reasonable time after the issuance of a Direction of Election, where through no fault of its own the petitioner was unaware of the proceedings, *held* to have been presented in time. *American Tobacco Co.*, 2 N. L. R. B. 198, 209–212.

Petitions for leave to intervene in representation proceedings denied where the petitions were filed after the hearing in the entire case had been concluded, and had they been granted it is impossible to tell how many more petitions to intervene would have been filed or how long it would have taken to reach a final determination of the issues of the cases which had been regularly presented. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 648, 649.

Hart & Cooley Mfg. Col, 30 N. L. R. B. 1119. (Petition to intervene filed after close of hearing in a representation case by a labor organization not in existence at the time of the hearing, denied for to open the record upon the appearance of each succeeding labor organization would only serve to protract the proceedings interminably.)

Two labor organizations which filed separate petitions for investigation and certification of representatives 2 or 3 days before a hearing of which they had received notice upon the filing of a petition by four other labor organizations, are regarded as intervenors rather than petitioners where the Board had not acted upon their petitions in ordering an investigation. *Phelps Dodge Corp.*, 6 N. L. R. B. 624, 625, 626.

Labor organization not served with notice of hearing permitted upon its own motion to intervene in the proceedings and to a place on the ballot where in accordance with the Direction of Election it presented proof to the Regional Director within the required time that it had a substantial interest in the proceedings. *Campbell Transportation Co.*, 37 N. L. R. B. 240.

c. Procedure in applying.

A petition for intervention may be filed in the form of a letter. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 648.

Trial Examiner's ruling which required labor organization making oral request at hearing to be permitted to intervene in representation proceeding to file written petition for intervention prior to participation in such proceeding, affirmed. *Walt Disney Productions, Ltd.*, 13. N L. R. B. 865.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 543. (Oral motion to intervene, denied.)

Paramount Pictures, Inc., 7 N. L. R. B. 1106, 1107. (Oral motion to intervene in representation proceedings granted subject to filing written petition during hearing.)

Standard Oil Co., 8 N. L. R. B. 1094, 1095. (Oral motion to intervene denied where no excuse was offered for not making motion in writing.)

d. For purpose of collateral attack.

A petition to intervene in complaint proceedings for the purpose of showing that an election held in prior proceedings was improperly conducted has been properly disallowed. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 955, enforced 111 F. (2d) 814 (C. C. A. 5), cert. dismissed on motion of petitioning company 311 U. S. 723.

e. Charging violations not alleged in complaint.

Ruling of Trial Examiner denying motion of employer to dismiss amended petition to intervene filed by a labor organization reversed where the complaint was not amended to include the additional charges filed in the amended petition to intervene. *Falk Corp.*, 6 N. L. R. B. 654, 656, enforced 308 U. S. 453, reversing 106 F. (2d) 454, and modifying 102 F. (2d) 383 (C. C. A. 7).

f. Effect upon status of intervenor as party to proceedings. [*See* §§ 77, 79 (as to labor organizations alleged or found to be employer dominated).]

A labor organization is not precluded from being certified as representative of a majority of the employees in an appropriate unit, although it failed to execute and file a petition in accordance with the Rules and Regulations, where it was informed at the hearing by the Trial Examiner that its intervention placed it in the same position as if a petition had been filed. *Wadsworth Watch Case Co.*, 4 N. L. R. B. 487, 494.

A labor organization served with notice of a hearing in a representation proceeding is not required to file a petition to intervene in order to acquire the status of a party. *Cudahy Packing Co.*, 17 N. L. R. B. 302, 304.

57 g. For purpose of attacking jurisdiction of Board.

Quaere, whether the word "intervene" is used in Section 10 (b) of the Act in the sense that the right to intervene is to be determined by rules regarding intervention in court proceedings. If it is to be so considered, intervention is properly disallowed where sought for the purpose of attacking the jurisdiction of the Board. *N. L. R. B.* v. *Star Publishing Co.*, 97 F. (2d) 465, 469 (C. C. A. 9), enforcing 4 N. L. R. B. 498.

58 h. Effect of service of notice of proceeding.

A labor organization served with notice of a hearing in a representation proceeding is not required to file a petition to intervene in order to acquire the status of a party. *Cudahy Packing Co.*, 17 N. L. R. B. 302, 304.

Union's motion to intervene in complaint proceedings received as an exhibit since it had already become a party by virtue of having been named in and served with a copy of the complaint. *International Harvester Co.*, 29 N. L. R. B. 456, 459.

65 i. Other circumstances.

2. *Legitimate labor organizations.*

66 a. In general.

67 b. Duty to intervene in absence of notice.

A legitimate labor organization which has not been served with a copy of the complaint and notice of hearing is under no duty to intervene in order to safeguard its interests. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 231–238, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

68 c. Materiality of issues upon which petition for intervention based.

After the hearing in a representation proceeding a labor organization which was not a party to such proceeding filed a petition with the Board in the form of a letter stating that a majority of the employees in an appropriate unit did not want a rival labor organization which had filed the petition in a proceeding to represent them and requesting that the present petitioner be "appointed" by the Board as the bargaining agency for such employees or that an election be

held to determine whether they wished to be represented by it or by the rival organization. *Held:* petition denied. The petition was filed 10 days after the hearing in the entire case had been concluded and no regular opportunity was provided for the cross-examination of petitioning organization's witnesses; the evidence filed in support of its petition is not sufficient to warrant a certification; it seeks at most a place on the ballot in an election; that facts presented at the hearing did not warrant the direction of an election and such direction is not justified on the basis of the petition or evidence so introduced. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 648, 649.

The petition of a labor organization to intervene in a proceeding charging an employer with a refusal to bargain with another labor organization has been properly disallowed where the petitioner alleged that it represented a majority of the employees in the appropriate unit at the time the petition was filed but failed to allege that it represented a majority at the time the employer was charged with a refusal to bargain with the complainant labor organization. *U. S. Stamping Co.*, 5 N. L. R. B. 172, 175.

A petition to intervene filed by a labor organization after a hearing but before the Board had issued its decision based on charges of unfair labor practices and designating a rival organization as the representative of the employees has been improperly disallowed where the intervening organization claimed that a majority of the employees had transferred to it. *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 54, 55 (C. C. A. 8), modifying 9 N. L. R. B. 1073, cert. denied, 314 U. S. 696.

Rival labor organization which petitioned to intervene in a complaint proceeding, alleging that at the time of the filing of the petition it represented a majority of employees in one unit. In denying the request, the Board pointed out that the rival labor organization did not represent a majority until after the respondents' refusal to bargain with the charging labor organization and after the hearing in the instant case; and that prior to this case, the Board in a representation case had certified the charging labor organization in this unit. The Board's findings in regard to the unfair labor practices of respondents, therefore, were not affected by this alleged recent majority of the

rival union. Despite any present majority of the rival union, the Board refused to modify its bargaining order because: (1) the unfair labor practices of the respondents had discouraged membership in the charging labor organization so that any alleged subsequent change of affiliation was not the free uncoerced choice of the employees; and (2) effective administration of Section 8 (5) would be impossible if every such change in affiliation after a violation of 8 (5) must be investigated and given effect. *Westinghouse Electric & Mfg. Co.*, 22 N. L. R. B. 147, 176.

Labor organization, which made no claim or showing of designation among employees concerned in a representation proceeding limited to metropolitan unit, permitted to intervene to protect its interest in composition of a Nation-wide unit which parties agree may in the future be appropriate. *Western Union Telegraph Co.*, 30 N. L. R. B. 679. See also: *Western Union Telegraph Co.*, 30 N. L. R. B. 720. *Western Union Telegraph Co.*, 30 N. L. R. B. 1138. *Western Union Telegraph Co.*, 32 N. L. R. B. 210.

Petition to intervene and reopen record after hearing, denied on ground that no material issue had been raised to justify reopening of the record, where union which sought to take evidence to determine by what authority the charging union "claims the right to act as bargaining agency"—on ground that it is a party to a contract with employer designating it as sole bargaining agency—had after the signing of the contract, appeared on the ballot with the charging union in a consent election won by the charging union and had not questioned the validity of the results of the election. *Pacific States Cast Iron Pipe Co.*, 37 N. L. R. B. 405.

9 d. Interest.

Petition of a labor organization, claiming a majority of the employees as its members and requesting that it be made a part to proceedings predicated upon a complaint alleging discriminatory discharges, denied since the petition showed no sufficient interest in the proceedings and was not filed until after the hearing. *Mansfield Mills, Inc.*, 3 N. L. R. B. 901, 920.

Contention of employer that the Board erred in failing to assume jurisdiction of the entire controversy by denying intervention to labor organization whose members were given employment as the result of dispute over membership between the labor organization seeking intervention and

another organization and which resulted in the discriminatory transfer of employees who were members of the other labor organization, rejected for the proposed intervenors were not a part of the controversy before the Board. *N. L. R. B.* v. *Star Publishing Co.*, 97 F. (2d) 465, 470 (C. C. A. 9), enforcing 4 N. L. R. B. 498.

Trial Examiner in a representation proceeding properly denied motion to intervene by a labor organization which contended that proceeding would disturb its relationship with the company under the terms of an alleged agreement with the company, where it failed to show the existence of the alleged agreement and did not claim to represent any individuals then in the employ of the company and directly affected by the investigation. *Interstate Water Co.*, 11 N. L. R. B. 417, 418.

Calco Chemical Co., Inc., 13 N. L. R. B. 34. (Petition for intervention by a labor organization denied for failure to show a substantial interest in a representation proceeding.)

Vultee Aircraft, Inc., 24 N. L. R. B. 1184. (Membership of 18 of approximately 2,000 employees by a union, *held* not to constitute sufficient interest in proceedings to justify intervention.)

McCormick S. S. Co., 25 N. L. R. B. 587. (Motion of petitioning union to disallow petition for intervention made by another union, granted when it appeared at the end of the hearing that the intervening union had no membership among employees involved.)

American Enka Corp., 28 N. L. R. B. 423. (A union which was still in its formative stage at the time of the hearing, *held* not to have such a substantial interest in the proceedings as to be entitled to intervene.)

Goodrich Electric Co., Inc., 30 N. L. R. B. 979. (Labor organization which alleged that it had been informed by certain unnamed employees that they and other employees desired to be represented by it, but made no claim to actual membership among employees of the company, *held* not to have such a substantial interest in the proceedings as to entitle it to intervene.)

Kennecott Copper Corp., 40 N. L. R. B. 986. (Motion of labor organization to intervene denied for insubstantial showing of membership.)

[*See* INVESTIGATION AND CERTIFICATION § 84 (as to requirement of a showing of interest to participate in an election).]

Where applications of proposed intervenors do not relate directly to questions concerning representation which petitions filed by petitioning labor organizations allege to exist, the proposed intervenors having sought to represent entirely different groups of employees than did the petitioning labor organizations, they may not intervene in the proceedings. Proper procedure for proposed intervenor to have followed would have been to file petitions with Regional Director for investigation and certification of representatives, which would then have been passed upon by the Board. *Vail-Ballou Press, Inc.*, 15 N. L. R. B. 406.

ET & WNC Motor Transportation Co., 30 N. L. R. B. 505, 506. (Board denied petition of proposed intervenor who sought to represent employees other than those directly affected by the investigation.)

§ 70 e. Necessity that employees be eligible to membership.

There is no requirement that employees be eligible to membership in a labor organization seeking to intervene in a representation proceeding, for while the employees may not always be eligible to membership in the intervenor, they may desire to be represented by it. *L. A. Nut House*, 5 N. L. R. B. 799. 803, 804.

§ 75 f. Other circumstances.

3. *Labor organizations alleged or found to be employer-dominated.*

§ 76 a. In general.

§ 77 b. Right of employer-dominated labor organization to intervene in representation proceedings.

The Board is not concerned with whether certain organizations alleging to represent employees and granted leave to intervene in a representation proceeding do or do not exist as labor organizations, since Section 9 of the Act speaks not of "labor organizations" but of "representatives for the purposes of collective bargaining"; nor whether, in the absence of a charge filed and complaint issued under Section 8 (2) the employer does or does not dominate or contribute financial support to the organization. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 642, 643. See also: *Wilson & Co.*, 14 N. L. R. B. 283, 284.

A labor organization previously found to be employer-dominated is not entitled to intervene in representation proceedings. *Metropolitan Engineering Co.*, 8 N. L. R. B.

670, 671. See also: *Gutmann & Co., Inc.*, 30 N. L. R. B. 1. *Virginia Electric & Power Co.*, 45 N. L. R. B. 1313.

Hart & Cooley Mfg. Co., 30 N. L. R. B. 1119. (Trial Examiner's ruling permitting an organization, alleged by the petitioner to be employer-dominated, to intervene in a representation case, overruled following disposal of charges by company's agreeing to organization's disestablishment.)

Roebling's Sons Co., 31 N. L. R. B. 160. (Labor organization previously found to be employer-dominated by the Board, denied the right to intervene although the Board's decision respecting such organization was still pending before the U. S. Circuit Court.) See also: *Thompson Products, Inc.*, 40 N. L. R. B. 407.

Staley Mfg. Co., 31 N. L. R. B. 946. (Record reopened to permit an organization to intervene after the Circuit Court of Appeals set aside an order of the Board requiring its disestablishment.)

[*See* INVESTIGATION AND CERTIFICATION § 81.5 (as to the participation of employer-dominated representatives in elections).]

78 c. Duty to intervene in absence of notice.

A labor organization alleged to be employer-dominated is under a duty to intervene in complaint proceedings if it desires to participate. *Armour & Co.*, 8 N. L. R. B. 1100, 1102, denying injunction restraining election in 105 F. (2d) 1016 (C. C. A. 7).

79 d. Limitations on right to intervene in complaint proceedings.

Motion of labor organization alleged to be employer-dominated to be permitted to answer the complaint and in effect to intervene for all purposes, granted only for the purpose of showing: (1) that it was a labor organization; (2) that from the date of the signing of a contract between it and the employer, to the date of the issuance of the order, it represented a majority of the employees within the appropriate bargaining unit; and (3) that certain allegations in its motion regarding the employer's activities on its behalf and relations to it were true. *Burnside Steel Foundry Co.*, 7 N. L. R. B. 714, 716.

Labor organization alleged to be employer-dominated sought to intervene in proceeding involving charges of 8 (2) and 8 (5). The Trial Examiner permitted intervention on issue of domination in violation of Section 8 (2) and denied intervention on the issues of the sppropriate unit and the majority claim of a rival labor organization, but at the

close of the hearing permitted intervention on the question of unit with leave to introduce evidence on that issue. Labor organization claimed it had been deprived of a legal right. *Held:* The question has been decisively settled that the presence of such a labor organization was not necessary as to an issue of domination and if an order may be entered against an employer ordering disestablishment of an organization without its presence, there is no reason why an order may not be entered determining the appropriate unit and that a rival organization has a majority in such unit without the presence of an employer-dominated labor organization. *Inland Steel Co.* v. *N. L. R. B.*, 9 N. L. R. B. 783, remanded for new hearing 109 F. (2d) 9, 25, 26, (C. C. A. 7), interrogatories denied 105 F. (2d) 246.

Motion by labor organization alleged to be employer-dominated for leave to intervene at a hearing with respect to a paragraph of the complaint alleging that a certain unit was appropriate for purposes of collective bargaining, granted, and motion to intervene with respect to a paragraph of the complaint alleging that a majority of the employees in an appropriate unit designated the complaining labor organization as their bargaining representative, denied. *Cupples Co.*, 10 N. L. R. B. 168, 171, modified and rehearing denied 106 F. (2d) 100 (C. C. A. 8).

For decisions in which alleged dominated organization's participation was limited to matters directly or indirectly affecting its interests, *see:*

Link-Belt Co., 12 N. L. R. B. 854, 856, enforced as modified 110 F. (2d) 506 (C. C. A. 7), reversed modification of Board's order in 311 U. S. 584.

Phelps Dodge Corp.. 15 N. L. R. B. 732, 734.

Barre Wool Combing Co., Ltd., 28 N. L. R. B. 40.

Ford Motor Co., 31 N. L. R. B. 994.

Phelps Dodge Corp., 32 N. L. R. B. 338.

Tidewater Express Lines, Inc.,32 N. L. R. B. 792.

Pick Mfg. Co., 35 N. L. R. B. 1334.

e. Other circumstances.

Alleged dominated union's motion to intervene received as an exhibit since it had already become a party to the hearing by virtue of having been named in and served with a copy of the complaint. *International Harvester Co.*, 29 N. L. R. B. 456. Cf. *California Walnut Growers Assn.*, 18 N. L. R. B. 493, 496.

4. *Individual employees.*

a. In general.

b. Interest.

A petition for intervention filed by certain employees has neither alleged nor set forth facts showing that they had any right which they could assert with respect to the subject matter of the complaint, charging that certain other employees had been discriminatorily discharged, where the petitioners alleged that they constituted a majority of the employees, that they did not desire the complaining labor organization to represent them for the purposes of collective bargaining and that they did not wish to work with the persons alleged to have been discriminatorily discharged, and the Trial Examiner was correct in ruling that he had no authority to review the ruling of the Regional Director who had, prior to the hearing, denied the petition for intervention on the ground of lack of interest in the petitioners. *Bell Oil & Gas Co.*, 2 N. L. R. B. 886, 887, 888.

Individual employees do not have such an interest as entitled them to intervene in proceedings brought by the Board on a complaint issued by it against an employer for the purpose of showing what they believe constitutes an appropriate unit for the purposes of collective bargaining and that a labor organization did not represent a majority in that unit at the time of the hearing. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 682, enforced 98 F. (2d) 18 (C. C. A. 9), commission and interrogatories denied 98 F. (2d) 16.

In a representation proceeding Board sustained Trial Examiner's rulings which permitted certain employees in the editorial department of a newspaper publisher to intervene for the purpose of showing that editorial employees constituted a separate appropriate unit, and denied other employees in the editorial and commercial departments permission to intervene on the ground that their interests were the same as the former group and would thus be adequately represented. *Evening News Assn.*, 42 N. L. R. B. 736.

c. Other circumstances.

5. *Others.*

Motion by an attorney to intervene in unfair labor practice proceeding properly denied until he proved his authority to represent numerous of the respondent's employees by introducing signed petitions. *Reed & Prince Mfg. Co.*, 12 N. L. R. B. 944, 971, enforced as modified 118 F. (2d) 874 (C. C. A. 1), cert. denied 313 U. S. 595.

Oughton, 20 N. L. R. B. 301, 302, enforced as modified 118 F. (2d) 494, cert. denied 62 S. Ct. 485. (Petition for intervention in a complaint proceeding by counsel for committee of 5, who claimed to represent 145 employees whose signatures were purportedly affixed to written authorizations, denied where neither the petition nor the authorization purported to designate a person or labor organization as bargaining representative.)

Divorced wife of an employee discharged in violation of 8 (3) refused permission to intervene in Board proceeding although a State court had entered a decree in a divorce proceeding awarding her the back pay claim. *Continental Box Co., Inc.*, 19 N. L. R. B. 860, enforced 113 F. (2d) 93 (C. C. A. 5).

Attorney may not continue to participate in a hearing in behalf of a labor organization which he admitted had ceased to exist since hearing began; and he may not intervene in behalf of a witness who was not entitled to be a party. *Condenser Corp. of America*, 22 N. L. R. B. 347, enforced as modified March 25, 1942 (C. C. A. 3).

Intervention denied eight self-styled "citizens and inhabitants" acting for themselves and "in the collective behalf and interest of the Citizens of the Community in which they reside," who petitioned to intervene because of certain alleged financial and other interests. *Brown-McLaren Mfg. Co.*, 34 N. L. R. B. 984.

Ely & Walker Dry Goods Co., 40 N. L. R. B. 1262. (Committee of business and professional men granted leave to intervene on behalf of themselves and other local citizens and business people for the limited purpose of offering evidence relative to their connection with, and motive in, participation of events referred to in evidence previously adduced at the hearing.)

III. PLEADINGS.

A. CHARGE. [*See* LITIGATION DIGEST. PROCEDURE BOARD—*Charge.*]

1. *In general.*

a. Nature, scope, and function.

The function of the charges is to call the attention of the Board to the fact that certain unfair labor practices are alleged to have been committed, and it is not essential that the charge describe the unfair labor practices with the same particularity as the complaint. Accordingly, employer's motion to strike portions of complaint on the

ground that complaint was broader than charge was properly overruled by the Trial Examiner when the charge although not setting forth the specific allegations objected to, provided a proper basis therefor. *Shell Petroleum Corp.*, 10 N. L. R. B. 719, 720. See also:

Beckerman Shoe Corp., 19 N. L. R. B. 820, 822.

Block-Friedman Co., 20 N. L. R. B. 625, 627 n. 4.

Fox-Coffey-Edge Millinery Co., Inc., 20 N. L. R. B. 637, 639.

Bierner, 20 N. L. R. B. 673, 676.

Inland Lime & Stone Co., 24 N. L. R. B. 758, 759, enforced 119 F. (2d) 20 (C. C. A. 7).

There is no merit to a contention of an employer that findings by the Board of unfair labor practices which occurred after the charge was filed constitute a fatal departure, on the ground that the charge is a jurisdictional prerequisite to the complaint and subsequent proceedings and the latter are restricted to the specific unfair labor practices alleged in the charge, where the complaint elaborated the charge with particularity and findings of the Board were of the same class and continuation of the violations alleged in the charge, for whatever restrictions the requirements of a charge may be thought to place upon proceedings by the Board, the Act does not preclude it from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350, 368, 369, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

Board found H. Company had committed unfair labor practices. Order of the Board was, nevertheless, directed against both the H. Company and the M. Company on the theory that the latter was the successor or the *alter ego* of H. Company. M. Company objected to assumption of jurisdiction by Board. M. Company was not served with complaint until 2 days after hearing against H. Company had begun. Later, the Trial Examiner, without a charge having been filed with the Regional Director or the Board, allowed an amended charge against M. Company. Board issued a complaint against M. Company on ground its authority to do so was not limited by the scope or the original H. Company. *Held:* The Board cannot use its own initiative in respect to charging unfair practices. Article II

of the Rules and Regulations of the Board provide, among other things, that the charge shall be filed with the Regional Director who thereupon shall cause to be served upon the employer a formal complaint stating the charges and containing a notice of hearing. This procedure is required as a prerequisite to the jurisdiction of the Board and the complaint issued and the subsequent hearing must be in accord with the charge in an attempt to prove or rebut such charges. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 101 (C. C. A. 2), modifying 4 N. L. R. B. 922, contempt citation granted 104 F. (2d) 302.

[*See* § 27 (as to addition or substitution of parties).]

95 b. Sufficiency. [*See* § 103 (as to sufficiency of complaint).]

The fact that a charge on which a complaint issued, and the complaint itself, contain nothing about the formation of a labor organization found to be employer-dominated does not justify a court of review in interfering with an order of the Board requiring the employer to disestablish that organization and to bargain collectively with the representatives of its employees, for although a charge is a condition precedent upon the Board's power to issue a complaint, it is not necessary for it to include, and no charge could have included, the employer-dominated organization which arose following the failure of a strike, but the Board was within its powers in treating the whole sequence as one. *N. L. R. B.* v. *National Licorice Co.*, 104 F. (2d) 655, 658 (C. C. A. 2), modifying 7 N. L. R. B. 537, modified 309 U. S. 350.

Killefer Mfg. Corp., 22 N. L. R. B. 484, 488. (It is true that the Board cannot initiate proceedings itself, and it is the purpose of charges to institute proceedings. When, however, charges are filed the Board proceeds not in vindication of private rights, but as an administrative agency charged by Congress with the function of enforcing the Act and bringing about compliance with its provisions. Accordingly, when in the course of an investigation begun upon charges duly filed evidence is disclosed that a respondent has engaged in unfair labor practices not specified in the charges, public policy, as well as the policies of the Act, require the Board to proceed with respect to such unfair labor practices, to order it to cease and desist therefrom, and to take such affirmative action as will remedy the effects thereof. The Board would be failing in its duty as a

public agency if it chose to do otherwise.) See also: *Firestone Tire & Rubber Co. of California*, 22 N. L. R. B. 580, 584. *Feinberg Hosiery Mill, Inc.*, 38 N. L. R. B. 1359. *Brown-McLaren Mfg. Co.*, 34 N. L. R. B. 984.

Motion by employer at commencement of the hearing to strike out allegations of an amended complaint as to the discriminatory discharges of a stated number of employees on the ground that the charge filed with the Regional Director, a copy of which was attached to the amended complaint, contained no reference to the employees mentioned in the amended complaint, denied, but request for a bill of particulars stating the names of such employees granted. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 681, enforced 98 F. (2d) 18 (C. C. A. 9).

An employer is not prejudiced by any paucity of facts in the charge where the complaint contains a clear and concise statement of such facts, and a copy of the complaint had been served upon the employer a considerable time before the hearings. *Trenton Garment Co.*, 4 N. L. R. B. 1186, 1187, 1188.

Vincennes Steel Corp., 17 N. L. R. B. 825, enforced as modified 117 F. (2d) 169 (C. C. A. 7). (A misnomer of a labor organization in the charge, *held* not to vitiate the complaint.)

Ruling of Trial Examiner denying motion by employer at conclusion of hearing to strike out testimony of all employees named in the complaint who had testified, except those who had signed the charge, on the ground that they were not parties to the proceeding, affirmed. *Montgomery Ward & Co.*, 9 N. L. R. B. 538, 540, modified 107 F. (2d) 555 (C. C. A. 7).

c. Variance between allegations of charge and of complaint. (*See* §§ 170–180.)

5.5 2. *Delay in filing.* [*See* § 102 (as to effect of a delay in the issuance of a complaint), § 314 (as to dismissal of complaint for laches).]

Motion to dismiss complaint on ground that charges of unfair labor practices were not filed within a reasonable time, denied for the Act contains no limitation of time within which charges of unfair labor practices may be filed, and the equitable principle of laches does not apply to the Board in its administrative capacity as an agency of the Government. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028, 1044. See also: *Colorado Milling & Elevator Co.*, 11 N. L. R. B. 66, 67. *Brown Paper Mill Co., Inc.*, 36

N. L. R. B. 1220, 1222. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652, 655.

96 3. *Who may file.*

The Board cannot itself initiate charges of unfair labor practices. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 101 (C. C. A. 2), modifying 4 N. L. R. B. 922, contempt citation granted 104 F. (2d) 302.

The type of person or organization making the charge, or the relationship between such person or organization and the individuals involved in the acts complained of, are not limited by the Act, and a contention of an employer that a charge is not justified by the Act, since it was made by a labor organization and not by any of the employees involved or by the labor organization as their representative finds no support in the Act or in the Rules and Regulations. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 45, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

Employer's contention that the charge upon which the complaint was based was not filed in the manner or by the persons authorized to file such a charge is without merit and finds no support in the Act or in Board Rules and Regulations. The charges and amended charges upon which the complaint was issued were filed by the union and were signed by its representatives. The Act provides that the Board may issue a complaint "whenever it is charged that any person has engaged in" unfair labor practices. The Board's Rules and Regulations provide that such a charge may be made by any person or labor organization. *Wilson & Co., Inc.*, 31 N. L. R. B. 440, enforced 126 F. (2d) 114 (C. C. A. 7) cert. denied 62 S. Ct. 1292.

N. L. R. B. v. *Star Publishing Co.*, 97 F. (2d) 465, 470 (C. C. A. 9), enforcing 4 N. L. R. B. 498. (The right of employees to institute proceedings before the Board is not affected by the fact that they have also gone on strike because of an unfair labor practice.)

Foster Bros. Mfg. Co., Inc., 1 N. L. R. B. 880, 890, set aside 85 F. (2d) 948. (Striking employees may institute proceedings under the Act.)

Hearst, 2 N. L. R. B. 530, 544, 545, enforced 102 F. (2d) 658 (C. C. A. 9). (Labor organization boycotting employer's business may file charge.)

Barrett, 3 N. L. R. B. 513, 516. (A local labor organization whose charter has been allegedly revoked by parent organization may file charge.)

General Shoe Corp., 5 N. L. R. B. 1005, 1007, n. 3. (An individual may file a charge.)

Kansas City Structural Steel Co., 12 N. L. R. B. 327, 328. (A labor organization alleging that employees were discharged for membership in a rival labor organization may file a charge.)

General Motors Corp., 14 N. L. R. B. 113, 115, 162, enforced 116 F. (2d) 306 (C. C. A. 7). (Labor organization that agreed not to file charges, may file charges; local union which lacked authority under its constitution, charter, and bylaws to file charges, may file charges.)

Universal Match Corp., 23 N. L. R. B. 226, 227. (A charge of unfair labor practice when filed by an individual, even though purportedly in behalf of a labor organization which is shown to be non-existent, satisfies the requirements of Section 10 (b) of the Act and constitutes substantial compliance with the Rules and Regulations.)

Boswell Co., 35 N. L. R. B. 968. (Employer's contention that charges filed in behalf of an individual were a nullity inasmuch as the individual was not a member of the union and there was no evidence that she had authorized the union to file a charge in her behalf, *held* without merit.) See also: *Washougal Woolen Mills*, 23 N. L. R. B. 1.

Greer Steel Co., 38 N. L. R. B. 65. (Charging union's alleged surrender of charter is not a question which would affect the propriety of the issuance of the complaint.)

National Mineral Co., 39 N. L. R. B. 344. (Contention that complaint should be dismissed because of alleged lack of authorization of person filing charges, *held* without merit, aside from finding that such person was authorized to file charges.)

96.5 4. *Failure to file charge in good faith.*

Motion to dismiss complaint on the ground that the charges were not filed in good faith, denied for the motive of the party filing charges is immaterial, the only question being whether unfair labor practices have been committed as alleged. *Mooremack Gulf Lines, Inc.*, 28 N. L. R. B. 869, 882. See also: *Berkshire Knitting Mills*, 17 N. L. R. B. 239, 243, granted motion to adduce additional evidence, in part, and remanding, 121 F. (2d) 235 (C. C. A. 3), motion

for writ of mandamus denied. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028, 1044.

§ 97 5. *Reinstatement of charge.*

Petition of labor organization for reinstatement of charge and proceedings, granted upon showing of failure of employer to remedy unfair labor practices found by Trial Examiner in Intermediate Report where proceedings had been previously dismissed and charge withdrawn, without prejudice, upon the request of petitioning labor organization. *Conn, Ltd.*, 7 N. L. R. B. 337–339, set aside 108 F. (2d) 390 (C. C. A. 7). See also: *Protective Motor Service Co.*, 2 N. L. R. B. 934, 936. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 911, 912. *Taylor Milling Corp.*, 26 N. L. R. B. 424, 439, n. 36.

[*See* EVIDENCE § 42 (as to what constitutes *res judicata*), and REMEDIAL ORDERS § — (as to the effect of reinstatement of charge upon an award of back pay).]

§ 100 6. *Amendments.*

Complaint issued on an amended charge, *held* not to have deprived respondent of due process of law by Board's refusal to produce the original charge when complaint raised no issues not encompassed within the amended charge. Respondent's contention that Board is neither empowered by the Act nor authorized by the Rules and Regulations, to issue complaints based upon an amended charge, *held* groundless. *Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382, 1384.

[*See* §§ 91, 95 (as to the necessity of amending charge to conform with original or amended complaint).]

§ 100.1 7. *Irregularities in filing and/or execution of charge.* [*See* § 143.1 (as to irregularities in filing and/or execution of petition for investigation and certification of representatives).]

Respondent's motion to dismiss the proceedings, claiming that the Board was without jurisdiction in that the amended charge was not executed before a notary public as required by the Rules and Regulations, but was sworn to before a master in chancery, denied. *Popper, Inc.*, 17 N. L. R. B. 961, 962, set aside 113 F. (2d) 602 (C. C. A. 3).

8. *Necessity that charge be attached to complaint.* (*See* § 121.)

9. *Laches.* (*See* § 314.)

10. *Failure to file charge in good faith.* (*See* § 96.6.)

B. COMPLAINT. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Complaint.*]

§ 101 1. *In general.*

The function of a complaint is to advise employer of the charges constituting unfair labor practices so that he may be put upon his defense, and the Act does not require the particularity of pleading required in criminal or equitable proceedings; thus, an order germane to the subject matter before the Board is proper although the complaint did not set out the particular facts constituting the unfair labor practice as finally found. *N. L. R. B.* v. *Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6) enforcing 7 N. L. R. B. 782. See also: *Consumers Power Co.* v. *N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6), enforcing 9 N. L. R. B. 701, rehearing denied October 8, 1940.

There is no merit to an employer's contention that the Board is neither empowered by the Act or authorized by its Rules and Regulations to issue a complaint based upon an amended charge. *Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382, 1384.

The issues in the case are based upon the allegations of the complaint rather than those of the charges. *Fox-Coffey-Edge Millinery Co., Inc.*, 20 N. L. R. B. 637, 639.

.02 2. *Delay in issuance.* [*See* § 95.5 (as to the effect of a delay in the filing of charges), and § 314 (as to dismissal of complaint for laches).]

Ruling of Trial Examiner, denying motion of employer to dismiss complaint for the reason that a delay of nearly 3½ months in issuing the complaint after the filing of the charge would prejudice the employer in the event that it should be ordered to reinstate its employees with back pay, affirmed. *Jefferson Electric Co.*, 8 N. L. R. B. 284, 285, set aside 102 F. (2d) 949 (C. C. A. 7).

Employer's contention that Regional Director's delay in issuing a complaint was in effect a refusal to issue the complaint, and that, therefore, charging union must obtain review of such refusal from the Board prior to its issuance by Regional Director, rejected. *Bussmann Mfg. Co.*, 14 N. L. R. B. 322, 324, enforced as modified 111 F. (2d) 783 (C. C. A. 8), contempt citation granted November 25, 1940.

Employer's motion to dismiss complaint on ground that both union and Board were guilty of laches, denied when union had filed charges promptly after the commission of the unfair labor practices and the delay in issuance of the complaint was caused by employer's resistance to the Board's subpenas. *Barrett Co.*, 41 N. L. R. B. 1327.

3. *Sufficiency.*

03 a. In general. (*See* also § 101).

b. Matters not alleged. (*See* §§ 113, 181–190.)

4. *Lack of particularity.* [*See* §§ 131–140 (as to the granting of a bill of particulars).]

04 a. In general.

The function of a complaint is to advise employer of the charges constituting unfair labor practices so that he may be put upon his defense, and the Act does not require the particularity of pleading required in criminal or equitable proceedings; thus, an order germane to the subject matter before the Board is proper although the complaint did not set out the particular facts constituting the unfair labor practice as finally found. *N. L. R. B.* v. *Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6) enforcing 7 N. L. R. B. 782.

05 b. Lack of particularity remedied by specific averment of charge.

Rulings of Trial Examiner denying employer's motions for bill of particulars and to make the complaint more definite and certain sustained since these rulings were not prejudicial to the employer in that, near the conclusion of the Board's case, the employer was granted an adjournment for several days in order to prepare its defense and the added time thus given after disclosure of the Board's evidence gave it complete opportunity to meet the issues; and further, the original charge together with three amended charges, set forth in detail most of the acts alleged to have been done by the employer and constituted notice to the employer of acts not alleged with the same particularity in the complaint. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 272, enforced as modified 118 F. (2d) 780 (C. C. A. 9).

06 c. Failure to name persons or set forth time or place of occurrence.

An employer has not been prejudiced by the lack of particularity in a complaint charging a violation of Section 8 (2) where, although the complaint was couched in general language and did not state the names of the individuals involved or the time and place of the occurrences, nevertheless, the petitioner was fully advised of the times and places of the alleged unfair labor practices and of the persons involved at the close of the Board's evidence, at which time the hearing was adjourned and the employer was given 2 days, excluding a Sunday, to prepare for the cross-

examination of certain of the Board's witnesses with the presentation of its own evidence, after which it fully cross-examined the Board's witnesses, and introduced evidence of its supervisory employees on each of the charges made and the issues presented. *Swift & Co.* v. *N. L. R. B.*, 106 F. (2d) 87, 91 (C. C. A. 10), rehearing denied with opinion 106 F. (2d) at 94, modifying 7 N. L. R. B. 269.

Motion by employer at the commencement of the hearing to strike out allegations of an amended complaint as to the discriminatory discharges of a stated number of employees on the ground that the charge filed with the Regional Director, a copy of which was attached to the amended complaint, contained no reference to the employees mentioned in the amended complaint denied, but request for a bill of particulars stating the names of such employees granted. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 681, enforced 98 F. (2d) 18 (C. C. A. 9); leave to adduce additional testimony denied, 96 F. (2d) 197; commission and interrogatories denied, 98 F. (2d) 16.

)7 d. Waiver of defect by reason of lack of particularity.

An employer has waived any defect by reason of failure of counsel for the Board to amend the complaint during the hearing to include persons found to have been discriminated against where, although the names of these persons were inadvertently omitted from the complaint, yet the Trial Examiner, counsel for the employer, and counsel for the Board were under the impression that the names had been added to the complaint by amendment, and the proceeding continued on the theory that they had been included in the complaint. *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, 1075, n. 1, modified 104 F. (2d) 49 (C. C. A. 8), cert. denied 314 U. S. 696.

An employer has not been prejudiced by failure to the complaint to specifically allege the demotion of an employee in violation of Section 8 (1), when employer participated in the litigation of the issue and at no time applied to the Trial Examiner for a continuance of the hearing so that it might make additional preparation for the presentation of its defense. *Lawrenceburg Roller Mills Co.*, 23 N. L. R. B. 980, 1006.

Employer's motion to make complaint more definite and certain in effect withdrawn by stating for the record that it considered the complaint sufficiently definite and certain. *Long-Bell Lumber Co.*, 26 N. L. R. B. 823.

10 e. Other circumstances.

5. *Variance between charge and complaint.* (*See* §§ 171–180.)

6. *Amendments.*

11 a. In general.

Rulings permitting amendments to a complaint during the course of a hearing by adding another employee to those alleged to have been wrongfully discharged and supplying an omitted allegation that the other unfair labor practices alleged affected commerce are discretionary and afford no ground for challenging the validity of the hearing. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 224, 225, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Jefferson Electric Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 954, (C. C. A. 7), setting aside 8 N. L.R. B. 284.

Amendments to a complaint during a hearing may be made by a Trial Examiner "upon such terms as may be deemed just," and so where an amendment was made during a hearing it was held that the respondent was afforded an adequate opportunity to make its defense, when the witnesses were called, as a result of this amendment 4 days thereafter, testified without objection, and no adjournment was requested to enable the respondent to rebut their testimony. *Quality Art Novelty Co., Inc.*, 20 N. L. R. B. 817, 822, enforced (work relief modification) May 22, 1942 (C. C. A. 2). See also: *Roebling's Sons Co.*, 17 N. L. R. B. 482, 485, enforced as modified (addition of "Roebling" clause to order) 120 F. (2d) 289 (C. C. A. 3); (on reasonable opportunity to meet evidence).

Motion to strike and dismiss evidence and allegations in an amended complaint concerning matters occurring subsequent to a compromise agreement, or matters occurring prior thereto but not included in the original complaint upon which the settlement was had and order issued, denied although the better practice would have been for new proceedings to have been initiated. *Fraim Lock Co.*, 24 N. L. R. B. 1190, 1199.

Employer's contention that the Board had not substantially complied with the mandate of the court, because the complaint as amended abandoned certain issues at the first hearing and alleged unfair labor practices which arose subsequent to the first hearing, *held* without merit, since the court in its remand did not limit the new hearing to issues covered in the complaint, but stated that such

hearing might be upon the complaint "as now amended or otherwise." Since issuance of the complaint as amended in effect strikes from the complaint the allegations in question, there is no reason for dismissing these allegations. *Montgomery Ward & Co., Inc.*, 31 N. L. R. B. 786.

Amendment of complaint which alleged that respondent had discriminatorily reinstated employees following a lock-out to allege that respondent had discriminatorily locked out employees, *held* not prejudicial where complaint originally alleged a lock-out. *Ford Motor Co.*, 31 N. L. R. B. 994.

12 b. Time for filing.

A ruling of the Trial Examiner allowing a complaint to be amended on the last day of a hearing to include allegations setting forth the discriminatory lay-off of an employee concerning which testimony had been introduced 2 days previously and requiring counsel for the employer to offer evidence in denial on the afternoon of the same day, which he was unable to do, overruled, and allegations in the amended complaint dismissed for the reason that the employer was not allowed sufficient time in which to answer them. *Highway Trailer Co.*, 3 N. L. R. B. 591, 593.

Motion by counsel for the Board at close of Board's case to amend complaint to add additional names to those already listed as discriminatorily discharged, granted although counsel for employer objected to amendment on the grounds that it should have been made earlier in the hearing, when he admitted that he had received the list 3 days before and that he and counsel for Board had stipulated for the record at that time that these persons left their employment because they had refused to join an inside labor organization. *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, 1075, modified 104 F. (2d) 49 (C. C. A. 8), cert. denied 314 U. S. 696.

Employer *held* not to have been prejudiced by reason of the fact that the Trial Examiner granted Board's counsel's motion to amend complaint shortly before the close of the hearing where employer's counsel conceded that the matter sought to be included in the complaint was at issue, and refused a continuance as to which counsel for the Board exhibited his willingness to stipulate. *Brown-McLaren Mfg. Co.*, 34 N. L. R. B. 984.

Motion to dismiss amended complaint on the ground that language of Section 10 (b) and corresponding language in Board's Rules and Regulations permitted "amendment

at any time prior to the issuance of an order based thereon," denied when Board's order was set aside and complaint was amended after court's denial of enforcement and Board acted in conformity with court's opinion and no order was outstanding at time of amendment. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652.

13 c. To enlarge allegations or to supply omitted allegation. [*See* § 170 (as to amendments to include allegations of matters brought in issue).]

Rulings permitting amendments to a complaint during the course of a hearing by adding another employee to those alleged to have been wrongfully discharged and supplying an omitted allegation that the other unfair labor practices alleged affected commerce are discretionary and afford no ground for challenging the validity of the hearing. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 224, 225, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Jefferson Electric Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 954, (C. C. A. 7), setting aside 8 N. L. R. B. 284. *Atlanta Woolen Mills*, 1 N. L. R. B. 316, 317.

Pleadings may be amended so as to allege that a strike was caused by the unfair labor practices of an employer upon remand of the proceedings by a court of review for the purpose of taking further evidence before the Board, where the order of the Board requiring reinstatement of the striking employees was based upon a finding that the strike had been caused by the unfair labor practices, though the fact was not alleged in the charge or the complaint or set forth in the findings of the Intermediate Report. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 820 (C. C. A. 8), enforcing and remanding 6 N. L. R. B. 423.

U. S. Stamping Co., 5 N. L. R. B. 172, 185. (An employer's objection to amendment of complaint, during hearing, to allege that a strike was caused by its refusal to bargain and that the striking employees should be reinstated, on the ground that the amendment was not based on the charge, is untenable, for even though the complaint had not been amended, the Board could have found that the strike was caused by the employer's refusal to bargain and ordered that the employer reinstate its striking employees, since the original complaint, in conformity with the charge, alleged that the strike had occurred, without stating its cause.)

Ruling of Trial Examiner, granting motion of Board to amend

complaint so as to include an allegation of unfair labor practices committed within the meaning of Section 8 (1) and (4) by discharging an employee for the reason that he had testified as a witness for the Board in the proceedings, affirmed. *Empire Worsted Mills, Inc.*, 6 N. L. R. B. 513, 514.

Motion to amend the pleadings to conform with the proof properly granted, when testimony of a conversation between a respondent and another that occurred prior to the unfair labor practices alleged in the charge and complaint was admitted in evidence, when the respondent was present at the hearing and there was adequate opportunity to meet such evidence. *Trelles*, 12 N. L. R. B. 981, 986.

Motion after the close of the hearing to amend the complaint in order to allege more specifically an issue which had been fully tried under a more general allegation improperly denied. *Capital Theatre Bus Terminal, Inc.*, 16 N. L. R. B. 104, 105.

Amendment of complaint after the oral argument before the Board, proper when the issues of fact framed by the amended pleadings differed in no respect from those framed by the original pleadings. *Glass & Co.*, 21 N. L. R. B. 727, 731.

After the issuance of proposed findings and oral argument the Board issued an amendment to the complaint to conform the pleadings to the proof to cover certain individual agreements, although the charges filed did not allege them as unfair labor practices. *Killefer Mfg. Corp.*, 22 N. L. R. B. 484.

Ruling of Trial Examiner granting motion of counsel for the Board to amend complaint in certain particulars with provision that employer would be given a reasonable time at close of Board's case to prepare to meet any new issues raised by said amendment in view of employer's claim that the amendments changed the theory of the Board's case as originally pleaded and therefore confronted it with surprise, affirmed. *Sussex Dye & Print Works, Inc.*, 34 N. L. R. B. 625.

Complaint amended to include allegation of discriminatory discharge as to employee whose name had been included in the charge but had been inadvertently omitted from the complaint. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028.

Complaint amended to include allegation that employees

alleged in original complaint to have been discriminatorily discharged had also been discriminatorily refused employment. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028.

§ 120 d. Other amendments.

e. Addition or substitution of parties. (*See* § 27.)

§ 121 7. *Necessity that charge be attached to complaint.*

Ruling of a Trial Examiner denying the motion of an employer to dismiss a complaint on the ground that it was defective in that it did not have a copy of the original charges and the last two pages of the 3-page amended charges attached thereto as provided in the board Rules and Regulations, affirmed where the employer was in no way prejudiced by the technical irregularities upon which the motion to dismiss was predicated in that the issues were based upon the allegations of the complaint rather than those of the original and amended charges. *Lone Star Bag & Bagging Co.*, 8 N. L. R. B. 244, 245.

American Numbering Machine Co., 10 N. L. R. B. 536, 538. (Ruling of Trial Examiner overruling objection by employer to the introduction in evidence of the complaint on the ground that the amended and not the original charge was attached thereto, affirmed.)

National Meter Co., 11 N. L. R. B. 320, 321. (Where an amended charge was attached to the complaint and the original charge was not, a motion to dismiss the complaint, denied.

Borg-Warner Corp., 23 N. L. R. B. 114. (Where a copy of the charge was not attached to the complaint when it was served upon the employer, but counsel for the employer was furnished with a copy of the charge prior to the commencement of the hearing, the employer was not prejudiced by the irregularity.)

8. *Service of complaint.* (*See* § 161.)

C. ANSWER. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Answer.*]

§ 122 1. *In general.*

§ 123 2. *Failure to file.*

Ruling of Trial Examiner that unless employer filed answer, it would be declared in default, reversed. *Carlisle Lumber Co.*, 2 N. L. R. B. 248, 249, 251, enforced 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575.

Allegations amending a complaint during the course of hearing are deemed denied by the employer, although no

formal answer was filed thereto, where such allegations were put in issue by examination of witnesses, the introduction of evidence, and arguments upon the merits in a brief filed by the employer with the Board. *Model Blouse Co.*, 15 N. L. R. B. 133, 137.

[*See* § 212 (as to the effect of the failure of parties duly served with notice to appear or to testify).]

24 3. *Failure to deny allegations of complaint upon filing answer.* [*See* LITIGATION DIGEST. EVIDENCE: *Consideration of*—Admissions in pleadings.]

Where an employer has filed an answer, its failure to deny therein allegations of the complaint relating to the discriminatory discharge of employees constitutes an admission that the employees in question were discriminatorily discharged as alleged. *Whiterock Quarries, Inc.*, 5 N. L. R. B. 601, 608.

Botany Worsted Mills, 41 N. L. R. B. 218. (Allegation in the complaint concerning respondent's business not specifically denied by the respondent in its answer found to be admitted.)

30 4. *Amendments.*

Respondent's motion to amend its answer to allege that employees named in the complaint were laid off not only for lack of work, but also for incompetence, granted. *Allied Yarn Corp.*, 26 N. L. R. B. 1440, 1442.

D. BILL OF PARTICULARS. [*See* §§ 104–110 (as to what constitutes lack of particularity in a complaint).]

31 1. *In general.*

The denial by a Trial Examiner of a bill of particulars is not prejudicial to an employer since such a bill is important only when a party must meet his adversary's case without opportunity to prepare and is of slight value in a trial by hearing at intervals. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 873 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

For decisions indicating a general practice that when a bill of particulars is denied, the party requesting it is afforded an opportunity in the event of surprise for a continuance or a renewal of its motion to enable it to prepare its defense and meet all issues, *see*:

Baldwin Locomotive Works, 20 N. L. R. B. 1100, enforced (minor modifications) March 23, 1942 (C. C. A. 3), opinion sur petition for rehearing and settlement of

decree (denying respondent's petition for rehearing and modifying form of decree submitted by Board) May 6, 1942 (C. C. A. 3).

Pacific Gas & Electric Co., 13 N. L. R. B. 268, enforced as modified 118 F. (2d) 780 (C. C. A. 9).

Roebling's Sons, 17 N. L. R. B. 482, enforced as modified (addition of "Roebling" clause to order) 120 F. (2d) 289 (C. C. A. 3).

Decatur Iron & Steel Co., 29 N. L. R. B. 1044.

Precision Castings Co., Inc., 30 N. L. R. B. 212.

Merrimack Mfg. Co., 31 N. L. R. B. 900.

Armour & Co., 32 N. L. R. B. 536, enforced June 22, 1942 (C. C. A. 10).

Canyon Corp., 33 N. L. R. B. 885.

Kayser & Co., 39 N. L. R. B. 825.

Gates Rubber Co., 40 N. L. R. B. 424.

[*See* §§ 242, 243 (as to the granting of a continuance for lack of particularity in or amendment of pleadings).]

132 2. *Enlargement of allegations by reason of amended pleadings.*

Request for a bill of particulars stating the names of employees alleged in an amended complaint to have been discriminatorily discharged, granted. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 681, enforced 98 F. (2d) 18 (C. C. A. 9); leave to adduce additional testimony denied, 96 F. (2d) 197; commission and interrogatories denied, 98 F. (2d) 16. See also: *Stonewall Cotton Mills*, 36 N. L. R. B. 240, 242, modifying June 3, 1942 (C. C. A. 5).

133 3. *Lack of particularity of complaint remedied by specific averments of amended charge.*

Rulings of Trial Examiner denying employer's motions for bill of particulars and to make the complaint more definite and certain, sustained since these rulings were not prejudicial to the employer in that, near the conclusion of the Board's case, the employer was granted an adjournment for several days in order to prepare its defense and the added time thus given after disclosure of the Board's evidence gave it complete opportunity to meet the issues; and, further, the original charge together with three amended charges, set forth in detail most of the acts alleged to have been done by the employer and constituted notice to the employer of acts not alleged with the same particularity in the complaint. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 272, enforced as modified 118 F. (2d) 780 (C. C. A. 9).

134 4. *Directed to averments of charge.*

Motion by employer for further bill of particulars denied, where counsel for the Board had served an answer to an original bill of particulars requested by the employer setting forth answers to the demands relating to the allegations in the complaint, but declining to answer information requested relative to allegations contained in the charge for the reason that the proceedings were based on the complaint and not on the charge. *National Licorice Co.*, 7 N. L. R. B. 537, 540, modified 309, U. S. 350, modifying 104 F. (2d) 655 (C. C. A. 2).

140 5. *Adequacy of particulars.*

The inadequacy of information given by counsel for the Board to counsel for the employer pursuant to a ruling granting a request for a bill of particulars should be submitted to the Trial Examiner for a ruling before presenting such issue for review by the Board, but it is unnecessary for the Board to determine whether the ruling of the Trial Examiner and the procedure taken pursuant thereto were prejudicial to the employer where that part of the complaint to which the request for the bill of particulars was addressed has been dismissed by the Board. *Atlantic Greyhound Corp.*, 7 N. L. R. B. 1189, 1190.

E. PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES. [*See* INVESTIGATION AND CERTIFICATION (as to the existence of and the resolution of question concerning representation).]

141 1. *In general.*

No question concerning representation of employees other than those covered in an original petition for investigation and certification has arisen in the absence of a petition concerning such other employees, for a petition is of practical importance in determining whether a question concerning representation exists and is the original source of information as to the existence of rival organizations in the same unit which should be notified of the proceedings and be given an opportunity to participate therein. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 645, n. 67.

Atlas Powder Co., 41 N. L. R. B. 127. (Board upon four petitions filed found that four respective units therein requested appropriate, but did not resolve the requests of other organizations to find appropriate the residual group of employees not included in any of the four petitions

in view of the fact that no petitions were pending involving such employees.)

A labor organization is not precluded from being certified as representative of a majority of the employees in an appropriate unit, although it failed to execute and file a petition in accordance with the Rules and Regulations where it was informed at the hearing by the Trial Examiner that its intervention placed it in the same position as if a petition had been filed. *Wadsworth Watch Case Co.*, 4 N. L. R. B. 487, 494.

Two labor organizations which filed separate petitions for investigation and certification of representatives 2 or 3 days before a hearing of which they had received notice upon the filing of a petition by four other labor organizations, are regarded as intervenors rather than petitioners, where the Board had not acted upon their petitions in ordering an investigation. *Phelps-Dodge Corp.*, 6 N. L. R. B. 624, 625, 626.

The petition is merely the machinery which institutes the investigation; and the Board may certify whomever the investigation shows to be the selected representative.

Motion to dismiss petition on ground the report of Regional Director with respect to the claims of representation, and the order of Board directing investigation and hearing were *ex parte* documents and violated the constitutional rights of the employer as guaranteed in the fifth amendment, denied. *Ryan Aeronautical Co.*, 27 N. L. R. B. 14.

Although Article III, Section 2 (b) of the Board's Rules and Regulations—Series 2, as amended, permits an employer to file a petition where two organizations state conflicting claims as to representation, it makes no provision permitting the employer to request certification within the unit which he may claim to be appropriate. *National Tube Co.*, 33 N. L. R. B. 1248.

[*See* § 325 (as to the dismissal of the petition when no appropriate unit is found within the scope of the petition).]

142 2. *Who may file.* [*See* LITIGATION DIGEST: PROCEDURE REPRESENTATION CASES. *Generally.*—Dominated union may not petition for certification.]

While it is true that a petition for investigation and certification is generally filed by a labor organization which claims to represent the employees involved, there is nothing in the Act or in the Rules and Regulations which limits such filing

to a labor organization and it is proper for a city-wide council of a national labor organization to file a petition without obtaining a formal resolution of authority from either the local labor organization or itself, and any objections to its authority may be made by the members of the local. *Interlake Iron Corp.*, 2 N. L. R. B. 1036, 1041, 1042.

The Sorg Paper Co., 8 N. L. R. B. 657, 659. (Petition filed by a labor organization, signed by persons unknown to employees; and union failed to show that employees had desired or authorized petition.)

Wilson & Co., Inc., 15 N. L. R. B. 195, 196. (Company moved to dismiss petition on the ground that neither union nor employees had authorized its filing.) See also: *McLouth Steel Corp.*, 30 N. L. R. B. 1000. *Gatke Corp.*, 39 N. L. R. B. 197.

Klamath Timber Co., 35 N. L. R. B. 141. (Petition filed by a labor organization whose charter was allegedly suspended or revoked.)

Petition may be filed by an employer where competing organizations make conflicting claims as to representation. *Iowa Poultry Producers Marketing Assn.*, 19 N. L. R. B. 1063, 1066.

A joint petition filed by two coaffiliated labor organizations and contested by a third unrelated organization, *held* proper when the unit alleged by the joint petition was found appropriate because of their substantial unity of interest, although the apparently substantial majority of one of the joint petitioners as to a group of employees in the unit might compensate for the alleged minority status of the other joint petitioner in the remaining group. *General Electric Co.*, 42 N. L. R. B. 569.

43 3. *With whom to be filed.*

There is no merit to an exception filed by a labor organization to an Intermediate Report in that the Trial Examiner failed to find and conclude that the request of the labor organization for an election should have been granted, inasmuch as such a request is tantamount to a petition for certification of representatives and should have been filed with the Regional Director in accordance with the Rules and Regulations of the Board. *Elkland Leather Co., Inc.*, 8 N. L. R. B. 519, 522, enforced 114 F. (2d) 221 (C. C. A. 3), cert. denied 311 U. S. 705.

Permission to file an amended petition during the course of

a hearing has been properly denied by the Trial Examiner on the ground that it should have been filed with the Regional Director. *Elliott Bay Lumber Co.*, 8 N. L. R. B. 753, 754.

"Petition" filed with Secretary of the Board dismissed without prejudice. *Eagle Oil & Refining Co., Inc.*, 27 N. L. R. B. 1003.

143.1 *Irregularities in filing and/or execution of petition.* [*See* § 100.1 (as to irregularities in filing and/or execution of charge).]

Company's objection to the representation proceedings and to the admission in evidence of the original petition filed by the union, on the ground that the petition did not contain the expiration date of the commission of the notary public before whom it was executed, *held* without merit. *General Motors Corp.*, 37 N. L. R. B. 616.

Inaccurate allegation in petition concerning manner in which question of representation arose, *held* not ground for dismissal of petition, where such allegation, which union withdrew at hearing, was not prejudicial to company. *Muncie Elwood Lamp Co.*, 40 N. L. R. B. 1096.

144 5. *Effect of petition in absence of investigation authorized by the Board.*

The Board will not pass upon the merits of a petition for investigation and certification of representatives filed by a labor organization, upon which no investigation was authorized, and which was introduced at a hearing in a consolidated proceeding upon a charge and petition filed by another labor organization. *Beloit Iron Works*, 7 N. L. R. B. 216, 217.

Petitions dismissed without prejudice in view of the inconclusive character of the investigation conducted by the Board. *National Dress Manufacturers' Assn., Inc.*, 35 N. L. R. B. 169.

6. *Failure to controvert allegation that question exists.* [*See* INVESTIGATION AND CERTIFICATION § 9.]

7. *Amendments.*

145 a. In general.

146 b. Effecting change in scope of unit.

The statement of a labor organization at a hearing concerning investigation and certification of employees, changing the description of the unit alleged to be appropriate by excluding certain employees therefrom, constitutes an

amendment to its petition. *Electric Auto-Lite Co.*, 9 N. L. R. B. 147, 154. Cf. *American Zinc, Lead & Smelting Co.*, 44 N. L. R. B. 443, 447.

American Enka Corp., 28 N. L. R. B. 423. (Union's motion to amend its petition to define with more particularity the employees claimed by it to be within the unit, granted by Trial Examiner, without objection on part of the company.)

Aviation Corp., 30 N. L. R. B. 269. (Union's motion to amend its petition to include additional employees granted by Trial Examiner.)

Chicago Macaroni Co., 30 N. L. R. B. 288. (Union's motion to amend its petition to exclude certain employees which Trial Examiner reserved ruling on, granted by Board.)

Upon amended petition filed following a series of postponements of the resolution of the question concerning representation in the original proceedings because of company's past conduct, scope of unit amended from a system-wide unit (as found appropriate in original proceedings) to a division-wide unit. *Pacific Gas & Electric Co.*, 40 N. L. R. B. 591.

Christian Feigenspan Brewing Co., 29 N. L. R. B. 1136. (Petition as originally filed alleging employees in two areas constituted an appropriate unit, amended at hearing to limit unit to one area.)

50 c. Other amendments.

d. Adding or substituting parties. (*See* § 41.)

8. *Withdrawal.* [*See* §§ 321–340 (as to dismissal of petition for various reasons).]

51 a. In absence of objection.

Request of petitioning labor organization to withdraw its petition, granted after a hearing on such petition had been held and an election ordered where the sole labor organization involved in the proceeding made such request prior to the holding of the election. *Ford Mfg. Co.*, 11 N. L. R. B. 60. See also: *Wisconsin Porcelain Co.*, 40 N. L. R. B. 1155.

Western Union Telegraph Co., 32 N. L. R. B. 463. (Motion made at commencement of hearing by counsel for a petitioning labor organization, which had disbanded and ceased to function, to withdraw the petition filed by said organization, granted.)

Walgreen Co., 37 N. L. R. B. 764. (Motion made at hearing

for withdrawal of two petitions for the reason that charges of unfair labor practices affecting these petitions were filed, granted and cases ordered severed from remaining consolidated case.) See also: *Swayne & Hoyt Ltd.*, 2 N. L. R. B. 282, 289.

Paraffine Companies, Inc., 39 N. L. R. B. 555. (Direction of Election vacated and petition dismissed where company notified Regional Director of its willingness to recognize the union and where the union, the only labor organization seeking an election, filed with Regional Director a request for the withdrawal of its petition without prejudice.)

West Texas Utilities Co., 40 N. L. R. B. 1142. (Request of petitioning labor organization to withdraw its petition because of lapse of time since the Direction; election had been postponed because company was found to have engaged in unfair labor practices.)

52 b. In presence of objection.

Motion by petitioning labor organization, prior to an election directed by the Board, for permission to withdraw or dismiss its petition for investigation and certification, denied where a rival labor organization, named in the petition as claiming to represent employees, had intervened and participated in the hearing and had expressed a desire that an election be held. *Interlake Iron Corp.*, 4 N. L. R. B. 55, 62.

Request of labor organization objecting to an election on the basis of the inappropriateness of the date used to determine eligibility to withdraw its petition for an investigation and certification of representatives in case the Board ordered a new election based on a pay-roll date other than that requested by it denied, for to permit the withdrawal of the petition would be improper at this stage of the proceedings since two other labor organizations are parties; however, if within 5 days after the issuance of a Direction of Election the petitioning organization informs the Board that it desires that its name be taken off the ballot, the Direction of Election to be amended accordingly. *Lincoln Mills of Alabama*, 12 N. L. R. B. 1285, 1287–1289. See also: *Sonneborn Sons, Inc.*, 31 N. L. R. B. 431. *Hardy Metal Specialties, Inc.*, 35 N. L. R. B. 179.

Mergenthaler Linotype Co., 6 N. L. R. B. 671, 672. (A request for withdrawal of petition because of a large number of layoffs subsequent to filing, denied where rival organization

which was party to proceeding stated that if request were granted it would file petition on its own behalf.) See also: *American Brass Co.*, 6 N. L. R. B. 723, 724, 729.

[*See* INVESTIGATION AND CERTIFICATION §86 (as to withdrawal from ballot).]

Motion by labor organization which had a closed-shop contract with the respondent to withdraw its petition denied, since having taken steps to initiate proceeding and assert that a question concerning representation exists and the Board having considered its petition and that of the rival labor organization, it cannot now successfully assert its contract with the respondent as a bar to a finding in this proceeding that a question concerning representation exists. *Borg-Warner Corp.*, 19 N. L. R. B. 538, 542.

[*See* INVESTIGATION AND CERTIFICATION (as to effect of the filing of a petition by a contracting union).]

60 c. Power of Trial Examiner to grant.

A Trial Examiner is without power, even in the absence of objection, to grant a motion by a labor organization to withdraw a petition which it has filed. *Carrollton Metal Products Co.*, 6 N. L. R. B. 569, 570.

61 F. PROCESS AND SERVICE. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Generally.*—Service of process.]

Service can be made by the Board anywhere in the United States, despite the contention of an employer that no valid service could be had outside the judicial district or region in which the unfair labor practice is alleged to have occurred, for the Act specifically permits the Board to designate the place of hearing and authorizes service by mail; and further, Congress may authorize the civil process of a Federal District Court to be served upon persons in any other district, since it has the power to authorize such service anywhere in the United States. *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

Motion of employer to dismiss complaint on the ground that it was defective in that the notice of hearing was actually served by registered mail 4 days after it had been issued and dated, which delay in service gave the employer less than the 5 days' notice provided by the Board's Rules and Regulations for filing its answer, denied where the employer was not prejudiced in that it actually filed its answer on

the day required in the notice, but, if it had been necessary, it could have moved for an extension of time to answer under the Board's Rules and Regulations. *Lone Star Bag & Bagging Co.*, 8 N. L. R. B. 244, 245.

Motion made at the beginning of the hearing by employer to dismiss the complaint on the ground that at the date of the issuance thereof it was neither a resident of nor doing business within the jurisdiction of the Regional Office of the Board or within the judicial district of the State, and that service of the complaint has been made on the respondent at its home office in another State, denied. *Lengel-Fencil Co.*, 8 N. L. R. B. 988, 989.

Rulings of Trial Examiner denying motion and overruling objection, sustained where an employer moved to postpone a hearing and objected to any proceedings on the ground that sufficient notice of hearing was not received by the employer by reason of a typographical error in a telegram notifying the employer of the date of the hearing and advising it that a formal notice would follow that day, in that the number of the case as cited in the telegram differed from that as cited in the subsequent formal notice, for the employer was not misled or prejudiced by the error in the telegram, since the petitioning labor organization advised the employer by letter that a petition had been filed, and an officer of the company wrote the Regional Director discussing the issues of the petition. *Shell Petroleum Corp.*, 9 N. L. R. B. 831, 833.

Although an employer participated in a hearing, it had not been accorded full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issue of an amended complaint because of lack of notice, where it was served with an amended complaint after business hours on a Saturday and the hearing was set for the following Monday, and under such circumstances the ruling of the Trial Examiner denying a motion of the employer made at the beginning of the hearing, to postpone the hearing for 5 days but giving permission to file an answer at any time during the hearing, overruled. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 955.

Where service of complaint was made upon employer's attorney and not upon the employer, but employer actually received a copy of the complaint more than 5 days prior to the hearing, it was not prejudiced by the irregularity. *Emerson Electric Mfg. Co.*, 13 N. L. R. B. 448, 449.

G. VARIANCE. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Complaint.*—Variance. *Hearing.*—Variance between complaint and inquiry at hearing.]

62 1. *In general.* [*See* EVIDENCE §§ 12.5–14 (as to the admissibility of background evidence, and matters occurring subsequent to the filing of the complaint).]

2. *Scope of issues.*

63 a. In general.

While a respondent is entitled to know the basis of a complaint against it, and to explain its conduct in an effort to meet that complaint, its objection that it had been denied a hearing with respect to the offense found by the Board because the issue had been changed by amended pleadings will not be sustained where it appears from the record that it understood the issue and was afforded full opportunity to justify the action of its officers as innocent rather than discriminatory. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 761 (C. C. A. 9).

The validity of closed-shop contracts entered into between an employer and a labor organization became an issue in proceedings before the Board as soon as the complaint was amended, on the second day of the hearing, to allege that the contracts were the culmination of the employer's unfair labor practices. *Jefferson Electric Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 954 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

164 b. Allegations in answer of matters not included in complaint.

The validity of contracts, which have not been mentioned in the original or amended complaints, has not been put in issue because the respondents amended their answer to the effect that the making of the contracts had rendered the proceeding moot. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 235, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

A finding by the Board that a strike was caused not only by the specific unfair labor practices mentioned in the complaint, but also by other unfair labor practices does not constitute a variance prejudicial to the employer, where the complaint, the answer, and affirmative defense to that section of the complaint alleging the unfair labor practices put in issue the causes of the strike, and at the hearing the evidence relating to all the unfair labor practices alleged to

have occurred before the strike including those not mentioned as causes thereof in the complaint clearly involved the basic reasons for the strike, and where further, any variance which might have existed was cured by motion of the Board's attorney to conform the pleadings to the proof. *Republic Steel Corp.*, 9 N. L. R. B. 219, 382, 388, modified 107 F. (2d) 472 (C. C. A. 3).

170 c. Amendment to include allegations of matters brought in issue. [*See* § 113 (as to amendments to enlarge allegations or to supply omitted allegations).]

Motion by counsel for the Board, upon conclusion of its case, to conform the complaint to the evidence, denied insofar as it was intended to bring within the allegations of the complaint which set forth unfair labor practices within the meaning of Section 8 (3) the discriminatory discharge of an employee not named in the complaint but concerning whose discharge testimony had been received, and granted in all other respects. *Consolidated Edison Co.*, 4 N. L. R. B. 71, 74, 75, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 683, enforced 98 F. (2d) 18 (C. C. A. 9).

Where the complaint does not allege a violation of Section 8 (3), the granting of a motion to amend pleadings to conform to the proof is considered as amending the complaint by adding thereto such allegations of unfair labor practices within the meaning of Section 8 (3) as the Board attempted to prove at the hearing, in view of the introduction of testimony by the Board, without objection by the employer with regard to unfair labor practices within the meaning of that Section, and in view of the introduction of answering testimony by the employer. *Abell Co.*, 5 N. L. R. B. 644, 645, modified 97 F. (2d) 951 (C. C. A. 4).

3. *Variance between allegations of charge and of complaint.*

171 a. In general.

172 b. Failure of charge to state facts with same particularity as complaint.

There is no merit to a contention of an employer that findings by the Board of unfair labor practices which occurred after the charge was filed constitute a fatal departure, on the ground that the charge is a jurisdictional prerequisite to the complaint and subsequent proceedings, and the latter are restricted to the specific unfair labor practices alleged in the charge, where the complaint elaborated the

charge with particularity and the findings of the Board were of the same class and continuations of the violations alleged in the charge, for whatever restrictions the requirements of a charge may be thought to place upon proceedings by the Board, the Act does not preclude it from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350, 368, 369, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

Trial Examiner's overruling of employer's objection that complaint was not based upon the charge affirmed, where the complaint and the charge alleged precisely the same types of unfair labor practices on the part of the employer and the complaint, issued only after the charge was filed with the Board, contained a clear and concise statement of the facts alleged. *Trenton Garment Co.*, 4 N. L. R. B. 1186, 1187, 1188.

A respondent's motion to strike portions of the complaint on the ground that they did not conform to the charge and its subsequent objections made during the course of hearing to certain evidence which was apparently based upon the theory that the complaint and the proof introduced in support thereof was strictly limited to matters specifically set forth in the charges, is in error, for the function of the charge is to call the attention of the Board to the fact that certain unfair labor practices were alleged to have been committed, it is not essential that the charge describe the alleged unfair labor practices with the same particularity as the complaint. *Block-Friedman Co., Inc.*, 20 N. L. R. B. 625, 627. See also:

Beckerman Shoe Corp., 19 N. L. R. B. 820, 822.

Fox-Coffey-Edge Millinery Co., Inc., 20 N. L. R. B. 637, 639.

Bierner, 20 N. L. R. B. 673, 676.

Inland Lime & Stone Co., 24 N. L. R. B. 758, 759.

80 c. Allegations in complaint in absence of like averments in charge.

Record reopened for further proceedings on order of the Board, and Regional Director authorized to accept amended charges and issue amended complaint upon employer's exceptions to Trial Examiner's denial of its motion to dis-

miss the complaint as to certain allegations of unfair labor practices for the reason that they were not supported by any averments in the charges. *Titmus Optical Co.*, 9 N. L. R. B. 1026, 1027, 1028.

Precision Castings Co., Inc., 30 N. L. R. B. 212. (Trial Examiner's ruling striking allegations from amended complaint concerning matters not set forth in charge and thereafter reinstating such allegations upon filing of amended charge, sustained.)

4. *Variance between allegations and findings.*

181 a. In general.

182 b. Materiality.

A finding by the Board that a strike was caused not only by the specific unfair labor practices mentioned in the complaint, but also by other unfair labor practices, does not constitute a variance prejudicial to the employer, where the complaint, the answer, and affirmative defense to that section of the complaint alleging the unfair labor practices put in issue the causes of the strike, and at the hearing the evidence relating to all the unfair labor practices alleged to have occurred before the strike including those not mentioned as causes thereof in the complaint clearly involved the basic reasons for the strike, and where further, any variance which might have existed was cured by motion of the Board's attorney to conform the pleadings to the proof. *Republic Steel Corp.*, 9 N. L. R. B. 219, 382, 383, modified 107 F. (2d) 472 (C. C. A. 3).

Variations between findings of the Board and allegations of complaint as to the appropriate unit with respect to which an employer was alleged to have refused to bargain is not material on the issue of the employer's violation of Section 8 (5) where the labor organizations involved jointly sought to bargain for the employees in the unit found, and the employer's refusal was based on a rejection of the collective bargaining principle, irrespective of the question of the appropriateness of the unit. *Union Envelope Co.*, 10 N. L. R. B. 1147, 1155, 1156. See also: *Webster Mfg., Inc.*, 27 N. L. R. B. 1338.

Proof of discrimination because of activities on behalf and membership in Nation-wide union held sufficient to support allegations in complaint of discrimination because of activities on behalf of and membership in a local of the Nation-wide union organized for employees of the respond-

ent approximately 7 months after the discrimination, for the gist of allegations was discrimination and discouragement of membership in a labor organization and that variance, if any, between proof and complaint was immaterial. *Panter-Panco Rubber Co., Inc.*, 11 N. L. R. B. 1261, 1270.

Where complaint alleged that an employee was discharged because of activities on behalf of a union at the plant where he was employed, and the evidence showed that if union activities entered into the cause for his discharge, such activities were on behalf of a union not claiming to represent the employees at the plant, Board dismissed allegation of discrimination as not being within the scope of the complaint. *Emerson Electric Mfg. Co.*, 13 N. L. R. B. 448.

c. Waiver.

Employer has waived any defect by reason of failure of counsel for the Board to amend the complaint during the hearing to include five persons found to have been discriminated against where, although the names of these persons were inadvertently omitted from the complaint, yet the Trial Examiner, counsel for the employer, and counsel for the Board were under the impression that the names had been added to the complaint by amendment, and the proceeding continued on the theory that they had been included in the complaint. *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, 1075, modified 104 F. (2d) 49 (C. C. A. 8).

A contention that the question whether a strike was caused by the unfair labor practices of an employer was not brought within the issues, by reason of the fact that it was not so alleged in either the charge or the complaint and no finding to that effect was made in the Intermediate Report, is without merit; nor does the Board's order, based upon a finding that the strike was so caused, and requiring reinstatement of the strikers, constitute reversible error where the employer's answer to the Board's petition for enforcement alleges that the striking employees have been reinstated to available positions and no persons first hired since the strike began have been retained; for if the strikers have been reinstated as alleged, the employer is not prejudiced by the order, whether the existence of the strike was mentioned or not. *N. L. R. B.* v. *Lund*, 103 F. (2d)

815, 820 (C. C. A. 8), remanding 6 N. L. R. B. 423. See also: *Republic Steel Corp.*, 9 N. L. R. B. 219, 397, modified 107 F. (2d) 472 (C. C. A. 3).

Respondent fully litigated the issues determined although there was a variance between the findings and the complaint, when it was not deprived of an opportunity to present what evidence it wished on the issues raised by the proof adduced against it, when it was plain from its answer and briefs that it was apprised of the transactions or occurrences involved by the complaint, and when it claimed no surprise or prejudice in its brief. *Highland Park Mfg. Co.*, 12 N. L. R. B. 1238, 1251. See also: *Lawrenceburg Roller Mills Co.*, 23 N. L. R. B. 980, 1006. *Cleveland Worsted Mills Co.*, 43 N. L. R. B. 545.

84 d. Finding, subsequent to amendment of complaint, based upon original allegations.

Where original complaint, alleging respondent discriminatorily discharged five men, is amended after the Board has presented its testimony to allege that respondent refused to reemploy the five men, and the Board's finding states that there had not been a failure to employ but a wrongful discharge, respondent was not denied a hearing with respect to the offense found by the Board since all the parties to the proceeding knew from the outset that the thing complained of was discrimination against certain men by reason of their alleged union activities. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 349, 350, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 761 (C. C. A. 9).

90 e. Finding in absence of specific allegation.

There is no merit to a contention of an employer that findings by the Board of unfair labor practices which occurred after the charge was filed constitute a fatal departure, on the ground that the charge is a jurisdictional prerequisite to the complaint and subsequent proceedings and the latter are restricted to the specific unfair labor practices alleged in the charge, where the complaint elaborated the charge with particularity and the findings of the Board were of the same class and continuation of the violations alleged in the charge, for whatever restrictions the requirements of a charge may be thought to place upon proceedings by the Board, the Act does not preclude it from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. *National Licorice*

Co. v. *N. L. R. B.*, 309 U. S. 350, 368, 369, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

[*See* EVIDENCE § 14 (as to the admissibility of matter occurring subsequent to the filing of the complaint).]

An order of the Board invalidating contracts entered into between a legitimate labor organization and an employer on the ground that the contracts were the result of the employer's unfair labor practices will not be sustained, in the absence of an amendment to the complaint containing such an allegation, notice to the labor organization, and the introduction of proof to sustain the charge. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 238, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

A finding by the Board that an employer, after discharging all of its employees, offered to rehire two of them on condition that they join a designated union will not sustain a conclusion that there had been a violation of Section 8 (3), where the complaint alleged that the discharge of the men constituted an unfair labor practice in violation of Section 8 (1) and (3) and that the execution of an agreement with the union constituted an unfair labor practice under Section 8 (5), but contained no reference to any discrimination in hiring men or charged any violation in connection therewith. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 345, 346, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

The execution of a contract between an employer and a company-dominated organization is an unfair labor practice within the broad language of the complaint where, although the complaint makes no specific reference to the contract, nonetheless, it states that the formation and administration of the labor organization was in violation of Section 8 (2) and that the employer recognized and continued to recognize the labor organization as the exclusive bargaining agency of its employees. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 173 (C. C. A. 3), modifying 6 N. L. R. B. 171, cert. denied 308 U. S. 605.

H. MOTIONS.

191 1. *In general.*

A request in a letter to the Board by counsel for a labor organization involved in complaint proceedings that certain data showing the results of a referendum and of an election conducted among employees after the Trial Examiner had filed his Intermediate Report finding the labor organization

in question to be employer-dominated be made part of the record in the case denied, since the request was improperly made under the Board's Rules and Regulations governing motions and the data was immaterial to the determination of the issues. *Newport News Shipbuilding & Dry Dock Co.*, 8 N. L. R. B. 866, 868, enforced 308 U. S. 241, modifying 101 F. (2d) 841 (C. C. A. 4).

92 2. *To strike pleadings.*

Motion by employer at the commencement of the hearing to strike out allegations of an amended complaint as to the discriminatory discharges of a stated number of employees on the ground that the charge filed with the Regional Director, a copy of which was attached to the amended complaint, contained no reference to the employees mentioned in the amended complaint denied, but request for a bill of particulars stating the names of such employees granted. *Biles Coleman Lumber Co.*, 4 N. L. R. B. 679, 681, enforced 98 F. (2d) 18 (C. C. A. 9).

Block-Friedman Co., Inc., 20 N. L. R. B. 625, 627. (Motion to strike portions of the complaint on the grounds that they did not conform to the charge apparently based upon the theory that the complaint and the proof introduced in support thereof are to be strictly limited to matters set forth in the charges, untenable.) See also: *Precision Castings Co., Inc.*, 30 N. L. R. B. 212.

[*See* § 91 (as to nature, scope, and function of charge).]

Trial Examiner's order striking from the answer of the employer allegations which charged that a national labor organization, with which the labor organization involved was affiliated, was engaged in a Nation-wide illegal conspiracy to seize plants in various parts of the country including the plant of the employer, and denying the application for the issuance of subpenas to compel the attendance of officers of the national labor organization as witnesses and the production of its records and the attendance of certain law-enforcing officers to sustain these allegations, affirmed. *Serrick Corp.*, 8 N. L. R. B. 621, 624, enforced 110 F. (2d) 29 (App. D. C.).

Quality & Service Laundry, Inc., 39 N. L. R. B. 970. (Motion of Board's counsel to strike those portions of employer's answer averring acts of sabotage on ground that such acts were not alleged to have been committed by any of the employees, denied.)

N. Y. Merchandise Co., Inc., 41 N. L. R. B. 1078. (Motion of Board's counsel to strike portions of employer's answer averring affirmatively that charges were filed in bad faith, that officers and members of charging union were members of subversive groups, granted.)

Karron, 41 N. L. R. B. 1454. (Trial Examiner although accepting evidence as to violence on part of striking employees, struck at request of Board's and union's counsel allegations of employer's answer that union had forfeited its right under Act by engaging in "unlawful . . . and criminal acts.")

Motions to strike allegations in answer respecting activities of Board's Regional Office, granted. *Cudahy Packing Co.*, 24 N. L. R. B. 1219, 1220.

Cudahy Packing Co., 27 N. L. R. B. 118. (Trial Examiner's ruling granting, over the respondent's objection, a motion by counsel for the Board to strike a paragraph of the answer which contained general statements intended as allegations of a conspiracy between the charging union and the Board's officers and agents, affirmed.)

Wilcox Oil & Gas Co., 28 N. L. R. B. 79. (Motion by counsel for the Board to strike allegations in respondent's answer that Board agents had attempted to coerce it to reemploy two complainants, granted.)

93 3. *To strike testimony.*

Granting by Trial Examiner of a motion to strike testimony that several employees were advocating a strike in the event an election was not held to determine the collective bargaining representatives of the employees because the witness refused to divulge the names of these employees, *held* error since the witness was justified in his action as it is the policy of the Board not to expose workers to possible discrimination for advocating resort to legitimate labor activities. *Samson Tire & Rubber Corp.*, 2 N. L. R. B. 148, 157.

Ruling of Trial Examiner denying motions of employer, who was made a party to the proceedings during the course of the hearing, to strike out testimony offered prior thereto insofar as it purported to be testimony directed against it, but subject to a reconsideration of the motion in case the employer did not have the opportunity to cross-examine witnesses who had previously testified on matters charged against it, affirmed. *Hopwood Retinning Co., Inc.*, 4

N. L. R. B. 922, 924, 925, modified 98 F. (2d) 97 (C. C. A. 2).

Ruling of Trial Examiner denying motion by employer at conclusion of hearing to strike out evidence relating to all the employees named in the complaint for stated constitutional reasons and on the ground that by signing individual contracts of employment, terminable at will, they had waived their rights under the Act, affirmed. *Montgomery Ward & Co.*, 9 N. L. R. B. 538, 540, modified 107 F. (2d) 555 (C. C. A. 7).

Trial Examiner's refusal to strike testimony taken at hearing in absence of counsel for respondent, not a denial of due process where counsel was absent after his motion for continuance was properly denied, and where he was given opportunity to read testimony of the witnesses who testified in his absence and to cross-examine them. *La Paree Undergarment Co., Inc.*, 17 N. L. R. B. 166.

Board affirmed Trial Examiner's ruling denying employer's motions for a mistrial and to strike testimony of witness who had distributed handbills urging employees not to testify for the company, contending that the distribution of the handbills amounted to a criminal obstruction of justice by intimidating prospective witnesses, but made no showing that its distribution prevented the presentation of any defense testimony. *International Harvester Co.*, 29 N. L. R. B. 456.

Ruling of Trial Examiner granting employer's motion to exclude evidence and strike allegations from the amended complaint on the ground that such matters were not set forth in the third amended charge upon which the amended complaint was based, affirmed. *Precision Casting Co., Inc.*, 30 N. L. R. B. 212.

[*See* § 91 (as to nature, scope, and function of charge).]

94 4. *For a mistrial.*

Where Trial Examiner excluded evidence offered by employer which was competent, relevant, and material to the issues, Board ordered a new hearing. *Owens-Illinois Glass Co.*, 11 N. L. R. B. 38.

Board affirmed Trial Examiner's ruling denying employer's motions for a mistrial and to strike testimony of witness who had distributed handbills urging employees not to testify for the company, contending that the distribution

of the handbills amounted to a criminal obstruction of justice by intimidating prospective witnesses, but made no showing that its distribution prevented the presentation of any defense testimony. *International Harvester Co.*, 29 N. L. R. B. 456.

§ 200 5. *Other motions.*

6. *To conform pleadings to proof.* (*See* §§ 113, 170.)

7. *To dismiss complaint.* (*See* §§ 311–320.)

8. *To amend complaint.* (*See* §§ 111–120.)

9. *For fill of particulars.* (*See* §§ 131–140.)

10. *To amend petition.* (*See* §§ 145-150.)

11. *To withdraw petition.* (*See* §§ 151–160.)

12. *To intervene.* (*See* §§ 51–90.)

13. *To adduce additional evidence.* (*See* §§ 281, 282.)

14. *For continuance.* (*See* §§ 241–250.)

15. *To reopen record.* (*See* §§ 271–300.)

IV. HEARING. [*See* § 247 (as to continuance for insufficiency of notice), and LITIGATION DIGEST. PROCEDURE BOARD: *Hearing.*]

§ 201 A. IN GENERAL.

Statutory provisions in the public interest of the kind to be found in the National Labor Relations Act are not considered as conferring common law rights requiring trial by jury. *Agwilines Inc.* v. *N. L. R. B.*, 87 F. (2d) 146, 151 (C. C. A. 5), modifying 2 N. L. R B. 1.

B. NOTICE. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Generally*—Notice of contentions; Notice of proceedings; Service of process.]

§ 202 1. *In general.*

2. *Sufficiency.*

§ 203 a. In general.

§ 204 b. Lack of proper notice waived or remedied.

An employer and two labor organizations have waived all objections to the intervention of one of the organizations and to the jurisdiction of the Board over the persons of each of the parties where a notice of hearing and a subsequent notice of change of place of hearing were issued to the employer and one of the labor organizations, but not to the other, although it had been named in the petition as claiming majority representation; a letter from that organization to the Regional Director was treated as a petition for intervention; and a hearing was held at a place contrary to both

notices, but in accordance with a consent signed by representatives of the employer and of both labor organizations. *West Virginia Pulp & Paper Co.*, 3 N. L. R. B. 675, 676.

Objection to sufficiency of notice of hearing overruled where the labor organization contending that it did not have proper notice raised no objections at the time of the hearing. *American Hardware Corp.*, 4 N. L. R. B. 412, 425.

Pursuant to a motion made subsequent to the hearing, one local was ordered substituted for the petitioning local as party petitioner in the proceedings in all respects as if said local had participated in the proceedings provided the substituted local files with the Board a statement that it assents to the substitution of itself and waives any right of notice and binds itself to the record as made. *Corona Citrus Assn.*, 25 N. L. R. B. 77; *Jameson Co.*, 25 N. L. R. B. 64.

Kennecott Copper Corp., 40 N. L. R. B. 986. (Service of notice of hearing waived by company and labor organizations during hearing.)

Although a labor organization, was not served with a notice of the hearing, *held* that it became a party to the representation proceedings where it entered an appearance, and was treated as a party. *National Gypsum Co.*, 32 N. L. R. B. 976.

210 c. Other circumstances.

Service of copy of complaint and notice of hearing upon a local union, whose members were not employees of respondent, is not such notice as would entitle the Board to set aside a contract which other locals of the union, whose members were in respondent's employ, had entered into with the respondent, where the complaint made no mention of the contract. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 234, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

An employer has not been denied due process by reason of the fact that it had not been granted sufficient time to prepare for hearing before the Board where notice thereof had been given 8 days prior thereto and additional notice charging further unfair labor practices 2 days later; nor is there any showing of prejudice where the employer was given full opportunity to present and cross-examine witnesses, and whatever may have been the lack of

preparation before the hearing, there is no claim that as the proceeding developed this difficulty had not disappeared. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 492 (C. C. A. 9), enforcing 3 N. L. R. B. 140, cert. denied 306 U. S. 643.

An employer has not been prejudiced by any lack of notice of an order of consolidation of a complaint and representation proceeding or by the form of such order or of the notices of hearing where the subject matter of both the representation and complaint cases was similar in that the complaint case was based upon alleged unfair labor practices of the employer in interfering with an election directed in the representation proceeding; although the notices of hearing did not specify that the hearing would relate to a consolidated proceeding, the notices in both cases provided for a hearing at the same time and place; and a copy of the order of consolidation was introduced as an exhibit on the first day of the hearing, which was continued 1 week before any testimony was taken. *Eagle & Phenix Mills*, 11 N. L. R. B. 361, 364, 365.

An employer is not prejudiced by a lack of notice and an opportunity to be heard prior to the action of the Board in amending its Direction of Election, and action so taken is within the authority vested in the Board by Section 9 (c) of the Act and pursuant to Article III, Section 8, of the Rules and Regulations. *Proximity Print Works*, 11 N. L. R. B. 379, 387.

Section 10 (b) of the Act makes no requirement that the notice of hearing name the individual who is to act as Trial Examiner; accordingly, employer's motion to dismiss complaint because notice of hearing failed to designate the Trial Examiner, dismissed. *Roebling's Sons Co.*, 17 N. L. R. B. 482, 486.

211 3. *Lack of proper notice as affected by opportunity to be heard by court of review.*

It is immaterial that legitimate unions whose contracts with an employer have been invalidated by the Board in a proceeding to which the unions themselves have not been made parties, have petitioned for review of the Board's Order in the Circuit Court of Appeals, for while due process does not require an opportunity to be heard before judgment, its defense may be presented upon appeal, the rule assumes that the appellate review affords opportunity to present all

available defenses, including lack of proper notice to justify the judgment or order complained of. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 234, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

A labor organization, found by the Board to have been employer-dominated and whose members replaced striking employees ordered reinstated by the Board has not been substantially prejudiced by a failure of the Board to serve it with notice of hearing where it was heard upon the points in which it was interested by the court of review; and while it is unlikely that it might have persuaded the Board to exercise its descretion differently as to that section of the Order which affected the jobs of its members, nevertheless, as a matter of assurance, the court will give it the right to petition the Board for a change in that clause of the Order, after the court's opinion has been filed. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 873 (C. C. A. 2), modifying 2 N. L. R. B 626, cert. denied 304 U. S. 576.

312 4. *Failure of parties duly served with notice to appear or to testify.* [*See* § 312 (as to dismissal of complaint for failure of employees alleged to be victims of unfair labor practices to appear or to testify), and LITIGATION DIGEST: PROCEDURE BOARD. *Hearing*—Default proceedings.]

Where respondents filed objection to the constitutionality of the Act and the jurisdiction of the Board, but refused to introduce evidence or take part in the proceedings, they were not misled into believing that they would be given an opportunity to try the merits of their cases after the Supreme Court had passed upon the constitutionality of the Act, for the first Trial Examiner to sit in the case stated that he would note respondents' objection on the record but that he proposed to hear what either party offered, and the second Trial Examiner stated that he believed, since the defendants had been given every opportunity to present their cases and since they were withdrawing voluntarily, no further opportunity would be given. *N. L. R. B.* v. *Anwelt Shoe Mfg. Co.*, 93 F. (2d) 367, 371 (C. C. A. 1), enforcing 1 N. L. R. B. 939.

An employer's contention that representation proceedings should be dismissed because one of the labor organizations involved was an indispensable party and had not been joined by the Board is without merit, where the labor organization in question was served with a copy of the petition and notice of hearing in the proceedings, but did

not appear, for upon being served as required by Article III, Section 3, of the Rules and Regulations, the labor organization was expressly recognized as a "party" to the proceedings. *National Electric Products Corp.*, 3 N. L. R. B. 475, 499, 500.

The failure of a legitimate labor organization, with whom an employer has made an illegal contract, to appear in complaint proceedings, does not nullify such proceedings where the organization was duly served with copies of the charge, complaint, and notice of hearing, for the complaint is not directed against the labor organization but against the employer, and the interests of the organization could have been protected by a petition to intervene, and the employer cannot be heard to complain that the labor organization did not avail itself of that opportunity. *National Electric Products Corp.*, 3 N. L. R. B. 475, 500.

[*See* § 123 (as to the effect of a failure to file an answer), and EVIDENCE § 33 (as to a presumption of guilt for failure to testify or produce evidence).]

220 5. *Other circumstances.*

Respondent's objection to the presentation of evidence by the labor organization which filed the charges upon which the complaint was issued, properly overruled, since as a party to the proceeding it did not exceed its rights under Article II, Section 25, of National Labor Relations Board Rules and Regulations—Series 1, as amended. *Goodyear Tire & Rubber Co.*, 21 N. L. R. B. 306, 309.

6. *Parties entitled to notice.* (*See* §§ 18–25, 31–40.)

7. *Necessity that employer receive notice of run-off election.* (*See* INVESTIGATION AND CERTIFICATION § 95.)

8. *Necessity that employer receive notice of consolidation, transfer, and severance of proceedings.* (*See* §§ 301–304.)

C. SUBPENAS. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Subpenas.*]

221 1. *In general.*

The rule of the Board providing that subpenas be issued to an employer only upon written application specifying the name of the witness and the nature of the facts to be proved, but the practice of not requiring similar application on the part of counsel for the Board, constitutes a reasonable restriction upon the right of the employer to the process of subpena, for conditions upon which the Board grants subpenas to the employer, are fair as well as designed to prevent obstructive tactics or other abuse of the Board's

subpena power and it is necessary to make the conditions expressly applicable to Board agents since the Board has ample supervisory power to prevent improper conduct on the part of its employees. *Weirton Steel Co.*, 32 N. L. R.B. 1145, 1150. See also:

Bethlehem Steel Co. v. *N. L. R. B.*, 120 F. (2d) 641 (C. A. D. C.), enforcing 14 N. L. R. B. 539.

North Whittier Heights Citrus Assn. v. *N. L. R. B.*, 109 F. (2d) 76, enforcing 10 N. L. R. B. 1269.

N. L. R. B. v. *Dahlstrom Metallic Door Co.*, 112 F. (2d) 756, enforcing 11 N. L. R. B. 408; (Where in the absence of claim of prejudice court, *held* Board's application of rule did not vitiate its Order; however, no opinion was expressed as to the legality of the practice.) Cf. *Inland Steel Co.* v. *N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7), remanding 9 N. L. R. B. 783.

222 2. *Failure to follow proper procedure in applying for subpenas.*

Refusal of an employer's requests for subpenas which do not state "the nature of the fact to be proved," as required by the Rules, is reasonable, for the Board cannot be required to exercise the process of bringing witnesses to a hearing where either the relevancy of the evidence offered does not appear, or it appears affirmatively that the offer will not be relevant. *Rabhor Co., Inc.*, 1 N. L. R. B. 470, 479. See also: *Delaware-New Jersey Ferry Co.*, 30 N. L. R. B. 820. *Electric Boat Co.*, 7 N. L. R. B. 572, 574. (An employer cannot be heard to complain that the refusal of the Board to issue subpenas upon its application was prejudicial to its case where the application did not conform to the procedure required by the Board's Rules and Regulations.)

Berkshire Knitting Mills, 37 N. L. R. B. 926. (Application for subpena previously denied because of lack of specification as to "nature of facts to be proved" granted where statement in brief which Board considered as supplementing original application contained sufficient specification.)

223 3. *Failure to utilize other means of securing information or evidence.*

Employer's request for the issuance of subpenas for employees whose names appeared on authorization cards submitted by a labor organization seeking to represent the employees denied in view of the company's refusal to examine the cards, its failure to contradict testimony submitted by the labor organization as to the genuineness of the signatures, and its refusal to produce a pay roll against which the cards

could be checked. *Blackstone Mfg. Co.*, 7 N. L. R. B. 1169, 1172.

24 4. *Where information desired has already been supplied.*

A motion for an order to compel obedience to a subpena of the Board to produce books for the sole purpose of showing that an employer was engaged in interstate commerce will be denied where the facts sought to be shown by the subpena are admitted by the employer. *N. L. R. B.* v. *Eastern Footwear Corp.*, D. C. N. Y., Feb. 14, 1938.

Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 699, 700. (Request by employer for subpena *duces tecum*, denied where information desired had been entered into the record.)

Pacific Gas & Electric Co., 13 N. L. R. B. 268, 273–275. (Application by employer for subpena requiring attendance of Regional Director and production of certain specified records, denied where the desired information had been obtained by the employer as a result of a stipulation with the Board.)

Friedrich, Inc., 17 N. L. R. B. 387, 388. (Application by respondent for subpenas requiring attendance of five named witnesses, denied where some of the witnesses were already under subpena by the Board and an arrangement was entered into by counsel for the respondent and counsel for the Board whereby the remaining witnesses were to be requested to appear voluntarily.)

Acme-Evans Co., 24 N. L. R. B. 71, 75. (Applications by respondent for subpenas requiring the attendance of witnesses who had already been fully cross-examined by the respondent, denied when the respondent neither indicated the nature of the evidence it desired to adduce nor showed that they would have testified on any matter not fully probed when they first testified and were cross-examined.)

25 5. *Relevancy of evidence offered.*

Where the Board is conducting an investigation of representatives of employees in the mechanical department of a plant, its subpena calling for the "pay roll" of the entire plant, except supervisory employees who have authority to employ and discharge, is not too broad in scope, for the Board would be directly interested in the entire personnel since certain employees may have overlapping duties or may be employed part time in the mechanical department

and part time elsewhere and in the first instance, at least, it rests with the Board to determine whether any such employees should be classified with those in the mechanical department. *N. L. R. B.* v. *New England Transportation Co.*, 14 F. Supp. 497, 499 (D. C. Conn.)

A Trial Examiner's order striking from the answer of the employer allegations which charged that a national labor organization, with which the labor organization involved was affiliated, was engaged in a Nation-wide illegal conspiracy to seize plants in various parts of the country including the plant of the employer, and denying the application for the issuance of subpenas to compel the attendance of officers of the national labor organization as witnesses and the production of its records and the attendance of certain law enforcing officers to sustain these allegations, affirmed. *Serrick Corp.*, 8 N. L. R. B. 621, 624, enforced 110 F. (2d) 29 (App. D. C.)

No prejudicial error was committed in proceedings for the purpose of adducing additional evidence where although the Board authorized the issuance of subpenas to the extent of requiring a labor organization to produce its membership record, application cards, and cards of authorization, the Board, however, denied an employer's request to subpena the union books of account, bylaws, and minutes of meeting, by which it sought to prove that a majority of persons claimed as members of the labor organization were not dues-paying members and did not attend union meetings, for these records are not relevant on the issue of whether an employer has engaged in unfair labor practices. *Boss Mfg. Co.*, 11 N. L. R. B. 432, 440, 441, modified and rehearing denied 107 F. (2d) 574 (C. C. A. 7).

In a hearing on objections to the Regional Director's Intermediate Report on the ballot consolidated with a hearing involving 8 (1) allegations, application by respondent for a subpena which would require production at hearing of Intermediate Report on the ballot, a list of employees within the appropriate unit and eligible to vote, a record of employees who voted, a record of votes which were challenged "together with the record of the reasons specified as a basis for challenge" and all affidavits with respect to the conduct of the election, denied when there was no claim of irregularity at the polls. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 274.

Ruling of the Regional Director denying an application by the company for subpena *duces tecum* to require the production in evidence of all correspondence between the union and the Board or its agents, sustained when the application did not sufficiently disclose the relevance of the correspondence to the issues in the proceeding. *Colorado Fuel & Iron Corp.*, 29 N. L. R. B. 541.

Employer's motion for a subpena *duces tecum* of union records to show which employees were members of the union in order to determine the treatment afforded other employees who were members of the union and whether alleged discrimination actually discouraged membership in the union, properly rejected by the Trial Examiner on the ground that membership of employees in the union could be material by way of defense only if the employer knew of such membership, and that would not be shown by production of union records. *Montgomery Ward & Co.*, Inc., 31 N. L. R. B. 786.

In the absence of any claim by the employer that the minutes of union meetings or other matters which it desired to subpena would controvert the facts as established by the membership records made available to it at the hearing and incorporated in the record with its assent, *held* that the employer was not prejudiced by the Trial Examiner's refusal to permit it to explore further the question of union membership and representation. *Brown-McLaren Mfg. Co.*, 34 N. L. R. B. 984.

Application for subpena, denied insofar as it sought to prove that the charges were filed by the union in bad faith, since the motive of the person or organization filing the charges is irrelevant. *Berkshire Knitting Mills*, 37 N. L. R. B. 926.

[*See* EVIDENCE §§ 14.5–16, 18.9–23.9 (as to what constitutes relevant matter).]

26 6. *Matters relating to internal affairs of labor organizations.*

Ruling of Trial Examiner refusing to permit the employer to make application for a subpena to compel the labor organization petitioning for investigation and certification of representatives to produce the minutes of the meeting at which a resolution was allegedly passed authorizing the petition in question, affirmed. *Sorg Paper Co.*, 8 N. L. R. B. 657, 658.

Beck, 3 N. L. R. B. 110, 111. (Subpena for production of books, records, and correspondence of labor organization, denied.) See also: *Marlin-Rockwell Corp.*, 5 N. L. R. B. 206, 207.

General Petroleum Corp., 5 N. L. R. B. 982, 985. (Subpena requiring appearance of branch agents of labor organization involved, and production of records and resolutions of the branches bearing upon the authority of the secretary to institute proceedings in question, denied.)

Crane Co., 28 N. L. R. B. 756. (Subpena to compel union to produce signed applications or authorizations, denied.)

Brown-McLaren Mfg. Co., 34 N. L. R. B. 984. (Subpena to produce minutes of union meetings, and of other of the union's records, and documents, denied.)

Berkshire Knitting Mills, 37 N. L. R. B. 926. (Subpena to compel union to produce records concerning the membership of the union and the expenses which it incurred in connection with a strike, denied.)

[*See* EVIDENCE §§ 23, 41 (as to the privileged character of matters affecting the internal affairs of labor organizations).]

227 7. *Matters relating to Board business.*

Respondent's motion for subpena *duces tecum* directing Board's Regional Director to produce data and documents in Board's possession bearing upon the charges filed and the complaint issued against said respondent denied on the grounds, *inter alia*, that wholesale publication of information and confidences gained by the Board in its preliminary investigations of cases would deter persons from supplying material information. *Uhlich & Co., Inc.*, 26 N. L. R. B. 679.

[*See* EVIDENCE § 41 (as to privileged character of matters relating to Board business).]

228 8. *Compliance.*

Where an employer has refused to comply with a subpena of the Board calling for production of the employer's list of personnel in aid of an investigation of representatives under Section 9 (c), a Federal District Court will issue an order requiring compliance therewith upon application of the Board pursuant to Section 11 (1) and (2), for Section 9 (c), considered apart from the obligatory provisions contained elsewhere in the Act, must be considered as conferring a valid power upon the Board and in aid of that power the process provided by Section 11 (1) and (2) is valid and enforceable. *N. L. R. B.* v. *New England Transportation Co.*, 14 Fed. Sup. 497, 499 (D. C. Conn.).

Order compelling obedience to subpenas and subpenas

duces tecum entered by Federal District Court on application of the Board to compel members of a partnership, a former employee of such partnership, and the Clerk of a State Court, to produce books and records and to appear and testify before the Board in proceedings involving charges of unfair labor practices. *N. L. R. B.* v. *Ritholz Optical Co.*, (D. C., Ill., June 13, 1939), enforcing subpenas.

30 9. *Other circumstances.*

The failure to deliver subpena and subpena *duces tecum* did not deny an employer a fair hearing where its application therefor had been filed with the Regional Director and at the close of the evidence a copy of such application was made part of the record, at which time a discussion between counsel revealed that the subpenas had been brought but had not been handed to counsel for the employer because of a misunderstanding, and when this was made clear, no request for the delivery was made nor was any remedy sought in the court of review. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 245 (C. C. A. 8), modifying 7 N. L. R. B. 986.

D. TRIAL EXAMINER. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Hearing*—Trial Examiner.]

31 1. *In general.*

Employer's objection to Trial Examiner's sitting in the case on the ground that he was not a lawyer and therefore not qualified to admit and weigh evidence, *held* without merit. *Freundlich, Inc.*, 2 N. L. R. B. 802, 805.

Contention that Trial Examiners are not authorized by law to receive evidence, *held* groundless. *Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382, 1384.

Objection to appointment of Board's attorney as Trial Examiner in a representation proceeding in which he acted as attorney in the preliminary investigation, without merit. *Armour & Co.*, 25 N. L. R. B. 238, 239.

232 2. *Limiting opportunity to examine and/or cross-examine.*

[*See* LITIGATION DIGEST: PROCEDURE BOARD. *Hearing*—Cross-examination.]

A contention that the action of a Trial Examiner in deferring the intervenor's right to cross-examine witnesses until the end of the Board's case is prejudicial error, without merit where this action was necessary to expedite a hearing that was being unduly prolonged by the conduct and tactics of counsel for the intervenor in covering by his cross-

examination only the ground already covered in cross-examination by counsel for the employer. *National Motor Bearing Co.*, 5 N. L. R. B. 409, 439, modified 105 F. (2d) 652 (C. C. A. 9).

Zenite Metal Corp., 5 N. L. R. B. 509, 511. (Denial to intervening labor organization of right to examine witnesses not prejudicial error where the labor organization had entered into a stipulation with all parties concerning the testimony in question.) See also: *Montgomery Ward & Co.* v. *N. L. R. B.*, 103 F. (2d) 147, 149 (C. C. A. 8), setting aside 4 N. L. R. B. 1151.

National Dress Manufacturers' Assn., 28 N. L. R. B. 386. (Trial Examiner's denial of company counsel's request to cross-examine witnesses who had testified on the day counsel absented himself from the hearing without notice, *held* not an abuse of discretion.)

Christian Feigenspan Brewing Co., 29 N. L. R. B. 1136. (Trial Examiner's ruling denying requests of the company to cross-examine certain witnesses or to call certain witnesses on the ground that the issues which the company sought to prove thereby were collateral to the issues presented at the hearing, *held* not prejudicial.)

United Dredging Co., 30 N. L. R. B. 739. (Trial Examiner's ruling denying employer's motions to examine as adverse witnesses certain complainants who did not testify but permitting employer to call such complainants as witnesses and examine them as adverse witnesses, if upon examination they were shown to be in fact adverse, *held* to have afforded the employer adequate opportunity to examine and cross-examine these complainants and that it was not deprived of an opportunity to present its defense.)

National Mineral Co., 39 N. L. R. B. 344. (Trial Examiner's refusal to permit respondent to cross-examine witnesses to establish misrepresentations on the part of the union and to show that the union members were kept in ignorance of what was going on between the respondent and the union, not prejudicial, in view of the desirability of avoiding unnecessary inquiries into union activities, and of the fact that the respondent's anti-union activities and refusal to bargain could not have been predicated upon such alleged misrepresentations, when it admittedly had no knowledge of them.)

Siskin, 41 N. L. R. B. 187. (Trial Examiner's ruling that a union organizer could not be cross-examined in a represen-

tation proceeding with reference to the number of employees the union represented in fact and in good faith, *held* proper for in order to avoid possible unfair labor practices which might follow such disclosure, Board does not require the union which seeks an election by secret ballot to disclose which employees have authorized the union to represent them.)

Record with the exception of certain formal papers, set aside, and new hearing ordered where Trial Examiner examined witnesses on new phases of testimony not gone into by employer's counsel and denied to counsel the right to examine further on these phases of the testimony. *Bercut-Richards Packing Co.*, 13 N. L. R. B. 101. See also: *Montgomery Ward & Co.* v. *N. L. R. B.*, 103 F. (2d) 147, 149 (C. C. A. 8), setting aside 4 N. L. R. B. 1151. *Inland Steel Co.* v. *N. L. R. B.*, 109 F. (2d) 9, 18 (C. C. A. 7), remanding for a new hearing 9 N. L. R. B. 783.

232.5 3. *Rulings on motions.*

Regardless of the action subsequently taken by the Board in its decision, a Trial Examiner may deny a motion to dismiss made during the course of a hearing or reserve decision thereon for his Intermediate Report after consideration by him of the entire record. *Times Publishing Co.*, 13 N. L. R. B. 652, 653. See also: *Calmar S. S. Corp.*, 18 N. L. R. B. 1, 3.

4. *Conduct of Trial Examiner.*

233 a. In general.

An employer has been denied a fair hearing as required by due process of law where the Trial Examiner, at the hearing: (1) omitted from the record occurrences at the hearing; (2) unfairly restricted examination and cross-examination by counsel for the employer and for an intervening labor organization; (3) exhibited a hostile attitude toward witnesses who might be supposed to favor the employer or the intervenor; (4) and exhibited an obvious attitude of bias. *Montgomery Ward & Co.* v. *N. L. R. B.*, 103 F. (2d) 147, 149 (C. C. A. 8), setting aside 4 N. L. R. B. 1151.

An employer has been deprived of a fair hearing by the ruling of a Trial Examiner which directed the official reporter to omit "off the record" matter during the first 5 days of a hearing, until directed by the Board to include such matter, and his refusal to allow the employer to have its own reporter take such omissions. *Inland Steel Co.* v. *N. L. R.*

B., 109 F. (2d) 9, 14 (C. C. A. 7), remanding for a new hearing 9 N. L. R. B. 783.

The Act authorizes the Board to enter an order only after a hearing, which must mean a trial by a tribunal free from bias and prejudice and imbued with a desire to accord to the parties equal consideration, and if such right was denied an employer, it is immaterial that it has failed to prove that its case was prejudiced or that any evidence favorable to it was cut from the record, for to say that the employer was not prejudiced because of the bias of the Trial Examiner is purely a matter of speculation; nor is such prejudice remedied by the transfer of the proceedings to the Board without Intermediate Report by such Examiner, for the Board could not restore to the employer the right to a fair and impartial hearing of which it had been deprived by the Trial Examiner. *Inland Steel Co.* v. *N. L. R. B.*, 109 F. (2d) 9, 21 (C. C. A. 7), remanding for a new hearing 9 N. L. R. B. 783.

Although the record discloses some instances of abruptness and impatience by the Trial Examiner during the hearing it does not necessarily follow that he was biased or conducted himself in a prejudicial manner. *Johns-Manville Products Corp.*, 17 N. L. R. B. 895, 901.

Alleged unfair conduct by Trial Examiner found groundless where no specific instances of unfair treatment were cited by any party; alleged refusal to permit rejected preferred exhibits to be included with the record for review of ruling rejecting said exhibits found groundless where no reference was made to the transcript in support of the charge and where no such documents were offered the Board so that it might rectify any possible error in this regard. *Condenser Corp. of America*, 22 N. L. R. B. 347.

Employer's contention that the Trial Examiner denied it a fair hearing because of his refusal to make available to employer all written statements and affidavits of Board witnesses for employer's use in cross-examination, and because of his denial of employer's request for subpenas, and his failure to adequately protect its witnesses from intimidation, *held* without merit. *Sorg Paper Co.*, 25 N. L. R. B. 946.

Trial Examiner's ruling establishing order of proof, *held* within his discretion and not evidence of bias. *Ford Motor Co.*, 31 N. L. R. B. 994.

Rulings of the Trial Examiner in regard to permitting and forbidding leading questions even if assumed to be erroneous, *held* not prejudicial where there was nothing to suggest that it caused the suppression of information helpful to the defense or prevented the Board from appraising the record. *Weirton Steel Co.*, 32 N. L. R. B. 1145.

Remarks expunged from the record by the Trial Examiner as obnoxious to him, *held* not prejudicial where this disciplinary measure was used sparingly and where nothing suggests that its presence would have added to the objecting party's case. *Weirton Steel Co.*, 32 N. L. R. B. 1145.

Hearing was not so regulated as materially to impair the effectiveness of the defense despite the objection to miscellaneous rulings of the Trial Examiner in connection with the proper control of counsel, witnesses, and the hearing. *Weirton Steel Co.*, 32 N. L. R. B. 1145.

Alleged bias of Trial Examiner because of his alleged erroneous rulings, rejected since it is elementary that error does not of itself convict a man of bias. *Weirton Steel Co.*, 32 N. L. R. B. 1145.

Rulings of Trial Examiner denying continuances requested by respondent in order to afford it additional time within which to prepare its defense, *held* not to have been unreasonable or arbitrary. *National Mineral Co.*, 39 N. L. R. B. 344.

Employer's contention that it had been denied a fair hearing because of the rulings of the Trial Examiner on the admission of evidence, the manner in which he interrogated one of its witnesses, and his refusal to exclude witnesses from the hearing, *held* without merit. *Spandsco Oil & Royalty Co.*, 42 N. L. R. B. 942.

34 b. Examination of witnesses.

A Trial Examiner may properly examine witnesses himself and by doing so the employer is not deprived of a fair trial. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 873 (C. C. A. 2), enforcing 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

The exclusion of evidence by the Trial Examiner and his questioning of witnesses for the employer and for an intervening labor organization alleged to have been discriminatorily favored by the employer do not indicate an unfair and biased conduct of the hearing where: (1) the evidence excluded was irrelevant to the issue concerning the exist-

ence of unfair labor practices and therefore the refusal to receive it did not constitute prejudicial error; and (2) where the testimony given is controversial, there is no prejudice in the examination of the key witnesses by the Trial Examiner nor is it necessarily indicative of bias on his part that some of the evidence elicited in this manner was not favorable to the intervening labor organization. *Jefferson Electirc Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 954, 955 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

A Trial Examiner is free to and should interrogate witnesses when necessary to elicit or clarify testimony. *Montgomery Ward & Co.* v. *N. L. R. B.*, 103 F. (2d) 147, 156 (C. C. A. 8), setting aside 4 N. L. R. B. 1151.

An employer has not been denied a fair hearing by reason of the fact that a Trial Examiner subjected witnesses to searching cross-examination, for this is a proper exercise of the judicial prerogative and the Examiner in so acting did not in anywise limit the right of the employer to bring forth its side of the case. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 177 (C. C. A. 3), modifying 6 N. L. R. B. 171, cert. denied 308 U. S. 605. See also: *Subin* v. *N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), modifying 12 N. L. R. B. 467, cert. denied 311 U. S. 673. *Ford Motor Co.*, 26 N. L. R. B. 322, 328.

Conduct of hearing by Trial Examiner was not so unfair as to constitute a denial of due process by reason of the fact that the Trial Examiner extensively cross-examined witnesses for the employer and asked a question of one of its witnesses implying collusion between counsel for the employer and counsel for a labor organization found by the Board to be employer-dominated, where although the Trial Examiner's conduct was justly subject to criticism, he was, nevertheless, courteous and there is nothing to indicate that his examination of the witnesses was seriously objectionable to the employer. *Cupples Co. Manufacturers* v. *N. L. R. B.* 106 F. (2d) 100, 113 (C. C. A. 8), modifying 10 N. L. R. B. 168.

An employer has been denied a full and fair hearing where the Trial Examiner: (1) devoted very little time to the examination of important witnesses favorable to the Board, but, on the other hand, examined important witnesses for the employer at great length; (2) suggested that one of the employer's witnesses should be indicted for perjury, commented that others were evasive, and exhaustively

cross-examined two others in such a manner as to intimidate them; (3) discredited the testimony of employer witnesses concerning an important record, while at the same time refrained from seeing or doing anything to discourage witnesses who had given testimony of a dubious nature concerning a record regarded as important in support of the Board's case; and (4) limited the cross-examination of the employer, whereas he permitted counsel for the Board to cross-examine beyond the subject matter of the direct examination. *Inland Steel Co.* v. *N. L. R. B.*, 109 F. (2d) 9, 18 (C. C. A. 7), remanding for a new hearing 9 N. L. R. B. 783.

An imputation of impropriety to a Trial Examiner because he asked questions of witnesses is unfounded, for it is not the proper function of a judge or other presiding officer at a trial to sit dumbly and leave the questioning of the witnesses solely to the lawyers, regardless of whether they succeed in bringing out the truth, and a Trial Examiner cannot be criticized because he elicited the truth from reluctant witnesses. *National Electric Products Corp.*, 3 N. L. R. B. 475, 504.

Trial Examiner's order for a closed session when witness' testimony concerned criminal acts allegedly committed by another witness, but for which the latter had never been tried or convicted, *held* proper and not prejudicial. *Goodyear Tire & Rubber Co.*, 21 N. L. R. B. 306, 311.

Employer's contention that it was prejudiced by conduct of the Trial Examiner in attempting to break down its "key" witnesses by extensive cross-examination, *held* without merit. *Cities Service Oil Co.*, 25 N. L. R. B. 36, 39.

Employer contended that it had been denied a fair hearing by the Trial Examiner's "searching examination of witnesses who appeared to be favorable to the employer and his extreme activity in questioning and in amplifying the testimony of witnesses for the Board." Employer upon inquiry by Trial Examiner of any objection which it might have to his examination of witnesses, voiced no objection but instead favored such examination, Board found Trial Examiner's examination neither excessive nor prejudicial and rejected employer's assertions as unfounded. *Delaware-New Jersey Ferry Co.*, 30 N. L. R. B. 820, 824.

c. Grounds for disqualifying.

Near the conclusion of the hearing the Trial Examiner stated that he was going to make a statement at the close of the

case about the conduct of counsel if there was going to be future use of the record, either statistically or otherwise, to attack the record on prejudice. Employer claimed this was tantamount to a confession of prejudice by Trial Examiner, while Board contended it merely indicated a purpose on his part to preserve the record for determination on the merits. *Held:* The statement is consistent with the conclusion that employer was deprived of the character of hearing to which, by law, it was entitled and the natural inference is that the Trial Examiner realized the record was subject to attack because of his biased conduct and sought to forestall such attack by threatening counsel with exposure or counter-attack. *Inland Steel Co.* v. *N. L. R. B.* 109 F. (2d) 9, 20 (C. C. A. 7), remanding for new hearing 9 N. L. R. B. 783.

Ruling of Trial Examiner denying motion of employer that the hearing be held before another Trial Examiner on the ground that the Trial Examiner was prejudiced and biased, affirmed and Trial Examiner held correct in not disqualifying himself in the absence of any proof substantiating the employer's contention of bias and prejudice where proceedings were reopened after filing of supplemental charge and complaint alleging that the employer had posted in its plant a notice which attacked the Trial Examiner's Intermediate Report as unfair and prejudiced and, in addition, contained anti-union statements. *Union Die Casting Co., Ltd.*, 7 N. L. R. B. 846, 848.

Sufficient ground for ordering a new hearing before another Trial Examiner in order to remove any possible stigma of prejudice exists where, although it does not affirmatively appear that the Trial Examiner in the case was unable impartially to exercise his function, he had stated during the early part of the hearing that he had seen an editorial in the employer's newspaper which referred to the Board, and explained that it was his purpose to include on the record all circumstances which concern the situation and which might affect the findings and rulings so that the review could also be based thereon. *Express Publishing Co.*, 8 N. L. R. B. 162, 163.

Contention that Trial Examiner possessed a disqualifying personal bias, prejudged issues in case, and acted in a manner as to indicate that his mind was not open to proof, *held* without merit. *Ford Motor Co.*, 26 N. L. R. B. 322.

Contention that testimony given before the Smith Committee with respect to the conduct of the Trial Examiner indicated that employer had been denied a fair hearing, *held* without merit. *International Harvester Co.*, 29 N. L. R. B. 456. See also: *Alma Mills, Inc.*, 24 N. L. R. B. 1, 5.

Undignified manner of response to employer's counsel on part of Trial Examiner, *held* not sufficient in itself to deprive respondent of a fair hearing. *Illinois Electric Porcelain Co.*, 31 N. L. R. B. 101, 107.

Statement of Trial Examiner criticizing respondent's managing officers who refused to appear in response to Board's subpenas found in light of entire record not to establish any bias or prejudice on part of Trial Examiner nor to have affected fairness of hearing accorded respondents. *Phelps*, 45 N. L. R. B. 1163.

5. *Power to review ruling of Regional Director.*

A Trial Examiner is correct in taking the position he had no authority to review the ruling of the Regional Director who had, prior to the hearing, denied a petition for intervention on the ground of lack of interest in the petitioners. *Bell Oil & Gas Co.*, 2 N. L. R. B. 886, 888.

6. *Substitution of Trial Examiners.*

A Trial Examiner committed no prejudicial error in overruling objections and denying motions to dismiss the complaint, made by the employer and a labor organization alleged to be employer-dominated, on the grounds that the designation of a second Trial Examiner to complete the hearing on the case upon the illness of the Trial Examiner originally appointed, was a violation of the Act, of the Board Rules and Regulations, and of the constitutional rights of the employer. *American Smelting & Refining Co.*, 7 N. L. R. B. 735, 736.

There is no merit to the objection of an employer to the designation of the Trial Examiner on the ground that a hearing involving consolidated proceedings upon a complaint and petition was merely a continuation of a hearing held more than 5 months prior thereto, before the issuance of the complaint, upon the same petition, and that the same Trial Examiner who sat in the prior hearing should have been designated for the present hearing. *Model Blouse Co.*, 15 N. L. R. B. 133, 136.

There is no merit to an employer's contention that the evidence taken at a former hearing must be disregarded

because the Trial Examiner who conducted it did not also conduct the resumed hearing, since neither of the Trial Examiners filed an Intermediate Report and the findings of fact made by the Board, in the case of both the former and resumed hearings, were equally without the benefit of the observations of the demeanor of the witnesses, and were similarly based upon the recorded stenographic transcript and exhibits in both hearings. *Condenser Corp. of America,* 22 N. L. R. B. 347, 356.

§ 240 7. *Exclusion of parties from participation in hearing because of contemptuous conduct.*

The provision of the Rules and Regulations of the Board stating that "Contemptuous conduct at any hearing before a Trial Examiner or before the Board shall be ground for exclusion from the hearing" applies to lawyers and laymen alike, and a Trial Examiner is empowered, by virtue of such rule, to bar an attorney who has engaged in contemptuous conduct from further participation in a hearing in the interest of orderly and expeditious proceedings. *Weirton Steel Co.,* 8 N. L. R. B. 581, 582, 583.

Baldwin Locomotive Works, 20 N. L. R. B. 1100, 1104. (Trial Examiner *held* justified in excluding counsel for intervenor from participation in the hearing during the remainder of 1 day because of unseemly conduct in the hearing room.)

Weirton Steel Co., 32 N. L. R. B. 1145, 1154. (Employer's contention that the Trial Examiner's exclusion of one of its attorneys from further participation in the hearing was for the purpose of hampering its defense, without merit where the Board found the exclusion was proper and the employer in the absence of this attorney was able to and did present an exhaustive and complete defense.)

§ 240.5 8. *Other matters.*

9. *Exclusion of evidence.* (*See* EVIDENCE.)

10. *Intermediate Report of Trial Examiner.* (*See* §§ 251, 260.)

11. *Review of Trial Examiner's findings.* (*See* §§ 306–310.)

E. CONTINUANCE. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Hearing*—Continuance.]

§ 241 1. *In general.*

Denial of a motion to postpone the commencement of the hearing may be necessitated by the presence of the assembled witnesses of the Board and is quite different from a refusal to continue it after these witnesses have been heard, either to have some recalled for further examination or to produce others; and denial of the former type of motion

does not constitute a violation of due process in absence of a showing of prejudice. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 492 (C. C. A. 9), enforcing 3 N. L. R. B. 140. See also: *La Paree Undergarment Co., Inc.*, 17 N. L. R. B. 166, 169.

The Trial Examiner, as a court, has a rather wide discretion in his refusal to grant a continuance and should not be interfered with by a reviewing court except upon a clear showing of abuse. *N. L. R. B.* v. *Algoma Plywood & Veneer Co.*, 121 F. (2d) 602 (C. C. A. 7), setting aside 26 N. L. R. B. 975.

Trial Examiner's ruling denying intervenor's motion for a continuance, *held* not prejudicial, when counsel for intervenor was unable to specify a date on which he would be able to proceed with the hearing. *Harrisburg Children's Dress Co.*, 14 N. L. R. B. 1035.

242 2. *Lack of particularity in pleadings.*

An employer has not been prejudiced by the lack of particularity in a complaint charging a violation of Section 8 (2) where although the complaint was couched in general language and did not state the names of the individuals involved nor the time and place of the occurrences, nevertheless, the petitioner was fully advised of the times and places of the alleged unfair labor practices and of the persons involved at the close of the Board's evidence, at which time the hearing was adjourned and the employer was given 2 days, excluding a Sunday, to prepare for the cross-examination of certain of the Board's witnesses and the presentation of its own evidence, after which it fully cross-examined the Board's witnesses, and introduced evidence of its supervisory employees on each of the charges made and the issues presented. *Swift & Co.* v. *N. L. R. B.*, 106 F. (2d) 87, 91 (C. C. A. 10) modifying 7 N. L. R. B. 269.

243 3. *Amendment of pleadings.*

An intervening legitimate labor organization has not been prejudiced by the refusal of a Trial Examiner to grant a continuance following amendment of the complaint to alleged that certain closed-shop contracts entered into between the employer and the intervenor were invalid, for it is elementary law that the matter of continuances rests in the sound discretion of the Trial Examiner and his ruling in that regard is not ordinarily reviewable. *Jefferson Electric Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 955 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

Ruling of Trial Examiner granting employer's request for a continuance of the hearing affirmed where, at the hearing, the employer first moved to dismiss the petition upon the ground that it failed to set forth the nature of the question concerning representation alleged to have arisen, but thereafter withdrew its motion to dismiss when petition was amended, by consent of the parties, to allege the manner in which the question had arisen concerning representation of employees. *May Knitting Co., Inc.*, 9 N. L. R. B. 938, 939.

Rulings of Trial Examiner denying employer's motions for bill of particulars and to make the complaint more definite and certain, sustained since these rulings were not prejudicial to the employer in that, near the conclusion of the Board's case, the employer was granted an adjournment for several days in order to prepare its defense and the added time thus given after disclosure of the Board's evidence gave it complete opportunity to meet the issues; and, further, the original charge together with three amended charges, set forth in detail most of the acts alleged to have been done by the employer and constituted notice to the employer of acts not alleged with the same particularity in the complaint. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 272.

44 4. *Substitution and/or unavailability of counsel.*

Motion for adjournment of hearing in proceeding concerning representation of employees on the ground, *inter alia*, that the moving labor organization had retained new counsel who had had insufficient time to prepare its case, granted. *Blanchard Bros. & Lane, Inc.*, 8 N. L. R. B. 1271, 1272, 1273.

Karron, 41 N. L. R. B. 1454. (Motion by employer-assisted union for an adjournment of the hearing on the ground that its attorney had withdrawn from the case, denied when its attorney had withdrawn from the case upon being denied a continuance.)

Greenway Wood Heel Co., Inc., 43 N. L. R. B. 752. (Trial Examiner's denial of motion for adjournment for an unstated period, made by company representative on the ground that he had been unable to retain counsel because of illness and absence from the office, affirmed where request for a week's continuance had been granted previously.)

Denial by Trial Examiner of motion to continue opening of hearing for 24 hours on ground that counsel for employer

had to appear in the Federal District Court on another matter, with the result that the Board's case went on in the absence of any attorney for the employer for a period of about 1 hour, does not constitute prejudicial error or a denial of due process. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 492 (C. C. A. 9), enforcing 3 N. L. R. B. 140. See also: *La Paree Undergarment Co., Inc.*, 17 N. L. R. B. 166, 167.

45 5. *Unavailability of witnesses.*

Request by employer upon conclusion of the presentation of the Board's case for an adjournment in order to prepare its case, and in particular to secure the testimony of two witnesses who were then unavailable, granted as to the two witnesses, and denied as to the right to call other witnesses where the only reason given for the failure to call such other witnesses at the conclusion of the Board's case was that the Board had completed its presentation sooner than anticipated. *Consolidated Edison Co.*, 4 N. L. R. B. 71, 74, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2).

Motion for continuance of hearing on petition for investigation and certification of representatives until such time as witness could be present with records to testify as to membership of a labor organization, properly denied where the number of employees that the witness would testify were members was not sufficient to destroy the majority of the other labor organizations involved. *Bingham & Taylor Corp.*, 4 N. L. R. B. 341, 345, 346.

Feinberg Hosiery Mill, Inc., 38 N. L. R. B. 1359. (Motion for continuance, denied where witness who was unavailable was not involved in any of the alleged unfair labor practices.)

At opening of hearing counsel for employer requested a 3 weeks' adjournment on the ground that his two principal witnesses had made arrangements long prior to the issuance of the complaint to go to another State for the purpose of a combined business and pleasure trip and to visit a wife and sick child. Motion denied and counsel for employer withdrew from the hearing which was thereafter conducted in his absence. *Held*: Denial of motion affirmed. There could have been no emergency to justify the absence of the witnesses since both trips were admittedly arranged long prior to the date upon which complaint and notice of

hearing were served. Moreover, ample notice of the hearing was given to the employer. In absence of an adequate showing of substantial cause, private convenience must accommodate itself to public necessity. *Ronni Parfum, Inc.*, 8 N. L. R. B. 323, 324, 325, enforced 104 F. (2d) 1017 (C. C. A. 2).

Quality Art Novelty Co., Inc., 20 N. L. R. B. 817, 821. (Application for continuance after commencement of hearing, properly denied where respondent failed to show adequate cause therefor.)

Employer not prejudiced by Trial Examiner's denial of its motion for an extension due to the state of one of its officers' health, where the medical testimony it adduced was to the effect that although such person was able to appear as a witness there was a possibility that such appearance would result in a relapse and that such person's physical condition would probably be no better in 60 or 90 days, and where it did not request that such person's testimony be taken by deposition. *Leyse Aluminum Co.*, 37 N. L. R. B. 839. See also: *N. L. R. B.* v. *Algoma Plywood & Veneer Co.*, 121 F. (2d) 602 (C. C. A. 7), setting aside on other grounds, 26 N. L. R. B. 975.

Denial of third continuance before beginning of the hearing, *held* not prejudicial where respondent had been granted two prior continuances, and the hearing was adjourned after close of Board's case so that respondent might confer with a witness who had been unavailable because of illness. *May Co.*, 38 N. L. R. B. 1154.

246 6. *Institution and/or pendency of other proceedings.* [*See* INVESTIGATION AND CERTIFICATION §§ 72, 75 (as to period within which election is held when other proceedings are instituted or pending).]

Motion of labor organization for continuance of hearing on petition for investigation and certification of representatives on the ground that the organization had filed charges with the Board against the employer and a second labor organization which was party to the proceedings some 3 hours prior to the time a hearing was scheduled to begin and that it desired that the Board be notified of these charges, denied where it was agreed that the Board be notified thereof and notice was immediately sent to the Board. *Northrop Corp.*, 3 N. L. R. B. 228, 230.

Ruling of Trial Examiner, denying company's motion for

continuance of representation proceedings pending judicial review by Circuit Court of Appeals of a prior Decision and Order of Board in a complaint case directing company to disestablish a union found to be company-dominated, affirmed by Board. *New Idea, Inc.*, 25 N. L. R. B. 265. See also: *Colorado Fuel & Iron Corp.*, 29 N. L. R. B. 541.

Motion by rival affiliated union for an adjournment of representation proceedings on ground that it had filed charges alleging that the petitioner was a company-dominated union within the meaning of Section 8 (2) of the Act denied since Board had sustained Regional Director's refusal to issue a complaint thereon. *Marks Products Co., Inc.*, 28 N. L. R. B. 334. See also: *Atlas Underwear Co.*, 30 N. L. R. B. 607. *Curtiss Wright Corp.*, 33 N. L. R. B. 490.

Motion by Board counsel for an adjournment to investigate charges alleged in amendment to complaint, that employer had made use of "outside" organizations to discourage membership in union, granted. *Gates Rubber Co.*, 40 N. L. R. B. 424.

7. *Insufficiency of notice.* [*See* §§ 202–220 (as to notice of hearing).]

Although an employer participated in a hearing, it had not been afforded full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issue of an amended complaint because of lack of notice where it was served with an amended complaint after business hours on a Saturday and the hearing was set for the following Monday, and under such circumstances the ruling of the Trial Examiner denying a motion of the employer made at the beginning of the hearing to postpone the hearing for 5 days, but giving permission to file an answer at any time during the hearing, overruled. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 955.

Trial Examiner's refusal to grant motion by employer for continuance was proper where such motion was made without previous notice or good grounds. *La Paree Undergarment Co., Inc.*, 17 N. L. R. B. 166, 169.

8. *Dilatory tactics.*

Rulings of Trial Examiner denying an employer's request for a continuance because of employer's dilatory tactics in delaying the hearing unnecessarily, sustained. *National Dress Manufacturers' Assn., Inc.*, 28 N. L. R. B. 386.

§ 249 9. *Removal of hearing.* [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Hearing*—Place of hearing.]

Adjournment of hearing to a different place by second Trial Examiner, *held* not to have denied employer a fair hearing, where it did not appear that the second Trial Examiner abused his discretion by transferring the hearing; there was no showing that such action prevented employer from offering a full defense; and the employer stated that it did not rely upon any matter which occurred since this Trial Examiner was designated. *Weirton Steel Co.*, 32 N. L. R. B. 1145.

§ 249.5 10. *Time for preparation.*

Where a continuance was granted by the Board for the purpose of enabling an employer to present the testimony of two witnesses and the Examiner and the Board refused to permit any other witnesses to testify on the date to which the hearing had been postponed, their action in so doing was unreasonable and arbitrary, since the additional witnesses were at hand and their testimony would have been short and would not have entailed an appreciable delay in closing the hearings, but the remedy of the employer in such a case was to apply to the Circuit Court of Appeals for the taking of additional evidence as provided for in Section 10 (e). *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 225, 226, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

Rulings of Trial Examiner denying continuances requested by respondent in order to afford it additional time within which to prepare its defense, *held* not to have been unreasonable or arbitrary but on the contrary were consonant with maintenance of orderly procedure and reasonable expeditious conduct of the hearing where respondent failed to avail itself of opportunities afforded it throughout hearing. *National Mineral Co.*, 39 N. L. R. B. 344.

§ 250 11. *Other circumstances.*

Continuance ordered by Trial Examiner in order to provide respondent an opportunity to appeal directly to the Board from his ruling denying various motions by the respondent. *International Harvester Co.*, 29 N. L. R. B. 456.

V. INTERMEDIATE REPORT. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Intermediate Report.*]

A. EXCEPTIONS. [*See* §§ 306–310 (as to review of Trial Examiner's findings).]

§ 251 1. *In general.*

2. *Who may file.*

Where no exceptions had been filed by the union instituting the charges, Board considered exceptions filed by the individuals as to whom the Trial Examiner recommended a dismissal of the complaint. *Hooven Letters, Inc.*, 43 N. L. R. B. 1309, 1311.

3. *Time for filing.*

The Board has not abused its discretion by reopening proceedings 10 months after the Trial Examiner had recommended dismissal of the complaint on the ground that the Board did not have jurisdiction, notwithstanding the fact that the employer resisted the Board's motion to reopen for the reason that no exceptions had been taken to the Intermediate Report within 10 days as required by Section 34, Article 2, of the Rules, since, by virtue of Section 36 the Board may reopen the record for further proceedings upon motion made within a reasonable period and upon proper cause shown. *N. L. R. B.* v. *Kentucky Fire Brick Co.*, 99 F. (2d) 89, 93 (C. C. A. 6), enforcing 3 N. L. R. B. 455.

Whiterock Quarries, Inc., 5 N. L. R. B. 601, 602. (Case reopened 1 year after Trial Examiner recommended that complaint be dismissed for want of jurisdiction, although finding that employer had engaged in unfair labor practices and labor organization permitted to file exceptions to Intermediate Report of the Trial Examiner.)

A denial by an employer that a labor organization which had filed charges represented a majority of the employees in an appropriate unit is insufficient when raised for the first time by exceptions filed 9 days after the issuance of the Intermediate Report, and is neither mentioned in any answer to the complaint nor supported by evidence introduced by the employer or adduced by cross-examination of witnesses of the labor organization. *Harbor Boat Building Co.*, 1 N. L. R. B. 349, 353.

4. *Failure to file.* (*See* § 307.)

B. OMISSION OF TRIAL EXAMINER'S REPORT.

Proceedings transferred to the Board at conclusion of testimony and prior to oral argument before Examiner. Respondent's motion to resubmit cause to Trial Examiner for preparation and filing of Intermediate Report denied. Respondent presented oral argument and brief to Board. Contention that failure of Trial Examiner to submit report

to which exceptions could be made deprived respondent of opportunity to call Board's attention to an alleged fatal variance between allegations of complaint and findings. *Held:* The Fifth Amendment protects substantial rights, but guarantees no particular form of procedure. The issues and contentions of the parties having been clearly defined, the Board's procedure is not one calling for reversal of the order. Respondent was not denied a full and adequate hearing. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350, 351, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 761 (C. C. A. 9).

While it would have been better practice for the Board to have directed the Trial Examiner to file an Intermediate Report with an opportunity for exceptions and argument thereon, nevertheless, it is not a denial of due process where the issues and contentions are clearly defined for proceedings to be transferred to the Board at the closing of the hearing and a Decision issued with an Intermediate Report. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 227–229, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), enforcing 2 N. L. R. B. 530. *Killefer Mfg. Co.*, 22 N. L. R. B. 484. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028.

[*See* §§ 267, 268 (as to the effect of Board's failure to issue proposed findings of fact and conclusions of law).]

VI. PROCEDURE BEFORE THE BOARD.

262 A. IN GENERAL. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Generally.*]

B. OPPORTUNITY TO SUBMIT BRIEFS AND PRESENT ORAL ARGUMENT. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Briefs and oral arguments.*]

263 1. *In general.*

It may be assumed that respondent's brief was considered by the Board in making its decision where at the close of a hearing and after respondent had submitted its brief to the Trial Examiner the proceedings were transferred to the Board and its decision issued, although no Intermediate Report was filed. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 226, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *U. S. Smelting, Refining & Mining Co.*, 27 N. L. R. B. 383.

263.5 2. *Time for filing.*

Motion to file brief and present oral argument, denied where it was not filed within time prescribed by Board's Rules and Regulations. *Life Insurance Co. of Virginia*, 29 N. L. R. B. 246.

263.9 3. *Who may submit briefs and present oral argument.*

264 4. *Failure of Board to file or present.*

The Intermediate Report of the Trial Examiner, with the complaint advising of the charges, is sufficient indication to an employer of what it is required to meet and the employer was properly advised of the claims of the Board where neither the Board nor any of its representatives made any argument in the employer's presence or furnished it with any brief, proposed findings, or recommendations, except for a brief preliminary statement made before the Trial Examiner by the attorney for the Board and the Trial Examiner's report, for no particular form of procedure is essential in presenting the issues to the party who is required to meet them. *Cupples Co.* v. *N. L. R. B.*, 103 F. (2d) 953, 956, 957 (C. C. A. 8), denying interrogatories 10 N. L. R. B. 168.

An employer has not been denied a fair hearing where the Board has had the benefit of arguments by those opposed to as well as those favorable to proposed findings, conclusions, and order, although the Board itself did not participate in those arguments. *Inland Steel Co.* v. *N. L. R. B.*, 105 F. (2d) 246, 251 (C. C. A. 7), denying interrogatories 9 N. L. R. B. 783.

265 5. *Failure to request leave to file or present.*

A respondent must make a request for filing briefs and presenting oral argument where proceedings, at the close of evidence, are transferred to the Board; and the contention that the Rules (37 and 38) of the Board induced the belief that there would be further proceedings, after the case had been transferred, at which respondent would be heard is not justified. *Consolidated Edison Co.*, v. *N. L. R. B.*, 305 U.S. 197, 228, modifying 4 N. L. R. B. 71 and modifying 95 F. (2d) 390 (C. C. A. 2).

An order of the Board is not void nor has an employer been denied due process by reason of the fact that the Board's decision was made without brief or oral argument and without submission of an Intermediate Report or Proposed Findings, nor by reason of the further fact that the

proceedings were transferred from the Trial Examiner to the Board, where the employer fully understood the issues and was given an opportunity to request further hearing and to submit a brief, but did not avail itself of that opportunity. *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

An employer is not deprived of any material procedural right in the denial of its request for oral argument and submission of briefs in support of its objections to an Intermediate [election] Report on the ballot in a run-off election, for a certification is not an order directed against the employer or which can in any way aggrieve it; and further it had full opportunity to present evidence as to the validity of the certification and the accuracy of the facts to which the certification attested in a hearing upon a complaint issued subsequent to the investigation and certification of representatives, and an additional opportunity of which it did not avail itself to request oral argument upon its exceptions to the Intermediate Report in the complaint proceedings. *Fedders Mfg. Co., Inc.*, 7 N. L. R. B. 817, 823.

266 6. *Necessity that Board hear oral argument.*

The Board is not bound to hear oral argument if it prefers to take a brief. *Consolidated Edison Co.* v. *N. L. R. B.*, 95 F. (2d) 390, 395 (C. C. A. 2), modifying 4 N. L. R. B. 71, modified 305 U. S. 197.

The Intermediate Report of the Trial Examiner, with the complaint advising of the charges, is sufficient indication to an employer of what it is required to meet and the employer was properly advised of the claims of the Board where neither the Board nor any of its representatives made any argument in the employer's presence or furnished it with any brief, proposed findings, or recommendations, except for a brief preliminary statement made before the Trial Examiner by the attorney for the Board and the Trial Examiner's report, for no particular form of procedure is essential in presenting the issues to the party who is required to meet them. *Cupples Co.* v. *N. L. R. B.*, 103 F. (2d) 953, 956, 957 (C. C. A. 8), denying interrogatories 10 N. L. R. B. 168.

Board granted parties an opportunity to request further oral argument, when prior to the decision the term of one of the

members of the Board, who sat at the first argument, had expired. *Firestone Tire & Rubber Co.*, 22 N. L. R. B. 580, 585.

C. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Intermediate Report and Proposed Findings.*]

267 1. *In general.*

268 2. *Failure of Board to issue.*

An employer has not been denied due process by reason of the fact that the Board failed to submit its findings, conclusions, and order to the employer before they were issued where: (1) the employer was fully and definitely advised by the charges which supported the order, both of what was sought to be proved at the hearing and what was sought to be ordered; (2) full opportunity for argument upon the evidence taken at the hearing was afforded and the Board's attorney fully presented the contentions of law and fact upon which the Board's order was finally made; (3) the case was transferred to the Board for hearing upon the testimony taken by the Trial Examiner and before any action was taken or recommendation made by him and, prior to the Board hearing, the matter was fully briefed for the Board by the employer; (4) the employer was allowed full opportunity to argue its case at the hearing before the Board. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 16, 18, enforcing 4 N. L. R. B. 679.

The Intermediate Report of the Trial Examiner, with the complaint advising of the charges is sufficient indication to the employer of what it is required to meet and the employer was properly advised of the claims of the Board where neither the Board nor any of its representatives made any argument in the employer's presence or furnished it with any brief, proposed findings, or recommendations. *Cupples Co.* v. *N. L. R. B.*, 103 F. (2d) 953, 956, 957 (C. C. A. 8), denying interrogatories 10 N. L. R. B. 168. See also: *N. L. R. B.* v. *Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9), enforcing 2 N. L. R. B. 530. *N. Y. & Porto Rico S. S. Co.*, 34 N. L. R. B. 1028.

D. NECESSITY THAT BOARD HEAR OR READ EVIDENCE. [*See* LITIGATION DIGEST: PROCEDURE BOARD. *Decision.*—Board's process of decision.]

269 1. *In general.*

Where an employer had filed a brief with the Board prior to the issuance of its Decision and Order, an allegation that the Board had not read all the testimony and examined all the exhibits states no cause for relief on the ground of denial of due process, for the brief filed by the employer may have made admissions making it unnecessary to read "all" the evidence offered. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 16, 17, enforcing 4 N. L. R. B. 679.

It is not indispensable that members of the Board shall have heard the evidence delivered or shall have read it all, but if the evidence has been taken, and the opposing parties appear and fully argue the case so that the disputes of fact are clearly defined it is necessary to read and consider only the evidence bearing on the disputes, other facts being taken as the parties concede them. *N. L. R. B.* v. *Cherry Cotton Mills*, 98 F. (2d) 444, 446, 447 (C. C. A. 5), postponing enforcement 4 N. L. R. B. 731, remanded 98 F. (2d) 1021.

It is not essential that the Board or any member thereof be personally present and hear the testimony of the witnesses, for the Act expressly makes provisions for the taking of testimony otherwise; nor can it be said, as a matter of law, that it is incumbent upon the Board or any member thereof to read the testimony or exhibits received in evidence, but the requirements in this respect must depend upon the circumstances of each case and where the Board heard oral argument by opposing parties and received briefs in support of their respective positions, it may be concluded that it thus acquired a knowledge of the facts relative to the issues in dispute which might well have dispensed with the necessity for a reading of the testimony especially in connection with the presumption of regularity which must be accorded the acts of the Board. *Inland Steel Co.* v. *N. L. R. B.*, 105 F. (2d) 246, 251, 252 (C. C. A. 7), denying interrogatories 9 N. L. R. B. 783.

270 2. *Reliance on assistants.*

The Board may properly rely upon its employees or its subordinates for assistance in the preparation of Findings of Fact, Conclusions of Law, and Orders, and in so doing it is not depriving an employer of a full and fair hearing as required by due process of law. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 16, 17 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

There is no real finding of fact by the Board and no legal basis for its order if persons other than members, thereof, ascertain the facts. *N. L. R. B.* v. *Cherry Cotton Mills,* 98 F. (2d) 444, 446 (C. C. A. 5), enforcement postponed 4 N. L. R. B. 731, remanded 98 F. (2d) 1021.

It is not indispensable that members of the Board shall have heard the evidence delivered or shall have read it all, but if the evidence has been taken, and the opposing parties appear and fully argue the case so that the disputes of fact are clearly defined it is necessary to read and consider only the evidence bearing on the disputes, other facts being taken as the parties concede them; but where only one side argues, or when neither does, the Board may perhaps seek the aid of assistants, though if reliance is to be placed on their conclusions and recommendations, opportunity for argument before them or upon their recommendations ought to be afforded the parties, after the analogy of proceeding before masters; and if this is not done, the members of the Board must substantially master the record before adopting a report made to them which is unknown to the parties and unargued by them. *N. L. R. B.* v. *Cherry Cotton Mills*, 98 F. (2d) 444, 446, 447 (C. C. A. 5), postponing enforcement 4 N. L. R. B. 731, remanded 98 F. (2d) 1021.

The members of the Board need not personally consider the evidence, but may rely upon the summary, suggestions, and recommendations of subordinates as to evidence submitted. *Cupples Co.* v. *N. L. R. B.*, 103 F. (2d) 953, 957 (C. C. A. 8), denying interrogatories 10 N. L. R. B. 168. See also: *Inland Steel Co.*, 9 N. L. R. B. 783, 785, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

E. REOPENING THE RECORD. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Generally*—Rehearing; Reopening of case. PROCEDURE E/R: *Additional evidence*; *Rehearing*; *Remand.*]

1. *In general.*

a. Authority of Board.

71 The Board has authority to reopen the record for the purpose of taking further testimony relative to charges that unfair labor practices had been committed after an election was held pursuant to an order in a representation proceeding, since the record in a representation proceeding remains open until the investigation instituted by the Board is concluded; moreover, the Rules and Regulations specifically

provide for consideration of an Intermediate [election] Report on a ballot and objections thereto as an incident to any proceeding for the Investigation and Certification of Representatives, and since the record in the representation case remained open after the election the employer's objection based on the alleged absence of authority of the Board to reopen such a case need not be considered. *Eagle-Phenix Mills*, 11 N. L. R. B. 361, 364, 365.

The Board, on its own motion, may reopen the record to admit newly acquired evidence embodied in a stipulation by all the parties. *Schwartze Electric Co.*, 16 N. L. R. B. 247, 249.

272 b. Failure of Board to reopen on own motion.

Failure of the Board to reopen a case for argument on its own motion does not constitute a violation of due process where the employer made no request to present argument or to submit a brief as it might have done under Section 36 and Section 38 of the Rules. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 492 (C. C. A. 9), enforcing 3 N. L. R. B. 140.

273 c. Failure to follow proper prodecure in filing motion.

A motion by the Board to reopen the record does not constitute error by reason of the fact that the motion had been filed with the Trial Examiner rather than with the Regional Director, as provided in the Rules and Regulations, where any irregularity in the filing could not have prejudiced the employer since it had due notice of each step in the proceeding. *Pure Oil Co.*, 8 N. L. R. B. 207, 209.

274 d. Lapse of time.

The Board has not abused its discretion by reopening proceedings 10 months after the Trial Examiner had recommended dismissal of the complaint on the ground that the Board did not have jurisdiction, since by virtue of Section 36 the Board may reopen the record for further proceedings upon motion made within a reasonable period and upon proper cause shown. *N. L. R. B.* v. *Kentucky Fire Brick Co.*, 99 F. (2d) 89, 93 (C. C. A. 6), enforcing 3 N. L. R. B. 455. *Whiterock Quarries, Inc.*, 5 N. L. R. B. 601, 602. (Proceedings reopened more than 1 year after Intermediate Report of Trial Examiner had recommended dismissal on jurisdictional grounds.)

There is no merit to an employer's objection to the introduction of evidence on the grounds that good cause for reopening the proceeding had not been shown and that the

proceeding had not been reopened within a reasonable time where the order granting a motion by the Board's counsel to reopen the proceeding was served upon the employer the day after the filing of a supplemental charge alleging that 12 days prior thereto the employer had posted a notice attacking as unfair and prejudicial the Trial Examiner's Intermediate Report. *Union Die Casting Co., Ltd.*, 7 N. L. R. B. 846, 848.

Motion to reopen the record by labor organization made 10 months after the original hearing, granted when the respondents objected upon the grounds, *inter alia*, that the motion to reopen was not made within a reasonable period after the first hearing, that the alleged discovery that witnesses at the first hearing had admitted they had testified falsely at such hearing did not constitute sufficient ground for reopening, that the motion to reopen had been filed and the order granting said motion had been issued without notice to the respondents, and that the Board, under the circumstances, was without authority to reopen the cases. *Alma Mills, Inc.*, 24 N. L. R. B. 1, 3.

75 e. Relevancy and materiality.

Employer's application to adduce additional evidence of events which occurred after the close of the hearing, denied where such evidence was immaterial. *Burke Machine Tool Co.*, 36 N. L. R. B. 1329.

Republic Steel Corp., 9 N. L. R. B. 219, 387, 388, modified 107 F. (2d) 472 (C. C. A. 3). (Motion by employer for leave to introduce additional evidence relating to violence during a strike denied, but alternative motion for leave to submit and have incorporated in the record evidence, *inter alia*, that certain named strikers, after the close of the hearing in the case had pleaded guilty to indictments for various crimes committed in connection with the strike, granted.) See also: *Calmar S. S. Corp.*, 18 N. L. R. B. 1, 4. *Goodyear Tire & Rubber Co.*, 21 N. L. R. B. 306, 314.

Luxuray, Inc., 16 N. L. R. B. 37, 38. (Respondent's petition to reopen the hearing for the purpose of taking allegedly newly discovered evidence which would affect the credibility of a witness, denied when counsel for the Board opposed respondent's application on the ground that it was collateral to the issues of the case, and upon the further ground that the charges as to the witnesses' credibility were refuted in certain affidavits.)

Electric Vacuum Cleaner Co., Inc., 18 N. L. R. B. 591, 638. (Motion to reopen record denied when the evidence which would be adduced pursuant thereto, was immaterial to the present decision dismissing the petition.) See also: *Bakewell Mfg. Co.*, 48 N. L. R. B. No. 104.

Goodyear Tire & Rubber Co., 21 N. L. R. B. 306, 313. (Motion to reopen the record by labor organization in complaint proceeding to submit evidence of alleged beatings of witnesses who had testified at the hearing, denied.)

Condenser Corp. of America, 22 N. L. R. B. 347, 451. (Motions to reopen record to introduce newly acquired evidence respecting events concerning labor relations between respondents and unlawfully assisted labor organization and respecting events surrounding execution of a contract succeeding one found to be unlawful, denied on the ground that supporting affidavits make no showing that respondents have purged themselves of their unfair labor practices and the effects thereof.)

Belmont Radio Corp., 27 N. L. R. B. 341. (Motion made by union after close of hearing to reopen hearing for the purpose of the introduction of, or to make a part of the record, affidavits regarding the union membership of two employees, denied where affidavits found not essential to resolution of issues.)

N. Y. Times Co., 32 N. L. R. B. 928. (Motion by one of the unions involved in representation proceedings to reopen hearing for purpose of introducing certain newly acquired evidence, concerning the participation by a rival organization in controversial political and non-trade union activities, denied for in determining the appropriate unit, and other issues presented in representation cases the Board will not consider evidence as to the supposed superiority of one bona fide union over another in respect to policies, political tendencies, or like matters.)

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668. (Motion to reopen record in representation proceedings to admit newly acquired evidence denied where such evidence would not affect Board's determination of proceedings.)

Interstate Steamship Co., 36 N. L. R. B. 1307. (Employers' motion to reopen record to introduce evidence that union no longer represents a majority of employees within an appropriate unit, denied where the loss of majority representation occurred as the result of employers' unfair labor

practices and accordingly cannot be given effect.) See also: *Kirk & Son, Inc.*, 41 N. L. R. B. 807.

Pacific States Cast Iron Pipe Co., 37 N. L. R. B. 405. (Petition to intervene and reopen record after hearing, denied on ground that no material issue had been raised to justify reopening of the record, where union which sought to take evidence to determine by what authority the charging union "claims the right to act as bargaining agency"—on ground that it is a party to a contract with employer designating it as sole bargaining agency—had after the signing of the contract, appeared on the ballot with the charging union in a consent election won by the charging union and had not questioned the validity of the results of the election.)

Berkshire Knitting Mills, 37 N. L. R. B. 926. (Record reopened for the purpose of a hearing limited to taking of testimony of an individual and documentary evidence relevant to the allegation in the Board's complaint that a strike was caused by respondent's unfair labor practices.)

Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234. (Application to reopen record denied where evidence sought to be introduced covering alleged bargaining and benefits secured by the alleged dominated organization would not alter Board's conclusions as to the issues involved.)

Texas Co., 42 N. L. R. B. 593, 606. (Record reopened pursuant to remand of case by court for reconsideration of alleged discriminatory discharges in the light of certain maritime safety statutes to which the court adverted in its opinion.)

[*See* EVIDENCE §§ 14.5–16, 18.9–23.9 (as to what constitutes relevant matter).]

80 f. Other circumstances.

81 2. *To introduce newly acquired evidence.*

Petition by intervening labor organization in representation proceedings to reopen hearing for purpose of introducing certain newly acquired evidence, granted for the limited purpose of introducing the evidence described in the petition and for the introduction of testimony by the other labor organization which was a party to the proceedings to rebut the effect of that evidence. *Zellerbach Paper Co.*, 4 N. L. R. B. 348, 349.

Motion of employer to reopen the record to take further evidence not available at the hearing, mainly relating to subsequent changes in its method of operations, denied,

for the Board cannot, as a matter of administration of the Act, reopen the record to receive testimony upon constantly changing details in compliance with a performance of its orders, since to do so would require a reopening of the record whenever the employer changed his method of operations and would delay interminably the final adjudication of the issues. *Republic Steel Corp.*, 9 N. L. R. B. 219, 400, modified 107 F. (2d) 472 (C. C. A. 3). See also:
Lone Star Bag & Bagging Co., 8 N. L. R. B. 244, 246.
Oil Well Mfg. Corp., 14 N. L. R. B. 1118, 1130.
Swift & Co., 30 N. L. R. B. 550.
Ford Motor Co., 31 N. L. R. B. 277.

Cf. *McKaig-Hatch, Inc.*, 26 N. L. R. B. 1459. (Record reopened to take evidence concerning determination of particular individuals to be reinstated or placed on preferential list and for a determination of persons to receive compensation and the amount of money to be paid them under earlier Board order, despite the fact that such determinations are usually made by the Regional Director in connection with obtaining compliance with the Board's order, since the allegations contained in the respondent's application to reopen relate to or involve substantive issues and not merely compliance procedure.)

Record reopened for the purpose of adducing exhibits as newly discovered evidence when they had been mislaid at the time of the hearing and discovered thereafter. *Revere Copper & Brass, Inc.*, 16 N. L. R. B. 437, 439.

Motion to reopen the record to admit certain testimony and exhibits received thereafter by a Congressional committee, denied when judicial notice was taken of these matters. *Sorg Paper Co.*, 25 N. L. R. B. 946, 950.

82 3. *To introduce evidence wrongfully excluded at hearing.*

Where the Board has reversed a ruling of the Trial Examiner that the validity of a certain contract entered into between the employer and the labor organization which was a party to representation proceedings was not an issue in the case, directed that the hearing be reopened to afford the parties full opportunity to present evidence relative to the issues. *Margolin & Co., Inc.*, 9 N. L. R. B. 852, 853.

General Furniture Mfg. Co., 26 N. L. R. B. 74. (Erroneous exclusion of evidence of parties' construction of and practice under a certain contract.)

Offers of proof considered a part of the record when the Trial Examiner erred in excluding the evidence. *Armour & Co.*,

14 N. L. R. B. 682, 687. See also: *El Paso Electric Co.*, 13 N. L. R. B. 213, 215.

283 4. *To clarify evidence in record.*

Record reopened for purposes of receiving further evidence relating to the discharge of an employee where the circumstances surrounding the discharge were confusing, and the evidence at the initial hearing was not clear.

Millfay Mfg. Co., Inc., 2 N. L. R. B. 919, 923, enforced 97 F. (2d) 1009 (C. C. A. 2).

Sterling Electric Motors, Inc., 29 N. L. R. B. 778. (Record reopened pursuant to court remand for the purpose of adducing further evidence concerning employer's alleged domination of a labor organization.)

Merit Clothing Co., 30 N. L. R. B. 1201. (Record reopened for the purpose of receiving expert medical testimony respecting X-ray photographs received as exhibits at an earlier hearing.)

Willians Motor Co., 31 N. L. R. B. 715. (Record reopened for the purpose of adducing further testimony relative to employer's reason for closing one of its departments.)

Radio Condenser Co., 31 N. L. R. B. 845. (Record reopened for the purpose of affording parties an opportunity to present evidence concerning the existence of a contract and the effect of a settlement stipulation on the contract.)

284 5. *Adequate opportunity at hearing to introduce evidence offered.*

Petition of employer requesting that hearing be reopened for the purpose of taking additional testimony to controvert several findings of the Trial Examiner, denied where there is nothing in employer's petition indicating that the evidence it seeks to introduce was not available to it at the time of the hearing. *Phillips Packing Co., Inc.*, 5 N. L. R. B. 272, 274. See also:

Regal Shirt Co., 4 N. L. R. B. 567, 568, 569.

National Sewing Machine Co., 5 N. L. R. B. 372, 379, 380.

John Minder & Son, Inc., 7 N. L. R. B. 153, 154.

American Mfg. Co., Inc., 7 N. L. R. B. 375, 377.

Republic Steel Corp., 9 N. L. R. B. 219, 381, 382, 398, 399, modified 107 F. (2d) 472 (C. C. A. 3).

Revolution Cotton Mills, 9 N. L. R. B. 468, 470.

Consumers' Power Co., 9 N. L. R. B. 701, 705.

Union Drawn Steel Co., 10 N. L. R. B. 868, 870, 871, modified 109 F. (2d) 587 (C. C. A. 3).

Mt. Vernon Car Mfg. Co., 11 N. L. R. B. 500, 503.

Oil Well Mfg. Corp., 14 N. L. R. B. 1114, 1118.
Aluminum Goods Mfg. Co., 25 N. L. R. B. 1004.
Merrimack Mfg. Co., 31 N. L. R. B. 900.
Northern States Power Co., 37 N. L. R. B. 991.
Karron, 41 N. L. R. B. 1454.

Petition to reopen the record for the sole purpose of including therein the testimony of petitioner's vice president who was absent from the city at the time of the hearing, denied when the petitioner failed to make any effort at, or prior to the time of, the hearing to meet the circumstance of his absence, to object to the hearing being conducted in his absence, to request, prior to the issuance of the Decision and Order that the record be reopened, or offer to have his deposition taken under oath. *U. S. Truck Co.*, 12 N. L. R. B. 828. See also: *Indiana & Michigan Electric Co.*, 20 N. L. R. B. 989.

Although record was reopened to permit an organization to offer proof of its representation, Board indicated that in the future where full opportunity had been afforded an organization for the timely presentation of *prima facie* proof of representation it would reject all offers of proof of representation made after the close of the hearing since expeditious investigation and certification of representatives is essential to the proper administration of the Act. *American Woolen Co.*, 32 N. L. R. B. 1.

285 6. *To show change in name or status.*

Petition of labor organization that record in representation proceedings be reopened to show change of name of petitioner, granted despite the opposition of employer on the ground that the successor organization seeking to have the record reopened is an entity separate and distinct from the original petitioner and that such newly established successor to the organization has not filed a petition pursuant to the Rules and Regulations of the Board. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 667, 668.

Record reopened for the purpose of taking further evidence concerning the present affiliation of the petitioner and whether the unit it claims appropriate can constitute a separate appropriate unit, when in the original decision no determination was made concerning the appropriateness of the unit as claimed by that union since the Board had held that the desires of a chartering union to which it was then subservient should prevail. *Standard Forgings Corp.*, 29 N. L. R. B. 290.

Decision and Direction of Election had been issued. *Hay Co.*, 41 N. L. R. B. 155.

[*See* §§ 18–25, and 31–40 (as to who are necessary parties).]

§ 288 9. *Enlargement or change of issues by amendment of pleadings after hearing.*

Reopening of the record for the taking of further evidence, ordered where an amended petition enlarging the alleged appropriate unit had been filed with the Regional Director subsequent to the hearing on the original petition. *Elliott Bay Lumber Co.*, 8 N. L. R. B. 753, 754. See also: *Killefer Mfg. Corp.*, 22 N. L. R. B. 484. *Dixie Motor Coach Corp.*, 25 N. L. R. B. 869. *Great Western Mushroom Co.*, 27 N. L. R. B. 352.

§ 289 10. *Failure of averments of charge to support allegations of complaint.*

Record reopened for further proceedings on order of the Board, and Regional Director authorized to accept amended charges and issue amended complaint upon employer's exceptions to Trial Examiner's denial of its motion to dismiss the complaint as to certain allegations of unfair labor practices for the reason that they were not supported by any averments in the charges. *Titmus Optical Co.*, 9 N. L. R. B. 1026, 1028.

§ 290 11. *To adduce evidence tending to affect order requiring back pay.*

Motion by employer to reopen the record for further evidence and offer of proof to show that pickets, strikers, and persons affiliated with a labor organization caused damage to its property and to the property of certain non-striking employees, denied where it appears that the purpose of such offer is to establish a basis for set-offs or recoupments against back wages ordered by the Board. *Republic Steel Corp.*, 9 N. L. R. B. 219, 399, modified 107 F. (2d) 472 (C. C. A. 3).

Pursuant to remand of the Circuit Court, record reopened to permit employer to show the existence of evidence as to the unjustifiable refusal to take desirable new employment upon the part of the discharged and striking employees. *Rapid Roller Co.*, 46 N. L. R. B., No. 29.

§ 291 12. *To introduce evidence concerning a jurisdictional dispute between labor organizations.*

Petitions of a labor organization requesting the Board to hold a further hearing in order that it might show that its parent body had not properly established a successor organization

to it and that therefore the Board should revoke certain certifications and ballot designations of a successor organization previously made denied because the determination of such an issue would have required the Board to investigate the internal affairs of the parent body and thereby depart from its consistent practice of refusing to interfere in jurisdictional disputes. *American France Line*, 12 N. L. R. B. 766, 768. See also: *International Freighting Corp.*, 12 N. L. R. B. 785, 787.

[*See* §§ 16–17.9 (as to effect of jurisdictional dispute between affiliated but competing labor organizations in representation proceeding), § 226 (as to issuance of subpenas involving the internal affairs of a labor organization) and EVIDENCE § 41 (as to the privileged nature of matters concerning the internal affairs of a labor organization).]

§ 300 13. *Other circumstances.*

Petition for hearing based on fact that hearing was great distance from plant, preventing company from conveniently producing witnesses, denied where company blocked hearing near plant by court injunction. *Prettyman*, 12 N. L. R. B. 640, 643.

F. CONSOLIDATION, TRANSFER, AND SEVERANCE OF PROCEEDINGS. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Generally*—Consolidation of proceedings; Splitting cause of action.]

§ 301 1. *In general.*

§ 302 2. *Of complaint proceedings.*

There is no merit to the objection of an employer that the consolidation of its case with others, without notice, was prejudicial to its rights where 10 cases involving complaints against 10 automobile distributors and dealers were consolidated for the purpose of hearing and one record made of the proceeding, all 10 distributors and dealers were located in the same city and State, served approximately the same territory, and all were members of the same automobile dealers' association through which all functioned with respect to certain business and labor policies, and the alleged unfair labor practices stemmed from their adherence to a common labor policy. *Denver Automobile Dealers Assn.*, 10 N. L. R. B. 1173, 1175, 1176.

Block-Friedman Co., Inc., 20 N. L. R. B. 625, 627. (Employer was not prejudiced by the consolidation of its case with certain other cases involving other millinery manufacturers located in the same city, when each case was heard *seriatim*

with leave granted Board's attorney to introduce in any case evidence which had been presented in any other of the consolidated cases, and with leave to counsel for the respective respondents to cross-examine witnesses testifying to such evidence so introduced.)

Ore Steamship Corp., 29 N. L. R. B. 954. (Employer's motion to specify the scope and extent of a Board order consolidating several cases, and to maintain separate identity of certain cases by issuance of separate findings and order thereon, denied.)

Precision Castings Co., Inc., 30 N. L. R. B. 212, 214. (Board counsel's motion to consolidate complaint proceedings, denied.)

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690. (Employer's motion to sever consolidated complaint cases, denied.) See also: *Borg Warner Corp.*, 23 N. L. R. B. 114, 118. *International Harvester Co.*, 29 N. L. R. B. 456.

Hearst Publications, Inc., 39 N. L. R. B. 1245. (Notwithstanding consolidation of complaint cases involving independent newspaper companies, evidence with respect to one publisher was not considered with respect to the others.)

Imperial Lighting Product Co., 41 N. L. R. B. 1408. (Board reopened record in a case for purpose of conducting a further hearing and consolidating it with another case in which a further charge involving employer had been filed.)

303 3. *Of representation proceedings.*

Ruling of Trial Examiner granting motion of counsel for the Board during hearing of two cases concerning investigation and certification of representatives, and after evidence had been adduced in one case, to consolidate both cases for the purposes of hearing and for convenience in taking testimony, affirmed. *Whittier Mills Co.*, 3 N. L. R. B. 389, 391.

American Steamship Co., 27 N. L. R. B. 584. (Representation cases involving several companies although not consolidated, disposed of in one decision when hearings were conducted the same day and the issues were similar and the same attorneys appeared for each of the parties.)

Leriton Mfg. Co., 27 N. L. R. B. 741. (Petition for certification and investigation of representatives filed by a union which had not previously participated in a proceeding in which a Decision and Direction of Election was issued, incorporated in the record of that case.)

One of several consolidated representation cases severed for further action as may be deemed necessary by the Board, when union's objection to election report was held to have raised substantial and material issues concerning the election. *WGAL, Inc.*, 30 N. L. R. B. 243.

Two representation cases involving the same company consolidated for the purpose of decision when the issues arising in both cases were closely related. *Truscon Steel Co.*, 33 N. L. R. B. 61.

304 4. *Of complaint and representation proceedings.* [*See* LITIGATION DIGEST. PROCEDURE REPRESENTATION CASES: *Generally*—Consolidation of R and C cases.]

There is no inconsistency in proceeding on both a complaint involving a refusal to bargain collectively in a violation of Section 8 (5) and a petition for certification of representatives, since a refusal to bargain may, conceivably, be coupled with a question concerning the representation of employees, the provisions for a joint hearing merely expediting the proceeding where a charge and petition relate to the same parties. *International Filter Co.*, 1 N. L. R. B. 489, 500.

Armour & Co., 8 N. L. R. B. 1100, 1103, 1104. (The issuance of an order consolidating representation and complaint proceedings prior to the issuance of the complaint is in accordance with the provision of the Rules and Regulations of the Board which expressly provide that the Board may, at any time after a charge has been filed with the Regional Director, order that such charge, in any proceeding which may have been instituted in respect thereto, be consolidated for the purpose of hearing or for any other purpose with any other proceedings which may have been instituted in the same region.)

Eagle-Phenix Mills, 11 N. L. R. B. 361, 364, 365. (Ruling of Trial Examiner, overruling objections of employer to order consolidating complaint and representation proceedings sustained where subject matter of both the representation and complaint cases were similar in that the complaint case was based upon alleged unfair labor practices of the employer in interfering with an election directed in the representation proceedings; although the notices of hearing did not specify that the hearing would relate to a consolidated proceeding, the notices in both cases provided for a hearing at the same time and place; and the employer was not prejudiced thereby, since a copy of the order of

consolidation was introduced as an exhibit on the first day of the hearing which was continued for 1 week before any testimony was taken.)

Arma Engineering Co., 14 N. L. R. B. 736, 739. (Motion by labor organization alleged to be employer-dominated to consolidate its petition for investigation and certification of representatives with the proceedings on the complaint, denied.) See also: *Aluminum Goods Co.*, 25 N. L. R. B. 1004.

Glass & Co., 21 N. L. R. B. 727, 730. (Consolidation of a complaint and representation proceeding ordered after the Board heard oral argument in the representation proceeding.)

Pick Mfg. Co., 35 N. L. R. B. 1334. (Objection to consolidation of representation proceedings and unfair labor practice charges on ground that consolidation order was issued without hearing thereon, without merit.)

§ 305 G. POWER OF BOARD TO MODIFY OR SET ASIDE ORDER. [*See* LITIGATION DIGEST. PROCEDURE BOARD: *Decision*—Modification by the Board of its orders.]

Section 10 (d) invests the Board with authority, at any time before the transcript of record is filed in court, to modify or set aside its order in whole or part. *In re National Labor Relations Board*, 304 U. S. 486, 492.

The fact that the Board abandoned its conclusions relating to an alleged majority representation by a labor organization because they were not supported by evidence is not sufficient ground for holding invalid its subsequent Decision and Order on the ground that bias has thereby been shown for it would destroy the usefulness of the judicial process to find bias in a judicial tribunal because it has committed error of this kind. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 177 (C. C. A. 3), enforcing 6 N. L. R. B. 171.

H. REVIEW OF TRIAL EXAMINER'S FINDINGS. [*See* LITIGATION DIGEST. EVIDENCE: *Sufficiency upon review*—Intermediate Report. PROCEDURE BOARD: *Generally*—Reopening of case; *Decision*—Consideration of exceptions.]

§ 306 1. *In general.*

The Board may accept or reject the recommendations of the Trial Examiner or may add to them such orders as seem warranted by the evidence and its findings for the remedy of the Act is in the orders of the Board to cease and desist and take designated affirmative action, and the recom-

mendations of the Trial Examiner are no more than recommendations to the Board as to its action. *N. L. R. B.* v. *Oregon Worsted Co.*, 94 F. (2d) 671, 672, (C. C. A. 9), denying motion for certification of compliance.

306.5 2. *Duty of review.*

The exceptions of a labor organization to the findings of a Trial Examiner that a strike was not caused by unfair labor practices and that certain employees were not discriminatorily discharged necessitates a review of such findings by the Board. *Ferguson Bros. Mfg. Co.*, 9 N. L. R. B. 189, 194.

Board found it unnecessary to pass on claim that the Intermediate Report presented a biased view of the evidence, since it resolved issues of credibility upon the face of the record. *North Electric Mfg. Co.*, 24 N. L. R. B. 547, 550. See also: *Air Associates, Inc.*, 20 N. L. R. B. 356, 359.

Differences in the findings and recommendations of Trial Examiners in each of two cases, *held* not prejudicial for although Board gives careful consideration to Trial Examiner's Intermediate Report it is the duty of the Board to determine the issues involved. *Pequanoc Rubber Co.*, 40 N. L. R. B. 541, 557.

3. *Where no exceptions have been filed to recommendations of Trial Examiner.*

307 a. That entire complaint be dismissed.

Where a labor organization has not filed exceptions to the Intermediate Report of the Trial Examiner in complaint proceedings in which the Trial Examiner has recommended that the entire complaint be dismissed, the case is considered closed. *Bishop & Co., Inc.*, 13 N. L. R. B. 207, 208, 209. See also: *Allied Paper Mills*, 12 N. L. R. B. 677, 678.

307.1 b. That part of complaint be dismissed.

Board reviewed and sustained Trial Examiner's finding dismissing certain allegations of the complaint in the absence of exceptions.

Indianapolis Power & Light Co., 21 N. L. R. B. 193. See also:

American Smelting & Refining Co., 29 N. L. R. B. 360, 383.

Gates Rubber Co., 40 N. L. R. B. 424.

Rieke Metal Products Corp., 40 N. L. R. B. 867.

Crown Can Co., 42 N. L. R. B. 1160.

North Carolina Finishing Co., 44 N. L. R. B. 184.

§ 308 4. *Where employer has complied with recommendations of Trial Examiner.* [*See* LITIGATION DIGEST. ORDERS GENERALLY: *Mootness*—Kinds of changed circumstances; Compliance.]

A mere report by an employer that it hadcomplied with the recommendations of the Trial Examiner does not establish compliance as fact, for it is a mere *ex parte* statement upon which the Board may take further evidence as to its verity for the purpose of determining the administrative question whether it will continue the proceeding for all or part of the remedial action sought, and since the recommendations of the Trial Examiner may be rejected or added to by the Board, performance by the employer offers no reason for his not excepting to the findings or the procedure before the Examiner. *N. L. R. B.* v. *Oregon Worsted Co.*, 94 F. (2d) 671, 672 (C. C. A. 9), denying motion for certification of compliance.

It is unnecessary for the Board to pass upon findings of the Trial Examiner, except insofar as issues thereon are raised by the general exceptions of the complaining labor organization, where the employer has fully complied with the Trial Examiner's recommendations. *Ferguson Bros. Mfg. Co.*, 9 N. L. R. B. 189, 194. See also: *Wirz, Inc.*, 9 N. L. R. B. 480,485. *Fern's Tin Can Co.*, 23 N. L. R. B. 1330, 1341.

Where an employer, acting pursuant to recommendations contained in the Trial Examiner's Intermediate Report, has indicated its intention of complying with the Act, and has posted notices so informing its employees, it is unnecessary to make any findings as to whether the employer has interfered with, restrained, or coerced its employees in the exercise of rights guaranteed in the Act. *Talladega Cotton Factory*, 9 N. L. R. B. 207, 211. See also: *Gotham Shoe Mfg. Co., Inc.*, 12 N. L. R. B. 543, 547, 548. *Swift & Co.*, 37 N. L. R. B. 400.

§ 310 5. *Other circumstances.*

VII. DISMISSAL. [*See* §§ 151–160 (as to withdrawal of petition for various reasons).]

A. COMPLAINT.

§ 311 1. *In general.*

§ 312 2. *Failure of employees alleged to be victims of unfair labor practices to appear or to testify.* [*See* § 212 (as to the effect of a failure of parties duly served with notice to appear or to testify).]

Ruling of Trial Examiner recommending the dismissal of the complaint as to certain employees for the reason that they failed to testify before the Board or file affidavits, overruled where the record discloses that they were members of the labor organization filing the charge and employees at the time of a discriminatory lock-out. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 307, 323.

N. Y. & Porto Rico Steamship Co., 34 N. L. R. B. 1028. (Motions of respondents to dismiss complaints with respect to employees alleged to have been discriminatorily discharged and who did not appear at the hearing or testify, denied where the record clearly established that the complainants who did not testify, as well as those who did, were discharged and that the operative factors which induced the charges were the same in each instance.) See also: *Calmar Steamship Corp.*, 18 N. L. R. B. 1, 3. *Protective Motor Service Co.*, 40 N. L. R. B. 967.

Sartorius & Co., Inc., 40 N. L. R. B. 107. (Board will not assume from mere non-appearance at hearing of employees alleged to have been discriminated against that they desire no relief and accordingly, where record sufficiently disclosed that they were discriminated against, Board followed its usual practice and accorded them appropriate relief.)

Atlanta Flour & Grain Co., Inc., 41 N. L. R. B. 409. (Motion to dismiss complaint as to discharged employees who failed to appear and testify in their own behalf denied, when the record sustained the allegation of unlawful discrimination and their testimony was not a *sine qua non* of relief under the Act.)

Complaint dismissed without prejudice, where evidence did not sufficiently establish allegations of discriminatory discharge and refusal to reinstate, and where persons named in complaint did not appear at the hearing to testify in their own behalf. *Crossett Lumber Co.*, 8 N. L. R. B. 440, 496. See also: *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, 1128, modified 104 F. (2d) 49 (C. C. A. 8). *Bennett-Hubbard Candy Co.*, 11 N. L. R. B. 1090, 1091, 1100.

Ferguson Bros. Mfg. Co., 9 N. L. R. B. 189, 190. (Rulings of Trial Examiner granting, without objection, motion of labor organization to dismiss complaint insofar as it charged the employer with refusing to reinstate an employee who could not be found at the opening of the hearing and later granting, over objection of the employer's counsel, a motion

by counsel for the Board to amend the previous motion by making dismissals without prejudice, affirmed.)

[*See* EVIDENCE § 33 (as to a presumption of guilt for failure to testify or produce evidence).]

313 3. *Compliance of employer with findings of Trial Examiner.* [*See* § 308 (as to review of Trial Examiner's findings where employer has complied with his recommendations).]

There is not sufficient reason to dismiss a complaint where, although it is not necessary for the Board to make findings of fact and conclusions of law or issue an order based thereon by reason of the fact that the employer has complied with the recommendations of the Trial Examiner that it cease and desist from engaging in unfair labor practices and that it disestablish an employer-dominated labor organization, for such recommendations contemplate a continuing course of conduct on the part of the employer. *Wirz, Inc.*, 9 N. L. R. B. 480, 488. See also: *Ferguson Bros. Mfg. Co.*, 9 N. L. R. B. 189, 198. *Calco Chemical Co.*, 12 N. L. R. B. 275, 307. Cf. *Hooven Letters, Inc.*, 43 N. L. R. B. 1309.

314 4. *Laches.* [*See* § 95.5 (as to the effect of a delay in the filing of charges), § 102 (as to the effect of a delay in the issuance of a complaint), REMEDIAL ORDERS §§ 119, 133 (as to the effect of laches upon reinstatement and back pay orders), JURISDICTION § 10 (as to effect of statutes of limitation upon Board's jurisdiction) and LITIGATION DIGEST. PROCEDURE E/R: *Delay*.]

Where more than 4 years elapsed between the filing of the charges and the Board's decision as to jurisdiction, complaint dismissed in its entirety. *Protective Motor Service Co.*, 21 N. L. R. B. 552, 557.

Employer's motion to dismiss complaint on ground that both union and Board were guilty of laches, denied when union had filed charges promptly after the commission of the unfair labor practices and the delay in issuance of the complaint was caused by employer's resistance to the Board's subpenas. *Barrett Co.*, 41 N. L. R. B. 1327.

320 5. *Other circumstances.*

Dissolution of a corporation occurring after its commission of unfair labor practices does not require a dismissal of a complaint against it. *Grower-Shipper Assn.*, 15 N. L. R. B. 322, 367.

Complaint dismissed without prejudice on "Motion and Suggestion for the Record" filed by the Regional Director

subsequent to the hearing, when the respondent was dissolved more than 2 years previous, the plant involved had been closed for 2 years, there was no immediate prospect of reopening by a successor, and the alleged company-dominated union ceased functioning. *Taylor Co.*, 21 N. L. R. B. 1162, 1165.

B. PETITION.

21 1. *In general.*

23 2. *Lapse of time.* [*See* LITIGATION DIGEST. PROCEDURE REPRESENTATION CASES: *Generally*—Delay between election and certification.]

Petition for investigation and certification dismissed without prejudice following an election where there was a strong possibility that a certification might not accurately represent the present wishes of the employees due to the fact that the vote was close, and there had been a delay of 15 months since the election because of two subsequent hearings on objections to the election and on challenges to the ballots. *Bamberger-Reinthal Co.*, 9 N. L. R. B. 1057, 1058, 1059.

American France Line, 10 N. L. R. B. 1169, 1170. (Petition dismissed where lapse of 15 months since ballot taken.) See also *id.*, 12 N. L. R. B. 766, 769, 770; (Petitions dismissed where lapse of 2 years since filing.)

Case Co., 36 N. L. R. B. 614. (Petition dismissed in view of lapse of a year following an election.) See also: *McLoughlin Mfg. Co.*, 36 N. L. R. B. 1196.

In a consolidated complaint and representation proceeding, petition dismissed without prejudice due to the length of time that had elapsed since the date of filing. *Quality Art Novelty Co., Inc.*, 20 N. L. R. B. 817. See also:

Woolworth Co., 25 N. L. R. B. 1362.
Link-Belt Co., 26 N. L. R. B. 319.
Cleveland-Cliffs Iron Co., 30 N. L. R. B. 1093.
Weirton Steel Co., 32 N. L. R. B. 1145.
American Smelting & Refining Co., 34 N. L. R. B. 968.
N. Y. & Porto Rico S. S. Co., 34 N. L. R. B. 1028.

Election set aside and petition dismissed without prejudice in view of employer's interference with conduct of election and lapse of time since filing of petition. *Pick Mfg. Co.*, 35 N. L. R. B. 1334. See also:

Letz Mfg. Co., 32 N. L. R. B. 563.
Hicks Body Co., 33 N. L. R. B. 858.
McKesson & Robbins, Inc., 36 N. L. R. B. 1104.

Sunbeam Electric Mfg. Co., 41 N. L. R. B. 469.
Fairchild Engine & Airplane Corp., 41 N. L. R. B. 552.
Houde Engineering Corp., 42 N. L. R. B. 713.
American Tube Bending Co., 44 N. L. R. B. 121.
Whiterock Quarries, Inc., 45 N. L. R. B. 165.

In a consolidated complaint and representation proceeding in which an election was directed but no date fixed pending compliance with the Board's order relating to the unfair labor practices, Direction of Election set aside and petition dismissed without prejudice due to the lapse of time since the Direction of Election. *Pilot Radio Corp.*, 36 N. L. R. B. 1045. See also: *American Petroleum Co.*, 35 N. L. R. B. 966.

Direction of Election vacated and petition dismissed without prejudice where there was no reason for excluding an organization from an election in view of the court's denial of enforcement of the Board's Order directing its disestablishment, and where it was inadvisable to proceed on the basis of the petition, in view of the substantial lapse of time, since the filing of the petition. *Arma Engineering* Co., 37 N. L. R. B. 328.

325 3. *No appropriate unit within scope of petition.*

No question concerning representation of employees in an appropriate bargaining unit has arisen, and petition for investigation and certification of representatives, dismissed where a unit consisting of employees in only one of two plants operated in the local area by the employer, as proposed by the petitioning labor organization, is not appropriate, and the employer and a rival labor organization contend that the employees of both plants comprise an appropriate unit, nor is it necessary to determine what would be the appropriate unit if the petition were broader in scope. *Swift & Co.*, 4 N. L. R. B. 779, 782.

Utah Copper Co., 35 N. L. R. B. 1295, 1301, 1302. (Petition dismissed when craft units proposed by petitioning craft labor organizations were inappropriate, and no determination was made respecting the appropriateness of an industrial unit urged by other labor organizations, when they had not petitioned for and made no substantial showing of representation within such a unit.)

[*See* § 141 (as to scope of petition), and UNIT § 41 (as to dismissal of petition when employees indicate their preference in a Globe election for a unit different from that proposed by the petitioning labor organization).]

Where unit found appropriate by the Board was at variance with that proposed by the petitioner, the sole labor organization involved, petition will be dismissed if petitioner files notice within 5 days of receipt of the Direction of Election of its desire to withdraw the petition. *Hart & Cooley Mfg. Co.*, 30 N. L. R. B. 1119. See also:

Christian Feigenspan Brewing Co., 29 N. L. R. B. 1136.
May Department Stores Co., 39 N. L. R. B. 471.
American Hawaiian S. S. Co., 41 N. L. R. B. 425.
General Motors Corp., 42 N. L. R. B. 224.
Court Square Press, Inc., 44 N. L. R. B. 702.

Celluloid Corp., 25 N. L. R. B. 711. (Where unit found appropriate was broader than that requested by petitioning union, and rival union desired dismissal of petition, petition will be dismissed if petitioner files notice within 5 days of receipt of Direction of Election that it does not desire to proceed with an election.)

Western Union Telegraph Co., 34 N. L. R. B. 579. (Petitioning labor organization whose unit contentions were not upheld, permitted to withdraw from the ballot when there were intervenors.)

326 4. *Resolution of question concerning representation.*

Petitions for investigation and certification of representatives in a consolidated proceeding dismissed as to one employer and Direction of Election amended by striking therefrom its name where following the issuance of the Direction of Election the employer entered into an agreement with the labor organization filing the petition recognizing it as the exclusive representative of those of its employees within the unit found appropriate by the Board. *Williams Dimond & Co.*, 2 N. L. R. B. 859, 866, 867.

It is unnecessary for the Board to take action on petitions for investigation and certification of representatives where no question concerning representation exists at the time of the hearing since the employers, who had originally refused to deal with the petitioning labor organization by reason of the fact that its parent body was about to revoke its charter, had by the time of the hearing either announced their willingness to deal with the organization or else commenced negotiations with it, and the parent body had indicated that it would not interfere in any way with such negotiations. *Pacific Steamship Co.*, 12 N. L. R. B. 214, 222–230.

Direction of Election vacated and petition dismissed where company notified Regional Director of its willingness to

recognize the union and where the union, the only labor organization seeking an election, filed with Regional Director a request for the withdrawal of its petition without prejudice. *Paraffine Companies, Inc.*, 39 N. L. R. B. 555.

327 5. *Where employer has engaged in unfair labor practices.*

Withdrawal of petition allowed and conduct of election terminated on request of labor organization which had filed the petition for certification and case closed where, following Direction of Election balloting was interrupted by a strike and the afore-mentioned labor organization filed a charge with the Regional Director averring that the employer had engaged in unfair labor practices within the meaning of the Act in connection with the other labor organization placed on the ballot. *Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 282, 289.

In a consolidation complaint and representation proceeding, petition dismissed without prejudice to renew at a future date, when it was filed approximately 3 years ago, and when the hostile attitude of the employer toward the labor organization concerned and its interference with, restraint, and coercion of its employees in violation of the Act so thwarted the organizational activities of the union that it was almost completely disorganized, and it is clear that some time must elapse after the issuance of the Board's Decision and Order in a complaint proceeding for the labor organization to overcome the effect of the employer's unfair labor practices. *Crossett Lumber Co.*, 8 N. L. R. B. 440, 498.

Motion by a labor organization to dismiss a petition on ground that the employer had discouraged membership in the union and favored the petitioner, denied where at the time of the filing of the petition a complaint proceeding charging the employer with the above-mentioned unfair labor practices was pending before the Board, and thereafter was settled pursuant to a stipulation entered into by the employer, the union now moving for dismissal of the petition, and a representative of the Board. *Steel Storage File Co.*, 27 N. L. R. B. 210.

Hearing on objections to election report not directed and petition for investigation and certification of representatives dismissed without prejudice, where the facts alleged by Board in a contempt proceeding, were substantially the same or closely related to those alleged by the union in its objections to the election, and where the relief sought

by the Board in the contempt proceeding, if granted, would remedy the objections to the election. *Lowenstein & Sons, Inc.*, 36 N. L. R. B. 457.

Election set aside and petition dismissed where the Board found in a subsequent complaint proceeding that the petitioner was a company-dominated organization. *Marks Products Co., Inc.*, 36 N. L. R. B. 1254.

Le Tourneau, Inc., 36 N. L. R. B. 774. (Petition dismissed when petitioning union was found to be a successor to a company-dominated union previously ordered disestablished.) See also: *Fletcher Co.*, 41 N. L. R. B. 420.

[*See* § 323 (as to dismissal of petition where employer had engaged in unfair labor practices and there was a substantial lapse of time since the filing of the petition).]

28 6. *Finding of refusal to bargain.*

Petition for certification of representatives in a combined complaint and representation proceedings dismissed where the Board, in the complaint proceeding which charged the employer with a refusal to bargain, made a finding as to the designation of representatives by a majority of the employees in the appropriate unit. *Somerset Shoe Co.*, 5 N. L. R. B. 486, 494. See also:

Atlantic Refining Co., 1 N. L. R. B. 359, 369.
International Filter Co., 1 N. L. R. B. 489, 500.
Shell Oil Co. of California, 2 N. L. R. B. 835, 853.
Omaha Hat Corp., 4 N. L. R. B. 878, 892.
Lund Co., 6 N. L. R. B. 423, 436, remanded, 103 F. (2d) 815 (C. C. A. 8).
Farmco Pkg. Corp., 6 N. L. R. B. 601, 610, 611.
Dixie Motor Coach Corp., 25 N. L. R. B. 869.
Lennox Furnace Co., Inc., 28 N. L. R. B. 208.
Ford Motor Co., 29 N. L. R. B. 873.

40 7. *Other circumstances.*

Petition dismissed where the union receiving a majority of the votes cast in the election no longer claimed to represent employees for the purposes of collective bargaining. *Medford Corp.*, 33 N. L. R. B. 162.

Company's request that petition be dismissed because employees could not freely bargain collectively through the petitioner in view of the bargaining policies of the petitioner and its parent organization, denied since the question raised is a matter of internal union policy over which the Board has no jurisdiction, and further, the employees,

having the statutory right to bargain collectively through representatives of their own choosing will, in the election directed, have full opportunity to accept to reject the petitioner and its bargaining policies. *Lansing Drop Forge Co.*, 39 N. L. R. B. 682.

Petition dismissed when the company had sold all of its assets after the close of the hearing, was no longer engaged in business, employed no persons at that time, and was in the process of liquidating its assets and liabilities. *Sterling Pump Corp.*, 41 N. L. R. B. 1219. See also: *Solvay Process Co.*, 26 N. L. R. B. 650, 655.

REMEDIAL ORDERS

I. IN GENERAL.

A. NATURE AND PURPOSE.

1 1. Cease and desist orders.

2 2. Affirmative orders.

B. SCOPE.

6 1. Orders to successor employer or to those acting in the interest of an employer.

7 2. Orders broader than specific violations.

10 3. Other orders.

C. EFFECT UPON ORDERS OF VARIOUS CIRCUMSTANCES.

11 1. Misconduct.

12 2. Laches.

13 3. Termination of unfair labor practices.

14 4. Cessation, removal, or change of mode of operations.

15 5. Agreements. (*See also* JURISDICTION § 20, PRACTICE AND PROCEDURE §§ 1–11, and UNFAIR LABOR PRACTICES § 702.)

6 6. Lack of labor dispute.

17 7. Other circumstances.

8. Compliance. (*See* PRACTICE AND PROCEDURE § 313.)

9. Change of legal entity. (*See* § 6, and PRACTICE AND PROCEDURE § 320.)

10. Other laws or proceedings. (*See* JURISDICTION §§ 6–15.)

II. ORDERS TO EMPLOYER ENGAGING IN INTERFERENCE, RESTRAINT, OR COERCION, WITHIN SECTION 8 (1).

21 A. IN GENERAL.

B. SPECIFIC ORDERS CONCERNING VARIOUS FORMS OF INTERFERENCE, RESTRAINT, OR COERCION.

22 1. Espionage and surveillance.

23 2. Bribery.

24 3. Violence or incitement to violence.

25 4. Anti-union statements or declarations of union preference.

26 5. Distribution of loyalty pledges or anti-union petitions or literature.

27 6. Interrogation concerning union membership.

28 7. Interference in the formation or administration of a labor organization or contribution of support thereto.

29 8. Discrimination. [*See also* §§ 102–150 (as to reinstatement and back-pay orders).]

30 9. Interference with right of employees to bargain collectively.

31 10. Removal, cessation, or change of operations.

32 11. Threatened or actual evictions, exclusions, or restraint in use of company property.

33 12. Privileges accorded or favoritism shown to one of two or more rival labor organizations.

34 13. Conducting, supervising, or interfering with elections.

REMEDIAL ORDERS

I. IN GENERAL.

A. NATURE AND PURPOSE.

1. *Cease and desist orders.*

A cease and desist order operates retrospectively to eradicate unfair labor practices from the beginning. *Agwilines, Inc.* v. *N. L. R. B.*, 87 F. (2d) 146, 151 (C. C. A. 5), modifying 2 N. L. R. B. 1.

Where the Board has found that an employer has wrongfully discharged employees and wrongfully refuses to reinstate them because of their union activities, a cease and desist order, made operative under the authority of the statute from the time of discharge, is as clearly within constitutional authority as if made effective alone for the future. *Agwilines, Inc.* v. *N. L. R. B.*, 87 F. (2d) 146, 151 (C. C. A. 5), modifying 2 N. L. R. B. 1.

2. *Affirmative orders.*

The provisions of Section 10 (c) leave to the Board scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether a case is one requiring an affirmative order and in choosing the particular affirmative relief to be ordered. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265, enforcing 1 N. L. R. B. 1, and reversing 91 F. (2d) 178 (C. C. A. 3).

The authority of the Board to order affirmative action does not go so far as to confer a punitive jurisdiction to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 235, 236, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Bell Oil & Gas Co.* v. *N. L. R. B.*, 91 F. (2d) 509, 513 (C. C. A. 5), enforcing 2 N. L. R. B. 577. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

The Board is authorized by Section 10 (c) to order an employer found to have committed unfair labor practices to take such affirmative action as will effectuate the policies of the Act. *National Licorice Co.*, 309 U. S. 350, 363,

Mar. 4, 1940, modifying 104 F. (2d) 655 (C. C. A. 2), modifying 7 N. L. R. B. 537.

Employees compelled by respondent to contribute financially to anti-union campaign not ordered reimbursed where Board found it administratively impractical to do so. *Ford Motor Company*, 26 N. L. R. B. 322.

Possible ineffectiveness of a Board order, *held* no bar to its issuance. *Isaac Schieber*, 26 N. L. R. B. 937.

B. SCOPE.

1. *Orders to successor employer or to those acting in the interest of an employer.*

An order of the Board directed against an original and a successor corporation found to be the *alter ego* and agent of the original corporation cannot be enforced as to the successor in the absence of a formal charge filed against it, though the original corporation may be required to secure the cooperation of the successor as agent to the extent that it is necessary in carrying out the terms of the order. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 102 (C. C. A. 2), modifying 4 N. L. R. B. 922; and see 104 F. (2d) 302, where the successor adjudged in contempt for failure to comply with enforcement decree. Cf. *Timken Silent Automatic Co.*, 11 N. L. R. B. 901, enforced as modified 114 F. (2d) 449 (C. C. A. 2).

Jergens Co. of California, 43 N. L. R. B. 457. (Where successor corporation was held responsible for unfair labor practices of original respondent and substituted as party respondent, Board directed it to cease and desist from these unfair labor practices and to take certain affirmative action.)

Dissolution of a copartnership does not defeat an order of the Board requiring affirmative action since: (1) orders of the Board are intended to implement a public policy and are not primarily concerned with private rights, and (2) the Act seeks to regulate the employing industry, rather than a particular owner thereof. *N. L. R. B.* v. *Colten & Colman, d/b/a Kiddie Kover Mgf. Co.*, 105 F. (2d) 179, 182 183 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

Kirk & Son, Inc., 41 N. L. R. B. 807. (Board not disabled from directing an order against a partnership when one of the partners is no longer associated therewith.)

Jergens Co. of California, 43 N. L. R. B. 457. (Change in ownership by merger of former respondent corporation with parent successor corporation after hearing, *held* not

to affect propriety of Board's exercising the corrective and remedial provisions of Act.) See also: *N. L. R. B.* v. *Baldwin Locomotive Works*, 128 F. (2d) 39, 65 (C. C. A. 3). *Southport Petroleum Co.* v. *N. L. R. B.*, 62 St. Ct. 452. *Bethlehem Steel Co.* v. *N. L. R. B.*, 120 F. (2d) 641 (App. D. C.)

Cease and desist and affirmative order issued against parent corporation and its wholly owned subsidiary although the unfair labor practices of the subsidiary were committed prior to the time the parent corporation took over its property and assets when prior to that time, the labor relations policy and business of the subsidiary were directed by the parent corporation, which operated it in conjunction with other units of its entire enterprise so that parent was properly chargeable for those unfair labor practices.

Union Drawn Steel Co., 10 N. L. R. B. 868, 886.

See also:

Republic Steel Corp., 26 N. L. R. B. 1244.

Manville Jenckes Corp., 30 N. L. R. B. 382.

Bethlehem Steel Corp., 33 N. L. R. B. 1190.

Interstate Steamship Co., 36 N. L. R. B. 1507.

Chamberlain Corporation, 37 N. L. R. B. 499. (Order issued against operating company and complaint dismissed as to parent company when there was no indication in the record that an order against the parent company was necessary to insure the effectiveness of the order against the operating company.)

R. M. Johnson, 41 N. L. R. B. 263. (Order directed against a partnership and two corporations engaged in a single enterprise and found to be employers within the meaning of the Act despite contention that the employees involved were solely the employees of the partnership, since the activities of the three companies were so related and commingled that findings and order directed solely against the partnership would neither be accurate nor afford an effective remedy.)

Carrington Publishing Company, 42 N. L. R. B. 356. (Where holding company through an individual dominated and controlled the operating company particularly as to its labor policies, *held* that they were all employers of the employees of the operating company within the meaning of the Act, and that it was proper to include all of them in a cease-and-desist order; however, since neither the hold-

ing nor operating company employed a person discriminated against by another company owned by the individual, affirmative action concerning the discriminated person was directed solely to the individual respondent.) See also: *Wright Products, Inc.*, 45 N. L. R. B. 509.

Order runs against receiver, and against company in the event receivership is discharged, where unfair labor practices were committed during receivership. *Hoosier Veneer Co.*, 21 N. L. R. B. 907, 936.

Corporation formed after the commission of unfair labor practices by copartners found to be business successor and *alter ego* of copartners, order directed to corporation as well as to copartners. *Leybro Manufacturing Company*, 24 N. L. R. B. 786.

Isaac Schieber, 26 N. L. R. B. 937. (Order, addressed to individual owner of corporation as well as to the corporation, requires said individual to cause his corporate *alter ego* to comply therewith.)

Board ordered respondent organizations, claiming to be so-called "civic" organizations, who, acting directly or indirectly in the interest of the employers, variously aided and assisted in interfering with self-organization of the employees of the employers by establishing and supporting an "inside" union, to cease and desist from such unfair labor practices and from the conduct which brought about the concerted violations. *Sun Tent-Luebbert Company*, 37 N. L. R. B. 50.

Mt. Vernon Car Mfg. Co., 11 N. L. R. B. 500. (Board's order runs against Operators' Association as well as employer-members thereof.) See also: *Grower-Shipper*, 15 N. L. R. B. 322.

Kirk & Son, Inc., 41 N. L. R. B. 807. (Board *ordered* institutional respondents who, acting directly and indirectly in the interest of an employer, variously aided and assisted in interfering with the self-organization of employees of the employer by establishing and supporting an "inside" union, to cease and desist from such unfair labor practices and from the conduct which brought about the concerted violations.)

Wright Products, Inc., 45 N. L. R. B. 509. (Where individual in his capacity as factory superintendent of corporation was found to be an employer of corporation's employees, and both individual and corporation were found to have violated Sections 8 (1) and (3) of the Act, Board

directed that both respondents cease and desist unfair labor practices, but limited affirmative orders awarding reinstatement and back pay to the employing corporation.) See also: *Carrington Publishing Co.*, 42 N. L. R. B. 356.

[*See* DEFINITIONS §§ 34–42 (as to enterprises composed of more than one individual or corporation, and successors, when constituting an employer within the meaning of the Act), PRACTICE AND PROCEDURE § 27 (as to procedure followed in case of change of employer status), and UNFAIR LABOR PRACTICES §§ 4–10 (as to responsibility of parties succeeding to or acting in interest of employer).]

2. *Orders broader than specific violations.*

The Board may order an employer found to have committed unfair labor practice, within the meaning of Section 8 (1) to desist from such practice generally and is not required to limit its order so as to compel cessation only of the particular and limited activity found to have taken place. *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9), modifying 5 N. L. R. B. 409.

The breadth of the order must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which is indicated because of their similarity or relation to those unlawful acts committed in the past. *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426.

Bingler Motors, Inc., 30 N. L. R. B. 1080 (as to the issuance of a Board order in light of above doctrine).

Respondent ordered to cease and desist from executing at any of its plants in the country an anti-union campaign found to have been carried out in one plant when there was a centrally devised anti-union program and the Board deemed it necessary that the respondent be deterred from repeating that program in the plant in question and from proceeding with its application at other branches of the company. *Ford Motor Company*, 26 N. L. R. B. 322.

Institutional respondents, so-called "civic" organization, found to have committed certain unfair labor practices by acting in behalf of an employer, as an integral part of a coordinated scheme or plan of serving employers in a given area, ordered to cease and desist from in any other manner, severally, jointly, or in concert with other employers, interfering with the rights guaranteed to employees in Section 7 of the Act, and to notify all such persons

to whom they have offered their illegal plan that they have in effect abandoned such plan, when if applied again would inevitably bring about a further concerted violation of the Act similar in kind to the unfair labor practices found. *Sun Tent-Luebbert Co.*, 37 N. L. R. B. 50. See also: *Kirk & Son, Inc.*, 41 N. L. R. B. 807.

[*See* §§ 161–170 (as to precautionary orders).]

10 3. *Other orders.*

C. EFFECT UPON ORDERS OF VARIOUS CIRCUMSTANCES.

11 1. *Misconduct.*

The contention of an employer that an order of the Board should not be enforced, for the reason that the proceeding is an equitable one and the union had not come into court with clean hands because its picketing resulted in violence in violation of the laws of the State, is without merit, for it is the Board and not the union which is asking enforcement. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 146 (C. C. A. 9), modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 595, *id.* 99 F. (2d) 533, 540 (C. C. A. 9), enforcing back-pay provision 2 N. L. R. B. 248, cert. denied 304 U. S. 575. See also:

N. L. R. B. v. *El Paso Elec.*, 119 F. (2d) 581 (C. C. A. 5), enforcing 13 N. L. R. B. 213 (sabotage).

N. L. R. B. v. *Hearst*, 102 F. (2d) 658 (C. C. A. 9), enforcing 2 N. L. R. B. 530 (boycott, violence).

N. L. R. B. v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576 (union has "locus penitentiae").

N. L. R. B. v. *Republic Steel*, 107 F. (2d) 472 (C. C. A. 3), enforcing as modified 9 N. L. R. B. 219 modified with respect to work-relief provisions 311 U. S. 7 (violence).

Cf. *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948, 953, setting aside 1 N. L. R. B. 181, affirmed 306 U. S. 292.

[*See* §§ 107–110 (as to the effect of misconduct upon reinstatement and back-pay orders), DEFINITIONS § 8 (as to the status of an employee who has ceased work as a result of discharge for violence or breach of contract), UNFAIR LABOR PRACTICES § 404 (as to the right of the employer to discharge employees who have engaged in acts of violence), and UNFAIR LABOR PRACTICES § 767 (as to the effect of misconduct of employees or their representatives upon employer's duty to bargain).]

12 2. *Laches.*

Contention that the Board was barred by its laches, *held* without merit for the Board acts in the public interest and the benefits conferred upon individuals by its orders are only incidental to the exercise of its power to effectuate the policies of the Act. *Colorado Milling & Elevator Co.*, 11 N. L. R. B. 66.

[*See* §§ 119, 133 (as to the effect of laches upon reinstatement and back-pay orders, and PRACTICE & PROCEDURE § 314 (as to consideration of laches in a motion to dismiss complaint).]

13 3. *Termination of unfair labor practices.*

Although a respondent had voluntarily ceased employing outside investigating agencies for the purposes of industrial espionage before charges had been filed, the Board is entitled to bar resumption of the practice by including a provision to that effect in its order. *Consolidated Edison Co.*, v. *N. L. R. B.*, 305 U. S. 197, 230, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Boss Mfg. Co.*, 11 N. L. R. B. 432, 444, modified and rehearing denied, 107 F. (2d) 574 (C. C. A. 7).

Where an employer has already taken such affirmative action as the Board would have ordered to effectuate the policies or the Act, the Board will make no affirmative order in the case, but merely order that the employer cease and desist from any continuation of its violation. *Nolan Motor Co., Inc.*, 2 N. L. R. B. 357, 367.

Providence Gas Company, 41 N. L. R. B. 1121; (Where allegedly dominated organization had been disestablished pursuant to Regional Director's recommendation and employer had advised employees of its intention not to infringe guarantees contained in the Act, Board found that it would effectuate the policies of the Act to refrain from making findings of unfair labor practices with respect to the organization and issuing the usual order thereon.)

[*See* § 53 (as to effect of discontinuance of dominated organization upon the issuance of orders to remedy 8 (2) violations).]

14 4. *Cessation, removal, or change of mode of operations.*

Where at time of hearing a respondent (who had engaged in acts of interference), although not operating an active business, existed as a corporate entity and was engaged in the liquidation of its remaining assets it was ordered to

post notices in the event it has reentered, or shall hereafter reenter, its former business or any substantially similar business. *Mountain City Mill Company*, 25 N. L. R. B. 397, 448.

Norwich Dairy Company, Inc., et al., 25 N. L. R. B. 1166; (One respondent was ordered to take affirmative action to remedy its unfair labor practices in the event it resumes the conduct of the business it transferred to the other.)

The provisions of an order, addressed to a dissolved corporation, which contemplate business activity are applicable only in the event the corporation reenters business in the future. *Isaac Schieber, et al.*, 26 N. L. R. B. 937.

Where one of respondents found to have committed unfair labor practices had begun liquidation of its business and at time of hearing was not carrying on operations although it had not been dissolved, Board ordered it as well as operating respondent to cease and desist unfair labor practices and to take appropriate affirmative action, reserving the issue as to what should constitute compliance by such respondent for decision upon the basis of the existing situation with respect to its business operations when the question of compliance would be determined. *Max Ulman, Inc., et al.*, 45 N. L. R. B. 836.

[*See* §§ 94, 111, 112 (as to effect of cessation, removal, or change of mode of operations upon orders to bargain collectively and reinstatement and back-pay orders), JURISDICTION § 100 (as to effect of temporary cessation of business operations on Board's jurisdiction), and PRACTICE & PROCEDURE § 320 (as to dismissal of complaint because of cessation of operations).]

5. *Agreements.* (*See also* JURISDICTION § 20, PRACTICE AND PROCEDURE §§ 1–11, and UNFAIR LABOR PRACTICES § 702)

Releases by employees, executed subsequent to their discriminatory discharge, *held* not to bar a reinstatement and back-pay order, for the Board in the exercise of its administrative discretion, as a corollory from the exclusive authority conferred on it by Section 10 (a), determined that private settlements should not stay it from vindicating the policies of the Act by remedying unfair labor practices involved in the discriminatory discharge of employees. *Beckerman Shoe Corporation of Kutztown*, 43 N. L. R. B. 435.

6. *Lack of labor dispute.*

Respondent's contention that it would not effectuate the policies of the Act to order the disestablishment of a "successor" dominated organization since from the inception of the "predecessor," in 1918, to date of the hearing there had been no disputes, *held* without merit. *Standard Oil Co.*, 43 N. L. R. B. 12.

[*See* JURISDICTION § 30 (as to the jurisdiction of the Board in the absence of showing of actual stoppage or impairment of commerce).]

7. *Other circumstances.*

8. *Compliance.* (*See* PRACTICE AND PROCEDURE § 313.)

9. *Change of legal entity.* (*See* §6, and PRACTICE AND PROCEDURE § 320.)

10. *Other laws or proceedings.* (*See* JURISDICTION §§ 6–15.)

II. ORDERS TO EMPLOYER ENGAGING IN INTERFERENCE, RESTRAINT, OR COERCION, WITHIN SECTION 8 (1).

A. IN GENERAL.

Employer found to have violated Section 8 (1) *ordered* to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 51, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

See following page references for additional decisions:
Vol. 25— pp. 36, 869, 727, 506, 397, 1190, 1362.
Vol. 26—pp. 1, 88, 177, 192, 198, 447, 582, 662, 765, 823, 878, 1094, 1288.
Vol. 27—pp. 118, 235, 613, 878, 976, 1149, 1300, 1386.
Vol. 28—pp. 64, 79, 116, 208, 257, 430, 442, 540, 572, 619, 667, 847, 975, 1051.
Vol. 29—pp. 456, 556, 673, 873, 939.
Vol. 30—pp. 146, 170, 212, 382, 440, 700, 809, 888, 1027, 1080, 1093, 1201.
Vol. 31—pp. 71, 101, 621, 715, 786, 900, 1166.
Vol. 32—pp. 195, 338, 387, 536, 595, 773, 792, 863, 1145.
Vol. 33—pp. 191, 263, 351, 511, 557, 613, 885, 954, 1155, 1170.

Vol. 34—pp. 1, 457, 539, 610, 651, 785, 815, 968, 1068, 1129.
Vol. 35—pp. 63, 217, 621, 810, 857, 963, 968, 1050, 1220, 1262.
Vol. 36—pp. 1, 240, 411.
Vol. 37—pp. 100, 260, 334, 405, 499, 578, 631, 700, 725, 839, 1059, 1090, 1174.
Vol. 38—pp. 159, 234, 357, 555, 690, 813, 838, 866, 1111, 1124, 1176, 1210, 1245, 1359.
Vol. 39—pp. 107, 344, 501, 709, 825, 1130.
Vol. 40—pp. 107, 223, 301, 323, 424, 541, 736, 867, 967, 1058, 1262, 1367.
Vol. 41 — pp. 263, 288, 326, 409, 444, 469, 521, 537, 674, 693, 807, 843, 872, 921, 1078, 1105, 1278, 1288, 1308, 1327, 1374, 1383, 1408, 1454, 1474.
Vol. 42 — pp. 85, 356, 377, 440, 457, 472, 593, 713, 852, 866, 898, 1051, 1073, 1086, 1160, 1218, 1375.
Vol. 43 — pp. 1, 12, 73, 125, 179, 435, 613, 695, 711, 804, 1020, 1309, 1322.
Vol. 44 — pp. 1, 184, 257, 273, 386, 404, 632, 920, 959, 970, 1136, 1234, 1310, 1342.
Vol. 45 — pp. 105, 146, 214, 230, 241, 355, 377, 448, 509, 551, 638, 679, 709, 744, 799, 836, 869, 902, 936, 987, 1027, 1113, 1163, 1272, 1318.

B. SPECIFIC ORDERS CONCERNING VARIOUS FORMS OF INTERFERENCE, RESTRAINT, OR COERCION.

1. *Espionage and surveillance.*

Employer *ordered* to cease and desist from employing detectives, or any other persons, for the purpose of espionage within the labor organization of its employees. *Fruehauf Trailer Co.*, 1 N. L. R. B. 68, 80, enforced 301 U. S. 49, reversing 85 F. (2d) 391 (C. C. A. 6). See also: *Fashion Piece Dye Works, Inc.*, 1 N. L. R. B. 285, 290, enforced 100 F. (2d) 375 (C. C. A. 7). *Consolidated Edison Co. et al.*, 4 N. L. R. B. 71, 109, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2). *Crossett Lumber Co.*, 8 N. L. R. B. 440, 499.

Employer *ordered* to cease and desist from maintaining surveillance of the activities of a labor organization and of the activities of its employees in connection with such labor organization. *Friedman-Harry Marks Clothing Co.*, 1 N. L. R. B. 411, 431, enforced 301 U. S. 58, reversing 85 F. (2d) 1 (C. C. A. 2).

Employers who, among other things, have violated Section 8 (1) by the use of spies and emissaries *ordered* to cease and desist from spying, maintaining surveillance, or employing any other manner of espionage over the meetings or meeting places and activities of any labor organization of their employees. *Metropolitan Engineering Co. and Metropolitan Device Corp.*, 4 N. L. R. B. 542, 565.

See also:

National Electric Products Corp., 3 N. L. R. B. 475, 508.
Highway Trailer Co., 3 N. L. R. B. 591, 616.
Clover Fork Coal Co., 4 N. L. R. B. 202, 240.
Botany Worsted Mills, 4 N. L. R. B. 292, 305, remanded 106 F. (2d) 263 (C. C. A. 3).
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 68.

See following page references for additional decisions:

Vol. 25—p. 1190.
Vol. 26—p. 322.
Vol. 28—p. 257.
Vol. 30—p. 1201.

Employer *ordered* to cease and desist from maintaining surveillance of or employing any manner of espionage for the purpose of ascertaining or investigating the activities of a stated organization or of its employees in connection with such organization or any other labor organization, or any other activity which is in exercise of the rights guaranteed in Section 7 of the Act, 1145.

23 2. *Bribery.*

An employer found to have violated Section 8 (1) of the Act by offering shares of its stock to officers of a "Committee," contingent upon their continued employment for 3 years, in order to control the bargaining committee *ordered* to make written withdrawal of such offer. *Patriarca Store Fixtures, Inc.*, 12 N. L. R. B. 93, 105.

24 3. *Violence or incitement to violence.*

Employer, who in the formation and administration of a labor organization, had permitted members of that organization to assault fellow employees who were members of an outside organization *ordered* to instruct all of its employees that physical assaults and other acts of intimidation and coercion of employees would not be permitted in the plant during working hours. *General Shoe Corp.*, 5 N. L. R. B. 1005, 1020.

Asheville Hosiery Co., 11 N. L. R. B. 315. (An employer, who permitted and encouraged assaults upon employees because of their union activity ordered to "instruct all its employees that physical assaults on and threats of physical violence to their fellow employees for the purpose of discouraging membership in, or activities on behalf of, a named union or any other labor organization, will not be permitted in the plant at any time; and take effective action to enforce these instructions.")

Goodyear Tire & Rubber Company of Alabama, 21 N. L. R. B. 306. (An employer who had condoned violence in its plants against employees who were union members and was responsible for the activities of its "flying squadron" which participated in antiunion activities, ordered to instruct all its employees that physical assaults or threats of violence directed at discouraging membership in, or activities on behalf of, the union would not be permitted in the plant, and specifically to prohibit any member of the flying squadron (1) from interfering with, restraining, or coercing its production employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and (2) participating in the formation, administration, or activities of any labor organization of its production employees; and to take effective action to enforce this prohibition.)

Ford Motor Company, 26 N. L. R. B. 322. (Employer *ordered* to cease and desist from assaulting, beating, or otherwise engaging in physical violence, or inciting, encouraging, or assisting others to assault, beat, or otherwise engage in physical violence, for the purpose of discouraging membership in, or activities on behalf of, any labor organization of its employees; disrupting meetings or public gatherings for the purpose of interfering with the right of its employees to self-organization; and to take the following affirmative action: afford all its employees and other persons lawfully on its premises adequate protection at all times at and about a named plant from intimidation, physical assaults, or threats of physical violence directed at discouraging membership in a named union or in any other labor organization; instruct in writing all employees at named plant that they may not make, store, or carry in the plant blackjacks or other dangerous

weapons of any nature or remove them from the plant for the purpose of discouraging membership in a named union or any other labor organization; and effectuate the rule.)

Weirton Steel Company, 32 N. L. R. B. 1145. (Employer *ordered* to cease and desist from assaulting, beating, or otherwise engaging in physical violence, or inciting, encouraging, or assisting others to assault, beat, or otherwise engage in physical violence.)

An employer found to have violated Section 8 (1) by threatening union organizers with violence and forcibly preventing them from coming into or remaining in a company town, *ordered* to cease and desist from interfering in any manner with the right of any person, in his entering upon and traversing the ways of ingress and egress, public or private, in the company town, customarily used by the employees there residing and persons engaged in lawful transaction with them, for the purpose of consulting, talking to, or assisting any employee in regard to the right of said employees under the Act. *Harlan Fuel Co.*, 8 N. L. R. B. 25, 63.

Ford Motor Company, 26 N. L. R. B. 322. (Respondent *ordered* to cease and desist from disrupting public meetings or gatherings for the purpose of interfering with the right of its employees to self-organization.)

4. *Anti-union statements or declarations of union preference.*

Employer *ordered* to cease and desist from indicating to its employees the employer's attitude and desires with respect to the relationship of its employees to any particular labor organization, or indicating to its employees the employer's judgment of labor organizers or particular labor organizations. *Clover Fork Coal Co.*, 4 N. L. R. B., 202, 240, enforced 97 F. (2d) 331 (C. C. A. 6).

Employer *ordered* to cease and desist from questioning, threatening, or instructing its employees in respect to the exercise of their rights to join or assist an outside labor organization, or any other labor organization of its employees. *Botany Worsted Mills*, 4 N. L. R. B. 292, 305, remanded 106 F. (2d) 263 (C. C. A. 3).

Employer *ordered* to cease and desist from urging, persuading, warning, or coercing its employees to join a particular labor organization or any other labor organization, or threatening them with discharge if they fail to join such

labor organization. *Ward Baking Co.*, 8 N. L. R. B. 558, 571.

Employer *ordered* to cease and desist from stating to its employees that activities by them on behalf of a named union, or any other labor organization, would result in the closing of the plant. *Blackstone Mfg. Co., Inc.*, 17 N. L. R. B. 813. See also: *Asheville Hosiery Co.*, 11 N. L. R. B. 1365.

6 5. *Distribution of loyalty pledges or anti-union petitions or literature.*

An employer found to have published and distributed pamphlets and leaflets containing statements disparaging to labor organizations *ordered* to cease and desist from circulating, distributing, or otherwise disseminating among its employees written or printed matter which by its content or manner of distribution or the circumstances under which it is distributed, interferes with, restrains or coerces such employees in the exercise of rights guaranteed in Section 7 of the Act. *Ford Motor Co.*, 29 N. L. R. B. 783, 916.

7 6. *Interrogation concerning union membership.*

Employer *ordered* to cease and desist from questioning, threatening, or instructing its employees in respect to the exercise of their rights to join or assist an outside labor organization, or any other labor organization of its employees. *Botany Worsted Mills*, 4 N. L. R. B. 292, 305, remanded 106 F. (2d) 263 (C. C. A. 3).

Employer *ordered* to instruct all their officials and agents, including supervisory employees, not in any manner to approach employees concerning, or discuss with employees, the question of their labor affiliation or threaten employees in any manner because of their membership in any labor organization. *Metropolitan Engineering Co., and Metropolitan Device Corp.*, 4 N. L. R. B. 542, 566.

Employer *ordered* to cease and desist interrogating its employees as to their union affiliation or activities, or in any other manner maintaining surveillance over its employees in the exercise of their rights guaranteed under the Act for the purpose of interfering with their activities on behalf of the charging union, or any other labor organization. *Superior Tanning Co.*, 14 N. L. R. B. 942, 968. See also: *Covington Weaving Co.*, 34 N. L. R. B. 187, 192.

Employer *ordered* to cease and desist requiring prospective employees to furnish information regarding their union affiliation. *Spalek*, 45 N. L. R. B. 1272.

Interference in the formation or administration of a labor organization or contribution of support thereto.

Upon a finding that an employer has sponsored an unaffiliated labor organization in violation of Section 8 (1), employer ordered to disestablish such labor organization. *Atlanta Woolen Mills*, 1 N. L. R. B. 316, 332, 333.

An employer who was found to have violated Section 8 (1) by fostering an affiliated labor organization, *ordered* to withhold recognition from that organization as exclusive representative until it had been certified by the Board, and to withhold from it recognition as representative of any employees until the same or similar recognition was granted to its rival. *Eagle-Picher Mining & Smelting Co.*, 16 N. L. R. B. 727. See also: *Abinante & Nola Packing Co.*, 26 N. L. R. B. 1288.

Employer *ordered* to cease and desist from recognizing and assisting nationally affiliated organization as exclusive representative of its employees unless and until it is certified as such by the Board. *Gerity Whitaker Co.*, 33 N. L. R. B. 393.

See also:

Northwestern Cabinet Company, 38 N. L. R. B. 257.
Ohio Valley Bus Company, 38 N. L. R. B. 838.
Cowell Portland Cement Company, 40 N. L. R. B. 652.
Premo Pharmaceutical Laboratories, Inc., 42 N. L. R. B. 1086.
Dominic Meaglia, 43 N. L. R. B. 1277.
Rutland Court Owners, Inc., 44 N. L. R. B. 587.
Bradford Machine Tool Co., 44 N. L. R. B. 759.

Employer found to have assisted an unaffiliated organization in violation of Section 8 (1) but not to have dominated the organization within the meaning of Section 8 (2) *ordered* to cease and desist from recognizing or dealing with it as the representative of its employees, unless and until it is certified by the Board as the representative of the employees. *National Silver Co.*, 50 N. L. R. B., No. 84. See also: *Interstate Folding Box Co.*, 47 N. L. R. B. 1192. *Heather Handkerchief Wks.*, 47 N. L. R. B. 800. *Wayne Works*, 47 N. L. R. B. 1437.

Where prior to issuance of the Board's complaint a union, found by the Board to have been company-dominated, ceased to exist and the respondent ceased to give effect to its contract with such union, and where the Board's complaint contained no separate specific allegation of an

8 (2) violation, the respondent was ordered to cease and desist from conduct of the sort that brought the dominated union into being and gave support to it, but was not ordered to disestablish said union nor to cease giving effect to its contract with said union. *Mall Tool Company*, 25 N. L. R. B., 771, 788.

[*See* § 33 (as to orders issued when privileges were accorded or favoritism shown to one of two or more rival labor organizations), §§ 51–60 (as to orders with respect to organizations dominated in violation of Section 8 (2), § 61 (as to orders in respect to check-off arrangements with assisted and dominated organizations), and §§ 152, 160 (as to orders with respect to agreements entered into with assisted organizations).]

29 8. *Discrimination.* [*See also* §§ 102–150 (as to reinstatement and back-pay orders).]

Employer found to have violated Section 8 (1) by demoting an employee to an irregular part-time job, because of her membership and activities in a labor organization, *ordered* to offer the employee immediate and full reinstatement to her former position without prejudice to any seniority rights or other rights and privileges previously enjoyed by her. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 929.

See also:

Indianapolis Glove Co., 5 N. L. R. B. 231, 249 (employees discharged in violation of Section 8 (1) ordered reinstated with back pay).

Fort Wayne Corrugated Paper Co., 14 N. L. R. B. 1, 12 (employee demoted in violation of Section 8 (1) ordered reinstated to his former position with back pay).

McColdrick Lumber Co., 19 N. L. R. B. 887, 940 (employees laid off in violation of Section 8 (1) ordered reinstated with back pay).

General Shale Products Corp., 26 N. L. R. B. 921 (employees discharged for their concerted activity in violation of Section 8 (1) ordered reinstated with back pay).

Employer *ordered* to offer employment to a person discriminatorily refused employment in violation of Section 8 (1). *Mountain City Mill Co.*, 25 N. L. R. B. 397.

Employer who discriminatorily denied an employee the privilege of taking his day off on Sunday, in accordance with his regular practice, because of his union member-

ship and activity, *ordered* to restore this privilege to him. *Valley Mould and Iron Corp.*, 20 N. L. R. B. 211, 239.

Employer who engaged in interference by depriving editorial employees of bylines because of their participation in a strike, *ordered* to restore to these employees the bylines. *Citizen-News*, 33 N. L. R. B. 511.

An employer who, as part of his course of conduct designed to defeat the self-organization of employees changed an employee's work schedule and discriminatorily applied to him a no-talking rule, *ordered* to cease and desist from imposing discriminatory terms and conditions of employment upon employees because of their membership or activity in behalf of a labor organization. *Wilson & Co.*, 43 N. L. R. B. 804, 820.

Employer *ordered* to cease and desist requiring or enforcing affidavits of apprentices which effected a waiver of their right to collective bargaining by agreeing to abide by a unilateral determination of wages by the employer. *Spalek, Adolph*, 45 N. L. R. B. 1272.

0 9. *Interference with right of employees to bargain collectively.*

Employer found to have violated Section 8 (1) by arbitrarily abrogating a seniority agreement entered into with a labor organization in violation of its employees' rights to collective bargaining in respect to conditions of employment, ordered to enter into negotiations with the labor organization with the object of reaching an agreement in regard to the seniority arrangement. *Brown Shoe Co., Inc.*, 1 N. L. R. B. 803, 834.

Employer found to have interfered with the right of its employees to collective bargaining in violation of Section 8 (1) by refusing to negotiate with their representatives under the terms of a settlement proposal providing for reinstatement of striking employees *ordered* on request to enter into negotiations with the representatives of the employees concerning such reinstatement. *Alabama Mills, Inc.*, 2 N. L. R. B. 20, 35, 36.

31 10. *Removal, cessation, or change of operations.*

Employer found to have violated Section 8 (1) *ordered*, among other things, to cease and desist from threatening to close its mines if its employees joined a labor organization. *Clover Fork Coal Co.*, 4 N. L. R. B. 202, 240, enforced 97 F. (2d) 331 (C. C. A. 6).

An employer who was found to have unlawfully moved his plant in order to rid himself of the union, *ordered* to pay for

transportation expenses of employees and their families to the place of removed operations, or for bi-weekly trips from the place of removed operations to former operations, at the option of individual employees. *Jacob H. Klotz,* 13 N. L. R. B. 746, 781.

[*See* § 111, 112 (as to 8 (3) orders when removal, cessation, or change of operations were discriminatory).]

32 11. *Threatened or actual evictions, exclusions, or restraint in use of company property.*

An employer's contention that the Fifth Amendment to the Constitution renders unconstitutional a construction of the Act which orders it to grant passes, since thereby it will be deprived of the "property," *held* without merit for if the findings and order are reasonably calculated to effectuate the policies of the Act, any incidental property deprivation is *damnum absque injuria. Cities Service Oil Co.*, 25 N. L. R. B. 36, 57.

Employer *ordered* to cease and desist from interfering in any manner with the right of any person, in his entering upon and traversing the ways of ingress and egress, public or private, in the company town, customarily used by the employees there residing and persons engaged in lawful transaction with them, for the purpose of consulting, talking to, or assisting, any employee in regard to the right of said employees under the Act. *Harlan Fuel Co.*, 8 N. L. R. B. 25, 63.

Employer *ordered* to cease and desist from denying to its employees who reside in houses owned by the respondent the right to have any person call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting, or assisting, its employees or any of them, in regard to the rights of said employees under the Act, and from following or trailing any person or in any other manner intimidating or interfering with the right of any person, in his use of the thoroughfares in the towns and camps located within a named locality, for the purpose of consulting, conferring, of advising with, talking to, meeting, or assisting, the respondent's employees or any of them, in regard to the rights of said employees under the Act. *West Kentucky Coal Co.*, 10 N. L. R. B. 88.

Employers found to have violated Section 8 (1) by refusing to grant passes to representatives of their unlicensed personnel in order that such representatives might confer with the unlicensed personnel on board the employers'

vessels, *ordered* to grant passes to representatives of the union subject to such conditions on the use of the passes as would be arrived at through collective bargaining between the respondents and the union. *Cities Service Oil Co.*, 25 N. L. R. B. 36.

Employer *ordered* to cease and desist from interfering with employees' receipt through the mail of union literature aboard the dredge on which they lived and worked. *United Dredging Co.*, 30 N. L. R. B. 739.

A union's request that the Board modify its Order which required the employer "upon request by five or more of its employees who live at one or more of the employer's camps, and under lawful and reasonable conditions not more onerous than those imposed on other persons, to admit to such camp or camps representatives of labor organizations" to require admittance of accredited representatives of said union only, denied since the requested modification would not be consonant with the policies and provisions of the Act. *Weyerhaeuser Timber Company, Longview Branch*, 31 N. L. R. B. 258; 32 N. L. R. B. 273.

Employer who was found to have interfered with the rights of its employees by excluding from company-owned colored quarters, white employees and other white persons seeking to interest colored employees in the union, and by refusing president of the union, a white employee, a pass to enter the quarters while permitting white persons engaged in non-union business to enter, *ordered* to permit for the purpose of self-organization all its employees free access to the homes of their fellow employees, irrespective of any employee's race. *Ozan Lumber Co.*, 42 N. L. R. B. 1073.

[*See* § 24 (as to orders with respect to restraint in use of company property by acts of violence), § 33 (as to orders with respect to discriminatory restraint in use of company property when access to property accorded rival representatives), and § 102 (as to orders with respect to discriminatory evictions in violation of Section 8 (3)).]

12. *Privileges accorded or favoritism shown to one of two or more rival labor organizations.*

Employer *ordered* to cease and desist permitting organizers and collectors of dues for a legitimate labor organization favored by the employer or any other labor organization, to engage in activities among the employees in behalf of such labor organizations during working hours or on the

employer's property unless similar privileges are granted to the rival labor organization and all other labor organizations of its employees. *Consolidated Edison Co. of New York, et al.*, 4 N. L. R. B. 71, 109, modifying 95 F. (2d) 390 (C. C. A. 2). See also: *Lenox Shoe Co.*, 4 N. L. R. B. 372, 390.

Employer *ordered* to cease and desist from refusing to grant ship passes to representatives of a labor organization in equal numbers and under the same conditions as it grants passes to representatives of a rival labor organization. *Waterman Steamship Corp.*, 7 N. L. R. B. 237, 252, enforced 309 U. S. 206, and reversing 103 F. (2d) 157 (C. C. A. 5). See also: *South Atlantic S. S. Co.*, 12 N. L. R. B. 1367. *West African Lines*, 21 N. L. R. B. 691. *Cities Service Oil Co.*, 25 N. L. R. B. 36.

§ 34 13. *Conducting, supervising, or interfering with elections.*

An employer found to have interfered with a Board election through letters to employees, *ordered* to distribute individual notices stating that he would not engage in the prohibited conduct. *Letz Mfg. Co.*, 32 N. L. R. B. 563. See also: *American Tube Bending Co., Inc.*, 44 N. L. R. B. 121.

§ 35 14. *Inducement of or aid to employees to withdraw from labor organization.*

§ 36 15. *Contracts constituting interference, restraint, or coercion.* (*See also* §§ 151–160.)

§ 50 16. *Other specific orders.*

Employer *ordered* to cease and desist from compelling its employees to contribute financially toward the support of an anti-union campaign. *Ford Motor Co.*, 26 N. L. R. B. 322.

III. ORDERS TO EMPLOYER ENGAGING IN DOMINATION OF OR INTERFERENCE WITH FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION, OR CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT THERETO, WITHIN SECTION 8 (2)

A. IN RESPECT TO STATUS OF DOMINATED UNION.

§ 51 1. *In general.*

Provisions of an order of the Board requiring an employer to withdraw all recognition from an employer-dominated

labor organization and to post notices of compliance are within the terms of Section 10 (c) and are of a kind contemplated by Congress in enacting the section. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268, enforcing 1 N. L. R. B. 1, and reversing 91 F. (2d) 178 (C. C. A. 3).

Whether the continued recognition of a labor organization by an employer would be a continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively is an inference of fact which the Board can draw if there is evidence to support it. *N. L. R. B.* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275, enforcing 2 N. L. R. B. 431, and reversing 91 F. (2d) 458 (C. C. A. 9).

The Board is justified in ordering disestablishment of an employee representation plan found to be employer-dominated for, although Section 10 (c) was not intended to give the Board power of punishment or retribution for past wrongs or errors and employees are free to adopt any form of organization and representation whether purely local or connected with a national body, their purpose to do so may be obstructed by the existence of an old plan, the original structure of which was not in accordance with the Act, and while action under Section 10 (c) must be limited to the effectuation of the policies of the Act, one of these policies is that employees be free to choose such form of organization as they wish. *N. L. R. B.* v. *Newport News*, 308 U. S. 241, 250, enforcing 8 N. L. R. B. 866, and reversing 101 F. (2d) 841 (C. C. A. 4). See also:

Consolidated Edison Co. v. *N. L. R. B.*, 305 U. S. 197, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

N. L. R. B. v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 262, modifying 5 N. L. R. B. 930, and modifying 98 F. (2d) 375 (C. C. A. 7).

N. L. R. B. v. *Falk Corp.*, 308 U. S. 453, 461, enforcing 6 N. L. R. B. 654, and reversing 106 F. (2d) 454 (C. C. A. 7).

N. L. R. B. v. *Bradford Dyeing Association*, 310 U. S. 318, (U. S. Sup. Ct.) May 20, 1940, enforcing 4 N. L. R. B. 604 and reversing 106 F. (2d) 119 (C. C. A. 1).

N. L. R. B. v. *Wallace Mfg. Co.*, 95 F. (2d) 818, 820 (C. C. A. 4), enforcing 2 N. L. R. B. 1081.

N. L. R. B. v. *J. Freezer & Son*, 95 F. (2d) 840, 841 (C. C. A. 4), enforcing 3 N. L. R. B. 120.

N. L. R. B. v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 594 (C. C. A. 9), enforcing 3 N. L. R. B. 140.

The term "disestablish" as used in order of Board requiring employer to withdraw all recognition from and disestablish a labor organization found to be employer-dominated construed by court of review as meaning complete withdrawal of any recognition of such labor organization and complete cessation of all financial or other support thereof. *Wilson & Co.* v. *N L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N.L.R.B. 986. See also: *Cudahy Packing Co. v. N. L. R. B.*, 102 F. (2d) 745, 752 (C. C. A. 8), modifying 5 N. L. R. B. 472, cert. denied 308 U. S. 565. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 821 (C. C. A. 8), remanding 6 N. L. R. B. 423. *Swift & Co.* v. *N. L. R. B.*, 106 F. (2d) 87, 95 (C. C. A. 10), modifying 7 N. L. R. B. 269.

Where an organization, found to be employer-dominated, is engaged in numerous activities aside from collective bargaining, the employer is not required to disestablish it for all purposes, and the Board's order does not interfere with its activities other than those with respect to collective baragining. *S. Blechman & Sons, Inc.*, 4 N. L. R. B. 15, 24.

An order requiring an employer to disestablish an employee committee found to be employer-dominated is not intended to interfere with activities which have been carried on with the aid of the employer through the medium of the committee, other than matters relating to collective bargaining which have resulted in benefits to the employees: such as, first-aid and safety-first courses, savings in coal purchases made by employees, recreation associations, and employees' benefit association, and a death benefit plan. *Utah Copper Co.*, 7 N. L. R. B. 928, 944, 945; (first-aid and safety-first courses, recreation, and employees' benefit associations, and death benefit plan). See also: *Central Truck Lines, Inc.*, 3 N. L. R. B. 317, 326; (help benefit fund). *Titan Metal Mfg. Co.*, 5 N. L. R. B. 577, 594, enforced 106 F. (2d) 254 (C. C. A. 3); (group insurance plan). *West Kentucky Coal Co.*, 10 N. L. R. B. 88, 128; (sickness and death benefit plans and recreational and safety ventures).

Berkey & Gay Furniture Co., 11 N. L. R. B. 282; (An order requiring an employer to disestablish a company-domi-

nated union is not intended to affect the functioning of such union in administering a health and accident fund.)

Bethlehem Steel Corporation, et al, 14 N. L. R. B. 539, 630, enf'd 120 F. (2d) 641 (App. D. C.). (An order requiring an employer to disestablish employees' representation plans found to be employer-dominated is not intended to interfere with the relief and pension plans and the saving and stock ownership plans, provided that they are divorced from functioning in connection with any labor organization and are continued without discrimination against or in favor of any labor organization.)

Service Wood Heel Company, Inc., 31 N. L. R. B. 505. (Group insurance plan found to have constituted illegal assistance and support to an organization as a result of the manner in which it was initiated and administered not to be affected by order requiring dominated organizations disestablishment except insofar as it will be necessary to modify the operation of the plan in the light of the disestablishment order.)

Curtiss-Wright Corporation, 39 N. L. R. B. 992. (Order requiring employer to cease and desist giving effect to contract with dominated organization held not to operate to interfere with or suspend any legitimate social activities carried on by the dominated organization or with the legitimate functions of a Federal Credit Union which it sponsored.)

Carter Carburetor Corporation, 39 N. L. R. B. 1269. (So long as a voluntarily dissolved labor organization is not operated as a labor organization, an order requiring employer to cease and desist its 8 (2) activities held not intended to vary employer's relations with that organization as are established as a result of soft-drink, milk, and candy concessions in its plant, although Board found employer had granted that organization these concessions to finance a disability program and noted that employer's bounty in this respect served to defeat the purposes of the Act so long as that organization existed as a labor organization.)

Where an employer had not recognized an inside organization found to have been dominated, the Board merely ordered the employer to withhold recognition of the organization. *Gulf Public Service Co.*, 18 N. L. R. B. 562.

Standard Oil Co., 25 N. L. R. B. 1190. (Disestablishment of a dominated labor organization *ordered*, although

employer had not granted it recognition and had not entered into any contract with it.)

See following page references for decisions in which dominated organizations were ordered disestablished:

Vol. 25—pp. 347, 557, 672, 946, 1004, 1126, 1190, 1332
Vol. 26—pp. 1, 88, 227, 297, 447, 491, 662, 878, 975, 1059, 1244
Vol. 27—pp. 441, 521, 813, 856, 1021, 1057
Vol. 28—pp. 208, 257, 442, 1051
Vol. 29—pp. 60, 360, 456, 673, 837, 1044
Vol. 30—pp. 212, 440, 700, 820
Vol. 31—pp. 101, 196, 440, 621, 715, 994, 1166, 1179
Vol. 32—pp. 338, 595, 863, 895, 1145
Vol. 33—pp. 858, 954, 1033, 1190
Vol. 34—pp. 625, 785, 896, 1095
Vol. 35—pp. 44, 1262, 1334
Vol. 36—pp. 1, 86, 710, 851, 1349
Vol. 37—pp. 839, 1059, 1090, 1174
Vol. 38—pp. 234, 690, 1154, 1245
Vol. 39—pp. 107, 825, 1269
Vol. 40—pp. 223, 301, 541, 867, 1037, 1058, 1262
Vol. 41—pp. 693, 872, 1078, 1428, 1474
Vol. 42—pp. 119, 377, 440, 457, 472, 713, 898, 1218
Vol. 43—pp. 12, 457, 613, 695, 1020, 1322
Vol. 44—pp. 1, 174, 404, 920, 959, 1136, 1234
Vol. 45—pp. 146, 241, 482, 551, 744, 977, 987, 1113

52 2. *Unsuccessful attempt to form.*

Employer found to have violated Section 8 (2) in attempting, although unsuccessfully, to dominate and interfere with the formation of a labor organization *ordered*, to cease and desist from dominating or interfering with the formation or administration of any labor organization of its employees, or contributing financial or other support to it, or from attempting to do so. *Millfay Mfg. Co., Inc.*, 2 N. L. R. B. 919, 932, enforced 97 F. (2d) 1009 (C. C. A. 2). See also: *Canvas Glove Mfg. Works, Inc.*, 1 N. L. R. B. 519, 526. *Uhlich & Co., Inc.*, 26 N. L. R. B. 679.

53 3. *Dormant or defunct.*

Employer *ordered* to refuse to give recognition to a dominated labor organization if it should ever return to existence under the same form and name or any other, where, despite testimony that the organization was dissolved, the record does not show the circumstances of its dissolution so that

it can be determined whether it is dissolved in fact or has merely temporarily suspended activities. *Yates-American Machine Co.*, 7 N. L. R. B. 627, 636.

B. Z. B. Knitting Co., 28 N. L. R. B. 257. (Where an employer had voluntarily terminated its recognition of a dominated organization, Board did not consider an order of disestablishment necessary; however, since it was not clear whether the organization had dissolved or merely suspended activities for the time being, employer *ordered* to refuse it recognition if it should resume functioning.)

For additional decisions in which an employer was ordered to withhold recognition to a defunct organization in the event it should ever return to existence, see:

Condenser Corp. of America, 22 N. L. R. B. 347, 452.
General Dry Batteries Inc., 27 N. L. R. B. 1021.
Hicks Body Co., 33 N. L. R. B. 858.
Sanco Piece Dye Works Inc., 38 N. L. R. B. 690.
Carter Carburetor Corp., 39 N. L. R. B. 1269.

Employer *ordered* to refuse to recognize a defunct labor organization, found to have been employer dominated, as a collective bargaining agency for its employees if the organization ever returns to an active existence under its old name and form or any other name or form, and to refuse to accord to a successor organization, although not employer dominated, any recognition since it does not purport to be a labor organization but became a non-profit organization, organized to lend financial or other aid to its members. *The Serrick Corp.*, 8 N. L. R. B. 621, 650, 651, enforced 110 F. (2d) 29 (App. D. C.) *H. J. Heinz Co.*, 10 N. L. R. B. 963, 987, enforced 110 F. (2d) 843 (C. C. A. 6); cf. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 821 (C. C. A. 8), remanding 6 N. L. R. B. 423. (Labor organization found to have been employer-dominated *ordered* disestablished, notwithstanding the fact that the employees had designated an outside labor organization to represent them as the result of an election, and the inside organization subsequently existed solely for the purpose of carrying on social functions.)

Employer-dominated organization, which was dormant but not dissolved, *ordered* disestablished. *Barnes Co.*, 12 N. L. R. B. 1028.

Odanah Iron Company, et al., 25 N. L. R. B. 1332. (Inactive organization which was still in existence, *ordered* disestablished.)

Peyton Packing Co., Inc., 32 N. L. R. B. 595. (Labor organization found to have been employer-dominated *ordered* disestablished, notwithstanding its alleged dissolution when it did not appear that the employer had ever taken steps to inform its employees that it was withdrawing its support therefrom or disestablishing it as a representative of employees.)

Sun Tent-Luebbert Co., 37 N. L. R. B. 50. (Dominated organization apparently abandoned by a vote of its membership but not formally dissolved as a corporation and legal entity, *ordered* disestablished.)

Verplex Co., 42 N. L. R. B. 472. (Defunct "predecessor" organization which had never been disestablished, *ordered* disestablished.)

Employer not ordered to disestablish a dominated organization in view of its discontinuance 3 years prior to the issuance of the decision. However, appropriate cease and desist order provided in order to bar any resumption or repetition of the unfair labor practices which the Board found the employer to have engaged in with respect to such organization. *Texas Co.*, 26 N. L. R. B. 1059, 1091. See also:

Neuhoff Packing Co., 29 N. L. R. B. 746, 771.
Cudahy Packing Co., 29 N. L. R. B. 837, 869.
Wilson & Co., 31 N. L. R. B. 440, 457.
Thompson Products Inc., 33 N. L. R. B. 1033, 1053.
Ohio Valley Bus Co., 38 N. L. R. B. 838, 861.

Although an employer had complied with the recommendation of the Trial Examiner with respect to the disestablishment of a dominated organization, Board made customary 8 (2) order. *Hooven Letters, Inc.*, 43 N. L. R. B. 1309.

Bunte Bros., 26 N. L. R. B. 1419. (Employer directed to continue to refuse to recognize dominated organization previously disestablished in accordance with the Trial Examiner's recommendations.)

Where an employer was found to have dominated two organizations, the Board ordered it to disestablish the successor organization, but made no affirmative order in regard to the predecessor organization which was no longer in existence and the reestablishment of which appeared unlikely. *Dowty Equipment Corp.*, 45 N. L. R. B. 214. See also: *Standard Oil Co.*, 43 N. L. R. B. 12.

Cities Service Oil Company, 32 N. L. R. B. 1020. (Inasmuch as a predecessor dominated organization had become dormant and since the employer had never recognized either the predecessor or successor, disestablishment not ordered. Employer however ordered to refuse to recognize the predecessor and successor organization as representatives or any of its employees.)

Kirk & Son, Inc., 41 N. L. R. B. 807. (Although a dominated organization had been abandoned and a successor organization formed, employer ordered to refrain from according it recognition where employer's conduct in attempting to revive it pointed to possibility that it might again be brought into existence as an active labor organization.)

Jergens Co. of California, 43 N. L. R. B. 457. (Board withheld an order disestablishing an organization found to be employer dominated where said organization had been replaced by another; however, in order to bar a resumption or repetition of the activities which constituted the unfair labor practices, it ordered the employer to cease and desist from dominating, interfering with, or contributing support to it.)

Phillips Petroleum Company, 45 N. L. R. B. 1318. (Where an employer was found to have dominated three organizations, the first two of which were no longer active but had not been effectively disestablished, Board ordered employer to disestablish the third organization and to refrain from recognizing the first two organizations should either return to active existence.) *See* also:

Rushton, 33 N. L. R. B. 954.
Ex-Lax, 34 N. L. R. B. 1095.
Square D Co., 41 N. L. R. B. 1408.
Elizabeth Arden Inc., 45 N. L. R. B. 936.

60 4. *Other circumstances.*

B. IN RESPECT TO AGREEMENT BETWEEN EMPLOYER AND DOMINATED UNION. (*See* § 160.)

61 C. IN RESPECT TO CHECK-OFF ARRANGEMENT WITH DOMINATED UNION.

An employer, who had entered into a contract with a labor organization found to be employer-dominated authorizing it to deduct dues for the organization from the wages of its members, *ordered* to reimburse its employees for amount deducted from their wages as dues for the organization.

The Heller Brothers Co., 7 N. L. R. B. 646, 656, 660. See also:

Lone Star Bag and Bagging Company, 8 N. L. R. B. 244.
West Kentucky Coal Company, 10 N. L. R. B. 88.
Greenebaum Tanning Company, J., 11 N. L. R. B. 300.
Mt. Vernon Car, 11 N. L. R. B. 500.
U. S. Truck Company, 11 N. L. R. B. 706.
Kansas City Power & Light Company, 12 N. L. R. B. 1414.
Greif, L. & Bro., Inc. & The Greif Company, 13 N. L. R. B. 396.
Foote Brothers Gear and Machine Corporation, 14 N. L. R. B. 1045.
Laird, Schober Company, Inc., 14 N. L. R. B. 1152.
Corning Glass Works, Macbeth-Evans Div., 15 N. L. R. B. 598.
Western Union Telegraph Company, The, 17 N. L. R. B. 34.
Gutmann & Company, 18 N. L. R. B. 64.
Alabama Power Company, 18 N. L. R. B. 652.
McGoldrick Lumber Company, 19 N. L. R. B. 887.
Blossom Products Corporation, 20 N. L. R. B. 335.
Lancaster Iron Works, Inc., 20 N. L. R. B. 738.
Virginia Electric & Power Company, 20 N. L. R. B. 911.
Donnelly Garment Company, 21 N. L. R. B. 164.
Continental Oil Company, a Corp., 22 N. L. R. B. 61.
Motor Specialties Corporation, 22 N. L. R. B. 865.
Southwestern Greyhound Lines, Inc., 22 N. L. R. B. 1.
Staley Manufacturing Company, A. E., 22 N. L. R. B. 663.
J. Greenebaum Tanning Co., 25 N. L. R. B. 672.
Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1.
Holmes Silk Company, The, 26 N. L. R. B. 88.
General Aniline Works, Inc., 26 N. L. R. B. 491.
Hughes Tool Company, 27 N. L. R. B. 836.
B. Z. B. Knitting Company, 28 N. L. R. B. 257.
Reliance Manufacturing Co., 28 N. L. R. B. 1051.
Carpenter Baking Company, 29 N. L. R. B. 60.
Peyton Packing Company, Inc., 32 N. L. R. B. 595.
Atlas Press Company, 32 N. L. R. B. 863.
Gerity Whitaker Company, 33 N. L. R. B. 393.
Casady, A. L., et al., 38 N. L. R. B. 1245.
Food Machinery Corp., 41 N. L. R. B. 1428.

Casoff, 43 N. L. R. B. 1193, (dues in behalf of an organization found assisted in violation of Section 8 (1)).

Virginia Electric & Power Co., 44 N. L. R. B. 404.

Where respondent checked off moneys from employees' wages for the purpose of insurance protection and company-dominated union dues, and the record did not show the amounts allocated to each item, the respondent was ordered to repay the whole sum checked off. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1.

An employer who instituted a "check-off system" prior to the effective date of the Act and maintained its existence thereafter *ordered* to reimburse its employees for all amounts deducted from their wages as dues as of the effective date of the Act. *Hughes Tool Co.*, 27 N. L. R. B. 836.

Employer *ordered* to reimburse employees for amount of dues checked off for *dissolved* dominated organization. *Gerity Whitaker Co.*, 33 N. L. R. B. 393. Cf. *Ohio Valley Bus Co.*, 38 N. L. R. B. 838 (no reimbursement ordered).

Employer not ordered to reimburse employees for dues checked off pursuant to invalid closed-shop contract with employer-assisted union, despite charging union's objection since such order was unnecessary to effectuate policies of Act under circumstances of case, particularly where the beneficiary of employer's extensive unfair labor practices was not ordered disestablished. *Karron*, 41 N. L. R. B. 1454.

Ohio Valley Bus Company, 38 N. L. R. B. 838. (Under circumstances of case Board *held* it would not effectuate the policies of the Act to require respondent to reimburse employees for money checked off from their wages pursuant to contracts made with defunct dominated organization.)

Where bylaws of dominated organization required members to execute check-off authorizations under penalty of being dropped from membership and failure to do so would consequently result in the loss of their jobs by reason of invalid closed-shop contract with that organization, Board found that monies were coerced and exacted from employees for the illegal purpose of maintaining the dominated organization, that employees thereby had suffered a definite loss and deprivation of wages equal to amounts deducted, and that the policies of the Act could only be effectuated by restoring the *status quo* through an order

requiring employer to reimburse employees for amounts deducted. *Virginia Electric and Power Co.*, 44 N. L. R. B. 404. See also:

Mt. Vernon Car Mfg. Co., 11 N. L. R. B. 500.
Casady, 38 N. L. R. B. 1245.
Food Machinery Corp., 41 N. L. R. B. 1428.
Cassoff, 43 N. L. R. B. 1193.

70 D. OTHER ORDERS.

Employer *ordered* to cease and desist from permitting its overseers, second hands, and other supervisory officials to remain or become officers or members of an employer-dominated labor organization, to participate in its activities, and to solicit membership in it. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 120–121.

Employer *ordered* to cease and desist from affording an employer-dominated labor organization the privileges of having its dues collected by the employer from the wages of its members and of soliciting for members during working hours and on the employer's property unless similar privileges are offered to an outside labor organization and any other labor organization of its employees. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 120–121.

Employer *ordered* to prohibit the use of its property for meetings of any labor organization unless free and unconditional privilege for the use thereof is also extended to any other labor organization of its employees. *Wallace Mfg. Co., Inc.*, 2 N. L. R. B. 1081, 1093.

Employer *ordered* to prohibit the use of its bulletin boards for posting of notices by a labor organization found to be employer-dominated, or any other labor organization of its employees unless free and unconditional privileges as to the use thereof shall be equally extended to an outside labor organization, and to any other labor organization of its employees. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 146, 147.

Employer who enlisted aid of institutional respondents and cooperated with them in introducing and supporting a dominated organization *ordered* to cease and desist from confederating or conspiring with such respondents or with any other individual or group for similar unlawful purposes. *Kirk & Son, Inc.*, 41 N. L. R. B. 807.

IV. ORDERS TO EMPLOYER ENGAGING IN ENCOURAGEMENT OR DISCOURAGEMENT OF MEMBERSHIP IN A LABOR ORGANIZATION BY DISCRIMINATION, WITHIN SECTION 8 (3).

A. IN GENERAL.

Employers found to have violated Section 8 (3) *ordered* to cease and desist from discouraging membership in a specified labor organization, or any other labor organization of their employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 51, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 397, 456, 519, 621, 771, 821, 837, 869, 946, 989, 1004, 1126, 1166, 1362
Vol. 26—pp. 1, 88, 177, 198, 273, 297, 424, 582, 662, 765, 823, 878, 921, 937, 1094, 1182, 1244, 1353, 1398, 1419, 1440
Vol. 27—pp. 118, 352, 521, 813, 864, 878, 976, 1040, 1257, 1321
Vol. 28—pp. 64, 79, 116, 357, 442, 540, 572, 619, 667, 869, 975, 1057, 1197
Vol. 29—pp. 360, 556, 673, 837, 783, 939
Vol. 30—pp. 146, 170, 314, 382, 426, 550, 809, 888
Vol. 31—pp. 71, 101, 196, 365, 621, 715, 786
Vol. 32—pp. 195, 338, 387, 536, 863, 895, 1020, 1145
Vol. 33—pp. 191, 263, 351, 511, 557, 710, 858, 885, 954, 1170
Vol. 34—pp. 346, 502, 539, 610, 700, 785, 815, 866, 896, 917, 968, 1028, 1052, 1068, 1095
Vol. 35—pp. 63, 217, 605, 810, 857, 968, 1128, 1220, 1334
Vol. 36—pp. 240, 288, 411, 545, 1220, 1294, 1307
Vol. 37—pp. 50, 334, 499, 578, 631, 700, 725, 1059, 1174
Vol. 38—pp. 65, 234, 357, 555, 690, 778, 813, 838, 866, 1176, 1210, 1245, 1359
Vol. 39—pp. 107, 344, 501, 709, 1130, 1269
Vol. 40—pp. 323, 424, 652, 736, 967, 1058
Vol. 41—pp. 263, 288, 326, 409, 521, 537, 674, 843, 872, 1078, 1278, 1288, 1327, 1408, 1474
Vol. 42—pp. 356, 457, 593, 852, 866, 942, 1051, 1073 1086, 1160, 1375

See following page references for additional decisions:
Vol. 25—pp. 456, 869, 946, 1166, 1312
Vol. 26—pp. 582, 679, 937, 975
Vol. 27—pp. 864, 1021, 1300, 1338
Vol. 28—pp. 79, 208, 847, 1051
Vol. 29—pp. 746, 873
Vol. 30—pp. 146, 188, 382, 440, 739, 820, 1027, 1080
Vol. 31—pp. 71, 715, 1179
Vol. 32—pp. 505, 895
Vol. 33—pp. 233, 393, 557, 1184
Vol. 34—pp. 457, 651, 700, 760, 917, 1068
Vol. 35—p. 936
Vol. 36—pp. 240, 1307, 1329
Vol. 37—pp. 100, 334, 405, 649, 662, 725, 839
Vol. 38—pp. 357, 778
Vol. 39—pp. 344, 1245, 1286
Vol. 40—pp. 107, 652
Vol. 41—pp. 218, 263, 444, 537, 807, 1327, 1383, 1428
Vol. 42—pp. 85, 119, 866, 1160, 1375
Vol. 43—pp. 125, 348, 874, 989, 1193, 1277
Vol. 44—pp. 604, 834, 898, 920, 1013, 1200
Vol. 45—pp. 377, 448, 836, 869, 987, 1113

2 B. ORDERS TO EMBODY UNDERSTANDINGS REACHED IN A CONTRACT.

Employer who violated Section 8 (5) by refusing to embody any understandings reached in a signed agreement *ordered* upon request to bargain collectively and to embody any understanding reached in a signed agreement. *Inland Steel Co.*, 9 N. L. R. B. 783, 818, reversed and remanded for new hearing 109 F. (2d) 9 (C. C. A. 7). See also:

St. Joseph Stock Yards Co., 2 N. L. R. B. 39, 56.
Federal Carton Corp., 5 N. L. R. B. 879, 888.
Piqua Munisingwood Wood Products Co., 7 N. L. R. B. 782, 791.
Western Felt Works, 10 N. L. R. B. 407, 423, 466.
Art Metals Construction Co., 110 F. (2d) 148 (C. C. A. 2), modifying 12 N. L. R. B. 1307.
Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4), enforcing 12 N. L. R. B. 1238.
Sunshine Mining Co., 110 F. (2d) 780 (C. C. A. 9), enforcing 7 N. L. R. B. 1252.

H. J. Heinz Co., 110 F. (2d) 843 (C. C. A. 6), enforcing 10 N. L. R. B. 963.

Cf. *Inland Steel Co.*, 109 F. (2d) 9 (C. C. A. 7), remanding for new hearing 9 N. L. R. B. 783.

Fort Wayne Corrugated Paper Co., 111 F. (2d) 869 (C. C. A. 7), modifying 14 N. L. R. B. 1.

Employer *ordered* to bargain and to reduce to writing any understanding reached when it had expressed a determination not to sign an agreement with the union, although the refusal to bargain was based on other grounds in addition to the refusal to sign an agreement. *Moltrup Steel Products Co.*, 19 N. L. R. B. 471.

See following page references for additional decisions:

Vol. 25 — p. 1312
Vol. 26 — p. 679
Vol. 28 — pp. 208, 847
Vol. 29 — pp. 746, 873
Vol. 30 — pp. 188, 1027
Vol. 33 — p. 233
Vol. 34 — p. 457
Vol. 36 — pp. 210, 411
Vol. 37 — pp. 100, 405, 725
Vol. 38 — p. 778
Vol. 39 — pp. 970, 1286

93 C. EFFECT UPON ORDERS OF ALLEGED LOSS OF MAJORITY

The Board is justified in ordering an employer to bargain collectively with a labor organization which lost its majority because of the unfair labor practices of the employer. *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318, enforcing 4 N. L. R. B. 604, and reversing 106 F. (2d) 119 (C. C. A. 1).

See also:

National Licorice Co. v. *N. L. R. B.* 309 U. S. 350, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

Somerset Shoe Co., 5 N. L. R. B. 486, 493, remanded 111 F. (2d) 681 (C. C. A. 1).

Gates Rubber Co., 13 N. L. R. B. 158.

New Era Die Co., 19 N. L. R. B. 227.

Valley Mold and Iron Co., 20 N. L. R. B. 211.

Clarksburg Publishing Co., 25 N. L. R. B. 456.

Fiss Corp., 43 N. L. R. B. 125.

Dominic Meaglia, 43 N. L. R. B. 1277.
Hirsch Mercantile Co., 45 N. L. R. B. 377.

An order of the Board requiring an employer to negotiate with a union representing the majority of its employees carries with it no assurance of perpetual tenure for that union, and if it later loses its majority, a refusal of the employer to treat with it for that reason in good faith will not be treated as contempt by the court, until after the Board has conducted an investigation of representatives pursuant to Section 9 (c) and has certified the result. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

A union's majority which was shown to have existed through a strike and after the employees returned to work, when the respondent's refusal to bargain was already complete, will be presumed to have continued in the absence of strong evidence to the contrary. As such employer's contention that there was no evidence to support a finding that the union continued to represent a majority following the strike and that the Board should conduct an election among the employees before ordering the respondent to bargain with the union, *held* without merit. Further, evidence that the employer had discharged "dues delinquents" at the request of the union, *held* insufficient to overcome the presumption of continuance and that any dissipation following the termination of the strike must be attributed to the unfair labor practices of the respondent in refusing to bargain with the union, and as such cannot operate to deprive the union of its rightful status as the exclusive representative of the employees in the appropriate unit. *Martin Brothers Box Co.*, 35 N. L. R. B. 217, 241, 242.

Although there has been an increase in the unit resulting in the union's loss of majority following employer's refusal to bargain collectively with the union, the Board based its order requiring employer to bargain upon the majority obtaining on the date of the refusal to bargain, on the ground that a fortuitous increase in the number of employees in the appropriate unit should not relieve the employer of its duty to bargain, since the Board to effectuate the policies of the Act must restore the *status quo* before the employer's unfair labor practices were committed and secure to the employees their right to bargain

through the representatives they have selected. *Sanco Piece Dye Works, Inc.*, et al., 38 N. L. R. B. 690.

Bloomfield Mfg. Co., 22 N. L. R. B. 83, 105. (Order to bargain based on Union's majority at date of refusal prior to discriminatory discharges; although unit later increased in size, and Union presently represents a minority even with reinstatement of discharged employees: unfair labor practices of respondents cannot preclude Union from opportunity to secure as members some of additional employees in unit.)

Clarksburg Publishing Co., 25 N. L. R. B. 456, 476. (Notwithstanding that as of the date of the hearing, the composition of the unit had been altered by two resignations and the discharge of a third, who were replaced by new employees and that upon the reinstatement of the discharged person the union would represent 7 of the 18 employees in the unit, employer ordered to bargain with labor organization which represented a majority of the employees at the date of the refusal to bargain, when employer by its unfair labor practices had secured resignation from the union and since it appeared that new employees had not been requested to join the union because of such practices it was highly likely that the organization would represent a majority within the unit. Further, to permit the employer by such conduct to preclude the exclusive representative from the very real probability of obtaining as members at least some of the newly hired employees would permit it to evade their duty under Section 8 (5) of the Act by the simple expedient of violating other provisions of the Act. As such, and in order to effectuate the policies of the Act, the Board must restore, as nearly as possible the *status quo* before the unfair labor practices were committed and secure to the employees their right to bargain through representatives they have selected with full freedom of choice.)

Medo Photo Supply Corporation, 43 N. L. R. B. 989. (Where respondent's act in dealing with its individual employees occasioned the initial defections from the union, it cannot be permitted to evade its duty to bargain with the union by reason of the fact that new employees, who are not shown to be members of the union, have since been hired to replace some of those who were members of the union; for Board must assume that, absent the unfair labor practices of the respondent, the union would have been

able to obtain as members at least some of the new employees and would have maintained its majority status despite the turn-over of personnel; accordingly, employer ordered to bargain collectively as nearly as possible, the *status quo* before the unfair labor practices were committed) *Franks Bros. Company*, 44 N. L. R. B. 898. (Notwithstanding employer's alleged assertion at oral argument that a sufficient number of union members had left its employ by that date to effect the union's majority, *held* that loss of majority is not determinative of the remedy to be ordered, and that the only means by which a refusal to bargain can be remedied is by an affirmative order requiring employer to bargain with the union which represented a majority at the time the unfair labor practice was committed.)

Alleged shift in membership subsequent to refusal to bargain, held not to affect findings of refusal to bargain or order to bargain collectively. *Marshall Field & Co.*, 43 N. L. R. B. 874. Cf. *Foote Bros. Gear & Machine Corp.*, 14 N. L. R. B. 1045 (no affirmative order issued when no showing that the union continued to represent a majority of the employees after a change in affiliation).

D. EFFECT UPON ORDERS OF CESSATION, REMOVAL OR CHANGE OF MODE OF OPERATIONS.

Employer found to have refused to bargain collectively with the representative of his employees, and who had later ceased engaging in the operations which the employees performed, *ordered* to cease and desist from engaging in such unfair labor practices, and to bargain collectively with the representative, upon request, in the event that the employer reengages in his former operations. *N. Kiamie*, 4 N. L. R. B. 808, 813. See also: *Norwich Dairy Co.*, 25 N. L. R. B. 1166, 1183 (where record indicated that that respondent might resume the conduct of the business which it had transferred to another company).

Employer found to have violated Section 8 (5) and, among other things, found to have closed its plant and removed operations to another of its plants in order to evade bargaining collectively with the representatives of its employees *ordered* to bargain collectively with the organization representing the majority of its employees in an appropriate unit in the event that it reopens the closed plant, but if the discharged employees of the closed plant are reinstated at the plant to which operations have been

removed, the order not to be construed to required the employer to bargain collectively with the organization as the representative of the employees at the latter plant since it is uncertain whether the organization will then represent a majority of the employees in an appropriate unit. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 325.

Where employer's business was closed at the time of the hearing and, allegedly, was not to reopen, no affirmative order to bargain was issued, but employer was ordered to cease and desist refusing to bargain in the event he should reenter the same or substantially similar business. *Ray Nichols, Inc.*, 15 N. L. R. B. 846.

Metal Textile Corp., 47 N. L. R. B. 743. (No affirmative order issued in view of the curtailment of employer's operations due to war conditions and the improbability that such operations would be resumed until after the war, if then.)

§ 100 E. OTHER ORDERS.

Respondent ordered to bargain with craft union despite existence of agreement with industrial union covering in general terms the craft group, because such contract did not specifically relate to the working conditions of the craft group and because respondent had refused to bargain with craft union prior to execution of contract with industrial union. *Bussmann Mfg. Co.*, 14 N. L. R. B. 322.

[*See* INVESTIGATION AND CERTIFICATION §§ 21–40 (as to effect of existing contract upon question concerning representation).]

§ 101 ORDERS TO EMPLOYER CAUSING OR PROLONGING STRIKE BY UNFAIR LABOR PRACTICES.

[*See* § 103 (as to reinstatement orders), § 106 (as to conditions precedent to reinstatement and back-pay orders), and § 132 (as to period for which back pay is awarded).]

VIII. REINSTATEMENT AND BACK-PAY ORDERS

A. REMEDY FOR UNFAIR LABOR PRACTICES.

§ 102 1. *In general.*

Employer engaging in unfair labor practices by discriminating against employees in regard to hire, tenure, terms, or conditions of employment *ordered* to offer employees reinstatement and back pay where such order will effectuate the policies of the Act. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48, enforcing 1 N. L.

R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5); (violation of Section 8 (3)).

[For kinds of 8 (3) acts remedied by reinstatement orders, *see:* UNFAIR LABOR PRACTICES §§ 421–480.]

Ingram Mfg. Co., 5 N. L. R. B. 908, 929; (violation of Section 8 (1).)

Friedman-Harry Marks Clothing Co., 1 N. L. R. B. 411, 428, 431, enforced 301 U. S. 58, reversing 85 F. (2d) 1 (C. C. A. 2); (violation of Section 8 (4).)

[For additional 8 (1) and 8 (4) reinstatement orders *see:* § 29, 81, 90, and UNFAIR LABOR PRACTICES §§ 36, 601–603.]

Employer who discharged and refused to reinstate employees thereby engaging in unfair labor practices, *ordered* to reinstate them with back pay to their former or substantially equivalent positions, to dismiss all employees hired during or after the discharges, if necessary, to provide employment for those to be offered reinstatement, and if, thereupon, by reason of reduction in force there is not sufficient employment immediately available for remaining employees, including those to be offered reinstatement, all available positions to be distributed among such remaining employees in accordance with employer's usual method of reducing its force, without discrimination against any employee because of his affiliation or activities with, or on behalf of, a labor organization, following a system of seniority to such extent as has heretofore been applied in the conduct of the employer's business, and those employees remaining after such distribution, though no employment is immediately available, to be placed upon a preferential list prepared in accordance with the principles set forth above, and to be offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work. *Hamilton-Brown Shoe Co.*, 9 N. L. R. B. 1073, 1141, modified 104 F. (2d) 49 (C. C. A. 8).

SPECIAL TYPES OF REINSTATEMENT ORDERS

Where the discriminatory termination of employment caused the discriminatee to lose his insurance rights pursuant to a group-insurance policy employer *ordered* to procure for the discriminatee the restoration of those or substantially equivalent insurance rights. *Continental Oil Co.*, 12 N. L. R. B. 789, 821.

Cottrell & Sons Company, C. B., 34 N. L. R. B. 457. (*Held:* that the restoration of insurance rights which employees lose as an incident of an employer's discrimination is within the power of the Board to exercise.)

Employee ordered reinstated without prejudice to right to participation in employer's employees' retirement plan, despite employee's withdrawal therefrom following discriminatory discharge. *Bank of America National Trust & Savings Assn.*, 14 N. L. R. B. 207.

Employer who discriminatorily refused an employee sick benefits, *ordered* to pay that employee the amount of sick benefits which would have been paid absent the discrimination. *Surpass Leather Co.*, 21 N. L. R. B. 1258.

Employer ordered to offer to discriminatorily discharged employees immediate occupancy of their former or substantially equivalent living quarters in the company-owned houses from which they were evicted. *Davidson Granite Co., Inc.*, 24 N. L. R. B. 370. See also: *Great Western Mushroom Co.*, 27 N. L. R. B. 352. *Abbott Worsted Mills, Inc.*, 36 N. L. R. B. 545.

Employer ordered to reinstate discriminatorily discharged employee who failed to earn the minimum wage required under the Fair Labor Standards Act, for a minimum period of 4 months under working conditions that would afford her a reasonable opportunity to earn the minimum wage required under the Fair Labor Standards Act and thereafter to continue her as a regular employee if her average weekly earnings during the last 3 weeks of the 4-month period were at least equal to the minimum wage required under the Fair Labor Standards Act. *Hawk & Buck Company, Inc.*, 25 N. L. R. B., No. 837.

Where an employer in the course of an otherwise legitimate reduction of force discriminated against union members in selecting employees to be laid off but where, because of the large union membership, many union members would probably have been included in a non-discriminatory layoff, the reinstatement of discriminatees was ordered effected by the distribution of all available positions in accordance with the employer's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities and following a system of seniority to such extent as had heretofore been applied in the conduct of the business. *F. W. Woolworth Co.*, 25 N. L. R. B. 1362, 1380.

Discrimination in the form of a refusal to hire by imposing stock ownership in a new company as a condition of employment *held* remedied by an order that the new company offer stock and employment to those discriminated against, or in the alternative offer regular employment without stock to those discriminated against. *Olympia Shingle Co.*, 26 N. L. R. B. 1398.

Employee who was refused reinstatement in part because of his union activity, but who was alleged to be unfit for work, *ordered* reinstated provided he could obtain a doctor's certification of his fitness for employment. *Phelps Dodge Corp.*, 28 N. L. R. B. 442, 487.

Employee whose working hours were unlawfully reduced *ordered* restored to hours of employment of other employees with whom he was employed on a parity prior to date of discrimination. *Pick Manufacturing Company*, 35 N. L. R. B. 1334.

Employer ordered to restore to employee discriminatorily denied newspaper byline privilege, such privilege in manner and extent which would obtain absent the unfair labor practices. *Carrington Publishing Company, The, et al.*, 42 N. L. R. B. 356.

Employee who was discriminatorily deprived of his turn to part-time supervisory position *ordered* to be restored and entitled to such position when and as it should be scheduled. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

03 2. *Strike caused or prolonged by unfair labor practices.*

Employer causing a strike by unfair labor practices *ordered* to reinstate strikers with back pay. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 23 (C. C. A. 9), enforcing 4 N. L. R. B. 679. See also:

Biles-Coleman Lumber Co., 4 N. L. R. B. 679.
Foster Bros. Mfg. Co., Inc., 1 N. L. R. B. 880, 889, 890.
Republic Steel Corp., 9 N. L. R. B. 219, 386, 387.
Mountain City Mill Co., 25 N. L. R. B. 397.
Ohio Fuel Gas Co., 25 N. L. R. B. 519.
Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1.
National Seal Corp., 27 N. L. R. B. 102.
Bingler Motors, Inc., 27 N. L. R. B. 932.
Delaware-New Jersey Ferry Co., 27 N. L. R. B. 646.
Neuhoff Packing Co., 29 N. L. R. B. 746.
Heilig Bros. Co., 32 N. L. R. B. 505.
Rapid Roller Co., 33 N. L. R. B. 557.

Eclipse Moulded Products Company, 34 N. L. R. B. 785.
Great Southern Trucking Company, 34 N. L. R. B. 1068.
Long Lake Lumber Co., 34 N. L. R. B. 700.
Security Warehouse & Cold Storage Co., 35 N. L. R. B. 857.
Burke Machine Tool Co., The, 36 N. L. R. B. 1329.
Montgomery Ward & Co., 37 N. L. R. B. 100.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.
Bear Brand Hosiery Co., 40 N. L. R. B. 323.
Karron, Abraham B., 41 N. L. R. B. 1454.
Barrett Company, 41 N. L. R. B. 1327.
V-O Milling Co., 43 N. L. R. B. 348.
Fiss Corporation, 43 N. L. R. B. 125.

Employer prolonging a strike by unfair labor practices *ordered* to reinstate strikers with back pay. *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879 (C. C. A. 2), enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579. See also:

Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153.
Manville Jenckes Corp., 27 N. L. R. B. 292.
Black Diamond Steamship Corp. v. *N. L. R. B.*, 94 F. (2d) 875 (C. C. A. 2), enforcing 3 N. L. R. B. 84.
Wilson & Co., Inc., 26 N. L. R. B. 1353.

An employer, who has reinstated certain striking employees and treated them as if they were newly employed, without the seniority and other rights and privileges they enjoyed prior to the strike, *ordered* to restore to such employees their seniority and other rights and privileges. *Western Felt Works, a Corp.*, 10 N. L. R. B. 407, 450, 455.

Cottrell & Sons Company, C. B., 34 N. L. R. B. 457. (Employer who deprived unfair labor practice strikers of group insurance privileges upon resumption of employment *ordered* to restore to the striking employees the same insurance privileges and also to make whole the beneficiary of a deceased striking employee for the amount that would have been payable had the employer not deprived such deceased employee of his rights and privileges of insurance.)

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (Unfair labor practice strikers' reemployment for 6 days after falsifying that she did not belong to the union *held* not to constitute reinstatement to former or substantially equivalent position to warrant denying her appropriate relief where her lay-off during a period when work in plant had not slackened was unexplained.)

A. Sartorius & Co., Inc., 40 N. L. R. B. 107. (Unfair labor practice striking employee who was reinstated after employer discriminatorily refused to reinstate her, but subsequently was compelled to quit by reason of employer's discrimination toward her, *ordered* reinstated and awarded back pay between date employer unlawfully refused to reinstate her to date of her reinstatement, less amounts earned in any employment including amounts earned from employer during period of her reinstatement.)

Employer whose unfair labor practices caused a strike *ordered*, upon application, to offer reinstatement to their former or substantially equivalent positions to those of its employees who went out on strike and have not been fully reinstated, without prejudice to seniority and other rights and privileges; such reinstatements to be effected by dismissing, if necessary, all persons hired after the date of the commencement of the strike and who were not on the pay roll as of that date, and if thereafter there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions to be distributed among such remaining employees in accordance with the employer's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activity, following a system of seniority to such an extent as had previously been applied in the conduct of the employer's business; and those employees remaining after such distribution, for whom no employment is immediately available, to be placed on a preferential list prepared in accordance with the principles above set forth, such persons to be offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work. *Denver Automobile Dealers Assn. et al.*, 10 N. L. R. B. 1173, 1218.

Unfair labor practice strikers are reinstated and awarded back pay despite respondent's contention that they are not entitled thereto because they struck in violation of contract. *United Biscuit Company of America*, 38 N. L. R. B. 778.

Although strike found to have been caused by unfair labor practices was st ll in progress at time of the hearing and there was no allegation that employer refused to rein-

state strikers Board *ordered* their reinstatement in accordance with its usual practice. *American Bread Company*, 44 N. L. R. B. 970.

Employer ordered to offer reinstatement to those strikers who had applied for reinstatement and upon application to those strikers who had not applied for reinstatement, although a strike settlement agreement provided for their reinstatement, when the record did disclose what steps if any, the employer had taken pursuant to the agreement. *Helene Rubinstein, Inc.*, 42 N. L. R. B. 898.

104 B. PERSONS INCLUDED WITHIN REINSTATEMENT AND BACK-PAY ORDERS.

Only "employees," as defined in Section 2 (3) of the Act may be reinstated. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 537 (C. C. A. 9), enforcing back-pay provision of 2 N. L. R. B. 248, cert. denied 306 U. S. 646.

The time when men are to be considered as "employees" for the purposes of reinstatement is as of the time the Board issues its order, and if the men were not "employees" at that time the Board would have no power to order their reinstatement. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533. 537 (C. C. A. 9), enforcing back-pay provision of order in 2 N. L. R. B. 248, cert. denied 306 U. S. 646.

Only those who are employees within the definition of the Act at the time of the making of the Board's order may be ordered reinstated, and although a finding that employees ordered reinstated have not gained substantially equivalent employment is helpful to the court it is not essential to the validity of an order of the Board, for an order directing reinstatement of employees must be understood in the absence of a contrary finding as applicable only to those who are such within the Act's definition. *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 661, 662 (C. C. A. 9), modifying 5 N. L. R. B. 409.

There is nothing in the Act which limits the reinstatement remedy to members of labor organizations nor even to striking employees who are primarily and directly aggrieve by an unfair labor practice which causes a strike, for an entire crew, union or non-union, may strike by reason of an unfair labor practice involving the discharge of only one man, and it could hardly be contended that reinstatement of the entire crew in such case would not be a reasonable measure for effectuating the policies of the Act

under Section 10 (c). *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 23 (C. C. A. 9), enforcing 4 N. L. R. B. 679. See also: *Rapid Roller Co.*, 33 N. L. R. B. 557, 595 [non-union member, strike sympathizer].

Employer, found to have discriminatorily discharged a sub-foreman *ordered* to reinstate him with back pay. *Triplett Electric Instrument Co., et al.*, 5 N. L. R. B. 835, 848, 860. See also:

American Potash & Chemical Corp., 3 N. L. R. B. 140, 159, 167, enforced 98 F. (2d) 448 (C. C. A. 9); (order requiring reinstatement with back pay for foreman).

Biles-Coleman Lumber Co., 4 N. L. R. B. 679, 706, 708, enforced 98 F. (2d) 18 (C. C. A. 9); (order requiring reinstatement of supervisors who joined other employees in strike).

Hazel-Atlas Glass Company, 34 N. L. R. B. 346, (order requiring reinstatement and back pay of foreman).

Board held that since Section 10 (c) of the Act expressly permits the Board to require upon a finding of unfair labor practices ". . . such affirmative action . . . as will effectuate the policies of the Act," it is thereby empowered to order the employment with back pay of individuals who were not employees of the respondent but who, absent the respondent's discriminatory refusal of employment contrary to Section 8 (3) of the Act, would have been hired and paid wages. *Mountain City Mill Company*, 25 N. L. R. B. 397, 448. See also: *Phelps Dodge Corp.*, 19 N. L. R. B. 547, 599. *Waumbec Mills, Inc.*, 15 N. L. R. B. 37. *Boswell Co.*, 35 N. L. R. B. 968.

Montgomery Ward & Co., Inc., 4 N. L. R. B. 1151, 1168, remanded for new hearing 103 F. (2d) 147 (C. C. A. 8); (Employer found to have discriminatorily refused employment to a person who had been temporarily employed on previous occasions, *ordered* to place the employee on a preferential list for temporary employment in work of the nature he had previously done for the employer and to offer him such employment when available.) See also: *Algonquin Printing Co.*, 1 N. L. R. B. 264, 272, 273; (back pay from date former employees applied for position and were refused).

Gates Rubber Company, 40 N. L. R. B. 424. (Employer found to have discriminatorily refused reemployment to a former employee *ordered* to offer him employment in the position to which he would have been assigned absent the

discrimination.) See also: *Swift & Co.*, 30 N. L. R. B. 550, 567, 576.

Gates Rubber Co., 40 N. L. R. B. 424. (Employee who left employment under an arrangement which permitted him to return to work within a prescribed time and who was refused reinstatement upon application, *ordered* reinstated.)

In aid of order requiring employer to place employees whose work ceased as a consequence of removal of operations from one plant to another upon a preferential list for employment, employer is ordered to make such persons whole for any loss of pay they or any of them will have suffered by reason of a refusal to place them on a preferential list or offer them employment in the manner set forth above. *Brown-McLaren Manufacturing Company*, 34 N. L. R. B. 984.

Employee who would have been discharged because of inefficiency at normal seasonal shut-down date but whose termination of employment was illegally advanced by a discriminatory lock-out, awarded back pay between date of discrimination and date his employer would normally have terminated his employment without discriminatory motive. *Cowell Portland Cement Company*, 40 N. L. R. B. 652.

[*See* §§ 111–130 (as to the effect of various circumstances upon the inclusion of persons within reinstatement and back pay orders), DEFINITIONS §§ 1–30 (as to persons who are employees within the meaning of the Act), and UNFAIR LABOR PRACTICES §§ 411–420 (as to persons entitled to the protection of the Act).]

C. CONDITIONS PRECEDENT TO REINSTATEMENT AND BACK-PAY ORDERS.

105 1. *In general.*

A condition of reinstatement is that the employer must have been guilty of an unfair labor practice; and another condition is that the affirmative action must be such as will effectuate the policies of the Act. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 537 (C. C. A. 9), enforcing back-pay provisions of 2 N. L. R. B. 248, cert. denied 306 U. S. 646.

Employees who have been discriminated against in regard to hire, tenure, terms, or conditions of employment are entitled to be reinstated with back pay without prior application for reinstatement. *Pennsylvania Greyhound*

Lines, Inc., 1 N. L. R. B. 1, 38, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3). Cf. *Hemp & Co.*, 9 N. L. R. B. 440, 462.

An employer had an unlawful motive for refusing a worker's application for reemployment. The Board could not determine definitely from the record whether or not the employer would have acted favorably upon the application in the absence of such unlawful motive. The Board, therefore, did not order the employer to offer the worker immediate reinstatement. In view, however, of the substantial expectancy of obtaining employment which the worker enjoyed at the time of the application but which was defeated because of the employer's unlawful motive, the Board ordered the employer to place the worker on a preferential list on the ground that such affirmative action would best effectuate the policies of the Act. In order to provide for the contingency that the worker would have been given work in the absence of the employer's unlawful motive, the Board ordered the employer to give him as back pay the amount which he would have earned had the employer not discriminated against him. *Dow Chemical Co.*, 13 N. L. R. B. 993.

106 2. *In respect to strikers.*

In proceedings to enforce an order of the Board, employer complained of that portion of order which required reinstatement "upon application" of unfair labor practice strikers who have not obtained regular and substantially equivalent employment elsewhere on ground that it placed no limit on the time within which such application might be made. *Held:* Order interpreted to mean that applications must be made within a reasonable time from the order of the Board, and inasmuch as the strike was still in progress the setting of a definite time limit for such applications was not feasible at the time of the issuance of the order. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 23 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

The failure of striking employees to apply for reinstatement is no bar to the securing of such relief as is offered by the Act where, due to the activities of the employer in recruiting workers in order to reopen its plant, the conditions of reinstatement which required them to sign applications for membership in an inside labor organization were well known to all the strikers, and it would consequently have been futile for them to have applied for reinstatement

unless they were willing to relinquish their membership in an outside labor organization. *Lion Shoe Co.*, 2 N. L. R. B. 819, 931, set aside 97 F. (2d) 448 (C. C. A. 1).

When employees voluntarily go on strike, even if in protest against unfair labor practices, they are not to be awarded back pay during the strike, but when the strikers abandon the strike and apply for reinstatement despite the unfair labor practice, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, considerations impelling a refusal to award back pay are no longer controlling, and accordingly, where an employer refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their membership in or activities on behalf of a labor organization, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any loss of pay they may have suffered by reason of the employer's discriminatory act. *American Mfg. Co.*, 5 N. L. R. B. 443, 467, modified 309 U. S. 629, affirming 106 F. (2d) 61 (C. C. A. 2). See also: *Western Felt Works*, 10 N. L. R. B. 407, 448.

While ordinarily employees who have been discriminatorily discharged or locked out are not required to apply for reinstatement, nevertheless employees who have been locked out must request reinstatement where they have taken the position at the hearing that they would not accept an offer of reinstatement unless the employer would recognize the labor organization of which they were members as their bargaining representative, and where other employees had previously refused an offer of reinstatement during the lock-out for the same reason. *Hemp & Co.*, 9 N. L. R. B. 440, 462.

An employee who went on strike because of the employer's unfair labor practices and failed to return to work, at first, because he did not know that the strike had ended and later, when he did so learn, did not apply for reinstatement because of a sign on the door of the plant stating that all positions were filled and that no other persons would be hired, is nevertheless entitled to reinstatement upon application. *Sigmund Freisinger*, 10 N. L. R. B. 1043, 1055, 1056.

Where a strike has been caused by unfair labor practices, employees whose names were placed on a list comprised

of individuals whose reinstatement was to be further arbitrated under the terms of a strike-settlement agreement ordered reinstated with back pay from the day after the strike was settled without further application. *Douglas Aircraft Co.*, 10 N. L. R. B. 242, 281.

An employer unlawfully refused to reinstate unfair labor practice strikers; a striker who was in the hospital at the time of such refusal need not apply for reinstatement as a condition precedent to obtaining reinstatement and back pay where the employer's refusal of reinstatement was not based on the fact that the striker was in the hospital. *Western Felt Works*, 10 N. L. R. B. 407, 432. See also: *Fanny Farmer Candy Shops, Inc.*, 10 N. L. R. B. 288, 295, 296, 308.

Held, that discriminatorily locked-out employees were under no obligation to seek reinstatement on their own initiative, and that, even though such employees were on an unfair labor practice strike on the day following the lock-out, it was unnecessary for them to apply for reinstatement when it was known to them that their reinstatement would be subject to the illegal condition that they join an employer-assisted union. *Cowell Portland Cement Company*, 40 N. L. R. B. 652.

[*See* UNFAIR LABOR PRACTICES §§ 452–454 (as to necessity for application for reinstatement as a condition precedent to a finding of a discriminatory refusal to reinstate following a strike).]

06.1 3. *Necessity that back pay be coupled with reinstatement orders or that reinstatement be coupled with back pay.*

For decisions in which back pay was ordered without reinstatement, *see:* §§ 107–110, 137.2 (where employees engaged in misconduct), §§ 111–118, 123, 125.1–125.3, 137, 1371.1 (availability of or for work), § 137.4 (reinstatement following discrimination).

N. L. R. B. v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 537, (C. C. A. 9), enforcing 2 N. L. R. B. 248, cert. denied 306 U. S. 646. (While the Act permits the Board to reinstate employees with or without back pay, it does not permit an award of back pay without reinstatement, because the back-pay provision in the Act is connected with and dependent upon the reinstatement provision.) See also: *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9), modifying 5 N. L. R. B. 409.

4. *Necessity of employee status.* (*See* § 104.)

D. EFFECT OF MISCONDUCT UPON REINSTATEMENT AND BACK-PAY ORDERS. [*See* EVIDENCE § 22 (as to the admissibility of matter tending to show violence or misconduct on part of employees).]

107 1. *In general.*

Employees who have engaged in violent or unlawful conduct during an unfair labor practice strike *ordered* reinstated where such conduct did not render the employees guilty thereof unsuitable for further employment, where reinstatement would not tend to encourage violence in labor disputes, and where such reinstatement would effectuate the policies of the Act. *Republic Steel Corp.*, 9 N. L. R. B. 219, 393, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U. S. 684.

Evidence of acts of violence committed by unfair labor practice strikers is relevant on the issue of whether it would effectuate the policies of the Act to order their reinstatement, and the Board considers evidence of convictions and pleas of guilty of acts of violence committed by individual strikers in connection with the strike, but it will not attempt to try accusations of violence which do not result in convictions or sentences upon pleas of guilty. *Republic Steel Corp.*, 9 N. L. R. B. 219, 387, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U. S. 684.

Offer of proof that strikers damaged the employer's property, as a basis for establishing set-offs or recoupments against back wages ordered by the Board, *denied*, for there is no basis for such a claim in a controversy of a public character where conformance is sought with the public policy of the United States, as expressed in a statute, and where those to whom the Board has awarded back pay are not private litigants in the cause. *Republic Steel Corp.*, 9 N. L. R. B. 219, 399, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U. S. 684.

Alleged misconduct held not to bar reinstatement where it was engendered by respondent's unfair labor practices, was of a kind likely to occur during a labor dispute, and no conviction for criminal offenses was had. *Ford Motor Co.*, 31 N. L. R. B. 994.

Alleged illegal conduct of unfair labor practice striking employees, *held* not to justify denying them reinstatement when none of these employees was arrested or convicted of any crime, and when employer's reinstatement of sole employee arrested and purported offer of reinstatement to all striking employees who applied therefor bars it from urging that any one of the striking employees proposed to be reinstated is not a suitable employee or that reinstatement would tend to encourage violence in labor disputes. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107.

All striking employees are not barred from reinstatement because some of them engaged in acts of violence. *Republic Steel Corp.*, 9 N. L. R. B. 219, 393, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U. S. 684.

Quality & Service Laundry, Inc., 39 N. L. R. B. 970, 988. (Misconduct of union organizers, found not to bar the reinstatement of striking union members.)

2. *Specific instances of misconduct.*

The Board may not order reinstatement of employees who have unlawfully seized and occupied the premises of the employer in engaging in a sit-down strike. *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 258, 5 N. L. R. B. 930, and modifying 98 F. (2d) 375 (C. C. A. 7).

Thompson Cabinet Company, 11 N. L. R. B. 1106, 1117. (Employee who subsequent to discrimination against him, offered his services to the employer as a labor spy, denied reinstatement.)

Cf. *Moore, Inc.*, 40 N. L. R. B. 1058, 1091. (Employee not barred from reinstatement by the fact that subsequent to his discriminatory lay-off he made an arrangement with other companies for a monetary consideration to spy upon the union and report to them information obtained, and instead furnished information concerning activities of the companies to the union and the Board.)

El Paso Electric Co., 13 N. L. R. B. 213, 243. (Employees who subsequent to discrimination practiced against them engaged in acts of sabotage, denied reinstatement.)

The attitude of certain discriminatorily discharged employees toward "scabs" or with respect to a boycott instituted against the employer does not bar them from reinstatement where there is nothing to indicate that, if reinstated, the employees would fail to perform their duties in a loyal and efficient manner. *Mackay Radio & Telegraph Co.*,

1 N. L. R. B. 201, 232, 233, enforced 304 U. S. 333, reversing 87 F. (2d) 611 (C. C. A. 9) and 92 id. 761.

Striking employees are not barred from reinstatement because of alleged acts of violence, consisting of throwing rocks at the house of an employee who had returned to work during the strike and of placing nails along a highway traversed by the employer's trucks. *Biles-Coleman Lumber Co.* 4 N. L. R. B. 679, 704, 705, enforced 98 F. (2d) 18 (C. C. A. 9).

Striking employees who committed a technical trespass by entering the employer's grounds and property during a strike but caused no actual damage to the property are not barred from reinstatement. *Louisville Refining Co.*, 4 N. L. R. B. 844, 874, modified and rehearing denied 102 F. (2d) 678, cert. denied 308 U. S. 568.

Striking employees are not barred from reinstatement because of acts of tresspass, property damage, and assault on nonstriking employees where the damage to the employer's property consisted of a few broken windows, and some injury to automobiles and automobile tires, and where, further, persons presently employed were guilty, or alleged to have been guilty, of similar acts of violence. *United States Stamping Co.*, 5 N. L. R. B. 172, 188, 189.

A fist-fight on a picket line in which strikers and nonstrikers joined with equal willingness is not of such a type or character as to bar the striking employees from reinstatement. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 176 (C. C. A. 3), modifying 6 N. L. R. B. 171, cert. denied 308 U. S. 605.

N. L. R. B. v. *Colten & Colman, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 183 (C. C. A. 6), enforcing 6 N. L. R. B. 335. (An order of the Board directing the reinstatement of employees who went out on strike is not invalid because there was some violence on the picket line in alleged violation of a temporary injunction where the offenders were not identified, no finding of guilt was made in contempt proceedings instituted by the employer, there was no showing that the violence was directed toward seizure of the employer's property, or that the accused employees were discharged because of their alleged violation of the injunction.).

Striking employees accused of certain offenses, were released by local authorities on their own recognizance. *Held:* Offenses are not of sufficient gravity to warrant excluding

them from an order of reinstatement. *Elkland Leather Co.*, 8 N. L. R. B. 519, 554, 555, enforced 114 F. (2d) 221 (C. C. A. 3).

Republic Steel Corp., 9 N. L. R. B. 219, 393, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U.S. 684. (Striking employees who were guilty of misdemeanors are not barred from reinstatement where they had already been punished by the appropriate law enforcement agencies, and their conduct was not of such character as to disqualify them from reemployment.)

For cases in which convictions for various offenses were found not to bar reinstatement, *see:*

Berkshire Knitting Mills, 17 N. L. R. B. 239, 290.

Jergens Co., 43 N. L. R. B. 457.

American Laundry Machinery Co., 45 N. L. R. B. 355.

Lettie Lee, Inc., 45 N. L. R. B. 448.

Standard Lime & Stone Co. v. *N. L. R. B.*, 97 F. (2d) 531, 536 (C. C. A. 4), setting aside 5 N. L. R. B. 106. (An order of the Board requiring the reinstatement of employees who had committed various acts of violence during the course of a strike and had later been indicted in the State Court on charges of misdemeanors for which they were sentenced to serve jail sentence will not be enforced.)

Kentucky Firebrick Co., 2 N. L. R. B. 455, 466, enforced and rehearing denied 99 F. (2d) 89 (C. C. A. 6). (A striking employee who had been arrested and indicted for shooting a fellow workman is not entitled to reinstatement.)

Quality & Service Laundry, Inc., 39 N. L. R. B. 970. (Striking employee convicted of assault and battery, denied reinstatement.)

The employer, after discharging an employee discriminatorily, discovered that he had, prior to such discharge, damaged his machine through negligence. *Held:* Employee is entitled to reinstatement only to substantially equivalent employment and not to his former position, if the employer does not desire to reinstate him to his former position. *Harnischfeger Corp.*, 9 N. L. R. B. 676, 689.

Discriminatorily discharged employees who committed infractions of rules by either leaving the plant to attend an organizational meeting without securing permission or by altering a time card are not barred from reinstatement where the dismissals were not based on such misconduct,

but on other matters found to have been in violation of the Act. *Harnischfeger Corp.*, 9 N. L. R. B. 676, 689.

N. L. R. B. v. *Oregon Worsted Co.*, 96 F. (2d) 193, 195 (C. C. A. 9), enforcing 1 N. L. R. B. 915 and 3 N. L. R. B. 36. (Prior to the period of his employment, an employee had been convicted in a State court of malicious destruction of property and imprisoned for a period of 4 months. The conviction was admittedly not the reason for his discharge, the precise circumstances surrounding the offense were not disclosed, and no attempt was made to show that the offense was in the nature of sabotage. *Held* reinstatement not barred by such conviction.)

For cases in which misconduct that did not appear to be the true reason for employer's objection to reinstatement was found not to bar reinstatement, *see:*

Red River Lumber Co., 12 N. L. R. B. 79, 89.
Lone Star Gas Co., 18 N. L. R. B. 420, 464.
Fein's Tin Can Co., Inc., 23 N. L. R. B. 1331, 1364.
Southern Cotton Oil Co., 26 N. L. R. B. 177, 189.
Republic Steel Corp., 26 N. L. R. B. 1244, 1265.
Ford Motor Co., 29 N. L. R. B. 873.
Gamble-Robinson Co., 33 N. L. R. B. 351.

Cf. Following cases in which misconduct that appeared to be the true reason for employer's objection to reinstatement was found to bar reinstatement:

Red River Lumber Co., 12 N. L. R. B. 79, 90.
Va. Electric & Power Co., 44 N. L. R. B. 404.

The fact that a discriminatorily discharged employee threatened at the time of his discharge to "get even" with the superintendent and later approached him in a belligerent manner when applying for reinstatement, found not to bar reinstatement. *Continental Box Co., Inc.*, 19 N. L. R. B. 860, 880.

Oral persuasion by which discharged employee attempted to induce other employees to join the union, found no bar to reinstatement. *Ozan Lumber Co.*, 42 N. L. R. B. 1073.

Employer's contention that it should not be requested to reinstate employees found to have been discriminatorily discharged, as they had instituted an unmeritorious suit against it, *held* without merit, since it was found that the filing of the suit constituted legitimate concerted activity. *Spandsco Oil & Royalty Co.*, 42 N. L. R. B. 942.

For additional cases in which misconduct was found not to bar reinstatement, *see:*

Ford Motor Co., 23 N. L. R. B. 342.
American Smelting & Refining Co., 29 N. L. R. B. 360.
Ohio Calcium Co., 34 N. L. R. B. 917.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.
Polish National Alliance, 42 N. L. R. B. 1375.

E. EFFECT UPON REINSTATEMENT AND BACK-PAY ORDERS OF OTHER CIRCUMSTANCES.

11 1. *Cessation* of operations. (*See also* § 31.)

DISCRIMINATORY CESSATION

Employer found to have discriminatorily locked out employees, *ordered* to reinstate them to their former or substantially equivalent positions at its plants then in operation, or at any other plant which the employer may acquire and operate in the future. *Somerset Shoe Co.*, 12 N. L. R. B. 1057, 1059, remanded 111 F. (2d) 681 (C. C. A. 1).

Employer found to have discriminatorily discharged employees by closing its plant, *ordered*, upon resumption of operations, to reinstate all employees who were on its pay rolls between the time it determined to close its plant and the time the plant was closed. *S. & K. Knee Pants Co., Inc.*, 2 N. L. R. B. 940, 948, 949.

Employer found to have ceased business and locked out his employees ordered to reinstate them in the event he has reentered or shall in the future reenter same or substantially similar business. *Heyward Granite Co.*, 18 N. L. R. B. 542, 555.

Employer found to have discriminatorily locked out employees, ordered to reinstate them in the event it should reopen; and if it should not, reinstatement ordered at any other operating plant of the employer with provision for necessary moving expenses. *Reliance Mfg. Co.*, 28 N. L. R. B. 1051, 1167.

Where an employer discontinued operations of a department and discharged employees thereof in order to discourage membership in a union, the Board ordered it to reinstate the employees to former or substantially equivalent employment, or to any other available positions for which they were qualified, but if no positions were available to place them on a preferential list for employment, and if

the department reopened to offer immediate reinstatement therein. *Williams Motor Co.*, 31 N. L. R. B. 715. Cf. *Newton Chevrolet, Inc.*, 37 N. L. R. B. 334 (immediate reinstatement to former or substantially equivalent positions, *ordered*, no preferential list ordered established). See also: *Reichelt*, 21 N. L. R. B. 262.

ECONOMIC CESSATION

Where an employer is not in a position to offer immediate reinstatement to 16 striking women employees by reason of the fact that during the course of the strike the employer, for lawful reasons, changed its business to one requiring the employment of 2 men operators, and the record does not show whether the machines operated by the men can be operated by women, the employer is ordered to reinstate the women employees, should it at any time in the future resume the operations upon which they were engaged at the time of the strike, and place those for whom no employment is available on a preferred list to be offered employment as it arises. *N. Kiamie*, 4 N. L. R. B. 808, 812, 813.

Employer which following the date of the discriminatory discharges discontinued operations although at the time of the hearing had not dissolved its corporate entity, *ordered* in the event it has reentered the same business or any similar business in which the persons discriminatorily discharged are qualified to work, to offer them reinstatement to their former or substantially equivalent employment without prejudice to their seniority and other rights and privileges. *Ray Nichols, Inc.*, 15 N. L. R. B. 846, 858.

Employees discriminatorily discharged, not ordered reinstated where respondent in bankruptcy and trustee in bankruptcy were not operating the business formerly operated by respondent. *Ryan Car Co.*, 21 N. L. R. B. 139.

Employer who following the issuance of the intermediate report advised the Board that it had closed its plant for economic reasons, ordered to place the name of employees discriminated against upon a preferential employment list in the event it resumes operations. *Surpass Leather Co.*, 21 N. L. R. B. 1258, 1276.

Where an employer after having committed unfair labor practices had ceased operations, employees who were dis-

criminated against ordered placed on a preferential list for employment as it arises whenever employer resumes operations. *Cleveland Cliffs Iron Co.*, 30 N. L. R. B. 1093, 1116. See also: *Mooremack Gulf Lines*, 28 N. L. R. B. 869, 885.

Where *bona fides* of respondent's sale of business is not in issue, respondent ordered to place employees discriminated against on preferential list for employment in the event it has reentered or shall in the future reenter such business. *Stanton, J. J., et al.*, 35 N. L. R. B. 1100.

12 2. *Removal of operations.* (*See also* § 31.)

Employer who unlawfully discharged employees and removed their department to another State *ordered* to offer them reinstatement in the State to which the department had been removed. *Herbert Robinson & Otto A. Golluber*, 2 N. L. R. B. 460, 469. See also: *S. & K. Knee Pants Co., Inc.*, 2 N. L. R. B. 940, 948, 949. *Omaha Hat Corp.*, 4 N. L. R. B. 878, 891, 892. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 322, 324, 327.

Employer who caused and prolonged a strike at several plants by unfair labor practices, and who removed operations from one plant to another, *ordered* to reinstate the strikers to the plant in the locality in which they reside, and group all remaining strikers, regardless of what plant they were formerly employed at, on a preferential list to be offered employment as it becomes available at any of the plants, giving preference to those residing in the locality in which the position is available, and pay all transportation expenses of strikers and their families who must move in order to obtain reinstatement. *Remington Rand, Inc.*, 2 N. L. R. B. 626, 737, 738, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576.

Employer who unlawfully discharged its employees at one plant by closing it and expanding its operations at another plant *ordered*, if operations resumed at first plant, to offer reinstatement thereat, with back pay to the discharged employees; otherwise, to offer reinstatement with back pay to the discharged employees to substantially equivalent positions at the second plant. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 322, 324, 327.

Employer *ordered* to offer reinstatement to locked-out employees and either to return the plant to point from which he removed it to evade responsibilities under the Act or to pay the expenses entailed by reinstated employees and

their families in moving to the new location of the plant. *Schieber*, 26 N. L. R. B. 937.

Employers who unlawfully removed the bulk of their business to another location *ordered* at their election to reinstate at either place of operations employees who were laid off and refused employment; in the event they choose to employ at the new location, employers *ordered* to pay such employees entitled to reinstatement the reasonable expenses entailed in the transportation and moving of such employees and their families. *Gerity Whitaker Co.*, 33 N. L. R. B. 393, 420.

13 3. *Decrease or change in operations requiring fewer employees.* (*See also* § 125.2.)

An order of the Board requiring an employer to reinstate employees who have been unlawfully discharged does not mean that the employer must hire such men in addition to its present employees, if the work to be done does not require additions to its force, for the employer is at liberty to discharge an equal number of other employees for proper reasons. *Consolidated Edison Co.* v. *N. L. R. B.*, 95 F. (2d) 390, 396, 397, enforcing 4 N. L. R. B. 71, modified 305 U. S. 197. See also: *Boss Mfg. Co.*, 11 N. L. R. B. 432, 438, modified 107 F. (2d) 574 (C. C. A. 7). Cf. *N. L. R. B.* v. *Bell Gas & Oil Co.*, 91 F. (2d) 509, 514 (C. C. A. 5), modifying 2 N. L. R. B. 577.

Employer who caused a strike by unfair labor practices *ordered* to displace persons hired after commencement of strike, if necessary, to provide employment for strikers; and where striker has performed more than one type of work for the employer, that fact to be taken into consideration in determining whether a new employee is filling a job which a striker may fill. *Timken Silent Automatic Co.*, 1 N. L. R. B. 335, 346. See also: *Boss Mfg. Co.*, 11 N. L. R. B. 432, 439, modified 107 F. (2d) 574 (C. C. A. 7). *Model House Co., et al.*, 15 N. L. R. B. 133, 156.

Where by reason of diminished operations, the position occupied by an employee who has been discriminatorily discharged is no longer available because of the fact that the work he formerly performed has been divided among other employees who also perform other tasks, the discharged employee is entitled to reinstatement to a position substantially equivalent to his former position in wages and type of work. *Oregon Worsted Co., a Corp.*, 1 N. L. R. B. 915, 926, enforced 96 F. (2d) 193 (C. C. A. 9). See also:

The Warfield Co., 6 N. L. R. B. 58, 67. *Kelly Springfield Tire Co.*, 6 N. L. R. B. 325, 350. *Tidewater Iron & Steel Co., Inc.*, 9 N. L. R. B. 624, 635.

Contingency that employer may need fewer employees following compliance with usual order of reinstatement does not bar the usual order because employer may, subsequent to compliance therewith, make lawful reductions in its staff. *Omaha Hat Corp.*, 4 N. L. R. B. 878, 891, 892. See also: *Louisville Refining Co.*, 4 N. L. R. B. 844, 874, 875, modified 102 F. (2d) 678 (C. C. A. 6). *Somerset Shoe Co.*, 5 N. L. R. B. 486, 493. *Fansteel Metallurgical Corp.*, 5 N. L. R. B. 930, 950, modified 306 U. S. 240, reversing 98 F. (2d) 375 (C. C. A. 7).

Great Western Mushroom Co., 27 N. L. R. B. 352, 369. (Order of reinstatement not affected by a contemplated transfer of work to an independent contractor.)

Unfair labor practice strikers, reinstated to positions for which they are qualified, but because there is not sufficient employment, not to their former or substantially equivalent positions, are entitled to be placed upon a preferential list for reemployment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work. *McKaig-Hatch, Inc.*, 10 N. L. R. B. 33, 52.

See also:

Boss Mfg. Co., 3 N. L. R. B. 400, 416, modified 107 F. (2d) 574 (C. C. A. 7).

Frederick R. Barrett, 3 N. L. R. B. 513, 525, 526.

Harlan Fuel Co., 8 N. L. R. B. 25, 60, 61.

Quality and Service Laundry, Inc., 39 N. L. R. B. 970.

Where it is probable that employees who were discriminated against might have been affected in their employment at some period even if the employer had not engaged in discrimination against union members; since record furnishes no basis for determining the order in which employees might have been laid off absence discrimination; and since record shows that employer was increasing its personnel in other of its operations and it is reasonable to assume that many of the employees discriminated against would have been transferred or rehired in those operations; employees discriminated against are ordered reinstated with back pay to place originally employed, dismissing if necessary newly hired employees and if sufficient employ-

ment there is still unavailable, employer ordered to reduce force in non-discriminatory manner and place employees so discriminated against on preferential list and to offer them employment in any other of its operations presently operated before other persons are hired for such work. *Moore, Inc., E. H.*, 40 N. L. R. B. 1058. See also: *Ford Motor Company*, 31 N. L. R. B. 994.

§ 114 4. *Voluntary transfer of assets to successor employer.*

Employer who after a lock-out of its employees, transferred its assets to a new company which the employer controlled, *ordered* to reinstate the employees with back pay either at the plant of the original company or at the plant to which the original company had been transferred. *Hopwood Retinning Co., Inc.*, 4 N. L. R. B. 922, 944, modified 98 F. (2) 97 (C. C. A. 2).

Respondent corporation which transferred its operations to another corporation having the same ownership, *ordered* to reinstate employees discriminated against in the event it should resume the conduct of its business. *Norwich Dairy Co., Inc.*, 25 N. L. R. B. 1166.

[*See* § 6 (as to orders to successors).]

§ 115 5. *Transfer by law of assets to successor employer.*

Death of a co-partner does not relieve the surviving co-partner or the executrix of the deceased co-partner who has appeared in enforcement proceedings from the necessity of complying with an order of the Board requiring the reinstatement with back pay of a discharged employee as well as the reinstatement of striking employees. *N. L. R. B.* v. *Colten & Colman, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 182, 183 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

[*See* § 6 (as to orders to successors).]

§ 116 6. *Offer of reinstatement.*

Employer unlawfully discharged employees and refused to bargain collectively; strike ensued; employer offered to reinstate the discharged employees; they refused to resume work while employer continued to violate Section 8 (5). *Held:* Unlawfully discharged employees entitled to reinstatement and to back pay except for period during which they refused to resume work since during this period the employer did not unlawfully withhold employment from them. *Harter Corp.*, 8 N. L. R. B. 391, 411. See also: *Hemp & Co.*, 9 N. L. R. B. 449, 462. *Capital Broadcasting*, 30 N. L. R. B. 146.

Prettyman, 12 N. L. R. B. 640, 671. (Discriminately discharged employees who refused to return to work unless all employees who struck as a result of the discharge were reinstated, *ordered* reinstated, but back pay suspended from the time they refused to return to work and assumed the position of strikers.) See also: *McGoldrick Lumber Co.*, 19 N. L. R. B. 887, 941. *Ohio Fuel Gas Co.*, 25 N. L. R. B. 519, 550.

Lindeman Power & Equipment Co., 11 N. L. R. B. 868: (Employees who were discharged because of their union activities and membership were awarded full back pay and reinstatement even though they testified at hearing that they would not return to work as long as the strike caused by their discharges, which was pending at the time of the hearing, continued. The Board stated that such testimony could not be regarded as an unequivocal assertion that the men would not have returned to work had the company offered to reinstate them.)

National Motor Rebuilding Corp., 19 N. L. R. B. 503: (Where following discriminatory discharges and strike which ensued following such discharges respondent sent letters to individual dischargees requesting them to return to work, *held* that they were entitled to reinstatement and back pay from date of discriminatory discharges notwithstanding that they had declined such offers, when their refusal to accept, because they did not know whether other employees had also received offers of reinstatement and their fear that, by returning individually, they would be forced to capitulate to the respondent's unfair labor practices (respondent had been attempting to make its employees sign Balleison contracts, and had also engaged in 8(5) during this period) was justified, and respondent's action in sending individual offers could only be construed as an attempt to break the collective opposition of its employees to the unfair labor practices by dealing with them individually and did not constitute unconditional offers of reinstatement.)

Good Coal Co., 12 N. L. R. B. 136: (An offer of reinstatement to some of a number of striking employees who have been discriminated against as a result of concerted activity together with a clear manifestation that the other employees who have been so discriminated against will not be allowed to return to work, does not constitute any real offer of reinstatement within the purview of the Act and

does not bar those employees who had been offered but refused to accept reinstatement the remedy ordered for all the strikers which includes reinstatement and back pay from the date the employer had discriminatorily refused to reinstate them. See also: *Draper Corp.*, 52 N. L. R. B. No. 251, reversing *Lettie Lee, Inc.*, 45 N. L. R. B. 448.

An employee was unlawfully refused reinstatement following a furlough: his assent, under economic duress, to an offer of a job not substantially equivalent to that which he held at the time he was furloughed, and in violation of the terms of an agreement in settlement of a strike, does not constitute a bar to an order of the Board requiring the employer to reinstate him. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 349.

Continental Box Co., Inc., 19 N. L. R. B. 860. (Rejection of an offer made during the course of the hearing to reinstate an employee discharged in violation of 8(3), without back pay and without seniority rights, where the employee was asked ". . . does he desire to drop this controversy and accept his job?" and was given only a few hours to decide, does not effect the ordinary remedy of reinstatement and back pay.

A discriminatorily discharged employee who refused an offer of reinstatement at the hearing to a position to which he had been discriminatorily transferred, immediately prior to his discharge, *ordered* reinstated to the job which he held prior to the date on which the employer first discriminated in regard to his employment. *Eastern Footwear Corp.*, 8 N. L. R. B. 1245, 1251.

Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 282. (Employees reinstated after unfair labor practice strike to positions inferior to those held before strike are entitled to reinstatement to their original positions with back pay to cover the difference between the amount they earned from the date they were reinstated to inferior positions to date of employer's offer of reinstatement to original position).

West Kentucky Coal Co., 10 N. L. R. B. 88, 121 (refusal of employee to accept reinstatement to position beyond his physical ability.

Western Felt Works, 10 N. L. R. B. 407, 431, 432 (refusal to accept employment not substantially equivalent to that enjoyed before unfair labor practice strike). See also: *Manville Jenckes, Corp.*, 30 N. L. R. B. 382.

Stehli & Co., Inc., 11 N. L. R. B. 1397, 1438 (refusal to accept employment on a less desirable shift).

Continental Oil Co., 12 N. L. R. B. 789, 806 (refusal to accept employment conditioned upon the duration of the illness of employee's wife).

Dixie Motor Coach, Corp., 25 N. L. R. B. 869 (refusal to accept non-substantially equivalent employment without back pay).

An employee who refused an offer of reinstatement because of the tendency of a strike caused by the employer's unfair labor practices, *ordered* reinstated upon subsequent application therefor. *Western Felt Works, a Corp.*, 10 N. L. R. B. 407, 429. See also: *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, 898. *Long Lake Lumber Co.*, 34 N. L. R. B. 700.

A striking employee who was invited by the respondent to apply for reinstatement but upon application was wrongfully denied reinstatement and thereafter never received any further offer from the respondent, ordered reinstated and awarded back pay, for it cannot be presumed in the absence of an offer to him that he would have refused an offer. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1, 21. See also: *Lindeman Power & Equipment Co.*, 11 N. L. R. B. 868.

Offer of reinstatement, conditioned upon membership in an assisted organization, *held* not to bar reinstatement and back pay. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652. See also: *Zenite Metal Corp.*, 5 N. L. R. B. 509. *Kassoff*, 43 N. L. R. B. 1193. *Dominic Meaglia*, 43 N. L. R. B. 1277.

American Mfg. Co., 5 N. L. R. B. 443. (Striking employees held justified in refusing a conditional offer of reinstatement without impairing their remedial rights; employer offered them reinstatement provided they (1) signed Balleison contracts, (2) filed applications as new employees, losing seniority rights which in addition was coupled with refusal to reinstate most active strikers.)

Panther-Panco Rubber Co., Inc., 11 N. L. R. B. 1261, 1275. (Offer of reinstatement without back pay to discriminatorily discharged employee made prior to hearing, contingent on general settlement of case, *held* inadequate to bar reinstatement or to stop back pay.)

Riverside Mfg. Co., 20 N. L. R. B. 394. (Employees who were discriminatorily evicted, *held* justified in refusing to

does not bar those employees who had been offered but refused to accept reinstatement the remedy ordered for all the strikers which includes reinstatement and back pay from the date the employer had discriminatorily refused to reinstate them. See also: *Draper Corp.*, 52 N. L. R. B. No. 251, reversing *Lettie Lee, Inc.*, 45 N. L. R. B. 448.

An employee was unlawfully refused reinstatement following a furlough; his assent, under economic duress, to an offer of a job not substantially equivalent to that which he held at the time he was furloughed, and in violation of the terms of an agreement in settlement of a strike, does not constitute a bar to an order of the Board requiring the employer to reinstate him. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 349.

Continental Box Co., Inc., 19 N. L. R. B. 860. (Rejection of an offer made during the course of the hearing to reinstate an employee discharged in violation of 8(3), without back pay and without seniority rights, where the employee was asked ". . . does he desire to drop this controversy and accept his job?" and was given only a few hours to decide, does not effect the ordinary remedy of reinstatement and back pay.

A discriminatorily discharged employee who refused an offer of reinstatement at the hearing to a position to which he had been discriminatorily transferred, immediately prior to his discharge, *ordered* reinstated to the job which he held prior to the date on which the employer first discriminated in regard to his employment. *Eastern Footwear Corp.*, 8 N. L. R. B. 1245, 1251.

Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 282. (Employees reinstated after unfair labor practice strike to positions inferior to those held before strike are entitled to reinstatement to their original positions with back pay to cover the difference between the amount they earned from the date they were reinstated to inferior positions to date of employer's offer of reinstatement to original position).

West Kentucky Coal Co., 10 N. L. R. B. 88, 121 (refusal of employee to accept reinstatement to position beyond his physical ability).

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An employee who refused an offer of reinstatement because of the tendency of a strike caused by the employer's unfair labor practices, *ordered* reinstated upon subsequent application therefor. *Western Felt Works, a Corp.*, 10 N. L. R. B. 407, 429. See also: *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, 898. *Long Lake Lumber Co.*, 34 N. L. R. B. 700.

A striking employee who was invited by the respondent to apply for reinstatement but upon application was wrongfully denied reinstatement and thereafter never received any further offer from the respondent, ordered reinstated and awarded back pay, for it cannot be presumed in the absence of an offer to him that he would have refused an offer. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1, 21. See also: *Lindeman Power & Equipment Co.*, 11 N. L. R. B. 868.

Offer of reinstatement, conditioned upon membership in an assisted organization, *held* not to bar reinstatement and back pay. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652. See also: *Zenite Metal Corp.*, 5 N. L. R. B. 509. *Kassoff*, 43 N. L. R. B. 1193. *Dominic Meaglia*, 43 N. L. R. B. 1277.

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Panther-Panco Rubber Co., Inc., 11 N. L. R. B. 1261, 1275. (Offer of reinstatement without back pay to discriminatorily discharged employee made prior to hearing, contingent on general settlement of case, *held* inadequate to bar reinstatement or to stop back pay.)

Riverside Mfg. Co., 20 N. L. R. B. 394. (Employees who were discriminatorily evicted, *held* justified in refusing to

accept an offer of reinstatement when employer refused to take steps to insure their safety; accordingly, reinstatement ordered and back pay awarded from date of the evictions.)

Employer's mere statement at hearing that he was willing to reemploy discriminatorily discharged employees, *held* not to constitute such an offer of reinstatement as would effectuate the policies of the Act. *Van Deusen*, 45 N. L. R. B. 679.

Federbush Co., Inc., 34 N. L. R. B. 539. (Offer to reinstate employees discriminatorily discharged "if work is available.")

[*See* UNFAIR LABOR PRACTICES §§ 449–451 (where offers of reinstatement constituted discrimination with respect to reinstatement as to strikes or other employees whose temporary interruption of employment did not constitute discrimination).]

17 7. *Prior refusal to accept reinstatement.*

An employee who has been discriminatorily discharged but who has rejected the employer's bona fide offer to reinstate him to his former position, is entitled to back pay for the period from the date of his discharge to the date reinstatement was offered, but under such circumstances the employer need not again offer him reinstatement. *Harter Corp.*, 8 N. L. R. B. 391, 415.

See also:

Trenton Garment Co., 4 N. L. R. B. 1186, 1196.
Precision Castings Co., Inc., 8 N. L. R. B. 879, 892.
Heyward Granite, 18 N. L. R. B. 542.
Cleveland Worsted Mills Co., 43 N. L. R. B. 545.

18 8. *Disqualification for reinstatement to original position.*

PHYSICAL DISQUALIFICATIONS

There is no merit to the contention of an employer that an employee who had been discriminatorily refused reinstatement after he had been furloughed, is not to be reinstated by reason of the fact that he had developed an injury for which the employer might be liable in compensation under the provisions of an applicable State statute where there is no showing that the injury existed at the time the unfair labor practice occurred and where the injury itself was not of such nature as would impede the employee in

the successful performance of his duties. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 347, 348.

See also: *Boswell Co.*, 35 N. L. R. B. 968.

Employee alleged to be physically unfit for work, *ordered* reinstated provided he could obtain a doctor's certification of his fitness for employment. *Phelps Dodge Corp.*, 28 N. L. R. B. 442, 487. See also: *Veta Mines, Inc.*, 36 N. L. R. B. 288.

Where the evidence shows that an employee discharged in violation of 8 (3) has been disqualified for the type of work he had been doing at the time of his discharge because of his physical condition, the respondent may carry out the order to reinstate him by placing him in a substantially equivalent position involving "lighter work." *Continental Box Co., Inc.*, 19 N. L. R. B. 860, 881.

New York Times Co., 26 N. L. R. B. 1094. (Employee not qualified for the type of work he was doing at the time of his discharge, *ordered* reinstated to a position for which he was qualified having the same salary and dignity as the one from which he was discharged.)

Employee having a history of tuberculosis, *ordered* reinstated notwithstanding employer's contention that its policy prohibited the employment of such a person, but employer not required to reinstate the employee to a position necessitating his handling of food products. *Armour & Co.*, 32 N. L. R. B. 536, 560.

Niles Fire Brick Co., 30 N. L. R. B. 426, 436. (Employee who contracted tuberculosis following his discharge, not ordered reinstated because of his protracted illness and his inability to work for a period of many months immediately prior to the hearing.)

Other Disqualifications

Where an employee who is an alien has been discriminatorily denied reinstatement following an unfair labor practice strike, but by reason of the fact that his full citizenship papers have not yet been granted, is temporarily disqualified from reinstatement to his former position because of a Federal statute prohibiting employment of aliens in construction of aircraft for the Government, the employer is under a duty to offer the employee such available employment for which he is eligible as an alien and which is most nearly equivalent to that which he had prior to the unlawful discrimination, and if no employ-

ment exists to place him upon a preferential list; and since the employee's ineligibility for certain work was not a factor in the discrimination practiced against him, he is entitled to back pay; without regard to that factor. *Douglas Aircraft Co., Inc.*, 10 N. L. R. B. 242, 282.

Discriminatorily discharged employee who failed to earn the minimum wage required under the Fair Labor Standards Act, *ordered* reinstated for a minimum period of 4 months under working conditions that would afford her a reasonable opportunity to earn the minimum wage required, and ordered thereafter to be given regular employment if her average weekly earnings during the last 3 weeks of the 4-month period were at least equal to the minimum wage required under the Fair Labor Standards Act. *Hawk & Buck Co., Inc.*, 25 N. L. R. B. 837.

An employer who, after discriminatorily discharging an employee, provokes a brawl and unfriendly feeling between employer and employee, may not set up such circumstance as an excuse for failing to remedy the unfair labor practice engaged in by it. *Berkey & Gay Furniture Co.*, 11 N. L. R. B. 282.

[*See* § 110 (as to misconduct as basis for disqualification).]

19 9. *Laches.* (*See also* §§ 12, 133.)

The failure of a labor organization to file charges on the first refusal of an employer to reinstate employees discriminatorily discharged does not relieve the employer of its duty to reinstate the employees where about a year after the employer refused such reinstatement the organization made another effort to procure voluntary action from the employer and 5 months thereafter filed charges with the Board, though in the absence of a showing of extenuating circumstances for the delay, the employees are not to receive back pay for the period from the time of the last attempt to secure compliance until the filing of charges. *N. L. R. B.* v. *Crowe Coal Co.*, 104 F. (2d) 633, 640, 641 (C. C. A. 8), enforcing 9 N. L. R. B. 1149.

Laches in filing charges held no bar to reinstatement where no showing was made that reinstatement was not necessary for effectuation of the Act; however, no back pay awarded for the period during which the union failed to file charges. *L. C. Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382, 1394.

Neither reinstatement nor back pay barred by the fact that approximately a year elapsed between commission of unfair

labor practices and filing of charges where the delay was occasioned by attempts to arrive at a settlement. *Mooremack Gulf Lines, Inc.*, 28 N. L. R. B. 869, 882.

[*See* §§ 12, 133 (as to effect of laches upon issuance of orders generally and specifically as to back-pay orders), and PRACTICE AND PROCEDURE § 314 (as to consideration of laches in a motion to dismiss complaint).]

20 10. *Employer's bona fide doubt as to rights under collective bargaining contract.*

An employer ordered to reinstate employees discriminated against within the meaning of Section 8 (3) need not reimburse them for the period from the date the discrimination occurred to the date of the decision where the employer's conduct was predicated upon an interpretation of a contract with a labor organization to which the employees belonged, and there was doubt as to the legal rights and obligations of the parties under such contract. *M & M Woodworking Co.*, 6 N. L. R. B. 372, 383, set aside 101 F. (2d) 938 (C. C. A. 9). See also: *Smith Wood Products, Inc.*, 7 N. L. R. B. 950, 957. *McKesson & Robbins, Inc.*, 19 N. L. R. B. 778, 802.

21 11. *Regular and substantially equivalent employment.*

Employer's contention that only employees within the meaning of Section 2 (3) of the Act fall within jurisdiction of the Board for purposes of remedial action, and that discharge employees who obtain regular and substantially equivalent employment cease to be such reemployees, *rejected* since: (1) the Board's power to undo the effects of illegal discrimination by requiring affirmative action is not limited to the "reinstatement of employees" but comprehends restoration of ex-employees to positions of employment; and (2) if the Board's power is limited to the "reinstatement of employees," the time when employee status is to be determined for the purposes of Section 10 (c) is the time of the unfair labor practices, and other employment obtained subsequent to the illegal discrimination does not alter or destroy that status. *United Dredging Co.*, 30 N. L. R. B. 739, 803.

The mere obtaining of substantially equivalent employment and evidence pertaining thereto, is irrelevant to considerations decisive of the question whether reinstatement effectuates the policies of the Act since the purpose of the order to offer reinstatement is not only to restore the victim of discrimination to the position from which he

was unlawfully excluded, but also, and more significantly, to dissipate the deeply coercive effects upon other employees who may desire self-organization, but have been discouraged therefrom by the threat to them implicit in the discrimination. This essential reassurance can be afforded—freedom can be reestablished—only by a demonstration that the Act carries sufficient force to restore to work anyone who has been penalized for exercising rights which the Act guarantees and protects; the acquisition of equivalent employment is no more relevant to this purpose than the acquisition of non-equivalent employment or of no employment at all. *Ford Motor Co.*, 31 N. L. R. B. 994, 1099.

See following page references for additional decisions:
Vol. 26—pp. 424, 937, 1094, 1182.
Vol. 27—p. 864.
Vol. 28—p. 869.
Vol. 29—pp. 746, 921, 939.
Vol. 30—pp. 382, 739.
Vol. 31—p. 71.
Vol. 32—p. 1145.
Vol. 33—p. 613.
Vol. 35—pp. 331, 418, 968.
Vol. 36—pp. 288, 1294.
Vol. 37—p. 578.
Vol. 38—p. 690.
Vol. 39—p. 970.
Vol. 42—p. 593.
Vol. 43—pp. 125, 179, 545.
Vol. 44—p. 404.
Vol. 45—pp. 355, 679.

22 12. *Economic pressure by a labor organization.*

Because of a dispute between two unions, an employer unlawfully transferred to less desirable positions employees who were members of one of the unions; members of this union went on strike in protest against these transfers; employer contends that by this strike union attempted "to economically destroy" it and therefore strikers should not be reinstated. Contention *rejected*, for to sustain the employer's contention would be to impede the right to strike which is guaranteed in Section 13 of the Act. *N. L. R. B.* v. *Star Publishing Co.*, 97 F. (2d) 465, 470 (C. C. A. 9), modifying 4 N. L. R. B. 498.

Reinstatement and back pay withheld as to employees discriminatorily discharged or refused employment where the employer was forced to take such action by reason of pressure brought to bear by members of an opposing union, had sustained considerable financial loss, and had maintained a neutral attitude with respect to the union affiliations of its employees. *New York & Porto Rico Steamship Co.*, 34 N. L. R. B. 1028.

Cf. *Greer Steel Co.*, 38 N. L. R. B. 651. (Employee refused reinstatement because of economic pressure brought to bear by a labor organization *ordered* reinstated and awarded back pay where the exertion of such pressure was not shown to have been exercised to the financial detriment of the employer or to have faced the employer with the immediate alternative of complete cessation or substantial interruption of operations.)

Metal Mouldings Corp., 39 N. L. R. B. 107. (Employee, allegedly discharged because of employer's fear of strike action by an organization, *ordered* reinstated and awarded back pay, where it was plain in view of the employer's domination of the organization that it could have had no fear of economic pressure by that organization and where, assuming *arguendo* that the organization was not dominated, the employer was not faced with a threat of strike action and its fears, if any, rested solely upon speculation unsupported by even a threatened exercise of economic power.)

123 13. *Military status of employees.*

Employee who enlisted in the military service of the United States subsequent to his discriminatory discharge, *ordered* reinstated upon application within 30 days after his discharge from the armed forces. *Federbush Co., Inc.*, 34 N. L. R. B. 539

Wells-Lamont-Smith Corp., 41 N. L. R. B. 1474. (Reinstatement *ordered* upon application within 40 days after discharge from the armed forces.) See also:

Brock, 42 N. L. R. B. 457.
John Engelhorn & Sons, 42 N. L. R. B. 866.
Monsieur Henri Wines, Ltd., 44 N. L. R. B. 1310.
Wright Products, Inc., 45 N. L. R. B. 509.
Phelps, 45 N. L. R. B. 1163.

124 14. *Death of employee.*

Back pay may be awarded the personal representative of an employee who died after the Board had issued its order.

N. L. R. B. v. *Hearst, et al.*, 102 F. (2d) 658, 664 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

The remedial power committed to the Board by the Act is unaffected by the employee's death; only the type of remedy is altered. Accordingly, back pay may be awarded to the personal representative of an employee who died prior to the date of the hearing. *El Paso Electric Co.*, 13 N. L. R. B. 213.

See following page references for additional decisions:
Vol. 19—p. 267
Vol. 33—p. 557
Vol. 34—p. 457
Vol. 40—pp. 652, 967

25 15. *Failure to appear or testify.* [*See* PRACTICE AND PROCEDURE § 312 (as to consideration of motion to dismiss complaint for failure to appear or testify).]

Fact that a discharged employee did not appear and testify at the hearing, found no bar to granting him relief under the Act when the record sustained the allegations of unlawful discrimination against him. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 323. See also: *Sartorius & Co., Inc.*, 40 N. L. R. B. 107. *Atlanta Flour & Grain Co., Inc.*, 41 N. L. R. B. 409, 416. *American Laundry Machinery Co.*, 45 N. L. R. B. 355, 364.

25.1 16. *Desires of employees.*

Irresolution on part of employee alleged in complaint to have been discriminated against, to have proceedings continued as to him, *held* under circumstances not to justify withholding remedy for discrimination. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

Where a person discriminated against did not desire the proceeding continued as to him, no reinstatement order was issued as to him. *Isthmian Steamship Co.*, 22 N. L. R. B. 689, 700. See also: *Sartorius & Co.*, 40 N. L. R. B. 107.

25.2 17. *Availability of or for employment.* (*See also* § 113.)

The reinstatement and back pay to be awarded to an employee who has been discriminated against in violation of the Act are not affected by his failure to seek employment elsewhere. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 539, 540 (C. C. A. 9), enforcing 2 N. L. R. B. 249, cert. denied 306 U. S. 646. See also: *Western Felt Works*, 10 N. L. R. B. 407, 451.

Phelps Dodge Corp. v. *N. L. R. B.*, 313 U. S. 177. (Board must deduct from back pay of striking union employees the

amount of wage losses they wilfully incurred after they became victims of discrimination since only actual wage losses should be made good by employer.)

Cleveland Worsted Mills Co., 43 N. L. R. B. 545, 592. (Employees who were not shown to have "willfully incurred" any loss by failure to secure employment elsewhere, not denied usual back-pay remedy because of employer's assertion that they had not made diligent effort to secure other employment.)

Persons who were refused employment and who, the record indicates, would not have worked for the employer thereafter because the employer was placed upon the union's "unfair list," *not awarded* back pay. *Olympia Shingle Co.*, 26 N. L. R. B. 1398, 1416.

McKaig-Hatch, Inc., 26 N. L. R. B. 1459, 1464. (Unfair labor practice strikers not entitled to restitution for work performed by other persons hired during the strike when such other persons were doing work for which none of said strikers was qualified or for which qualified strikers were not available at the time the work was begun.)

125.3 18. *Working rules.*

Employer who had discriminatorily discharged an employee who married after her discharge and had a policy against employing married women, *ordered* to reinstate the employee where its policy does not require the discharge of an unmarried women who marries while working at the plant. *Boss Mfg. Co.*, 11 N. L. R. B. 432, 439, modified and rehearing denied 107 F. (2d) 574 (C. C. A. 7).

Notwithstanding employer's rule forbidding employment of relatives, including husband and wife, discriminatorily discharged person, whose wife was employed, *ordered* reinstated when he was not dismissed pursuant to rule but because of his union membership and activities. *Montgomery Ward & Company, Inc.*, 31 N. L. R. B. 786.

125.4 19. *Agreements.* (See § 15, JURISDICTION § 20, and PRACTICE AND PROCEDURE §§ 1–11.)

Back pay not awarded to employees reinstated pursuant to strike settlement agreement wherein union waived claims to back pay. *Fein's Tin Can Co., Inc.*, 23 N. L. R. B. 1330.

Over objection of charging union Board gave effect to stipulation by counsel for Board and employer limiting the amount of back pay to be awarded a discriminatorily discharged employee. *Karron*, 41 N. L. R. B. 1454.

Releases executed by employees subsequent to their discriminatory discharge, *held* not to bar a reinstatement and back-pay order, for the Board in the exercise of its administrative discretion, as a corollary from the exclusive authority conferred on it by Section 10 (a), determined that private settlements should not stay it from vindicating the policies of the Act by remedying unfair labor practices involved in the discriminatory discharge of employees. *Beckerman Shoe Corp.*, 43 N. L. R. B. 435.

Board's order requiring the reinstatement of certain discriminated employees, *held* not affected by valid existing closed-shop contract where stipulation in partial settlement of case provides that employees ordered to be reinstated shall be given opportunity to become members of closed-shop union. *Hazel-Atlas Glass Company*, 34 N. L. R. B. 346.

25.5 20. *Other laws or proceedings.* (*See* JURISDICTION §§ 6–15.)

Propriety of present Board order, requiring employer to offer employment with back pay to certain individuals, *held* not affected by a Board order arising in another proceeding which ordered another employer to offer reinstatement and back pay to the same individuals; however, such persons will not be able to receive reinstatement with both employers nor receive double back pay for the same period. *Veta Mines, Inc.*, 36 N. L. R. B. 288.

Employer *ordered* to reimburse employee discharged in violation of 8 (3) for back pay although judgment of state court in divorce proceeding awarding such back-pay claim to wife of the employee was in evidence. *Continental Box Co., Inc.*, 19 N. L. R. B. 860.

Immigration laws *held* not to affect Board's plenary power under Section 10 of the Act to order reinstatement with back pay for employees who are citizens of Mexico. *Phelps Dodge Refining Corp.*, 37 N. L. R. B. 1059.

Reinstatement and back-pay award to a seaman who had been discriminated against, not barred by marine safety legislation. *Texas Co.*, 42 N. L. R. B. 593, 605.

30 21. *Other circumstances.*

Where employee created the possibility of his employment terminating because of his refusal to work pending adjustment of a grievance, back pay was not ordered, since the Board will not presume that had employer not discriminatorily discharged employee when it did the employee

would have continued to earn wages. *Long-Bell Lumber Co.*, 26 N. L. R. B. 828, 831.

Employee who desired reinstatement only on a condition which he was not entitled to impose, not ordered reinstated. *Manville Jenckes Corp.*, 30 N. L. R. B. 382.

Unfair labor practice strikers' reemployment for 6 days after falsifying that she did not belong to the union, *held* not to constitute reinstatement to former or substantially equivalent position to warrant denying her appropriate relief where her lay-off during a period when work in plant had not slackened was unexplained. *Sartorius & Co., Inc., A.*, 40 N. L. R. B. 107.

Employer not required to give employee who was discriminatorily transferred back pay, but required to give only such affirmative relief as would preserve his seniority rights intact in his former position and his return thereto on full resumption of operations, when Board's attorney at hearing announced that no other affirmative relief was being sought. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

F. PERIOD FOR WHICH BACK PAY IS AWARDED.

31 1. *In general.*

The Board is empowered to award back pay to the date of reinstatement and not merely to the date upon which its order was entered. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 539 (C. C. A. 9), enforcing 2 N. L. R. B. 249, cert. denied 59 S. Ct. 586.

Employees unlawfully locked out entitled to back pay for period of lock-out. *Somerset Shoe Co.*, 5 N. L. R. B. 486, 493, remanded 111 F. (2d) 681 (C. C. A. 1). See also:

Regal Shirt Co., 4 N. L. R. B. 567, 574.

Ballston-Stillwater Knitting Co., 6 N. L. R. B. 470, 483, set aside 98 F. (2d) 758 (C. C. A. 1).

The Grace Co., 7 N. L. R. B. 766, 777, 778.

Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1243 (lock-out in violation of Section 8 (1)).

Cf. *Long Lake Lumber Co.*, 34 N. L. R. B. 700. (While it is the policy of the Board not to award back pay during a strike to employees who voluntarily go on strike, even in protest against unfair labor practices, where the strike occurs after a discriminatory lock-out, the employer is obligated to make payment of back pay from the date of the lock-out to the date operations were attempted to be resumed, since at the date of the strike the lock-out was

still in existence and the strike had no effect upon the situation.)

An employer is not required to reimburse employees who were locked out upon the closing of its plant where it is impossible to determine from the record the extent to which the period of the shut-down was attributable to business reasons rather than to the employer's desire to discourage activity in a labor organization. *Titmus Optical Co.*, 9 N. L. R. B. 1026, 1037. See also: *Leo L. Lowy, individually, doing business as Tapered Roller Bearing Corp.*, 3 N. L. R. B. 938, 943, 944. *American Radiator Co.*, 7 N. L. R. B. 1127, 1152, 1153.

Employees unlawfully discharged as a result of employer discontinuing operations of one department to eliminate unionism from plant awarded back pay from date of discrimination to date of offer of reinstatement or placement upon a preferential list. *Williams Motor Co.*, 31 N. L. R. B. 715.

Unfair labor practices strikers found to have been discriminatorily discharged when employer notified union that their positions had permanently been filled by new employees, awarded back pay from date of discharge to date of offer of reinstatement or placement on preferential list. *Register Publishing Co., Ltd.*, 44 N. L. R. B. 834.

2. *In respect to strikers.*

When employees voluntarily go on strike, even if in protest against unfair labor practices, they are not to be awarded back pay during the strike, but when the strikers abandon the strike and apply for reinstatement despite the unfair labor practices, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, considerations impelling a refusal to award back pay are no longer controlling, and accordingly, where an employer refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the employer's discriminatory act. *American Mfg. Co.*, 5 N. L. R. B. 443, 467, modified 309 U. S. 629, affirming 106 F. (2d) 61 (C. C. A. 2). See also: *Western Felt Works*, 10 N. L. R. B. 407, 448.

Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 146. (Employer whose testimony at hearing showed that applications by unfair labor practice strikers would be futile *ordered* to pay them back pay from the date on which the hearing was closed to the date of offer of reinstatement.)

Acme Air Appliance Co., Inc., 10 N. L. R. B. 1385, 1405. (An employer who refused, upon application, to reinstate unfair labor practice strikers *ordered* to pay them back pay for a period measured by the delay in reemployment occasioned by the hiring and retention of new employees.)

Black Diamond S. S. Corp., 3 N. L. R. B. 84, 93, enforced 94 F. (2d) 875 (C. C. A. 2), cert. denied, 304 U. S. 579. (Where marine employees who "sign articles" and are paid only for such voyages as they make are entitled to reinstatement because of the employer's discriminatory refusal to reinstate them following strike prolonged by unfair labor practices, the back pay which such employees are to receive is to run from the date of the first sailing, after the refusal to reinstate, of the vessel upon which each was employed when the strike began, to the date of the employer's offer of reinstatement.)

Berkshire Knitting Mills, 17 N. L. R. B. 239. (Unfair labor practice strikers ordered reinstated with back pay from the date on which they applied for, and were refused, reinstatement, even where the names of the strikers and the dates of application were not shown in the record. Strikers who did not apply for reinstatement granted back pay from the date of respondent's refusal to reinstate them, upon application, after issuance of the Board's order.

Polish National Alliance of the United States of North America, 42 N. L. R. B. 1375. (Unfair labor practice striker who was discriminatorily offered conditional reinstatement after he had abandoned concerted activity by attempting to return to work while strike was still in progress, *awarded* back pay as of date of application of remaining strikers and not from date of his application for the reason that it would be inequitable to treat him in any different manner from the strikers who remained away from work.)

Employees who have been discriminatorily discharged prior to a strike are entitled to be reinstated with back pay from the date of discharge to the date of offer of reinstatement, not withstanding the fact that the plant was closed during part of the period by reason of a strike which occurred

after and because of the discharges. *N. L. R. B.* v. *Hearst, et al.*, 102 F. (2d) 658, 663, 664 (C. C. A. 9), enforcing 2 N. L. R. B. 530. See also:

American Mfg. Co., 5 N. L. R. B. 443, 467 modified 309 U. S. 629, modifying 106 F. (2d) 61 (C. C. A. 2).

Sigmund Freisinger, 10 N. L. R. B. 1043, 1055.

Remington Rand, Inc., 2 N. L. R. B. 626, 739, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576.

Montgomry Ward & Co., Inc., 4 N. L. R. B. 1151, 1168, remanded for new hearing 103 F. (2d) 147 (C. C. A. 8); (operations continued during period of strike).

Gulf Public Service Co., 18 N. L. R. B. 562, 586. (Although ordinarily back pay runs from the date strikers apply for reinstatement, where strikers were discriminatorily discharged and it was impossible to determine when the strikers would have applied for reinstatement, the Board refused to indulge in any speculation as to how long the strike might otherwise have lasted, and accordingly to restore the status quo as nearly as possible under the circumstances, awarded back pay from the date of their discharge.)

Ford Motor Co., 23 N. L. R. B. 342. (Employees who were discriminated against prior to the commencement of a strike caused by the employer's unfair labor practices and who thereafter joined the strike and did not receive and refuse offers of reinstatement *awarded* back pay throughout the strike, notwithstanding the fact that some of them testified to the effect that they would not return to work during the course of the strike and notwithstanding the fact that during the strike the striking union informed the employer by letter that the strikers were ready to return to work when the employer ceased its discriminatory policy and established relations with the union and its members. The employer ignored the union's letter and thereafter recalled other workers some of whom responded. The testimony of the employees and the letter of the union *held* inconclusive that the men in question would have refused an offer of reinstatement during the strike, had one been made.)

Where Board orders employer to offer reinstatement to a striking employee upon application, such order also includes provision that employer pay employee back pay during period from 5 days after date of application to date of offer of reinstatement or placement upon a prefer-

ential list. *Tiny Town Togs, Inc.*, 7 N. L. R. B. 54, 69. See also: *Electric Boat Co.*, 7 N. L. R. B. 572, 596.

American Bread Company, 44 N. L. R. B. 970. (Although strike found to have been caused by unfair labor practices was still in progress at time of the hearing and there was no allegation that employer refused to reinstate strikers, Board awarded back pay to those who may have applied for reinstatement from 5 days after date of their application to date of offer of reinstatement or placement on preferential list and to those who had not previously applied from 5 days after date they applied for reinstatement to date of offer of reinstatment or placement on a preferential list.) See also: *Eclipse Moulded Products Co.*, 34 N. L. R. B. 785, 811.

Ford Motor Co., 31 N. L. R. B. 994, 1105. (Discriminated employees who had been rehired but later joined unfair labor practice strike, *held* entitled to back pay only from the time of a refusal to reinstate pursuant to Board order.)

Where a strike has been caused by unfair labor practices, employees whose names were placed on a list comprised of individuals whose reinstatement was to be further arbitrated under the terms of the strike-settlement agreement need not make individual applications for reinstatement in order to start the period for which back pay should be ordered, and the employer is under a duty to offer reinstatement to such individuals with back pay from the day after the strike was settled to the date of the employer's offer of reinstatement. *Douglas Aircraft Co.*, 10 N. L. R. B. 242, 281.

Helena Rubinstein, Inc., 42 N. L. R. B. 898; (Although strike settlement agreement provided for reinstatement of unfair labor practice strikers to their former positions, since the record did not disclose what steps if any, the employer had taken pursuant to the agreement, employer was *ordered* to offer reinstatement to those strikers who had applied for reinstatement and those who had not applied, upon their application, and to make whole those who had applied for and had not been offered reinstatement from 5 days after application for reinstatement was made to date of its offer of reinstatement.)

While it is the policy of the Board not to award back pay during a strike to employees who voluntarily go on strike, even in protest against unfair labor practices, where the strike occurs after a discriminatory lock-out and continues

after the plant has reopened, the employer is obligated to make payments of back pay from the date of the lock-out to the date of the reopening of the plant, since at the date of the strike the lock-out was still in existence and the strike had no effect on the situation. *Somerset Shoe Co.*, 12 N. L. R. B. 1057, 1059, remanded 111 F. (2d) 681 (C. C. A. 1). See also: *Long Lake Lumber Co.*, 34 N. L. R. B. 700. *Ford Motor Co.*, 31 N. L. R. B. 994, 1104.

Cf. *Dominic Meaglia*, 43 N. L. R. B. 1277. (Where locked-out employees commenced an unfair labor practice strike immediately after employer offered to reinstate them, back pay awarded to time of offer of reinstatement.)

Kelly-Springfield Tire Co., 6 N. L. R. B. 325, 351. (An employee unlawfully refused reinstatement is not awarded back pay for the period of a shut-down caused by a strike not found to be caused or prolonged by unfair labor practices.)

Discriminatorily discharged employees who refused to return to work unless all employees who struck as a result of the discharge were reinstated, awarded back pay from the time they refused to return to work and assumed the status of strikers. *Prettyman*, 12 N. L. R. B. 640, 671. See also: *McGoldrick Lumber Co.*, 19 N. L. R. B. 887, 941. *Ohio Fuel Gas Co.*, 25 N. L. R. B. 519, 550. *Harry Schwartz Yarn Co., Inc.*, 12 N. L. R. B. 1139, 1191.

Unfair labor practice striking employee who was reinstated after employer discriminatorily refused to reinstate her, but subsequent was compelled to quit by reason of employer's discrimination towards her, *ordered* reinstated and awarded back pay between date employer unlawfully refused to reinstate her to date of her reinstatement, less amounts earned in any employment including amounts earned from employer during period of her reinstatement. *Sartorius & Co., Inc.*, A., 40 N. L. R. B. 107.

[*See* § 116 (as to effect of offers of reinstatement upon reinstatement and back pay-orders).]

3. *As affected by various circumstances.*

133 a. Laches. (*See also* §§ 12, 119.)

An employer need not give back pay to discriminatorily discharged employees for the period from the date upon which each was discharged to the date upon which charges were filed where a lapse of 11 and 19 months had occurred after the respective discharges and before charges were filed

with the Board. *Inland Lime & Stone Co.*, 8 N. L. R. B. 944, 958.

For additional cases in which back pay was awarded from the date of the filing of charges, see:

Hummer Mfg. Co., 17 N. L. R. B. 917.
Lansing Co., 20 N. L. R. B. 434, 446.
Washougal Woolen Mills, 23 N. L. R. B. 1.
Phillips Petroleum Co., 24 N. L. R. B. 317, 347.
Taylor Milling Corp., 26 N. L. R. B. 424.
New York Times Co., 26 N. L. R. B. 1094.
Middle West Corp., 28 N. L. R. B. 540.
Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234.
Cleveland Worsted Mills Co., 43 N. L. R. B. 545.

Crowe Coal Co., 9 N. L. R. B. 1149, 1154, enforced 104 F. (2d) 633, (C. C. A. 8), cert. denied, 60 S. Ct. 107. (In the absence of any showing of extenuating circumstances for the delay, an employer may exclude from the back pay awarded employees found to have been discriminatorily discharged a period of some 5 or 6 months after the last of several conferences between the employer and the labor organization seeking to effect the reinstatement of the discharged employees, during which the organization failed to file charges.) See also: *L. C. Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382.

Taylor Milling Corp., 26 N. L. R. B. 424. (Where charges of discriminatory discharge were filed, then withdrawn, and not refiled for 18 months and no efforts were made in the interim to obtain adjustment of the discriminatory discharge, respondent not ordered to make payment of back pay between the time the charges were withdrawn and the time they subsequently were refiled.)

Filing of charges 2 years and 5 months after discharge, *held* no bar to recovery of back pay for entire period of discrimination where more timely filing might have subjected employee to physical violence by employer. *Ford Motor Co.*, 26 N. L. R. B. 322.

Federbush Co., Inc., 34 N. L. R. B. 539, 548. (Back pay not denied for 3 to 6 month-period between discharges and filing of charges where record showed delay in filing charges was not unreasonable.)

Borg-Warner Corp., 38 N. L. R. B. 866. (Filing of charges more than 1 year after discriminatory discharge, *held* not to warrant departure from usual practice of awarding back pay for the entire period between date of discrimina-

tory discharge and the offer of reinstatement, where employee who was discharged 3 days after her reinstatement following charges which she filed alleging prior discrimination toward her, reasonably could have considered her ultimate dismissal as merely a continuation of what she believed and had charged to be the respondent's prior discriminatory conduct towards her and accordingly to have deemed it unnecessary to file an additional charge.

Johnson Steel & Wire Co., 42 N. L. R. B. 1051. (Five-month delay in filing charge, *held* not to abate back pay when such delay was occasioned by fact that employee was uncertain as to whether his lay-off was permanent and he feared that filing of a charge "might prejudice his chance to obtain other work.)

Employees' delay in filing charges, *held* not to warrant denying them usual back-pay remedy when employer, pursuant to a strike settlement, was apprised of claims of employees discriminated against 2 years prior to their filing and did not claim that it was prejudiced by delay in filing charges prior to the settlement. *Cleveland Worsted Mills Co.*, 43 N. L. R. B. 545.

Montgomery Ward & Co., Inc., 31 N. L. R. B. 786. (Delay of 18 months between acts of discrimination and filing of present charges found not to warrant limitation of back pay when the original charges which were later withdrawn to be incorporated in present charges had been filed shortly after the discriminatory conduct.)

National Lumber Mills, Inc., 37 N. L. R. B. 700. (*Held:* that there was no such delay as to warrant any limitation on award of back pay by reason of the filing of amended charges 1 year after the commission of unfair labor practices where the union sought redress promptly after the discharges and filed the original charges, which were incorporated in the amended charges, immediately following employer's failure to reinstate an employee in accordance with its promise.)

There is no warrant for a departure from the usual practice of the Board in awarding back pay from the date of discharge to the date of offer of reinstatement because of a lapse of 2 years and 7 months between the commission of the unfair labor practices and the issuance of the complaint where the charge had been filed 4 months after the commission of the unfair labor practices; for the employer is legally chargeable with knowledge of its commission of unfair

labor practices and could have taken appropriate action at any time after the filing of charges to remedy the consequences of its illegal conduct. *Colorado Milling & Elevator Co.*, 11 N. L. R. B. 66, 75, 76.

Ohio Calcium Co., 34 N. L. R. B. 917. (Where charges had been filed immediately after commission of unfair labor practices, issuance of complaint 1 year thereafter *held* not to warrant abatement of back pay.)

Cowell Portland Cement Co., 40 N. L. R. B. 642. (Where charges had been filed shortly after commission of unfair labor practices, alleged unjustified delays by the Board, *held* not to warrant abatement of back pay.)

Where 2 years and 5 months elapsed between the last date of the hearing and the issuance of the final decision, the respondents themselves delayed the conclusion of the hearing by injunction proceedings, and where much delay had been occasioned by the volume of the record, *ordered* that the amount of the back pay which would be due for the period between the close of the hearing and the date of the final decision if computed in the usual fashion be reduced by one-half. *Condenser Corp. of America*, 22 N. L. R. B. 347.

[*See* § 12 (as to effect of laches upon issuance of remedial orders) § 119 (as to effect of laches upon reinstatement and back pay orders), and PRACTICE and PROCEDURE § 314 (as to consideration of laches in a motion to dismiss complaint).]

34 b. *Trial Examiner's or Board's proposed findings.*

Where Board ordered discriminatorily discharged employee reinstated contrary to recommendation of Trial Examiner, who had not recommended his reinstatement on ground that he had obtained regular and substantially equivalent employment elsewhere, it directed that period from date of Intermediate Report to date of Decision and Order be excluded in computation of back pay since employer could not have been expected to offer reinstatement during period Trial Examiner's report was outstanding. *Virginia Electric and Power Company*, 44 N. L. R. B. 404.

E. R. Haffelfinger Co., Inc., 1 N. L. R. B. 760, 767. (An employer who has been ordered to reimburse employees discriminatorily discharged may exclude from the computation of back pay the period from the date of the Intermediate Report to the date of the order where the Trial Examiner had dismissed the complaint on the ground

that the Board did not have jurisdiction and that the discharges were not disciminatory.)

Kuehne Mfg. Co., 7 N. L. R. B. 304, 322, 325. (An employer who has been ordered to reimburse an employee discriminatorily discharged may exclude from the computation of back pay the period from the date of the Intermediate Report to date of the order where the Trial Examiner recommended dismissal of the complaint for the reason that the employee had refused an offer of reemployment to a substantially equivalent position and the Board has found that the position offered was not substantially equivalent.)

Lawrenceburg Roller Mills Co., 23 N. L. R. B. 980. (Where the Trial Examiner made no recommendation for the reinstatement of an employee discriminatorily demoted, the Board excluded from computation of back pay the period from the date of the Intermediate Report to the date of the Board's order.)

Period between proposed findings, stating that Board would dismiss the complaint, and Board order *excluded* in computing back pay. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587.

For additional decisions in which period between Intermediate Report and issuance of order was excluded from back pay upon reversal of Trial Examiner's findings, *see:*

Kentucky Firebrick Co., 3 N. L. R. B. 455, 473, enforced and rehearing denied 99 F. (2d) 89 (C. C. A. 6).

Brown Shoe Co., Inc., 1 N. L. R. B. 803, 834, 836.

Mann Edge Tool Co., 1 N. L. R. B. 977, 987.

Boss Mfg. Co., 3 N. L. R. B. 400, 415, 416, modified and rehearing denied 107 F. (2d) 574 (C. C. A. 7).

Wald Transfer & Storage Co., 3 N. L. R. B. 712, 727.

Louisville Refining Co., 4 N. L. R. B. 844, 875, modified and rehearing denied 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.

Cardinale Trucking Corp., 5 N. L. R. B. 220, 228, 229.

Kuehne Mfg. Co., 7 N. L. R. B. 304, 325.

Cf. *Crossett Lumber Co.*, 8 N. L. R. B. 440, 496. *C. G. Conn, Ltd.*, 10 N. L. R. B. 498, 515, set aside 108 F. (2d) 390 (C. C. A. 7).

Vol. 25—p. 1166

Vol. 26—pp. 88, 273, 765, 1094, 1419

Vol. 27—p. 813

Vol. 29—pp. 673, 873

Vol. 30—pp. 146, 314, 550, 888
Vol. 32—pp. 338, 1020
Vol. 33—pp. 263, 613, 710, 954
Vol. 34—pp. 346, 785, 815, 1052, 1068
Vol. 35—pp. 605, 1220
Vol. 36—p. 1220
Vol. 38—p. 65
Vol. 43—p. 435
Vol. 45—p. 1272

Back pay not required from date of issuance of first Trial Examiner's Intermediate Report recommending dismissal of 8 (3) allegations to date of issuance of second Trial Examiner's Report recommending award of back pay. *Reliance Mfg. Co.*, 28 N. L. R. B. 1051.

American Rolling Mill Co., 43 N. L. R. B. 1020. (Back pay of an employee as to whom Trial Examiner had dismissed complaint but who was found in proposed finding to have discriminated against, *ordered* to be calculated from date of discrimination to date of hearing and from date of proposed finding to date of offer of reinstatement.)

An employer who has been ordered to reimburse non-unfair labor practice striking employees denied reinstatement may not exclude from the computation of back pay the period from the date of the Intermediate Report to the date of the order where the Trial Examiner, although finding that the employer did not discriminate towards these employees, recommended their placement upon a preferential list and where employer has not complied with such recommendation and as such could not have relied upon Trial Examiner's Intermediate Report in refusing to reinstate the striking employees. *Ohio Calcium Co.*, 34 N. L. R. B. 917.

American Potash & Chemical Corp., 3 N. L. R. B. 140, 164, 165, enforced 98 F. (2d) 448 (C. C. A. 9), cert. denied 306 U. S. 643. (An employer who has been ordered to reimburse employees discriminatorily discharged may not exclude from the computation of back pay the period from the date of the Intermediate Report to the date of the order where the Trial Examiner, although recommending that the complaint be dismissed on jurisdictional grounds, found that the employees were discriminatorily discharged and recommended that they be reinstated.) See also: *Bell Oil & Gas Co.*, et al., 2 N. L. R. B. 577, 584,

enforced 91 F. (2d) 509 (C. C. A. 5), rehearing denied 93 id. 1010.

135 c. Reopening or reinstatement of dismissed proceedings.

An employer who has been ordered to reimburse employees whom it had discriminatorily refused to reinstate, may exclude from the computation of back pay the period from the date on which the charge was withdrawn without prejudice on request of the complaining labor organization to the date of the order reinstating the proceedings. *C. G. Conn, Ltd.*, 10 N. L. R. B. 498, 514, 515, set aside 108 F. (2d) 390 (C. C. A. 7).

Where the Trial Examiner recommended dismissal of the complaint on jurisdictional grounds, the case became closed upon the failure of the union to file exceptions to the Intermediate Report, but the case was later reopened by order of the Board, back pay was abated for the period during which no action was being taken in the case. *Whiterock Quarries, Inc.*, 5 N. L. R. B. 601.

Period from date on which original Decision and Order was set aside to date of issuance of subsequent Proposed Order excluded in computing back pay. *Protective Motor Service Co.*, 40 N. L. R. B. 967.

136 d. Impossibility of determining precise period.

Employer who had discriminatorily discharged employees ordered to reinstate them with back pay based on their average weekly compensation for the 8-week period prior to their discharge where one of the employees had no fixed rate of payment, the record indicated that he may not have worked every day, and he had been receiving a higher wage in the 2-month period to his discharge than he had previously received; and the other employee had received extra compensation for night driving, but the record did not show the rate of compensation or the frequency of night trips. *Harry G. Beck, trading as Rocks Express Co.*, 3 N. L. R. B. 110, 117.

Where, because of reduced production on the date employees were discriminately refused reinstatement it is impossible on the record to determine which individuals among the employees discriminated against would have been reinstated by the employer if it had discharged all persons hired since the commencement of the strike and not on its pay roll at the beginning thereof and thereafter employed no persons not on the pay roll, and it is further impossible to determine as of what time after the date of

the discriminatory action they would have been reinstated, employer *ordered* to reimburse such employees in an amount equal to that which each would have earned as wages from the date of the refusal to reinstate them to the date of offer of reinstatement or placement upon preferential list had the employer (1) on the date of application for reinstatement discharged so many as might have been necessary of the persons hired after the commencement of the strike and not on its pay roll on that date, and thereafter refrained from employing so many as might have been necessary of the persons thereafter employed and not on the pay roll, who were or are employed in the same or substantially equivalent positions as those formerly held by the employees discriminated against or in positions for which all or any of them may be qualified, and (2) had it filled the positions occupied by such persons with those of the employees discriminated against who could fill such positions, in accordance with, and following such system of seniority or procedure as heretofore applied in the conduct of its business. *McKaig-Hatch, Inc.*, 10 N. L. R. B. 33, 53. See also: *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 351. *Acme Air Appliance Co., Inc.*, 10 N. L. R. B. 1385, 1406.

Where the record did not fix the date prior to the hearing when discriminatory terminations of employment occurred, the Board took the date when the hearing began for the purposes of the back-pay order. *Triplex Screw Co.*, 25 N. L. R. B. 1126, 1154.

Where it was impossible to determine the precise dates upon which certain employees would have been reinstated had the employer considered them for reinstatement on a nondiscriminatory basis, and it appeared that any 4 of the 12 employees might have been hired instead of 4 new employees, *ordered* that back pay be awarded the 12 employees from the date on which the new employees were hired to the date of an offer of reinstatement. *Wilson & Co., Inc.*, 26 N. L. R. B. 273, 292.

Where the record did not indicate the precise date when laid-off persons, absent discrimination, would have been reinstated, back pay awarded from the dates when, following the lay-offs, the number of employees in given departments first reached a figure substantially in excess of the number of employees remaining immediately after the lay-offs. *Marlin-Rockwell Corp.*, 39 N. L. R. B. 501.

37 e. Availability of work.

Employees discriminatorily laid off in a period of general lay-off occasioned by business conditions, awarded back pay from the date of the discrimination to the date of offer of reinstatement, when the employer did not demonstrate that they would have been laid off shortly for business reasons, and the Board would not presume such fact. *Hubschman & Sons, Inc.*, 14 N. L. R. B. 225.

Effectuation of policies of the Act *held* not to require back pay order for period between date of unlawful shut-down and date of reopening of quarry where Board found employer would have closed the quarry for business reasons shortly following date of unlawful shut-down and Board was unable to ascertain interval between day of unlawful shut-down and the day the shut-down would lawfully have occurred. *Heyward Granite Co.*, 18 N. L. R. B. 542, 555. See also: *Phillips Granite Co.*, 11 N. L. R. B. 910, 918.

Inability to furnish employment to locked-out employees following a lock-out because of decrease in business does not stop the accrual of back pay where the employer followed a policy of discrimination in reinstating employees to such positions as were available. *Ford Motor Co.*, 31 N. L. R. B. 994.

Employees discriminatorily discharged awarded back pay between the date of the discrimination and the date employer ceased operations. *Cleveland-Cliffs Iron Co.*, 30 N. L. R. B. 1093. See also: *Ray Nichols, Inc.*, 15 N. L. R. B. 846, 848.

Employees discriminated against awarded back pay from date of discrimination to date employer sold business. *Stanton*, 35 N. L. R. B. 1100.

Seasonal employees discriminatorily laid-off, awarded back pay in the amount they would have earned had they not been discriminatorily selected for lay-off, taking into account the intermittent nature of the work in which they were engaged. *Ohio Fuel Gas Co.*, 25 N. L. R. B. 519.

Discriminatorily locked-out and discharged employees who would have been laid off at time of regular seasonal shut-downs, *held* not entitled to back pay for period during which employer would normally, without discriminatory motive, have suspended operations for business reasons. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652.

Employee who would have been discharged because of inefficiency at normal seasonal shut-down date but whose ter-

mination of employment was illegally advanced by a discriminatory lock-out, awarded back pay between date of discrimination and date his employer would normally have terminated his employment without discriminatory motive. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652.

[*See* §§ 111, 113 (as to effect of cessation or change of operation upon reinstatement and back-pay orders).]

37.1 f. Availability for work.

DESIRES OF EMPLOYEES

Employee who did not desire reinstatement, awarded back pay from the date of the discrimination to the date he obtained other employment. *Minder & Son, Inc.*, 6 N. L. R. B. 764. See also:

Union Die Casting Co., Ltd., 7 N. L. R. B. 846.
Serrick Corp., 8 N. L. R. B. 621.
Precision Castings Co., Inc., 8 N. L. R. B. 879.
Planters Mfg. Co., Inc., 10 N. L. R. B. 735.
Mahon Co., 28 N. L. R. B. 619.
Hygrade Food Products Corp., 35 N. L. R. B. 120.
Pick Mfg. Co., 35 N. L. R. B. 1334.
Sartorius & Co., Inc., 40 N. L. R. B. 107.
Hobbs Co., 41 N. L. R. B. 537.
Knipschild, 45 N. L. R. B. 1027.

Where discriminatorily discharged employee testified that she would accept reinstatement only if she failed to pass her probationary period at new employment and such period had expired prior to the issuance of decision, back pay awarded (1) between the date of discharge and date of reinstatement if she should accept reinstatement, or (2) between date of discharge and date when new position was obtained if she should decline reinstatement. *Kaplan Bros.*, 45 N. L. R. B. 799.

Employee who did not desire reinstatement awarded back pay from the date of discrimination to date he entered the second position he obtained after his discriminatory lay-off, which position was more like his regular trade than was the first position he had obtained. *Lexington Telephone Co.*, 39 N. L. R. B. 1130.

Employee discriminatorily discharged who did not desire reinstatement, awarded back pay between date of his discharge and date he accepted a university scholarship. *Rapid Roller Co.*, 33 N. L. R. B. 557.

Employee discriminated against who did not desire reinstatement, awarded back pay from the date of the discrimination to the date upon which he testified. *Isthmian Steamship Co.*, 22 N. L. R. B. 689, 700. See also: *Ford Motor Co.*, 29 N. L. R. B. 873. *Borg Warner Corp.*, 44 N. L. R. B. 105.

Cf. *Manville Jenckes Corp.*, 30 N. L. R. B. 382. (Employees who stated that they did not desire reinstatement, denied back pay where it did not appear at what time they no longer desired reinstatement.)

[*See* § 125.1 (As to effect of desires of employees upon reinstatement and back-pay orders).]

ILLNESS

Employee who was not ordered reinstated because of his protracted illness and his inability to work for a period of many months immediately prior to the hearing, awarded back pay from the date of the discrimination against him to the date on which he became physically incapacitated from working because of his illness. *Niles Fire Brick Co.*, 30 N. L. R. B. 426.

Laid-off employee who refused an offer of reinstatement because of his illness, awarded back pay from date of the discriminatory lay-off to the date he became physically incapacitated from working because of his illness. *Midwest Steel Corp.*, 32 N. L. R. B. 195.

Back pay awarded a person who became physically incapacitated subsequent to employer's refusal to employ him, between date of discrimination and date he became incapacitated and from time certification of capability to work is presented, to time he is employed or given preferred status. *Veta Mines, Inc.*, 36 N. L. R. B. 288.

[*See* § 118 (as to disqualification to original position as affecting reinstatement and back pay orders).]

MILITARY STATUS

Discriminatorily discharged employee who enlisted in the National Guard, awarded back pay from the date of the discrimination to the date of his enlistment, and from 5 days after his timely application upon his discharge from the Armed Forces of the United States to the date of offer of reinstatement. *Federbush Co., Inc.*, 34 N. L. R. B. 539. See also:

Wells-Lamont-Smith Corp., 41 N. L. R. B. 1474.

Brock, 42 N. L. R. B. 457.

John Engelhorn & Sons, 42 N. L. R. B. 866.
Monsieur Henri Wines, Ltd., 44 N. L. R. B. 1310.
Wright Products, Inc., 45 N. L. R. B. 509.

Fact that employee ordered reinstated with back pay was a member of the armed forces held not to affect employer's obligation to pay him immediately the amount due him for the period from the date of his discriminatory discharge to the date of his induction into the armed forces, even though he might become entitled to further back pay following his timely application for reinstatement upon his discharge from the armed forces. *American Laundry Machinery Co.*, 45 N. L. R. B. 355.

[*See* § 123 (as to effect of military status of employees upon reinstatement and back-pay orders).]

OTHERS

An unlawfully discharged employee does not receive back pay for the period during which he was on his honeymoon and would not have worked in the absence of discrimination. *Fanny Farmer Candy Shop, Inc.*, 10 N. L. R. B. 288, 295, 296, 308. See also: *Western Felt Works*, 10 N. L. R. B. 407, 432.

37.2 g. Misconduct.

Where an employee who was discriminatorily refused reinstatement following a strike later served a jail term upon conviction for battery, and was not ordered reinstated because employer's subsequent refusal to reinstate him was based solely upon such conviction, Board awarded him back pay from the date of the discriminatory refusal of reinstatement to the date of the second refusal of reinstatement, excluding, however, the time during which he served his sentence. *Red River Lumber Co.*, 12 N. L. R. B. 79, 90.

Period from date of employee's misconduct in assaulting another employee to date he was reinstated excluded in computing back pay. *Algoma Net Co.*, 28 N. L. R. B. 64.

Striking employee who was not ordered reinstated because of provocative conduct towards her superior, awarded back pay from the date of discrimination to the date she engaged in the misconduct. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107. Cf. *Thompson Cabinet Co.*, 11 N. L. R. B. 1106, 1117 (no back pay awarded).

[*See* §§ 107–110 (as to effect of misconduct upon reinstatement and back-pay orders).]

137.3 h. Employer's bona fide doubt as to rights under collective bargaining contract.

Although an employer had unlawfully discriminated against a number of employees by discharging them pursuant to an invalid closed-shop contract, no back pay awarded for any period prior to 5 days after the Decision and Order when the legal rights and obligations of the parties under the agreement were involed in doubt and the employer acted in honest reliance upon what it thought to be a proper interpretation thereof. *McKesson & Robbins, Inc.*, 19 N. L. R. B. 778, 802. See also: *M & M Woodworking* 6 N. L. R. B. 372. *Smith Wood Products*, 7 N. L. R. B 950.

137.4 i. Reinstatement.

Employer who had discriminatorily refused reinstatement to employees, and who subsequently did reinstate these employees, *ordered* to pay them back pay from date of discriminatory refusal to reinstate, to actual date of reinstatement. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 111. See also:

Canvas Glove Mfg. Works, Inc., 1 N. L. R. B. 519, 529.
Mann Edge Tool Co., 1 N. L. R. B. 977, 987, 988.
Southgate-Nelson Corp., 3 N. L. R. B. 535.
Metropolitan Engineering Co., et al., 4 N. L. R. B. 542, 564.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 859.
Aluminum Products Co., 7 N. L. R. B. 1219, 1243.
Hunnicutt, 35 N. L. R. B. 605.

140 j. Other circumstances.

An employer may exclude from a computation of back pay the period from the date of an order of a State court to the date of the Board decision, where the employees were discriminatorily discharged, later reinstated, and then discharged again pursuant to the order of the State court in an injunction proceeding brought by an employer-dominated labor organization. *Hill Bus Co., Inc.*, 2 N. L. R. B. 781, 799.

Employees who appeared and testified for the first time at the second hearing held 18 months after the first hearing, *awarded* back pay from the date of their appearance at the second hearing. *Nevada Consolidated Copper Corp.*, 26 N. L. R. B. 658.

Where a supervisory employee was discriminatorily discharged prior to the employer's receipt and reliance upon

erroneous advice of a Field Examiner concerning the employer's right to discharge such employee for failure to relinquish union membership, no back pay was awarded from the date of the erroneous device to the date of the Decision. *Golden Turkey Mining Co.*, 34 N. L. R. B. 760.

Unfair labor practice striking employee who was reinstated after employer discriminatorily refused to reinstate her, but subsequently was compelled to quit by reason of employer's discrimination towards her, *ordered* reinstated and awarded back pay between date employer unlawfully refused to reinstate her to date of her reinstatement, less amounts earned in any employment including amounts earned from employer during period of her reinstatement. *Sartorius & Co., Inc.*, 40 N. L. R. B. 107.

G. COMPUTATION OF BACK PAY AWARDED.

1. *In general.*

41 a. Payment to individual.

In cases where the Board has found that certain employees were discriminatorily discharged or refused reinstatement, the Board ordinarily orders the offending employer to make them whole with back pay, this being an amount equal to what they would have earned with the employer from the date of the discrimination to the date of reinstatement pursuant to the Board's order, less net earnings elsewhere during the same period, the objective being to restore the situation as nearly as possible, to that which would have obtained but for the illegal discrimination. *Eagle Pincher Mining & Smelting Co.*, 16 N. L. R. B. 727, 834.

The amount of back pay awarded to an employee who has been discriminated against is a sum of money equal to that which he would normally have earned as wages during the period of discrimination, less net earnings, and the term "net earnings" means the sum earned by him during the period of discrimination, less expenses such as for transportation, room and board, which he would not have incurred if he had continued to work for the employer, and had not been forced by the latter's unfair labor practices to seek work elsewhere. *Crossett Lumber Co.*, 8 N.L.R.B. 440, 497, 498. See also: *C. G. Conn, Ltd.*, 10 N.L.R.B. 498, 515, set aside 108 F. (2d) 390 (C.C.A. 7).

Republic Steel Corp. v. *N.L.R.B.*, 311 U.S. 7. (Monies received for work performed upon Federal, State, county,

municipal or other work-relief projects shall be considered as earnings.)

Harry C. Beck, trading as Rocks Express Co., 3 N.L.R.B.110, 117. (Employer who had discriminatorily discharged employees *ordered* to reinstate them with back pay based on their average weekly compensation for the 8-week period prior to their discharge where one of the employees had no fixed rate of payment, the record indicated that he may not have worked every day, and he had been receiving a higher wage in the 2 months prior to his discharge than he had previously received; and the other employee had received extra compensation for night driving, but the record did not show the rate of compensation or the frequency of night trips.)

Indianapolis Glove Co., 5 N.L.R.B. 231, 249, 250. (Employer who had violated Section 8 (1) by discharging employees because they had engaged in concerted activities and who, subsequently, effected a change in hours and rates of pay for its employees *ordered* to reinstate the discriminatorily discharged employees with back pay so computed as to take into consideration the change in hours and rates of pay and the date of such change.) See also: *The Grace Co.*, 7 N. L.R.B. 766, 777, 778. *Lone Star Bag & Baggage Co.*, 8 N. L. R. B. 244, 262.

Schwartz Yarn Co., Inc., 12 N. L. R. B. 1139. (Union employee discriminated against by being given less work than nonunion employees, awarded the amount he would have earned, apart from that which he did earn, had the employer given him an amount of work equal to that which, as an average, the non-union employees in his classification were given.) See also: *Surpass Leather Co.*, 21 N. L. R. B. 1258.

Scobey Fireproof Storage Co., 13 N. L. R. B. 1106. (To compute what hourly employee would have earned but for his discriminatory discharge, his actual earnings for 3 months next preceding the date of discharge are averaged to fix a monthly base rate.)

McKaig-Hatch, Inc., 26 N. L. R. B. 1459. (Payment to individual employees found to have been discriminatorily refused reinstatement is measured by the earnings of the particular persons hired during the strike at the work which the employees, respectively, were qualified to perform.)

Snow Co., 41 N. L. R. B. 1288, 1305. (Employer ordered to make employee whole for any loss of pay he suffered by reason of employer's discriminatory refusal to give him a raise, by payment of a sum equal to the amount which he would normally have received as wages from the date of the discrimination to the date of the offer of the raise.)

Cleveland Worsted Mills Co., 43 N. L. R. B. 545, 594. (Where on a given operation a new or former employee had been hired to do work formerly done by more than one of the claimants concerning whom Board found that the respondent discriminated, Board assumed that the claimant who was first thereafter reinstated would, in the absence of any discrimination, have been entitled to the job which was given to the new or former employee and that the claimant who was next reinstated would, in the absence of any discrimination, have been given a job at the time that the first claimant was reinstated, etc.; accordingly Board ordered that the respondent give back pay to the first claimant who was reinstated, for the period between the date of employment of the new or former employee and the date of his, the first claimant's reinstatement, and to the second claimant for the period between the date of the reinstatement of the first claimant and date when he, the second claimant, was reinstated, etc., and where more than one claimant was offered reinstatement on the same date, back pay to be computed on basis similar to the above outlined, to be equally divided between them.)

There is nothing in the Act which requires insertion in the Board's order of the names of employees awarded back pay and the amounts thereof, but the determination of those matters is left to regulation by the Board, since the Act itself contains no provision for them. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 539 (C. C. A. 9), enforcing 2 N. L. R. B. 249, cert. denied 306 U. S. 646. See also: *N. L. R. B.* v. *Fashion Piece Dye Works*, 100 F. (2d) 304, 305, 306 (C. C. A. 3), enforcing 1 N. L. R. B. 285 and 6 N. L. R. B. 274.

Cf. *Agwilines, Inc.*, v. *N. L. R. B.*, 87 F. (2d) 146, 155 (C. C. A. 5), modifying 2 N. L. R. B. 1. *N. L. R. B.* v. *Pacific Greyhound Lines*, 91 F. (2d) 458, 460 (C. C. A. 9), modifying 2 N. L. R. B. 431, reversed 303 U. S. 272; (cause remanded for purpose of including in order amount of back pay to be awarded).

If a dispute arises in regard to the identity of employees awarded back pay or the amounts due them under an order of the Board, the issue can be tried by the institution by the Board of contempt proceedings before the enforcing court. *N. L. R. B.* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 539 (C. C. A. 9), enforcing 2 N. L. R. B. 249, cert. denied 304 U. S. 575.

Offer of proof that strikers damaged the employer's property, as a basis for establishing set-offs or recoupments against back wages ordered by the Board, *denied,* for there is no basis for such a claim in a controversy of a public character where conformance is sought with the public policy of the United States, as expressed in a statute, and where those to whom the Board has awarded back pay are not private litigants in the cause. *Republic Steel Corp.*, 9 N. L. R. B. 219, 399, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only 309 U. S. 684. (May 20, 1940)

42 b. Lump sum payment to be divided among a group of individuals.

Where respondents following discriminations had reduced its operations and but for such discrimination in restaffing their force, there was no certainty that all the claimants found to have been discriminated against would have returned to work, since there were presumably at all times less jobs open than old employees available and it was fair to assume that a large number of the claimants discriminated against would have returned to work but the Board could not tell which ones would have returned, and it did not appear from the record that the respondents followed any set standards such as seniority in taking the men back, the Board computed back pay on the basis of earnings of employees hired after the discrimination began, and distributed this lump sum among the claimants in proportion to their respective earnings records. *Eagle Picher Mining & Smelting Co.*, 16 N. L. R. B. 727, 834–836.

Acme Air Appliance Co., Inc., 10 N. L. R. B. 1385, 1406. (Eight unfair labor practice strikers whose application for reinstatement had been previously denied could have been resinstated between January 24 and February 2. Employer *ordered* to apportion among them a sum equal to the total amount earned by the eight new employees hired or retained during this period between January 24 and the date of the reinstatement of the last of the eight strikers.)

Theurer Wagon Works, Inc., 18 N. L. R. B. 837, 874. (Where there was no certainty that absent discrimination all 95 striking employees would have returned to work since there were fewer jobs than striking employees available, but it appeared that some 65 of them would have been reinstated or reinstated sooner than they were, all striking employees awarded a lump sum consisting of wages paid out by the employer to 65 new employees from the date of the strikers' application for reinstatement to the date of compliance, each discriminatee to receive an amount proportionate to the wages paid him prior to the strike, computed from the date of application for reinstatement to the date of compliance, less his net earnings during said period.)

Wilson & Co., Inc., 26 N. L. R. B. 1353. (Each discriminatee to receive an amount proportionate to the average weekly wages paid him prior to the strike, computed over a period of 3 months prior to the strike less his net earnings; average weekly wage of any employee employed less than 3 months prior to the strike to be computed on the basis of the period of his actual employment.)

Ford Motor Co., 29 N. L. R. B. 873, 912. (Where it could not be determined which employees would have been reinstated following a lay-off absent discrimination, employees denied reinstatement awarded a lump sum bearing the relation to total wages paid to persons hired or reinstated from the reopening of the plant to the date of compliance that the number of discriminatees bore to the total number of employees at the time of the lay-off the lump sum to be divided among the discriminatees in proportion to their respective wage rates prior to the lay-off.) See also: *Ford Motor Co.*, 31 N. L. R. B. 994, 1102.

Leyse Aluminum Co., 37 N. L. R. B. 839, 860. (Where it was impossible to estimate the exact amount of wages lost by each of 7 employees discriminated against by denial of extra maintenance work, and where their original crew of 9 had been increased by 26 persons since the date of discrimination, each discriminatee awarded 1/35th of the total amount paid out by the employer for extra maintenance work from the date of discrimination to the date of compliance.)

An employer unlawfully locked out employees who had rotated thereby sharing the available work in a certain department. *Held:* Amount of the employer's pay roll

budgeted to the department from the date of the lock-out to the date the respondent offers resintatement to members of the union against whom the lock-out was directed should be apportioned among the rotating employees. *Louis Hornick & Co., Inc.*, 2 N. L. R. B. 983, 996.

Where an employer in the course of an otherwise legitimate reduction of force discriminated against union members in selecting employees to be laid off but where, because of large union membership, many union members would probably have been included in a non-discriminatory lay-off, entire group of laid-off union members share equally as a back-pay award a sum representing the normal earnings of a group equal to the number of union members laid-off in excess of normal probability, *Woolworth Co.*, 25 N. L. R. B. 1362.

143 2. *Additions.*

An employee discriminatorily refused reinstatement following a strike is entitled to receive back pay in a sum equivalent to the amount he would normally have earned as wages, plus the fair value of housing and lights which the employer would normally have furnished during the period of the discrimination. *Bell Oil and Gas Co., et al.*, 2 N. L. R. B. 577, 585, 586, modified 91 F. (2d) 509 (C. C. A. 5), rehearing denied 93 F. (2d) 1010.

National Weaving Co., Inc., 7 N. L. R. B. 743, 750. (Back-pay award to include employee's rights to rent, water, and electricity in company-owned house).

Cleveland-Cliffs Iron Co., 30 N. L. R. B. 1093. (Reasonable value of any maintenance customarily furnished by employer to lumber-camp employees, added to back pay.)

Great Western Mushroom Co., 27 N. L. R. B. 352. (Employees discriminatorily evicted from company-owned house, the free rental of which constituted part of their wages, *awarded* a sum of money equal to the rental of new dwellings from the date of eviction to the date of offer of reinstatement plus incidental expenses directly incurred as a result of the eviction.) See also: *Abbot Worsted Mills, Inc.*, 36 N. L. R. B. 545.

Where, following a strike caused by unfair labor practices, an employer has shut down one of its plants and opens a new plant in another city, enforcement will be denied with respect to a provision of the order requiring the employer to furnish the employees and their families with transportation if they should accept positions at the new plant. *N. L. R. B.*

v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576. Cf. *S. & K. Knee Pants Co., Inc.*, 2 N. L. R. B. 940, 948, 949.

Stanton, 35 N. L. R. B. 1100, 1112. (Amount of increased living expenses incurred by employee discriminatorily transferred, added to back-pay award.)

[*See* §§ 31, 11, 112 (as to other instances where order provides for payment for transportation expenses in the event employees accept positions at removed or other operations of the company).]

Discriminated against seamen awarded a sum of money equivalent to what each would have earned as wages, plus the value of his subsistence. *Southgate-Nelson Corp.*, 3 N. L. R. B. 535, 545. See also: *Peninsular and Occidental Steamship Co.*, 5 N. L. R. B. 959, 968, set aside 98 F. (2d) 411 (C. C. A. 5), cert. denied 305 U. S. 653. *Waterman Steamship Corp.*, 7 N. L. R. B. 237, 253, enforced 309 U. S. 206, reversing 103 F. (2d) 157 (C. C. A. 5).

Cities Service Oil Co., 32 N. L. R. B. 1020. (Although it did not affirmatively appear that a part of the compensation paid by the employer to its seamen consisted of maintenance on shipboard, the Board took notice of the general practice in the shipping industry in this respect and added to their monetary compensation from the employer the reasonable value of their maintenance on shipboard.)

The back-pay award of unlawfully discharged waiters *computed* on the basis of their weekly wage, plus an amount equal to the average weekly tips received by each in the 3 months prior to the discharge. *Club Troika, Inc.*, 2 N. L. R. B. 90, 94. See also: *Willard, Inc.*, 2 N. L. R. B. 1094, 1108, enforced 98 F. (2d) 244 (App. D. C.)

The back pay awarded to an unlawfully discharged employee includes wages and bonus. *Central Truck Lines, Inc.*, 3 N. L. R. B. 317, 330. See also: *Interstate S. S. Co.*, 36 N. L. R. B. 1307.

Phelps, 45 N. L. R. B. 1163. (Where employer had announced a policy to give to any employee entering military service an additional pay check equal to one month's normal wages, excluding overtime, to assist him in making readjustments incident to entering military service, Board ordered employer to add such amount to usual back pay due employees discriminated against who had entered armed service.)

Pay increase denied employees who refused to sign individual "Balleisen" contracts added in back-pay computation. *National Motor Rebuilding Corp.*, 19 N. L. R. B. 503.

In computing the back pay of those discriminatorily dismissed prior to the date of a general increase, it will be taken into account that such employees would have received the general increase but for the discrimination. *Condenser Corp.*, 22 N. L. R. B. 347.

Employer ordered to reinstate the insurance policies of a discriminatorily discharged employee, which policies had lapsed because of the employer's refusal to accept payment on them, or to provide the employee with a substantially equivalent substitute therefor, upon payment by him of the money he would have paid on the policies absent discrimination. *Sorg Paper Co.*, 25 N. L. R. B. 946, 985.

Where discriminatees were awarded a lump sum consisting of part of all wages paid out during a specified period and it appeared that during that period the plant had closed to discourage union activity, proportionate part of the normal pay roll for the time the plant was closed added to the lump sum. *Ford Motor Co.*, 31 N. L. R. B. 994.

Where evidence showed that during period of discharge of employee who had been reinstated and given back pay at regular rate for regular work week, respondent's plant had been operating on an overtime schedule and that if employee involved had not been discharged he would have earned overtime pay, Board ordered employer to make him whole for his loss of earnings by payment to him of a sum of money equal to the amount he would have earned as overtime pay wages during period of his discharge. *American Broach & Machine Co.*, 45 N. L. R. B. 241, 282.

150 3. *Deductions.*

The earnings to be deducted in computing the back-pay award include the sums earned to the date of reinstatement and not merely to the date of the order. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 303 U. S. 333, 348, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 671 (C. C. A. 9), and 87 F. (2d) 611.

An employer may deduct from the amount of back pay to be awarded employees a sum of money which it had already paid them in lieu of employment. *N. L. R. B.* v. *Hearst, et al.*, 102 F. (2d) 658, 663, 664 (C. C. A. 9), enforcing 2 N. L. R. B. 530.

Sums which an employee earned following his discriminatory discharge, which he could have earned outside of working hours had he continued to be employed, and which he had previously earned in a similar way prior to his discharge, are not to be deducted from the amount of back pay the employee is entitled to receive for the period from the date of discharge to the date of offer of reinstatement. *Pusey, Maynes and Breish Co.*, 1 N. L. R. B. 482, 488. See also: *Anwelt Shoe Mfg. Co.*, 1 N. L. R. B. 939, 949. *Louis Hornick & Co., Inc.* 2 N. L. R. B. 983, 996.

Link-Belt Co., 12 N. L. R. B. 854, 872, 882. (Earnings as musician not deductible on showing employee had enjoyed this independent source of income to the same extent prior to his discharge.)

Johnson, 41 N. L. R. B. 263. (In computing back pay to be awarded an employee who operated a private laboratory in addition to his work for a denture manufacturer both during the time he was employed and after he was discharged, no deduction was made for any income received from the private laboratory which he would have received had he continued to work for employer but if by virtue of his nonemployment elsewhere such employee had received a greater income from his laboratory than he would have received otherwise, such increase ordered to be accounted as part of his earnings.)

Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects, are deductible earnings. *Republic Steel Corp.* v. *N. L. R. B.* 311 U. S. 7.

Home-relief payments received by an employee following his discriminatory discharge are not to be deducted from the amount of back pay which the employee is entitled to receive from the period from the date of his discharge to the date he is offered reinstatement. *Vegetable Oil Products Co.*, 5 N. L. R. B. 52, 53.

Missouri-Arkansas Coach Lines, Inc., 7 N. L. R. B. 186, 206. (Relief payments received from labor organization, or payments received from job insurance not deductible.)

Grace Co., 7 N. L. R. B. 766, 778. (Reasonable value of board and room an employee receives as part of her salary for other employment she has secured as a domestic, deductible.)

The Lone Star Bag and Baggage Co., 8 N. L. R. B. 244, 262, 263. (Unemployment benefit payments received from labor organization not deductible.)

Sterling Corset Co., Inc., 9 N. L. R. B. 858, 871. (Strike or relief benefits received from labor organization not deductible.)

West Kentucky Coal Co., 10 N. L. R. B. 88, 128 (loans or relief payments received from labor organization not deductible).

Boswell Co., 35 N. L. R. B. 968 (workmen's compensation award *not* deductible).

Board must deduct from back pay of striking union employees the amount of wage losses they wilfully incurred after they became victims of discrimination since only actual wage losses should be made good by employer. *Phelps Dodge Corp.* v. *N. L. R. B.* 313 U. S. 177.

Cleveland Worsted Mills Co., 43 N. L. R. B. 545, 592. (Employees who were not shown to have "wilfully incurred" any loss by failure to secure employment elsewhere, not denied usual back-pay remedy notwithstanding employer's assertion that they had not made diligent effort to secure other employment.)

Rapid Roller Co., 46 N. L. R. B. 216. (Back-pay order not affected by mere statement that during the back-pay period there were employment opportunities in the vicinity in the absence of any evidence that the employees involved wilfully forewent an opportunity to work.)

Where back pay is computed on a lump sum basis and employees discriminated against do not receive 100 percent back pay but merely a fraction thereof, only a corresponding fraction and not 100 percent of the employees net earnings shall be deducted from the back pay otherwise due him. *Ford Motor Co.*, 31 N. L. R. B. 994.

Although the Board ordinarily deducts "net earnings" from an award of back pay to a discriminatee, where an employee whose hours of work were discriminatorily reduced contined to work for the employer and was not employed elsewhere up to the time of the hearing, it is only necessary to deduct his earnings. *Pick Mfg. Co.*, 35 N. L. R. B. 1334.

Where discriminatorily locked-out and discharged employees would have been laid off at time of regular seasonal shutdowns, *held* that they were not entitled to back pay for period during which employer would normally, without discriminatory motive, have suspended operations for

business reasons and that earnings during this period are not to be deducted from the sums otherwise due to the employees as back pay. *Cowell Portland Cement Co.*, 40 N. L. R. B. 652, 701.

Contention of charging union that net earnings should be deducted from back pay on a week-for-week basis, *held* without merit. *Western Cartridge Co.*, 43 N. L. R. B. 179.

IX. ORDERS TO EMPLOYER IN RESPECT TO AGREEMENTS. [*See* § 92 (as to orders to embody understandings reached in a contract when employer has violated Section 8 (5)), and §§ 171–173 (as to affirmative repudiation of agreements by notice).]

51 A. IN GENERAL.

An order of the Board requiring an employer to cease giving effect to contracts found to have been entered into with the individual employees in deprivation of their rights guaranteed in the Act runs against the employer only and its effect is to preclude the employer from taking any benefit of the contracts or from carrying out any of their terms; but it does not foreclose the employees from taking any action to secure an adjudication upon the contracts, nor prejudge their rights in the event of such adjudication. *National Licorice Co.*, 309 U. S. 350, 364, 365, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

B. AGREEMENTS AFFECTED.

52 1. *Nature of agreement.*

The Board is justified in ordering an employer to cease and desist from giving effect to a contract which represents the fruit of unfair labor practices and a device to perpetuate their effects. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 173 (C. C. A. 3), enforcing 6 N. L. R. B. 171. See also: *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

The Board is justified in ordering an employer to cease giving effect to contracts entered into with individual employees which by their terms deprived the employees of rights guaranteed in the Act in prohibiting a demand for a closed-shop or a signed agreement with any labor organization and providing that an employee's discharge is not to be subject to arbitration or mediation. *National Licorice Co.*, v. *N. L. R. B.* 309 U. S. 350, 360, modifying

7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2). See also:

David E. Kennedy, Inc., 6 N. L. R. B. 699, 713.

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 306, 307.

Carlisle Lumber Co., 2 N. L. R. B. 248, 278, enforced 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575.

Hopwood Retinning Co., Inc., 4 N. L. R. B. 922, 944, modified 98 F. (2d) 97 (C. C. A. 2), contempt citation granted, 104 *id.* 302.

Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1113, 1114.

Federal Carton Corp., 5 N. L. R. B. 879, 891, 892.

Newark Rivet Works, 9 N. L. R. B. 498, 521, 523.

American Numbering Machine Co., 10 N. L. R. B. 536, 561.

Centre Brass Works, Inc., et al., 10 N. L. R. B. 1060, 1072.

Vincennes Steel Corp., 17 N. L. R. B. 825, 840. (Employer ordered to cease and desist in any manner continuing, enforcing, or attempting to enforce the provision in its stock purchase plan purporting to bar requests by employees for wage increases.

[*See* UNFAIR LABOR PRACTICES § 45 (for additional decisions with respect to contracts entered into with individual employees in violation of the Act).]

Where there is a closed-shop contract with an unlawfully assisted organization purporting to represent a coerced majority for a term of 2 years, the term expiring between the conclusion of the hearing and the issuance of the final decision, *held* that the respondents be ordered to cease and desist from giving effect to said contract or to any extension or renewal thereof, or to any successor contract with the unlawfully assisted organization which may be in effect at the time of the making of the order. *Condenser Corp.*, 22 N. L. R. B. 347.

Gerity Whitaker Company, 33 N. L. R. B. 393 (no order required with respect to terminated contracts between Company and dissolved dominated organization).

[*See* § 53 (as to orders with respect to dormant or defunct dominated organizations).]

160 2. *Parties to agreement.*

The Board is justified in ordering an employer to cease and desist giving effect to individual employee contracts which contravene the Act. *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350, 360, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

N. L. R. B. v. *Tidewater Express Line, Inc.*, 90 F. (2d) 301, 302 (C. C. A. 4), enforcing 2 N. L. R. B. 560. (The requirement of an employer that employees enter into individual contracts not to join a union is in conflict with Sections 7 and 8 of the Act, and an order of the Board prohibiting such practice is valid.)

The Board is justified in ordering an employer to cease giving effect to a contract which it had entered into with a labor organization found to be employer dominated. *N. L. R. B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 173, (C. C. A. 3), modifying 6 N. L. R. B. 171, cert. denied 308 U. S. 605. See also: *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 54 (C. C. A. 8), modifying 9 N. L. R. B. 1073.

Burnside Steel Foundry Co., 7 N. L. R. B. 714, 733, 734 (exclusive recognition).

Clinton Cotton Mills, 1 N. L. R. B. 97, 112 (closed shop).

Highway Trailer Co., 3 N. L. R. B. 591, 618 (right to discharge employees as undesirable).

Phillips Packing Co., 5 N. L. R. B. 272, 285, 286 (recognition as exclusive bargaining agency and check-off.

Titan Metal Mfg. Co., 5 N. L. R. B. 577, 594, 596, enforcing 106 F. (2d) 254 (C. C. A. 3) (recognition and check-off).

H. E. Fletcher Co., 5 N. L. R.B. 729, 740, 741 (written agreement providing for wage increase).

Taylor Trunk Co., 6 N. L. R. B. 32, 54, 56, 57 (written contract).

Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 124 (recognition as bargaining agent).

Employer ordered to cease and desist giving effect to a closed-shop contract entered into with a legitimate labor organization which did not represent an uncoerced majority of the employees in an appropriate unit at the time the contract was made, and to cease and desist recognizing the labor organization as the exclusive representative of its employees unless and until the organization is certified as such by the Board. *Ward Baking Co.*, 8 N. L. R. B. 558, 571. See also:

National Electric Products Corp., 3 N. L. R. B. 475, 508.

Consolidated Edison Co., 4 N. L. R. B. 71, 109, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2); (contract for members only).

Lenox Shoe Co., Inc., 4 N. L. R. B. 372, 388, 391.

National Motor Bearing Co., 5 N. L. R. B. 409, 437, 441, modified 105 F. (2d) 652 (C. C. A. 9).

Zenite Metal Corp., 5. N L. R. B. 509, 531, 532.

Missouri-Arkansas Coach Lines, Inc., 7 N. L. R. B. 186, 204, 205, 206.

Jefferson Electric Co., 8 N. L. R. B. 284, 298, 299, 300, set aside 102 F. (2d) 949 (C. C. A. 7).

The Serrick Corp., 8 N. L. R. B. 621, 651, 653, 655, enforced 110 F. (2d) (App. D. C.)

[*See* UNFAIR LABOR PRACTICES §§ 45, 271–290, 481–500 (for additional decisions with respect to contracts entered into with individual employees, assisted organizations, or dominated organizations in violation of the Act).]

X. PRECAUTIONARY ORDERS.

161 A. IN GENERAL.

Section 10 (c) authorizes the Board, upon finding that an employer has engaged in unfair labor practices, to order the employer "to take such affirmative action * * * as will effectuate the policies of this Act." Accordingly, if an employer commits unfair labor practices from which it is clear that he is predisposed to commit certain other unfair labor practices, the Board, in order to effectuate the policies of the Act, has adapted the order to the situation calling for relief. *Fourth Annual Report, page 108.*

B. SPECIFIC PRECAUTIONARY ORDERS.

162 1. *Order of reinstatement.*

Where a strike has neither been induced nor prolonged by unfair labor practices but where employer has engaged in unfair labor practices and has shown a predisposition towards engaging in other unfair labor practices and the danger exists that, in the absence of an order, it will not reemploy the strikers even if positions are open, employer *ordered* to place names of strikers upon list of employees temporarily laid off and to offer them employment in order of their seniority when such employment becomes available, before hiring other persons. *American Mfg. Concern*, 7 N. L. R. B. 753, 763.

Benjamin Levine d/b/a Estellite Fixtures Co., 6 N. L. R. B. 400, 406. (An employee who has been laid off in a nondiscriminatory manner and for whom no work is presently available, is nevertheless entitled to be placed upon a preferential list for employment when it arises where the employer has committed unfair labor practices in his ex-

press opposition to labor organizations and in his discriminatory failure to reinstate two other employees.)

American Numbering Machine Co., 10 N. L. R. B. 536, 562. (Where the temporary lay-off of certain employees was not occasioned by any unfair labor practices on the part of the employer, but such employer had violated the Act in respect to other matters, so that there is grave danger that the employees will not be reemployed even if their former or substantially equivalent positions are available, such employees for whom work was not available at the time of the hearing, are to be placed upon a preferential list for employment as it arises.)

Link-Belt Company, 12 N. L. R. B. 854. (Cautionary order not to discriminate in future against employees whose 8 (3) cases had been dismissed.)

Luckenbach Steamship Co., 12 N. L. R. B. 1333. (Employees dismissed upon abolition of their positions; *held* that abolition was due to valid economic reasons but timed to thwart bargaining, hence 8 (3) cases; no reinstatement ordered, only precautionary order to offer them employment when available.)

Schwarze Electric Co., 16 N. L. R. B. 246. (Where, by reason of an anti-union record of an employer, there is grave danger that he will not reinstate certain employees who have been laid off for business reasons, the Board may require that the employer place such employees upon a preferential list to be offered reinstatement in a nondiscriminatory manner when positions for such employees are available.)

Barre Wool Combing Company, Ltd., 28 N. L. R. B. 40. (Board found that discharges of 12 employees were occasioned by adoption of rule by respondent that not more than 4 members of one family living in a single household be employed in plant, and dismissed complaint as to them. In view of unfair labor practices of respondent and because Trial Examiner's recommendation that respondent reemploy the 12 individuals in their former or substantially equivalent positions if any changes should occur in status of any of the 4 members of their respective families in the respondent's employ contemplated a continuing course of conduct on part of respondent, Board ordered respondent to place these individuals upon a preferential list for employment in accordance with Trial Examiner's recommendation.)

United Dredging Company, 30 N. L. R. B. 739. (Cautionary order of reinstatement ordered as to an employee found not discriminated against, in view of statements made to him at time he applied for reemployment.)

Brown-McLaren Manufacturing Company, 34 N. L. R. B. 984. (Employer ordered to place employees whose work ceased as a consequence of removal of operations from one plant to another upon a preferential list for employment, where employer's illegal refusal to bargain collectively with the union concerning the transfer of employees from one plant to another denied employees all possibility of obtaining through the procedures of collective bargaining work and employment at the plant to which operations were removed.)

Boswell Co., 35 N. L. R. B. 968. (Cautionary order of reinstatement ordered as to employees not discriminated against, in view of employer's attitude toward the union and its members.) See also: *Jergens Co. of. California*, 43 N. L. R. B. 457.

An employer had an unlawful motive for refusing a worker's application for reemployment. The Board could not determine definitely from the record whether or not the employer would have acted favorably upon the application in the absence of such unlawful motive. The Board, therefore, did not order the employer to offer the worker immediate reinstatement. In view, however, of the substantial expectancy of obtaining employment which the worker enjoyed at the time of the application but which was defeated because of the employer's unlawful motive, the Board ordered the employer to place the worker on a preferential list on the ground that such affirmative action would best effectuate the policies of the Act. In order to provide for the contingency that the worker would have been given work in the absence of the employer's unlawful motive, the Board ordered the employer to give him as back pay the amount which he would have earned had the employer not discriminated against him. *Dow Chemical Co.*, 13 N. L. R. B. 993.

Precautionary order refused in case of union members properly discharged before respondent entered upon policy of mass discrimination. *Ford Motor Company*, 31 N. L. R. B. 994.

63 2. *Order to bargain collectively.*

Although there has been no finding that an employer has refused to bargain collectively, and an election has been directed, employer *ordered*, where he has engaged in unfair labor practices and has shown a predisposition to commit other unfair labor practices, to bargain collectively with the labor organization upon request, in the event that the labor organization is designated in the election by a majority of the employees and is certified by the Board as the exclusive representative of all employees in the appropriate unit. *West Kentucky Coal Co.*, 10 N. L. R. B. 88, 129, 130.

70 3. *Other specific precautionary orders.*

[*See* § 7 (as to scope of orders which are broader than specific violations), §§ 94, 111–113 (as to effect of cessation, removal, or change of operations upon orders requiring employer to bargain collectively, and reinstatement and back-pay orders), and INVESTIGATION AND CERTIFICATION §§ 92, 113 (as to provisions to insure conduct of fair elections in resolving question concerning representation when privilege of access to company property was accorded to one of two or more participating rival organizations).]

XI. ORDERS TO EMPLOYER TO PUBLICIZE TERMS OF BOARD ORDERS AMONG EMPLOYEES AND TO REPORT TO BOARD OR ITS AGENT STEPS TAKEN TO COMPLY THEREWITH.

71 A. IN GENERAL.

An order of the Board requiring an employer to post notices of compliance with other portions thereof is within the terms of Section 10 (c) and is of a kind contemplated by Congress in enacting the section. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 267, 268, enforcing 1 N. L. R. B. 1, and reversing 91 F. (2d) 178 (C. C. A. 3). See also: *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318, enforcing 4 N. L. R. B. 604, reversing 106 F. (2d) 119 (C. C. A. 1). *N. L. R. B.* v. *Bell Oil & Gas Co.*, 99 F. (2d) 56 (C. C. A. 5), rehearing of contempt proceedings denied 2 N. L. R. B. 577.

Cf. *N. L. R. B.* v. *Falk Corp.*, 308 U. S. 453, enforcing 6 N. L. R. B. 654, reversing 106 F. (2d) 454 (C. C. A. 7), modifying 102 *id.* 383.

Order of the Board requiring employer to post notices that contracts executed by the employer with its employees

individually, whereby they renounced rights guaranteed in the Act, are "void and of no effect" modified by omitting the quoted words and instead providing "that the individual contracts of employment entered into between the respondent and some of its employees were made by the respondent in violation of the National Labor Relations Act; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees; but this is without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts." *National Licorice Co.*, 309 U. S. 350, 367, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2).

The degree of domination and interference which an employer has exerted in regard to a labor organization found to be company dominated does not affect the need for modifying an order of the Board requiring an employer to cease and desist from recognizing such organization and to post notices to that effect by providing that such notices include a statement that the order "does not restrict, but is to protect, the right of the employees freely to join or not to join any labor organization or to form or not to form a local organization of their own," for the right of the employees to form an independent union, and to be so advised of the right, should not be dependent upon the degree of coercion or persuasion the employer may previously have exerted in the formation of such organization. *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 54 (C. C. A. 8), modifying 9 N. L. R. B. 1073. See also: *Cudahy Packing Co.* v. *N. L. R. B.*, 102 F. (2d) 745, 752, 753 (C. C. A. 8), enforcing 5 N. L. R. B. 472.

An order of the Board requiring an employer to post notices stating that it will cease and desist from engaging in specified unfair labor practices will not be enforced, but the purposes of the Act will be fully met in this respect if the employer is required to post a notice to its employees containing a copy of the order of the Board, an enumeration of the action from which the employer has been ordered to cease and desist and the affirmative action which it is required to take including, in the latter, a posting of the copy of the order of the Board, together with a statement that the order had been approved by the Court and is binding upon the employer. *N. L. R. B.* v. *A. S.*

Abell Co., 97 F. (2d) 951, 959 (C. C. A. 4), modifying 5 N. L. R. B. 644. See also:

Mooresville Cotton Mills v. *N. L. R. B.* 97 F. (2d) 959, 964 (C. C. A. 4), remanding 2 N. L. R. B. 952.

N. L. R. B. v. *Eagle Mfg. Co.*, 99 F. (2d) 930, 932 (C. C. A. 4), modifying 6 N. L. R. B. 492.

Virginia Ferry Corp. v. *N. L. R. B.*, 101 F. (2d) 103, 106 (C. C. A. 4), modifying 8 N. L. R. B. 730.

N. L. R. B. v. *Louisville Refining Co.*, 102 F. (2d) 678, 681 (C. C. A. 6), modifying 4 N. L. R. B. 844.

N. L. R. B. v. *Nebel Knitting Co., Inc.*, 103 F. (2d) 594, 595 (C. C. A. 4), modifying 6 N. L. R. B. 284.

Burlington Dyeing & Finishing Co. v. *N. L. R. B.* 104 F. (2d) 736, 739 (C. C. A. 4), modifying 10 N. L. R. B. 1.

Swift & Co. v. *N. L. R. B.*, 108 F. (2d) 988, 990 (C. C. A. 10) modifying 7 N. L. R. B. 269.

The Board requires an employer who has engaged in unfair labor practices to publicize the terms of the Board order against him among his employees. The exact wording of the notice necessarily varies somewhat in different cases. Although the Board formerly generally required notices stating that "the respondent will cease and desist in the manner aforesaid," the order now requires notices which state "that the respondent will not engage in the conduct from which it is ordered to cease and desist * * *." *Fifth Annual Report*, page 78. Citing—*Brown Shoe Co.*, 22 N. L. R. B. 1080, 1114.

Employer found to have violated Section 8(1) by making false announcements in newspapers and other sources that it intended to close its plant rather than bargain collectively with a labor organization, for the purpose of influencing the vote of its employees in an election directed by the Board *ordered*, to prepare on its stationery a statement for the press that it will not in any way interfere with, restrain, or coerce its employees in the exercise of the right of self-organization guaranteed in the Act, and distribute such statements by registered mail to the daily papers in that locality. *Oregon Worsted Co.*, 3 N. L. R. B. 36, 58, enforced 96 F. (2d) 193 (C. C. A. 9).

Where a number of the employees are not familiar with the English language, notices are ordered posted in the English language as well as languages familiar to those persons,

as specified by the Regional Director. *Weirton Steel Company,* 32 N. L. R. B. 1145. See also: *Laird Schober Co.,* 14 N. L. R. B. 1152.

172 B. PLANT NOTICES.

An employer who has engaged in unfair labor practices *ordered* to publicize the terms of the Board order among the employees by appropriate notices posted in conspicuous places in the employer's plant. *Pennsylvania Greyhound Lines, Inc.,* 1 N. L. R. B. 1, 52, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

Hopwood Retinning Co., Inc., 6 N. L. R. B. 87, 88, modified 98 F. (2d) 97 (C. C. A. 2). (Employer who engaged in unfair labor practices and transferred its operations to another company organized by it to avoid its obligations under the Act *ordered* to post appropriate notices in conspicuous places at its original plant, at the new plant, and at any other plant or place of operations.)

Kuehne Mfg. Co., 7 N. L. R. B. 304, 328. (Employer who committed unfair labor practices and discriminatorily closed its plant and removed operations to another of its plants if it resumes operations at the closed plant to post appropriate notices to its employees in conspicuous places, within and without that plant, or, if it should not so resume operations, to post appropriate notices within and without the plant to which operations have been removed.)

In view of wide publicity given to an employer's outrages at one of its branch plants, the employer was ordered to post notices in all branch plants throughout the country publicizing its intention not to engage in practices which it was ordered to cease; the employer was also ordered to post at its plant where the unfair labor practices were committed, notices covering the affirmative action it was ordered to take. *Ford Motor Company,* 26 N. L. R. B. 322.

Square D Company, 41 N. L. R. B. 693; (In view of provisions of contract with employer-dominated organization, notices *ordered* posted, not only in plants covered originally by contract may have been extended)

An employer found to have engaged in certain unfair labor practices, who customarily posts names of men whom it desires to report for work in an establishment owned by a certain individual with whom it has an agreement as to its use, is ordered to post appropriate notices in a conspicuous

place in such establishment as well as in its mine and mill. *Shenandoah-Dives Mining Company*, 35 N. L. R. B. 1153.

Although the Board formerly required that posted notices remain posted for at least 30 consecutive days, the period now normally required is 60 days. *Fourth Annual Report*, page 109.

A notice posted by the employer on its bulletin board after a hearing in which it had been found to have dominated a labor organization, advising its employees that they might join or not join any labor organization without fear of discrimination, that no solicitation by any labor organization would be permitted on company time, and that supervisory employees were forbidden to engage in any form of union activity, is not complete enough to be considered as substitute for the posting of a notice which the Board ordinarily requires in its order in such cases. *The Heller Brothers Co.*, 7 N. L. R. B. 646, 655.

American Newspapers Inc., 22 N. L. R. B. 899. (Employer posted in its plant the cease and desist notices recommended in the Intermediate Report of the Trial Examiner. Since the employees were on strike, however, such notices did not come to their attention. Consequently, the Board ordered the employer to provide the union with four copies of the posted notice so that the union could post them in places accessible to the strikers.)

Fein's Tin Can Co., 23 N. L. R. B. 1330. (Further posting of notices ordered, despite compliance with recommendations of Trial Examiner, where Board, reversing Trial Examiner, found employees were discriminatorily refused reinstatement and respondent continued to engage in conduct found to constitute interference.)

American Smelting & Refining Company, 34 N. L. R. B. 968. (Notice posted by employer pursuant to request of Board agent who was investigating union's charges, which employer contends dissipated conduct prohibited by Section 8 (1) engaged in by its supervisory employees, *held* to offer no legal obstacle to Board's ordering employer again to post notices advising employees of Board's order and of their rights under the Act, where such notice was not posted pursuant to any agreement settling or compromising the unfair labor practice charges, and where in addition the employer is found to have violated Section 8 (1) and 8 (3) by discharging one of its employees.)

Cf. *Hooven Letters*, 43 N. L. R. B. 1309. (Notices not required when employer had complied with Trial Examiner's recommendations.)

173 C. INDIVIDUAL NOTICES.

Order requiring an employer not to give effect to unlawful individual contracts and to notify each employee that they violate the Act, and that the employer will no longer offer, solicit, or enter into, enforce, or attempt to enforce such contracts with its employees enforced. *National Licorice Co.*, 309 U.S. 350, 367, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2). See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 306, 307.
Carlisle Lumber Co., 2 N. L. R. B. 248, 278, enforced 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U.S. 575.
Hopwood Retinning Co., Inc., 4 N. L. R. B. 922, 944, modified 98 F. (2d) 97 (C. C. A. 2), contempt citation granted 104 *id.* 302.
Federal Carton Corp., 5 N. L. R. B. 879, 890.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 713.
American Numbering Machine Co., 10 N. L. R. B. 536, 561.
Centre Brass Works, Inc., et al., 10 N. L. R. B. 1060, 1072.
Great Western Mushroom Company, 27 N. L. R. B. 352.
Precision Castings Company, Inc., 30 N. L. R. B. 212, 309 U. S. 350, 7 N. L. R. B. 537.
Sone, Norman H., et al., 33 N. L. R. B. 1014.
Brown-McLaren Manufacturing Company, 34 N. L. R. B. 984.
Bear Brand Hosiery Co., 40 N. L. R. B. 323.
Case Company, J. I., 42 N. L. R. B. 85.
Cassoff, Louis F., et al., 43 N. L. R. B. 1193.
Western Cartridge Company, 44 N. L. R. B. 1.
Spalek, Adolph, et al., 45 N. L. R. B. 1272.

Employer *ordered* personally to inform in writing the officers of a labor organization found to be illegal under the Act, that the organization had been formed and administered in violation of the Act, that it would be dissolved and cease to exist, and that the employer would not in any manner deal with or recognize such organization. *Atlas Bag & Burlap Co., Inc.*, 1 N. L. R. B. 292, 307.

Montgomery Ward & Co., 17 N. L. R. B. 191, 216. (Employer ordered to notify in writing all of its present and any future under-cover operatives that they shall not spy upon its employees in the exercise of their right to self-organiza-

tion, to form, join, or assist labor organizations of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, and that they shall not report to the respondent regarding such exercise by its employees.)

Ward Baking Co., 8 N. L. R. B. 558, 561. (Trial Examiner's recommendation that an employer notify each of its supervisory employees that he cease and desist from membership in any labor organization not followed.)

Employer found to have violated Section 8 (1) by falsely and in bad faith announcing through the press and other sources that it intended to liquidate its plant rather than bargain collectively with a labor organization, hoping thereby to discourage membership in the organization and break a then existing strike *ordered*, to prepare and distribute to all striking employees a statement that it will not in any manner interfere with, restrain, or coerce its employees in the exercise of the right of self-organization guaranteed in the Act. *Oregon Worsted Co.*, 3 N. L. R. B. 36, 58, enforced 96 F. (2d) 193 (C. C. A. 9).

Employer *ordered* to inform employees who were discriminated against that they are free to join or assist a specifically named union, or any other labor organization of its employees and that their status as employees will not be affected by such action on their part. *National Motor Bearing*, 5 N. L. R. B. 409, 441.

Atlas Mills, Inc., 3 N. L. R. B. 10, 23, (Employer who conditioned the reinstatement of striking employees upon abandonment of their affiliation with a labor organization *ordered*, to inform the employees in writing that they are free to join or assist any labor organization and that their status as employees will not be affected by such action on their part.)

Employer *ordered* to notify a labor organization with which it refused to bargain that it is prepared to renew negotiations looking toward a collective bargaining agreement and to embody the terms of such agreement as may be finally arrived at in a written, signed, contract. *Holston Manufacturing Co.*, 13 N. L. R. B. 783, 794.

Employer *ordered* to instruct in writing all its employees that they may not make, store, or carry in the plant blackjacks or other dangerous weapons of any nature or remove them from the plant for the purpose of discouraging membership in a named organization; and that

any official or supervisory employee may not in any manner, upon pain or dismissal or other severe penalty interfere with the right of any employee at the plant to form, join, or assist any labor organization. *Ford Motor Co.*, 26 N. L. R. B. 322, 399.

[*See* § 241 (for decision in which employer was ordered to instruct employees not to engage in acts of violence).]

Letz Manufacturing Company, The, 32 N. L. R. B. 563. (An employer found to have unlawfully interfered with an election held under Board auspices by distributing anti-union letters among its employees *ordered* to distribute notices to each of its employees stating that it would not engage in conduct from which it is ordered to cease and desist.) See also: *American Tube Bending Co., Inc.*, 44 N. L. R. B. 121.

North American Aviation, Inc., 44 N. L. R. B. 604. (Employer found to have refused to bargain collectively ordered to inform its employees in writing that its notice setting up individual grievance procedure was null and void and that no effect would be given to such procedure.)

180 D. REPORTS TO BOARD OR ITS AGENT.

Employer found to have engaged in unfair labor practices and ordered to cease and desist therefrom and take appropriate affirmative action *ordered* to file with the Board on or before the 10th day from the date of service of the order, a report in writing setting forth in detail the manner and form in which it has complied with the order. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 122.

Columbian Enameling & Stamping Co., 1 N. L. R. B. 181, 200, reversed 306 U. S. 292, affirming 96 F. (2d) 948 (C. C. A. 7) (notify Board within 30 days of date of service of order).

United States Stamping Co., 5 N. L. R. B. 172, 191 (notify Regional Director within 16 days from date of order).

UNFAIR LABOR PRACTICES

I. IN GENERAL.

§ 1 A. NATURE AND EXTENT OF PROSCRIPTIONS.

B. RESPONSIBILITY OF EMPLOYER FOR ACTS OF AGENTS AND OTHERS.

§ 2 1. In general.

§ 3 2. Action of fellow employees or outside persons or groups. [*See* § 29 (as to acts of interference, restraint, and coercion by accepting or enlisting aid of outside persons or organizations) and § 421 (as to acts of discouragement or encouragement within the meaning of Section 8(3) by the discriminatory action of fellow employees or outside persons or groups authorized or acquiesced in by employer).]

3. Parties succeeding to or acting in the interest of the employer.

§ 4 a. In general.

§ 5 b. Successor in interest.

§ 6 c. Parent and subsidiary corporations.

§ 7 d. Alter ego of corporate employer.

§ 10 e. Other parties.

4. Doctrine of respondent superior.

§ 11 a. In general.

b. Persons' relation to employer.

§ 12 (1) Corporate officers.

(2) Supervisory employees.

§ 12.1 (a) In general.

(b) Indicia of supervisory authority.

1. Hire, discharge, promote, discipline, transfer and otherwise effect change in employee status.

§ 12.2 *a.* Actual authority.

§ 12.3 *b.* Power to recommend.

§ 12.4 *c.* Absence of authority.

2. Supervision of work.

§ 13 *a.* Assignment.

§ 13.1 *b.* Direction.

§ 13.2 *c.* Inspection and/or report.

§ 13.3 *3.* Rate of pay.

§ 13.4 *4.* Minor supervisory duties.

§ 13.5 *5.* Strategic position to translate to subordinates policies and desires of management.

§ 13.6 *6.* Duties which lead employees to believe that employee represents management. [*See* § 16 (as to non-supervisory employees).]

§ 13.7 *7.* Regarded by employees as representatives of management. [*See* § 16 (as to non-supervisory employees).]

§ 13.8 *8.* Charge of plant operations or subdivisions thereof.

C. ACTS OF DOMINATION, INTERFERENCE, AND SUPPORT.

§ 121 1. In general.

2. Active participation by representatives of management. [*See* §§ 11–20 (as to who is considered a representative of management).]

§ 122 a. In general.

b. Participation in initiation and formation.

§ 123 (1) Suggesting formation of organization.

§ 124 (2) Forming organization.

§ 125 (3) Presenting plan of organization to employees.

§ 126 (4) Drafting constitution and bylaws.

§ 127 (5) Solicitation of members; preparing, signing, or circulating applications, petitions, or literature.

§ 128 (6) Attendance at meetings.

§ 129 (7) Advancing membership dues or fees.

§ 130 (8) Calling or giving notice of meetings.

§ 131 (9) Enlisting or accepting aid of outside persons or organizations.

§ 140 (10) Other acts of participation in initiation and formation.

c. Participation in administration.

§ 141 (1) Attendance at meetings.

§ 142 (2) Becoming members.

§ 143 (3) Serving as officers or employee representatives.

§ 144 (4) Calling or giving notice of meetings.

§ 145 (5) Collecting dues.

§ 150 (6) Other acts of participation in administration.

3. Contribution of support. [*See* § 274 (as to check-off).]

§ 151 a. In general.

b. Furnishing materials or facilities.

§ 152 (1) Office services and facilities.

§ 153 (2) Meeting place.

§ 154 (3) Bulletin boards.

§ 155 (4) Publicity matter.

§ 156 (5) Copies of constitution, bylaws, membership cards, or other literature.

§ 157 (6) Ballots and election material.

§ 158 (7) Distributing notices of activities in pay envelopes.

§ 159 (8) Legal services.

§ 170 (9) Other materials or facilities.

c. Permitting employees to engage in activities on company time.

§ 171 (1) Solicitation of members; circulation of petitions or other literature.

§ 172 (2) Collection of dues.

§ 173 (3) Closing plant to enable employees to attend meetings.

§ 174 (4) Meetings on company time. (*See also* § 153.)

§ 175 (5) Election of officers or other form of balloting.

§ 180 (6) Other activities.

d. Financial contributions or assumption of expenses.

§ 181 (1) Assumption of some or all of organization's expenses.

§ 182 (2) Financial contributions to organization.

§ 183 (3) Compensation for time spent in forming or carrying on activities of organization.

f. Application for reinstatement.
452 (1) When necessary.
453 (2) When unnecessary.
454 (3) Conditional application.
g. Refusal to displace employees hired during strike. (*See* § 402.)
h. By reason of economic coercion. (*See* § 1.)
i. On ground employees have gone on strike for closed shop. (*See* § 507.)
j. On ground that employees have engaged in misconduct or concerted activity beyond the protection of the Act. (*See* § 404.)
k. Employees laid off prior to effective date of Act. (*See* DEFINITIONS § 3.)
l. By reason of contract violative of the Act. (*See* §§ 481–500.)
m. On ground that employee has other employment. (*See* REMEDIAL ORDERS § 121.)
n. On the ground that the persons were not parties to the conflict. (*See* § 418.)
o. By discriminatory action of fellow employees. (*See* § 421.)
p. On ground that employee status has terminated. (*See* DEFINITIONS §§ 1–30.)
461 5. Lock-out.
462 6. Lay-off.
463 7. Furlough.
464 8. Demotion.
9. Transfer. [*See* § 422 (as to inducing or compelling employee to resign).]
465 a. In general.
466 b. To temporary position.
467 c. To unsafe and/or unhealthy working place.
468 d. To more arduous work.
469 e. To another locality.
470 f. Resulting in reduction of employee's earning power.
470.5 g. Others.
471 10. Reduction of employee's earning power by failure to furnish proper or sufficient equipment or sufficient work.
472 11. Change of mode of operation.
473 12. Removal of operations.
474 13. Failure or refusal to grant wage increase or promotion.
475 14. Denial of privileges ancillary to employment.
480 15. Other acts of discrimination. (*See also* §§ 421–430.)

C. CONTRACTS THE EXECUTION OR ENFORCEMENT OF WHICH CONSTITUTE DISCOURAGEMENT (OR ENCOURAGEMENT) WITHIN THE MEANING OF SECTION 8(3). (*See also* § 45.)
1. The proviso construed.
481 a. In general.
482 (1) Contracts requiring membership in a labor organization as a condition of employment.

§ 769 i. Negotiating with individual employees. (*See also* § 792.)
§ 770 j. Threatened strike or other economic reprisals by rival labor organization.
§ 772 k. Agreements. [*See* § 769 (as to individual contracts).]
§ 773 l. Appropriateness of unit.
§ 774 m. Impasse: in general.
§ 775 n. Impasse: where circumstances have changed.
§ 776 o. Scope of the Act's jurisdiction. (*See also* JURISDICTION §§ 22–90.)
§ 777 p. Employees within the Act. (*See also* DEFINITIONS §§ 1–30.)
§ 780 q. Other circumstances.
r. Failure of employees to expressly designate labor organization as bargaining agent. (*See* §§ 711–718.5.)
s. Existence of question as to the majority status of a representative arising from inactivity, change of affiliation, "schism," repudiation, or otherwise. [*See* §§ 719–730 (as to continuance of majority designation), and § 794 (as to lack of good faith in bargaining by destroying majority of labor organization after request to bargain).]
t. Lack of demand by representatives of employees. (*See* §§ 731–740.)
u. Failure to present proof of majority to employer. (*See* §§ 741–750.)

D. DUTY OF EMPLOYER TO CARRY ON NEGOTIATIONS IN GOOD FAITH.

§ 781 1. The requirement of good faith in general.
§ 782 2. Counterproposals.
§ 783 3. Distraction of representatives by misrepresentations.
§ 784 4. Disregard of entire proposed agreement because some provisions are unacceptable.
§ 785 5. Imposing acceptance of demands as prerequisite to bargaining.
§ 786 6. Failure or refusal to substantiate position.
§ 787 7. Lack of authority in employer's representatives to offer counterproposals or enter into agreement.
§ 788 8. Effecting change in wages, hours, or other terms or conditions of employment subject to negotiations without opportunity for discussion, or after refusal to do so upon request of labor organization.
§ 789 9. Unreasonable delay and postponement of negotiations.
§ 790 10. Changing position for purpose of impeding negotiations.
§ 791 11. Threatened or actual cessation, change, or removal of operations. (*See also* §§ 40, 765.)
§ 792 12. Negotiating with individual employees or with other than authorized representatives.
§ 793 13. Preventing proof of majority by entering into closed-shop agreement with rival labor organization not representing a majority or assisted by unfair labor practices. (*See also* § 742.)
§ 794 14. Discharge of members of labor organization after request for bargaining conference or destroying majority status or labor organization by inducing employees to renounce membership, to designate employer-dominated organization, or by other unfair labor practices. (*See also* § 720.)
§ 795 15. Imposing preference of representatives of employees as condition precedent to negotiations. (*See also* § 39.)

I. IN GENERAL.

A. NATURE AND EXTENT OF PROSCRIPTIONS.

An employer is not justified in violating the Act by refusing to reinstate employees who have gone on strike on the ground that a labor organization may not have conducted its affairs in perfect parliamentary fashion, nor has it the right to pass judgment on what has occurred at meetings of the labor organization, for it is neither the business of the Board nor the employer to inquire into the manner in which labor organizations conduct their internal affairs. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 142, 143.

National Mineral Co., 39 N. L. R. B. 344. (Employer may not justify its acts of interference and refusal to bargain with the certified representative of its employees because of alleged illegal activities on part of union, for even if such illegal conduct had been engaged in—which Board finds to the contrary—employer was obliged to treat with the union and to refrain from interfering with the self-organization of its employees. Further employer could have dealt with such illegal conduct in a manner other than the course pursued.)

[*See* § 767 (as to employer's duty to meet and negotiate with representatives as affected by irresponsibility or misconduct of employees or representatives).]

An employer may not justify its anti-union conduct which discouraged and intimidated employees from joining or remaining members of a labor organization by pointing to the acts of the labor organization or its leaders which might also have caused a decline in its membership. *Bemis Brothers Bag Co.*, 3 N. L. R. B. 267, 274.

The Act prohibits unfair labor practices in all cases and permits no immunity because the employee may think the exigencies of the moment require violation of the Act, and, therefore, a contention by an employer that it was necessary to transfer employees from their regular positions to temporary jobs in another department and thus engage in unfair labor practice in order to prevent disruption of its

business as the result of a dispute between two unions does not excuse the transfer which was an act of discrimination. *N. L. R. B.* v. *Star Publishing Co.*, 97 F. (2d) 465, 470 (C. C. A. 9), enforcing 4 N. L. R. B. 498. See also:

Trawler Maris Stella, Inc., 12 N. L. R. B. 415.

General Motors & Delco-Remy Corp., 14 N. L. R. B. 113, enf'd 116 F. (2d) 306 (C. C. A. 7).

Isthmian S. S. Co., 22 N. L. R. B. 689.

Mooremack Gulf Lines, Inc., 28 N. L. R. B. 869.

Weirton Steel Co., 32 N. L. R. B. 1145.

New York & Porto Rico S. S. Co., 34 N. L. R. B. 1028.

Cowell Portland Cement Co., 40 N. L. R. B. 652.

[*See* REMEDIAL ORDERS § 121 (as to reinstatement and back-pay orders when discriminatory conduct was induced by a labor organization's economic pressure).]

Forcibly preventing union organizers from coming to or remaining in a company town constitutes a violation of the Act, for the rights guaranteed to employees by the Act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment. *Harlan Fuel Co.*, 8 N. L. R. B. 25, 32.

Ozan Lumber Co., 42 N. L. R. B. 1073. (The establishment or enforcement of any rule which makes it impossible for employees to have access in their homes to those who may advise and counsel them with reference to their rights to self-organization or prevents those attempting self-organization from having access to their fellow employees in their homes, interferes with self-organization.)

Membership of supervisory employees in a legitimate labor organization is not objectionable and does not in itself constitute an unfair labor practice. *Ward Baking Co.*, 8 N. L. R. B. 558, 561.

Johnson, R. M., 41 N. L. R. B. 263. (Employer held not privileged in inducing an employee to withdraw from union although such employee might have been a supervisory employee at the time of such request, where the suggestion was based not upon the fact that the employee, as a supervisor, was prejudicing the employer by his union activity, but upon its opposition to the Union.)

[*See* DEFINITIONS § 24.1 (as to employee status of supervisory employees) and UNIT § 86.5 (as to appropriateness of units confined to supervisory employees).]

The Act does not forbid an employer innocent of coercion, interference, or restraint, to suggest individual conference

with his men nor even to advocate advantages which grow from individual conferences nor does such a suggestion of itself constitute a violation of Section 8 (1). *Midland Steel Products Co.* v. *N. L. R. B.* 113 F. (2d) 800 (C. C. A. 6) setting aside 11 N. L. R. B. 1214.

Ohio Fuel Gas Co., 28 N. L. R. B. 667. (Anti-union activities constitute unfair labor practices notwithstanding the fact that no labor organization of the employees is in existence at the time.)

Case Co., J. I., 42 N. L. R. B. 85. (Before the designation of a bargaining representative an employer may deal individually with employees concerning any aspect of the employment relationship so long as he does not exact terms repugnant to the Act and does not offer the contracts for the purpose of infringing rights under the Act, but its duty to bargain is merely in abeyance pending the choice of a collective agent.)

An employer may not discipline an active union employee who also served as chairman of District Union Council for his activities on behalf of employees of a customer of the employer, for the Act does not limit its protection to an employee engaged in union activities with respect to his individual employer, and therefore activities on behalf of employees of the employer's customer are within the protection of the Act. *Fort Wayne Corrugated Paper Co.*, 14 N. L. R. B. 1, 5–6, enf'd as modified 111 F. (2d) 869 (C. C. A. 7).

Employer's contention that it cannot be charged with engaging in unfair labor practices, since the evidence failed to establish that employees were affected by or conscious of its practices is plainly fallacious, since it is sufficient that the conduct which constitutes the gravamen of the unfair labor practices normally results in interference, restraint, and coercion, it is immaterial that the proscribed conduct did not produce the desired result. Further, the employer's invasion of the field of union activity which the Act reserves as a matter of right to the employees is in itself an unfair labor practice. *Montgomery Ward & Co.*, 17 N. L. R. B. 191, 199.

See also:

Middle West Corp., 28 N. L. R. B. 540, 553.
Gamble-Robinson Co., 33 N. L. R. B. 351, 356.
American Sheet Metal Works, 41 N. L. R. B. 1383.
Hamel Leather Co., 45 N. L. R. B. 760.

Ohio Fuel Gas Co., 28 N. L. R. B. 667, 676. (Activities of an employer that are calculated to interfere with employees in the exercise of their rights graranteed in the Act constitute unfair labor practices without regard to the fact that such activities may have failed in their purpose or result.)

Schult Trailers, Inc., 28 N. L. R. B. 975. (Evidence concerning the effect or lack of effect of anti-union conduct of employer upon employees is not decisive of whether or not employer interfered with, restrained, or coerced employees; the real question for determination was whether such conduct constituted such interference, restraint, or coersion.)

The prohibitions of the statute against discrimination for filing charges is effective irrespective of whether the employer believes the charges to be false or whether the ultimate proof sustains their validity. *Poe Mfg. Co.*, 27 N. L. R. B. 1251.

B. RESPONSIBILITY OF EMPLOYER FOR ACTS OF AGENTS AND OTHERS.

1. *In general.*

2. *Action of fellow employees or outside persons or groups.* [*See* § 29 (as to acts of interference, restraint, and coercion by accepting or enlisting aid of outside persons or organizations), § 421 (as to acts of discouragement or encouragement within the meaning of Section 8 (3) by the discriminatory action of fellow employees or outside persons or groups authorized or acquiesced in by employer), and LITIGATION DIGEST. EMPLOYER: *Who may bind E.*—Outsiders.]

A contention that employees had not been discharged because of their union activities but had been forced out by the determined attitude of the employer's non-union men who refused to work with members of the union, rejected where the attitude of the employer's non-union men was, if not inspired by, at least encouraged and promoted by, the employer and its agents. *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331, 335 (C. C. A. 6), enforcing 4 N. L. R. B. 202. See also:

Grace Co., 7 N. L. R. B. 766, 775. (Activities of employees who were members of an employer-dominated labor organization prevented other employees from entering the plant unless they joined that organization.)

Dow Chemical Co., 13 N. L. R. B. 993, 1033. (Activities of non-union men who refused to work with a union employee in consequence of which said employee was ejected, found to have been approved, ratified, and adopted by employer, when their action "was . . . encouraged and promoted" by the respondent and its agents.")

California Walnut Growers Assn., 18 N. L. R. B. 493, 510. ("Outside" union members evicted by employee and supervisor members of employer-dominated union with knowledge and acquiescence of employer.)

Riverside Mfg. Co., 20 N. L. R. B. 394. (An employer cannot disclaim responsibility for the eviction and exclusion of union members on the ground that it was planned and carried out by its employees, when such acts were a direct result of the respondent's unlawful conduct in encouraging the anti-union group.

Weirton Steel Co., 32 N. L. R. B. 1145, 1254. (Unlawful ousters of "outside" union members because of employees' hostility to "outside" union and in order to champion the "inside" unions, *held* attributable to the employer, when employer in addition to merely possessing and manifesting those motives, inspired them in the employees, and it was immaterial in this connection that sources other than the employer may have contributed to the evictors' motivation.)

Weirton Steel Co., 32 N. L. R. B. 1145, 1255. (Anti-union activities of an employer-dominated organization, *held* attributable to the employer when employer sponsored the organization for that purpose.) See also: *Eagle-Picher Mining & Smelting Co.*, 16 N. L. R. B. 727, 765.

Hudson Motor Car Co., 34 N. L. R. B. 815, 826. (Where employer's favoritism toward an organization, demonstrated in those unfair labor practices, contributed materially to the state of mind of that organization's adherents in their determination to evict their dissident coworkers, employer was held responsible for their activities.)

Boswell Co., 35 N. L. R. B. 968, 985. (Evictions of union members by non-union employees, *held* attributable to employer, notwithstanding employer's claim that

the employees acted without its authority and ousted the union members because they resented their presence and their organizational activities, when employer by its anti-union conduct encouraged an attitude of hostility to the union on the part of its non-union employees.)

Cf. *N. L. R. B.* v. *Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4) mod'g and enf'g 11 N. L. R. B. 1365. (The employer's responsibility for the eviction of union employees by non-union employees was not shown by substantial evidence, in that there was overwhelming evidence that the hostile attitude of the great majority of workers towards the union proceed from their sincere and spontaneous dislike for outside interference, and that it was not enough that the management shared this feeling and manifested it in the statement of its supervisory officials.)

An employer is responsible for the anti-union activities of business men and officials of a town which had subscribed funds for the construction of the employer's factory and which was dependent upon the continued operation of the plant for its prosperity. *Brown Shoe Co., Inc.*, 1 N. L. R. B. 803, 826–829.

Condenser Corp. of America, 33 N. L. R. B. 347. (Employer held responsible for activities of member of Industrial Committee of a village Chamber of Commerce who obtained permission to organize a union and to use plant facilities, and for writings of editor of "plant organ" periodical for which employer paid expenses of publication.)

Manville Jenckes Corp., 31 N. L. R. B. 382. (Employers held responsible for the back-to-work movement undertaken by certain of its employees and for the activities of the local Chamber of Commerce in furthering said movement.)

Manville Jenckes Corp., 30 N. L. R. B. 382. (Employer held responsible for anti-union action prosecuted with its connivance or assistance by other persons or agencies in the community even though such persons or agencies had no pecuniary stake in the employer's business.)

Manville Jenckes Corp., 30 N. L. R. B. 382. (Employers held responsible for anti-union advertisements of local Chamber of Commerce inducing a campaign of attrition against the union, when it neither disavowed publication or contents of the advertisements.)

Merit Clothing Co., 30 N. L. R. B. 1201. (Employer held responsible for the anti-union activities of the citizens and officials of a town, when such activity was directly traceable to their fear that the employer would close the plant if union activity continued.)

Banner Slipper Co., 31 N. L. R. B. 621. (Employer held responsible for activities in behalf of "inside" union by a person who was an official of the town's "trade association.")

Ford Motor Co., 31 N. L. R. B. 994, 1062. (Employer held to have ratified and adopted course of interference pursued by police, when aside from any agreement between it and the city manager, payment was made to the police.) See also:

Bethlehem Steel Corp., 14 N. L. R. B. 539, 624, 625.

Chicago Casket Co., 21 N. L. R. B. 235, 245.

Cf. *Milan Shirt Mfg. Co.*, 22 N. L. R. B. 1143. (Employer held not to have engaged in interference by reason of anti-union statements made by local business men and officers of corporate landlord which had leased plant to employer, although substance of statements, if made by employer to his employees would have constituted interference, where only relationship between landlord and employer established by the record was that of landlord and sublessee.

Ely & Walker Dry Goods Company, 41 N. L. R. B. 1262. (Employer not held responsible for activities of local businessmen or civic organizations in combating an "outside" union and fostering an "inside" union.)

Fentress Coal and Coke Co., 44 N. L. R. B. 1033. (Activities of constables and deputies who were also employees of respondent held not attributable to respondent, when the only compensation they received from respondent consisted of wages earned as ordinary workers, they exercised their authority as peace officers in an impartial manner, and voiced their own views and not those of respondent when they spoke unfavorably of that union.)

An employer is responsible for the anti-union activities of an employer's association, and the illegal acts of the association are, in effect, the acts of the employer, where all contributions which the association received from the employer and others were placed in a general fund which was drawn upon to pay salaries and expenses of a deputy

sheriff whose functions were to discourage organizational activity, and one of the directors of the employer was elected to the executive board and his name printed on the letterhead of the association. *Clover Fork Coal Co.*, N. L. R. B. 202, 207–211, enforced 97 F. (2d) 331 (C. C. A. 6).

Abinante & Nola Packing Co., 26 N. L. R. B. 1288. (Employer held presumed to have authorized the instigation of a labor organization among its employees and other employees in the industry by a body of which the employer and substantially all other employers in the industry were members, which body held frequent meetings for the purpose of discussing problems relating to the industry.)

Attorney hired by persons acting in behalf of respondent in forming company union *held* also to act in behalf of respondent. *Sorg Paper Company*, 25 N. L. R. B. 946.

[*See* § 20 (as to employer's responsibility for activities of its attorney).]

Activities of a small stockholder who attempted to induce withdrawals from union *held* attributable to employer, when employees were justified in believing that he was acting as the employer's representative. *McCleary Timber Company, Henry*, 37 N. L. R. B. 725.

3. *Parties succeeding to or acting in the interest of the employer.*

[*See* DEFINITIONS §§ 34–41 (as to employer status).]

a. In general.

It is the employing industry that is sought to be regulated and brought withir the corrective and remedial provisions of the Act in the interest of industrial peace. It needs no demonstration that the strife which is sought to be averted is no less an object of legislative solicitude when contract, death, or operation of law brings about change of ownership in the employing agency. *N. L. R. B.* v. *Colten & Colman d/b/a Kiddie Cover Mfg. Co.*, 105 F. (2d) 179 (C. C. A. 6) enforcing 6 N. L. R. B. 355.

b. Successor in interest.

[*See* LITIGATION DIGEST: EMPLOYER—*Change of status or legal personality.*]

A successor corporation is responsible for acts of discrimination involving a failure or refusal to recall employees who were furloughed by trustees in proceedings involving reorganization of a corporate employer where the successor corporation assumed the position which had been occupied by its predecessor in relation to the employees who had

been furloughed, and undertook to reinstate such employees to, and employed them in, their former positions when such positions became available. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 337, 338.

A partnership which took over a corporation's assets and continued to operate its business is responsible for a continuation of unfair labor practices initiated by the corporation where the latter entered into a contract with a labor organization found to be employer dominated and the contract was continued in effect by the partnership. *Western Garment Mfg. Co.*, 10 N. L. R. B. 567.

The transfer of the assets of a subsidiary company to its parent corporation does not negative responsibility on the part of the subsidiary company for unfair labor practices previously committed by it. *Union Drawn Steel Co.*, 10 N. L. R. B. 868, 886, modified 109 F. (2d) 587 (C. C. A. 3).

Successor partnership which took over a corporation's assets following commission of unfair labor practices by the corporation, and the corporation, are both responsible for the unfair labor practices committed, when the formal structural change resulted in no change in the employer-employee relationship with which the Board is principally concerned. *Red Diamond Mining Co., Inc.*, 44 N. L. R. B. 1234, 1240. See also:

Weinberger Banana Co., 18 N. L. R. B. 786 (successor which took over when predecessor went into liquidation proceedings in State courts).

Baldwin Locomotive Works, 20 N. L. R. B. 100 (respondent who took over after termination of bankruptcy proceedings under Section 77B of the Bankruptcy Act, and who committed unfair labor practices while acting as debtor in possession).

Norwich Dairy Co., Inc., 25 N. L. R. B. 1166, 1179 (successor corporation which acquired assets and business of another corporation).

Schieber Millinery Co., 26 N. L. R. B. 937 (successor, which was formed, among other reasons, to avoid liability under the Act for acts of predecessor).

Carpenter Baking Co., 29 N. L. R. B. 60 (operating-successor).

Jergens Co. of Calif., 43 N. L. R. B. 465 (successor with which predecessor merged after the hearing and which was substituted as party respondent).

Adel Clay Products Co., 44 N. L. R. B. 386, 390 (successor partnership which took over a corporation's assets).

[*See* REMEDIAL ORDERS § 6 (as to effect of change of employer identity in scope of order).]

c. Parent and subsidiary corporations.

Where employees at the plants of two wholly owned subsidiaries of a parent company are governed by a common labor policy, have common interest and together constitute an appropriate unit, strikes which occurred at each of the subsidiaries are to be ascribed in large part to the unfair labor practices of the parent company and one of the subsidiaries in organizing, dominating, and supporting a labor organization, for although such unfair labor practices were confined to the employees of the subsidiary alone, they directly affected all the employees including those of the second subsidiary as well. *Todd Shipyards Corp.*, 5 N. L. R. B. 20, 38.

Middle West Corp., 28 N. L. R. B. 540, 546. (Where two subsidiary corporations of the same parent corporation operated as a single closely integrated enterprise, under a common management, with common supervision, and control of their labor policies, it cannot be said that either is absolved from responsibility for unfair labor practices engaged in by the other, *held* that each of them occupied the status of an employer.)

There is no merit to a contention that a parent corporation is not properly chargeable with unfair labor practices of its wholly owned subsidiary committed prior to the time the parent corporation took over the property and assets of the subsidiary where prior to that time the labor relations policy and business of the subsidiary were directed by the parent corporation which operated it in conjunction with other units of its entire enterprise. *Union Drawn Steel Co.*, 10 N. L. R. B. 868, 886, modified 109 F. (2d) 587 (C. C. A. 3).

Independent Pneumatic Tool Co., 15 N. L. R. B. 106, 108. (Complaint as to parent corporation dismissed where no proof was introduced to show that it exercised any control over or participated in unfair labor practices engaged in by wholly owned subsidiary.) See also: *Jamestown Metal Equipment Co., Inc.*, 17 N. L. R. B. 813. *Middle West Corp.*, 28 N. L. R. B. 540. *Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310.

Manville Jenckes Corp., 30 N. L. R. B. 382, 415. (Where a parent corporation by means of its corporate relationship with its wholly owned subsidiary, dominated and controlled the labor relations and policies of the subsidiary, especially as they concerned the commission of the unfair labor practices, *held* that the parent was responsible with its subsidiary for the unfair labor practices engaged in by the subsidiary.)

Respondent held responsible for activities of the manager of a company store operated by a separate corporation, when that corporation was a wholly owned subsidiary of the respondent's parent corporation, the store was located on respondent's property, accepted scrip issued by the respondent to its employees in return for merchandise, and in view of these circumstances was identified in fact and in the minds of the employees with the respondent; further the manager, having the power to extend or withhold credit to employees, was in a position where his statement had coercive effect. *Kelley's Creek Colliery Co.*, 17 N. L. R. B. 506, 516.

d. Alter ego of corporate employer.

Where a company engaging in unfair labor practices forms a new company which is found to be its alter ego and the latter aids in the continuation of the unfair labor practices, the former is responsible for the acts of its alter ego which is acting as its agent or instrumentality. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100, 101 (C. C. A. 2) modifying 4 N. L. R. B. 922. See also: *Schieber*, 26 N. L. R. B. 937, 966. *Gerity Whitaker Co.*, 33 N. L. R. B. 393, 400.

e. Other parties.

4. *Doctrine of respondeat superior.* [*See* DEFINITIONS §§ 24–24.6 (as to status of employees allied with management); UNFAIR LABOR PRACTICES §§ 411–420 (as to persons afforded protection under the Act); UNIT §§ 86–90.5 (as to units confined to special classes of employees); §§ 101–110.9 (as to exclusion or inclusion of employees allied with management), and LITIGATION DIGEST. EMPLOYER: *Who may bind E.*]

a. In general.

The employer may be held to have assisted the formation of a union even though the acts of the so-called agents were not expressly authorized or might not be attributable to

him on strict applications of the rules of *respondeat superior*, for what is being dealt with is neither private rights nor technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but a clear legislative policy to free the collective bargaining processes from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible. Thus where the employees would have just cause to believe that solicitors professedly for a labor organization were acting for or on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates. *International Association of Machinists* v. *N. L. R. B.*, 411 U. S. 72, affirming 100 F. (2d) 29 (App. D. C.) enforcing 8 N. L. R. B. 621. See also: *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, enf'g as modified 12 N. L. R. B. 854.

In view of the public rights involved and the remedial nature of the proceeding designed for their preservation and protection, acts of coercion and intimidation by supervisory employees may be restrained and their resumption interdicted by appropriate action of the Board, even in the absence of clear demonstration of prior authorization or subsequent ratification, when the circumstances are such as to induce in subordinate employees a reasonable apprehension that the acts condemned reflect the policy of the employer. *Consumers Power Co.* v. *N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6), enf'g 9 N. L. R. B. 701. See also: *Central Greyhound Lines, Inc.*, 27 N. L. R. B. 976, 989. (Employees exercised no supervision but were in positions close to the management.)

The question of an employer's liability for alleged unauthorized acts of its supervisory employees is not one of legal liability of the employer in damages for penalties on principles of agency or *respondeat superior*, but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent, the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequence of them

upon the employees' right of self-organization, as much as if he had directed them. *Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514, affirming 110 F. (2d) 843 (C. C. A. 6) enforcing 10 N. L. R. B. 963.

b. Persons' relation to employer.

(1) Corporate officers.

In accordance with the principles of *respondeat superior*, an employer is responsible for the acts of its officers, plant managers, and plant superintendents. *Aluminum Goods Mfg. Co.*, 25 N. L. R. B. 1004, 1012.

Carlisle Lumber Co., 2 N. L. R. B. 248, 267, enforced 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575; enforcing back-pay provisions 99 F. (2d) 533, cert. denied 306 U. S. 646. (An employer is responsible for the use of "yellow dog" applications for reemployment distributed by two of the employer's executives.)

Condenser Corp. of America, 22 N. L. R. B. 347. (Corporations engaged in integrated enterprise held responsible for acts of corporate officers and supervisory employees of either corporation.)

Milan Shirt Mfg. Co., 22 N. L. R. B. 1143, 1151. (Employer held responsible for statements of incorporator and director, although he had no financial interest in employer company.)

Metal Hose & Tubing Co., Inc., 23 N. L. R. B. 1121. (Corporation in hands of former president's executors and trustees, *held* responsible for its activities during president's lifetime since the Act applies to fiduciaries as well as to other employers.)

Whiterock Quarries, Inc., 45 N. L. R. B. 165. (Respondent held responsible for statements made by a member of Board of Directors.)

Interference engaged in by corporation's president by withholding loans to union employees, *held* attributable to the corporation, although the loans were not part of the respondent's corporate transactions and the president had used his personal funds, when the loans were transacted and repaid at corporation's office with knowledge of board of directors, and when the employees believed that they were made by the respondent. *Great Western Mushroom Co.*, 27 N. L. R. B. 352, 361.

(2) Supervisory employees.

2.1 (a) In general.

If a reasonable man, in the position of an employee, could conclude or infer that the acts and deeds of the supervisory officials represented the attitude of the employer, then the Board may find that such acts and deeds were the acts and deeds of the employer. In determining whether such a reasonable man could make such an inference, the Board may consider a number of factors, some of which are: the actual authority of the supervisory employees and whether they were in a strategic position to translate to their subordinates the policies and desires of the management; the employer's previous union attitude; favoritism of the employer; and failure of the employer, upon being informed of the acts and deeds of the supervisory officials, to renounce such acts and deeds and to announce its impartiality. It is unnecessary that all facts be present in each case, for one or more may be sufficient to authorize the inference. *Pacific Gas & Electric Co.*, 118 F. (2d) 780 (C. C. A. 9), enforcing as modified 13 N. L. R. B. 268.

With respect to the acts of supervisory employees, the doctrines of *respondeat superior* applies, and the employer is responsible for their actions even though it had no actual participation therein. *N. L. R. B.* v. *Swift & Co.*, 106 F. (2d) 87, 93 (C. C. A. 10), modifying 8 N. L. R. B. 269.

Tex-O-Kan Flour Mills Co., 26 N. L. R. B. 765, 774. (*Held:* that the assertion that supervisors or company officials who were the actors in certain unfair labor practices lacked direct authorization from the respondent to engage in such conduct was irrelevant, since it is well settled that the principle *respondeat superior* is applicable in proceedings under the Act.)

Cudahy Packing Co., 27 N. L. R. B. 118, 126. (An employer cannot avoid responsibility for the conduct of a supervisory employee on the ground that such conduct was not within the scope of his authority.)

Gamble-Robinson Co., 33 N. L. R. B. 351. (Lack of authorization does not relieve an employer from the anti-union activities of his supervisory employees where the employer takes no effective steps to prevent their occurrence.)

The activity of foremen binds an employer unless effectively disavowed, notwithstanding the employer's assertion that it maintained a position of neutrality toward competing labor organizations, and that activity on the part of minor supervisory employees could not be taken as expressing

its policy and was not, in fact, authorized by its high officials, for although it may well be that such officials maintained a neutral attitude, nevertheless foremen are in constant association with employees who must take orders from them and commonly learn from them the employer's policy on other matters. *Tennessee Copper Co.*, 9 N. L. R. B. 117, 118. See also: *Emsco Derrick & Equipment Co.*, 11 N. L. R. B. 79, 87. *Nekoosa-Edwards Paper Co.*, 11 N. L. R. B. 446, 455. *Jefferson Lake Oil Co., Inc.*, 16 N. L. R. B. 355, 371.

It is not necessary that an employer have knowledge of the activity of its supervisory employees in soliciting members for an inside labor organization to establish its responsibility for their activities. *Western Felt Works*, 10 N. L. R. B. 407, 444. See also:

Chicago Apparatus Co., 12 N. L. R. B. 1002, 1016.
Erskine Baking Co., 12 N. L. R. B. 1107, 1110.
Milne Chair Co., 18 N. L. R. B. 53, 61.
Lansing Co., 20 N. L. R. B. 434, 440.

An employer is answerable for the anti-union acts of its employees performed within the scope of their employment. *Ford Motor Co.*, 26 N. L. R. B. 322.

(b) Indicia of supervisory authority.

1. Hire, discharge, promote, discipline, transfer, and otherwise effect change in employee status.

2 *a* Actual authority.

Norfolk Shipbuilding & Drydock Corp., 12 N. L. R. B. 886.
Popper, Inc., 17 N. L. R. B. 961, 971.
California Walnut Growers Assn., 18 N. L. R. B. 493, 504.
Ford Motor Co., 19 N. L. R. B. 732, 744.
Riverside Mfg. Co., 20 N. L. R. B. 394, 404.
Burk Bros., 21 N. L. R. B. 1281, 1286.

3 *b* Power to recommend.

Semet-Solvay Co., 7 N. L. R. B. 511, 519, 520.
Nekoosa-Edwards Paper Co., 11 N. L. R. B. 446, 455.
Star & Crescent Board Co., 18 N. L. R. B. 479, 484.
California Walnut Growers Assn., 18 N. L. R. B. 493, 504.
Lansing Co., 20 N. L. R. B. 434, 440.
Out West Broadcasting Co., 40 N. L. R. B. 1367, 1370.
Imperial Lighting Products Co., 41 N. L. R. B. 1408, 1418.
Miami Broadcasting Co., 44 N. L. R. B. 256, 260.

American Bread Co., 44 N. L. R. B. 970, 976.
Red Diamond Mining Co., Inc., 44 N. L. R. B. 1234, 1243.
Leach Relay Co., Inc., 45 N. L. R. B. 744, 755.
Whiting-Mead Co., 45 N. L. R. B. 987, 1001.

2.4 *c* Absence of authority.

An employer is responsible for the anti-union statments of the captain of a vessel owned and operated by the employer, for the relationship is such that the doctrine *respondeat superior* unquestionably applies, and it is immaterial that there is no showing that the captain had authority to hire and discharge. *Virginia Ferry Corp.* v. *N. L. R. B.*, 101 F. (2d) 103, 106 (C. C. A. 4), modifying 8 N. L. R. B. 730.

An employer is responsible for the acts of employees in supporting a labor organization, despite the fact that the employees in question, although having positions of authority, had no power to hire or discharge, since it is normal for an employee to assume that those who are in positions of authority represent to a large extent the wishes of the management, in the absence of a declaration by the employer to dispel this assumption. *M. Lowenstein & Sons, Inc.*, 6 N. L. R. B. 216, 232, 233.

Cf. *Ballston-Stillwater Knitting Co.* v. *N. L. R. B.*, 98 F. (2d) 758, 762 (C. C. A. 2), setting aside 6 N. L. R. B. 470. *Cupples Co.* v. *N. L. R. B.*, 106 F. (2d) 100, 115, 116, (C. C. A. 8) modifying and denying rehearing 10 N. L. R. B. 168.

The test by which the employer's liability for supervisory employees' conduct is not gauged by whether or not supervisory employees have power to hire or discharge employees but on whether their relation to the employer is such that the employees have just cause to believe that they do represent the employer and that they translate to them the wishes, desires, and orders of management. *Curtiss-Wright Corp.*, 39 N. L. R. B. 992, 1018. See also: *Borden Mills, Inc.*, 13 N. L. R. B. 459, 465. *Humble Oil & Refining Co.*, 16 N. L. R. B. 112, 125.

For additional decisions in which an employer was held responsible for the acts of supervisory employees who had no authority to hire or discharge; *see:*

Consumer's Power Co., 9 N. L. R. B. 701, 736 (crew foremen empowered to recommend hire, discharge, and promotion of other employees).

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 745 (dispatchers and passenger agents, the former possessing authority to change schedules and thereby rates of pay, of bus drivers, the latter under duty to report on conduct of employees).

Pacific Gas & Electric Co., 13 N. L. R. B. 268, 283, 284, 290 (general foremen and other supervisory employees empowered to recommend discharges and transfers).

Borden Mills, Inc., 13 N. L. R. B. 459 (section men, fixers and loom fixers).

California Walnut Growers Assn., 18 N. L. R. B. 493 (supervisors or forceladies).

Walworth Company, 21 N. L. R. B. 1302 (subforemen).

Sorg Paper Co., 25 N. L. R. B. 946 (employee without power to hire and discharge who was allowed to vote in prior Board Election).

Hughes Tool Co., 27 N. L. R. B. 836 (set-up men).

Central Greyhound Lines, Inc., of New York, 27 N. L. R. B. 976 (chief and garage bus dispatchers).

General Dry Batteries, Inc., 27 N. L. R. B. 1021 (inspector).

Algoma Net Co., 28 N. L. R. B. 64; (foreman with power to recommend, hire and discharge).

International Harvester Co., 29 N. L. R. B. 456 (gang leader).

Ford Motor Co., 29 N. L. R. B. 873; (assistant foremen and head timekeeper).

Decatur Iron & Steel Co., 29 N. L. R. B. 1044 (mechanics who controlled and directed other employees).

Swift & Co., 30 N. L. R. B. 550 (foremen).

United Dredging Co., 30 N. L. R. B. 739 (leverman, extra leverman, chief mate, first mate, second, and third engineers, steward, assistant shore foreman).

Cities Service Oil Co., 32 N. L. R. B. 1020 (shipping master who allegedly did not have the power to hire or discharge but who occupied a position commonly known in industry as "employment manager").

Hunnicutt, Mr. & Mrs. H. P., 35 N. L. R. B. 605 (shipping clerk who was second in command to employer).

Boswell Co., J. G., 35 N. L. R. B. 968 (activities of individuals who although not having authority to hire and discharge directed the work of the rank and file employees).

Phelps Dodge Refining Corp., 37 N. L. R. B. 1059 (activities of minor supervisory employees when it reasonably appeared to other employees that they reflected the views and opinions of management).

German Seed and Plant Co., 37 N. L. R. B. 1090 (working foremen).

Sun Shipbuilding and Dry Dock Co., 38 N. L. R. B. 214 (leaders).

Northwestern Cabinet Co., 38 N. L. R. B. 357 (sprayer).

Phelps Dodge Refining Corp., 38 N. L. R. B. 555 (strawboss).

Ohio Valley Bus Co., 38 N. L. R. B. 838 (bus dispatchers).

May Co., The, 38 N. L. R. B. 1154 (department heads in the warehouse of a department store retailing firm).

Schaefer-Hitchcock Co., 39 N. L. R. B. 709 (strawboss).

Curtiss-Wright Corp., 39 N. L. R. B. 992 (leadmen).

Pequanoc Rubber Co., 40 N. L. R. B. 541 (line supervisors).

Ely & Walker Dry Goods Co., 40 N. L. R. B. 1262 (floorladies).

Kirk & Son, Inc., Morris P., 41 N. L. R. B. 807 (subforemen, strawbosses, and head carpenter).

Springfield Woolen Mills Company, The, 41 N. L. R. B. 921 (shift bosses).

Alco Feed Mills, 41 N. L. R. B. 1278 (foreman).

Verplex Co., 42 N. L. R. B. 472 (working floorlady).

Helena Rubinstein, Inc., 42 N. L. R. B. 898 (minor supervisory employees).

Columbian Iron Works, 43 N. L. R. B. 73 (activities of an employee who was in charge of a group of employees and whose subordinates were told by the management to see him about complaints).

Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613 (Working supervisors).

Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613 (minor supervisory employees who performed acts similar to those committed by major supervisory employees).

Elvine Knitting Mills, Inc., 43 N. L. R. B. 695 (activities of an employee who was responsible for the mechanical operation of machines).

Elvine Knitting Mills, Inc., 43 N. L. R. B. 695 (employee who was characterized as "forelady," and her successor after her discharge).

Platte Valley Telephone Corp., 44 N. L. R. B. 632 (activities of employees who had no absolute authority to hire or discharge but who were responsible for the advancement of other employees).

Maxson Corp., 44 N. L. R. B. 1136 (employee who could recommend discharges and transfers, and an employee who had recommended pay increases for his assistants)

American Broach & Machine Co., 45 N. L. R. B. 241 (activities of instructor who was next to foreman in authority).

Taitel, Irving, 45 N. L. R. B. 551 (activities of foremen and foreladies).

2 Supervision of work

a Assignment.

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 744.

Arma Engineering Co., 14 N. L. R. B. 736, 750.

Harrisburg Children's Dress Co., 14 N. L. R. B. 1035, 1039.

Bierner, 20 N. L. R. B. 673, 679.

Burk Bros., 21 N. L. R. B. 1281, 1286.

Butler Bros., 41 N. L. R. B. 843, 850.

American Bread Co., 44 N. L. R. B. 970, 976.

Leach Relay Co., 45 N. L. R. B. 744, 755.

Elizabeth Arden, Inc., 45 N. L. R. B. 936, 943.

.1 *b* Direction.

Nekoosa-Edwards Paper Co., 11 N. L. R. B. 446, 455.

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 744.

Borden Mills, Inc., 13 N. L. R. B. 459, 465.

Resnick Cleaners & Dyers, Inc., 24 N. L. R. B. 690, 702.

Red Diamond Mining Co., Inc., 44 N. L. R. B. 1234, 1243.

Elizabeth Arden, Inc., 45 N. L. R. B. 936, 943.

.2 *c* Inspection and/or report.

Semet-Solvay Co., 7 N. L. R. B. 511, 519, 520.

Nekoosa-Edwards Paper Co., 11 N. L. R. B. 446, 455.

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 744.

Ford Motor Co., 19 N. L. R. B. 732, 743.

Riverside Mfg. Co., 20 N. L. R. B. 394, 403.

Leach Relay Co., Inc., 45 N. L. R. B. 744, 755.

3.3 *3* Rate of pay.

The fact that employees who do not receive salaries as do regular supervisory employees are considered foremen by both the employer and the employees whose work they supervise is sufficient in itself to indicate the supervisory character of the positions which they occupy and where such employees give orders to other employees, report such employees for infraction of rules, and make recommendations concerning them, they exercise supervisory powers, irrespective of the fact that they are called gang leaders, assistant foremen, or are given some other title, and the employer is responsible for the activities of such employees in forming and administering a labor organization. *Semet-Solvay Co.*, 7 N. L. R. B. 511, 519, 520.

Norfolk Shipbuilding & Drydock Corp., 12 N. L. R. B. 886 (Employee characterized as "lumber inspector" paid on weekly basis as other foremen, instead of hourly as non-supervisory employees.)

Kelley's Creek Colliery Co., 17 N. L. R. B. 506, 515 (Employee received additional compensation for supervision of crew.)

Minneapolis-Honeywell Regulator Co., 33 N. L. R. B. 263, 274, 275 (Employee who at first received $35 per week was thereafter paid on a monthly basis and at time of the hearing was receiving a salary of $230 a month.)

Williamson-Dickie Mfg. Co., 35 N. L. R. B. 1220, 1226 (Employees' rate of pay found not inconsistent with his supervisory status, when it was admitted that supervisory employees' rate of pay ranged from 38 cents to 55 cents an hour, the employee in question was presently receiving 42 cents an hour, which amount it was admitted, was not received by any of the subordinate employees.)

Leach Relay Co., Inc., 45 N. L. R. B. 744, 755 (Employees characterized as "bench foremen" received a higher rate of pay than other employees.)

3.4 *4* Minor supervisory duties.

Interlake Iron Corp., 33 N. L. R. B. 613, 631 (Employer held not responsible for the activities of a bricklayer who had limited supervisory authority such as was commonly exercised by a skilled craftsman over his helpers.)

3.5 *5* Strategic position to translate to subordinate policies and desires of management.

Where factory office managers participated in unfair labor practices affecting production employees respondent's

argument that it was not accountable for their activities because they were "not in a position to exert pressure" upon such employees, rejected when in conduct of respondent's operations factory office managers act or appear to act as respondent's representatives in relation to production employees. *Aluminum Goods Mfg. Co.*, 25 N. L. R. B. 1004.

Employer held responsible for the activities of an employee, when he occupied positions as leadman and assistant foreman, and because of such position and his participation with employer's officials in organizing and directing the activities of a company-dominated union, was in a strategic position to translate to employees the labor views of management with which he was essentially identified. *Dowty Equipment Corp.*, 45 N. L. R. B. 214, 217.

16 6 Duties which lead employees to believe that employee represents management. [*See* § 16 (as to non-supervisory employees).]

Employer is held responsible for the activities of an employee who is found to be a supervisory employee in view of his duties; his connection with the employer's house organ; the amount of his salary; the extent of his extra-curricular activities for the employer; and the location of his desk, which is a few feet from the employment manager. *Minneapolis-Honeywell Regulator Company*, 33 N. L. R. B. 263, 274.

For additional decisions, *see:*

Minneapolis-Honeywell Regulator Co., 33 N. L. R. B. 263, 274, 275.

Curtiss-Wright Corp., 39 N. L. R. B. 992, 1018.

Miami Broadcasting Co., 44 N. L. R. B. 257, 260.

Dowty Equipment Corp., 45 N. L. R. B. 214, 218.

17 7 Regarded by employees as representatives of management. [*See* § 16 (as to nonsupervisory employees).]

Semet-Solvay Co., 7 N. L. R. B. 511, 519, 520.

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 744.

Arma Engineering Co., 14 N. L. R. B. 736, 750.

Harrisburg Children's Dress Co., 14 N. L. R. B. 1035, 1040.

California Walnut Growers Assn., 18 N. L. R. B. 493, 504.

Riverside Mfg. Co., 20 N. L. R. B. 394, 403.

Blechman & Sons, Inc., 20 N. L. R. B. 495, 501.

Bierner, 20 N. L. R. B. 673, 679.

Minneapolis-Honeywell Regulator Co., 33 N. L. R. B. 263, 274, 275.
Curtiss-Wright Corp., 39 N. L. R. B. 992, 1018.
Imperial Lighting Products Corp., 41 N. L. R. B. 1408, 1419.
Elvine Knitting Mills, Inc., 43 N. L. R. B. 695, 700.
Miami Broadcasting Co., 44 N. L. R. B. 257, 261.
Red Diamond Mining Co., Inc., 44 N. L. R. B. 1234, 1243.
Elizabeth Arden, Inc., 45 N. L. R. B. 936, 943.

3.8 *8* Charge of plant operations of subdivisions thereof.
Kelley's Creek Colliery Co., 17 N. L. R. B. 506, 515.
Lansing Co., 20 N. L. R. B. 434, 440.
Bierner, 20 N. L. R. B. 673, 679.
Resnick Cleaners & Dyers, Inc., 24 N. L. R. B. 690, 703.
Red Diamond Mining Co., Inc., 44 N. L. R. B. 1234, 1243.
Cf. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332; 341 setting aside 1 N. L. R. B. 546 and affirming 96 F. (2d) 721 (C. C. A. 6).

3.9 *9* Manual duties.
Employer held responsible for the activities of working supervisors who performed both manual and supervisory work, when they were the management's first contact with the general employees, were regarded by the latter as supervisors, and were part of the familiar category known not only as working supervisors but also as leaders, pushers, crew foremen, and strawbosses. *Emerson Radio & Phonograph Corp.*, 43 N. L. R. B. 613, 626. See also: *Germain Seed & Plant Co.*, 37 N. L. R. B. 1090, 1096. *Verplex Co.*, 42 N. L. R. B. 472, 447.

4 *10* Others.
Where bylaws of dominated organization indicated duties of set-up men were of a supervisory nature, doctrine of *respondeat superior* applied. *Hughes Tool Co.*, 27 N. L. R. B. 836.

5 (c) Eligibility to membership in labor organization or eligibility to vote.
An employer is not relieved from responsibility for the union activity of its supervisory employees by virtue of membership of such employees in a labor organization, for a corporate employer in its relations to its ordinary employees necessarily acts through and must be held responsible for the acts of its supervisory employees, and where such employees actively interfere with one labor organization and

promote another, the employer itself must be deemed to have engaged in such interference and promotion. *Ward Baking Co.*, 8 N. L. R. B. 558, 565. See also: *California Walnut Growers Assn.*, 18 N. L. R. B. 493, 504.

Membership of supervisory employees in a labor organization involved in a controversy over representation cannot relieve an employer of responsibility for their acts nor confer on such employees a privilege to interfere by means of statements made to their fellow-employees which disparage one of the organizations and which indicate that the employees might possibly lose their jobs in the event they select that organization as their representative, for supervisory employees although eligible for membership in competing labor organizations are forbidden by the Act in their capacity as the employer's agents to interfere in the selection of employee bargaining representatives, yet there need be no conflict by reason of their dual status since it is perfectly consistent for such employees to belong to labor organizations and yet be prohibited from conduct permitted non-supervisory employees. *Tennessee Copper Co.*, 9 N. L. R. B. 117, 119.

An employer is responsible for the acts of supervisory employees in interfering with an election directed by the Board notwithstanding the fact that some of the supervisory employees were within the appropriate unit and hence eligible to vote in the election since the important consideration is that the various supervisory employees did in fact hold positions with the employer which gave them certain powers of direction over other employees who identified them with the management. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 289, 290.

Neither the right of supervisory employees to engage in concerted activities nor their eligibility to membership in a union excuses an employer's failure to restrain them from enlisting its prestige on one side of a representation dispute. *Ford Motor Co.*, 23 N. L. R. B. 342, 357.

Supervisory employee's statements, *held* not to reflect coercive conduct by the employer, where he denied he acted in any way at the instructions of the employers, had no financial interest in the business, and traditionally supervisory employees had been active in the printing-trade unions. *Jackson, Sam M.*, 34 N. L. R. B. 194.

For additional decisions in which employer was held responsible for activities of its supervisory employees al-

though they were eligible in or members of a labor organization, or were eligible to vote, *see:*

Chicago Apparatus Co., 12 N. L. R. B. 1002, 1017, enf'd 116 F. (2d) 753 (C. C. A. 7).
California Walnut Growers Assn., 18 N. L. R. B. 493.
West Oregon Lumber Co., 20 N. L. R. B. 1.
Baldwin Locomotive Works, 20 N. L. R. B. 1100.
West Texas Utilities Co., 22 N. L. R. B. 522.
Ford Motor Co., 23 N. L. R. B. 342.
Lawrenceburg Roller Mills Co., 23 N. L. R. B. 980.
Swift & Co., 30 N. L. R. B. 550.
Seagram & Sons, Inc., Joseph E., 32 N. L. R. B. 1056.
Sherwin-Williams Co., 37 N. L. R. B. 260.
McCleary Timber Co., Henry, 37 N. L. R. B. 725.
Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234.
Iowa Electric Light & Power Co., 38 N. L. R. B. 1124.
Greenport Basin & Construction Co., 42 N. L. R. B. 377.
Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613.
Cassoff, Louis F., 43 N. L. R. B. 1193.

[*See* UNIT § 86–86.5 (as to appropriateness of proposed units confined to supervisory employees).]

5.1 (d) Contemplated or actual cessation or temporary nature of supervisory status.

Foremen who were not receiving wages because of a shut-down were held, nevertheless, to be acting for the employer during such shut-down because; the employer and the foremen contemplated that they would return to their usual positions on the pay roll upon the resumption of operations; there was nothing in the record to show that the employees ceased to consider the foremen as supervisory employees simply because the foremen were not receiving any salary; and the employer invited activity by the foremen during the shut-down. *West Oregon Lumber Co.*, 20 N. L. R. B. 1, 23.

Merit Clothing Co., 30 N. L. R. B. 1201. (Employer held responsible for the anti-union acts of a machinist who was formerly a foreman and was still regarded as such by some of the employees.)

Interlake Iron Corp., 33 N. L. R. B. 613. (Employer held responsible for anti-union activities of an employee when he was temporarily exercising supervisory duties.)

Imperial Lighting Products Co., 41 N. L. R. B. 1408, 1419. (Employer held responsible for the activities of an employee although he was transferred from a position of

foreman in charge of night operations to non-supervisory work on day operations, when it failed to inform employees that the transfer in any way affected his prior intimate identity with the management, and it was normal for employees to view him as a representative of the management.)

Verplex Co., 42 N. L. R. B. 472. (Employer held responsible for activities of head designer who sometimes acted in a supervisory capacity and was regarded by both management and employees to be more than an ordinary employee.)

Texas Co., Marine Division, 42 N. L. R. B. 593. (Employer held accountable for anti-union activities of third ranking officer on ship who during absence of his superior officer was in complete charge of ship.) See also: *Texas Co.*, 19 N. L. R. B. 835, 842 (acting first mate).

Statements made by plant superintendent, held not attributable to employer, when it was not unlikely that employees, who knew of a prospective change in management, anticipated his retirement, and therefore no longer regarded him as a genuine spokesman for management. *Seagram & Sons, Inc.*, 32 N. L. R. B. 1056, 1070.

5.5 (e) Other circumstances.

(f) Types of supervisory employees for whose activities employer was held responsible. [*See* §§ 12.2, 12.4 (as to supervisory employees), and § 16 (as to nonsupervisory employees).]

6 (3) Other employees, agents, or parties in interest.

Statements made by a shipping clerk and by a plant superintendent are not imputable to the employer when among other circumstances neither of the two men held such a position that his statements were evidence of the company's policy. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 341, 342, setting aside 1 N. L. R. B. 546 and affirming 96 F. (2d) 721 (C. C. A. 6).

Uxbridge Worsted Company, Inc., 11 N. L. R. B. 333 (employee who had no power to hire, discharge, or supervise work of others).

Bollman & Co., George W., 29 N. L. R. B. 663 (inspector; physician).

Norwood Sash & Door Mfg. Co., 42 N. L. R. B. 687 (highest paid and oldest employee).

Cherry River Boom & Lumber Co., 44 N. L. R. B. 273 (conductors, yard graders and employee who, although keeping

time of employees assisting and instructing them in work with which he was more familiar, had no authority to discipline, hire, or discharge, and was neither employed in a supervisory capacity nor accorded ostensible supervisory authority).

Fentress Coal and Coke Co., 44 N. L. R. B. 1033. (Activities of constables and deputies who were also employees of respondent, *held* not attributable to respondent in the absence of any connection between respondent and their activities as deputies, when the only compensation they received from respondent consisted of wages earned as ordinary workers, they exercised their authority as peace officers in an impartial manner, and voiced their own views and not those of respondent when they spoke unfavorably of union.)

Gray Envelope Mfg. Co., Inc., 45 N. L. R. B. 653 (adjuster). Councilmen who were employee representatives of dominated Plan which employer dissolved after validation of the Act, *held* to have acted for and on behalf of the employer in all their activities in the formation of successor organizations and that the employer was responsible for their activities, went under the Plan they represented the management, and they as well as their fellow employees believed that they represented the views of the management. *International Harvester Co.*, 29 N. L. R. B. 456.

Hollywood-Maxwell Co., 24 N. L. R. B. 645. (Ordinary employees who were leaders in a dominated organization, held, by reason of their identification with that organization, representatives of the respondent in the formation of its successor.)

Sorg Paper Co., 25 N. L. R. B. 946. (Employees who were acting in behalf of the respondent as representatives, *held* to have continued to act with the apparent authority of the respondent in undertaking similar activity in organizing a successor organization.)

New Idea, Inc., 31 N. L. R. B. 196. (Persons identified with predecessor employer-dominated organization who formed and developed the successor organization, *held* to have acted in behalf of and represented the employer.)

Bethlehem Steel Corp., 33 N. L. R. B. 1190. (Employees serving as employee representatives of dominated "Plan," *held* to have acted for and in behalf of employer in all their activities with respect to the formation of a "successor"

organization and that the employer was responsible for their activities.)

An employer cannot be divested of responsibility for anti-union statements made by its counsel in the course of the duties for which he was retained. *Merit Clothing Co.*, 30 N. L. R. B. 1201, 1210.

Fletcher Paper Co., 27 N. L. R. B. 1274, 1280 (attorney who assisted in drafting withdrawal petitions).

[*See* § 3 (as to employer's responsibility for activities of attorney for company-union).]

An employer is responsible for the lawless conduct of special watchmen, supplied by an "industrial service company" and paid by the employer, when it incited, instigated, approved, and ratified such activities. *Weirton Steel Co.*, 32 N. L. R. B. 1145, 1175.

Whiting-Mead Co., 45 N. L. R. B. 987. (Employer held responsible for activities of industrial engineer employed by firm contracting with respondent to revise respondent's business and personnel organization, when he made recommendations as to respondent's personnel and purported to act in respondent's interest, a fact of which both respondent and employees were aware and which respondent did not disavow.

An employer held responsible for the activities of employees who although not possessing clear supervisory powers performed duties that allied them more closely with the management than with the other employees and were regarded by them as representatives of the management. *Southern Bell Telephone & Telegraph Co.*, 35 N. L. R. B. 621.

H. J. Heinz Co., 10 N. L. R. B. 963, 974, enforced 110 F. (2d) 843 (C. C. A. 6) (good-will man).

Walworth Co., Inc., 21 N. L. R. B. 1301 (head inspector).

Aluminum Goods Mfg. Co., 25 N. L. R. B. 1004 (production clerk).

Central Geyhound Lines, 27 N. L. R. B. 976, 989 (private secretary to company's officials). See also: *Western Garment Mfg. Co.*, 10 N. L. R. B. 567, 573. *Luckenbach S. S. Co., Inc.*, 12 N. L. R. B. 1333. *Germain Seed and Plant Co.*, 37 N. L. R. B. 1090.

Hazel-Atlas Glass Co., 34 N. L. R. B. 346. (Employee who supervised time racks; and ingress and egress to plant).

Hygrade Food Products Corp., 35 N. L. R. B. 120 (head office auditor).

Boswell Co., J. C., 35 N. L. R. B. 968 (farm advisor, agronomist, cashier, head bookkeeper and storekeeper).

Casady, 38 N. L. R. B. 1245, 1253. (Statements of an individual acting in the capacity of engineer and salesman, *held* attributable to the respondent, notwithstanding that he did not perform any supervisory duties, when in view of his role as advisor to the respondent and the fact that he had been an operator of coal mines within the area for many years, and receiver of the mine purchased by the respondent, employees were justified in believing that his activities represented the respondent's wishes and desires.)

Moore, Inc., E. H., 40 N. L. R. B. 1058 (night watchman characterized as "special officer").

Hearst Mercantile Co., 44 N. L. R. B. 1342 (credit manager).

American Broach & Machine Co., 45 N. L. R. B. 241 (instructors).

Activities of respondent's sister-in-law held attributable to the respondent, when her status was that of a confidential employee whose activities purported to be, and were accepted by the employees as expressions of the respondent's attitude, and who because of her family relationship to respondent and respondent's conduct was respondent's agent with respect to those activities. *Van Deusen*, 45 N. L. R. B. 679.

Niles Fire Brick Co., 18 N. L. R. B. 883, 897–899. (Activities of son-in-law of general manager, *held* attributable to respondent, when it permitted him to use his relationship to the general manager to invest his activities with coercion and thereby intimidate employees and achieve the results described by the respondent.)

[*See* UNIT § 110 (as to exclusion from units of employees intimately related to management).]

c. Employer's conduct.

7 (1) In general.

7.1 (2) Neutrality: what constitutes.

The doctrine of *respondeat superior* applies to the acts of supervisory employees and an employer is responsible for the actions of such employees, even though it had no actual participation therein, and despite the fact that its plant manager and a plant superintendent repeatedly warned against violations of the Act and solicitation of membership in labor organizations on the employer's premises during working hours, but took no effective means to stop

repeated violations. *Swift & Co.* v. *N. L. R. B.*, 106 F. (2d) 87, 93 (C. C. A. 10) modifying 8 N. L. R. B. 260.

Consumers' Power Co., 9 N. L. R. B. 701, 737. (An employer has not relieved itself of its responsibility by instructing supervisory employees to refrain from activities directed against a labor organization where such activity continued after the instructions were given.)

Nebraska Power Co., 19 N. L. R. B. 357, 365. (Statements of supervisory employees held not effectively disavowed, although employer at request of complaining organization admonished the employee as well as other supervisors against any recurrence of such incidents and voiced to representatives of the union its policy of non-opposition to membership of employees in the union, when employees were never directly informed that the statements were contrary to the employer's policy and Board was of the opinion that more remained to be done if the effect of the statements were to be overcome.)

Schult Trailers, Inc., 28 N. L. R. B. 975. (Employer held responsible for allegedly unauthorized acts of supervisory employees regardless of its alleged instructions to them not to speak of unions to non-supervisory employees, when such instructions were not publicized or communicated to the latter; employer was on notice of the coercive activities of the supervisory employees and took no steps to eliminate the effect thereof; and when the supervisory employees in their anti-union conduct clearly emulated the anti-union conduct of the employer.)

American Steel Scraper Co., 29 N. L. R. B. 939. (An employer is responsible for anti-union activities of a production foreman notwithstanding its contention that he was instructed not to discuss the subject of unions with the employees where he was the direct supervisor over the employees who understood him to speak for the employer and where the employer took no steps to counteract his anti-union activities by informing the employees that his action was beyond the scope of his authority.)

Curtiss-Wright Corp., 39 N. L. R. B. 992. (Employer held responsible for activities of its supervisory employees notwithstanding its contention that it instructed them to remain neutral, where despite such instructions, many of its supervisory employees did not remain neutral but on the contrary became active partisans of the "inside" organization and antagonists of the "outside" union; and

where no effective means were taken by the employer to interdict its supervisory force's support to the "inside" organization.)

For additional decisions in which an employer was held accountable for activities of supervisory employees when alleged instructions of neutrality were not complied with and were not communicated or publicized to the employees, *see:*

Borden Mills, Inc., 13 N. L. R. B. 459.
Air Associates, Inc., 20 N. L. R. B. 356.
General Shale Products Corp., 26 N. L. R. B. 921, 925.
Quaker State Oil Refining Corp., 27 N. L. R. B. 1321, 1327.
Bemis Bro. Bag Co., 28 N. L. R. B. 430.
Reliance Mfg. Co., 28 N. L. R. B. 1051.
American Cyanamid Co., 37 N. L. R. B. 578.
Ohio Valley Bus Co., 38 N. L. R. B. 838.
Lexington Telephone Co., 39 N. L. R. B. 1130.
Fairchild Engine & Airplane Corp., 41 N. L. R. B. 521.
Whiterock Quarries, Inc., 45 N. L. R. B. 165.

An employer cannot disavow the support which its supervisory employees accorded a labor organization found to be controlled by the management where there is no showing that the employer sought to make clear to the employees that its foremen were acting without its acquiescence. *Swift & Co.*, 7 N. L. R. B. 269, 284, modified 106 F. (2d) 87 (C. C. A. 10).

Cooper, Wells & Co., 16 N. L. R. B. 27, 32. (Although the Board held that an employer effectively maintained neutrality, in so holding it indicated that it did not mean to imply that as a general rule an employer may avoid the consequences of the coercive acts of its supervisory employees merely by instructing such supervisors to take no part in organizational activities, or by making general announcements of neutrality to its employees, for the question in each case is a matter of degree depending upon such circumstances as the status of the supervisors involved, the effect of their statements upon the employees, the steps which the employer takes to remove any impression which such statements may have created, and the employer's attitude toward the unionization of its employees.)

New York Times Co., 26 N. L. R. B. 1094, 1106. (Employer cannot fulfill its duties under Act merely by issuing in-

structions requiring compliance with the Act; it must make such instructions effective.)

Employer's contention that it cannot be held responsible for unauthorized acts of its foremen in soliciting membership in an inside labor organization and discouraging membership in an outside organization is untenable, in spite of employer's posted notices and oral instructions setting forth a neutral attitude toward organizational activities; for employees customarily give small credence to general acts of purported neutrality when confronted with unmistakable acts of favoritism on the part of representatives of management with whom they have the closest contact, and the fact that high executives of a company may maintain an impartial attitude is without significance when foremen engage in discriminatory conduct. *Inland Steel Co.*, 9 N. L. R. B. 783, 812, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

Pennsylvania Greyhound Lines, 11 N. L. R. B. 738, 746. (Employer not relieved of responsibility for acts of its supervisory employees because of bulletin which it posted stating "that the policy of the company is that no employee will be required as a condition of employment to join any labor organization, nor will his or her right to belong to any labor organization be interfered with," when it failed to take action to clarify situation brought about by certain statements made by its supervisory employees.)

Boeing Airplane Co., 46 N. L. R. B. 267. (An anticipatory notice by an employer that unneutral statements by his supervisory employees will not reflect his attitude and which are disavowed in advance, is not sufficient, without more, to overcome the effect of subsequent manifestations of partiality where the employer learns of such partiality.)

Notwithstanding employer's contention that it had posted notice and maintained a position of neutrality toward competing labor organizations and had instructed its supervisory employees to observe this neutrality, *held* that it was not relieved of responsibility for their activities, where it expressed its neutrality in an atmosphere already charged with its supervisors' hostility to the affiliated union and enthusiasm for the "inside" union, where such instructions were too long delayed—instructions were not given until "inside" union obtained a majority, and where no effective means were taken to prohibit

their activities which continued after the instructions were given. *Aintree Corp.*, 37 N. L. R. B. 1174.

H. J. Heinz Co., 10 N. L. R. B. 963, 974, enforced 110 F. (2d) 843 (C. C. A. 6). (An employer is not relieved from liability for the acts of its supervisory employees notwithstanding instructions to the supervisory employees that they were not to take part in any of the union activities of the employees and that they should practice no discrimination between employees belonging to, any group, where anti-union statements and other acts, violative of the Act, had been consummated prior to the time the instructions were given.)

Nebraska Power Co., 19 N. L. R. B. 357. (Foremen's anti-union conduct, *held* not overcome by respondent's subsequent statement to union representatives that employees were free to join the union, and warning to foremen against repetition of such incidents, in absence of direct communication to employees.)

Dowty Equipment Corp., 45 N. L. R. B. 214. (Employer held responsible for activities of supervisory employees notwithstanding its contention that instructions were given supervisors not to discuss union matters with employees, when the alleged instructions were given after the the union had filed charges, and were never made known to employees so far as record showed.)

Anti-union activities of supervisory and other employees during working hours held not attributable to employer, when respondent's managing officers immediately upon learning thereof, reprimanded such employees, instructed them to discontinue such activities, admonished supervisory employees not to engage in union discussions with other employees or to interfere with union activities, and distributed among its employees a statement of its policy to permit employees full freedom of organization for the purposes of collective bargaining. *Gray Envelope Mfg. Co., The*, 45 N. L. R. B. 653. See also: *Cooper, Wells & Co.*, 16 N. L. R. B. 27, 31.

National Supply Co., 16 N. L. R. B. 304, 312. (Aside from the fact that Board was not convinced that certain statements were made by supervisory employees, Board found employer not to be responsible for their activities, when it took steps to declare its neutrality, and in consonance with this policy instructed its supervisory employees to remain aloof from the union rivalry, and when advised

of an alleged union favoritism by its supervisory employees invited the union so charging to report any specific instance of such conduct.)

(3) Authorization or ratification.

7.2 (a) Supervisory employees.

Employer held responsible for plant manager's acquiescence and consent to anti-union violence of foremen. *Newberry Lumber & Chemical Co.*, 17 N. L. R. B. 795.

An employer cannot relieve itself of responsibility for acts of supervisory employee in taking a leading part in the formation of labor organization, when it had full knowledge of, acquiesced in, and indicated its approval of his activities. *Link-Belt Co.*, 30 N. L. R. B. 227

An employer engaged in mining operations, held responsible for the activities of its shift-boss, when that person was vested with important supervisory duties, including the power to discharge or lay off the men working under him, and when he committed the acts in question under the instructions from the mine superintendent, and was thus carrying out the express wishes of the management. *Canyon Corp.*, 33 N. L. R. B. 885, 894.

Activities of a supervisor held attributable to the respondent, particularly when it was aware of his activites and took no steps to disavow his acts, and by its other conduct, countenanced if not directly authorized such conduct. *McCleary Timber Co.*, 37 N. L. R. B. 725, 730.

Employer held responsible for acts and statements of a supervisory employee despite claim that such acts were unauthorized, when ordinary employees would have been justified in believing that he was acting as employer's representative and when it condoned such conduct in that it failed to curb the acts of said supervisory employee of which it was cognizant. *Tennessee Products Corp.*, 41 N. L. R. B. 326.

7.3 (b) Non-supervisory employees, agents, or parties in interest.

Abinante & Nola Packing Co., 26 N. L. R. B. 1288. (Action taken by employees at their employer's express direction and request.) See also:

Dixie Motor Coach Corp., 25 N. L. R. B. 869.

National Seal Corp., 30 N. L. R. B. 188.

Kirk & Son, Inc., 41 N. L. R. B. 807.

American Broach & Machine Co., 45 N. L. R. B. 241.

Donnelly Garment Co., 21 N. L. R. B. 164, 199; (Activities committed with the knowledge and approval of the employer.) See also:

Northern Ohio Telephone Co., 27 N. L. R. B. 613.
Merit Clothing Co., 30 N. L. R. B. 1201.
Phelps Dodge Refining Corp., 37 N. L. R. B. 1059.
Aintree Corp., 37 N. L. R. B. 1174.

Central Greyhound Lines, 27 N. L. R. B. 976, 989. (Activities of the secretary to respondent's vice president because of his position and the similarity between his statements and those uttered by others actually having supervisory status and those contained in notices posted by the respondent.)

Ford Motor Co., 29 N. L. R. B. 873, 910. (Acts of one who represented himself as an agent of and spoke on behalf of the respondent; showed knowledge of respondent's policies; associated, in conferences with the union, with respondent's officials; was introduced by a company representative as one of respondent's agents; negotiated settlements which respondent adopted; prevented a company-assisted labor organization from holding meetings, and impersonated a company representative in the presence of other company representatives who, knowing of his impersonation did not disclaim his authority to speak for respondent.)

Phelps Dodge Refining Corp., 38 N. L. R. B. 555. (Activities of an employee, when employer with knowledge of his anti-union animus and his reputation as a labor spy, encouraged him in such activities, failed to advise the employees generally that he did not represent the management, and thereafter promoted him.)

7.4 (4) Other conduct.

d. Surrounding circumstances.

9 (1) In general.

9.1 (2) Isolated statements and/or personal opinions.

An employer is responsible for anti-union statements of supervisory employees, notwithstanding employer's contention that these persons were friendly with the employees, that the statements attributed to them were made during casual conversations, and that the record did not indicate that these conversations had any effect on the employees' membership or loyalty to the union, when the tenor of their statements were clearly anti-union, they occupied high supervisory positions and insofar as their subordi-

nates knew, purported to state the employer's policies and views with respect to the union. *Quaker State Oil Refining Corp.*, 27 N. L. R. B. 1321, 1327. See also:

Clinton Cotton Mills, 1 N. L. R. B. 97, 109–110; (activities of supervisory employees despite their friendly relationship with employees).

Brown Shoe Co., Inc., 1 N. L. R. B. 803, 829; (anti-union statements of supervisory employees, despite friendly relationship with ordinary employees).

Union Pacific State, Inc., 2 N. L. R. B. 471, 478, 480; (anti-union statements by superintendents not justified as reflecting personal opinions of such employees).

Owen-Illinois Glass Co., 25 N. L. R. B. 92, 106; (anti-union remarks of supervisory employee, despite fact that he prefaced his remarks with the statements that he was speaking on his own responsibility and not for the employer).

Illinois Electric Porcelain Co., 31 N. L. R. B. 101, 111; (activities of foreman, in questioning an employee about the union, despite the fact he was not instructed to engage in such activities, and had spoken to the employee as a friend).

Statements made by supervisory employees held not attributable to an employer, when many of the incidents were isolated and unauthorized and obviously involved only an expression of personal opinion not involving the employer, and were neither inspired nor countenanced by the employer. *Gulf States Utilities Co.*, 42 N. L. R. B. 988, 997.

Brewer-Titchener Corp., 19 N. L. R. B. 160, 166. (An employer is not accountable for activities of its foremen, when the record indicated that he was doing nothing more than participating in what was, and everyone regarded as, a free and open discussion, and employer when advised of such conduct upon complaint of the union, instructed its foremen to remain neutral.)

Sbicca, Inc., 30 N. L. R. B. 60, 66. (Anti-union statements made by vice president of respondent to an employee, *held* to be insufficient when standing alone to support a finding of interference in violation of the Act.)

Harland Co., 45 N. L. R. B. 76. (Employer not held responsible for the conduct of its foremen, when employer had demonstrated its neutral attitude towards the employees, the discussion between them and the ordinary employees was initiated by an ordinary employee, and was part of an

exchange of personal viewpoints, and when viewed in such a setting did not enlist the prestige of management to oppose the union.)

9.2 (3) Activities in behalf of rival organizations.

Where among other circumstances supervisory employees were members of and participated in the activities of two rival organizations, *held* that the respondent did not through its supervisory employees assist one of the organizations, for employer's prestige was not enlisted on one side of a representation dispute. *Crown Central Petroleum Corp.*, 24 N. L. R. B. 217, 224.

Sbicca, Inc., 30 N. L. R. B. 60, 68. (Employer not held responsible for union activities of a supervisory employee in behalf of one organization, when he engaged in such activities while retaining membership in a rival organization, and there was no evidence that such activities reflected the desires of the employer.)

9.3 (4) Activities which are in apparent concert with desires of employer. [*See* §§ 17.2, 17.3 (as to authorization or ratification).]

Employer held responsible for activities of supervisory employees, when among other circumstances the acts and statements of certain supervisory employees whose authority to bind the employer was admitted, plainly pointed out the employer's anti-union policy which the supervisory employees followed. *Jefferson Lake Oil Co., Inc.*, 16 N. L. R. B. 355, 372.

Employer held responsible for activities of section foremen, who were next in rank to the mine foreman, when their conduct was in accordance with the tenor of the instructions which they received from admittedly high ranking supervisory employees. *Kelly's Creek Colliery Co.*, 17 N. L. R.B. 506, 515.

Employer held responsible for the anti-union statements and acts of its officials and supervisory employees, when the statements were made not only by foremen purporting to speak for the "company" but also by important officials, and when the nature and similarity of the statements and their widespread utterance were such as to strongly suggest central direction. *Ohio Fuel Gas Co.*, 25 N. L. R. B. 519, 533, 534.

Activities of foremen in aiding in the enlistment of members in a labor organization, *held* not imputable to the employer, when the employeee did not regard these activities as

being in a business capacity, and the employer had a history of hostility toward the labor organization which the foremen aided. *Seagram & Sons, Inc.*, 32 N. L. R. B., 1056, 1070.

Trial Examiner's findings that the employer was not chargeable with the activities of two person favoring one of the labor organizations because their supervisory authority was limited, they belonged to a foremen's union affiliated with the alleged favored union, and they acted contrary to the employer's instructions to remain neutral *reversed* when their remarks occurred at a time of factional conflict, and their remarks emulated the employer's policies. *Hudson Motor Car Co.*, 34 N. L. R. B. 815, 822.

Activities of a non-supervisory employee who acted in concert with a supervisory employee, *held* attributable to the employer, when the employee acted in fulfillment of the employer's announced wishes and the participation of the supervisory employee marked the activities with the stamp of employer approval. *McLachlan & Co., Inc.*, 45 N. L. R. B. 1113, 1119.

9.4 (5) Activities which are performed on company time and property.

Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613, 632. (Although a person was not a supervisor, his distribution of certain literature advertising "inside" organization was held attributable to employer when he did so in the usual course of his duties on company time and premises, and presumably with the knowledge of the employer.)

Sbicca, Inc., 30 N. L. R. B. 60, 66. (Employer not held responsible for activities of an employee in behalf of an organization which was conducted on company premises and allegedly on company time, notwithstanding that the employer might have had knowledge of such activities, when the rival organization in which the employee had been a member took no steps to discipline him for his dissidence, and there was nothing in the record to indicate that the rival organization was not permitted similar privileges.)

[*See* §§ 171–180 (as to contribution of support to an organization by permitting employees to engage in activities in its behalf on company time and premises).]

9.5 (6) Other circumstances.

II. INTERFERENCE, RESTRAINT, OR COERCION IN EXERCISE OF RIGHTS GUARANTEED IN THE ACT: SECTION 8 (1).

A. IN GENERAL

1. *Necessity that acts of employer be directed against employees.*

1 a. In general.

An employer has engaged in unfair labor practices in violation of the Act where it used its influence to prevent the reappointment of a school teacher after her husband had been seen at a union meeting and had become active in union affairs, although neither she nor her husband were employees. *West Kentucky Coal Co.*, 10 N. L. R. B. 88, 107–109.

Steps taken by the respondent to prevent the employees of another company from assisting its own employees in their organizational activities, *held* to be in derogation of rights secured employees under Section 7 of the Act, and constitutes a violation of Section 8 (1) of the Act, for the rights guaranteed to employeed by the Act include full freedom to receive aid, advice, and information from others concerning those rights and their enjoyment. *Commonwealth Telephone Co.*, 13 N. L. R. B. 317, 322, 325.

An employer's association, which induced firms supplying ice and other indispensable commodities to its members to boycott one member of the association in order to punish him for attempting to bargain with the union, *held* to have interfered with, restrained, and coerced the employees, not only of the boycotted employer, but also of all the members of the association in the exercise of the rights guaranteed by Section 7 of the Act, when such action was calculated to strike at the union indirectly by preventing its enjoyment of the fruits of collective bargaining with the employer of some of its members; and was also designed to prevent further defections from the association ranks, which might have resulted in the conclusion of similar agreements between employers and the union. *Grower-Shipper Vegetable Assn. of Central California*, 15 N. L. R. B. 322, 352, modified 122 F. (2d) 368 (C. C. A. 9).

The blowing of respondent's whistle announcing and the participation by respondent's supervisory officials in anti-union demonstration growing out of controversy at nearby mine not owned by respondent, *held* to constitute 8 (1) as

to respondent's employees. *Federal Mining and Smelting Co.*, 20 N. L. R. B. 192.

Employer's anti-union statements made to union's business manager constitutes an unlawful interference, restraint, and coercion although union's manager was not an employee since statements were of a character normally calculated to reach employees and to discourage them from joining the union. *Federbush Co., Inc.*, 34 N. L. R. B. 539. See also: *Phillips Petroleum Co.*, 24 N. L. R. B. 317, 327.

American Machine & Foundry Co., 14 N. L. R. B. 497. (Anti-union statement made to one union employee, *held* 8 (1).)

Regardless of whether employees of an alleged independent contractor were found to be employees of the company, *held* anti-union conduct directed towards these persons would have had an equally coercive effect upon the company's employees since they worked with the company's employees. *Alco Feed Mills*, 41 N. L. R. B. 1278, 1282.

b. Acts directed against labor organization before any employees have become members.

An employer's contention that since the Act only protects employees and since, at the time of the particular occurrence, none of its employees were members of a labor organization, the acts of its supervisory officials in molesting and routing union organizers do not come within the purview of the Act, is untenable, for employers may not bludgeon union representatives with impunity until the particular unions gain a membership foothold in their plant, for so open an indication of hostility to a labor organization on the part of representatives of the management necessarily exercises a coercive influence on the employees. *Mock-Judson-Voehringer Co. of North Carolina, Inc.*, 8 N. L. R. B. 133, 137, 138.

Discharge of several employees for concertedly attempting to obtain wage increases (with or without strike action), and for encouraging others to engage in concerted activity and for planning to organize a labor organization before organization had actually started and before any employees had become members; *held*, discharges for participation in concerted activity for the purposes of collective bargaining and other mutual aid and protection constitute interference with, restraint, and coercion of employees in the exercise of rights guaranteed by Section 7, and therefore violate 8 (1); *held*, moreover, that such discharges had the effect of

discouraging the formation of and membership in a particular labor organization appearing in the plant shortly thereafter, and have the further effect of discouraging membership in labor organizations generally since such organizations are the customary instrument utilized by employees to achieve collective bargaining, and therefore violate 8 (3) as well as 8 (1). *Condenser Corp. of America*, 22 N. L. R. B. 347.

Ordering field representative of union who stood outside plant distributing organizational literature to cease such activities before meetings of the respondent's employees were called, *held* to violate Section 8 (1). *Paragon Die Casting Co.*, 27 N. L. R. B. 878.

Anti-union activities constitute unfair labor practices notwithstanding the fact that no labor organization of the employees was in existence at the time. *Ohio Fuel Gas Co.*, 28 N. L. R. B. 667, 672.

An employer's contention that alleged anti-union incidents were irrelevant and immaterial because of the lapse of time between their occurrence and organizational efforts and because they did not refer to complaining union, *held* without merit, when the employer was on the alert for and anticipated an attempt to organize its employees and was motivated by a desire to prevent employee self-organization. *Hearst Mercantile Co.*, 44 N. L. R. B. 1342. See also: *Abinante & Nola Packing Co.*, 26 N. L. R. B. 1288, 1316.

B. ACTS OF INTERFERENCE, RESTRAINT, OR COERCION.

3 1. *In general.*

4 2. *Espionage and surveillance.*

In General

The maintenance of open surveillance of a meeting of a labor organization constitutes restraint and coercion, especially when coupled with threats of discharge, for it has the obvious intent and effect of placing the employees in fear of their jobs because of their activity in connection with the labor organization. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 22, enforcing 303 U. S. 261, setting aside 91 F. (2d) 178 (C. C. A. 3).

An employer has interfered with, restrained, and coerced its employees in their rights to self-organization, where it employed detectives as under-cover operatives to investi-

gate labor organization activities among its employees, nor is the question rendered moot because there is no showing that such employment continued after the filing of charges, for there is no assurance that such activities were not carried on by other agencies, or by its own employees or that such practice will not be resumed in the future. *Consolidated Edison Co. of New York, Inc.*, 4 N. L. R. B. 71, 95, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2).

Respondent's contention that although it hired operatives of a detective agency, it had not violated the Act since there was no showing that the employment of the detective agency had any effect upon the labor organizations at its plant or any of their members or upon the conduct of the respondent toward any of the labor organizations or their members, or that prior to the commencement of the proceeding any member of the labor organizations ever suspected or knew about any of the espionage, *held* without merit, for it is the view of the Board that surveillance of union organization, constitutes an interference with employees' right to self-organization, even though there is no showing that the specific information obtained was used in the commission of unfair labor practices. *Baldwin Locomotive Works*, 20 N. L. R. B. 1100, 1212, enforced 128 F. (2d) 39 (C. C. A. 3). See also: *Bethlehem Steel Corp.*, 14 N. L. R. B. 539; *Montgomery Ward & Co.*, 17 N. L. R. B. 191. *Virginia Electric & Power Co.*, 44 N. L. R. B. 404.

[*See* EVIDENCE § 19 (as to the relevancy of evidence of the failure of unfair labor practices to affect employees).]

METHODS EMPLOYED

Industrial

Employment of a detective for the purpose of spying upon the employees and reporting to the employer as to which employees joined a labor organization constitutes a violation of Section 8 (1). *Fashion Piece Dye Works, Inc.*, 1 N. L. R. B. 285, 288, 290, enforced 100 F. (2d) 304 (C. C. A. 3).

Agwilines, Inc., 2 N. L. R. B. 1, 7 (police departments). See also: *Oregon Worsted Co.*, 3 N. L. R. B. 36, 48–52. *Ohio Fuel Gas Co.*, 28 N. L. R. B. 667, 674.

Clover Fork Coal Co., 4 N. L. R. B. 202, 207 (coal operators association espionage services). See also: *Crossett Lumber Co.*, 8 N. L. R. B. 440, 449 (lumber operator's association which secured for employer an operative on the staff of a detective agency).

Fansteel Metallurgical Corp., 5 N. L. R. B. 930, 937–939 (National Metal Trades Association espionage services). See also: *Link-Belt Co.*, 12 N. L. R. B. 854, 867–869. *Arma Engineering Co.*, 14 N. L. R. B. 736, 760–763. *General Motors Corp.*, 14 N. L. R. B. 113, 130.

Montgomery Ward & Co., 9 N. L. R. B. 538, 546 (Burns Detective Agency). See also:

United States Stamping Co., 5 N. L. R. B. 172, 186 (National Corporation Service, Inc.).

Bethlehem Steel Corp., 14 N. L. R. B. 539, 625–628 (Pinkerton). *Grower-Shipper Vegetable Assn.*, 15 N. L. R. B. 322, 354 (Charles N. Watkins Detective Agency).

Atlas Underwear Co., 18 N. L. R. B. 338, 342 (Corporation Service Co., Inc.).

Baldwin Locomotive Works, 20 N. L. R. B. 1100, 1119–1122 (Pinkerton).

Borg-Warner Corp., 23 N. L. R. B. 114, 120 (Corporations Auxiliary Company).

B. Z. B. Knitting Co., 28 N. L. R. B. 257, 268 (Bargren and Seagrove Detective Agencies).

Weirton Steel Co., 32 N. L. R. B. 1145, 1160 (Central Industrial Service Co.).

Virginia Electric & Power Co., 44 N. L. R. B. 404, 412 (Railway Audit and Inspection Company).

Company System

Agwilines, Inc., 2 N. L. R. B. 1, 6 (company police). See also:

Republic Steel Corp., 9 N. L. R. B. 219, 240.

Dow Chemical Co., 13 N. L. R. B. 993, 997.

Ford Motor Co., 14 N. L. R. B. 346, 368.

American Enka Corp., 27 N. L. R. B. 1057, 1065.

Bear Brand Hosiery, 40 N. L. R. B. 323, 328.

American Rolling Mill Co., 43 N. L. R. B. 1020, 1058.

Ross Packing Co., 11 N. L. R. B. 934, 939 (ex-employee).

Montgomery Ward & Co., 17 N. L. R. B. 191, 194–197 (undercover operatives).

Moltrup Steel Products Co., 19 N. L. R. B. 471 (attempt to use company union representatives as informers).

Chicago Casket Co., 21 N. L. R. B. 235, 251 (individuals).

Firestone Tire & Rubber Co., 22 N. L. R. B. 580, 597 (employee who volunteered to engage in espionage activities and whose activities employer encouraged and approved).

Cook Coffee Company, 22 N. L. R. B. 967, 974 (persons who were former police officers).

Paragon Die Casting Co., 27 N. L. R. B. 878 (employees who were urged to become informers). See also:

Hamilton-Brown Shoe Corp., 9 N. L. R. B. 1073, 1097.
Indianapolis Power & Light Co., 25 N. L. R. B. 193, 205.
Schieber, 26 N. L. R. B. 937.
Rapid Roller Co., 33 N. L. R. B. 565.
Marshall Field & Co., 34 N. L. R. B. 1, 9.
Northwestern Photo Engraving Co., 38 N. L. R. B. 813, 819.

Phelps Dodge Refining Corp., 37 N. L. R. B. 1059, 1077 (individual who was also in the employ of sheriff as an informer).

An employer has interfered with, restrained, and coerced its employees, where representatives of the management appeared at meetings of a labor organization and heckled its speakers. *Clover Fork Coal Co.*, 4 N. L. R. B. 202, 212, 213, enforced 97 F. (2d) 331 (C. C. A. 6).

Williams Mfg. Co., 6 N. L. R. B. 135, 138 (company officials). See also: *Stover*, 15 N. L. R. B. 635, 639. *Berkshire Knitting Mills*, 17 N. L. R. B. 239, 272. *Atlanta Feed Mills*, 41 N. L. R. B. 409, 412.

Brown Paper Mill Co., 12 N. L. R. B. 60, 69 (supervisory employees). See also:

Mexia Textile Mills, 11 N. L. R. B. 1167, 1172.
Hazel-Atlas Glass Co., 34 N. L. R. B. 346, 373.
American Cyanamid Co., 37 N. L. R. B. 578, 582.
Phelps Dodge Refining Corp., 37 N. L. R. B. 1059, 1071.
United Biscuit Co., 38 N. L. R. B. 778, 782.
Lexington Telephone Co., 39 N. L. R. B. 1130, 1138.
Chicago Molded Products Corp., 38 N. L. R. B. 1111, 1115.
Hearst Mercantile Co., 44 N. L. R. B. 1342, 1346.

Types of Acts

Thompson Products, Inc., 3 N. L. R. B. 332, 336 (surveillance of union meetings). See also:

Botany Worsted Mills, 4 N. L. R. B. 292, 298.
West Kentucky Coal Co., 10 N. L. R. B. 88, 107.

Brown Paper Mill Co., Inc., 12 N. L. R. B. 60, 69.
Stover, 15 N. L. R. B. 635.
Wickwire Bros., 16 N. L. R. B. 316.
Berkshire Knitting Mills, 17 N. L. R. B. 239.
Ford Motor Co., 23 N. L. R. B. 548, 552.
Ohio Fuel Gas Co., 28 N. L. R. B. 667, 674.
Illinois Electric Porcelain Co., 31 N. L. R. B. 101.
Peyton Packing Co., Inc., 32 N. L. R. B. 595.
American Cyanamid Co., 37 N. L. R. B. 578, 582.
Phelps Dodge Refining Corp., 37 N. L. R. B. 1059, 1071.
Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234.
United Biscuit Co. of America, 38 N. L. R. B. 778, 782.
Northwestern Photo Engraving Co., 38 N. L. R. B. 813, 819.
Chicago Molded Products Corp., 38 N. L. R. B. 1111.
Lexington Telephone Co., 39 N. L. R. B. 1130, 1138.
Sartorius & Co., Inc., A., 40 N. L. R. B. 107.
Bear Brand Hosiery Co., 40 N. L. R. B. 323.
Protective Motor Service Co., 40 N. L. R. B. 967.
Moore, Inc., E. H., 40 N. L. R. B. 1058.
Atlanta Flour & Grain Co., Inc., 41 N. L. R. B. 409.
Alco Feed Mills, 41 N. L. R. B. 1278.
American Rolling Mill Co., 43 N. L. R. B. 1020.
Hancock Brick & Tile Co., 44 N. L. R. B. 920.
American Broach & Machine Co., 45 N. L. R. B. 241.
American Laundry Machinery Co., 45 N. L. R. B. 355.
Van Deusen, Maynard K., 45 N. L. R. B. 679.

West Kentucky Coal, 10 N. L. R. B. 88, 112–114 (surveillance of employees or organizers). See also:
Auburn Foundry, 14 N. L. R. B. 1219.
West Texas Utilities Co., 22 N. L. R. B. 522.
Federbush Co., 24 N. L. R. B. 829.
Merit Clothing Co., 30 N. L. R. B. 1201.
Montgomery Ward & Co., Inc., 31 N. L. R. B. 786.
Times-Picayune Publishing Co., 32 N. L. R. B. 387, 398.
Shell Oil Co., Inc., 34 N. L. R. B. 866, 873.
Pick Mfg. Co., 35 N. L. R. B. 1334.
National Mineral Co., 39 N. L. R. B. 344.
Houde Engineering Corp., 42 N. L. R. B. 713.
Wilson & Co., Inc., 43 N. L. R. B. 804.
American Rolling Mill Co., 43 N. L. R. B. 1020.

Lawrenceburg Roller Mills, 23 N. L. R. B. 980, 990 (presence near union meeting hall which was satisfactorily explained, *held* not to constitute surveillance). See also:
Model Blouse, 15 N. L. R. B. 133, 145.
Southwestern Gas & Electric Co., 16 N. L. R. B. 512, 527.
Blue Bell-Globe Mfg. Co., 24 N. L. R. B. 126, 137.
Woolworth Co., 25 N. L. R. B. 1362, 1369.
Anderson, 45 N. L. R. B. 638.

3. *Bribery.*

An employer has interfered with, restrained, and coerced its employees in violation of Section 8(1) by attempting to bribe two employees, one of whom was an officer and the other a shop steward of a labor organization, to change their union affiliation. *McNeely & Price Co.*, 6 N. L. R. B. 800, 814, modified 106 F. (2d) 878 (C. C. A. 3).

Patriarca Store Fixtures, Inc., 12 N. L. R. B. 93, 98 (Employer offered shares of stock to officers of a "Committee," contingent upon their continued employment for 3 years, in order to control the "Committee").

Central Greyhound Lines, Inc. of New York, 27 N. L. R. B. 976 (payment of monies to employees who intended to work during strike).

Reliance Mfg. Co., 28 N. L. R. B. 1051 (bribing union organizer to discourage a strike; offering vacation to employee as inducement to form inside union; offering union organizer bribe to report on union activities; offering a person money to persuade employees to give up membership in union).

Manville Jenckes Corp., 30 N. L. R. B. 382 (promising rewards to striking employees if they returned to work.)

Hygrade Food Products Corp., 35 N. L. R. B. 120 (bribing union members to refrain from further union activities.)

Cherry River Boom & Lumber Co., 44 N. L. R. B. 273 (offering to compensate employee for reporting names of his fellow employees who joined union; promising employee a wage increase if he would join independent union).

Virginia Electric & Power Co., 44 N. L. R. B. 404 (promising employee better job if he would get a certain group of workers to cooperate with plan for an unaffiliated organization).

Taitel, 45 N. L. R. B. 551; (offering employee free plastic surgery for anti-union support).

[*See* § 44 (as to the use of various other devices for the purpose of inducing employees not to become or remain members of labor organization).]

4. *Violence or incitement to violence.*

Threatening organizers for a labor organization with violence and forcibly preventing them from coming into, or remaining in, a company town constitutes a violation of Section 8 (1), for the rights guaranteed to employees by the Act include full freedom to receive aid, advice and information from others, concerning those rights and their enjoyment. *Harlan Fuel Co.*, 8 N. L. R. B. 25, 32.

Sunshine Mining Co., 7 N. L. R. B. 1252, 1264–1267 (formation of vigilante groups to intimidate union organizers). See also: *Diamond Alkali Co.*, 30 N. L. R. B. 700.

General Motors Corp., 14 N. L. R. B. 113 (eviction of union employees from plant). See also: *General Shoe Co.*, 5 N. L. R. B. 1011. *Donnelly Garment Co.*, 21 N. L. R. B. 164.

Eagle-Picher Mining & Smelting, 16 N. L. R. B. 727 (violence against property). See also: *Newberry Lumber Co.*, 17 N. L. R. B. 795.

Eagle-Picher Mining & Smelting Co., 16 N. L. R. B. 727 (inciting attacks on union representatives). See also:

Ford Motor Co., 14 N. L. R. B. 346.
Van Iderstine Co., 17 N. L. R. B. 771.
Tyne Co., 35 N. L. R. B. 63.
Beckerman Shoe Corp., 43 N. L. R. B. 435.
American Rolling Mill Co., 43 N. L. R. B. 1020.

Newberry Lumber & Chemical Co., 17 N. L. R. B. 795 (inciting and encouraging mob violence).

Weinberger Banana Co., Inc., 18 N. L. R. B. 786 (threats of bodily harm). See also: *Diamond Alkali Co.*, 30 N. L. R. B. 700. *Rapid Roller Co.*, 33 N. L. R. B. 557.

Alma Mills, 24 N. L. R. B. 1 (disruption of union meetings). See also:

Dow Chemical Co., 13 N. L. R. B. 993, 1003.
Ford Motor Co., 26 N. L. R. B. 322.
Verplex Co., 42 N. L. R. B. 472, 476.
Taitel, 45 N. L. R. B. 551.

Reliance Mfg. Co., 28 N. L. R. B. 1051 ("escorting" union organizer out of town). See also: *Triplett Electrical Instrument Co.*, 28 N. L. R. B. 572 (eviction of union

organizer from public lobby in plant and suggestion to get out of town). *H. McLachlan & Co., Inc.*, 45 N. L. R. B. 1113 (promotion of and participation in action to oust union organizer from community).

Ford Motor Co., 31 N. L. R. B. 994. (Permitting manufacture of weapons in plant for use in labor dispute, *held* interference, restraint, and coercion. See also: *General Motors Corp.*, 14 N. L. R. B. 113, 155, 156, enf'd 116 F. (2d) 306 (C. C. A. 7).

Weirton Steel Co., 32 N. L. R. B. 1145 (assaults, beatings, and intimidating "outside" organizers by special watchmen employed and paid by employer). See also:

Newberry Lumber Co., 17 N. L. R. B. 795 (union members and sympathizers).

Goodyear Tire & Rubber Co., 21 N. L. R. B. 306 (union member).

Alma Mills, 24 N. L. R. B. 1 (union members).

Ford Motor Co., 26 N. L. R. B. 322 (by inside and outside squads of employees formed by supervisory employees to stamp out union activity).

Armour & Co., 32 N. L. R. B. 536 (Supervisory employee struck an employee because he believed the employee was talking "unionism").

Tennessee Products Corp., 41 N. L. R. B. 326 (Cursing and beating an international representative of the union and an active union member).

[*See* §§ 3, 29, 421 (as to eviction or exclusion of union members from plant by action of fellow employees or outside persons or groups authorized or acquiesced in by employer).]

7 5. *Employment of professional strikebreakers, "missionaries," "nobles," and under cover men.*

Adoption of a strikebreaking technique, involving the use of "missionaries," "nobles," and strikebreakers, formulation of public opinion through the radio and press, and the formation of back-to-work movements and citizens' committees, constitutes a violation of Section 8 (1). *Remington Rand, Inc.*, 2 N. L. R. B. 626, 664–666, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied, 304 U. S. 576. See also: *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1264–1267, enforcing 110 F. (2d) 780 (C. C. A. 9).

8 6. *Formation of vigilante groups and similar strikebreaking agencies.*

Formation of a vigilante committee and citizens committee for the purpose of intimidating union organizers and

breaking a strike constitutes a violation of Section 8 (1). *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1264–1267, enforced 110 F. (2d) 780 (C. C. A. 9).

Moltrup Steel Products Co., 19 N. L. R. B. 471, 482 (participation of respondent's officials in back-to-work movement).

Aluminum Goods Mfg. Co., 25 N. L. R. B. 1004, 1025 (initiating and assisting back-to-work movement).

Manville Jenckes Corp., 30 N. L. R. B. 382 (sponsoring and supporting back-to-work movement undertaken by certain employees).

[*See* § 113 (as to formation of organizations in violation of Section 8 (2) as a result of back-to-work movements).]

9 7. *Accepting or enlisting aid of outside persons or organizations.* [*See* §§ 3, 421 (as to responsibility of employer for the acts of fellow employees and outside persons).]

An employer has interfered with, restrained, and coerced employees in violation of Section 8 (1) where local police, upon order of the mayor, broke up a picket line of the employees who had gone on strike, after the employer, being aware of the fact that the town was greatly dependent upon the continued operation of the plant, informed the mayor that the plant would be closed unless it could be run peacefully. *Brown Shoe Co., Inc.*, 1 N. L. R. B. 803, 824, 830.

Where mayor of city in which company's plant provided economic life-blood had indicated that his conception of best method of handling strike situation was to create hostility toward and to defeat the union, the company, in providing money which was turned over to mayor and in directly turning over sum of money to mayor, was insuring continuance of such attitude and engaging in a course of conduct which necessarily affected that impartiality by city administration which was necessary to proper preservation of rights of company and union, and was thereby acting in contravention of Section 8 (1). Belief of company that State, county and borough had failed to perform its function, *held* no justification for such activity. *Bethlehem Steel Corp.*, 14 N. L. R. B. 539, 624.

Elkland Leather Co., Inc., 8 N. L. R. B. 519, 524, 525, 530, 536 (instigation of anti-union campaign in town where employer's business constituted sole industry).

Jacob H. Flotz, 13 N. L. R. B. 746, 753, 759, 760 (encouragement of civic hostility to union and its members).

Continental Roll & Steel Foundry Co., 19 N. L. R. B. 720 (Use of agency for purpose of receiving reports in part about the union activities of its employees, questioning its employees about the union and making disparaging remarks about the union, *held* 8 (1).)

Chicago Casket Co., 21 N. L. R. B. 235 (The Board found that the employer had engaged police assistance to interfere with the conduct of the strike and that it had thereby violated Section 8 (1) of the Act.)

Alma Mills, 24 N. L. R. B. 1, 17, 24 (support and encouragement of anti-union religious campaign among employees in a region where appeals to religious prejudices had constituted an effective means of combating unionism).

Reliance Mfg. Co., 28 N. L. R. B. 1051 (permitting distribution by citizen's committee of anti-union literature).

Manville Jenckes Corp., 30 N. L. R. B. 382 (causing and joining with local Chamber of Commerce in the publication of anti-union newspaper publication aimed in part at causing striking employees to repudiate their union and return to work and to induce public action against employees' union).

Banner Slipper Co., Inc., 31 N. L. R. B. 621 (activities in behalf of "inside" union by a person who was an official of the town's "trade association").

Security Warehouse & Cold Storage Co., 35 N. L. R. B. 857, 878. (Employment of uniformed policemen at plants coincident with union organizational campaign, had the effect of intimidating employees to refrain from joining or retaining membership in the union.)

Cassoff, Louis F., 43 N. L. R. B. 1193 (permitting organizer of assisted union to bring strangers into plant for the purpose of intimidating employees into joining union).

Taitel, Irving, 45 N. L. R. B. 551 (arranging with local organization favorable to employer whereby organization offered free movie tickets to employees for night of consent election).

Van Deusen, 45 N. L. R. B. 679 (inducing anti-union speech by major customer).

8. *Anti-union propaganda.*

When Statements Are Considered Coercive

An employer violated Section 8 (1) in attempting to discredit a labor organization, following the issuance of a Direction

of Election by the Board during a strike and shut-down of its plant, by blaming the organization for attaching dynamite bombs in the cars of several employees and accusing its leaders of being racketeers responsible for terroristic activities, when such accusations were unfounded and contrary to available information. *Oregon Worsted Co.*, 3 N. L. R. B. 36, 47, 52, enforced 96 F. (2d) 193 (C. C. A. 9).

Remarks of supervisory employees to the effect that the employer would go out of business before signing a contract with an outside labor organization and disparaging the organization are not to be deemed privileged because made in reply to request for information or advice by non-supervisory employees, for their duty to remain aloof or impartial under all circumstances is clear, and employees who request advice of supervisors, being uncertain as to which course to pursue, may also be fearful that the employer may frown upon a contemplated step in the direction of engaging in concerted activity, and therefore interference at this point necessarily restrains or coerces employees in the exercise of rights guaranteed by the Act. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 922, 923. See also: *Wickwire Bros.*, 16 N. L. R. B. 316, 320. *Stone*, 33 N. L. R. B. 1014, 1018.

There is no merit to a contention that remarks made by supervisory employees who were members of a labor organization were merely expressive of opinion and not coercive in intent or effect where statements were made to the employees which indicated possible loss of their jobs in the event they selected as their representative a rival labor organization in a coming election and which disparaged the latter organization, for such statements transcend the limits of opinion and amount to coercion; nor is the form of the utterance controlling, but it is rather the locus of economic power in the proximate relation of employer and employee which gives coercive effect to words which in another context might be mere statements of opinion. *Tennessee Copper Co.*, 9 N. L. R. B. 117, 118. See also: *Pennsylvania Greyhound Lines*, 1 N. L. R. B. 1. *Rockland Mitten & Hosiery Co.*, 16 N. L. R. B. 641. Cf. *Ward Baking Co.*, 8 N. L. R. B. 558, 565.

Although in many instances a false rumor concerning a labor organization may have entered and circulated through an employer's plant independently of any action on its part, nevertheless, where the employer was responsible

for the spread of the rumor in other instances, it cannot evade the restrictive language of Section 8 by showing that a concurrent cause was operating independently toward the same end, for it is an unfair labor practice within the meaning of Section 8 (1) for an employer to interfere with the rights of its employees guaranteed in Section 7, irrespective of the success of such interference. *Yale & Towne Mfg. Co.*, 10 N. L. R. B. 1321, 1328.

In order to determine the question of whether anti-union literature distributed by an employer and expressing its policy was calculated under the circumstances to arouse in its employees' minds a fear that membership or activity in the union would result in the employer's discrimination against them, the Board considers not only the bare words of the literature, but also the accompanying events which provide the setting for the statements and reveal their full import. *Ford Motor Co.*, 23 N. L. R. B. 548, 567.

Notwithstanding the fact that an employer's statements had a coercive effect, it is unnecessary where the record in its entirety establishes an anti-union course of conduct to show actual coercion in order to constitute a violation of Section 8 (1); it is enough that they were reasonably likely to restrain the employees' rights under the Act. *L. H. Hamel Leather Co.*, 45 N. L. R. B. 760, 770.

For character of statements made and/or literature posted or circulated during crucial periods of organization or concerted activities which in context with other anti-union conduct induce employees not to join, resign from, or not to be active in a labor organization, violate Section 8 (1):

Discrediting union or its officials

Hoover Co., 6 N. L. R. B. 688, 691. (Employer a few days after the commencement of organizational activities by an outside labor organization, posted on bulletin boards throughout its factory a circular letter which stated that it "seemed" in order to suggest that labor organizers are prompted in their efforts by the fees they collect from those who join the organization they are prompting, and it "was well to remember that long drawn-out strikes are usually settled on a basis where more has been lost by factory employees than is gained through increased pay schemes or improved working conditions," that the company looked with "great disfavor" upon having the relationship which existed between its employees and itself cancelled

through such efforts as were now being made by outside labor organizers desiring to step in and serve as go between of the "company and its employees."

American Mfg. Concern, 7 N. L. R. B. 753, 760–762. (During the course of a strike, employer caused to be printed in the local newspapers an advertisement wherein it characterized the leaders of a labor organization as "outside agitators" and inferred that the strikers were the dupes of such persons.)

Muskin Shoe Co., 8 N. L. R. B. 1, 6, 7 (distribution of anti-union pamphlets).

Luckenbach S. S. Co., Inc., 8 N. L. R. B. 1280, 1290 (interrogated an employee as to his union activities and made or brought to his attention remarks derogatory to labor organizations by placing on his desk printed material purporting to show that a strike was "communistic and controlled from Moscow").

Freisinger, 10 N. L. R. B. 1043, 1052 (characterizing representatives of a labor organization as "communists," "reds," "rats," and "racketeers").

Reed & Prince Mfg. Co., 12 N. L. R. B. 944, enf'd as modified by 118 F. (2d) 874 (C. C. A. 1), cert. denied 313 U. S. 595 (anti-union propaganda mailed to employees discrediting union and its leaders).

Reed & Prince Mfg. Co., 12 N. L. R. B. 994 (attempts to destroy employees' allegiance to union by stamping legend "United States citizenship is an asset" on envelopes sent to employees).

Commonwealth Telephone Co., 13 N. L. R. B. 317 (characterizing union speaker as "just a rattle-brained kid").

Aronsson Printing Co., 13 N. L. R. B. 799 (distributing booklets to striking employees referring to union organizers as "so-called friends").

Model Blouse Co., 15 N. L. R. B. 133, 139–141 (warning employees against "racketeering" unions).

Rockford Mitten & Hosiery Co., 16 N. L. R. B. 501 (characterizing union as a fly-by-night organization led by irresponsible and unintelligent persons who would foment a long series of unjustified strikes).

Monticello Mfg. Co., 17 N. L. R. B. 1091 (statements ridiculing and discrediting union, its members, and its badge).

Valley Mold & Iron Corp., 20 N. L. R. B. 211. (distributing to employees with their pay checks copies of anti-union booklet).

Citizen-News Co., 21 N. L. R. B. 1112. (disparaging remarks by supervisory employees concerning union and union policies).

Ford Motor Co., 26 N. L. R. B. 322; 29 N. L. R. B. 873, (distribution of booklet containing inflammatory statements against unions in general).

Leitz Carpet Corp., 27 N. L. R. B. 235. (discrediting labor organization).

Union Mfg. Co., Inc., 27 N. L. R. B. 1300. (circulating memorandum which was derogatory of the union leaders, indicating intention to deal with employees individually or collectively regardless of the union and its status as the employee's bargaining representative).

Phelps Dodge Corp., 28 N. L. R. B. 540. (derogatory remarks about union insignia; derogatory insinuation about union activity).

Reliance Mfg. Co., 28 N. L. R. B. 1051. (characterizing the union as a bunch of communists and radicals; referring to union organization work as dangerous).

International Harvester Co., 29 N. L. R. B. 456. (characterizing union as "rackets").

Cleveland-Cliffs Iron Co., 30 N. L. R. B. 1093. (issuances and posting of anti-union notices).

Illinois Electric Porcelain Co., 31 N. L. R. B. 10. (discrediting union leaders).

Illinois Electric Porcelain Co., 31 N. L. R. B. 101. (President in a speech before employees disparaged the union's claims and questioned its purposes.)

Ford Motor Co., 31 N. L. R. B. 994. (distribution of literature attacking labor organizations).

Trojan Powder Co., 31 N. L. R. B. 1308. (statements cautioning employees against being coerced into joining the union and referring to union leaders as saboteurs).

Gantner & Mattern Co., 32 N. L. R. B. 773. (posting newspaper article imputing misconduct to officers of union).

Eclipse Moulded Products Co., 34 N. L. R. B. 785. (intimating that the union was an un-American organization).

Tyne Co., 35 N. L. R. B. 63 (circulating anti-union petition in plant during working hours).

Germain Seed & Plant Co., 37 N. L. R. B. 1090 (distributing to employees a so-called "statement of facts" indicating respondent's disfavor toward an "outside" union).

Northwestern Photo Engraving Co., 38 N. L. R. B. 813 (disparaging union, its leaders, and members).

Bear Brand Hosiery Co., 40 N. L. R. B. 323 (intimidatory notices, letters, and advertisements).

Karp Metal Products Co., Inc., 42 N. L. R. B. 119 (characterizing "outside" organization as enemies of the country and saboteurs of the defense program).

Houde Engineering Corp., 42 N. L. R. B. 713 (charging adherents of "outside" union with commission of minor factory offenses with knowledge that such charges were unfounded).

Wilson & Co., Inc., 43 N. L. R. B. 804 (reference by supervisory employee to union literature as "trash").

Western Cartridge Co., 44 N. L. R. B. 1 (statements displaying hostility toward "outside" union and disparaging its leadership).

Miami Broadcasting Co., 44 N. L. R. B. 257 (stating that union brought contention; that president hated to interview a union man; that union was "sort of socialistic organization"; that union was in control of a "bunch of racketeers").

Derogation of the value of labor organization

Virginia Ferry Corp. v. *N. L. R. B.*, 101 F. (2d) 103, 104, 105 (C. C. A. 4) modifying 8 N. L. R. B. 730. (An employer has violated Section 8 (1) where the captain of one of two vessels operated by it told the employees "that he would not work a union crew, before he would do that he would pack his bag and get off" and that he would rather have them keep out of the union and follow him; and the superintendent, during a speech to the men, warned them not to be fooled by outsiders, that the employer treated them right and was "still going to treat them right.")

Knoxville Publishing Co., 12 N. L. R. B. 1209. (Statements to effect that employer could do more for employees than union would be able to accomplish and that salaries would be increased without respect to union thereby implying that employees would derive no benefits from union affiliation.)

Lightner Publishing Corp., 12 N. L. R. B. 1244. (Letters sent by employer to strikers setting forth his opinion as to the futility of their union membership.)

Picker X-Ray Corp., 12 N. L. R. B. 1384. (Statement that company had paid highest wages possible and had tried to maintain ideal working conditions; and company could not prosper unless employees prosper and employees could

not prosper unless company prospered, *held* to constitute an attempt to persuade employees that they should look to the employer rather than to the union for the protection of their interests.)

Commonwealth Telephone Co., 13 N. L. R. B. 317. (Statement by employer, purportedly made in jest that he was going to start a "cut-rate union," *held* under circumstances to constitute 8 (1).)

Hope Webbing Co., 14 N. L. R. B. 55. (Issuing circular indicating that employees need pay no dues or submit to pressures from outside sources to secure collective bargaining rights.)

General Motors Corp., 14 N. L. R. B. 113. (Statements to employees that employer would not recognize any union and implied that employees did not have to pay tribute to a "group of private labor dictators" for privilege of working.)

Ford Motors, 14 N. L. R. B. 346. (Warning to employees that by joining a labor organization they paid money for nothing.)

Stewart Die Casting Corp., 14 N. L. R. B. 872. (Circular sent to employees stating that "it was not necessary for employees to join a union and burden themselves with dues in order to confer with or receive fair treatment from the Company.")

Luxury, Inc., 16 N. L. R. B. 37. (Statement to employees which explained why it would not be to their interest to join the union.)

Wickwire Bros., 16 N. L. R. B. 316, 320. (Notice that no employee need join or pay tribute to any organization to hold a job, that outsiders had not been necessary in the past, and nothing has happened to make them necessary now, posted at a time when outside organization was conducting organization campaign.)

Lorillard Co., 16 N. L. R. B. 771. (Statement by employer that he could provide a cheaper union for employees.)

La Paree Undergarment Co., Inc., 17 N. L. R. B. 166. (Statement to employees that the plant is better off without the union; indicating to employees that they did not have to pay for their jobs.)

Cottrell & Sons Co., C. B., 34 N. L. R. B. 457, 464. (Notices to the effect that "employees would gain nothing by joining a labor organization" published and posted at time when employees, through a labor organization of their

own choosing, were in the process of laying the foundation for collective bargaining.)

Shell Oil Co., Inc., 34 N. L. R. B. 866 (posing bulletin regarding submission of grievances).

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690 (inducing employees to sign anti-union document which subtly endorsed respondent's existing labor policies and indirectly attacked the aims of the union).

Butler Bros., 41 N. L. R. B. 843 (statements suggesting that unions were expensive and unnecessary).

Trojan Powder Co., 41 N. L. R. B. 1308 (distribution of series of letters at height of union organizing campaign, appealing to the loyalty of employees, emphasizing the benefits unilaterally granted, and indicating that security of employment and wage increases could be obtained only through good will of employer).

Wells-Lamont-Smith Corp., 42 N. L. R. B. 440, 450. (An employer's unprecedented action following the union's initial organizational meeting, in calling meetings of employees while work was stopped and making speeches to the employees in which he disparaged the advantages of membership in the union and threatened possible unemployment if the employees persisted in joining that organization, *held* to be a coercive act in a pattern designed to interfere with and restrain the employees.)

Faultless Caster Corp., 45 N. L. R. B. 146 (statement to an employee that she might as well drop her activities on behalf of the union because the union could not improve the prevailing working conditions).

[*See* §§ 37 and 792 (as to undercutting representatives in violation of Sections 8 (1) and 8 (5) by effecting change in working conditions which are the subject of negotiations).]

Detriment of unionism to business interest

Proximity Print Works, 7 N. L. R. B. 803, 811. (Articles, printed in a weekly newspaper owned by the interests controlling that of the employer and distributed free to employees, condemning an outside labor organization and stressing that another company in a like business had been compelled to liquidate because of that organization's activities, served to intimidate the employees in connection with a free choice of bargaining representation, and the employer must be charged with such intimidation.)

Columbia Powder Co., 40 N. L. R. B. 223 (arguing with employees against the feasibility of their principal objective, increase of wages; and warning employees that its products might be boycotted if they organized an affiliated union).

[*See* § 36 (as to shut-down), and § 40 (as to threatened cessation or change of operations).]

By various other methods

American Mfg. Concern, 7 N. L. R. B. 753, 762. (Employer through the medium of a labor organization, found to have been aided by it, procured resignations from the legitimate labor organization to which its employees formerly belonged.)

Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 857–858. (An employer has interfered with, restrained, and coerced its employees within the meaning of Section 8 (1) where subsequent to the filing of the Trial Examiner's Intermediate Report it posted a notice addressed to its employees which attacked the Intermediate Report as unfair and prejudiced and the clear intent of which was to arouse the emotions of the employees against labor organizations and to warn them against such organizations at a time when their efforts to organize were being summarily interfered with by the employer.)

Sorg Paper Co., 25 N. L. R. B. 947. (Petition opposing union's contention as to appropriate unit circulated for signature.)

Wessel Co., 26 N. L. R. B. 192 (withdrawal petition circulated and signed at the request of a supervisory employee).

Texarkana Bus Co., Inc., 26 N. L. R. B. 582 (preparation and solicitation of employees to sign letter of renunciation of union bargaining authority).

Tex-O-Kan Flour Mills, 26 N. L. R. B. 765 (circulation of withdrawal petitions).

American Enka Corp., 27 N. L. R. B. 1057. (Petition not to join "outside" organization circulated for signature.)

Fletcher Paper Co., 27 N. L. R. B. 1274 (circulating withdrawal petition drafted by respondent's attorney).

Sherwin-Williams Co., 34 N. L. R. B. 651 (speech to employees during working hours advising them not to join a labor organization).

Tyne Co., 35 N. L. R. B. 63 (requesting employees to resign from the union).

McCleary Timber Co., Henry, 37 N. L. R. B. 725 (inducing employees to resign from union and advising them to do so by letters of withdrawal).

Germain Seed & Plant Co., 37 N. L. R. B. 1090 (treating employees to a dinner and advising and urging them not to join or remain members of an "outside" union).

Detroit Southern Pipe Line Co., 38 N. L. R. B. 159 (advising employee to "drop out" of union).

National Mineral Co., 39 N. L. R. B. 344 (circulating anti-union statement inducing non-striking employees to take concerted action in opposition to union).

Sport-Wear Hosiery Mills, 41 N. L. R. B. 668, 678. (Statements made to an employee during union organizing campaign that "it was hard to get a job anywhere if you joined the C. I. O.," *held* violative of Section 8 (1), when the remarks not only indicated the respondent's opposition to the C. I. O. with which the union was affiliated, but also contained an implicit threat that employees belonging to the C. I. O. might lose their mobs.)

Springfield Woolen Mills Co., 41 N. L. R. B. 921, 926. (Through acts of supervisory employees in signing anti-union pledges and by its conduct in permitting their names to remain on list of "loyal employees" who likewise signed the anti-union pledges, posted in an individual's store across from plant and of which it had knowledge and made no effort to counteract the natural effect thereof, employer violated Section 8 (1).)

Snow Co., Fred A., 41 N. L. R. B. 1288 (requesting employees to burn union membership cards).

Locomotive Finished Material Co., 41 N. L. R. B. 1374 (requesting employees to send letters of resignation to union).

Greenport Basin & Construction Co., 42 N. L. R. B. 377 (inducing employees' delegates to withdraw their names from a petition naming union as their bargaining representative).

Elvine Knitting Mills, Inc., 43 N. L. R. B. 695 (circulation of sheets of paper among the employees in the presence of the respondent's president and supervisory employees so that the employees might indicate that they did not want the union to represent them).

Harbison-Walker Refractories Co., 43 N. L. R. B. 711 (circulating petition to the effect that the signers thereof opposed the union).

American Rolling Mill Co., 43 N. L. R. B. 1020 (passing word around the plant that union members could be restored to the good graces of the respondent only by destroying their membership cards in the presence of some supervisory, and renouncing their allegiance to the Union).

American Bread Co., 44 N. L. R. B. 970 (urging employees to talk against union and advising employees how to withdraw their names from union rolls; circulating loyalty petition for signature shortly before scheduled consent election).

Whiterock Quarries, Inc., 45 N. L. R. B. 165. (Employer held to have engaged in unfair labor practices within the meaning of Section 8 (1) of the Act when it interfered with the conduct of an election by making anti-union statements, threatening to discharge employees who voted for the union and closing down the plant if union came in, promising an increase in wages if union was defeated, and allowing an employee to circulate a petition urging Board not to certify union which made a majority showing.)

Teitel Irving, 45 N. L. R. B. 551, 561 (circulation of and inducing signing by employees of anti-union petition).

Van Deusen, Maynard K., 45 N. L. R. B. 679. (Speech by employer coincident with union activities, delivered to employees during working hours, suggesting deferment or abandonment of union activities.)

[*See* §§ 33, 44 (as to the use of various devices to induce employees not to become or remain members in a labor organization).]

Lip Service to Act

Statements to employees that they were free to join any organization of their own choosing, *held* to have been nullified and rendered meaningless when such statements were accompanied by acts indicating opposition to the union. *Hilgartner Marble Co.*, 13 N. L. R. B. 1200. See also: *Southern Colorado Power Co.*, 13 N. L. R. B. 699, 710. *Bisbee Linseed Co.*, 18 N. L. R. B. 993, 997.

Remarks by an employer to a supervisory employee which sought to dissuade him from union activity, *held* to be coercive and not privileged when the basis for the employer's suggestion was its opposition to the union and not that the employee as a supervisor was prejudicing the respondent in maintaining neutrality. *Johnson*, 41 N. L.

R. B. 263, 269. See also: *Western Cartridge Co.*, 44 N. L. R. B. 1, 16.

[*See* §§ 401, 412 (as to employer's duty to remain neutral notwithstanding that activities are directed to a supervisory employee).]

PERMISSIVE STATEMENTS

Posted statement which contained a general outline of policy and specific provision with respect to wages, rates of pay, hours, and other working conditions, *held* not to have been issued for the purpose of undermining the union as alleged, when nothing in the terms thereof was designed to interfere with the rights guaranteed by the Act and under the circumstances surrounding its issuance was not intended to and did not have the effect of interfering with the employees in the exercise of their rights under Act. *Shell Oil Co.*, 34 N. L. R. B. 866, 878.

N. L. R. B. v. *Union Pacific Stages*, 99 F. (2d) 153, 178 (C. C. A. 9), modifying 2 N. L. R. B. 471. (The expression of a general opinion by an employer that an employee would find it more to his advantage not to belong to a union not made for the purpose of discouraging the exercise of rights guaranteed by the Act does not constitute an unfair labor practice, although the case is different where the employer makes use of threats to prevent organization.)

Kohen-Ligon-Folz, Inc., 36 N. L. R. B. 1294. (Speech by employer touching on union activity during working hours, *held* not to constitute interference where its purpose and effect was to prohibit activities destructive of efficiency and disruptive of production.)

Polson Logging Co., 40 N. L. R. B. 736. (An employer's statements made to a union negotiating committee which merely expressed its reasoned preference for dealing with one, rather than two unions, *held* not to be viewed as coercive within the meaning of Section 8(1) of the Act.)

Although employer unquestionably had right to defend the character of the respondents and working conditions in plant, anti-union statements made under guise of defense of unions' misrepresentations of working conditions in plant, *held* 8(1). *Windsor Mfg. Co.*, 20 N. L. R. B. 301, 307. See also: *Pulaski Veneer Corp.*, 10 N. L. R. B. 136, 144. *National Mineral Co.*, 39 N. L. R. B. 344.

NEUTRALIZING STATEMENTS

Employer's cooperation with union in notifying employees of right to self-organization constituted effective dissipation and disavowal of anti-union statements of its supervisory employees. *Sinclair Refining Co.*, 20 N. L. R. B. 800, 804.

Harland Co., John H., 45 N. L. R. B. 76. (Statement of superintendent for employees to "compare their wages with union scales and decide if they wanted the union" and other statements of foremen criticizing the union, *held* neutralized by statements of employer that union affiliation made not one particle of difference either way, and that all employees were free to make their own choice.)

Cf. *Quality & Service Laundry, Inc.*, 39 N. L. R. B. 970, 976. (Statement read to employees which employer claimed constituted an effective antidote to its prior coercive conduct, *held* to have been "far from nullifying" prior activities and to have in fact constituted an integral part of its coercive course of conduct.)

FREE SPEECH

An employer by distributing to its employees an anti-union pamphlet, "Viewpoint on Labor," is *held*—upon the entire record, which portrayed the systematic employment by the employer of unfair labor practices directed against the union—to have interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act. After finding in the light of the facts presented the employer's defenses of (1) the right to freedom of speech and of press and (2) the freedom of employers to influence their employees in the exercise of the rights guaranteed in Section 7 as long as employers do not interfere with, restrain, or coerce employees in the exercise of such rights, to be without merit, the Board stated:

The employer's right to freedom of speech and of press does not sanction its use of speech or press as a means of employing its economic superiority to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed by the Act. By its distribution of the "Viewpoint on Labor" to the plant employees, the employer was not addressing or attempting to influence the public at large; nor was the employer addressing an argument to the intellect of its employees which they were

free to accept or reject without compulsion. The employer was not attempting to engage in the "free trade in ideas . . . in the competition of the market." On the contrary it was issuing a stern warning that it was bitterly opposed to the union and that it would throw the weight of its economic power against the efforts of its employees to form or carry on such an organization. The employer's right so to interfere with, restrain, and coerce its employees is not sanctioned by the First Amendment. *Ford Motor Co.*, 23 N. L. R. B. 342, 352, 353.

Rieke Metal Products Corp., 40 N. L. R. B. 867. (Advertisement caused to be published in local daily newspaper by employer, who contends its purpose was to state publicly its viewpoint in connection with a pending labor controversy, *held* not sanctioned by the First Amendment to the Federal Constitution and to have interfered with its employees' rights under the Act, where it went beyond a fair factual statement concerning the existing labor dispute by inaccurately stating the cause of the strike of which it must be deemed to have been with knowledge of, and by characterizing the union in a manner to incite the employees, as well as the community at large against the union.)

Sunbeam Electric Mfg. Co., 41 N. L. R. B. 469. (Respondent's contention that speeches, letters, and statements, which it had made involved "nothing more or less than expressions of respondent's opinion" and that such expressions are protected by the constitutional guarantee of freedom of speech, *held* without merit, since the First Amendment does not privilege "pressure exerted vocally" by an employer where that employer's "whole course of conduct" properly appraised—as in instant case, having been timed to coincide with a crucial period in union's organization and growth and given strength through repetition by corporate employer's most important officers on company time and with company facilities—constitutes interference, restraint, and coercion within the meaning of the Act.)

American Tube Bending Co., Inc., 44 N. L. R. B. 121, 133. (Utterances by an employer which constitutes restraint and interfere with Board election are not constitutionally privileged under the right to free speech, for the character of the conduct itself, and not the medium of its expression, is the proper test as to whether employer's conduct violates the Act.)

For decisions in which anti-union statements, *held* not sanctioned or excused by First Amendment to Federal Constitution, *see:*

Stone, Norman H., 33 N. L. R. B. 1014, 1029.
Pick Mfg. Co., 35 N. L. R. B. 1334, 1350.
Trojan Powder Co., 41 N. L. R. B. 1308, 1319.
Lettie Lee, Inc., 45 N. L. R. B. 448.
Van Deusen, Maynard K., 45 N. L. R. B. 679.

For decisions in which distribution of anti-union literature, *held* not sanctioned or excused by First Amendment to Federal Constitution, *see:*

Wickwire Bros., 16 N. L. R. B. 321.
Ford Motor Co., 23 N. L. R. B. 342.
Ford Motor Co., 29 N. L. R. B. 873.
Thompson Products, Inc., 33 N. L. R. B. 1033, 1051.
Rieke Metal Products Corp., 40 N. L. R. B. 867, 877, 878.
Trojan Powder Co., 41 N. L. R. B. 1308.

9. *Declarations of union preference.*

Assuming as urged by an employer, that where two legitimate labor organizations seek recognition it cannot be said to be an unfair labor practice for the employer merely to express his preference of one organization over the other in the absence of any attempts at intimidation or coercion, nevertheless, a finding of the Board that an employer had interfered with the rights of its employees by having stated such preferences is justified where substantial evidence existed that attempts at intimidation or coercion were made. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 230, modifying 4 N. L. R. B. 71 and modifying 95 F. (2d) 390 (C. C. A. 2).

Although an employer's expression of preference of a local over an outside union is not subject to criticism, especially where the employee asks for advice, the position of employer carries such weight that his words, by tone and inflection, as well as by the substance of the words themselves, may carry such weight and influence that they may be coercive and provoke fear and awe when they would not do so if the relation of master and servant did not exist. *N. L. R. B.* v. *Falk Corp.*, 102 F. (2d) 383, 389 (C. C. A. 7), enforcing 6 N. L. R. B. 654, affirmed 308 U. S. 453, reversing 106 F. (2d) 454.

In any normal relationship between employers and employees, at least in the early states or organization, any answer by the employer which evinces a preference as to type of labor

organization is technically likely to constitute an unfair labor practice within the meaning of Section 8 (1) for any encouragement of any particular sort of labor organization by making concessions as a reward for compliance with the employer's preference is unlawful under the Act. *Western Garment Mfg. Co.*, 10 N. L. R. B. 567, 572.

An employer by statements and acts constituting a consistent pattern of hostility to an outside organization and preference for an inside organization, *held* to have interfered with, restrained, and coerced its employees in violation of Section 8 (1), notwithstanding that the employer was not found to have dominated the preferred organization in violation of Section 8 (2). *Chicago Molded Products Corp.*, 38 N. L. R. B. 1111, 1121.

An employer's several expressions of preference for a "local" organization, *held* to be more than mere statements of opinion, when they were part of a total program of conduct designed to aid that organization and hinder a rival organization, and when viewed in this context had the effect of interfering with, restraining, and coercing its employees. *Wells-Lamont-Smith Corp.*, 41 N. L. R. B. 1474, 1489, 1490.

Ward Baking Co., 8 N. L. R. B. 558, 562–565 (permitting supervisory employees to urge, persuade, and warn other employees to join one labor organization and to refrain from joining another).

Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 252 (suggesting reformation of inside organization, if it should be disestablished by the Board).

Denver Automobile Dealers Assn., 10 N. L. R. B. 1173, 1211 (informing employee that he would be reinstated only if he joined employer-dominated labor organization).

Pacific Gas & Electric Co., 13 N. L. R. B. 268 (declaration by supervisory employee that respondent would never recognize a named labor organization because it had a radical trend).

Model Blouse Co., 15 N. L. R. B. 133, 139–141 (warning employees against "racketeering" unions and advising them to form unaffiliated organization).

Monticello Mfg. Corp., 17 N. L. R. B. 1091 (statement that employer would not deal with one union and preferred a rival union, and that it would move its plant elsewhere rather than deal with the disfavored union).

1. *Milling Co.*, 26 N. L. R. B. 614 (suggesting that
yees form "inside union").
n Enka Corp., 27 N. L. R. B. 1057 (distributing to
yees a booklet of general information which described
nside" organization in detail but mentioned no other
organization).
Mfg. Co., 28 N. L. R. B. 1051 (informing employees
plants where independent unions existed would get
work).
Whitaker Co., 33 N. L. R. B. 393, 417 (statements by
ndent's president at meeting to dissolve dominated
ization which were tantamount to an instruction to
yees of how they should vote in an election in which
were to determine the type of organization they
d).
., 35 N. L. R. B. 63 (suggesting to employees that
affiliate with a labor organization other than the
ing union).
-Williams Co., 37 N. L. R. B. 260 (urging formation of
nside" union).
Seed & Plant Co., 37 N. L. R. B. 1090 (crediting wage
ases to company formed and dominated union in face
reat by employees to join "outside" union).
stern Cabinet Co., 38 N. L. R. B. 357 (warning,
ing, soliciting employees to join "shop union" and
ously disparaging and denouncing "outside" union).
Molded Products Corp., 38 N. L. R. B. 1111 (attempts
duce employees to form "grievance committees"
r than to affiliate with an "outside" organization).
A. L., 38 N. L. R. B. 1245 (advising employees that
would benefit by forming and joining "inside" union).
Portland Cement Co., 40 N. L. R. B. 652 (urging and
ng employees to relinquish membership in unfavored
ide" union and to accept membership in projected
ide" union).
Engineering Corp., 42 N. L. R. B. 713 (declaring pref-
e for dominated organization and openly fraternizing
its officials).
Virginia Glass Specialty Co., 43 N. L. R. B. 1322 (state-
s showing hostility to "outside" union and preference
nside" union).
a Electric & Power Co., 44 N. L. R. B. 404 (statement
perintendent at time when he was seeking to induce

employees to cooperate in plan for an unaffiliated organization that employer had a large surplus of money and would fight affiliated organizations).

Dowty Equipment Corp., 45 N. L. R. B. 214 (indicating preference for "inside" union).

Southern Wood Preserving Co., 45 N. L. R. B. 230 (persuading and compelling employees to attend election meeting of company-preferred union by threats of dismissal).

Amercian Broach & Machine Co., 45 N. L. R. B. 241 (indication of preference for "inside" organization).

Whiting-Mead Co., 45 N. L. R. B. 987 (exhortations to abandon union and support inside organization).

Knipschild, Fred F., 45 N. L. R. B. 1027 (urging employees to abandon the union and form one of their own, promising them certain concessions if they did).

2 10. *Distorted or misleading explanation of rights under the Act.*

Distribution of leaflets titled "A Message to Employees, Facts about the Wagner Act" containing a bias explanation of the Act, neglecting to set forth in clear terms its fundamental purposes and emphasizing what the provisions of the Act do not purport to do, rather than the positive principles and the rights which it establishes, constitutes a violation of Section 8 (1). *Mansfield Mills, Inc.*, 3 N. L. R. B. 901, 907; *Nebel Knitting Co.*, 6 N. L. R. B. 284, 293. See also:

Mock-Judson-Voehringer Co., 8 N. L. R. B. 133, 136, 137.

Ferguson Bros. Mfg. Co., 9 N. L. R. B. 189, 192, 193.

Goshen Rubber & Mfg. Co., 11 N. L. R. B. 1346.

Brashear Freight Lines, Inc., 13 N. L. R. B. 191.

Auburn Foundry Inc., 26 N. L. R. B. 879, 883.

Norristown Box Co., 32 N. L. R. B. 895, 903.

Cudahy Packing Co., 17 N. L. R. B. 302, 319 (plant publication).

Blackburn Products Corp., 21 N. L. R. B. 1240, 2147 ("Questions and Answers on the Act"). See also: *Perfection Steel Body*, 23 N. L. R. B. 99, 105, 106.

Standard Knitting Mills, 25 N. L. R. B. 168, 177 (notice on bulletin boards).

Jones Foundry & Machine Co., W. A., 30 N. L. R. B. 809, 814, 817 (prepared statement read to assembled employees).

Anderson, Charles, 45 N. L. R. B. 638 (distributing a letter with employees' pay envelopes which misrepresented em-

ployer's duty to bargain with representatives of majority and misrepresented rights of employees under the Act). See also:

Hamel Leather Co., L. H., 45 N. L. R. B. 760.
Ulman, Inc., Max, 45 N. L. R. B. 836.

11. *Interrogation concerning union membership or activities.* Interrogation of employees concerning their membership and activity in behalf of a labor organization constitutes a violation of Section 8 (1), and an employer's contention that it is necessary to prove directly that the effect of this practice has been to intimidate is without merit, for the Board can draw no other inference but that such tactics have had and are likely to continue to have the effect of immediate, personal fear of the loss of employment. *Botany Worsted Mills*, 4 N. L. R. B. 292, 297, 298, remanded 106 F. (2d) 263 (C. C. A. 3).

For additional decisions in which interrogation of employees concerning their union membership and activity constituted in context with other circumstances a violation of Section 8 (1), *see:*

Greensboro Lumber Co., 1 N. L. R. B. 629, 632.
Union Pacific Stages, Inc., 2 N. L. R. B. 471, 478–480.
Strain Co., Inc., David, 8 N. L. R. B. 310, 313, 314.
Lockenbach Steamship Co., Inc., 8 N. L. R. B. 1280, 1290.
Republic Steel Corp., 9 N. L. R. B. 219, 314.
Acme Air Appliance Co., Inc., 10 N. L. R. B. 3185, 1390.
Collins Baking Co., 19 N. L. R. B. 374.
Standard Knitting Mills, 25 N. L. R. B. 168
Indianapolis Power & Light Co., 25 N. L. R. B. 193.
Mountain City Mill Co., 25 N. L. R. B. 397.
Clarksburg Publishing Co., 25 N. L. R. B. 456.
Excel Curtain Company, Inc., 25 N. L. R. B. 557.
Charles C. Hobart, 25 N. L. R. B. 727.
Dain Mfg. Co. and Deere & Co., 25 N. L. R. B. 821.
Hawk & Buck Co., Inc., 25 N. L. R. B. 837.
Dixie Motor Coach Corp., 25 N. L. R. B. 869.
Sorg Paper Co., 25 N. L. R. B. 946.
Triplex Screw Co., 25 N. L. R. B. 1126.
Southern Cotton Oil Co., 26 N. L. R. B. 177.
Taylor Milling Corp., 26 N. L. R. B. 424.
Texarkana Bus Co., Inc., 26 N. L. R. B. 582.
M. F. A. Milling Co., 26 N. L. R. B. 614.
Ulich & Co., Inc., Paul, 26 N. L. R. B. 679.
Tex-O-Kan Flour Mills, 26 N. L. R. B. 765.

Kraus & Co., 26 N. L. R. B. 1004.
New York Times Co., 26 N. L. R. B. 1094.
Abinante & Nola Packing Co., 26 N. L. R. B. 1288.
Northern Ohio Telephone Co., 27 N. L. R. B. 613.
Paragon Die Casting Co., 27 N. L. R. B. 878.
Central Greyhound Lines, Inc. of New York, 27 N. L. R. B. 976.
Quaker State Oil Refining Corp., 27 N. L. R. B. 1321.
Algoma Net Co., 28 N. L. R. B. 64.
Kudile, Rudolph & Charles, 28 N. L. R. B. 116.
B. Z. B. Knitting Co., 28 N. L. R. B. 257.
Bemis Bro. Bag Co., 28 N. L. R. B. 430.
Phelps Dodge Corp., 28 N. L. R. B. 442.
Ohio Fuel Gas Co., 28 N. L. R. B. 667.
Schult Trailers, Inc., 28 N. L. R. B. 975.
Reliance Mfg. Co., 28 N. L. R. B. 1051.
International Harvestor Co., 29 N. L. R. B. 456.
American Steel Scraper Co., 29 N. L. R. B. 939.
Tekel Bottling Co., 30 N. L. R. B. 440.
Gregory, Joseph R., 31 N. L. R. B. 71.
Illinois Electric Porcelain Co., 31 N. L. R. B. 101.
Phelps Dodge Corp., 32 N. L. R. B. 338.
Norristown Box Co., 32 N. L. R. B. 895.
Cities Service Oil Co., 32 N. L. R. B. 1020.
Gamble-Robinson Co., 33 N. L. R. B. 351.
Rushton, W. W., 33 N. L. R. B. 954.
Stone, Norman H., 33 N. L. R. B. 1014.
Marshall Field & Co., 34 N. L. R. B. 1.
American Smelting & Refining Co., 34 N. L. R. B. 968.
Great Southern Trucking Co., 34 N. L. R. B. 1068.
Ex-Lax, Inc., 34 N. L. R. B. 1095.
Commonwealth Plastic Co., 34 N. L. R. B. 1129.
Tyne Co., 35 N. L. R. B. 63.
Hygrade Food Products Corp., 35 N. L. R. B. 120.
Security Warehouse & Cold Storage Co., 35 N. L. R. B. 857.
Kansas Utilities Co., 35 N. L. R. B. 936.
Pick Mfg. Co., 35 N. L. R. B. 1334.
Stonewall Cotton Mills, 36 N. L. R. B. 240.
Brown Paper Mill Co., Inc., 36 N. L. R. B. 1220.
Sherwin-Williams Co., 37 N. L. R. B. 260.
Newton Chevrolet, Inc., 37 N. L. R. B. 334.
Pacific States Cast Iron Pipe Co., 37 N. L. R. B. 405.
National Lumber Mills, Inc., 37 N. L. R. B. 700.

Detroit Southern Pipe Line Co., 38 N. L. R. B. 159.
Phelps Dodge Refining Corp., 38 N. L. R. B. 555.
Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.
United Biscuit Co. of America, 38 N. L. R. B. 778.
Northwestern Photo Engraving Co., 38 N. L. R. B. 813.
Chicago Molded Products Corp., 38 N. L. R. B. 1111.
South Bend Fish Corp., 38 N. L. R. B. 1176.
Blatt Co., M. E., 38 N. L. R. B. 1210.
Casady, A. L., 38 N. L. R. B. 1245.
Schaefer-Hitchcock Co., 39 N. L. R. B. 709.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.
Lexington Telephone Co., 39 N. L. R. B. 1130.
Clinton E. Hobbs, 41 N. L. R. B. 537.
Butler Bros., 41 N. L. R. B. 843.
American Oil Co., 41 N. L. R. B. 1105.
Alco Feed Mills, 41 N. L. R. B. 1278.
Snow Co., Fred A., 41 N. L. R. B. 1288.
Trojan Powder Co., 41 N. L. R. B. 1308.
Locomotive Finished Material Co., 41 N. L. R. B. 1374.
Amercian Sheet Metal Works, 41 N. L. R. B. 1383.
Carrington Publishing Co., 42 N. L. R. B. 356.
Greenport Basin & Construction Co., 42 N. L. R. B. 377.
Wells-Lamont-Smith Corp., 42 N. L. R. B. 440.
Brock, John David, 42 N. L. R. B. 457.
Texas Co., Marine Division, 42 N. L. R. B. 593.
Helena Rubinstein, Inc., 42 N. L. R. B. 898.
Polish National Alliance of the United States, 42 N. L. R. B. 1375.
Beckerman Shoe Corp. of Kutztown, 43 N. L. R. B. 435.
Cleveland Worsted Mills Co., 43 N. L. R. B. 545.
Elvine Knitting Mills, Inc., 43 N. L. R. B. 695.
Harbison-Walker Refractories Co., 43 N. L. R. B. 711.
North Carolina Finishing Co., 44 N. L. R. B. 184.
Miami Broadcasting Co., 44 N. L. R. B. 257.
Platte Valley Telephone Corp., 44 N. L. R. B. 632.
Franks Bros. Co., 44 N. L. R. B. 898.
American Bread Co., 44 N. L. R. B. 970.
Hardy Co., L., 44 N. L. R. B. 1013.
Monsieur Henri Wines, Ltd., 44 N. L. R. B. 1310.
Hearst Mercantile Co., 44 N. L. R. B. 1342.
American Broach & Machine Co., 45 N. L. R. B. 241.
American Laundry Machinery Co., 45 N. L. R. B. 355.
Hirsh Mercantile Co., 45 N. L. R. B. 377.
Lettie Lee, Inc., 45 N. L. R. B. 448.

Taitel, Irving, 45 N. L. R. B. 551.
Van Deusen, Maynard K., 45 N. L. R. B. 679.
Amberson, Joe, 45 N. L. R. B. 709.
Kaplan Bros., 45 N. L. R. B. 799.
Fradkin, Joseph L., 45 N. L. R. B. 902.
Elizabeth Arden, Inc., 45 N. L. R. B. 936.
Whiting-Mead Co., 45 N. L. R. B. 987.
Phelps, Jr., Henry K., 45 N. L. R. B. 1163.
Phillips Petroleum Co., 45 N. L. R. B. 1318.

Interrogation of employees about union membership, *held* violation of 8 (1) despite prefatory statement that the employees need not answer questions if they chose. *Foote Bros. Gear & Machine Corp.*, 14 N. L. R. B. 1045.

The respondent may not, in the preparation of its case to a consolidated complaint and representation proceedings, elicit from its employees their preference as to union representation in the future or to solicit from them approval of respondent's desire that representatives be ascertained by an election, for although the respondent might properly have inquired of the employees named in the complaint whether they had been union members at the time of their alleged discharge, and such an inquiry would have been legitimate in the preparation of its defense to the allegation of discrimination, it was not open to the respondent to elicit from its employees such information and invade a field of union activity reserved by the Act to the employees. *Woolworth Co.*, 25 N. L. R. B. 1362, 1371. See also: *Covington Weaving Co.*, 34 N. L. R. B. 187, 191.

N. & W. Overall Co., Inc., 51 N. L. R. B., No. 160. (A respondent may through its counsel interview employees to discover facts within the limits raised by a complaint for the purpose of preparing its case for trial.) Cf. *Interstate Folding Box Co.*, 47 N. L. R. B. 1192.

Use of application form providing space for designating applicant's union affiliation, *held* violative of Section 8 (1), although not all applicants were required to fill out these forms, when it was apparent that the refusal to fill in this blank might create the inference that the applicant was a member of a labor organization; and that the request itself deterred concerted activity by both applicants for employment and employees who had filled in the application blank. *Texarkana Bus Co., Inc.*, 26 N. L. R. B. 582, 586.

Hartsell Mills Co., 18 N. L. R. B. 268, 280, 281. (Social Security cards used by the respondent which provided space for designating the employee's union affiliation, *held* not violative of Section 8(1), although the union affiliation of the employees is clearly not the concern of the respondent and such information should not be called for on its Social Security cards or any other cards which the employees are required to fill out, when the employees were not forced to supply this information, the system was not selected with a view to obtain information concerning the union affiliation of its employees or of applicants for employment.)

For additional decisions in which use of application forms requiring applicants to state their union affiliation was found in context with other circumstances to violate Section 8(1), *see*:

Peerless Woolen Mills, 13 N. L. R. B. 438.
Mahon Co., 28 N. L. R. B. 619.
Dannen Grain & Milling Co., 30 N. L. R. B. 888.
Gates Rubber Co., 30 N. L. R. B. 170.
Gates Rubber Co., 40 N. L. R. B. 424,432.
American Rolling Mill Co., 43 N. L. R. B. 1020.
Spalek, Adolph, 45 N. L. R. B. 1272.

12. *Interference in the formation or administration of a labor organization or contribution of support thereto.*

There is ample evidence to support a finding of the Board that an employer who operated two affiliated plants coerced his employees to refrain from joining an outside labor organization and to join an organization found to be employer-dominated where the record shows: (1) the employer announced that he would never deal with outside organization or recognize it for collective bargaining; (2) he and his agents and representatives affirmatively assisted in the formation of a labor organization and promptly recognized it as the representative of all employees at one of the plants; (3) while that organization was in the process of formation the employer closed one plant for the purpose of coercing his employees to join that organization; (4) he announced that he would remove that plant rather than bargain with the outside organization; and (5) when the outside organization tried to organize the other plant he opposed it, threatened to move that plant if there were any labor trouble, and declared he would not deal with that

organization. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 817, 818 (C. C. A. 8), remanding 6 N. L. R. B. 423.

Employer's unsuccessful attempt to promote inside labor organization, constitutes a violation of Section 8(1). *Fansteel Metallurgical Corp.*, 5 N. L R. B. 930, 933–939, 943–946, modified 306 U. S. 240, modifying 98 F. (2d) 375 (C. C. A. 7). See also: *Pacific Gas & Electric Co.*, 21 N. L. R. B. 630, 633–635. *Karron, Inc.*, 25 N. L. R. B. 506, 512. *Ohio Calcium Co.*, 34 N. L. R. B. 917, 926.

[*See* § 110 (as to unsuccessful attempt to form a dominated organization as violative of Section 8 (2), and REMEDIAL ORDERS § 52 (as to orders with respect to respondents which unsuccessfully attempt to form a labor organization).]

Aiding and encouraging the formation of an inside labor organization immediately after the Board had directed an election to determine whether the employees wished to be represented by a bona fide labor organization constitutes a violation of Section 8(1). *Model Blouse Co.*, 15 N. L. R. B. 133, 143–145.

Support and encouragement of membership in an inside organization after an outside organization was formed and had begun its campaign for members, constitutes a violation of Section 8(1). *Indianapolis Power & Light Co.*, 25 N. L. R. B. 193, 212, 213.

An employer has dominated and interfered with the formation and administration of an inside organization in violation of Section 8(1) when in order to undermine the outside organization and thwart possible future attempts by that organization to organize its employees, it initiated and fostered the inside organization through its representatives. *Mall Tool Co.*, 25 N. L. R. B. 771, 782. See also: *Eagle-Picher Mining & Smelting Co.*, 16 N. L. R. B. 727, 765; (to break a strike). *Wilcox Oil & Gas Co.*, 28 N. L. R. B. 79, 97; (to avoid granting recognition to an outside union). *Northwestern Cabinet Co.*, 38 N. L. R. B. 357, 365; (to obstruct and prevent outside union from organizing and bargaining for the employees).

An employer who encouraged membership in an organization found by the Board in an earlier case to be illegally dominated and while that case was pending in proceedings for review in the court, *held* to have engaged in conduct violative of Section 8(1). *Cudahy Packing Co.*, 27 N. L. R. B. 118, 123.

Organization of a social club, although falling short of an intended "inside" organization, *held* violative of Section 8(1) when designed to service as a substitute for the "outside" union. *Emerson Radio & Phonograph Corp.*, 43 N. L. R. B. 613, 628.

Where a respondent was responsible for the formation of an employee association and was motivated in this action by a desire to prevent organization by an affiliated labor organization, *held* that the association and the contract between it and the respondent constituted an interference with the rights of the employees and that it was not material that the association ceased to function as a bargaining representative after the execution of the contract. *Adel Clay Products Co.*, 44 N. L. R. B. 386, 392.

[*See* DEFINITIONS § 87 (as to dormant or defunct organizations as labor organizations) and REMEDIAL ORDERS §§ 28, 53 (as to orders issued with respect to dormant or defunct organizations that had been assisted or dominated).]

An employer engaged in conduct violative of Section 8 (1), when it unlawfully assisted an "inside" organization, although the evidence as a whole did not warrant a finding that the employer dominated that organization in violation of Section 8 (2). *Heather Handkerchief Works*, 47 N. L. R. B. 800. See also: *International Folding Box Co.*, 47 N. L. R. B. 1192. *Wayne Works*, 47 N. L. R. B. 1437. *National Silver Co.*, 50 N. L. R. B. 570.

[*See* § 31 (as to assisting labor organizations by declarations of union preference), § 42 (as to assisting labor organizations by privileges accorded or favoritism shown to one of two or more rival legitimate labor organizations), § 45 (as to assisting labor organizations by the fulfillment of contracts), §§ 481–499 (as to contracts the execution or enforcement of which constitute discouragement or encouragement within the meaning of Section 8 (3)), and REMEDIAL ORDERS § 28 (as to orders issued with respect to organizations dominated or assisted in violation of Section 8 (1)).]

13. *Actual, threatened, or purported discharge or other interference with hire, tenure, terms or conditions of employment.*

Discriminatory discharges constitute violations both of Sections 8 (1) and 8 (3) of the Act for in the one case they discourage membership in a labor organization as prohibited by Section 8 (3) and in the other they interfere with the right of employees to form labor organizations as proscribed by Section 8 (1). *N. L. R. B.* v. *Remington Rand*,

Inc., 94 F. (2d) 862, 869 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576, 585.

Stehli & Co., Inc., 11 N. L. R. B. 1397, 1451 (discharge for engaging in concerted activities as concurrent violations of Sections 8 (1) and 8 (3)). See also: *Pittsburgh Standard Envelope Company*, 20 N. L. R. B. 516. *Ohio Fuel Gas Co.*, 28 N. L. R. B. 667.

M. F. A. Milling Co., 26 N. L. R. B. 614, 626 (discharge for engaging in activity constituting either union or concerted activity as concurrent violations of Sections 8 (1) and 8 (3)). See also: *General Shale Products Corp.*, 26 N. L. R. B. 921, 928.

The discharge of marine engineers who went on strike because they believed the remaining members of the crew to be incompetent constitutes interference with their right "to engage in concerted activities for the purposes of collective bargaining or other *mutual aid or protection*" within the meaning of Section 8 (1). *Southgate Nelson Corp.*, 3 N. L. R. B. 535, 542.

The discharge of three employees, who at the time were not members of a labor organization, constitutes a violation of Section 8 (1) where their discharge was caused by the fact that they had engaged in concerted activities for the purposes of collective bargaining by sitting at their machines as a spontaneous expression of discontent, staged for the purpose of bringing to the attention of the employer a grievance concerning wages which repeated talks to their forelady had failed to remedy. *Indianapolis Glove Co.*, 5 N. L. R. B. 231, 234, 238.

[*See* § 415 (as to protection afforded by Section 8 (3) to non-union employees), § 506 (as to discrimination in violation of Section 8 (3) for engaging in concerted activities in absence of membership in labor organization) and § 507 (as to discrimination in violation of Section 8 (3) for refusal to work).]

Warnings by supervisory employees that workers would lose their jobs and threats by one of the partners that the firm would go out of business if there was a labor organization in the shop constitute a violation of Section 8 (1). *N. L. R. B.* v. *Colten & Colman, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 181 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

The action of an employer in threatening to discharge and in purporting to discharge employees who went on strike to enforce their demand for a shorter working day restrains employees from engaging in concerted activities for their mutual aid and protection and thereby constitutes a violation of Section 8 (1); nor is the situation altered by the fact that the employer, upon learning of the employee's intentions shortly before the strike began, issued a rule stating that employees who left before the end of the working day would be discharged, and removed the time cards of employees who left before that time, for an employer cannot, in the name of plant discipline, coerce his employees for the purpose of discouraging collective activity. *American Mfg. Concern*, 7 N. L. R. B. 753, 759, 760.

[*See* §§ 404 and 507 (as to concerted activity within or beyond the protection of the Act).]

Section 8 (1) which makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights of self-organization and collective bargaining covers a discriminatory refusal to hire as well as a discriminatory discharge, for one form of interference is the discharge for union membership or activities of an individual already employed and another such form is the refusal to hire an individual seeking employment for the same reason, and since each is an open warning to all persons already employed, and it is the interfering and coercive effect upon them that constitutes the violation of Section 8 (1) in both cases, it is therefore, immaterial whether the individual discriminated against is already an employee or merely an applicant for employment. *Waumbec Mills, Inc.*, 15 N. L. R. B. 37, 45, 46. *Mountain City Mill Co.*, 25 N. L. R. B. 397, 405 (refusal of employment to son of union member employee on hypothesis that since husband and wife were union members the son would be for the union, *held* a violation of Section 8 (1).

[*See* §§ 441–443 (as to refusal to employ former employees or applicants for initial employment in violation of Section 8 (3), DEFINITIONS § 1.1 (as to "applicants" as employees), and REMEDIAL ORDERS § 104 (as to the inclusion of "applicants" within reinstatement and back pay orders).]

An attempt on the part of an employer in the negotiations for the settlement of a strike to obtain from the union the

right to select which employees it shall reinstate in exchange from the union for its covenant that the employer's acts should not form the basis of unfair labor practice charges, *held* a violation of Section 8 (1), for the employer thereby attempted to obtain a license to discriminate in the selection of the reinstatees and as such was repugnant to the spirit of the Act. *Wilson & Co., Inc.*, 26 N. L. R. B. 1353, 1375–1377.

Refusal to give certain employees recommendations to help them secure other jobs because of their union activity constitutes a violation of Section 8 (1), for one of the ordinary incidents of employment is the expectancy of receiving such a recommendation upon request for work well done and when such a refusal becomes known to other employees it necessarily operates as a deterrent to subsequent participation in similar activities by those employees. *Shenandoah-Dives Mining Co.*, 35 N. L. R. B. 1153.

Western Cartridge Co., 43 N. L. R. B. 179 (attempting to prevent discriminatorily discharged employee from obtaining employment elsewhere by making false answer to a bond questionnaire; informing an employee that his absentation from union activities was a condition of its request for his draft deferment).

An employer's requirement that its foremen who were members of an outside labor organization renounce their union affiliation or suffer demotion, *held* not to constitute an unfair labor practice, when the duties and capacities of the foremen were such as to bring them within the realm of management and thus charge them for their activities in coercing subordinate employees in joining the union, and such action was taken to counteract their interference with the right of the subordinate employees to self-organization. *Sherwin-Williams Co.*, 37 N. L. R. B. 260, 279, 280.

[*See* § 412 (as to protection afforded by Section 8 (3) to supervisory employees), DEFINITIONS §§ 24–24.6 (as to employee status of persons allied with management), and UNIT §§ 86–86.5 (as to appropriateness of units confined to supervisory employees).]

Contention that payment of a bonus to employees who did not participate in a non-unfair labor practice strike operated as a mode of interference with the right of employees to engage in concerted activities by rewarding employees

who refrained from such acts, *held* without merit when bonus was not offered during pendency of strike nor as a reward for not striking but as compensation to non-strikers for loss resulting from strike's interference with normal production; employer had voluntarily paid strikers their usual wages for period of strike, and had employer failed to make any adjustment for non-strikers; they would have received less for working than strikers for not working; and when there appeared no reason to question the good faith of respondent in adopting the rough basis of equalization which it employed. *Bloom, Inc., Charles,* 45 N. L. R. B. 1250.

[*See infra* this section (for decisions involving preferential treatment).]

Actual Discharges:

Patriarca Store Fixtures, Inc., 12 N. L. R. B. 93, 97–99.
Dixie Motor Coach Corp., 25 N. L. R. B. 869.
Texarkana Bus Co., Inc., 26 N. L. R. B. 582.
Ohio Calcium Co., 34 N. L. R. B. 917.
National Lumber Mills, Inc., 37 N. L. R. B. 700.
Rieke Metal Products Corp., 40 N. L. R. B. 867.
Protective Motor Service Co., 40 N. L. R. B. 967.

Threatened Discharges:

Pennsylvania Greyhound Lines, Inc., 1 N. L. R. B. 1.
Union Pacific Stages, Inc., 2 N. L. R. B. 471, 477–480.
Hoover Co., 6 N. L. R. B. 688, 692.
The Citizen-News Co., 21 N. L. R. B. 1112.
Ohio Fuel Gas Co., 25 N. L. R. B. 519.
Hobart, Charles C., 25 N. L. R. B. 727.
Wessel Co., 26 N. L. R. B. 192.
Taylor Mining Corp., 26 N. L. R. B. 424.
Uhlich & Co., Inc., Paul, 26 N. L. R. B. 679.
Tex-O-Kan Flour Mills, 26 N. L. R. B. 765.
Long-Bell Lumber Co., 26 N. L. R. B. 823.
Auburn Foundry, Inc., 26 N. L. R. B. 878.
Isaac Schieber, 26 N. L. R. B. 937.
Abinante & Nola Packing Co., 26 N. L. R. B. 1288.
Northern Ohio Telephone Co., 27 N. L. R. B. 613.
Paragon Die Casting Co., 27 N. L. R. B. 878.
American Enka Corp., 27 N. L. R. B. 1057.
Fletcher Paper Co., 27 N. L. R. B. 1274.
Algoma Net Co., 28 N. L. R. B. 64.
Wilcox Oil & Gas Co., H. F., 28 N. L. R. B. 79.
Kudile, Rudolph & Charles, 28 N. L. R. B. 116.

Phelps Dodge Corp., 28 N. L. R. B. 442.
Middle West Corp., 28 N. L. R. B. 540.
Schult Trailers, Inc., 28 N. L. R. B. 975.
International Harvester Co., 29 N. L. R. B. 456.
Gates Rubber Co., 30 N. L. R. B. 170.
Manville Jenckes Corp., 30 N. L. R. B. 382.
United Dredging Co., 30 N. L. R. B. 739.
Midwest Steel Corp., 32 N. L. R. B. 285.
Phelps Dodge Corp., 32 N. L. R. B. 490.
Times-Picayune Publishing Co., 32 N. L. R. B. 520.
Tidewater Express Lines, Inc., 32 N. L. R. B. 828.
Rapid Roller Co., 33 N. L. R. B. 557.
Canyon Corp., 33 N. L. R. B. 885.
Rushton, W. W., 33 N. L. R. B. 954.
Hazel-Atlas Glass Co., 34 N. L. R. B. 346.
Eclipse Moulded Products Co., 34 N. L. R. B. 785.
Tyne Co., 35 N. L. R. B. 63.
Hygrade Food Products Corp., 35 N. L. R. B. 120.
Kansas Utilities Co., 35 N. L. R. B. 936.
Columbia Box Board Mills, Inc., 35 N. L. R. B. 1050.
Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153.
Stonewall Cotton Mills, 36 N. L. R. B. 240.
Burke Machine Tool Co., 36 N. L. R. B. 329.
Scripto Mfg. Co., 36 N. L. R. B. 411.
Phelps Dodge Refining Corp., 38 N. L. R. B. 555.
Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.
Lexington Telephone Co., 39 N. L. R. B. 1130.
Columbia Powder Co., 40 N. L. R. B. 223.
Gates Rubber Co., 40 N. L. R. B. 424.
Polson Logging Co., 40 N. L. R. B. 736.
Moore, Inc., E. H., 40 N. L. R. B. 1058.
Poultrymen's Service Corp., 41 N. L. R. B. 444.
Sport-Wear Hosiery Mills, 41 N. L. R. B. 674.
Butler Bros., 41 N. L. R. B. 843.
Springfield Woolen Mills Co., 41 N. L. R. B. 921.
Alco Feed Mills, 41 N. L. R. B. 1278.
American Sheet Metal Works, 41 N. L. R. B. 1383.
Wells-Lamont-Smith Corp., 41 N. L. R. B. 1474.
Karp Metal Products Co., Inc., 42 N. L. R. B. 119.
Carrington Publishing Co., 42 N. L. R. B. 356.
Greenport Basin & Construction Co., 42 N. L. R. B. 377.
Brock, John David, 42 N. L. R. B. 457.
Texas Co., Marine Division, 42 N. L. R. B. 593.
Haydu & Sons., Inc., S., 42 N. L. R. B. 852.

Sartorius & Co., Inc., A., 40 N. L. R. B. 107.
Cowell Portland Cement Co., 40 N. L. R. B. 652.

Threats to displace Striking Employees:
Wilson & Co., Inc., 26 N. L. R. B. 1353, 1378.
Johnson, 41 N. L. R. B. 263, 276, 277.
Cleveland Worsted Mills Co., 43 N. L. R. B. 545, 567.

[*See* § 37 (as to undercutting the union by inducing strikers to return to work), §§ 402, 403 (as to employer's right to replace employees engaged in an economic or unfair labor practice strike), and § 440 (as to discharge of strikers for not returning to work).]

Job Perquisite:
Citizen-News Co., 33 N. L. R. B. 511.

Threat to withhold Promotion and/or Wage Increases:
Citizen-News Co., 21 N. L. R. B. 1112.
Aluminum Goods Mfg. Co., 25 N. L. R. B. 1004.
Armour & Co., 32 N. L. R. B. 536.

Withdrawal of Privileges, Actual or Threatened

Davidson Granite Co., Inc., 24 N. L. R. B. 370 (threatening members of union with curtailment of credit and loans at company-owned store).

Great Western Mushroom Co., 27 N. L. R. B. 352 (withholding loans to various employees).

Smith & Co., Inc., J. Allen, 27 N. L. R. B. 1386, 1392 (threatening loss of hospitalization).

Ohio Valley Bus Co., 38 N. L. R. B. 838 (threatening to deprive employees of loans, uniforms, and insurance if they joined "outside" organization).

Bear Brand Hosiery Co., 40 N. L. R. B. 323 (informing employee who had a newspaper delivered to him each day in the plant and customarily read it there during his spare time without objection from supervisors, that it was against the Company's rules to read a labor paper).

Gates Rubber Co., 40 N. L. R. B. 424 (threatening employees that they would lose their vacations with pay, holidays with pay, and other benefits if plant were organized).

Ozan Lumber Co., 42 N. L. R. B. 1073, 1076 (threatening employees with loss of fish fries if they engaged in union activities).

Hardy Co., L., 44 N. L. R. B. 1013, 1017 (threatening employees with curtailment of privilege of smoking and eating meals at shop).

Preferential Treatment, Actual or Promised

Heilig Bros. Co., 32 N. L. R. B. 505 (discriminatory distribution of extra work).

Security Warehouse & Cold Storage Co., 35 N. L. R. B. 857 (threats of discrimination in amount and duration of employment to union members; hiring, housing, and preferential treatment of college students for purpose of discouraging union membership).

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (An employer who in contradistinction to treatment accorded non-union girls separated union girls from each other, constantly criticized them, and in addition to close supervision of their work did not permit them to raise their eyes nor to sit while working, has engaged in conduct violative of of Section 8 (1).)

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (An employer by discriminatorily assigning union employees following her lay-off to unfamiliar jobs, filling her former position of supervising others with non-union girl having less seniority, and by undue supervision and criticism of her efforts on unfamiliar jobs, has engaged in conduct violative Section 8 (1).)

Butler Bros., 41 N. L. R. B. 843 (rewarding promotion to a line non-striker).

Phelps, Jr., Henry K., 45 N. L. R. B. 1163 (engaging in discriminatory promotions; attempting to arrange work of certain employees so as to disqualify them for inclusion within appropriate unit for collective bargaining).

[*See* § 40 (as to lock-out), and § 45 (as to contracts imposing unlawful conditions of employment).]

14. *Interference with right of employees to bargain collectively.*

The refusal of an employer to bargain collectively in violation of Section 8 (5) may also constitute a violation of Section 8 (1). *Express Publishing Co.*, 312 U. S. 426.

[*See* REMEDIAL ORDERS § 7 (as to the scope of the order).]

The abrogation by an employer of a seniority agreement which it had entered into with a labor organization without conferring with the organization constitutes a violation of Section 8 (1) for the employer in so doing gave no consideration to the rights of its employees to collective bargaining. *Brown Shoe Co., Inc.*, 1 N. L. R. B. 803, 829.

[*See* § 701 (as to subject matter of collective bargaining).]

It is unnecessary to consider the allegations of a complaint charging an employer with a refusal to bargain within the meaning of Section 8 (5), where it has been found that the employer has interfered with the rights of its employees to collective bargaining in violation of Section 8 (1). *Alabama Mills, Inc.*, 2 N. L. R. B. 20, 33, 34. See also: *Alaska-Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 134, 135. Cf. *Bemis Bros. Bag Co.*, 3 N. L. R. B. 269, 272–274.

An employer has interfered with the rights of its employees to bargain collectively in violation of Section 8 (1) by seeking to negotiate with individual employees for modification of an existing collective contract with its employees' exclusive representative, for such a practice is completely destructive of the principles of collective bargaining in that it not only "undercuts" the authority of the chosen representative to act within the sphere of representation in regard to the modification of a collective bargaining agreement but also subjects the individual employee to the very pressures which collective bargaining would obviate. *Williams Coal Co.*, 11 N. L. R. B. 579, 644.

Alaska-Juneau Gold Mining Co., 2 N. L. R. B. 125, 134 (requiring employees who had gone on strike because of refusal to bargain, to sign individual applications for reinstatement).

Hopwood Retinning Co., 4 N. L. R. B. 922, 940. (The attempt of an employer to bargain with its employees individually by offering each of them anti-union contracts after negotiations for collective bargaining had been initiated, constitutes a violation of Section 8 (1).)

Williams Mfg. Co., 6 N. L. R. B. 135, 144; *Newark Rivet Works*, 9 N. L. R. B. 498, 515 (individual contracts without anti-union provisions).

Elkland Leather Co., Inc., 8 N. L. R. B. 519, 534 (attaching statements to employees' pay checks announcing that employer would deal individually with employees).

Reed & Prince Mfg. Co., 12 N. L. R. B. 944, 962 (attempt to bargain individually with employees and use of individual contracts during a strike, called by a union representing a majority of the employees).

Dow Chemical Co., 13 N. L. R. B. 993, 1000. (Questioning employees concerning their grievances after the advent of the Union, thereby making it appear that employees could secure redress of their grievances, as an employer technique to persuade employees that the Union is superfluous.)

Stout, Charles Banks, 15 N. L. R. B. 541, 553. (Employer sought to negotiate with employees individually, knowing union represented majority.)

Air Associates, Inc., 20 N. L. R. B. 356, 362. (Respondent's attempt to persuade union committee to discuss provisions of proposed contract in face of committee's assertion it had no authority to do so in absence of union organizer, *held* 8 (1).)

Pacific Gas Radiator Co., 21 N. L. R. B. 630. (Respondent questioned employees as to whether they would work 40 or 48 hours a week at a time when hours of work were a subject of collective bargaining negotiations with the union.)

Highland Shoe, Inc., 23 N. L. R. B. 259. (Employer sought to reduce wages by dealing with employees directly rather than through their duly designated union in contravention of existing contract with union.)

Mountain City Mill Co., 25 N. L. R. B. 397 (urging employees to deal individually).

Hobart, Charles C., 25 N. L. R. B. 727 (inducing employees to bargain individually as to wages).

Aluminum Goods Mfg. Co., 25 N. L. R. B. 1004 (expressions of resentment at employees' resort to collective representation in connection with grievances).

Southern Cotton Oil Co., 26 N. L. R. B. 177. (Respondent's granting of raises without consulting union during bargaining negotiations calculated to undercut union's prestige, *held* 8 (1).)

Union Mfg. Co., Inc., 27 N. L. R. B. 1300. (Circulating memorandum which was derogatory of the union leaders, indicating intention to deal with employees individually or collectively regardless of the union and its status as the employee's exclusive bargaining representative, *held* 8 (1).)

Wilcox Oil & Gas Co., H. F., 28 N. L. R. B. 79. (While union was attempting to negotiate a contract, company hastily adopted a higher wage scale.)

Capital Broadcasting Co., Inc., 30 N. L. R. B. 146. (Transfer of duties and promulgation of restrictive rules, *held* interference with rights of employees, where duties were subject matter of bargaining at the time and restrictive rules affected union members alone.)

Minneapolis-Honeywell Regulator Co., 33 N. L. R. B. 263. (An employer has engaged in conduct violative of Section 8 (1) by reason of its supervisory employee urging employees

to present their grievances through him rather than through a labor organization.)

Stone, Norman H., 33 N. L. R. B. 1014 (tender of individual contracts shortly after the union's request for recognition).

Martin Bros. Box Co., 35 N. L. R. B. 217. (An employer who thrust aside the orderly process of bargaining with representatives selected by employees with whom it was under a duty to negotiate exclusively, by urging employees in midst of bargaining negotiations with the committee to accept its proposed contract which the committee then was not amenable to, has engaged in conduct violative of Section 8 (1).)

Burke Machine Tool Co., 36 N. L. R. B. 1329. (An employer by seeking to deal directly with employees while they were engaged in "concerted activities" has engaged in conduct violative of Section 8 (1).)

Columbia Powder Co., 40 N. L. R. B. 223 (by suggesting that employees take their grievances directly to employer rather than through their representatives).

Out West Broadcasting Co., 40 N. L. R. B. 1367 (by unilaterally dealing with employees).

Poultrymen's Service Corp., 41 N. L. R. B. 444 (influencing employees to organize and bargain collectively regardless of the union).

Barrett Co., 41 N. L. R. B. 1327 (inducing employees to refrain from concerted action in obtaining an increase in wages).

J. I. Case Co., 42 N. L. R. B. 85 (urging employees to bargain individually on the basis of individual contracts executed prior to the designation of an exclusive bargaining agent).

Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613 (arranging meeting of union employees to discuss possibility of raises without the necessity of having a union).

Hirsch Mercantile Co., 45 N. L. R. B. 377 (granting concessions in working conditions directly to employees, both on a general and on individual basis, while ostensibly negotiating with union).

Pastore, Michele, 45 N. L. R. B. 569. (After agreeing that union had a majority and that it would bargain with it, employer delayed negotiations while it undermined the union by telling its members they did not need a union to get wage increases for them as it was perfectly willing to grant increases on a parity with union's demands, then

granting such wage increases when former union pledges came directly seeking wage increases, causing a loss of union majority and subsequently refusing to deal with union because it did not then represent a majority.)

An employer engaged in conduct violative of Section 8 (1) when it sought to and in fact caused defections from the union by its insistence throughout negotiations with a labor organization upon conditions of employment (change in mode of payment which if accepted would reduce employees' earnings) as a qualifying prerequisite to the rights and benefits of collective bargaining. *Hearst Publications, Inc.*, 25 N. L. R. B. 621, 634.

Where members of a union representing a majority of employees within an appropriate unit authorized a strike vote in event no agreement was reached with the employer but did not thereby foreclose the possibility of reaching an agreement through the process of negotiation, and the employer instead of seeking to negotiate further conducted a strike vote himself to induce the employees to vote against the strike, *held* that the employer by such conduct had violated Section 8 (1) and also Section 8 (5), for the employer in holding the strike vote ignored the chosen representatives of its employees, undercut the authority of these representatives by dealing directly with the employees, and thereby avoided its duty to bargain collectively. Further, to find that the employer's action in holding the strike vote constituted an unfair labor practice only under Section 8 (1) of the Act would nullify Section 8 (5), and to so restrict the Board's findings "would be to hold that the obligation of one provision of the Act may be evaded by successful violation of another." *Algoma Plywood & Veneer Co.*, 26 N. L. R. B. 975, 995. See also: *Chicago Apparatus Co.*, 12 N. L. R. B. 1002, 1012.

An employer's refusal to meet with a union on grievances is not an unfair labor practice unless such union is the exclusive representative of the employees in an appropriate unit, or unless the manner and circumstances of the refusal in themselves coerce employees in the exercise of their right to self-organization; accordingly, when the evidence did not establish either of the prerequisites, indicated, *held* that the respondent had not committed an unfair labor practice. *New York Times Co.*, 26 N. L. R. B. 1094, 1104, 1105.

Gulf States Utilities Co., 42 N. L. R. B. 988. (Employer's refusal to recognize "outside" union for limited purpose of adjusting the grievances of its own members, *held* not in derogation of the rights of its employees under the Act when at all times that the employer refused to recognize the "outside" union, an "inside" organization was the accredited representative of its employees for a bargaining unit that included the employees that the "outside" union purported to represent.)

Bloom, Inc., Charles, 45 N. L. R. B. 1250. (Employer's refusal to deal with minority union in settling strike, *held* not violative of the Act, when its refusal was based upon the fact that union did not represent a majority of employees, and when employer manifested a willingness to deal with union as soon as it obtained majority representation.)

Cf. *Brashear Freight Lines, Inc.*, 13 N. L. R. B. 191. (Refusal of employer to meet with a labor organization in a manner calculated to discourage its employees from continuing their affiliation with this labor organization, *held* to constitute a violation of 8 (1) even though the Board failed to find that labor organization represented majority of employees in appropriate unit, when in refusing to meet with the labor organization the employer made it clear that it would not deal with the labor organization even if it did represent a majority of its employees.)

An employer's attempt to persuade striking employees to return to work on its own terms regardless of the decision of their statutory representative or the fact that the employees by concerted action were refusing to return to work pending an adjustment of their grievances and requests, *held* violative of the Act, for by "undercutting" in this matter the authority of the union to act as collective bargaining representative, and by bringing to bear the coercive force of its economic power upon the employees to the end that they disregard the union and union leadership and terminate the strike, the employer interfered with, restrained and coerced the employees in their right of self-organization, to bargain collectively, and to engage in concerted activities for mutual aid and protection. *Manville Jenckes Corp.*, 30 N. L. R. B. 382, 406. See also:

Sherwin-Williams Co., 34 N. L. R. B. 651, 664.

Montgomery Ward & Co., 37 N. L. R. B. 100.

National Mineral Co., 39 N. L. R. B. 344, 363.

Meaglia, Dominic, 43 N. L. R. B. 1277.
Lee, Inc., Lettie, 45 N. L. R. B. 448.

[*See* § 33 (as to undercutting by conducting an election).]

An employer has engaged in conduct violative of Section 8 (1) when in order to lower the prestige of a majority union and to discourage union membership and activity, it brought into a meeting, expressly scheduled for a discussion of working conditions between representatives of the union and the employer, 12 of its employees without the knowledge and consent of the union, permitted them to remain over the protest of the union, and thereafter converted the meeting into a forum for anti-union statements and misrepresentations of the employees' rights. *Cottrell & Sons Co.*, 34 N. L. R. B. 457, 463.

Jasper Blackburn Products Corp., 21 N. L. R. B. 1240. (Summoning by respondent of employees to act as "witnesses" during negotiations with union, *held* interference with right of employees to select representatives of their own choosing.)

R. M. Johnson, 41 N. L. R. B. 263 (inviting unauthorized employees to bargaining conference thereby seeking to create in minds of employees a lack of confidence in their bargaining representative).

An employer has interfered with and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act when as part of a consistent pattern of hostility to a majority outside union it solicited and urged individual striking employees to return to work. *Chicago Molded Products Corp.*, 38 N. L. R. B. 1111, 1121. See also: *Tidewater Express Lines, Inc.*, 32 N. L. R. B. 729, 799.

Cf. *Gulf States Utilities Co.*, 42 N. L. R. B. 988. (Employer's conduct during strike called by a minority outside, *held* not violative of Section 8 (1) where the employer was not shown to have exceeded its legitimate interests in protecting its property by securing adequate protection from authorities or to have thereby interfered with the orderly and peaceful picketing of its property, when statements which it made to acquaint the public as to the causes of the strike and position in which it had been placed were not challenged by the union, and its action in appealing through the press and individual bulletins inviting striking employees to return to work was not intended to discredit the union.)

Bloom, Inc., 45 N. L. R. B. 1250, 1257. (Employer found to have violated no duty under the Act in offering individual reinstatement to non-unfair labor practice strikers of a minority union, whom it was privileged to displace, when the form or tenor of the offer was devoid of any coercive element.)

8 15. *Advance announcement of refusal to agree to possible collective bargaining requests.*

An announcement to employees that the employer would not enter into a collective bargaining agreement, made at the time a labor organization was attempting to enroll the employees as members and before it had made any request upon the employer to bargain, constitutes a violation of Section 8 (1). *Roberti Bros., Inc.*, 8 N. L. R. B. 925, 928–930. See also:

Pearlstone Printing & Stationery Co., 16 N. L. R. B. 630.
Gulf Public Service Co., 18 N. L. R. B. 562.
Continental Box Co., Inc., 19 N. L. R. B. 860.
Blossom Products Corp., 20 N. L. R. B. 335.
Hawk & Buck, 27 N. L. R. B. 1386.
Bemis Bro. Bag Co., 28 N. L. R. B. 430.
Jones Foundry & Machine Co., 28 N. L. R. B. 809, 817.
Gallup American Coal Co., 32 N. L. R. B. 823.
AP Parts Corp., 40 N. L. R. B. 301.
Columbian Iron Works, 43 N. L. R. B. 73.
Harbison-Walker Refractories, 43 N. L. R. B. 711.
Cherry River Boom & Lumber Co., 44 N. L. R. B. 273.
Hirsch Mercantile Co., 45 N. L. R. B. 377.
Amberson, Joe, 45 N. L. R. B. 709.

9 16. *Refusal to deal with representatives of employees.* (See also § 795.)

The right of employees, guaranteed by the Act, to representatives of their own choosing necessarily negatives any privilege on the part of the employer to place limitations upon the representatives whom the employees are permitted to designate, and an employer may not specify that only employees of 5 years' standing should be on a committee of a labor organization to deal with it. *Fansteel Metallurgical Corp.*, 5 N. L. R. B. 930, 933, 934, modified 306 U. S. 240, modifying 98 F. (2d) 375 (C. C. A. 7). Cf. *Clayton & Lambert Mfg. Co.*, 34 N. L. R. B. 502.

An employer may not limit the personnel of a committee to confer with it only to people in its employ. *Crossett Lumber Co.*, 8 N. L. R. B. 440, 451, 452. See also:

National New York Packing & Shipping Co., Inc., 1 N. L. R. B. 1009, 1012, 1013, enforced 86 F. (2d) 98 (C. C. A. 2).

Berkshire Knitting Mills, 17 N. L. R. B. 239.

Moltrup Steel Products Co., 19 N. L. R. B. 471.

Illinois Electric Porcelain Co., 31 N. L. R. B. 101.

Carrington Publishing Co., 42 N. L. R. B. 356.

An employer has engaged in conduct violative of Section 8 (1), when it refused to meet with a committee of the union so long as a past employee, whom it had discriminatorily discharged, was one of its members. *Hearst Publications, Inc.*, 25 N. L. R. B. 621, 642, 646.

Martin Bros. Box Co., 35 N. L. R. B. 217 (attempts to persuade employees to displace union president and to substitute for him one who was more amenable to its desires).

An employer has engaged in conduct violative of Section 8(1) when in context with other anti-union conduct it expressed a determination not to deal with a union. *Butler Bros.*, 41 N. L. R. B. 843, 867. See also: *Sherwin-Williams Co.*, 34 N. L. R. B. 651. *Brock, John David*, 42 N. L. R. B. 457, 461. *Polish National Alliance of the United States of North America*, 42 N. L. R. B. 1375.

[*See* DEFINITIONS § 92 (as to who may be a representative).]

17. *Threatened or actual removal, cessation, or change of operations.*

Ceasing operations and organizing a company in another State for the purpose of avoiding obligations under the Act to bargain collectively with a labor organization representing a majority of the employees constitutes a violation of Section 8 (1) *Hopwood Retinning Co., Inc.*, 4 N. L. R. B. 922, 932–935, modified 98 F. (2d) 97 (C. C. A. 2). See also: *Klotz*, 13 N. L. R. B. 746, 750. *Schieber*, 26 N. L. R. B. 937. *Gerity Whitaker Co.*, 33 N. L. R. B. 393.

Cf. *Fiss Corp*, 43 N. L. R. B. 125. (Allegation that employer moved its operations to avoid collective bargaining *dismissed* when removal was found to have been made only for economic reasons.)

Threatened cessation of operations in context with other anti-union conduct, in the event employees exercised their right of self-organization, *held* violative of Section 8 (1). *N. L. R. B.* v. *Colten & Colman d/b/a Kiddie Kover Mfg.*

Co., 105 F. (2d) 179, 181 (C. C. A. 6), enforcing 6 N. L. R. B. 355. See also:
Oregon Worsted Co., 3 N. L. R. B. 36, 46.
Aluminum Products Co., 7 N. L. R. B. 1219.
Julius Breckwoldt & Son, Inc., 9 N. L. R. B. 94, 100.
Eagle & Phenix Mills, 11 N. L. R. B. 361, 369, 370.
Subin, David, 12 N. L. R. B. 476.
Dixie Motor Coach Corp., 25 N. L. R. B. 869.
Holmes Silk Co., 26 N. L. R. B 88.
Fletcher Paper Co., 27 N. L. R. B. 1274.
B. Z. B. Knitting Co., 28 N. L. R. B. 257.
International Harvester Co., 29 N. L. R. B. 456.
Diamond Alkali Co., 30 N. L. R. B. 700.
Williams Motor Co., 31 N. L. R. B. 715.
Midwest Steel Corp., *32* N. L. R. B. 195.
Canyon Corp., 33 N. L. R. B. 885.
American Smelting & Refining Co., 34 N. L. R. B. 968.
Mark Products Co., Inc., 35 N. L. R. B. 1262.
Stonewall Cotton Mills, 36 N. L. R. B. 240.
Aintree Corp., 37 N. L. R. B. 1174.
South Bend Fish Corp., 38 N. L. R. B. 1176.
Quality & Service Laundry, Inc., 39 N. L. R. B. 970.
Sartorius & Co., Inc., A., 40 N. L. R. B. 107.
Wells-Lamont-Smith Corp., 41 N. L. R. B. 1474.
Crown Can Co., 42 N. L. R. B. 1160.
Elvine Knitting Mills, Inc., 43 N. L. R. B. 695.
Franks Bros. Co., 44 N. L. R. B. 898.
Faultless Caster Corp., 45 N. L. R. B. 146.

An employer engaged in conduct violative of Section 8 (1) by a lock-out of its employees to prevent their concerted activities and right of self-organization. *Patriarca Store Fixtures, Inc.*, 12 N. L. R. B. 93, 97–99. See also: *Pittsburgh Standard Envelope Co.*, 20 N. L. R. B. 516, 525. *American Steel Scraper Co.*, 29 N. L. R. B. 939, 946.

An employer's shutting down of its plant pursuant to a threat to do so if a union became organized therein, *held* a violation of Section 8 (1) of the Act. *Chesapeake Shoe Mfg. Co.*, 12 N. L. R. B. 832. See also:
Regal Shirt Co., 4 N. L. R. B. 567, 573.
Omaha Hat Corp., 4 N. L. R. B. 878, 886, 887.
Somerset Shoe Co., 5 N. L. R. B. 486, 492.
N. L. R. B. v. *Lund*, 103 F. (2d) 815, 817, 818 (C. C. A. 8), remanding 6 N. L. R. B. 423.
Aluminum Products Co., 7 N. L. R. B. 1219, 1241.

Reliance Mfg. Co., 28 N. L. R. B. 1051.
Ohio Calcium Co., 34 N. L. R. B. 917.

Hobbs, Wall & Co., 30 N. L. R. B. 1027. (Use of mill shut-down, found due to business reasons and not to anti-union motives, to enhance effect of anti-union utterances, so as to convey to employees a threat of closing or failing to reopen mill if employees did not conform with employer's wishes as to union organization and activity, constitutes a violation of Section 8 (1).)

An employer has violated Section 8 (1) when in context with other anti-union conduct it threatened to change its mode of operations if the employees exercised their right of self-organization. *Pacific Gas & Electric Co.*, 13 N. L. R. B. 268, 291. See also: *Southern Colorado Power Co.*, 13 N. L. R. B. 699, 711 (threat to make technological changes). *Polson Logging Co.*, 40 N. L. R. B. 736; (threat to alienate railroad operations). *American Oil Co.*, 41 N. L. R. B. 1105; (threats to curtail amount of work by contracting it out).

Cf. *American Oil Co.*, 41 N. L. R. B. 1105. (Charges dismissed where it was found that employer contracted out part of its work to independent contractor for business reasons unrelated to the union activities of its employees.)

An employer has violated Section 8 (1), when in context with other anti-union conduct it threatened to move its operations if the employees exercised their right of self-organization. *Sanco Piece Dye Works, Inc.*, 38 N. L. R. B. 690, 716. See also:

Regal Shirt Co., 4 N. L. R. B. 567, 573.
Lund, 6 N. L. R. B. 423.
Owens-Illinois Glass Co., 25 N. L. R. B. 92.
Standard Knitting Mills, 25 N. L. R. B. 168.
Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.
Beckerman Shoe Corp. of Kutztown, 43 N. L. R. B. 435.
Amercian Rolling Mill, 43 N. L. R. B. 1020.
Western Cartridge Co., 44 N. L. R. B. 1.
Pastore, Michele, 45 N. L. R. B. 869.

[*See* § 461 (as to discriminatory lock-out in violation of Section 8 (3)), §§ 472, 473 (as to discrimination in violation of Section 8 (3) by abolishing positions and removal of operations), and § 791 (as to failure to bargain in good faith by threatened or actual cessation or change of operations).]

1 18. *Threatened or actual eviction from company-owned home or restraint in use of company-owned property.*

Threatened eviction from company-owned houses, among other circumstances, on condition that employees refrain from concerted activities or exercising their right of self-organization, *held* a violation of Section 8 (1). *Carlisle Lumber Co.*, 2 N. L. R. B. 248, 266. See also: *Good Coal Co.*, 1 N. L. R. B. 136, 140. *Great Western Mushroom Co.*, 27 N. L. R. B. 352.

Refusal to grant passes to representatives of a certified union in order that they may board vessels to confer with the employees they represented, *held* an "interference" with the right of those employees to bargain collectively concerning grievances through representatives of their own choosing, when other means of access to the union representatives was not available to the employees due to the nature of the employment, and rule prohibiting "visitors" from boarding the vessel, because of the nature of the cargo, was not strictly observed. *Cities Service Oil Co.*, 25 N. L. R. B. 36, 44.

United Dredging Co., 30 N. L. R. B. 739, 750. (An employer may not justify its interference with the receipt of union literature on board its dredge by asserting its private rights in the dredge and the post office box, nor may it pursuant thereto, impose a complete ban on the distribution of union literature, as such by or among employees whether off or on duty, when the dredge employees were entitled to quarters and, when off duty, to the freedom of the dredge; some of them made their home thereon and incident to these rights was the right to receive mail on the dredge, and the rights guaranteed to employees by the Act to receive aid, advice, and information from others insofar as they concerned the employees who lived on board the dredge, would be seriously curtailed if the employer were permitted to impose such a prohibition.)

Weyerhaeuser Timber Co., 31 N. L. R. B. 258. (Exclusion of union representatives from respondent's camps, *held* a violation of Section 8 (1), when employees lived most of the time at the camps, and respondent had granted permits to a wide variety of persons who were not engaged in assisting union activity.)

American Cyanamid Co., 37 N. L. R. B. 578, 585, 586. (Enforcement of racial segregation rule for the purpose of denying access of union representatives or organizers to

employees living in company-owned quarters, *held* a violation of Section 8 (1).) See also: *Ozan Lumber Co.*, 42 N. L. R. B. 1073.

Spalek Engineering Co., 45 N. L. R. B. 1272, 1277. (An employer may not impede the lawful distribution of literature at the entrance of its plant in an effort to interfere with the employee's right to self-organization.)

Cf. *Texas Co.*, 19 N. L. R. B. 835, 840. (Refusal to grant passes to representatives of union that they might board the respondent's vessels to confer with members of the crew, *held* not to violate 8 (1) where it appeared that, because of the highly inflammable nature of the cargo carried, the same prohibition was applied to all persons not in the respondent's employ, and the union was able to confer with the respondent at its offices on shore, and to contact its members employed by the respondent while they were on shore leave.)

[*See* § 26 (as to forcibly preventing union organizers from coming to or remaining on company property), and § 42 (as to lack of equality of access to company property accorded rival representatives).]

An employer by ordering union organizers away from alleged privately owned manufacturing district where its plant was located, engaged in conduct violative of Section 8 (1), when the street was accessible to the general public, there was no evidence of misconduct by the organizers to warrant their exclusion, and sole reason for the employer's action was to prevent their union activities. *National Mineral Co.*, 39 N. L. R. B. 344, 361.

[*See* § 47 (as to rules regulating working conditions).]

19. *Privileges accorded or favoritism shown to one of two or more rival legitimate labor organizations.* [*See* § 32 (as to declaration of union preference as an act of interference, restraint, or coercion).]

Where it was shown that prior to the passage of the Act an employer sponsored and assisted in the formation of certain employer-dominated unions, and immediately after the Act was declared constitutional recognized and negotiated contracts with a legitimate union which at the time did not represent a majority of its employees, and meanwhile ignored another legitimate union which was endeavoring to gain members among the employees, there is ample evidence to support the Board's findings that the employer exerted pressure on its employees to join the former union

while it discouraged membership in the latter. *Consolidated Edison Co.* v. *N. L. R. B.*, 95 F. (2d) 390, 395, 396 (C. C. A. 2), modifying 4 N. L. R. B. 71, modified 305 U. S. 197.

Engelhorn, 42 N. L. R. B. 866, 878. (An employer has rendered potent assistance to a labor organization and has encouraged membership therein, in violation of Section 8 (1), when in context with other forms of assistance, it executed a closed-shop contract with the union while a rival union's petition for investigation was pending before the Board and without reasonable belief that the contracting union represented a majority.) See also: *Southern Wood Preserving Co.*, 45 N. L. R. B. 230, 238.

Premo Pharmaceutical Laboratories, 42 N. L. R. B. 1086, 1097. (An employer unlawfully enlisted membership in an organization when in context with other forms of assistance it executed a closed-shop contract with the favored organization with notice of a rival union's organizational efforts and the contracting organization represented less than a majority of its employees.)

Fiss Corp., 43 N. L. R. B. 125, 136. (A company which while having no reason to believe that its employees desired to be represented by a certain labor organization executed a closed-shop contract conditioned in its operation by oral arrangement upon its acquisition of a majority status, although being appraised that a question concerning representation existed, and thereafter without it appearing that the organization acquired such a status permitted it to solicit membership in the plant, *held* that the company interfered with, restrained, and coerced its employees in their choice of representatives and assisted the labor organization by permitting it to solicit membership in the plant and by entering into the contract recognizing it as the exclusive representative of its employees and requiring them to become members of the organization.)

Bradford Machine Tool Co., 44 N. L. R. B. 759. (Respondent which with knowledge of the claims of a majority by a rival labor organization, recognized another labor organization on the basis of its showing of a majority by designations which on their face indicated that they were void unless the Union procured a certain wage increase within 10 days, executed a closed-shop contract with it, and fulfilled the condition upon which the effectiveness of the designations was limited, *held* to have illegally participated in

the selection of the bargaining representative of its employees, and to have illegally assisted that organization in violation of Section 8 (1).)

Southern Wood Preserving Co., 45 N. L. R. B. 230, 237, 238. (An employer has violated Section 8 (1) when it showed preference for one of two rival legitimate organizations by executing a new union shop contract with one of the organizations while the rival union's petition for investigation and certification was pending before the Board and compelled its employees, by threats of dismissal, to attend a meeting of the contracting union to vote on the said contract.)

[*See* INVESTIGATION AND CERTIFICATION, §§ 22.1 and 33 (as to effect of contracts in 9 (c) proceedings when entered into with a minority union with notice of claims of a rival representative).]

An employer has violated Section 8 (1) by issuing passes to representatives of one labor organization prior to the holding of an election directed by the Board, and refusing to grant such passes to representatives of a rival labor organization for the same purpose and under the same conditions. *N. L. R. B.* v. *Waterman Steamship Corp.*, 309 U. S. 206, 224–226, enforcing 7 N. L. R. B. 237, and reversing 103 F. (2d) 157 (C. C. A. 5). See also: *South Atlantic S. S. Co.*, 12 N. L. R. B. 1367, 1379.

[*See* INVESTIGATION AND CERTIFICATION §§ 92, 113 (as to company's duty to afford representatives of labor organizations equality of access to vessels in maritime election).]

The mere showing of a preference and acts of cooperation do not constitute interference with employees in the exercise of the rights guaranteed under the Act, although it is true that employer leadership through supervisory employees is condemned, and that pressure overriding the will of the employees as a means of encouraging or discouraging membership in a labor organization constitutes interference with a worker's right to select his representative. *Jefferson Electric Co.* v. *N. L. R. B.*, 102 F. (2d) 949, 956 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

The acts of an employer in permitting the use of its cafeteria and other plant facilities to one of two legitimate labor organizations are not, in themselves, inconsistent with a strict "hands-off" policy, and do not furnish sufficient evidence to sustain a finding of the Board that the employer has thereby violated Section 8 (1). *Jefferson*

Electric Co. v. *N. L. R. B.*, 102 F. (2d) 949, 956 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

Granting one labor organization an opportunity to use employer property for organizational purposes when such grant is not accorded on equally favorable terms to another labor organization, constitutes employer assistance and support to the first organization, and an unfair labor practice, within the meaning of Section 8 (1). *American-West African Lines, Inc.*, 21 N. L. R. B. 691, 705.

Grant of passes to the majority representatives with whom employer has a valid closed-shop contract while denying such passes to a rival organization, *held* violative of Section 8 (1), for the proviso clause to Section 8 (3) neither provides nor allows the rendering of assistance or support to a labor organization beyond that existent in conditioning employment on union membership. *American-West African Lines, Inc.*, 21 N. L. R. B. 691, 705.

[*See* § 481 (as to the construction of the proviso to Section 8 (3)).]

An employer violated Section 8 (1) when in context with other anti-union conduct it assisted an affiliated organization by permitting members thereof to be solicited and recruited on company time and denied similar privileges to a rival legitimate organization. *Cassoff*, 43 N. L. R. B. 1193, 1221. See also:

National Electric Products Corp., 3 N. L. R. B. 475, 485, 494.

Lenox Shoe Co., Inc., 4 N. L. R. B. 372, 381.

Serrick Corp., 8 N. L. R. B. 621, 650.

Jones Foundry & Machine Co., 30 N. L. R. B. 809, 816, 817.

Hudson Motor Car Co., 34 N. L. R. B. 815.

[*See* §§ 171–200 (as to contribution of support to a labor organization in violation of Section 8(2)).]

43 20. *Conducting, supervising, or interfering with elections.*

After a labor organization duly authorized to represent employees has taken a strike vote, it is an act of interference with the exercise of its right to bargain collectively for the employer to undercut its authority by a vote of its own. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

[*See* § 37 (as to "undercutting" generally), and § 741 (as to employer's failure to cooperate with representatives in proving their majority).]

An employer who conducted a ballot in which employees were invited to indicate a desire to be represented by a certain labor organization or none, *held* to have interfered with the rights guaranteed by the Act, when the ballot was conducted in the plant, during the customary working hours, in the presence of supervisory officials, and without the consent of all the labor organizations. *Okey Hosiery Co., Inc.*, 22 N. L. R. B. 792, 797.

Laird, Schober Co., Inc., 14 N. L. R. B. 1152, 1155. (The sponsorship of an election by an employer, the conduct of it in his plant during the customary working hours with supervisory officials present, together with manifestations by the employer of preference for or dislike of a particular organization, precludes the casting of ballots which register the free and independent expression of choice by the employees, and constitutes a violation of Section 8 (1).)

Charles C. Hobart, 25 N. L. R. B. 727. (Contention that taking a vote was not a prohibited interference because the voters were not required to declare their identity by signing the ballots, *held* without merit, when the propositions posed necessarily conveyed unmistakably to the employees the respondent's opposition to self-organization and collective bargaining.)

American Steel Scraper Co., 29 N. L. R. B. 939, 945. (An employer's conduct of a poll of its employees' desire to be represented by a certain labor organization at a time when that organization was maintaining that it represented a majority and its petition for an investigation and certification of representatives was pending before the Board, *held* to constitute an attempt to discourage and had the necessary effect of discouraging membership in the union, for the circumstances under which the poll was conducted was not conducive to a free choice on the part of the employees and forcibly indicated to them the employer's reluctance to deal with the union.)

Cf. *Wiss & Sons*, 12 N. L. R. B. 601, 614, 615. (Employer *held* not to have engaged in interference with self-organization within the meaning of Section 8 (1), when in good faith he conducted an election among his employees, but showed no favoritism to either of the rival organizations contesting for designation as representative.)

[*See* INVESTIGATION AND CERTIFICATION §46 (as to the effect of employer-sponsored elections upon a question concerning representation).]

For additional decisions in which an employer-conducted election was found to violate Section 8 (1), *see:*

Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Eagle Mfg. Co., 6 N. L. R. B. 492, 497.
McNeely & Price Co., 6 N. L. R. B. 800, 806.
Schult Trailers, Inc., 28 N. L. R. B. 975.
Atlas Press Co., 32 N. L. R. B. 863.
Shell Oil Co., Inc., 34 N. L. R. B. 866.
Lebanon News Publishing Co., 37 N. L. R. B. 649.
AP Parts Corp., 40 N. L. R. B. 301.
Red Diamond Mining Co., Inc., 44 N. L. R. B. 1234.
Southern Wood Preserving Co., 45 N. L. R. B. 230.

The Act contemplates selection by employees of their bargaining representative free from employer interference and such freedom on the part of employees imports a correlative duty on the part of employers to maintain complete neutrality with respect to an election conducted to ascertain bargaining representatives. *Letz Mfg. Co.*, 32 N. L. R. B. 563, 572. See also: *Emerson Radio & Phonograph Corp.*, 43 N. L. R. B. 613, 628. *Fradkin*, 45 N. L. R. B. 902.

[*See* INVESTIGATION AND CERTIFICATION § 113 (as to improper conduct by employer prior to or during conduct of an election asserted as an objection to the conduct of an election).]

Pacific Gas & Electric Co., 13 N. L. R. B. 268, 295, 296. (Supervisory employees made statements and warnings in favor of inside union and against outside union, allowed meetings favorable to inside union and opposed outside union, it solicited members for the inside union, and where it actively assisted the inside union in connection with two bank loans.)

New York Handerchief Mfg. Co., 16 N. L. R. B. 532, 543 (attempt to restrain employees from voting in a Board election because it believed that the Board could not certify the union if less than a majority of employees took part in the election).

F. W. Woolworth Co., 25 N. L. R. B. 1362, 1371 (Employer's circulation of petition for election among employees during hearing in consolidated complaint and representation case, *held* to repudiate the position taken by the union leaders for certification on the record.)

Manville Jenckes Corp., 30 N. L. R. B. 382 (electioneering with respect to and interfering with a proposed consent election).

Times-Picayune Publishing Co., 32 N. L. R. B. 387 (urging employees to vote against the union).

Letz Mfg. Co., 32 N. L. R. B. 563 (distributing anti-union letter among employees on eve of election).

Canyon Corp., 33 N. L. R. B. 885 (wager against union's winning Board election).

Stone, Norman H., 33 N. L. R. B. 1014 (questioning employees concerning their union affiliation and sending letters containing statements calculated to affect employees' choice in election).

Bradley Lumber Co. of Arkansas, 34 N. L. R. B. 610 (unusual number of loans by employer to employees immediately before and after election).

Pick Mfg. Co., 35 N. L. R. B. 1334 (disparaging the union and warning employees of "consequences").

Stonewall Cotton Mills, 36 N. L. R. B. 240, 249 (posting anti-union notices on eve of election and thereafter urging employees to vote).

Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234 (conniving with an employee to garner votes for "inside" union).

National Mineral Co., 39 N. L. R. B. 344 (refused to permit the posting of election notices or to furnish copies of its pay roll, and its affirmative action in maintaining surveillance over polling place).

Bear Brand Hosiery Co., 40 N. L. R. B. 323 (visits by the Chairman of the Board of Directors and the President of the Company to employees to discuss the union and forthcoming elections; letter issued to employees the day before Board elections, suggesting that only disadvantages would flow from union membership and implying a threat to close the plant was successful).

Sunbeam Electric Mfg. Co., 41 N. L. R. B. 469 (participation by an employer in a pre-election campaign as if he were a contestant).

American Oil Co., 41 N. L. R. B. 1105 (Speech made a few days before Board election encouraging the formation of an unaffiliated union).

Snow Co., Fred A. 41 N. L. R. B. 1288 (campaigning against union in pending Board election).

John Engelhorn & Sons, 42 N. L. R. B. 866 (electioneering by company executive on behalf of favored labor organization).

Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613, 625, 628 (interference with impending consent election, through acts of working supervisors who immediately after consent election agreement wore buttons bearing the insignia "I am Neutral" and "Vote for Neither," and permitted employees to leave plant early to distribute anti-union literature).

American Bread Co., 44 N. L. R. B. 970, 975–977 (interference with proposed consent election by instigating circulation of loyalty petition shortly before scheduled election, urging employees to vote against the union, and threatening to cease operations).

Whiterock Quarries, Inc., 45 N. L. R. B. 165, 172 (making anti-union statements; threatening to discharge employees who voted for the union; threats to close plant; promising wage increase if union was defeated; allowing circulation of petition urging Board not to certify the union).

Taitel, 45 N. L. R. B. 551 (threats of plant shut-down, offering unprecendented free refreshments, picnic, and arranging with local organization favorable to employer where organization offered free movie tickets to employees for night of consent election).

Joseph L. Fradkin, 45 N. L. R. B. 902 (delaying of posting notice of wage increase based on promise to raise wages with rise in cost of living until same day as notice of election, without reasonable explanation for delay between gathering statistics and posting notice).

[*See* § 60 (as to employer's interference by publicly celebrating a labor organization's defeat in an election).]

4 21. *Inducing employees not to become or remain members of labor organization by wage increase or by stock purchase plan, or other device.*

An employer violated its duty to refrain from action which would influence the employees to abandon the union, when it granted an unsolicited general increase in wages at a time when the organization of its employees had just been inaugurated and thereby conveyed the impression that it would not recognize the union and that the employees had no need for an organization. *Ritzwoller Co.*, 15 N. L. R. B. 15, 23. Cf. *N. L. R. B.* v. *Union Pacific Stages*, 99 F. (2d) 153, 163 (C. C. A. 9), modifying 2 N. L. R. B. 371. *Wright Products Inc.*, 45 N. L. R. B. 509.

Wage increase or offer of wage increase not to become or remain members of a labor organization:
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Roberti Bros., Inc., 8 N. L. R. B. 925, 930, 931.
El Paso Electric Co., 13 N. L. R. B. 213, 231.
Southern Colorado Power Co., 13 N. L. R. B. 699, 708, 711.
Ohio Fuel Gas Co., 25 N. L. R. B. 519.
Triplex Screw Co., 25 N. L. R. B. 1126.
Taylor Milling Corp., 26 N. L. R. B. 424.
Jones Foundry & Machine Co., 30 N. L. R. B. 809.
Norristown Box Co., 32 N. L. R. B. 895.
Williamson-Dickie Mfg. Co., 35 N. L. R. B. 1220.
Leyse Aluminum Co., 37 N. L. R. B. 839.
Out West Broadcasting Co., 40 N. L. R. B. 1367.
Snow Co., Fred A., 41 N. L. R. B. 1288.
Locomotive Finished Material Co., 41 N. L. R. B. 1374.
Brock, John David, 42 N. L. R. B. 457.
Haydu & Sons, Inc., 42 N. L. R. B. 852.
Helena Rubinstein, Inc., 42 N. L. R. B. 898.
Crown Can Co., 42 N. L. R. B. 1160.
Polish National Alliance of the United States of North America, 42 N. L. R. B. 1375.
Emerson Radio & Phonograph Corp., 43 N. L. R. B. 613.
Medo Photo Supply Corp., 43 N. L. R. B. 989, 996.
Western Cartridge Co., 44 N. L. R. B. 1.
Platte Valley Telephone Corp., 44 N. L. R. B. 632.
Whiterock Quarries, Inc., 45 N. L. R. B. 165.
H. McLachlan & Co., Inc., 45 N. L. R. B. 1113.

Offering or granting wage increase at a crucial moment to prevent or discourage self-organization:
Indianapolis Power & Light Co., 25 N. L. R. B. 193.
Hobart, Charles Co., 25 N. L. R. B. 727.
Dixie Motor Coach Corp., 25 N. L. R. B. 869.
Woolworth Co., 25 N. L. R. B. 1362.
Kudile, Rudolph & Charles, 28 N. L. R. B. 116.
United Biscuit Co. of America, 38 N. L. R. B. 778.
AP Parts Corp., 40 N. L. R. B. 301.
Bear Brand Hosiery Co., 40 N. L. R. B. 323.
American Oil Co., 41 N. L. R. B. 1105.
Phillips Petroleum Co., 45 N. L. R. B. 1318.

Giving or offering employment security not to become or remain a union member:

Aronsson Printing Co., 13 N. L. R. B. 799, 805, 810.
Northern Ohio Telephone Co., 27 N. L. R. B. 613.
Wilcox Oil & Gas Co., H. F., 28 N. L. R. B. 79.
Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673.
Gates Rubber Co., 30 N. L. R. B. 170.
Rapid Roller Co., 33 N. L. R. B. 557.

Giving or offering advancement or other benefits not to become or remain a union member:

Uhlich & Co., Inc., Paul, 26 N. L. R. B. 679.
General Shale Product Corp., 26 N. L. R. B. 921.
New York Times Co., 26 N. L. R. B. 1094.
Reliance Mfg. Co., 28 N. L. R. B. 1051.
Armour & Co., 32 N. L. R. B. 536.
Firth Carpet Co., 33 N. L. R. B. 191, 202.
Brown Paper Mill Co., Inc., 36 N. L. R. B. 1220.
Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.
New York Merchandise Co., Inc., 41 N. L. R. B. 1078.
Elizabeth Arden, Inc., 45 N. L. R. B. 936.

Granting or offering vacations not to become or remain members of a labor organization:

McNeely & Price Co., 6 N. L. R. B. 800, 806.
Midwest Steel Corp., 32 N. L. R. B. 195.
Stone, Norman H., 33 N. L. R. B. 1014.

[*See* § 30 (as to the use of anti-union statements as a method of inducing employees not to become or remain members in a labor organization), §§ 37 and 788 (as to inducing withdrawals by "undercutting" authority of representatives).]

45 22. *Contracts interfering with or restraining rights of employees.* Granting recognition to one of two rival labor organizations by entering into contracts with it at a time when it did not represent a majority of the employees constitutes interference with the rights of the employees to self-organization in violation of Section 8 (1), and the contracts so executed are invalid, notwithstanding the fact that they expressly apply only to employees who are members of the labor organization, and are *a fortiori* invalid if regarded as exclusive collective bargaining agreements as construed by the employer. *Consolidated Edison Co. of New York, Inc.*, 4 N. L. R. B. 71, 94, modified 305 U. S. 197, modifying 95 F. (2d) 390 (C. C. A. 2).

An employer is not justified in engaging in an unfair labor practice by signing a closed-shop contract with a favored legitimate labor organization, on the ground that it was forced to do so by threat of a strike. *Ward Baking Co.*, 8 N. L. R. B. 558, 567.

[*See* § 1 (as to economic pressure not justifying unfair labor practices).]

An employer violated Section 8 (1) when among other activities it executed a closed-shop contract with an organization after it had flagrantly interfered with, and restrained its employees in their right to join and assist a rival organization and coerced them to join the contracting union, and it is immaterial that the contracting union, may have then represented a majority of the employees, for Section 8 (1) of the Act precludes the execution of a closed-shop with a labor organization established, maintained or assisted by unfair labor practices, irrespective of whether it has or has not been designated as collective bargaining agent by a majority of the employees; further a new closed-shop agreement which was entered into after the employer had continued its unfair labor practices under the guise of performance of the previous invalid closed-shop agreement likewise was illegal and void notwithstanding the majority status of the contracting union or the approval of the contract by a large majority of the employees prior to its execution. *Electric Vacuum Cleaner Co.*, 18 N. L. R. B. 591, 626, 627.

The proviso clause to Section 8 (3) does not provide nor allow the rendering of assistance, support, or favoritism, to a labor organization having a valid closed-shop agreement, beyond that existent in conditioning employment on union membership, and as such an employer who allegedly pursuant to a valid closed-shop contract refused to issue passes for boarding its vessels to a rival labor organization while granting passes to the contracting union, engaged in conduct violative of Section 8 (1). *American-West African Lines, Inc.*, 21 N. L. R. B. 691, 705.

[*See* § 42 (as privileges accorded or favoritism shown to one of two or more rival legitimate organizations by the use of a contract), and § 481 (as to construction of the proviso to Section 8 (3)).]

The Act expressly declares that the public policy is to encourage the practice and procedure of collective bargaining and imposes upon employers the duty to bargain exclusively

with the duly designated representatives of their employees. The duty is necessarily paramount to the freedom of contract which the employer may have enjoyed prior to the enactment of the statute or before the collective agent has been chosen. Until such representative is designated, the employer may, of course, deal individually with his employees concerning any aspect of the employment relationship so long as he does not exact terms repugnant to the Act and does not offer the contracts for the purpose of infringing rights under the Act. The employee is not, however, presumed thereby to have surrendered his right to collective bargaining during the period of his individual agreement. The right and its correlative duty are merely in abeyance pending the choice of a collective agent. When once a majority of the employees have exercised their right to choose a representative for concerted bargaining in an appropriate unit, the employer's statutory obligation to deal exclusively with such representative as to all terms and conditions of employment is immediate and unconditional and its performance may not be deferred or qualified by reason of any individual bargain which he may have made with his employees. *Case Co.*, 42 N. L. R. B. 85, 96.

Individual contracts which in their history, execution, and existence are tainted by employer conduct condemned by the Act:

American Mfg. Co., 5 N. L. R. B. 443.
National Licorice Co., 7 N. L. R. B. 537.
Reed & Prince Mfg. Co., 12 N. L. R. B. 944.
Superior Tanning Co., 14 N. L. R. B. 942.
Vincennes Steel Corp., 17 N. L. R. B. 825.
Jahn & Ollier Engraving Co., 24 N. L. R. B. 893.
Stone, 33 N. L. R. B. 1014.
Trojan Powder Co., 41 N. L. R. B. 1308.
Adel Clay Products Co., 44 N. L. R. B. 386, 397.

[*See* §§ 37, 792 (as to undercutting authority of majority representative by use of individual employment contracts).]

Individual contracts not infringing rights under the Act:

Emerson Electric & Mfg. Co., 13 N. L. R. B. 448, 456.
Pick Mfg. Co., 35 N. L. R. B. 1334, 1353.

Individual contracts whose terms per se violate the Act in that they limit or restrict lawful concerted activities:

N. L. R. B. v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2), modifying 4 N. L. R. B. 922.

National Licorice Co., 309 U. S. 350, 360, modifying 104 F. (2d) 655 (C. C. A. 2), and modifying 7 N. L. R. B. 537.
American Mfg., 5 N. L. R. B. 443.
Eastern Footwear, 8 N. L. R. B. 1245.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1065–1068.
Reed & Prince, 12 N. L. R. B. 944.
Superior Tanning Co., 14 N. L. R. B. 942.
Vincennes Steel Corp., 17 N. L. R. B. 825, 833, enforced as modified 117 F. (2d) 169 (C. C. A. 7).
Douglas Aircraft Co., Inc., 18 N. L. R. B. 43.
Jahn & Ollier Engraving Co., 24 N. L. R. B. 893.
Great Western Mushroom Co., 27 N. L. R. B. 352.
Stone, Norman H., 33 N. L. R. B. 1014.
Brown-McLaren Mfg. Co., 34 N. L. R. B. 984.
Bear Brand Hosiery Co., 40 N. L. R. B. 323.
Imperial Lighting Products Co., 41 N. L. R. B. 1408.
Karp Metal Products Co., Inc., 42 N. L. R. B. 119.
Cassoff, Louis F., 43 N. L. R. B. 1193.
Western Cartridge Co., 44 N. L. R. B. 1.
Spalck, Adolph, 45 N. L. R. B. 1272.

An employer's operation under a contract entered into with one of two rival organizations without reasonable belief that the contracting union represented a majority and while the rival union's petition for investigation was pending before the Board pursuant to which he required his employees to become members in that organization as a condition of employment constitutes a violation of Section 8 (1). *Engelhorn*, 42 N. L. R. B. 866, 878.

Ward Baking Co., 8 N. L. R. B. 558, 567. (Attempted enforcement of a closed-shop contract entered into between an employer and a legitimate labor organization at a time when, the organization did not represent a free and uncoerced choice of a majority of the employees by reason of the unlawful assistance accorded that organization by the employer constitutes a violation of Section 8 (1).)

Northwestern Cabinet Co., 38 N. L. R. B. 357, 378. (Agreements entered into between the company and a labor organization not representing a majority, and the contractual relationship existing thereunder, *held* to be means of utilizing an employer-assisted organization to frustrate the exercise by the employees of the rights guaranteed in Section 7 of the Act.)

Karron, 41 N. L. R. B. 1454, 1464. (An employer has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, when with knowledge of a union's claim to representation, it coercively enlisted membership in and granted recognition to a rival labor organization, and further violated the Act when it entered into a contract which required its employees, as a condition of their employment, to become and remain members of and to be represented for the purposes of collective bargaining by that organization, in complete disregard of their uncoerced desires in that respect.)

Fiss Corp., 43 N. L. R. B. 125, 136. (A company which while having no reason to believe that its employees desired to be represented by a certain labor organization executed a closed-shop contract conditioned in its operation by oral arrangement upon its acquisition of a majority status, although being appraised that a question concerning representation existed, and thereafter without it appearing that the organization acquired such a status permitted it to solicit membership in the plant, *held* that the company interfered with, restrained, and coerced its employees in their choice of representatives and assisted the labor organization by permitting it to solicit membership in the plant and by entering into the contract recognizing it as the exclusive representative of its employees and requiring them to become members of the organization.)

Where a respondent was responsible for the formation of an employee association and was motivated in this action by a desire to prevent organization by an affiliated labor organization, *held* that the association and the contract between it and the respondent constituted an interference with the rights of the employees, although the association did not function as a bargaining representative after the execution of the contract. *Adel Clay Products Co.*, 44 N. L. R. B. 386, 393.

A company which discharged some of its employees pursuant to a validly made closed-shop contract at the time its term was about to expire and the company's employees sought to change their collective bargaining representative, and which with knowledge of the existence of a question concerning representation renewed the closed-shop contract, *held* to have unlawfully assisted and maintained the contracting organization by encouraging membership

in it and discouraging membership in a rival organization, tending to forestall or defeat a determination of the representation question in a manner consonant with the policies and provisions of the Act, and not within the protection of the proviso to Section (3). *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587, 598.

A company's execution of a closed-shop contract and discharges of some of its employees pursuant thereto, *held* to be an unlawful assistance to the contracting organization and not within the protection of the proviso to Section 8 (3), when the company and the organization in entering into the contract conspired fraudulently to deprive certain of its employees of employment, including those upon whose designations the organization's authority depended, by an understanding that these employees would not be admitted to membership in the organization and that non-employee members would displace them at the plant. *Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310, 1318.

[*See* §§ 271–290 (as to form and nature of contracts entered into with dominated organizations), §§ 481–500 (as to contracts the execution or enforcement of which constitute discouragement or encouragement within the meaning of Section 8 (3), § 769 (as to employer's duty to bargain during the term of and concerning matters covered by valid individual contracts), and REMEDIAL ORDERS §§ 151–160 (as to orders to employer in respect to agreements)]

23. *Discrediting labor organization by unfounded accusations or other means.* (*See also* § 30.)

Ordering an employee to remove a button indicating his rank and function in a labor organization constitutes a violation of Section 8 (1). *Armour & Co.*, 8 N. L. R. B. 1100, 1112. See also: *Ford Motor Co.*, 23 N. L. R. B. 342.

American Laundry Machinery Co., 45 N. L. R. B. 355 (avoiding giving patriotic buttons to employees wearing union buttons).

Destroying union signs on employer's property while permitting other signs to remain, *held* to constitute interference, restraint, and coercion. *Callup American Coal Co.*, 32 N. L. R. B. 823.

Spalek, Adolph, 45 N. L. R. B. 1272 (destroying union literature in the presence of an employee).

7 24. *Working rules discriminatory in character or discriminatorily enforced.*

The Act does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline. *Peyton Packing Company.*, 49 N. L. R. B. 828.

Rule prohibiting solicitation or union activity on company time and property when found to be discriminatory:

New York Times Co., 26 N. L. R. B. 1094, 1172, 1173.
Letz Mfg. Co., 32 N. L. R. B. 563, 569.
Davies Co., 37 N. L. R. B. 631, 636–639.
Harbison-Walker Refractories Co., 43 N. L. R. B. 711, 719.

Rule prohibiting solicitation or union activity on company time presumed to be lawful:

Marshall Field & Co., 34 N. L. R. B. 1, 11.
Scullin Steel Co., 49 N. L. R. B. 405.

Rule prohibiting solicitation or union activity on company property but on employees' own time presumed to be unlawful:

Scullin Steel Co., 49 N. L. R. B. 405.
Peyton Packing Co., 49 N. L. R. B. 828.
Worthington Creamery & Produce Co., 52 N. L. R. B., No. 21.

Rule prohibiting solicitation or union activity on company property but on employees' own time when found to be nondiscriminatory. No cases.

An employer has interfered with, restrained, and coerced its employees when in context with other anti-union conduct it discriminatorily enforced a rule prohibiting conversations during working hours by reprimanding union members for violating the rule although non-union employees likewise violated the rule. *Times-Picayune Publishing Co.*, 32 N. L. R. B. 387, 394. See also: *Minneapolis-Honeywell Regulator Co.*, 33 N. L. R. B. 263. *National Mineral Co.*, 39 N. L. R. B. 354, 364.

Company rule prohibiting union discussion on company time or property not applied as to an employer-dominated committee, *held* violative of Section 8 (1). *AP Parts Corp.*, 40 N. L. R. B. 301, 318, 320. See also: *McLain Fire Brick Co.*, 47 N. L. R. B. 1.

[*See* § 36 (as to interference with hire, tenure, terms, or conditions of employment by discriminatory enforcement of working rules), § 41 (as to restraint in use of company property), § 42 (as to privileges accorded or favoritism shown to one or two or more rival legitimate organizations by discriminatory enforcement of working rules), § 404 (as to conduct which employer may permissively restrain), and § 532 (as to discrimination in violation of Section 8 (3) by promulgation or discriminatory enforcement of working rules).]

8 25. *Interference with proceedings before the Board.* [*See* §§ 601–603 (as to violation of Section 8 (4) by discrimination for filing charges or giving testimony under the Act).]

Respondent's attempts to persuade employees to withdraw charges filed by them with the Board, *held* 8 (1). *West Texas Utilities Co.*, 22 N. L. R. B. 522. See also: *Ford Motor Co.*, 31 N. L. R. B. 994.

[*See* § 785 (as to requiring withdrawal of charges as prerequisite to bargaining).]

Attempt to dissuade employee from testifying at Board hearing, *held* a violation of Section 8 (1). *Sanco Piece Dye Works, Inc.*, 38 N. L. R. B. 690.

Urging "inside" union to intervene in representation proceedings before the Board, *held* 8 (1). *Western Cartridge Co.*, 44 N. L. R. B. 1.

0 26. *Other acts of interference, restraint, or coercion.*

An employer who assisted, supported, and encouraged a celebration held on company premises following union's defeat in a consent election conducted by the Board has

engaged in conduct violative of Section 8 (1). *Atlas Powder Co.*, 15 N. L. R. B. 912, 920, 921.

Federal Mining & Smelting Co., 20 N. L. R. B. 192, 197. (Employer blew mine whistle and supervisory officials participated in parade celebrating defeat of sister unions at neighboring mines.)

Times-Picayune Publishing Co., 32 N. L. R. B. 387 (financing party to celebrate union's defeat in election).

Bradley Lumber Co., of Arkansas, 34 N. L. R. B. 610 (distributing liquor and money to employees to celebrate defeat of union in election).

AP Parts Corp., 40 N. L. R. B. 301 (staging a rally celebrating defeat of union at an election).

Reporting union leader to immigration authorities in order to raise obstacles to his continued union activities constitutes a violation of Section 8 (1) of the Act. *Ford Motor Co.*, 19 N. L. R. B. 732, 744.

An employer who interfered with the affiliation of an inside union with national union by aiding several employees to institute injunction proceedings to impound inside union's funds has engaged in conduct violative of Section 8(1). *Lancaster Iron Works, Inc.*, 20 N. L. R. B. 738, 763.

Exaction of monies from employees to defray costs of anti-union program, *held* violation of 8(1). *Ford Motor Co.*, 26 N. L. R. B. 322, 368–372.

A company which held meetings in such a way as to obstruct the organizational attempts of a union, *held* to have violated Section 8(1). *Phillips Petroleum Co.*, 45 N. L. R. B. 1318. See also: *Schaefer-Hitchcock Co.*, 39 N. L. R. B. 709.

Northern Ohio Telephone Co., 27 N. L. R. B. 613. (Arranging "beer and poker" party on the evening a union meeting was to be held as a means of frustrating the union's attempt to organize the employees.)

III. DOMINATION OR INTERFERENCE WITH FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION AND CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT: SECTION 8(2).

A. IN GENERAL. [*See* LITIGATION DIGEST ULP 8(2).]

01 1. *Necessity that domination or interference be directed against a "labor organization."*

The Board has no power to find that an employer has violated Section 8(2) unless it also finds that his illegal acts

were taken with respect to a "labor organization" as defined in Section 2(5), though an essential finding when so made does not place a stamp of legitimacy upon the organization. *Atlanta Woolen Mills*, 1 N. L. R. B. 316, 333.

[*See* DEFINITIONS §§ 83–90 (as to what constitutes a labor organization), and REMEDIAL ORDERS § 53 (as to orders issued with respect to dormant or defunct organizations).]

02 2. *Effect of participation in Board or consent election.*

Employer's contention that an organization participating in a Board election without a charge of company domination purged that organization of any taint of company domination and that the successor organization therefore inherited the status of a union cleared of any charge of company domination, *held* without merit since the representation proceeding did not involve the question of unfair labor practices. *Hicks Body Co.*, 33 N. L. R. B. 858. See also: *Wilson & Co.*, 31 N. L. R. B. 440. *Interlake Iron Corp.*, 33 N. L. R. B. 613, 627. *Sun Shipbuilding and Dry Dock Co.*, 38 N. L. R. B. 234.

Cf. *Hope Webbing Co.*, 14 N. L. R. B. 55. *Wickwire Bros.*, 16 N. L. R. B. 316. *Houde Engineering*, 42 N. L. R. B. 713.

3. *Desires of employees.*

Vol. 34

An employer has not engaged in conduct violative of Section 8(2) of the Act, although it engaged in acts of interference proscribed by the Act, where the potency of the desire of a majority of the employees for an independent labor organization transcended the effect of such acts, 1129.

Vol. 41

Although Board recognized that a new union when formed by a previous dominated organization can be inferred to be employer dominated even in the absence of acts of employer interference with the new union on the ground that the prior conduct of the employer gives employees reasonable grounds for the view that the second organization is his creature, it *held* that an organization which was formed prior to employer's posting in accordance with recommendation of Regional Director of appropriate disestablishment notices of a dominated organization, was not the successor of the dominated organization and consequently not employer-dominated. Such organization was not found to have arisen from or to have seemed to

employees at large to have evolved out of the employer-dominated organization in such a manner that employees believed employer approved this organization as it had the earlier dominated one since employees' dissatisfaction with dominated plan and their advocation of the formation of a union free of employer reflected an honest rebellion against employer domination and a desire for bona fide representation and since employees wholly unconnected in representative capacity with predecessor organization undertook the initiation of the organization when upon advice of counsel representatives of the prior organization refrained from further activity, 1121.

Approval by employees of a company-dominated organization was *held* not to alter its status as a company-dominated organization within the meaning of the Act, 1428.

Vol. 42

Although an "inside" union appeared to come into formal existence following circulation of a petition prepared by employees, no independent action was imputed to the action of employees in signing this petition when employer through his activities gave impetus to the formation of the union and when a former petition, likewise circulated, possessed supervisory sponsorship, 440.

04 4. *Motive and effect of employer's conduct.*

In applying the statutory test of independence to a labor organization alleged to be employer dominated, it is immaterial that employer interference in the administration of an employee's representation had been incidental, rather than fundamental, and with good motives or that the plan which it superseded had, in fact, not engendered, or indeed, had obviated serious labor disputes in the past. *N. L. R. B.* v. *Newport News*, 308 U. S. 241, 251, enforcing 8 N. L. R. B. 866, and modifying 101 F. (2d) 841 (C. C. A. 4). See also: *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

10 5. *Unsuccessful attempt to form a labor organization.*

Section 8 (2) of the Act forbids domination or interference not only where it is successful, and a labor organization is actually formed, but also makes it an unfair labor practice where the domination or interference is unsuccessful. *Canvas Glove Mfg. Works, Inc.*, 1 N. L. R. B. 519, 526. See also: *Millfay Mfg. Co., Inc.*, 2 N. L. R. B. 919, 925. *Uhlich & Co.*, 26 N. L. R. B. 679.

B. ILLUSTRATIVE CASES.

1 1. *In general.*

Following a strike called by an outside labor organization, prior to the effective date of the Act, two supervisory officials formed an inside labor organization. Bylaws were prepared, which provided, among other things, that members of any other labor organization could not become or remain members of the inside organization. The first meeting was held in a church on the employer's property. Nearly all the supervisory employees attended this and subsequent meetings, and all of them became members. Both before and after the effective date of the Act, supervisors solicited memberships during working hours, although such a privilege was forbidden to the outside organization. Meetings of the outside organization were subject to the surveillance of supervisors, and many of its members were discharged upon their refusal to join the inside union. At the request of the inside organization, the employer's president signed a copy of its bylaws which contained a clause of endorsement. A closed-shop agreement with the inside organization was signed by the employer in August 1935. The contract contained no provisions concerning wages or hours but required either membership of the employees, or a power of attorney authorizing the organization to represent them. The right of check-off was also granted. Employment was thereafter denied to all persons who were not members of or did not authorize the inside organization to represent them. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 101–114.

In 1933, under the direction of supervisors and the vice president of the employer, employees were called together and an inside labor organization formed. The organization, which held no further meetings for 3 years, was revived by supervisory employees when a number of employees joined an outside organization and failed to form an inside organization at the employer's suggestion. Meetings of the revived organization were held on company time and property. Employees were threatened with discharge if they failed to join. Solicitation by the inside labor organization was permitted during working hours though the same unrestricted privilege of solicitation was denied the outside organization. When the outside organization presented a proposed contract the employer requested time to consider it, and during the interim signed an exclusive bargaining agreement with the inside organi-

zation. Monthly meetings were held on company time and property, and minutes of the meetings were taken by the employer's stenographer and transcribed in its office. Printed booklets containing copies of the agreement and the constitution and bylaws of the inside organization were paid for by the employer. Reprints of editorials in a local newspaper and other literature attacking the outside organization and containing threats of the employer to move the plant were distributed among the employees. Attempts were made to bribe officers of the outside organization to abandon their memberships. *Stackpole Carbon Co.*, 6 N. L. R. B. 171, 174–185, modified, 105 F. (2d) 167 (C. C. A. 3), rehearing denied 105 F. (2d) 179, cert. denied 308 U. S. 605.

Prior to the effective date of the Act, the employer's general manager initiated an inside labor organization. Foremen, subforemen, minor officers, and all other supervisory employees not directly connected with the office of the manager were eligible to membership and were elected to the more important offices and committees. Members with grievances were forbidden to discuss them with fellow employees. Membership applications were obtainable from the head timekeeper. A check-off system prevailed. Headquarters were maintained and meetings held on the employer's property, but no charges were made for rent, light, or heat. After the Act went into effect, the organization retained its same form, and the same practices prevailed. The organization had no power to make definite decisions but could only formulate recommendations for the approval of the management. Prolonged dealings with the employer to secure wage increases and a method of relieving a housing shortage which existed in the company-owned town were unsuccessful until an outside labor organization began to enlist members among the employees. Then the employer agreed to provide suitable housing, and granted a general wage increase. No machinery existed for regular meetings between the employer and the organization, and no wage agreements, either written or oral, had ever been negotiated prior to the time the outside labor organization appeared. Employees who were members of the outside labor organization were discharged, and when a committee representing the inside labor organization protested, the employer responded by discharging all but one member of the committee.

In sustaining the Board's finding, the Circuit Court of Appeals said:

". . . That the Association did make some attempts to free itself, there is no doubt. Thus early in 1936, the constitution was amended to permit affiliation with other labor organizations by majority vote instead of two-thirds as before. A second amendment excluded employees receiving over $200 per month from participation in Association voting.

"The finding that the Allied Chemical Workers' Association did not succeed in freeing itself from employer domination is supported by the evidence. For more than a year following passage of the Act, the Association made some attempts to gain better wages and to relieve the unsatisfactory housing situation in Trona. These moves were for the most part fruitless *until concessions on both matters were made by respondent in April 1936, the high point of the Borax and Potash Workers' Union organizing campaign.* The Board justly inferred that such success, coming after a long period of chronic inability to bargain successfully, was due to respondent's desire to head off the American Federation of Labor union rather than to any pressure from the Association.

* * * * * * *

"Significant also is the fact that no regular avenues or mechanics of collective bargaining between the Association and respondent were in existence until February of 1936, (the period in which the Borax and Potash Workers' campaign was under way). At that time, pursuant to a suggestion from respondent, a joint committee to consider grievances was set up, comprising representatives of both the employer and the Allied Chemical Workers' Association. One of the committee representatives on behalf of the employer, Martyn Porter, a system analyst in manager Burke's office, thus described the role of the joint committee at its first meeting:

> 'As Mr. Burke explained it to me, it did not have any power of definite decision. It was to formulate recommendations to the management's office. It required the management's office approval to put the recommendations into effect, or to refer them back for further consideration.'

This is not 'collective bargaining' as the term is commonly understood.

"The most potent evidence of employer domination of the Allied Chemical Workers' Association, is the discharge of 7

Association members of the joint committee because they protested the discharge of Union men. Respondent and the intervenor cite this instance as proof of the Association's freedom from such domination. Precisely the opposite is the case. The protest by the 7 committee members shows an attempt by the 7 and through them, the Association, to be free of employer control. The discharge shows that such freedom was not obtained. A discriminatory discharge may just well be directed toward *domination* of a labor organization as toward a dissolution or driving out of a labor organization. The distinction is clearly brought out in the case at bar. Both Union men and Association men were discharged by this respondent. After such discharges the Union was driven out or underground, but the Association continued to function with the permission and facilities of the employer. Clearly the discharges were motivated by a desire to destroy the Union and to *destroy the militancy and independence of the Association, but not the Association itself.* The Association was to remain and it was to remain subservient. What is domination and interference, if this is not?" *N. L. R. B.* v. *American Potash and Chemical Corp.*, 98 F. (2d) 488, 494, 495 (C. C. A. 9), enforcing 3 N. L. R. B. 140, cert. denied 306 U. S. 643.

Shortly before the Act went into effect, and immediately following a meeting held by an outside labor organization, the employer threatened to close the plant if the employees joined the organization, and offered a donation of $5000 if the employees would form a "local" union. The day following another meeting called by the outside labor organization after the effective date of the Act, employees were questioned as to their attendance. Later the same day, 15 employees were discharged. Three days later the power was shut off during working hours, and employees were instructed by foremen to attend a meeting in the plant. The superintendent and general manager addressed the meeting, stated that the employer did not want the outside labor organization, and again offered to to donate $5000 to an organization limited to the employees of the company. Immediately following the meeting, foremen solicited employees to sign a statement of opposition to outside labor organizations and preference for a company-employee association. Shop representatives were elected and were sent by their foremen to a room in the plant to initiate an organization. Night-

shift employees who attended meetings were paid for time so spent. The new organization consulted the management in regard to preparation of the constitution and bylaws. Provision was made for a check-off. Following final approval, the employer transferred a stock certificate, valued at $5000 to the organization. A year later the outside organization again commenced a membership drive, and the employer posted a bulletin defending the inside organization. The privilege of solicitation during working hours was granted to the inside organization but was denied to the outside union. The outside labor organization claimed a majority and requested recognition and an election without the name of the inside organization on the ballot. The employer refused but arranged and conducted an election in which the names of both organizations appeared on the ballot. *Heller Brothers Co.*, 7 N. L. R. B. 646, 649–656.

The Board is not concerned with the type of organization chosen by employees to represent them, except insofar as their choice of organization is dictated by the employer; and an employer has not dominated or interfered with the formation of an inside union which succeeded dominated employees' representation "Plan" where the employer in no way participated in the formation or administration of the inside union, and the employer's activities exerted in respect to the "Plan" did not persist in such fashion to accomplish directly the organization of the inside union. *Wisconsin Telephone Company*, 12 N. L. R. B. 375, 392. See also: *Mohawk Carpet Mills, Inc.*, 12 N. L. R. B. 1265, 1272. *Sprague Specialties Co.*, 20 N. L. R. B. 585. Cf. *DuPont*, 24 N. L. R. B. 919.

2. *Employee representation plans.*

In 1933, the employer initiated and formed an employee representation plan. Bylaws, prepared by the employer, were adopted by the employee and management representatives, but were never presented to the entire group of employees for their approval or disapproval. Membership was automatic upon employment and was limited to employees only. Neither membership cards nor dues were required. The employer bore all expenses of the organization, and compensated employee representatives at their regular rates of pay. No provisions were made for employee meetings. The bylaws could be amended only by a two-thirds vote of a committee consisting of an

equal number of employee representatives and representatives of the management. Decisions of this committee were final and binding upon employees and management, but matters coming before it required joint submission of the particular department head involved and a regional employee representative. The refusal of the head of a department to enter into the joint submission of a matter would preclude its consideration by the committee. After the Act went into effect, the organization existed in the same form with the management controlling all of its affairs, including the arrangement, conduct, and supervision of elections. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1; 7 N. L. R. B. 15, affirmed 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

In 1919, the employer prepared and introduced an employee representation plan in its various plants. The plan provided for a works council composed of an equal number of representatives of the employees and representatives of the management. The employer provided a meeting place for the council, and the employee representatives received their regular pay while serving as its members. Both management and employee representatives voted as a unit, the majority in each unit determining the vote thereof. In case of a tie vote, the matter might be referred to the employer's president who could either propose a settlement, or refer the matter to a general council, also composed of employee and management representatives. The plan had no provision for meetings of employees. Instead, the employee representatives ascertained the wishes of their constituents entirely through individual contract during working hours. Wherever possible, the plan had been linked with other activities and benefits, obviously desirable and beneficial to the employees, such as a credit union, athletic association and pension system. There were no dues, and all expenses of the plan were paid by the employer. Prior to 1936, semiannual elections for employee representatives were conducted by the works council and jointly supervised by employee and management representatives. In 1936, the employee representatives themselves conducted the election, but the ballots were supplied by the management, all the personnel involved in the conduct of the election were paid by the employer at their usual rates of pay, and notices pertaining to the election were posted on company bulletin

boards. Although bargaining had been conducted on inconsequential matters, no agreement concerning wages, hours, and working conditions had been entered into since the inception of the plan, and the only request for a beneficial change in wages and hours which had been made by the elected employee representatives during that time was dropped when the employer refused their demands. *International Harvester Co.*, 2 N. L. R. B. 310, 318–355.

In 1934, the employer initiated an employee representation plan which provided for a works council consisting of an equal number of employee and management representatives. All issues were to be decided by a two-thirds vote, and when such vote was not forthcoming the matter was to be referred to the president of the employer and finally to arbitration. Employee representatives were limited to employees of the company, and elections were supervised by a committee of three, two chosen by the employee representatives and one by the management. Regular meetings of the works council were held on company property, and the employee representatives were compensated by the employer for the time spent at such meetings. Meetings of employee representatives with the employees in their respective departments were all held from time to time on company property during working hours, but there were no general meetings of all the employees. After validation of the Act by the Supreme Court, the plan was modified in the following particulars. The employer charged a nominal rent for the use of its property as a meeting place and ceased paying employee representatives for attendance at evening meetings, although it continued to pay them for their attendance at meetings during working hours. Employees were required to pay dues, but those not choosing to pay could nevertheless remain members. In other respects, the plan retained its original form. By virtue of their employment, employees still participated in the plan, but were never afforded an opportunity to decide for or against it.

The Circuit Court of Appeals for the First Circuit, in sustaining the Board's finding said:

". . . in sum, there was little sincere effort to bring the Plan into harmony with the Act after the *Jones & Laughlin* decision. At best, there was an attempt to get rid of the features obviously in violation of the Act with the retention

of those that still enabled the respondent to interfere with and dominate the rights of the employees to organize and bargain collectively through representatives of their own choosing, and to engage in concerted activities for that and other purposes, within the provisions of Section 7 of the Act. The danger of interference is still present. Experience leads to the conclusion that the slight efforts made by the respondent would not have the effect of freeing the Plan from the respondent's domination. The difficulty from a practical standpoint, that of human experience, is that the virus of control is not so easily washed out. To get rid of it, a complete destruction of the body it had lodged in is usually made necessary and with that body any feeble and ineffectual antidote in the form of a supporting organization administered to effect a cure. Such a proceeding is more salutary and presents the obvious possibilities involved in a fresh start. For the Board to conclude that there was need of such a remedy, was properly inferable from the facts that were presented in this case. The fact that there has been no major industrial troubles in the respondent's industry, does not insure their not happening in the future." *H. E. Fletcher Co.*, 5 N. L. R. B. 729, 732–737, enforced 108 F. (2d) 459 (C. C. A. 1), cert. denied 309 U. S. 678.

In 1927, the employer introduced an employee representation plan which provided for four joint committees, consisting of an equal number of elected employee representatives and representatives chosen from among the employees by the management. Elected representatives received an annual remuneration from the employer. No dues were required. As revised in 1931, the four joint committees were succeeded by a general joint committee composed of an equal number of elected employee representatives and representatives of the management. An executive committee consisting of an equal number of elected employee and management representatives was also established. Elections were arranged for by the management representatives "but in so far as possible, conducted by the employees themselves." Finality of action of the general joint committee was made dependent upon approval of the employer's president. Amendment of the plan required a two-thirds vote of the entire general joint committee and approval of the employer's president. The plan retained substantially the same form until the validation

of the Act, when it was finally revised, with officials of the employer taking an active part in its revision. The two principal changes were the elimination of compensation paid by the employer to elected representatives, and the substitution for the general joint committee and joint executive committee of a single committee composed solely of elected employees' representatives. However, any action of this committee would become effective only upon agreement by the employer, and any amendment of the plan could be effected only by a two-thirds vote of the entire membership of the committee and a lapse of 15 days within which the employer might disapprove such amendment.

In sustaining the finding of the Board, the Supreme Court of the United States said:

"The Board has concluded that the provisions embodied in the final revision whereby action of the committee requires for its effectiveness the agreement of the company and whereby amendment of the Plan can become effective only if the company fails to signify its disapproval within fifteen days of adoption will give the respondents such power of control that the Plan is in the teeth of the expressed policy and specific prohibitions of the Act. The respondent argues that these provisions affect only the Company and not the employees; that, in collective bargaining, there is always reserved to the employer the right to qualify or reject the propositions advanced by the employee. Whatever may be said of the first mentioned provisions, this explanation will not hold for the second. The plan may not be amended if the company disapproves the amendment. Such control of the form and structure of an employee organization deprives the employees of the complete freedom of action guaranteed to them by the Act, and justifies an order such as was here entered . . . While the men are free to adopt any form of organization and representation whether purely local or connected with a national body, their purpose so to do may be obstructed by the existence and recognition by the management of an old plan or organization, the original structure or operation of which was not in accord with the provisions of the law . . . In applying the statutory test of independenc it is immaterial that the Plan had, in fact, not engendered, or indeed had obviated, serious labor disputes in the past, or that any company interference in the administration of

the plan had been incidental rather than fundamental and with good motives." *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 244–251, enforcing 8 N. L. R. B. 866, and modifying 101 F. (2d) 841 (C. C. A. 4).

Detailed analysis of 8(2) aspects of continuation of representation plan instituted before passage of Act. *Servel, Inc.*, 11 N. L. R. B. 1295.

Employee Representation Plan found in earlier Board Decision to be company dominated still held to be company dominated after certain changes in form instituted by respondent and Plan. *Phelps Dodge Corporation*, 15 N. L. R. B. 732.

See following page references for additional decisions:
Vol. 25—pp. 946, 1190, 1332
Vol. 26—pp. 88, 227, 491, 1059, 1244
Vol. 27—pp. 441, 757
Vol. 28—p. 442
Vol. 29—pp. 746, 837, 1025
Vol. 31—p. 440
Vol. 32—p. 1145
Vol. 33—p. 1190
Vol. 36—pp. 1, 86, 710
Vol. 43—p. 1020
Vol. 45—pp. 214, 482, 551, 977, 987

13 3. *Back-to-work organizations.*

After a strike had been called by an outside labor organization, a back-to-work movement was organized by a group of workers who were employee representatives under a previously existing unlawful employee-representation plan. The back-to-work committee, armed with shot-guns, policed the streets, ostensibly for the purpose of protecting non-strikers, held meetings, and conferred with officials of the community in regard to their demands. Several members were deputized as policemen, along with other persons, one a supervisory official of the company, upon bond furnished by the employer. Almost all the expenses of the back-to-work committee were defrayed by the employer. *Republic Steel Corp.*, 9 N. L. R. B. 219, 326–327, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940. See also: *Remington Rand, Inc.*, 2 N. L. R. B. 626, 650–733, modified 94 F. (2d) 862 (C. C. A. 2),

cert. denied 304 U. S. 576. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 129–136.

Vol. 25

Back-to-work movement discussed as forerunner of 8 (2), 1004.

4. *Balleisen organizations.*

After an outside labor organization had requested a conference for collective bargaining, the employer consulted L. L. Balleisen, secretary of the Brooklyn Chamber of Commerce, and received from him forms which Balleisen used in organizing company unions. The same day the employer called a meeting of the employees, made disparaging remarks about the outside organization, stated no contract would be signed with it and read an announcement, prepared by Balleisen, that if the employees elected a committee, the company would enter into a contract with the committee and with each employee individually. The announcement also contained an outline of the provisions to be embodied in the proposed contract. The employer then urged the employees to sign a letter, also prepared by Balleisen, stating that they had elected a bargaining committee and had authorized it to sign a contract containing provisions outlined by the management. The employees signed the letter and selected a committee, which, at the employer's suggestion, immediately commenced negotiations. The employees, dissatisfied with the results of these negotiations, went on strike and authorized the outside organization to continue to represent them, and the committee ceased to function. The employer refused to bargain with the outside organization, and, instead, approached employees individually seeking their return. The employer then appointed a new committee and gave them a list of "demands" to be submitted. At a conference between the employer and the new committee, the employer accepted the list of "demands" and signed a contract with respect thereto with the committee. Individual contracts, identical with the contract signed by the committee, were then executed by the employees. *Cating Rope Works*, 4 N. L. R. B. 1100, 1104–1110.

Following a request of a labor organization representing a majority of the employees to bargain, the employer offered certain proposals directly to the employees, and, when

these were rejected, selected employees to circulate a petition nominating a committee to supersede the labor organization. The attempt failed when many of the employees deleted their signatures upon discovering the import of the petition. At a meeting with the labor organization, arranged by an agent of the Board, the employer offered substantially the same proposals which had been rejected by the employees. Dissatisfied with the progress of negotiations, the employees engaged in a spontaneous strike, and the plant was closed. Shortly after operations were resumed, three employees met an official of the employer and asked if they could have a bargaining committee of their own. Following the suggestion of the official, one of the employees formed such a committee. He thereupon returned to the same official and asked to be informed as to what further steps were necessary to gain recognition. The employee was referred to the employer's president who prepared and dictated a form addressed to the employer, notifying it that the employees had elected a committee to represent them, and repudiating the authority given to any other bargaining agency. The notice was circulated by the employee in question and was signed by a number of the workers. The employer thereupon entered into negotiations with the committee. Concessions granted were in substance the same as those previously offered to and rejected by the employees. Contracts which were signed by the employer, the committee, and each individual employee empowered the employer to discharge the employees for any reason regardless of union affiliation, permitted an employee to join any labor organization, but precluded him from demanding a closed shop or a signed agreement or from striking. Subsequently, a request of other employees to be placed on the committee was denied by the employer's president. *National Licorice Co.*, 7 N. L. R. B. 537, 541–549, modified 309 U. S. 350, modifying 104 F. (2d) 655.

5. *Reformed and successor organizations.*

Following validation of the Act, representatives of an employees' representation plan which had been in operation for several years were informed by an official of the employer that the plan would have to be dissolved and that the employees could form a new plan if they wished, but cautioned them that such plan should not include management participation in elections, the furnishing of materials, or the

compensation of employee representatives. Thereafter, use of the plant cafeteria at a rental of $1, was secured by the employee representatives for the purpose of forming a new organization. Petitions to secure members for the new organization were circulated during working hours with the knowledge and assistance of supervisory employees. The board of directors of the new organization was largely composed of former representatives of the old plan. Supervisory employees were not excluded from membership and became officers. There were no provisions for regular meetings. The organization was incorporated and was granted exclusive recognition by the employer, although such recognition had been denied the outside organization. *Swift & Co.*, 7 N. L. R. B. 269, 275, 284, mod. 106 F. (2d) 87 (C. C. A. 10), rehearing denied 106 F. (2d) 87, 94. See also: *Swift & Co.*, 7 N. L. R. B. 287, 291–297.

In 1933, the employer prepared and introduced employee representation plans in its several plants. No opportunity was afforded the employees for acceptance, rejection, or alteration. Under the plans, employee grievances were settled by joint employer-employee committees, the latter being apportioned to a certain number of employees who in turn elected members to standing committees. Membership was automatic. The bylaws or constitutions of the various plans did not provide for general meetings of employees or for dues, all expenses being defrayed by the company. Employee representatives were provided with facilities and were paid for time spent in attending meetings or adjusting grievances. The approval of the management was required in order to amend the plans, to hold special meetings, or to refer matters to arbitration. After the Act was held constitutional, the Management withdrew financial support from the organizations and new organizations were at once formed, in some instances without dissolving the old plans. The new organizations functioned as before, with the same committees, whose members were paid for time spent in handling employee grievances, and who circulated membership cards during working hours. The constitutions were amended, in some instances with the approval of the management, and circulated throughout the plants. A number of practices were eliminated, such as articles dealing with the pay of employees' representatives, holding meetings in the employer's offices and joint

committees of employee and management representatives. No provisions were made for initiation fees or dues, or if dues were provided for, they could be waived by officers of the organization. Employee representatives were elected on the same basis as under the old plans, and there were no provisions for general meetings. *Republic Steel Corp.*, 9 N. L. R. B. 219, 228–236, 318–328, 334–346, 351–356, 358–378, modified 107 F. (2d) 472 (C. C. A. 3) cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940. See also: *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 244–251, enforcing 8 N. L. R. B. 866 and modifying 101 F. (2d) 841 (C. C. A. 4).

The furnishing of a meeting place, bulletin boards, and legal advice to employee representatives in an illegal Employee Representation Plan, resulting in their formation of a labor organization pursuant to the employer's suggestions, *held* to be factors showing that the latter organization was a successor to the illegal Plan. *Hood Rubber Company, Inc.*, 14 N. L. R. B. 16.

Successor organization formed after withdrawal of management representatives from employee representation plan council, with superintendent's encouragement that council carry on without management, following anti-union address by executives to employees' mass meeting, *held* company dominated. *Texas Co.*, 17 N. L. R. B. 843.

Preparing constitution to be adopted by unaffiliated union organized by old representatives, and failure to apprise employees of discontinuance of domination and support thereof as successor to dominated Plan, *held* to constitute interference, domination, and support of unaffiliated union. *Westinghouse Electric Mfg. Co.*, 18 N. L. R. B. 300.

Parent labor organizations and individual locals thereof existing at plants of various employers, *held* to be dominated. *McGoldrick Lumber Co.*, 19 N. L. R. B. 887.

Organization which succeeded original Employee Representation Plan after April 1937 found to be company dominated. *Swift and Company*, 21 N. L. R. B. 1169.

Successor employee organization held to be continuation of predecessor company-dominated union where successor employee organization organized at a meeting called by predecessor organization; where substantially same group of employees organized both organizations; and where no effort by respondent to inform generality of its employees of its dissociation from participation in union affairs.

Also, no disclaimer by respondent of previously open hostility to outside unions. *Walworth Co., Inc.*, 21 N. L. R. B. 1302.

Successor to company-dominated union, known by two successive names, found company dominated despite fact that its constitution was adopted and officers elected by secret ballot, where respondent was consulted and advised concerning organization of the successor union, prior to withdrawal of recognition of original company-dominated union, where respondent indicated preference for inside union and hostility toward affiliated union, and where successor was organized and headed by officers of the admittedly original company-dominated union. *Southwestern Greyhound Lines, Inc.*, 22 N. L. R. B. 1.

Successor organization found to be company dominated. *Southwestern Greyhound Lines, Inc.*, 22 N. L. R. B. 1. See also:

Continental Oil Company, 22 N. L. R. B. 61.

The Colorado Fuel and Iron Corporation, 22 N. L. R. B. 184.

Firestone Tire and Rubber Company of California, 22 N. L. R. B. 580.

A. E. Staley Manufacturing Company, 22 N. L. R. B. 663.

See following page references for additional decisions:

Vol. 25—pp. 672, 946, 1190, 1332
Vol. 26—pp. 227, 1059, 1244
Vol. 27—pp. 521, 757
Vol. 28—pp. 257, 442
Vol. 29—pp. 456, 837
Vol. 30—p. 212
Vol. 31—pp. 196, 440, 1179
Vol. 32—pp. 338, 1020
Vol. 33

An organization has arisen out of and is a successor to an admitted dominated organization where it has been initiated, formed, and promoted by the attorney, officers, and some of the members of the predecessor, where the employer at no time disestablished the predecessor nor did anything "to mark the separation between the two organizations to publicly deprive the successor of the advantage of its apparently continued favor," and where the predecessor permitted it to conduct its activities at

Vol. 44—p. 920
Vol. 45—pp. 214, 482, 936, 1318, *and*

In representation case, intervenor union held to be a successor organization to dominated union previously ordered dissolved by Board and not accorded place on ballot, 831.

[*See* EVIDENCE § 15 (as to evidence of violation of 8 (2) in representation proceeding), INVESTIGATION AND CERTIFICATION § 81.5 (as to according alleged successor dominated organization place on ballot), and PRACTICE AND PROCEDURE § 33 (as to an employer-dominated organization as a party to a representation proceeding).]

16 6. *Organizations initiated by discouraging membership in outside unions.*

The employer, aware of organizational discussion among the employees, informed them in a prepared statement read at a meeting that he knew the employees did not need an outside union or a company union to advance their interests that they could have either one if they wanted it, and that the progress of the business depended on "loyalty." The morning after an outside labor organization had held a meeting, the employer called another meeting of the employees and told them of their "rights" under the Act, leaving the impression that he was opposed to their affiliation with an outside labor union, and stating that he would not sign a contract with such an organization. Several days later, a small group of employees formed an inside labor organization. The organization was incorporated and a majority of the employees became members.

In finding a violation of Section 8 (2), the Board said:

"Upon the record before us we are convinced that the formation of the Association, followed, as it was, by a rapid, vigorous growth of that organization, can only be attributed to the respondent's acts in diverting and confining the desires of its employees into and within the channel of an inside union. Where an employer thus limits his employees to a particular form of labor organization and upon such limitation being imposed, a labor organization of the prescribed pattern springs into being, such an organization, in the absence of any showing to the contrary, must be presumed to reflect, in that respect, the will of the employer. Such an organization is not the result of a free choice, but one whose formation has been interfered with and dominated by the employer, within the meaning of the Act." *Crawford Mfg. Co.*, 8 N. L.

R. B. 1237, 1239–1243. See also: *Feinberg Hosiery Mills, Inc.*, 19 N. L. R. B. 667.

See following page references for additional decisions:

Vol. 26—pp. 662, 679, 878
Vol. 27—pp. 521, 856
Vol. 28—p. 208
Vol. 29—p. 1044
Vol. 30—pp. 700, 820
Vol. 33—pp. 393, 954
Vol. 34—p. 785
Vol. 35—p. 1153
Vol. 37—pp. 1090, 1174
Vol. 38—p. 1154
Vol. 40—pp. 223, 867, 1262
Vol. 41—p. 807
Vol. 42—p. 119
Vol. 43—p. 457
Vol. 44—pp. 1, 404
Vol. 45—pp. 146, 241, 744, 936, 1113

7 7. *Organizations dominated prior to the effective date of the Act which continued to exist without disapproval by employer after the effective date of the Act.*

Vol. 41

Since an unaffiliated union which is known for long to be favored by an employer carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent and cannot remain such until measures are taken completely to disabuse employees of any belief that they will win the employer's approval if they remain in it or incur his displeasure if they leave, it is incumbent upon an employer to completely disestablish an organization which it formed and dominated prior to the Act and to make clear to employees that they were free to exercise their right to self-organization without interference and as such where the organization continued in existence after the Act without substantial change in structure or operation and had never been disavowed or disestablished, *held* employer dominated such organization in violation of the Act, 872 and 1078.

See following page references for additional decisions:

Vol. 43—pp. 545, 695, 1020
Vol. 44—pp. 920, 959
Vol. 45—pp. 482, 1318

118 8. *"Hamilton Plan."*

Application of the so-called "Hamilton Plan," the fundamental provision of which is a contract whereby the employer obligates himself to compensate the union for "services" rendered the employer by the union "for the mutual benefit" of the employer and its employees, constitutes an unfair labor practice within the meaning of Section 8 (2) of the Act whether applied through an organization established with the aid of the employer or through one initiated independently. *Calco Chemical Company, Inc.*, 12 N. L. R. B. 275, 283.

120 9. *Other illustrations.*

Vol. 37

Employers confronted with organization campaigns of an "outside" union sought advice and assistance of institutional respondents in defeating the attempts of their employees at self-organization and collective bargaining; together with the institutional respondents and as an integral part of the institutional respondents' general scheme or plan to lend their services to employers in effectuating the "open shop" program throughout Southern California, employer dominated and interfered with the formation of the "inside" union by offering their cooperation and support to facilitate its establishment, and with the aid of institutional respondents and pursuant to its established procedure, imposed upon the "inside" organization basic documents which disabled it from acting as the freely chosen representative of their employees, 50.

C. ACTS OF DOMINATION, INTERFERENCE, AND SUPPORT.

121 1. *In general.*

The fact that an employer was purely passive during the formative period of a labor organization and did not call the meetings, write the bylaws, nor propose the form of the organization, is immaterial, for Section 8 (2) is not so narrowly interpreted as to require this direct and immediate link between the employer and the outlawed organization, but must be broadly construed to cover any conduct upon the part of the employer which is intended to bring into being, even indirectly, an organization which he considers favorable to his interests. *Ansin Shoe Mfg. Co.*, 1 N. L. R. B. 929, 935.

Absence of employer influence at the creation of a labor organization and the refusal of an employer to bargain

with that organization upon request cannot constitute a complete defense to an allegation under Section 8 (2) of the Act. *Ingram Mfg. Co.*, 5 N. L. R. B. 908, 925.

Absence of interference, restraint, and coercion, refusal to bargain with alleged company-dominated union, and willingness to bargain with complaining union given weight in decision to dismiss allegations alleging a violation of Section 8 (2). Federal Screw Works, 21 N. L. R. B. 100.

Vol. 31

Employer's contention that it maintained a neutral attitude toward the inside union and that it advised its supervisory employees to sever all relations with the inside union under penalty of discharge is rejected, although supervisory employees had ceased their activities in behalf of the inside union after receiving such instructions, where the organization had already been organized; the ordinary employees were never advised of the employer's neutrality; and the employer took no effective steps to dissipate the effects of the activities of its supervisory employees, 1166.

Vol. 32

It is immaterial under the Act that an organization contributed to the welfare of its members if an employer has in fact interfered with, supported, and dominated that organization, 1145.

That an organization secured benefits does not prove that it was free from interference, support, and domination of the employer, when such benefits were instruments by which the employer further sponsored the organization, 1145.

Vol. 35

Absence of proof that employer ever discriminated against employees for failure to join or actually coerced them in joining "inside" union, *held* unnecessary in finding violation of Section 8 (2) when employer domination and interference was established by other evidence, 857.

Vol. 41

Participation by members of charging union in activities of "inside" union, *held* not to free "inside" union of employer's domination and interference where it was clear that this circumstance did not in any way obviate the consequences of the proven acts of domination and interference by employer with "inside" union, 693.

Vol. 45

Employer found not to have dominated organization when it was formed by non-supervisory employees on company

time without employer's knowledge, and when employer refused to recognize it until certified by the Board, 653.

For decisions wherein charges were dismissed under this Section see:

Vol. 9—p. 538
Vol. 10—p. 1173
Vol. 11—pp. 333, 1248
Vol. 12—pp. 375, 392
Vol. 13—p. 92
Vol. 14—pp. 55, 322, 346, 497
Vol. 15—p. 450
Vol. 16—pp. 27, 291, 304, 316
Vol. 17—pp. 669, 843, 961
Vol. 18—pp. 82, 100, 167, 526
Vol. 19—pp. 160, 357, 720, 970
Vol. 20—pp. 585, 806
Vol. 21—pp. 100, 511
Vol. 22—pp. 502, 1066, 1143
Vol. 24—pp. 217, 625, 1011, 1136
Vol. 32—pp. 141, 792
Vol. 33—p. 613
Vol. 38—p. 1111
Vol. 41—p. 1121
Vol. 44—p. 273

2. *Active participation by representatives of management.* [*See* §§ 11–20 (as to who is considered a representative of management).]

22 a. In general.

To constitute domination or interference by the employer it must appear that the employees are acting for him rather than for themselves, or that the employer in some manner gives aid to one group which he withholds from the other, or discriminates in favor of members of a labor organization or against non-members. *Ballston-Stillwater Knitting Co.* v. *N. L. R. B.*, 98 F. (2d) 758, 762 (C. C. A. 2), setting aside 6 N. L. R. B. 470.

Where among other circumstances supervisory employees were members of and participated in the activities of the two rival organizations, *held* that the respondent did not through its supervisory employees assist one of the organizations, for employer's prestige was not enlisted on one side of a representation dispute. *Crown Central Petroleum Corp.*, 24 N. L. R. B. 217, 224.

Vol. 26

An employer cannot relieve itself of responsibility for acts of supervisory employee in taking a leading part in the formation of a labor organization where it had full knowledge of, acquiesced in, and indicated its approval of, his activities, 227.

Supervisory employees' participation in organizational activities on behalf of two labor organizations, *held* not to affect employer's responsibility for their activities on behalf of one of the labor organizations, when such acts were committed upon its express direction, and was accompanied by other manifestations of its approval of that organization. *Abinante & Nola Packing Co.*, 26 N. L. R. B. 1288, 1302. See also: *Ellis Klatscher & Co.*, 40 N. L. R. B. 1037, 1054.

Vol. 42

Employer was found not to have dominated an organization where activities of its highest paid and oldest employee in behalf of such organization were not attributable to it, as such employee was neither supervisory nor identified with management, and where evidence was insufficient as to activities of supervisory employees to warrant a finding of domination, 678.

Vol. 44

Supervisory employees' participation in organizational affairs, attributable to employer when warnings by employer to maintain strict neutrality constituted no more than lip service to established principles of the Act, 1136.

b. Participation in initiation and formation.

23 (1)—Suggesting formation of organization.

Where a bargaining committee was organized by the chief officers of two vessels, owned and operated by the employer, on their own motion with the approval of the employer's superintendent, and the persons selected as members of the bargaining committee were these same chief officers whose duty it was to represent the employer in dealing with the men under them, a finding of the Board that the employer had thereby dominated and interfered with the formation and administration of the committee should be sustained, for one of the chief purposes of the Act, which is to provide a free choice of employee representatives, would be entirely nullified if representatives of the employees should be chosen from among their superior officers whose interest and duty it is to protect the interest of the employer. *Virginia Ferry*

Corp. v. *N. L. R. B.*, 101 F. (2d) 103, 105 (C. C. A. 4), modifying 8 N. L. R. B. 730.

An address by the president of an employer to its employees shortly before a hearing, informing them that in the event the Board should disestablish an inside employees' association, it might with propriety reorganize or reincorporate it further, taking care to accomplish "technical" compliance with the Act, constitutes contribution of support to the association in violation of Section 8 (2). *Douglas Aircraft Co., Inc.*, 10 N. L. R. B. 242, 252. See also:

Hill Bus Co., Inc., 2 N. L. R. B. 781, 786, 787.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1105, 1106.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 845, 846.
G. Sommers & Co., 5 N. L. R. B. 992, 995.
General Shoe Corp., 5 N. L. R. B. 1005, 1008, 1009.
Taylor Trunk Co., 6 N. L. R. B. 32, 43, 46.
Simplex Wire and Cable Co., 6 N. L. R. B. 251, 254, 255.
Empire Worsted Mills, Inc., 6 N. L. R. B. 513, 516, 517.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 701, 702.
Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 107.
Swift & Co., 7 N. L. R. B. 269, 275, 283, modified 106 F. (2d) 87 (C. C. A. 10).
Swift & Co., 7 N. L. R. B. 287, 292, 293.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 381.
Semet-Solvay Co., 7 N. L. R. B. 511, 517, 518.
Yates-American Machine Co., 7 N. L. R. B. 627, 630, 631.
Heller Brothers Co., 7 N. L. R. B. 646, 650.
American Radiator Co., 7 N. L. R. B. 1127, 1133, 1141.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Harter Corp., 8 N. L. R. B. 391, 395.
Citizen-News Co., 8 N. L. R. B. 997, 1002.
Armour & Co., 8 N. L. R. B. 1100, 1105, 1106.
Crawford Mfg. Co., 8 N. L. R. B. 1237, 1240.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 423, 424, set aside 108 F. (2d) 872 (C. C. A. 3).
Harnishfeger Corp., 9 N. L. R. B. 676, 687.
Consumer's Power Co., 9 N. L. R. B. 701, 722.
Inland Steel Co., 9 N. L. R. B. 783, 805, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).
Lane Cotton Mills Co., 9 N. L. R. B. 952, 968.

Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1131, modifying 104 F. (2d) 49 (C. C. A. 8).
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 302.
Western Felt Works, 10 N. L. R. B. 407, 440, 441.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 522.
American Numbering Machine Co., 10 N. L. R. B. 536, 543, 544.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 570.
H. J. Heinz Co., 10 N. L. R. B. 963, 971.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1065, 1066.
United States Potash Co., 10 N. L. R. B. 1248, 1252.
Schwab and Schwab, 10 N. L. R. B. 1455, 1459, 1460.
Subin, 12 N. L. R. B. 467.
International Shoe, 12 N. L. R. B. 728.
American Oil Co., 14 N. L. R. B. 990.
Foote Bros., 14 N. L. R. B. 1045.
Cudahy Packing Co., 17 N. L. R. B. 302.
Monticello Mfg. Corp., 17 N. L. R. B. 1091.
Moltrup Steel Products Co., 19 N. L. R. B. 471.

See following page references for additional decisions:
Vol. 25—pp. 557, 771, 946, 1190
Vol. 26—pp. 88, 662, 679, 878, 975, 1059
Vol. 27—pp. 441, 613, 757, *and*

Conversion of welfare organization to labor organization after president of respondent instructed its treasurer to suggest it, 856.

Vol. 28—pp. 208, 257, 1051
Vol. 29—pp. 60, 360, 456, 673, 746, 1025, 1044
Vol. 30—pp. 212, 440, 550, 820
Vol. 31—p. 1179
Vol. 32—pp. 895, 1020, 1145
Vol. 33—pp. 393, 1033
Vol. 34—p. 1095
Vol. 35—pp. 605, 1153, 1334
Vol. 37—pp. 50, 839, 1090
Vol. 38—pp. 690, 838, 1154, 1245
Vol. 40—pp. 301, 1037, 1058, 1262
Vol. 41—p. 807
Vol. 42—pp. 119, 377, 440, 472, 898, 1218
Vol. 43—p. 1322
Vol. 44—pp. 404, 920, 1136
Vol. 45—pp. 146, 214, 482, 551, 936, 987, 1318

124 (2)—Forming organization.

Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 552.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 628.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 60.
T. W. Hepler, 7 N. L. R. B. 255, 260.
Virginia Ferry Corp., 8 N. L. R. B. 730, 733, 734, modified 101 F. (2d) 103 (C. C. A. 4).
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457.
Newark Rivet Works, 9 N. L. R. B. 498, 508, 509.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 43, 44.
Union Drawn Steel Co., et. al., 10 N. L. R. B. 868, 877–882, modified 109 F. (2d) 87 (C. C. A. 3).

See following page references for additional decisions:

Vol. 25—pp. 946, 1004, 1190
Vol. 26—pp. 227, 297, 679
Vol. 27—p. 521
Vol. 29—pp. 456, 1044
Vol. 30—pp. 550, 820
Vol. 31—pp. 101, 715, 1166
Vol. 32—p. 338
Vol. 33—p. 1190
Vol. 34—p. 896
Vol. 35—p. 857
Vol. 36—pp. 1, 86
Vol. 37—pp. 50, 1059, 1090
Vol. 38—pp. 690, 838, 1245
Vol. 40—pp. 867, 1037, 1262
Vol. 41—p. 1408
Vol. 42—p. 898
Vol. 43—pp. 457, 695

125 (3)—Presenting plan of organization to employees.

A finding of the Board that the formation of a labor organization was promoted by the employer is supported by substantial evidence where there was pronounced diversity among the employees as to joining or not joining an outside labor organization which was seeking to organize them, and, although the testimony for the company is that numbers of the men came to the manager with a request to work out some plan which would restore harmony and that it was in pursuance of that request that the management and the men together worked out this plan, yet there is substantial testimony that the plan was drawn

up and presented by the company. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N. L. R. B. 986. See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 298.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Central Trunk Lines Inc., 3 N. L. R. B. 317, 324.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1106.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 628–630.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Virginia Ferry Corp., 8 N. L. R. B. 730, 734, modified 101 F. (2d) 103 (C. C. A. 4).
Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 870–872, enforced 308 U. S. 241 reversing 101 F. (2d) 841 (C. C. A. 4).
American Numbering Machine Co., 10 N. L. R. B. 536, 543, 544, 548.

See following page references for additional decisions:

Vol. 25—pp. 557, 771, 1190
Vol. 26—pp. 1, 88, 491, 679, 975, 1244
Vol. 27—p. 441
Vol. 31—p. 715
Vol. 37—p. 1090
Vol. 40—p. 301
Vol. 41—p. 872
Vol. 44—p. 404

26 (4)—Drafting constitution and bylaws.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
New Idea, Inc., 5 N. L. R. B. 381, 387.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 60.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378, 379.
Heller Brothers Co., 7 N. L. R. B. 646, 651.
Pure Oil Co., 8 N. L. R. B. 207, 212, 213, 215.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 540.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1249.

See following page references for additional decisions:

Vol. 25—pp. 557, 672, 946
Vol. 26—p. 1244
Vol. 31—p. 715
Vol. 32—p. 338
Vol. 35—p. 857
Vol. 43—p. 695

(5)—Solicitation of members; preparing, signing, or circulating applications, petitions, or literature.

A finding of the Board that an employer had violated Section 8 (2) is justified where it is shown that counsel for the employer obtained the charter for the association on a petition from the employees which they had signed upon solicitation of a foreman, and the signatures were obtained in some cases under threats of discharge; and that while the professed objectives of the association were to encourage friendship, loyalty, and good will, a shop committee was provided for and actually appointed but there was no evidence that it had ever functioned as a bargaining agency. *N. L. R. B.* v. *J. Freezer & Son*, 95 F. (2d) 840, 841 (C. C. A. 4) enforcing 3 N. L. R. B. 120. See also:

Clinton Cotton Mills, 1 N. L. R. B. 97, 105.
Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 300.
Wheeling Steel Corp., 1 N. L. R. B. 699, 708.
International Harvester Co., 2 N. L. R. B. 310, 334, 335.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Highway Trailer Co., 3 N. L. R. B. 591, 605, 606.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1106.
Todd Shipyards Corp., 5 N. L. R. B. 20, 33, 34.
New Idea, Inc., 5 N. L. R. B. 381, 386, 387.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 628–630.
Altorfer Brothers Co., 5 N. L. R. B. 713, 721.
Ingraham Mfg. Co., 5 N. L. R. B. 908, 920, 921, 922.
G. Sommers & Co., 5 N. L. R. B. 992, 995.
Taylor Trunk Co., 6 N. L. R. B. 32, 43, 44, 45, 46.
Simplex Wire and Cable Co., 6 N. L. R. B. 251, 254, 255.
Empire Worsted Mills, Inc., 6 N. L. R. B. 513, 516, 517.
Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 109.
Beloit Iron Works, 7 N. L. R. B. 216, 220.
T. W. Hepler, 7 N. L. R. B. 255, 260.
Swift & Co., 7 N. L. R. B. 269, 279, modified 106 F. (2d) 87 (C. C. A. 10).
American Mfg. Co., Inc., 7 N. L. R. B. 375, 379.
Semet-Solvay Co., 7 N. L. R. B. 511, 518.
Burnside Steel Foundry Co., 7 N. L. R. B. 714, 726.
American Mfg. Concern, 7 N. L. R. B. 753, 760.
Heller Brothers Co., 7 N. L. R. B. 646, 650.

Grace Co., 7 N. L. R. B. 766, 771.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 850.
American Radiator Co., 7 N. L. R. B. 1127, 1134, 1140.
Sunshine Mining Co., 7 N. L. R. B. 1252, 1257, 1258, 1270, 1271, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.
Harlan Fuel Co., 8 N. L. R. B. 25, 33.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 248–250, 251.
Harter Corp., 8 N. L. R. B. 391, 396.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 541.
Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110F. (2d) 29.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248, 1249.
Republic Steel Corp., 9 N. L. R. B. 219, 234, 235, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457.
Revolution Cotton Mills, 9 N. L. R. B. 468, 474.
Consumer's Power Co., 9 N. L. R. B. 701, 733, 734.
Inland Steel Co., 9 N. L. R. B. 783, 806–813, remanded for new hearing, 109 F. (2d) 9 (C. C. A. 7).
Lane Cotton Mills Co., 9 N. L. R. B. 952, 970.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1132, modifying 104 F. (2d) 49 (C. C. A. 8).
Armour & Co., 9 N. L. R. B. 1295, 1300.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 44.
West Kentucky Coal Co., 10 N. L. R. B. 88, 103.
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Western Felt Works, 10 N. L. R. B. 407, 441.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 525.
American Numbering Machine Co., 10 N. L. R. B. 536, 544.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 571.
Union Drawn Steel Co., et al., 10 N. L. R. B. 868, 880, modified 109 F. (2d) 587 (C. C. A. 3).
H. J. Heinz Co., 10 N. L. R. B. 963, 973.

See following page references for additional decisions:
Vol. 25 — pp. 193, 347, 1004, 1126, 1190
Vol. 26 — pp. 1, 297, 447, 679, 878, 975, 1059, 1244
Vol. 27 — pp. 521, 613, 757, 1021
Vol. 28 — pp. 442, 1051

Vol. 29—pp. 456, 673, 837, 1044
Vol. 30—pp. 550, 700, 820
Vol. 31—pp. 101, 621, 715, 994, 1166
Vol. 32—pp. 595, 863, 895, 1020
Vol. 33—pp. 393, 954, 1033
Vol. 34—pp. 625, 785, 1095
Vol. 35—pp. 857, 1262, 1334
Vol. 37—p. 50
Vol. 38—pp. 234, 838, 1145, 1154
Vol. 39—p. 992
Vol. 40—pp. 541, 867, 1058, 1262
Vol. 41—p. 807
Vol. 42—pp. 377, 440, 457, 898
Vol. 43—pp. 457, 613, 1322
Vol. 44—pp. 174, 1234
Vol. 45—pp. 241, 551, 744, 936, 1318

(6)—Attendance at meetings.

Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Highway Trailer Co., 3 N. L. R. B. 591, 605.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1105, 1106.
Todd Shipyards Corp., 5 N. L. R. B. 20, 33.
Phillips Packing Co., Inc., 5 N. L. R. B. 272, 277.
New Idea, Inc., 5 N. L. R. B. 381, 384.
Taylor Trunk Co., 6 N. L. R. B. 32, 43.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 225.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 703, 704, 706.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61.
T. W. Hepler, 7 N. L. R. B. 255, 261.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Semet-Solvay Co., 7 N. L. R. B. 511, 518.
Yates-American Machine Co., 7 N. L. R. B. 627, 631.
Heller Brothers Co., 7 N. L. R. B. 646, 650.
American Mfg. Concern, 7 N. L. R. B. 753, 761.
Grace Co., 7 N. L. R. B. 766, 772.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1183.
Sunshine Mining Co., 7 N. L. R. B. 1252, 1271, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 249, 250.
David Strain Co., Inc., 8 N. L. R. B. 310, 315.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, 330, enforced 104 F. (2d) 1017 (C. C. A. 2).
Harter Corp., 8 N. L. R. B. 391, 395.

Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110 F. (2d) 29.
Citizen-News Co., 8 N. L. R. B. 997, 1001.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 424, set aside 108 F. (2d) 872 (C. C. A. 3).
Consumer's Power Co., 9 N. L. R. B. 701, 733, 735.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 303.
American Numbering Machine Co., 10 N. L. R. B. 536, 543, 544.
United States Potash Co., 10 N. L. R. B. 1248, 1252, 1253.

See following page references for additional decisions:
Vol. 25—p. 1004
Vol. 26—pp. 227, 491, 975, 1244
Vol. 27—pp. 521, 613, 856
Vol. 28—pp. 442, 1051
Vol. 30—p. 550
Vol. 31—pp. 440, 621, 715, 1166
Vol. 32—pp. 338, 895
Vol. 33—p. 954
Vol. 34—pp. 625, 785, 1095
Vol. 35—pp. 1153, 1262
Vol. 38—p. 838
Vol. 40—pp. 223, 301
Vol. 41—pp. 807, 872, 1408, 1474
Vol. 42—pp. 472, 898
Vol. 43—p. 457
Vol. 45—pp. 214, 936

29 (7)—Advancing membership dues or fees.
New Idea, Inc., 5 N. L. R. B. 381, 386.
Poultry Producers of Central California, 25 N. L. R. B. 347.

30 (8)—Calling or giving notice of meetings.
Republic Steel Corp., 9 N. L. R. B. 219, 325, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.) May 20, 1940.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Todd Shipyards Corp., 5 N. L. R. B. 20, 30, 31.
David Strain Co., Inc., 8 N. L. R. B. 310, 315.
Armour & Co., 9 N. L. R. B. 1295, 1299, 1300.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 521.

See following page references for additional decisions:
Vol. 26—pp. 491, 975, 1244

Vol. 27—p. 521
Vol. 28—p. 1051
Vol. 29—p. 456
Vol. 30—p. 550
Vol. 35—pp. 857, 1262
Vol 38—p. 1154
Vol. 41—pp. 807, 1408, 1474
Vol. 42—pp. 440, 472, 898
Vol. 43—p. 457

(9)—Enlisting or accepting aid of outside persons or organizations.

Ansin Shoe Mfg Co., 1 N. L. R. B. 929, 932, 934.
Remington Rand, Inc., 2 N. L. R. B. 626, 664.
Regal Shirt Co., 4 N. L. R. B. 567, 573, 574.
T. W. Hepler, 7 N. L. R. B. 255, 262.
American Radiator Co., 7 N. L. R. B. 1127, 1138, 1139.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 521–523.

See following page references for additional decisions:

Vol. 25—p. 946
Vol. 26—p. 1
Vol. 29—p. 456
Vol. 37—p. 50
Vol. 40—p. 1058
Vol. 41—p. 807
Vol. 42—p. 377
Vol. 45—p. 551

(10)—Other acts of participation in initiation and formation.

Vol. 21

Demand that incipient labor organization incorporate acquiesced in by the labor organization held to constitute evidence of domination, interference, and support, 1.

Vol. 27

Cooperation in the holding of a meeting for the formation of "inside" organization by arranging for substitute night operators to take the place of the regular night operators so that they could attend the meeting, 613.

Vol. 32

Supervisory employees who attended inside organizational meeting signed petition forming inside organization, 895.

Vol. 43

Assisting in the preparation of a working agreement providing for employee representation and stating that employees had the right to form a union of their own, 1322.

Selling stock—for which full payment was never required—to striking empoyees who had agreed to return to work under a working agreement stating that employees had a right to form a union of their own, 1322.

Vol. 44

Assistance in securing legal services, 920, 1136.

Vol. 45

Posting on bulletin board prior to an election conducted by employee representation committee to determine what type of representation employees desired, a notice drafted by respondent's counsel, placing undue emphasis on a company union as one of the choices available to employees and indicating employer's preference for such an organization, 744.

c. Participation in administration.

41 (1)—Attendance at meetings.

Clinton Cotton Mills, 1 N. L. R. B. 97, 105.
Wheeling Steel Corp., 1 N. L. R. B. 699, 708.
Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 936.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1106.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 62.
Swift & Co., 7 N. L. R. B. 287, 294.
Electric Boat Co., 7 N. L. R. B. 572, 584.
Utah Copper Co., 7 N. L. R. B. 928, 942.
Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1184, 1185.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1227.
David Strain Co., Inc., 8 N. L. R. B. 310, 317.
Harter Corp., 8 N. L. R. B. 391, 396.
Consumer's Power Co., 9 N. L. R. B. 701, 735, 736.
West Kentucky Coal Co., 10 N. L. R. B. 88, 97.
Cudahy Packing Co., 17 N. L. R. B. 302.

See following page references for additional decisions:

Vol. 25—p. 1190
Vol. 26—pp. 447, 1244
Vol. 27—pp. 521, 856
Vol. 29—p. 1025
Vol. 30—p. 212
Vol. 31—p. 440
Vol. 33—p. 1033
Vol. 34—p. 625

Vol. 35—pp. 857, 968, 1262
Vol. 37—pp. 1059, 1090, 1174
Vol. 38—pp. 234, 690
Vol. 39—pp. 992, 1269
Vol. 40—pp. 1058, 1262
Vol. 41—pp. 807, 872, 1428
Vol. 42—pp. 119, 472, 898
Vol. 43—p. 457
Vol. 45—p. 936

2 (2)—Becoming members.

The fact that overseers and second hands of a mill who are directly responsible to the management for production efficiency, labor costs, quality of work, and discipline are members or officers of an inside labor organization, the former having the authority to hire and discharge employees, the latter the authority to recommend such action, prevents the employees in the organization from attempting to engage in concerted activities to advance their own interest without the surveillance and active leadership of management, no matter how friendly the personalities who compose that management may be outside the mill walls. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 109–110, 105. See also:

West Kentucky Coal Co., 10 N. L. R. B. 88, 97, 99.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 248.
Western Felt Works, 10 N. L. R. B. 407, 441.
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1205–1207.
United States Potash Co., 10 N. L. R. B. 1248, 1256.
Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 300.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Highway Trailer Co., 3 N. L. R. B. 591, 606.
S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1106, 1107.
New Idea, Inc., 5 N. L. R. B. 381, 387.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 846.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61, 62.
Swift & Co., 7 N. L. R. B. 269, 281, 282, modified 106 F. (2d) 87 (C. C. A. 10).
Semet-Solvay Co., 7 N. L. R. B. 511, 518.

Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 850.
American Radiator Co., 7 N. L. R. B. 1127, 1140.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 540.
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.
Virginia Ferry Corp., 8 N. L. R. B. 730, 735, modified 101 F. (2d) 103 (C. C. A. 4).
Citizen-News Co., 8 N. L. R. B. 997, 1002.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 424, set aside 108 F. (2d) 872 (C. C. A. 3).
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457.
Newark Rivet Works, 9 R. L. R. B. 498, 500.
Inland Steel Co., 9 N. L. R. B. 783, 807, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).
Kane Cotton Mills Co., 9 N. L. R. B. 952, 969.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 44.

See following page references for additional decisions:
Vol. 25—p. 1004
Vol. 26—pp. 447, 1244
Vol. 31—p. 101
Vol. 33—pp. 954, 1190
Vol. 34—p. 1095
Vol. 35—pp. 857, 968
Vol. 37—pp. 50, 1059, 1090, 1174
Vol. 38—pp. 234, 690
Vol. 39—p. 992
Vol. 40—pp. 541, 1058
Vol. 41—pp. 807, 1078, 1428
Vol. 42—pp. 898, 1218
Vol. 45—pp. 214, 482, 551, 744, 936

43 (3)—Serving as officers or employee representatives.

A committee initiated by and whose membership is composed of superior officers of an employer is not an appropriate agency for representing the employees for the purposes of collective bargaining, and it makes no difference under such circumstances that the men voted for their officers to represent them, for no election can be held to represent their free choice where the candidates chosen are vested with such complete authority over them. *Virginia Ferry*

Corp. v. *N. L. R. B.* 101 F. (2d) 103, 105 (C. C. A. 4), modifying 8 N. L. R. B. 730. See also:

Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 573.
Union Drawn Steel Co., et al., 10 N. L. R. B. 868, 878, modified 109 F. (2d) 587 (C. C. A. 3).
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1205, 1207.
United States Potash Co., 10 N. L. R. B. 1248, 1256.
Clinton Cotton Mills, 1 N. L. R. B. 97, 105.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Highway Trailer Co., 3 N. L. R. B. 591, 607.
S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1106, 1107.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 846.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 225, 227.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 704.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61.
Swift & Co., 7 N. L. R. B. 269, 281, modified 106 F. (2d) 87 (C. C. A. 10).
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 850.
American Radiator Co., 7 N. L. R. B. 1127, 1140.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.
Virginia Ferry Corp., 8 N. L. R. B. 730, 735, modified 101 F. (2d) 103 (C. C. A. 4).
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457, 458.
Newark Rivet Works, 9 N. L. R. B. 498, 509.
Consumer's Power Co., 9 N. L. R. B. 701, 733.
Lane Cotton Mills Co., 9 N. L. R. B. 952, 969.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 44.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 303.
Western Felt Works, 10 N. L. R. B. 407, 441.

See following page references for additional decisions:
Vol. 25—pp. 946, 1004, 1190, *and*

Withdrawal of supervisory employees from the office of vice president of the inside organization after the completion of its organization in his branch office and the establishment of the inside organization as the bargaining agent of

Vol. 42—p. 898
Vol. 43—p. 695

50 (6)—Other acts of participation in administration.

Vol. 27

Suggesting and notarizing powers of attorney to substantiate claims of representation, 1021.

Vol. 29

Advising newly elected governing board of "inside" organization which succeeded employee representation plan as to list of committees "essential" to conduct organization's affairs, 837.

Vol. 32

Supervisory employee who was the motivating force behind the union's formation vested with exclusive control of union's funds, 1020.

Vol. 40

Suggesting that certain employees serve as officers of "inside" union, 301.

Vol. 41

Aiding "inside" union in securing majority designation by suggesting the use and wording of designation cards, 693.

Vol. 42

Interference in selection of employee representatives when agitation for change in bargaining committee was indicated, 119.

3. *Contribution of support.* [See § 274 (as to check-off).]

51 a. In general.

An employer has committed a violation of Section 8 (2) by giving a labor organization free hall rent, collecting dues and assessments from the members on its behalf, distributing notices of election to members in pay envelopes, furnishing publicity matter to be used by the union, and permitting the use of its mimeograph machine and its bulletin board without charge. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143, 144, (C. C. A. 9) modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 575.

Respondent's identification with and participation in meetings of labor organization constitutes support. *Phelps Dodge Corp.*, 15 N. L. R. B. 732.

Vol. 26

A labor organization's use of company facilities, time, and property constitutes company support, although it takes place without the Company's express permission, where

the labor organization's activities are such that they must have been known to the Company's supervisory personnel and where the Company made no effort to forbid such activities or to contradict publicly the inference of company approval arising therefrom, 1059.

Vol. 29

Employer's cooperation with newly formed "inside" organization in activities producing appearance of continuity between said organization and a predecessor employee-representation plant sponsored by employer, particularly in respect to social and welfare benefits associated with employee-representation plan, *held* indicative of support, 837.

Vol. 30

Financial support to organizers of "inside" union to enable them to investigate claims of "outside" union in other plants of respondent, *held* support to "inside" union in view of activity of organizers on behalf of prior company-dominated union and lack of any other reasonable basis for respondent's subsidy, 212.

b. Furnishing materials or facilities.

52 (1)—Office services and facilities.

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 300.
Lion Shoe Co., 2 N. L. R. B. 819, 828, 829, set aside 97 F. (2d) 448 (C. C. A. 1).
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Bradford Dyeing Association (U. S. A.), 4 N. L. R. B. 604, 614, enforcing 310 U. S. 318, reversing 106 F. (2d) 119 (C. C. A. 1).
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1110.
Todd Shipyards Corp., 5 N. L. R. B. 20, 35.
General Shoe Corp., 5 N. L. R. B. 1005, 1013, 1014.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 232.
C. A. Lund Co., 6 N. L. R. B. 423, 429.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 851.
Utah Copper Co., 7 N. L. R. B. 928, 942.
Armour & Co., 8 N. L. R. B. 1100, 1107.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 248.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 524.

The union found to be company-dominated met and had permanent office space in the respondent's recreation hall. The complaining union was denied similar facilities. The respondent defended on the ground that the recreation hall was for the use of employees only. The Board held

that there was illegal support since (1) the claimed rule discriminated against outside organizations; (2) the claimed rule was not enforced; and (3) even if the outside union had not asked for similar facilities, the granting of use thereof constituted support within the meaning of Section 8 (2). *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

See following page references for additional decisions:

Vol. 25—pp. 672, 1190
Vol. 26—pp. 491, 1059
Vol. 27—pp. 856, 1057
Vol. 29—pp. 60, 837
Vol. 31—p. 621
Vol. 32—pp. 338, 1145
Vol. 35—p. 621
Vol. 36—p. 710
Vol. 37—pp. 50, 1090
Vol. 38—p. 1154
Vol. 39—pp. 107, 992, 1269, *and*

Notwithstanding alleged failure of an "inside" organization to realize a profit from the operation of candy vending machines and sale of gasoline and oil on employer's properties, the position of such organization has unlawfully been enhanced by the employer's permitting the use of its properties for such purposes, 992.

Employer's failure to curtail illegal use of facilities for "inside" union activities when such facilities had been granted for the maintenance of a Federal Credit Union—a project of "inside" union—itself legitimate and in no manner a violation of the Act (51 Stat. 5), constitutes unlawful support, 992.

Vol. 41—pp. 807, 1428, 1474
Vol. 42—pp. 377, 457
Vol. 44—p. 959

53 (2)—Meeting place.

Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 935.
Hill Bus Co., Inc., 2 N. L. R. B. 781, 788.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Highway Trailer Co., 3 N. L. R. B. 591, 607, 608.
S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
Todd Shipyards Corp., 5 N. L. R. B. 20, 33, 34.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 630.
G. Sommers & Co., 5 N. L. R. B. 992, 996.

Taylor Truck Co., 6 N. L. R. B. 32, 45.
Trenton Philadelphia Coach Co., 6 N. L. R. B. 112, 117.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 224, 227, 231.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 701, 703.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61.
Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 107, 108.
Marks Brothers Co., 7 N. L. R. B. 156, 161.
Beloit Iron Works, 7 N. L. R. B. 216, 219.
Swift & Co., 7 N. L. R. B. 269, 276, modified 106 F. (2d) (C. C. A. 10).
Swift & Co., 7 N. L. R. B. 287, 294.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Electric Boat Co., 7 N. L. R. B. 572, 584.
Yates-American Machine Co., 7 N. L. R. B. 627, 630.
Heller Brothers Co., 7 N. L. R. B. 646, 650, 651.
Crawford Mfg. Co., 8 N. L. R. B. 1237, 1240.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1249.
Republic Steel Corp., 9 N. L. R. B. 219, 233, 234, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 423, 424, set aside 108 F. (2d) 872 (C. C. A. 3).
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 458.
Lane Cotton Mills Co., 9 N. L. R. B. 952, 969.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 301–303.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 521.
American Numbering Machine Co., 10 N. L. R. B. 536, 543, 544.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 571.
H. J. Heinz Co., 10 N. L. R. B. 963, 971.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1065.
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1207.
United States Potash Co., 10 N. L. R. B. 1248, 1252–1256.
Schwab and Schwab, 10 N. L. R. B. 1455, 1459, 1460.
Utah Copper Co., 7 N. L. R. B. 928, 942.
Wilson & Co. Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182, 1183, 1184.

Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1228.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 252.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358.
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.

Refusal to grant employees' request to permit outside organizer to address them at a meeting in plant's recreation room, although permission was granted to them and also to employees belonging to unaffiliated union to meet there, *held* to constitute interference and also support of latter union. *Westinghouse Electric & Mfg. Co.*, 18 N. L. R. B. 300, 311.

See following page references for additional decisions:

Vol. 25—pp. 347, 557, 672, 771, 1190, 1332, *and*

Conducting meetings on company time and property, *held* not to constitute employer domination and support when respondent had asked the inside organization to discontinue such activities and had not interferred with organizers of rival union who came on property, 347.

Vol. 26—pp. 1, 227, 491, 878, 975, 1059, 1244
Vol. 27—pp. 813, 856, 1021, 1057
Vol. 28—pp. 257
Vol. 29—pp. 60, 673, 1025
Vol. 30—p. 440
Vol. 31—pp. 440, 1179
Vol. 32—p. 863
Vol. 34—p. 896
Vol. 35—pp. 621, 968
Vol. 36—p. 86
Vol. 37—pp. 50, 1090
Vol. 38—pp. 234, 1154
Vol. 39—pp. 107, 1269
Vol. 40—p. 1058
Vol. 41—pp. 807, 872
Vol. 42—pp. 377, 472, 713, 1218
Vol. 43—p. 695
Vol. 44—pp. 404, 920, *and*

Permitting use of premises during organization's critical formative stage, held a means of rendering effective support, 404.

Vol. 45—pp. 214, 551, 744, 1113, 1318

54 (3)—Bulletin boards.

Wheeling Steel Corp., 1 N. L. R. B. 699, 708.
Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 136.
International Harvester Co., 2 N. L. R. B. 310, 323.
Hill Bus Co., Inc., 2 N. L. R. B. 781, 788.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Highway Trailer Company, 3 N. L. R. B. 591, 608.
Indianapolis Glove Co., 5 N. L. R. B. 231, 243.
Taylor Truck Co., 6 N. L. R. B. 32, 45.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 117.
Simplex Wire and Cable Co., 6 N. L. R. B. 251, 255.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 703.
Beloit Iron Works, 7 N. L. R. B. 216, 221.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Electric Boat Co., 7 N. L. R. B. 572, 584.
American Mfg. Concern, 7 N. L. R. B. 753, 761.
Utah Copper Co., 7 N. L. R. B. 928, 942.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1229.
Sunshine Mining Co., 7 N. L. R. B. 1252, 1271, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.
Harlan Fuel Co., 8 N. L. R. B. 25, 34, 36.
David Strain Co., Inc., 8 N. L. R. B. 310, 316.
Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 873, enforced 308 U. S. 241, reversing 101 F. (2d) 841 (C. C. A. 4).
Citizen-News Co., 8 N. L. R. B. 997, 1001.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 247.
Western Felt Works, 10 N. L. R. B. 407, 444.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 524.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 571.
United States Potash Co., 10 N. L. R. B. 1248, 1255.

See following page references for additional decisions:
Vol. 25—pp. 557, 672, 1190
Vol. 26—pp. 1, 88, 491, 878
Vol. 27—p. 1057
Vol. 28—p. 442
Vol. 29—p. 1044
Vol. 30—p. 440
Vol. 31—p. 440
Vol. 32—pp. 338, 595, 863
Vol. 35—p. 621
Vol. 37—p. 1090

Vol. 38—p. 1154
Vol. 39—pp. 107, 1269
Vol. 41—pp. 693, 1078, 1428, 1474
Vol. 42—pp. 440, 457, 472, 1218
Vol. 43—p. 695
Vol. 44—pp. 174, 920
Vol. 45—pp. 214, 744, 1113

155 (4)—Publicity matter.

Wilson & Co., Inc., 7 N. L. R. B. 986, 992, modified 103 F. (2d) 243 (C. C. A. 8).
Pure Oil Co., 8 N. L. R. B. 207, 213, 214.

See following page references for additional decisions:
Vol. 25—p. 672
Vol. 27—p. 1057
Vol. 38—p. 1154
Vol. 39—p. 107
Vol. 41—p. 872

156 (5)—Copies of constitution, bylaws, membership cards or other literature.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
Simplex Wire and Cable Co., 6 N. L. R. B. 251, 254, 255.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 379.
Electric Boat Co., 7 N. L. R. B. 572, 584.
Wilson & Co., Inc., 7 N. L. R. B. 986, 992, 993, modified 103 F. (2d) 243 (C. C. A. 8).

See following page references for additional decisions:
Vol. 25—pp. 557, 1332
Vol. 26—pp. 491, 1244
Vol. 27—pp. 856, 1021, 1057
Vol. 33—p. 1033
Vol. 36—p. 86
Vol. 41—p. 693
Vol. 45—p. 214

157 (6)—Ballots and election material.

American Mfg. Co., 7 N. L. R. B. 375, 379.
Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).
Texas Co., 17 N. L. R. B. 843.

See following page references for additional decisions:
Vol. 25—pp. 946, 1190, 1332
Vol. 26—p. 1059
Vol. 27—p. 1057
Vol. 28

Furnishing pay-roll list for *ex parte* election, 208
Vol. 29—p. 360
Vol. 31—p. 440
Vol. 33—p. 1033
Vol. 36—p. 710
Vol. 39—p. 1269
Vol. 41—p. 872
Vol. 42—p. 377

58 (7)—Distributing notices of activities in pay envelope.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 873, enforced 308 U. S. 241, reversing 101 F. (2d) 841 (C. C. A. 4).

59 (8)—Legal services.
A finding of the Board that an employer had fostered a labor organization of its employees which was formed during the course of a strike is justified where the same attorney who gave assistance to the union also represented the employer in injunction proceedings against the strikers and in proceedings before the Board, for the employer had it within its power to show its connection with the attorney and its silence in the face of his assistance to the union is significant.
N. L. R. B. v. *Remington Rand, Inc.*, 94 F. (2d) 862, 868, 869 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.
Representation of a labor organization by an attorney for the employer in proceedings before the Board, in and of itself raises the inference that the labor organization is but the creature of the employer. *Kiddie Kover Mfg. Co.*, 6 N. L. R. B. 355, 364, enforced 105 F. (2d) 179 (C. C. A. 6).
The Act in clear terms prohibits an employer from giving financial or other support to a labor organization and where an employer has secured an attorney for, and paid the cost of legal services rendered to, an inside labor organization in securing an injunction against an outside labor organization which had called a strike, an attempted justification on the ground of necessity in providing protection for members of the inside labor organization cannot absolve the employer of its violation of the Act's provisions. *Industrial Rayon Corp.*, 7 N. L. R. B. 878, 890. See also:
Wheeling Steel Corp., 1 N. L. R. B. 699, 709.
Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 135.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 557.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforcing 104 F. (2d) 1017 (C. C. A. 2).
Bear & Wilde Co., et al., 9 N. L. R. B. 420, 424, set aside 108 F. (2d) 872 (C. C. A. 3).

See following page references for additional decisions:
Vol. 25—p. 672
Vol. 27—p. 856
Vol. 29—p. 456
Vol. 43—p. 695
Vol. 45—p. 987

70 (9)—Other materials or facilities.

Vol. 29

Audit of membership in dominated labor organization in a manner to insure the auditor's approval of all membership cards submitted, 456.

Granting permission to inside union to conduct election on plant premises.

Vol. 32

Auditor of employer audited financial records of "Plan," 1145.

Vol. 39

Donation of truck for transportation purposes on occasion of annual picnic given by union, 107.

Vol. 41

Permitting "inside" union to attach prepared ballots to employee's time cards, 693.

Vol. 44

Furnishing detailed information as to employer's operations and personnel, 1, 404.

c. Permitting employees to engage in activities on company time.

71 (1)—Solicitation of members; circulation of petitions or other literature.

The fact that a plant superintendent knew that employees were circulating membership cards for an inside labor organization during working hours and that he took no steps to prevent it, does not, as a matter of law, amount to domination or interference by the employer. *Ballston-Stillwater Knitting Co.* v. *N. L. R. B.*, 98 F. (2d) 758, 762 (C. C. A. 2), setting aside 6 N. L. R. B. 470.

It is not significant in itself that solicitation by members of an inside organization occurred during working hours, but rather the fact that the solicitation was with the

express or implied approval of the employer, and therefore a failure of the Board to find that an outside labor organization had also solicited members during working hours is immaterial in absence of a showing that any supervisory employee knew or approved of such solicitation which, if it occurred at all, was negligible as compared to similar activities by members of the inside organization. *H. J. Heinz Co.*, 10 N. L. R. B. 963, 970, 972, 973, 975.

Where an employer has in the past indicated its hostility to labor organizations in general, its tacit acquiescence in the use of its time and property by certain employees to solicit members for a labor organization which they had initiated amounts to a contribution of support to that organization. *Revolution Cotton Mills*, 9 N. L. R. B. 468, 473. See also:

Clinton Cotton Mills, 1 N. L. R. B. 97, 109.
Indianapolis Clove Co., 5 N. L. R. B. 231, 241, 243.
New Idea, Inc., 5 N. L. R. B. 381, 387.
Ingraham Mfg. Co., 5 N. L. R. B. 908, 920.
G. Sommers & Co., 5 N. L. R. B. 992, 995, 996.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 116.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216–230.
Empire Worsted Mills, Inc., 6 N. L. R. B. 513, 517.
Beloit Iron Works, 7 N. L. R. B. 216, 220.
Swift & Co., 7 N. L. R. B. 269, 277, 278, modified 106 F. (2d) 87 (C. C. A. 10).
American Mfg. Co., Inc., 7 N. L. R. B. 375, 379.
Yates-American Machine Co., 7 N. L. R. B. 627, 632.
Heller Brothers Co., 7 N. L. R. B. 646, 652.
Hoover Co., 6 N. L. R. B. 688, 692.
Burnside Steel Foundry Co., 7 N. L. R. B. 714, 725, 726.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 851.
American Radiator Co., 7 N. L. R. B. 1127, 1134.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1185.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1227.
Harlan Fuel Co., 8 N. L. R. B. 25, 33.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 248–252.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 541.
Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110 F. (2d) 29.
Armour & Co., 8 N. L. R. B. 1100, 1108.

Republic Steel Corp., 9 N. L. R. B. 219, 231, 234, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 425, setting aside 108 F. (2d) 872 (C. C. A. 3).
Harnishfeger Corp., 9 N. L. R. B. 676, 687, 688.
Armour & Co., 9 N. L. R. B. 1295, 1299, 1300.
West Kentucky Coal Co., 10 N. L. R. B. 88, 103.
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 251.
Western Felt Works, 10 N. L. R. B. 407, 441.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 571.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1132, 1133, modifying 104 F. (2d) 49 (C. C. A. 8).
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1204.

Permitting employee representatives in an illegal Employee Representation Plan to engage in the solicitation of members in a newly formed labor organization, the solicitation taking place on company time and property, *held* to be factors showing that the latter organization was a successor to the illegal Plan. *Hood Rubber Co.*, 14 N. L. R. B. 16.

Where respondent allowed solicitation of membership and circulation of petition on plant during working hours, *held* to be support in violation of 8 (2). *Foote Bros. Gear and Machine Corp.*, 14 N. L. R. B. 1045.

Support of labor organization is evidenced by employer permitting circulation of petitions and solicitation of membership in plant during working hours. *Cudahy Packing Co.*, 17 N. L. R. B. 302.

See following page references for additional decisions:
Vol. 25—pp. 193, 557, 946, 1004, 1126, 1190
Vol. 26—pp. 227, 447, 491, 662, 878
Vol. 27—pp. 521, 613, 757, 813
Vol. 28—p. 1051
Vol. 29—pp. 360, 456, 673, 1044, *and*

Where employer permits "inside" organization which succeeded employee-representation plan to conduct intensive membership drive on company premises during working hours, proof that bona fide organization enjoyed similar privileges upon launching its organizational drive several months later, after inside organization had secured exclu-

sive recognition and contract, does not refute inference that employer assisted inside organization by acquiescing in and apparently sponsoring its membership drive, 837.

Vol. 30—pp. 700, 820
Vol. 31—pp. 101, 440, 621
Vol. 32—p. 895
Vol. 34—p. 785
Vol. 35—p. 1262
Vol. 36—p. 710
Vol. 37—pp. 50, 1090
Vol. 38—pp. 234, 690
Vol. 39—pp. 107, 992, 1269
Vol. 40—p. 1252
Vol. 41—pp. 693, 807, 1428, 1474
Vol. 42—pp. 377, 440, 457, 898, 1218
Vol. 43—pp. 457, 613
Vol. 44—pp. 1, 959, 1136
Vol. 45—pp. 241, 744, 977, 987, 1318

72 (2)—Collection of dues.

Swift & Co., 7 N. L. R. B. 269, 278, modified 107 F. (2d) 87 (C. C. A. 10).
Armour & Co., 8 N. L. R. B. 1100, 1108.
Republic Steel Corp., 9 N. L. R. B. 219, 234, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 425, set aside 108 F. (2d) 872 (C. C. A. 3).
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 251.
Western Felt Works, 10 N. L. R. B. 407, 441.

See following page references for additional decisions:

Vol. 26—p. 447
Vol. 27—p. 813
Vol. 28—pp. 456, 1044
Vol. 30—p. 700
Vol. 31—p. 621
Vol. 32—pp. 595, 863
Vol. 34—p. 625
Vol. 36—p. 710
Vol. 37—pp. 50, 1090
Vol. 38—p. 690
Vol. 39—pp. 107, 1269

Support to Employee Representation Plan shown by the fact that the superintendent of the department made available the facilities of his office during business to persons engaged in activities in behalf of the Plan, 1020.
Vol. 44—pp. 174, 404, 959
Vol. 45—pp. 214, 936, 987, 1113, 1318

175 (5)—Election of officers or other form of balloting.
See following page references for decisions:
Vol. 29
Election of officers on company time and property, 360.
Vol. 36
Permitting annual elections of employee representatives to be held on Company's property during working hours both before and after effective date of Act, 86.
Vol. 39
Permitting "inside" union election on company time and property, 1269.
Vol. 41
Election on company time and premises, 693, 1428.
Vol. 42
Permitting organization to hold its annual elections on company time and property, 713.
Vol. 44
Permitting organization to conduct election on company time and property, 959, 1234.
Vol 45
Elections conducted on company time and property, 214.

180 (6)—Other activities.
Vol. 27
Allowance to employees of time off to prepare constitution and bylaws, 856.
Vol. 44
Permitting officers of "inside" organization to leave the plant during working hours to attend to affairs of the organization, 1136.

d. Financial contributions or assumption of expenses.

181 (1)—Assumption of some or all of organization's expenses.
An employer has contributed support to a labor organization where the latter had no dues and such expenses as were necessary for ballots at employee elections and for other necessary matters in connection with the organization were borne by the company which financed picnics initiated by the organization and for which it claimed credit, and these contributions may properly be treated as within the in-

hibition of the statute and as having the effect of promoting this organization against any other which the employees might want to form or join. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N. L. R. B. 986.

An employer has interfered with the formation and administration of a labor organization and contributed support thereto where: (1) there was a pronounced diversity among the employees as to joining or not joining the outside labor organization; (2) although the company's testimony is that numbers of the men asked the manager to work out a plan there is substantial testimony that the employee representation plan which was inaugurated was drawn up and presented by the company; (3) the plan involved no dues and the expenses of the organization were borne by the company; and (4) the company financed picnics initiated by the organization and for which it claimed credit. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N. L. R. B. 986. See also:

International Harvester Co., 2 N. L. R. B. 310, 339.

Utah Copper Co., 7 N. L. R. B. 928, 942.

Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).

Republic Steel Corp., 9 N. L. R. B. 219, 229, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

West Kentucky Coal Co., 10 N. L. R. B. 88, 98.

Cudahy Packing Co., 17 N. L. R. B. 302.

See following page references for additional decisions:

Vol. 25—pp. 557, 1190
Vol. 26—pp. 1059, 1244
Vol. 27—p. 1057
Vol. 31—pp. 440, 715
Vol. 32—p. 1145
Vol. 34—p. 896
Vol. 36—p. 1
Vol. 37—p. 50
Vol. 38—p. 690
Vol. 39—p. 992
Vol. 44—p. 920
Vol. 45—p. 482

82 (2)—Financial contributions to organization.

An employer's contribution of $5,000 to a labor organization found to have been dominated by the employer, falls directly within the proscription of the Act, nor is such a contribution justified on the ground that it was comparable to granting employees an increase in wages, and thus promoting friendly relations. *The Heller Brothers Co. of Newcomerstown*, 7 N. L. R. B. 646, 655. See also:

Wheeling Steel Corp., 1 N. L. R. B. 699, 709.
Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 933.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Industrial Rayon Corp., 7 N. L. R. B. 878, 889.
West Kentucky Coal Co., 10 N. L. R. B. 88, 96, 97.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 246.

Contributions by an organization of employees found not to be a labor organization to another organization of employees found to be a company-dominated labor organization, *held* to be evidence of employer domination of labor organization where the first organization received more than 90 percent of its income from the operation of a retail store and related business activities on the employer's property and in connection with which the employer furnished gratuitously all rent, power, heat, light, electricity, clerical and other assistance, and accounting facilities required in the conduct of the enterprise. *Servel Inc.*, 11 N. L. R. B. 1295.

See following page references for additional decisions:

Vol. 25—p. 672
Vol. 26—p. 1
Vol. 27—pp. 813, 856
Vol. 29

Profits from cigarette vending machine turned over to organization, 60.

Offering to contribute money to "inside" union, 673.

Vol. 30—p. 212
Vol. 32—p. 1145
Vol. 35—p. 621
Vol. 38

Giving money to leading organizer of "inside" union to further organization, 234.

Vol. 40

Contribution of monies by member of law firm retained by employer, 1058.

Vol. 41

An employer has unlawfully assisted and supported a "successor" organization where during its formative stage it consented to a check-off, and accordingly thereafter checked off dues and initiation fees on behalf of the organization though no provision for such check-off was embodied in the contract between the organization and itself, 1428.

Vol. 42

Matching employees' contributions to "welfare fund," 1218.

Vol. 43

Contributing to employee association's sick and death benefit fund, 1020.

Vol. 44

Paying organization sum as dues pursuant to check-off provision, although employer had not at that time deducted the entire amount from wages of employees, 404.

Vol. 45—pp. 214, 987

33 (3)—Compensation for time spent in forming or carrying on activities of organization.

The fact that employees were permitted to leave the plant to attend a meeting of an inside labor organization and were not docked in pay is not sufficient evidence of domination or interference. *Ballston-Stillwater Knitting Co.* v. N. L. R. B., 98 F. (2d) 758, 761 (C. C. A. 2), setting aside 6 N. L. R. B. 470. See also:

Wheeling Steel Corp., 1 N. L. R. B. 699, 708, 709.
International Harvester Co., 2 N. L. R. B. 310, 322, 323, 338.
Maryland Distillery, Inc., 3 N. L. R. B. 177, 184.
Todd Shipyards Corp., 5 N. L. R. B. 20, 32, 34.
Indianapolis Glove Co., 5 N. L. R. B. 231, 243.
Altorfer Brothers Co., 5 N. L. R. B. 713, 720, 721, 722.
General Shoe Corp., 5 N. L. R. B. 1005, 1009, 1011.
Taylor Trunk Co., 6 N. L. R. B. 32, 43.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 224, 227.
Hoover Co., 6 N. L. R. B. 668, 692, 693, 694.
Beloit Iron Works, 7 N. L. R. B. 216, 219.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Electric Boat Co., 7 N. L. R. B. 572, 584.
Heller Brothers Co., 7 N. L. R. B. 646, 651.
American Mfg. Concern, 7 N. L. R. B. 753, 761.
Grace Co., 7 N. L. R. B. 766, 773.
Utah Copper Co., 7 N. L. R. B. 928, 942.
Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).

American Radiator Co., 7 N. L. R. B. 1127, 1131.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182, 1184.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1228.
David Strain Co., Inc., 8 N. L. R. B. 310, 314, 315.
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358.
Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 871, enforced 308 U. S. 241, reversing 101 F. (2d) 841 (C. C. A. 4).
Armour & Co., 8 N. L. R. B. 1100, 1106, 1107.
Republic Steel Corp., 9 N. L. R. B. 219, 229, 231, 235, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Lane Cotton Mills Co., 9 N. L. R. B. 952, 969.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 302.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 524, 525.
H. J. Heinz Co., 10 N. L. R. B. 963, 972.
Schwab and Schwab, 10 N. L. R. B. 1455, 1460.

See following page references for additional decisions:
Vol. 25—pp. 557, 1190, 1332
Vol. 26—pp. 491, 1059, 1244
Vol. 28—p. 1051
Vol. 29

Compensation for time spent in forming or carrying on activities of organization, 456.

Furnishing stenographic service, meals, and wages to employee delegates at convention of unaffiliated unions formed in various plants of employer's system, *held* acts of support, 837.

Vol. 30—p. 700
Vol. 31—p. 621
Vol. 32—p. 1145
Vol. 34—pp. 625, 896
Vol. 35—pp. 605, 621
Vol. 36—pp. 86, 710
Vol. 37—p. 50
Vol. 38—pp. 234, 1154
Vol. 39

Respondent's contention that pursuant to contract it was justified in paying an employee for acting as representative of union on ground such practice conforms to usage in automobile industry, *held* without merit, since these contracts, which are found in plants much larger than that of respond-

ent, limits payment to representatives only to extent of handling grievances during a limited number of working hours, whereas the respondent neither regulates this employee's working hours nor disposition of his time and not only paid the employee for the handling of grievances but also for his time spent in handling internal affairs of "inside" union in the absence of any contract provision therefor, 107.

Vol. 40

While contract with "inside" union provided that union would reimburse employer for time spent by employees attending vending machines during working hours, no showing was made that it had in fact reimbursed employer who had made no deductions from their pay for these absences, 541.

Vol. 41 — pp. 693, 807, 872, 1078, 1428
Vol. 42 — pp. 377, 472
Vol. 44 — pp. 959, 1136
Vol. 45 — p. 482

84 (4)—Donation or partial donation of recreational or other facilities.

Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 136.
Heller Brothers Co., 7 N. L. R. B. 646, 652.

See following page references for additional decisions:

Vol. 25 — p. 1332
Vol. 26 — p. 1059
Vol. 27 — p. 813
Vol. 29

Bread and cooking facilities donated for lunch served after meetings, 60.

Vol. 34

Profit from candy machine on Company's premises, 625.

Vol. 39

Permitting operation of plant merchandising vending machines from which union received the profits.

Monies given to and derived by an "inside" organization with the employer's aid from the sale of candy, gasoline, and other articles, allegedly for services rendered in handling welfare problems constitutes support even if, as alleged but found not to be so, monies were used by the organization entirely for a welfare program, 992.

Granting soft-drink concession privileges and arranging their purchase from a company in which an officer of respondent had an interest in order to lower the cost thereof to pro-

Vol. 39

Sharing expenses with "inside" union in joint distribution of Christmas packages. 992.

Vol. 40

Payment for luncheons at regular luncheon meetings between dominated bargaining committee and employer, 1037.

Vol. 41

Permitting arrangement with Employees' Exchange by which "inside" union was financed, 872.

Lavish contributions to "inside" union's social affairs and joint participation in the maintenance of union's hospitalization and loan funds, 1078.

Defraying part of cost of annual employee picnic sponsored by union, 1428.

Vol. 42

Permitting organization to sell raffle and dance tickets on company property during working hours, 713.

Vol. 43

Purchasing approximately one-third to more than one-half of the total sale of tickets to outings given by the employee association which except for 1 year spelled the difference between profit and loss for each outing, 695.

Vol. 44

Contributing to social events, 959.

e. Creating impression that benefits have been derived through efforts of organization.

91 (1)—Wage increases, reduction of hours, seniority provisions, safety measures, and other matters relating to terms or conditions of employment.

The action of an employer in giving undue credit for social, recreational, and employment benefits received by employees to collective bargaining of a labor organization which it has been found to have dominated, thus associating in the employees' minds things intrinsically beneficial to them with a system of collective bargaining which in reality plays little or no part in creating such benefits, constitutes "restraint" upon the employees to adhere to, and "support" for, such labor organization. *International Harvester Co.*, 2 N. L. R. B. 310, 329–331, 354. See also:

S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 556, 557.

Marks Brothers Co., 7 N. L. R. B. 156, 162, 164.
Beloit Iron Works, 7 N. L. R. B. 216, 221.
Wilson & Co., Inc., 7 N. L. R. B. 986, 994, modified 103 F. (2d) 243 (C. C. A. 8).
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1184.
Republic Steel Corp., 9 N. L. R. B. 219, 230, 231, modified 107 F. (2d) (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
West Kentucky Coal Co., 10 N. L. R. B. 88, 99.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 248.
Western Felt Works, 10 N. L. R. B. 407, 441, 444.
Sparks-Withington Co., 21 N. L. R. B. 1.

See following page references for additional decisions:
Vol. 25—p. 1190
Vol. 26—pp. 491, 1059
Vol. 29—pp. 60, 360
Vol. 30

Previous concessions granted by unilateral action of employer, incorporated into contract, 700.

Wage increases granted ostensibly as the result of collective bargaining, 820.
Vol. 37—p. 1090
Vol. 38—p. 838
Vol. 39—p. 992
Vol. 40—pp. 223, 1037
Vol. 42

Attributing announced wage increase to bargaining efforts of organization, 713.
Vol. 44

Permitting organization to receive credit for wage increases, 1, 1136.
Vol. 45

Posting notice of material concessions granted organization, 214.

92 (2)—Social and recreational benefits.

An employer has contributed support to a labor organization where the latter had no dues and such expenses as were necessary for ballots at employee elections and for other necessary matters in connection with the organization were borne by the company which financed picnics initiated by the organization and for which it claimed credit, and these contributions may properly be treated as within the inhibition of the statute and as having the effect of promoting

this organization, against any other which the employees might want to form or join. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N. L. R. B. 986.

See following page references for additional decisions:
Vol. 32—p. 595
Vol. 41—p. 1078

93 (3)—Insurance benefits.
Electric Boat Co., 7 N. L. R. B. 572, 584.
Industrial Rayon Corp., 7 N. L. R. B. 878, 894.

See following page references for additional decisions:
Vol. 25—p. 672
Vol. 26—p. 1059
Vol. 31—p. 1179
Vol. 43

Monthly per capita contributions to a benefit association (insurance) which was administered by the employee representation plan with the consent of the respondent and was compulsory for all employees, 545.

00 (4)—Other benefits.
Vol. 43

Specific suggestions from the employee representatives were invited by management for plant improvements so that it might appear to the representatives' credit that the action had originated with them, 1020.

4. *Interference, restraint, and coercion constituting acts of domination.*

01 a. In general.

Absence of interference, restraint, and coercion, refusal to bargain with alleged company-dominated union, and willingness to bargain with complaining union given weight in decision to dismiss allegations alleging a violation of Section 8 (2). *Federal Screw Works*, 21 N. L. R. B. 100.

02 b. Espionage and surveillance.

See following page references for decisions:
Vol. 25—p. 1190
Vol. 27—p. 521
Vol. 35—p. 1153
Vol. 38—pp. 234, 1154
Vol. 39 — p. 107
Vol. 42 — p. 377
Vol. 43 — p. 457

§ 203 c. Bribery.

See following page references for decisions:

Vol. 31 — p. 994

Vol. 38 — p. 1154

§ 204 d. Violence or incitement to violence

See following page references for decisions:

Vol. 35 — pp. 968, 1153

§ 205 e. Employment of professional strikebreakers, "missionaries," "nobles," and undercover men.

§ 206 f. Formation of vigilante groups and similar strikebreaking agencies.

Employer used local citizens to scotch attempt of employees to form union and later to join affiliated union. *Hartland Tanning Co., Inc.*, 22 N. L. R. B. 25.

See following page references for additional decisions:

Vol. 25 — p. 1004

Vol. 30

Support of anti-outside-union vigilante movement, 700.

Vol. 43

Organization of a military order of command with membership open to plant employees willing to support the Employee Representation Plan, which met and advertised its meetings by signs and handbills and solicited members on company property, and which appeared as an organizational drive in the industry commenced, 1020.

§ 207 g. Accepting or enlisting aid of outside persons, organizations. *T. W. Hepler*, 7 N. L. R. B. 255, 262.

See following page references for additional decisions:

Vol. 31—p. 621

Vol. 37—p. 50

Vol. 40—p. 1262

Vol. 42—p. 119

§ 208 h. Anti-union statements.

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 300.

Wheeling Steel Corp., 1 N. L. R. B. 699, 708.

Hill Bus Co., Inc., 2 N. L. R. B. 781, 786.

Maryland Distillery Co., Inc., 3 N. L. R. B. 176, 184.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 554.

Ingraham Mfg. Co., 5 N. L. R. B. 908, 992.

G. Sommers & Co., 5 N. L. R. B. 992, 996.

Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 117.

M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 231.

Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 107, 108.

Swift & Co., 7 N. L. R. B. 269, 281, modified 106 F. (2d) 87 (C. C. A. 10).
Yates-American Machine Co., 7 N. L. R. B. 627, 630, 631, 632.
Heller Brothers Co., 7 N. L. R. B. 646, 650, 653.
American Radiator Co., 7 N. L. R. B. 1127, 1134, 1138, 1139.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182, 1183.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1225, 1227.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 249, 250.
David Strain Co., Inc., 8 N. L. R. B. 310, 317, 318.
Harter Corp., 8 N. L. R. B. 391, 396, 397.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 541.
Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110 F. (2d) 29.
Virginia Ferry Corp., 8 N. L. R. B. 730, 735, 736, modified 101 F. (2d) 103 (C. C. A. 4).
Citizen-News Co., 8 N. L. R. B. 997, 1001, 1002.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248.
Harnishfeger Corp., 9 N. L. R. B. 676, 688.
Consumer's Power Co., 9 N. L. R. B. 701, 723, 730, 731.
Inland Steel Co., 9 N. L. R. B. 783, 808, 812, 813, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).
Lane Cotton Mills Co., 9 N. L. R. B. 952, 970.
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 251, 252.
Western Felt Works, 10 N. L. R. B. 407, 442, 443.
H. J. Heinz Co., 10 N. L. R. B. 963, 972, 973.
United States Potash Co., 10 N. L. R. B. 1248, 1257.
Schwab and Schwab, 10 N. L. R. B. 1455, 1460.
Dow Chemical Co., 13 N. L. R. B. 993.
California Walnut Growers Assn., 18 N. L. R. B. 493.

See following page references for additional decisions:
Vol. 25—pp. 347, 946, 1004, 1332
Vol. 26—pp. 227, 447, 679, 878, 1059
Vol. 27—pp. 521, 613, 757, 813, 1057
Vol. 28—p. 208
Vol. 29—pp. 360, 456, 1025, 1044
Vol. 30—pp. 212, 550, 820
Vol. 31—pp. 101, 621

209 i. Declarations of union preference.

Employer held to have dominated inside union by confining" the desires of the employees into and within the channel of an inside union." *John Barnes Co.*, 12 N. L. R. B. 1028.

See following page references for additional decisions:

Marked disparity in treatment of rival unions by respondent shown in its refusal to investigate reasonable charges that one union was violating respondent's rules while warning other union against any violation, 227.

Support found in hostility expressed to outside organization and membership therein, 895.

Employer while prohibiting "outside" union activity under penalty of discharge failed to issue any ban against like activities by "inside" union, 1262.

Voicing approval to inside union of their "loyalty," 234.

Calling a meeting of all employees, at which supervisory employees made derogatory, coercive, and partisan statements against outside union and then "suggested" that employees vote on question of outside or inside union, 1154.

Refusing to grant similar "members only" recognition to outside union, 1154.

Vol. 39

Counseling "inside" union to do "something dramatic almost daily" and suggesting that it publicize its accomplishments, 992.

Vol. 40

Statements made by supervisory personnel in favor of "inside" union as compared with derogatory remarks concerning "outside" union, 541.

Granting concessions to "inside" organization while refusing to make any concessions to bona fide statutory representative, 1037.

Urging employees to attend anti-union meetings and to heed anti-union counsels of businessmen and civic organizations, 1262.

Vol. 41

Statements of management representatives reflecting employer antagonism to national labor organizations and approval of an "inside" union, 807.

Encouraging employees to become or remain members of successor "inside" union, 807.

Statement disapproving "outside" unions, 872.

Employer's expressions of preference for an "inside" organization, in light of circumstances in which they were uttered, *held* to have been more than mere statements of opinion, and to have been part of a total program designed to aid the "inside" organization and hinder "outside" organization and thereby to have interfered with and restrained employees in their free choice of bargaining representatives, 1474.

Vol. 42—pp. 119, 377.

Vol. 43

Statements showing hostility to "outside" union and preference for "inside" union, 1322.

Vol. 44

Addressing employees on company time and property, expressing a preference for support union, 174.

Vol. 45—pp. 214, 241, 1318

j. Distorted or misleading explanation of rights under the Act.

See following page references for decisions:

Vol. 25—p. 1190

Vol. 28—p. 208

Vol. 31—p. 440

Vol. 42

Informing employees that it was a violation of the Act to wear union buttons in plant, 119.

211 k. Distribution of loyalty pledges or anti-union petitions or literature.

Simplex Wire and Cable Co., 6 N. L. R. B. 251, 255.
Pure Oil Co., 8 N. L. R. B. 207, 213.
Revolution Cotton Mills, 9 N. L. R. B. 468, 475, 476.
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1204.

See following page references for additional decisions:

Vol. 31—pp. 621, 994
Vol. 43

Preparing loyalty petition as organization drive in the industry was begun, 1020.

212 l. Interrogation concerning union membership.

David Strain Co., Inc., 8 N. L. R. B. 310, 316.
Harter Corp., 8 N. L. R. B. 391, 397.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248.
Newark Rivet Works, 9 N. L. R. B. 498, 509.
Inland Steel Co., 9 N. L. R. B. 783, 811, 813, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).
Union Drawn Steel Co., et al., 10 N. L. R. B. 868, 879, modified 109 F. (2d) 587 (C. C. A. 3).

See following page references for additional decisions:

Vol. 26—p. 447
Vol. 27—p. 856
Vol. 29—p. 1044
Vol. 30—p. 550
Vol. 31—pp. 101, 994
Vol. 35—p. 968
Vol. 38—pp. 838, 1154
Vol. 40

Questioning employees about an "outside" union petition, 223.

Questioning employees concerning organizational meetings of "outside" union, 1262.

Vol. 41—pp. 807, 1474
Vol. 42—p. 377

213 m. Interference with right of employees to bargain collectively.

See following page references for decisions:

Vol. 28—p. 208
Vol. 29—p. 360

Vol. 32

Support given to "inside" organization by employer's unlawful refusal to bargain collectively with outside union, 895.

Vol. 40—p. 223

Vol. 43—p. 1020

4 n. Threatened or actual removal, cessation, or change of operations.

The statement of an officer of an employer at a meeting of employees following a strike to the effect that if the people in the city where the plant was located did not want to work the employer would move the plant elsewhere, and the declaration of another official that the employees did not need people from another city to organize a labor organization are indicative of a mental attitude and may be considered in connection with subsequent acts in a review of an order of the Board requiring an employer to disestablish a labor organization found to be employer dominated. *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 52 (C. C. A. 8), remanding 9 N. L. R. B. 1073.

See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 301.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 554.

Regal Shirt Co., 4 N. L. R. B. 567, 572.

Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1105.

Grace Co., 7 N. L. R. B. 766, 771.

American Radiator Co., 7 N. L. R. B. 1127, 1134, 1135.

Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248.

Republic Steel Corp., 9 N. L. R. B. 219, 233, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

Inland Steel Co., 9 N. L. R. B. 783, 812, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1131, modifying 104 F. (2d) 49 (C. C. A. 8).

See following page references for additional decisions:

Vol. 25—p. 347

Vol. 28—p. 208

Vol. 29—pp. 60, 360, 456, 1025, 1044

Vol. 31—pp. 101, 621, 994

Vol. 34—p. 625

Vol. 35—p. 968

Vol. 37—p. 1174

Vol. 40

Threatening that unionization might result in curtailed production and a decrease in personnel, 223.

Vol. 42—p. 377

Vol. 44

Threatening cessation of operations in the event employees joined "outside" organization, 1234.

15 o. Threatened or actual eviction from company-owned property.

Vol. 44

Barring "outside" union organizers from property at request of "inside" union members, 1234.

16 p. Conducting, supervising, or interfering with election.

A committee initiated by and whose membership is composed of superior officers of an employer is not an appropriate agency for representing the employees for the purposes of collective bargaining, and it makes no difference under such circumstances that the men voted for their officers to represent them upon being given tickets on which only the names of the officers appeared although the tickets also contained a blank space in which the voter could write any name he wished, for no election can be held to represent their free choice where the candidates chosen are vested with such complete authority over them. *Virginia Ferry Corp.* v. *N. L. R. B.*, 101 F. (2d) 103, 105 (C. C. A. 4), modifying 8 N. L. R. B. 730.

The fact that a labor organization, though not initiated, was fostered and financially and otherwise supported by an employer, is sufficient to sustain a finding of the Board as to a violation of Section 8 (2) where the organization was formed after a strike caused by the refusal of the employer to bargain with a legitimate organization which had represented a majority of the employees but which had lost its majority by reason of a poll conducted by the employer in such a manner as to reveal the identity and the choice of the participating employees and induce them to express a preference for bargaining directly with the management rather than with the legitimate labor organization. *N. L. R. B.* v. *Colten & Colman, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 182 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 299.

Highway Trailer Co., 3 N. L. R. B. 591, 607.

S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19, 21.
Jacobs Bros, Co., Inc., 5 N. L. R. B. 620, 629.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 379.
Grace Co., 7 N. L. R. B. 766, 770.
Citizen-News Co., 8 N. L. R. B. 997, 1000, 1002.
Armour & Co., 8 N. L. R. B. 1100, 1107.

An election conducted by an employer not in an attempt to aid the inside union or to undermine outside union but in an honest endeavor to ascertain the desires of its employees for representation between the two unions does not constitute a violation of either Section 8 (1) or 8 (2) of the Act despite refusal of the outside union to participate therein and refusal of the Board's agents to participate on ground that charges had been filed by outside union alleging employer's domination of inside union. *J. Wiss & Sons Company*, 12 N. L. R. B. 601, 614, 615.

See following page references for additional decisions:
Vol. 25—pp. 1190,1332
Vol. 27—pp. 757, 856
Vol. 31—p. 440
Vol. 32—pp. 863, 1145
Vol. 37—p. 1090
Vol. 38

Interference with consent election to insure defeat of "outside" union by conniving with an employee to garner votes for "inside" union, 234.

Interference with consent election by writing speech delivered by an employee at "pep meeting" a few hours before the election and by otherwise expressing support for "inside" union, 838.
Vol. 39

By requiring each employee to sign card designating his bargaining representative and thereby providing itself with information as to the attitude of employees toward a successor "inside" organization, 1269.
Vol. 41—p. 807
Vol. 42—pp. 377, 440, 472
Vol. 43—p. 1020
Vol. 45

Supervisory employees' conducting elections among their workers to choose representatives to "Grievance Committee," 551.

217 q. Inducing employees not to become or remain members of labor organization by wage increase or by stock purchase plan or other device.

See following page references for decisions:

Vol. 26—p. 679
Vol. 28—p. 60
Vol. 37

Treating employees to a dinner and advising and urging them not to join or remain members of "outside" union, 1090.

Vol. 38—p. 234
Vol. 39

Promising an employee a wage increase if he joined "inside" union or just quit "outside" union, 992.

Vol. 40—p. 1262
Vol. 41

Requesting employees who were observed wearing "outside" union buttons to sign a petition opposing "outside" union, 807.

Procuring written resignations from "outside" union, 807.

Vol. 45

Urging employees to renounce "outside" union and join "inside" group, 146.

218 r. Contracts interfering with or restraining rights of employees. (*See* §§ 481–500, 769, 792.)

See following page references for decisions:

Vol. 38—p. 1245
Vol. 39—p. 1269

s. Discrediting labor organization by unfounded accusations or other means. (See § 208.)

230 t. Other acts of interference, restraint, or coercion.

See following page references for decisions:

Vol. 29

Carrying on open warfare against "outside" organization in connection with campaign for the enactment of a State Act (Catalin Act) forbidding stranger picketing and instructing employees as to the position they were to take in the matter, 60.

Vol. 45

Enlisting aid of an employee to persuade prospective employees to join the "inside" union, 146.

u. Actual, threatened, or purported discharge or other interference with hire, tenure, terms or conditions of employment. (*See* §§ 231–240.)

5. *Discharge or other interference or discrimination in regard to terms or conditions of employment.*

a. In general.

A discriminatory discharge may just as well be directed toward *domination* of a labor organization as toward a dissolution or driving out of a labor organization, and where an employer had discharged both employees who belonged to an outside labor organization and those who belonged to an organization found to have been dominated by the employer, but which showed signs of becoming independent of the employer's influence, thereby driving the former organization out or underground but permitting the latter to continue to function with the facilities of the employer, the discharges were clearly motivated by a desire to destroy the outside labor organization and to destroy the militancy and independence of the employer-dominated labor organization, but not the latter organization itself, which was to remain but was to be subservient. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 495 (C. C. A. 9) enforcing 3 N. L. R. B. 140.

b. Because of membership or activity in outside labor organization.

An employer has furnished support and comfort to a particular group of its employees in violation of Section 8 (2) by pursuing a policy of discharging those who refuse to join that group or who join a rival obnoxious to the employer, and the Board may rely on the discharge of employees who were members of an outside labor organization during the period between the commencement of agitation and the movement looking toward the establishment of that organization and the consummation of a plan to organize an inside organization as further evidence of the employer's hostility to the outside organization and its domination of the inside organization. *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 53 (C. C. A. 8), remanding 9 N. L. R. B. 1073. See also:

Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 136.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 183.
General Shoe Corp., 5 N. L. R. B. 1005, 1011–1013.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 704.
Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 107.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1225.
Harlan Fuel Co., 8 N. L. R. B. 25, 36.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 248.

Shellabarger Grain Products Co., 8 N. L. R. B. 336, 359.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1248.
Consumer's Power Co., 9 N. L. R. B. 701, 724, 727, 728, 730, 731.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1135, modifying 104 F. (2d) 49 (C. C. A. 8).
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. F. (2d) 100 (C. C. A. 8).
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 251.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 305.

See following page references for additional decisions:
Vol. 26—pp. 88, 297, 662, 1059
Vol. 27—pp. 521, 757
Vol. 30—pp. 212, 550
Vol. 31—pp. 101, 621, 994
Vol. 32—p. 863
Vol. 33—p. 954
Vol. 35—pp. 44, 968
Vol. 38—p. 838
Vol. 39—p. 1269
Vol. 42—p. 119
Vol. 43—p. 457

3 c. Because of attempt to engage in independent action on behalf of inside labor organization.

4 d. Because of refusal to join or antagonism to inside organization.

Wheeling Steel Corp., 1 N. L. R. B. 699, 708.
Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 934.
Hill Bus Co., Inc., 2 N. L. R. B. 781, 789.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Highway Trailer Co., 3 N. L. R. B. 591, 612, 613.
S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 20.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
Todd Shipyards Corp., 5 N. L. R. B. 20, 34.
New Idea, Inc., 5 N. L. R. B. 381, 386, 387.
Ingraham Mfg. Co., 5 N. L. R. B. 908, 921.
Taylor Trunk Co., 6 N. L. R. B. 32 , 45.
Heller Brothers Co., 7 N. L. R. B. 636, 652.
Burnside Steel Foundry Co., 7 N. L. R. B. 714, 726.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1185.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1227.
Harlan Fuel Co., 8 N. L. R. B. 25, 34.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 251.

Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, 330, enforced 104 F. (2d) 1017 (C. C. A. 2).
Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110 F. (2d) 29.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1249.
Republic Steel Corp., 9 N. L. R. B. 219, 233, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
Revolution Cotton Mills, 9 N. L. R. B. 468, 474.
Newark Rivet Works, 9 N. L. R. B. 498, 509.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1133, 1135, modifying 104 F. (2d) 49 (C. C. A. 8).
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 44.
West Kentucky Coal Co., 10 N. L. R. B. 88, 102.
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Western Felt Works, 10 N. L. R. B. 407, 442, 444.
American Numbering Machine Co., 10 N. L. R. B. 536, 544.

The discharge and transfer of officers of an "inside" labor organization because of their affiliation with an outside labor organization constitute evidence of employer domination of the inside labor organization. *Servel, Inc.*, 11 N. L. R. B. 1295.

Discharge of active member of rival bona fide organization *held* support of favored organization in violation of 8(2). *Foote Bros.*, 14 N. L. R. B. 1045.

The prompt discharge of the only three employees who expressed their opposition to a contract proposed by the respondent-dominated officer of a labor organization is further evidence of the domination and influence exerted on that labor organization by the respondent. *Keystone Freight Lines*, 24 N. L. R. B. 1153.

See following page references for additional decisions.
Vol. 27—p. 521
Vol. 30—p. 550
Vol. 31—p. 994
Vol. 34—p. 625
Vol. 35—p. 605
Vol. 38

Lay-offs, transfer, and discharge of employees because of antagonism to "inside" union, 234.

Employer's consultation with "Committee" in connection with reinstatements following strike and its refusal pursuant to their objection to reinstate to their former positions the leaders of the opposition to the "inside" union constitutes obvious and potent support to that organization, 1154.

Vol. 43—p. 457

40 e. Other acts of interference or discrimination in regard to terms or conditions of employment.

Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 632, 633; (employment benefits limited to signers of individual contracts).

Swift & Co., 7 N. L. R. B. 269, 279, modified 106 F. (2d) 87 (C. C. A. 10); (removal by foreman of emblem of outside organization from coat of employee).

Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 304; (attempt by superintendent to persuade employee to sign individual contract).

Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1067; (withholding employment benefits from employees who refused to sign individual contracts).

Schwartz Yarn Co., Inc., 12 N. L. R. B. 1139; (Union employees given less work and consequently smaller earnings than non-union employees, *held* to have been discriminated against in regard to terms and conditions of employment.)

See following page references for additional decisions:

Vol. 33

Conditioning employment upon membership in "inside" union, 61.

Vol. 35

Delegating to "inside" organization upon resumption of operations authority to determine who should be recalled to work, 1153.

Refusal to give certain employees who engaged in "outside" union activity recommendations to help them secure other jobs, 1153.

Vol. 40

Depriving pursuant to contract with "inside" union non-members thereof of extra work privileges as to which employer formerly made no distinction between members and non-members, 541.

Assigning "outside" union employees unfavorable work, 1058.

Vol. 41

When "inside" union officer refused to persuade employees to adopt view of employer as to provisions in a proposed contract with "inside" union, employer threatened him with prospect of not being promoted unless he changed his attitude, 693.

6. *Conducting, supervising, or interfering with elections.* (*See* § 216.)

D. INDICIA OF DOMINATION, INTERFERENCE, AND SUPPORT.

1. *Extent of employee participation in conduct of affairs.*

41 a. In general.

Board found that employer initiated and actively promoted organization of its employees. Bylaws of the organization provided that employees automatically became members and permitted only employees to act as representatives; no provisions were made for meetings or for methods of instructing employee representatives; grievances were subject to final review by committee composed of representatives of employees and management; employees paid no dues and all association expenses were paid by the management. Held: Evidence sufficient to sustain Board's conclusion that respondents had engaged in unfair labor practices within the meaning of 8 (2). *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268, 269, enforcing 1 N. L. R. B. 1 and modifying 91 F. (2d) 178 (C. C. A. 3).

Respondent's power to control representatives and meetings, pursuant to constitution formed with its assistance, regardless of whether such power was exercised, constitutes domination and interference. *Phelps Dodge Corp.*, 15 N. L. R. B. 732.

42 b. Lack of opportunity accorded employees to accept or reject organization prior to formation.

Swift & Co., 7 N. L. R. B. 269, 277, modified 106 F. (2d) 87 (C. C. A. 10).

Harlan Fuel Co., 8 N. L. R. B. 25, 35.

Republic Steel Corp., 9 N. L. R. B. 219, 230, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

West Kentucky Coal Co., 10 N. L. R. B. 88, 95.

Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 246, 247.

Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 305.
American Numbering Machine Co., 10 N. L. R. B. 536, 544, 548.

See following page references for additional decisions:
Vol. 25—pp. 1126, 1190
Vol. 28—p. 442
Vol. 29—pp. 60, 837
Vol. 31—p. 440
Vol. 35—p. 44
Vol. 36—pp. 1, 86
Vol. 39—p. 1269
Vol. 41—p. 1408

243 c. Lack of opportunity or restricted opportunity to select officers or representatives. (*See* § 302.)

Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 936.
International Harvester Co., 2 N. L. R. B. 310, 321, 322, 323.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 326.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1108.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 231, 232.
David F. Kennedy, Inc., 6 N. L. R. B. 699, 704.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61.
Beloit Iron Works, 7 N. L. R. B. 216, 221.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 379.
Harlan Fuel Co., 8 N. L. R. B. 25, 35.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
McKaig Hatch, Inc., 10 N. L. R. B. 33, 45.
Western Felt Works, 10 N. L. R. B. 407, 440.
American Numbering Machine Co., 10 N. L. R. B. 536, 544, 548.

The fact that a departmental representative could be deprived of his status as such by transfer to another department *held* to indicate company domination. *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

See following page references for additional decisions:
Vol. 25—p. 1190
Vol. 26—p. 1059
Vol. 27—pp. 441, 1021
Vol. 28—p. 442
Vol. 29

Committeeman selected with approval of management, 1025.
Vol. 30—p. 700
Vol. 32—pp. 1020, 1145
Vol. 34—p. 1095
Vol. 35—pp. 44, 621, 968
Vol. 36

Although bylaws did not of themselves impose any restriction as to the eligibility of representatives such a restriction is *held* to have existed *de facto*—it being generally assumed that representatives were required to be employees of the respondent, 1.
Vol. 38—pp. 1154, 1245
Vol. 39

Officers of predecessor "inside" union continued as officers of successor "inside" union for 6 months without approval of employees, 1269.
Vol. 40

Lack of freedom of choice of representatives by the employees who had their department heads thrust upon them as self-perpetuating representatives, 1037.
Vol. 41

Personnel of a committee of employees named by employer, 1408.
Vol. 42

Interference in selection of employee representatives when agitation for change in bargaining committee was indicated, 119.
Vol. 45

Governing rule and contract restricting choice of representatives to employees, 143.

Supervisory employees' conducting elections among their workers to choose representatives to "Grievance Committee," 551.

Requiring that officers of successor organization have a certain length of service with respondent, 936.

244 d. Lack of opportunity to instruct representatives. (See § 302.)
Hill Bus Co., Inc., 2 N. L. R. B. 781, 789.
Highway Trailer Co., 3 N. L. R. B. 591, 607.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
G. Sommers & Co., 5 N. L. R. B. 992, 999.
Taylor Trunk Co., 6 N. L. R. B. 32, 46.

Swift & Co., 7 N. L. R. B. 269, 282, modified 106 F. (2d) 87 (C. C. A. 10).
Electric Boat Co., 7 N. L. R. B. 572, 584.
Electric Auto-Lite Co., et. al., 7 N. L. R. B. 1179, 1182.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1229.
Harlan Fuel Co., 8 N. L. R. B. 25, 35.
Virginia Ferry Corp., 8 N. L. R. B. 730, 735, modified 101 F. (2d) 103 (C. C. A. 4).
McKaig-Hatch Inc., 10 N. L. R. B. 33, 45.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 249.
American Numbering Machine Co., 10 N. L. R. B. 536, 545.

See following page references for additional decisions:
Vol. 25—p. 1190
Vol. 26—p. 1059
Vol. 27—pp. 757, 1021, 1057
Vol. 29—p. 837
Vol. 30

Board of trustees had complete control over the management of the business, funds, negotiations and property of the union, and to make rules and regulations "subject only to vote of the membership when such vote is asked for by the trustees"; no membership meetings ever held at which proposed contracts were presented to membership for discussion, 700.
Vol. 31

Bylaws permitted committee to enter into contract with employer without securing approval of its terms from the membership at large, 101.
Vol. 35—pp. 968, 1262
Vol. 36—pp. 86, 710
Vol. 37—pp. 50, 1059
Vol. 38—p. 1154
Vol. 43—p. 545

250 e. Other indicia

See following page references for additional decisions:
Vol. 25

Lack of opportunity for employees to register approval or disapproval of agreements made by labor organization with employer, 1190.
Vol. 36

Employer's summary abandonment of "Plan" without notice to the representatives or employees is a significant indica-

tion of employer's interest in, and proprietary attitude toward, the organization, 1.

Vol. 38

Interference in affairs of "inside" organization by causing the summary removal of an employee from the position of influence which he held in the organization since its formation, 234.

Vol. 39

Lack of opportunity accorded employees to vote the abandonment of a successor "inside" organization, 1269.

Vol. 40

Failure of "inside" union to report to employees or to hold meetings of its own, 301.

Vol. 42

Failure to submit contract proposed by employer, counterproposals of union, or executed contract to employees, 440.

2. *Composition and powers of employee representatives.*

51 a. In general

b. Limitations upon powers of representatives.

52 (1) Limited to presentation of individual grievances.

International Harvester Co., 2 N. L. R. B. 310, 329.

Texas Co., 26 N. L. R. B. 1059.

53 (2) Powers shared with equal or greater number of employer representatives.

Pennsylvania Greyhound Lines, Inc., 1 N. L. R. B. 1, 15, enforced 303 U. S. 261 reversing 91 F. (2d) 178 (C. C. A. 3).

Maryland Distillery, Inc., 3 N. L. R. B. 176, 185.

H. E. Fletcher Co., 5 N. L. R. B. 729, 733, enforced 108 F. (2d) 459 (C. C. A. 1).

Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182.

Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 871, 872, enforced 308 U. S. 241 reversing 101 F. (2d) 841 (C. C. A. 4).

Republic Steel Corp., 9 N. L. R. B. 219, 229, 230, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

International Shoe Co., 12 N. L. R. B. 728.

See following page references for additional decisions:

Vol. 25—p. 1190

Vol. 26—p. 1059

Vol. 27—p. 813

Vol. 36—p. 86

§ 254 (3) Final authority to make decision resting with management.

Pennsylvania Greyhound Lines, Inc., 1 N. L. R. B. 1, 12, enforced 303 U. S. 261 reversing 91 F. (2d) 178 (C. C. A. 3).

Pacific Greyhound Lines, Inc., 2 N. L. R. B. 431, 453, enforced 303 U. S. 272, reversing 91 F. (2d) 458 (C. C. A. 9).

Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.

H. E. Fletcher Co., 5 N. L. R. B. 729, 737, enforced 108 F. (2d) 459 (C. C. A. 1).

Utah Copper Co., 7 N. L. R. B. 928, 943.

Newport News Shipbuilding and Dry Dock Co., 8 N. L. R. B. 866, 871, 872, enforced 308 U. S. 241 reversing 101 F. (2d) 841 (C. C. A. 4).

Republic Steel Corp., 9 N. L. R. B. 219, 229, 230, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

See following page references for additional decisions:
Vol. 25—pp. 557, 1190
Vol. 32—p. 1145
Vol. 45—p. 482

§ 260 (4) Other limitations.

3. *Character and extent of collective bargaining with organization.* [*See* § 331 (as to absence of attempts of organization to bargain).]

§ 261 a. In general.

The apparent ease and facility with which a committee representing an inside labor organization and an official of an employer entered into a contract for a closed shop, and the omission from the contract of any provision relating to hours, are circumstances which furnish a reasonable ground for the Board to draw an inference that the employer has violated Section 8 (2). *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 53 (C. C. A. 8) remanding 9 N. L. R. B. 1073.

The fact that a union discussed many grievances with the employer and secured the adjustment of many of them does not necessarily indicate freedom from domination and support, where other circumstances indicate such domination and support. *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

The nature of negotiations, conducted principally, if not solely, by the vice president of a labor organization, despite provisions for the conduct of negotiations by a central committee of which he was not a member, were in reality instructions by the respondent, no effort having been made to oppose the respondent's proposed postponement of a wage increase nor to bargain in connection therewith, and revealed the impotent and subservient character of that organization. *Keystone Freight Lines*, 24 N. L. R. B. 1153.

See following page references for additional decisions:

Vol. 28

Although the employer contended that it had not recognized the "Shop Committee" held as there is no fixed formula which must be followed in extending recognition to a labor organization, its willingness to discuss grievances and working conditions with "Shop Committee" and its periodic meetings with "Shop Committee" for that purpose constitute recognition, 257.

Absence of contract between employer and dominated labor organization does not mitigate the effect of employer's domination and support as the mere existence of such a dominated organization is an effective obstacle to the employees' free selection of a collective bargaining representative, 257.

Vol. 33

Employer's contention that the operation of the alleged dominated organization as a bargaining agent dispels any inference or presumption of "company domination or control" *held* without merit, 1033.

Vol. 35

Bargaining with dominated organization which secured benefits for members, *held* immaterial under Act, 621.

Vol. 36

Bargaining with inside union held immaterial as evidence of absence of domination, 710.

Vol. 39

Alleged militancy of "inside" organization and obtaining of certain benefits for employees *held* cannot and does not cleanse the organization of its illegal taint; the effects of the employer's unlawful acts and its interference with and control of the organization are not thus nullified, 992.

§ 262 b. Bargaining limited to existing conditions. *Citizen-News Co.*, 8 N. L. R. B. 997, 1003. *Trenton-Philadelphia Coach Co.*, 6 N. L. R. B. 112, 117. *Newark Rivet Works*, 9 N. L. R. B. 498, 510.

Vol. 43

Retention of existing conditions as to wages and hours prior to the effective date of the Act, 695.

§ 263 c. Bargaining as to only inconsequential modifications in wages, hours, terms, or conditions of employment.

The barren history of collective bargaining between a labor organization and the respondent, evidenced by its failure to act on grievances of vital concern to its members, its absorption almost exclusively in a program of sick benefits, and its failure to demand any improvements for its members, is some indication of that organization's submission to employer control. *Keystone Freight Lines*, 24 N. L. R. B. 1153.

International Harvester Co., 2 N. L. R. B. 310, 344–347.
Highway Trailer Co., 3 N. L. R. B. 591, 608.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 117.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 704, 705.
Harlan Fuel Co., 8 N. L. R. B. 25, 35.
Newark Rivet Works, 9 N. L. R. B. 498, 510.
Schwab and Schwab, 10 N. L. R. B. 1455, 1460.

See following page references for additional decisions:

Vol. 25—pp. 672, 946
Vol. 26—p. 88
Vol. 29—p. 257
Vol. 35—p. 44
Vol. 36—p. 710
Vol. 40—p. 541
Vol. 41—p. 1078
Vol. 42—p. 377
Vol. 44—p. 174
Vol. 45—pp. 146, 1113

§ 264 d. Consummation of agreement after cursory negotiations.

Where the secretary of a labor organization has no recollection of even the existence of a closed-shop collective bargaining contract, where the treasurer knew of its existence only because he had paid an attorney for drawing it up, and where the president did not recall whether or not the contract provided for any changes in the then existing working conditions, the circumstances surrounding the execution of this contract are sufficiently nebulous

to justify doubt as to the bona fide character of any negotiations that may have been conducted and indicate that it was an easy and quick victory granted by a company only too eager to accord the recognition in order to satisfy a desire of the company rather than the request of the employees. *Keystone Freight Lines*, 24 N. L. R. B. 1153.

Clinton Cotton Mills, 1 N. L. R. B. 97, 105.
Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 301.
Regal Shirt Co., 4 N. L. R. B. 567, 572.
G. Sommers & Co., 5 N. L. R. B. 992, 998.
Taylor Trunk Co., 6 N. L. R. B. 32, 46.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 117.
Empire Worsted Mills, Inc., 6 N. L. R. B. 513, 518.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 704.
T. W. Hepler, 7 N. L. R. B. 255, 263.
Grace Co., 7 N. L. R. B. 766, 773.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1228, 1229.
Pure Oil Co., 8 N. L. R. B. 207, 214, 215.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 253.
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 359.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 540.
Citizen-News Co., 8 N. L. R. B. 997, 1002.
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457, 458.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1134, modifying 104 F. (2d) 49 (C. C. A. 8).
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 45.
Cupples Co., 10 N. L. R. B. 168, 178, modified 106 F. (2d) 100 (C. C. A. 8).
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 303, 304.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 524, 526.
American Numbering Machine Co., 10 N. L. R. B. 536, 544.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1066.

See following page references for additional decisions:
Vol. 25—pp. 193, 557, 672, 771
Vol. 26—pp. 88, 227, 447, 878
Vol. 30—p. 440
Vol. 31—pp. 101, 715, 994
Vol. 33—pp. 393, 858
Vol. 34—pp. 625, 785
Vol. 35—p. 605
Vol. 37—pp. 839, 1059

Vol. 38—p. 838
Vol. 39—p. 107
Vol. 40—p. 867
Vol. 41—p. 1474
Vol. 43—p. 695
Vol. 44—p. 1234

§ 265 e. Agreement concluded during pending negotiations with a knowledge of outside organization's representation claim.

Granting of contract to inside organization covering unit of office workers in which organization had no membership and where a majority of such office workers in such unit had chosen rival bona fide organization *held* to be support in violation of 8 (2). *Foote Bros. Gear & Machine Co.*, 14 N. L. R. B. 1045, 1064.

California Walnut Growers Assn., 18 N. L. R. B. 493. (Employer recognized and negotiated contract with company-assisted union after it had told complaining union that the contract presented by said union would have to be considered by Board of Directors but before Board of Directors met, *held* to be discriminatory conduct.) See also:

Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1110.
Pure Oil Co., 8 N. L. R. B. 207, 214, 215.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 253.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 523, 524, 526.
American Numbering Machine Co., 10 N. L. R. B. 536, 542–590.

See following page references for additional decisions:

Vol. 25—pp. 557, 946
Vol. 26—pp. 88, 227
Vol. 36—p. 710
Vol. 38—p. 1154
Vol. 45—p. 987

§ 266 f. Recognition without proof of authority.

Regal Shirt Co., 4 N. L. R. B. 567, 572.
Marks Brothers Co., 7 N. L. R. B. 156, 161.
Armour & Co., 8 N. L. R. B. 1100, 1107, 1108.
Lady Ester Lingerie Corp., 10 N. L. R. B. 518, 524, 526.

See following page references for additional decisions:

Vol. 25—pp. 347, 557, 672, 771, 946, 1190, 1332
Vol. 26—pp. 491, 813
Vol. 28—pp. 257, 1051
Vol. 29—pp. 360, 673, 1044

Vol. 45

Granting *de facto* recognition and material concessions to successor organization, 214.

Signing a collective bargaining agreement with temporary committee prior to organization of the inside union, 936.

Recognizing successor organization and its right to administer contract executed with prior organization without demand or proof of majority status, 936.

Granting organization an exclusive bargaining contract without an adequate check of the extent of its authority at time of execution of contract and when number of employees had greatly increased since previous pay-roll check, 977.

According organization recognition without question concerning its authority and notwithstanding pending consent election, 1113.

Recognizing and granting third dominated organization a closed-shop contract upon the basis of its claimed majority which majority was not a result of free choice of employees, 1318.

270 g. Other indicia.

The fact that a union did not protest unilateral departures on the part of the employer from the terms of a contract with the union *held* indicative of company domination. *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

The respondent's eager recognition of a labor organization, successor to a labor organization dominated by the respondent's prececessor, and the haste with which a closed-shop contract was entered into with that organization before it held its first meeting, evidenced the respondent's intention to continue the domination and control exercised by the respondent's predecessor over the previously dominated labor organization. *Keystone Freight Lines*, 24 N. L. R. B. 1153.

See following page references for additional decisions:

Vol. 25

No action on a letter containing demands after formal acknowledgement of its receipt by the employer, 1332.

Vol. 26

Use of joint conferences between representatives of labor organization and representatives of management in much the same manner that meetings under a preceding company-dominated joint council plan had been used, 1059.

Vol. 31

Employer over the protest of the outside union who claimed to represent a majority and requested an election to be held under the Board's supervision, conducted a check of the membership application cards of the "inside" union and promptly granted it exclusive recognition, 101.

Vol. 36

Inside union's acquiescence in employer's recognition of it as bargaining representative of its members only despite its claim that it had a majority of the employees and a verification of that claim by a third party constitutes an indicia of discrimination, 710.

Vol. 40

Granting recognition and entering into contract with "inside" union in face of "outside" union's charge filed with Board alleging "inside" union to be employer dominated, 867.

Granting concessions to "inside" organization while refusing to make any concessions to bona fide statutory representative, 1037.

Vol. 41

Presenting an unrequested contract to "inside" union; and anxiety displayed by employer in pressing negotiations with "inside" union contrasted sharply with its hostile attitude toward negotiating with "outside" union, 693.

4. *Form and nature of contracts.*

71 a. In general.

72 b. Absence of provisions relating to hours, wages, or other basic working conditions.

The apparent ease and facility with which a committee representing an inside labor organization and an official of an employer entered into a contract for a closed shop, and the omission from the contract of any provision relating to hours, are circumstances which furnish a reasonable ground for the Board to draw an inference that the employer has violated Section 8 (2). *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F. (2d) 49, 53 (C. C. A. 8) remanding 9 N. L. R. B. 1073. See also:

Clinton Cotton Mills, 1 N. L. R. B. 97, 105.

Regal Shirt Co., 4 N. L. R. B. 567, 572.

Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1109.

Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 330, enforced 104 F. (2d) 1017 (C. C. A. 2).

See following page references for additional decisions:
Vol. 25

Submission by labor organization to employer of proposed contract expressly providing for retention of existing hours, wages, and working conditions, 1190.
Vol. 30—p. 700
Vol. 31—p. 715
Vol. 32—p. 338
Vol. 38—p. 838
Vol. 39—p. 107
Vol. 40—pp. 541, 867
Vol. 42—p. 1218
Vol. 43

Working agreement containing no wage schedule, 1322.
Vol. 44

Failure for almost 4 years to conclude a formal working agreement covering wages, hours, and conditions of employment, and entering into such an agreement only after an "outside" union began organizing activities, 1.

Contract making no provision for wage scale or conditions of work, 959.

73 c. Closed-shop provisions. (*See* § 295.)

The proviso clause in Section 8 (3) is not limited to conduct after the effective date of the Act, but includes a labor organization established prior to that time by conduct or means characterized as unfair by Section 8, for otherwise an employer could perpetuate a organization he had created prior to the effective date of the Act by entering into a closed-shop agreement with it after the Act became operative. *Clinton Cotton Mills,* 1 N. L. R. B. 97, 108, 105. See also:
Grace Co., 7 N. L. R. B. 766, 773.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1134, modifying 104 F. (2d) 49 (C. C. A. 8).
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 571.
California Walnut Growers Association, 18 N. L. R. B. 493.

See following page references for additional decisions:
Vol. 27—p. 813
Vol. 33—pp. 393, 858
Vol. 34—p. 625
Vol. 35—p. 44
Vol. 36—p. 851
Vol. 38—p. 1245

Vol. 44—pp. 174, 404, 1234
Vol. 45—pp. 987, 1318

d. Check-off provisions.

While the check-off is ordinarily a legitimate method of collecting union dues with the assistance of the employer, when it is used as merely one device among many whereby the employer fosters and supports a management-controlled organization, it comes within the ban of Sections 8 (1) and (2). *Clinton Cotton Mills*, 1 N. L. R. B. 97, 108, 109. Accord: *Titan Metal Mfg. Co.*, 5 N. L. R. B. 577, 585, enforced 106 F. (2d) 254 (C. C. A. 3), cert. denied 308 U. S. 615.

Authorization by an employee for the check-off of dues owed to an organization which his employer has formed and continued to dominate cannot be considered as having been voluntarily given by the employee for the reason that when a check-off authorization is sought under such conditions the employee is placed in the position of permitting it or putting himself squarely upon the record as openly opposed to the company's wishes, and no employee confronted with such an option can be regarded as having exercised a free choice. *The Heller Brothers Co. of Newcomerstown*, 7 N. L. R. B. 646, 652, 656. See also:

Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 935.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 325.
Highway Trailer Co., 3 N. L. R. B. 591, 609.
Phillips Packing Co., Inc., 5 N. L. R. B. 272, 278.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 62.
Industrial Rayon Corp., 7 N. L. R. B. 878, 889.
Harlan Fuel Co., 8 N. L. R. B. 25, 35.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 253.
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.
West Kentucky Coal Co., 10 N. L. R. B. 88, 96.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 247.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 573.
Foote Bros., 14 N. L. R. B. 1045.

See following page references for additional decisions:

Vol. 25—pp. 672, 1190
Vol. 26—p. 491
Vol. 27—pp. 856, 1021
Vol. 29—p. 60
Vol. 32—pp. 595, 863
Vol. 33—p. 393

Vol. 35—pp. 44, 621
Vol. 38—pp. 838, 1245, *and*
Where employees had not given voluntary authorization, 1245.
Vol. 42—pp. 440, 1218
Vol. 43—p. 1322
Vol. 44
Granting closed shop and check-off although employer had opposed both arrangements when employees were considering joining nationally affiliated organization, 404.
Executing check-off provision in contract and deducting dues although provision in contract for individual authorizations had not been complied with, 1234.

275 e. Precluding exercise of rights of employees.
Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 301.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1109.
Phillips Packing Co., Inc., 5 N. L. R. B. 272, 278.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 631, 632.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 705.
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 359.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1249, 1250.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 304.
American Numbering Machine Co., 10 N. L. R. B. 536, 549.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1067.
See following page references for additional decisions:
Vol. 27—p. 613
Vol. 37—p. 50
Vol. 39
Conduct of union in surrendering for the term of agreement employees' right to strike, without obtaining under the contract any concession with respect to wages, hours, or other terms or conditions of employment, is rare if not unheard of in negotiations involving legitimate labor organizations, and furnishes evidence of the subserviency of the union to the will of the employer, 107.
Contract which was executed prior to effective date of Act, in which organization's constitution was made part of contract, provided that no amendments could be made to the constitution without its consent; after effective date of Act respondent dictated the form of that article of the constitution which dealt with the selection of its council members and officers, participated in the formulation of the article determining eligibility to vote upon strike

question, and after attempting unsuccessfully to induce the organization to delete from the constitution the provision reserving the right to strike, nevertheless secured assurance that such provision would not be binding on it, 992.

Provision requiring certain form of "representatives," 1269.

Vol. 40

Contract although prohibiting right to strike, was barren of provisions concerning wages, hours, and working conditions other than a flexible system of departmental seniority and arbitration of grievances, 541.

Vol. 41—p. 693

Vol. 42

Balleisen contract, 119.

Vol. 43

Oral agreement that there should be no strikes or lock-outs, 695.

Vol. 44

Subservience to employer demonstrated by execution of contract limiting bargaining to matters not covered by illegal individual contracts, 1.

76 f. Requiring employees to sign individually.

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 301.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1108.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 631.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 705.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 330, enforced 104 F. (2d) 1017 (C. C. A. 2).
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1249.
Newark Rivet Works, 9 N. L. R. B. 498, 510.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 404.
American Numbering Machine Co., 10 N. L. R. B. 536, 549.
Centre Brass Works. Inc., 10 N. L. R. B. 1060, 1067.
Karp Metal Products Co., 42 N. L. R. B. 119.

77 g. Requiring payment of dues as condition of employment.

Hill Bus Co., Inc., 2 N. L. R. B. 781, 789.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1250.
Williams Motor Co., 31 N. L. R. B. 715.

78 h. Granting right of discharge to organization.

Highway Trailer Co., 3 N. L. R. B. 591, 609, 610.
Rieke Metal Products Corp., 40 N. L. R. B. 867.

[*See* § 421 (as to the discriminatory action of others authorized or acquiesced in by employer.

290 i. Other provisions.

See following page references for decisions:

Vol. 30

Provision in contract between employer and union covering membership and payment of dues in the union *held* to connote employer participation in the administration of a labor organization and to constitute an obstacle to the free administration of the affairs of such organization, 440.

Vol. 37

Vesting employer with authority to establish at its discretion, piece-work scales which employees wanted eliminated, 50.

Vol. 38

Provision permitting employees who had not chosen temporary representative committee to come within provisions of contract executed with his committee by "signing a memorandum between the respondent and themselves, agreeing to abide by the terms of the agreement," 1154.

Vol. 39

Employer by entering into contract with "inside" union which although allegedly for members only in effect granted the union exclusive recognition by virtue of clause foreclosing recognition to any other labor organization has thereby supported the organization and effectively perpetuated its existence, 107.

Dues-matching and profit-sharing provisions, 992.

Giving preference in the matter of lay-offs and rehiring to members of "inside" union, 992.

Provision requiring organization to hire an "attorney," 1269.

Incorporation in a contract of a provision covering membership constitutes an obstacle to the free administration of the affairs of an organization since the provision is a barrier to change by the employees of the internal structure of the organization, 1269.

Vol. 40

Granting exclusive right for extra work to members of "inside" union, 541.

Agreeing to shut down plant to permit employees to attend monthly meetings of "inside" union, 867.

Granting "inside" union exclusive use of bulletin board, 867.

Vol. 42

Permitting collection of dues upon company property, 440.

Giving preference in promotion and work to members of dominated union, 1218.

Vol. 43

Automatically including all eligible employees as members of "inside" union, 1322.

Vol. 45

Maintenance-of-membership provision, 744

5. *Constitution, bylaws and internal structure of organization.* [*See* § 243 (as to the limitation of representatives to employees), and § 331 (as to the absence of constitution and bylaws).]

91 a. In general.

Board found that employer initiated and actively promoted an organization of its employees. Bylaws of the organization provided that employees automatically became members and permitted only employees to act as representatives; no provisions were made for meetings or for methods of instructing employee representatives; grievances were subject to final review by committee composed of representatives of employees and management; employees paid no dues and all association expenses were paid by the management. *Held:* Evidence sufficient to sustain Board's conclusion that respondents had engaged in unfair labor practices within the meaning of Section 8 (2). *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268, 269, enforcing 1 N. L. R. B. 1, and modifying 91 F. (2d) 178 (C. C. A. 3).

There is no merit to the contention that the incorporation of a labor organization created a new entity and wiped out previous incidents upon which a finding of employer domination, interference, and support was made, where no change other than the incorporation of the organization took place and the officers, constitution, and method of operation remained the same. *Electric Auto-Lite Co., et al.*, 7 N. L. R. B. 1179, 1185, 1186.

Internal structure of labor organization, sufficient to establish respondent's participation in formation. *Phelps Dodge Corp.*, 15 N. L. R. B. 732.

An employer is under "the positive duty" not to interfere with the internal management or administration of an organization and as such may not justify its action in interesting itself in the provisions of an organization's constitution because the organization insisted that the constitution be part of a contract between itself and the

employer. *Curtiss-Wright Corporation*, 39 N. L. R. B. 992.

An organization by submitting its constitution to the respondent with notice that amendments could easily be made "if needed to meet any reasonable demands of the Company" and by insisting that the constitution be embodied in a collective agreement with the respondent has thereby exhibited a degree of subservience completely foreign to bona fide labor organization. *Curtiss-Wright Corporation*, 39 N. L. R. B. 992.

b. Provisions relating to membership.

92 (1)—Limiting membership to employees.

Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 935.
Highway Trailer Co., 3 N. L. R. B. 591, 607.
Indianapolis Glove Co., 5 N. L. R. B. 231, 242.
New Idea, Inc., 5 N. L. R. B. 381, 384.
G. Sommers & Co., 5 N. L. R. B. 992, 997.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 116.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 223.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 701.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 57.
American Radiator Co., 7 N. L. R. B. 1127, 1140.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182.
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 457.
Newark Rivet Works, 9 N. L. R. B. 498, 502.
Crawford Mfg. Co., 8 N. L. R. B. 1237, 1241.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 247.
Western Felt Works, 10 N. L. R. B. 407, 440.

See following page references for additional decisions:

Vol. 25—pp. 1190, 1332
Vol. 26—pp. 491, 1244
Vol. 28—p. 442
Vol. 31—pp. 101, 196
Vol. 32—p. 1145
Vol. 33—p. 1033
Vol. 34—p. 1095
Vol. 35—p. 968
Vol. 36—p. 710
Vol. 39—p. 992

93 (2)—Predicating eligibility to membership upon recommendation of management representatives.

Highway Trailer Co., 3 N. L. R. B. 591, 607.

94 (3)—Permitting supervisory employees to become members.
Highway Trailer Co., 3 N. L. R. B. 591, 607.
S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 19.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 553.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 845, 846.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 225, 227.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 61, 62.
Swift & Co., 7 N. L. R. B. 269, 282, modified 106 F. (2d) 87 (C. C. A. 10).
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 540.
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.
Virginia Ferry Corp., 8 N. L. R. B. 730, 734, 735, modified 101 F. (2d) 103 (C. C. A. 4).
Newark Rivet Works, 9 N. L. R. B. 498, 508, 509.

See following page references for additional decisions:
Vol. 27—p. 856
Vol. 30—p. 700
Vol. 31—p. 625
Vol. 35—p. 968
Vol. 38—p. 1154
Vol. 39

Although constitution limited membership to employees who did not hold a "supervisory position" leadmen who were supervisory employees were allowed to become members without any change in the constitution, 992.

Vol. 45—pp. 551, 936

95 (4)—Requiring membership as a condition of employment. (*See* § 273.)
Ansin Shoe Mfg. Co., 1 N. L. R. B. 929, 935.
Hill Bus Co., Inc., 2 N. L. R. B. 781, 788.
West Kentucky Coal Co., 10 N. L. R. B. 88, 96.
Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1204.

00 (5)—Other provisions relating to membership.

Vol. 39

Provision limiting membership to employees in employ of company for a definite period, 1269.

Vol. 41

Provision in bylaws that all employees not identified with management should be members in the organization, 872.

Absence of formal requirements for membership, 1428.
Conditioning elegibility to hold office as well as eligibility to vote upon employee status and not upon membership, 1474.
c. Limitations upon choice of officers or representatives. (See § 243.)
01 d. Absence of provision for dues.
An employer has interfered with the formation and administration of a labor organization and contributed support thereto where: (1) there was a pronounced diversity among the employees as to joining or not joining the outside labor organization; (2) although the company's testimony is that numbers of the men asked the manager to work out a plan there is substantial testimony that employees representation plan which was inaugurated was drawn up and presented by the company; (3) the plan involved no dues and the expenses of the organization were borne by the company; and (4) the company financed picnics initiated by the organization and for which it claimed credit. *Wilson & Co.* v. *N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8), modifying 7 N. L. R. B. 986. See also:
International Harvester Co., 2 N. L. R. B. 310, 339.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 185.
Beloit Iron Works, 7 N. L. R. B. 216, 221.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 851.
Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Republic Steel Corp., 9 N. L. R. B. 219, 229, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to workrelief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.
See following page references for additional decisions:
Vol. 25—pp. 1190, 1332
Vol. 26—pp. 491, 1059, 1244
Vol. 27—p. 1021
Vol. 28—p. 257
Vol. 31—p. 440, 1166
Vol. 32—p. 1145
Vol. 36—pp. 1, 86, 710
Vol. 39
Nominal dues, 992.
Vol. 41—pp. 693, 872, 1428

Vol. 43

Employee association's dues of 10 cents a week, 695.

Vol. 45—p. 551

2 e. Absence or restriction of provision for meetings. [*See* §§ 243, 244 (as to lack of employee participation).]

International Harvester Co., 2 N. L. R. B. 310, 329.

New Idea, Inc., 5 N. L. R. B. 381, 387.

Swift & Co., 7 N. L. R. B. 269, 282, modified 106 F. (2d) 87 (C. C. A. 10).

Utah Copper Co., 7 N. L. R. B. 928, 943.

Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).

Republic Steel Corp., 9 N. L. R. B. 219, 229, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.) May 20, 1940.

McKaig-Hatch, Inc., 10 N. L. R. B. 33, 45.

See following page references for additional decisions:

Vol. 25—p. 1332
Vol. 26—pp. 491, 1059, 1244
Vol. 27—pp. 813, 1057
Vol. 28—p. 257
Vol. 29—p. 837
Vol. 30—p. 700
Vol. 31—p. 440
Vol. 33—p. 1033
Vol. 34—p. 1095
Vol. 36—pp. 1, 86
Vol. 38—p. 1245
Vol. 39—p. 1269
Vol. 41—pp. 807, 872
Vol. 45—pp. 482, 551

3 f. Permitting amendments only upon consent of management.

Provision of an employees' representation plan whereby amendment of the plan could become effective only if the employer failed to signify its disapproval within 15 days of adoption constitutes such control of the form and structure of the organization as to deprive the employees of the complete freedom of action guaranteed them by the Act and justifies an order of the Board requiring disestablishment of the organization. *N. L. R. B.* v. *Newport News*, 308 U. S. 241, 249, 250, enforcing 8 N. L. R. B. 866 and modifying 101 F. (2d) 841 (C. C. A. 4).

In determining existence of respondent's control of a labor organization consider clause in constitution of such labor organization providing for participation by respondent in the amendment, alteration, or repeal of any provision in such constitution "affecting employee-company" relations. *Walworth Co., Inc.*, 21 N. L. R. B. 1302. See also:
International Harvester Co., 2 N. L. R. B. 310, 322.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 63.
Utah Copper Co., 7 N. L. R. B. 928, 943.
Wilson & Co., Inc., 7 N. L. R. B. 986, 992, 993, modified 103 F. (2d) 243 (C. C. A. 8).
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1182.
Republic Steel Corp., 9 N. L. R. B. 219, 229, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

See following page references for additional decisions:
Vol. 26—pp. 491, 1059, 1244
Vol. 27—pp. 441, 1057
Vol. 31—p. 440
Vol. 36—p. 710
Vol. 39—p. 992
Vol. 41—p. 872
Vol. 43—p. 545
Vol. 45—p. 482

304 g. Restrictions upon exercise of rights of employees.
Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 301.
Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 131.
Wallace Mfg. Co., Inc., 2 N. L. R. B. 1081, 1087, enforced 95 F. (2d) 818 (C. C. A. 4).
American Potash & Chemical Corp., 3 N. L. R. B. 140, 147, enforced 98 F. (2d) 448 (C. C. A. 9) cert. denied 306 U. S. 743.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 326.
New Idea, Inc., 5 N. L. R. B. 381, 387.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 631.
Fansteel Metallurgical Corp., 5 N. L. R. B. 930, 947, modified 306 U. S. 240 and modifying 98 F. (2d) 375 (C. C. A. 7).
Beloit Iron Works, 7 N. L. R. B. 216, 221.
Heller Brothers Co., 7 N. L. R. B. 646, 652.

See following page references for additional decisions:
Vol. 32—p. 1145
Vol. 35—p. 968

h. Similarity in structure and function between "successor" and its "predecessor."

Amendments, suggested and phrased by Company, which were put into effect at time of Supreme Court Decisions in 1937 which validated N. L. R. A. and which did not alter basic character and structure of Employee Representation Plans, did not serve to prevent Plans from obstructing free choice of employees for collective bargaining. *Bethlehem Steel Corp.*, 14 N. L. R. B. 539.

Identity of leadership in successor inside union and admittedly illegal representation plan *held* factor determining violation of 8 (2). *Foote Bros.*, 14 N. L. R. B. 1045.

See following page references for additional decisions:

Vol. 25

Similarity in structure and function between disestablished employee representation plan and successor unaffiliated labor organization and between such successor and unaffiliated labor organizations at other plants of same employer, 1190.

Employees prominently identified with employee representation plan admittedly company dominated served as officers of successor organizations, 1332.

Vol. 35—p. 1262
Vol. 38—p. 690
Vol. 41—pp. 693, 1428
Vol. 45—pp. 482, 936

i. Other indicia.

Constitution limiting representatives to a certain class of employees and providing that they should automatically cease being representatives upon discharge or transfer, *held* to constitute control and domination of organization. *Westinghouse Electric & Mfg. Co.*, 18 N. L. R. B. 300.

See following page references for additional decisions:

Vol. 32

Absence of constitution or bylaws, 693.

Vol. 36

Failure of an organization to adopt a constitution or bylaws considered among other circumstances in determining such organization to be a continuation and illegal successor to an earlier company-dominated organization ordered disestablished by the Board, 851.

Vol. 37

Absence of provision relating to membership, 50.

Vol. 38

Lack of any provision for grievance procedure, 1245.

Vol. 41

Absence of constitution or bylaws, 693.

6. *Time and circumstances surrounding appearance of organization.*

§ 311 a. In general.

Simplex Wire and Cable Co., 6 N. L. R. B. 251, 255.

Wilson & Co., Inc., 7 N. L. R. B. 986, 993, modified 103 F. (2d) 243 (C. C. A. 8).

Armour & Co., 8 N. L. R. B. 1100, 1107.

Republic Steel Corp., 9 N. L. R. B. 219, 229, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), May 20, 1940.

§ 312 b. During or following strike or lock-out.

Highway Trailer Co., 3 N. L. R. B. 591, 605.

Metropolitan Engineering Co., 4 N. L. R. B. 542, 552.

Phillips Packing Co., 5 N. L. R. B. 272, 277.

Altorfer Brothers Co., 5 N. L. R. B. 713, 722.

Taylor Trunk Co., 6 N. L. R. B. 32, 42.

Semet-Solvay Co., 7 N. L. R. B. 511, 517.

American Mfg. Concern, 7 N. L. R. B. 753,760.

American Radiator Co., 7 N. L. R. B. 1127, 1135.

Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1224.

Sunshine Mining Co., 7 N. L. R. B. 1252, 1270, 1271 enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.

Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).

Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358.

Elkland Leather Co., Inc., 8 N. L. R. B. 519, 539.

Hemp & Co. of Illinois, 9 N. L. R. B. 449, 456.

Newark Rivet Works, 9 N. L. R. B. 498, 508, 509.

Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 249.

Western Felt Works, 10 N. L. R. B. 407, 439.

Union Drawn Steel Co., et al., 10 N. L. R. B. 868, 877, modified 109 F. (2d) 587 (C. C. A. 3).

Denver Automobile Dealers Association, et al., 10 N. L. R. B. 1173, 1203, 1205.

Berkshire Knitting Mills, 17 N. L. R. B. 239.

See following page references for additional decisions:

Vol. 25—p. 672

Vol. 26—p. 88

Vol. 30—p. 212
Vol. 35—p. 968
Vol. 38—p. 234
Vol. 42—p. 119
Vol. 43—p. 1322

c. Following appearance of, or display of interest on part of employees in, outside organization.

Hill Bus Co., Inc., 2 N. L. R. B. 781, 785.
Maryland Distillery, Inc., 3 N. L. R. B. 176, 184.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Todd Shipyards Corp., 5 N. L. R. B. 20, 30.
Indianapolis Glove Co., 5 N. L. R. B. 231, 241.
New Idea, Inc., 5 N. L. R. B. 381, 384.
Jacobs Bros. Co., Inc., 5 N. L. R. B. 620, 628.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 845.
Ingraham Mfg. Co., 5 N. L. R. B. 908, 925.
G. Sommers & Co., 5 N. L. R. B. 992, 994.
General Shoe Corp., 5 N. L. R. B. 1005, 1008.
Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 116.
M. Lowenstein & Sons, Inc., 6 N. L. R. B. 216, 224.
Simplex Wire and Cable Co., 6 N. L. R. B. 251, 254, 256.
Empire Worsted Mills, Inc., 6 N. L. R. B. 513, 516.
David E. Kennedy, Inc., 6 N. L. R. B. 699, 701.
Tiny Town Togs, Inc., 7 N. L. R. B. 54, 60.
Art Crayon Co., Inc., et al., 7 N. L. R. B. 102, 106.
Marks Brothers Co., 7 N. L. R. B. 156, 160.
T. W. Hepler, 7 N. L. R. B. 255, 260.
American Mfg. Co., Inc., 7 N. L. R. B. 375, 378.
Yates-American Machine Co., 7 N. L. R. B. 627, 630.
Heller Brothers Co., 7 N. L. R. B. 646, 650.
Burnside Steel Foundry Co., 7 N. L. R. B. 714, 724.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 851.
Industrial Rayon Corp., 7 N. L. R. B. 878, 885.
Harlan Fuel Co., 8 N. L. R. B. 25, 33.
Lone Star Bag and Bagging Co., 8 N. L. R. B. 244, 248.
David Strain Co., Inc., 8 N. L. R. B. 310, 314.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358.
Harter Corp., 8 N. L. R. B. 391, 395.
Elkland Leather Co., Inc., 8 N. L. R. B. 519, 539.
Serrick Corp., 8 N. L. R. B. 621, 628, enforced 110 F. (2d) 29.

Citizen-News Co., 8 N. L. R. B. 997, 1001.
Crawford Mfg. Co., 8 N. L. R. B. 1237, 1240.
Eastern Footwear Corp., 8 N. L. R. B. 1245, 1247, 1248.
Baer & Wilde Co., et al., 9 N. L. R. B. 420, 423, set aside 108 F. (2d) 872 (C. C. A. 3).
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 456.
Revolution Cotton Mills, 9 N. L. R. B. 468, 472.
Consumer's Power Co., 9 N. L. R. B. 701, 733.
Cupples Co., 10 N. L. R. B. 168, 174, modified 106 F. (2d) 100 (C. C. A. 8).
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 301.
Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 570.
H. J. Heinz Co., 10 N. L. R. B. 963, 970.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1065.
United States Potash Co., 10 N. L. R. B. 1248, 1251, 1252, 1257.
Schwab and Schwab, 10 N. L. R. B. 1455, 1459.
Ohio Power Company, 12 N. L. R. B. 6, 22.
Brown Paper Mill Company, Inc., 12 N. L. R. B. 60, 64.

See following page references for additional decisions:
Vol. 25—pp. 193, 347, 1190
Vol. 26—pp. 88, 447, 491, 679, 1059
Vol. 27—pp. 521, 757, 856
Vol. 29—pp. 60, 1025, 1044
Vol. 30—pp. 550, 700
Vol. 31—pp. 101, 621
Vol. 32—p. 895
Vol. 33—p. 954
Vol. 34—p. 896
Vol. 35—pp. 605, 857, 1262
Vol. 37—pp. 50, 839, 1090, 1174
Vol. 38—pp. 838, 1154
Vol. 40—pp. 223, 1058
Vol. 41—pp. 807, 1408, 1474
Vol. 42—pp. 377, 440, 457, 472, 898
Vol. 43—p. 457, *and*

"Inside" organization evolving as result of employer's long campaign against the union and from loosely organized "neither group" formed by supervisory employees to combat "outside" union during election campaign, when the election was called off, and when such transformation appeared necessary for recognition as opponent of the "outside" union, 613.

Vol. 44—pp. 1, 404, 920, 1136, 1234
Vol. 45—pp. 241, 744

4 d. During or following attempt of outside labor organization to bargain.

The fact that a labor organization, though not initiated, was fostered and financially and otherwise supported by an employer, is sufficient to sustain a finding of the Board as to a violation of Section 8 (2) where the organization was formed after a strike caused by the refusal of the employer to bargain with a legitimate organization which had represented a majority of the employees but which had lost its majority by reason of a poll conducted by the employer in such a manner as to reveal the identity and choice of the participating employees and induce them to express a preference for bargaining directly with the management rather than through the legitimate labor organization. *N. L. R. B.* v. *Colten & Colman, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 182 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 298.
Central Truck Lines, Inc., 3 N. L. R. B. 317, 324.
Metropolitan Engineering Co., 4 N. L. R. B. 542, 552.
Cating Rope Works, Inc., 4 N. L. R. B. 1100, 1104.
Todd Shipyards Corp., 5 N. L. R. B. 20, 30.
Altorfer Brothers Co., 5 N. L. R. B. 713, 720.
Triplett Electrical Instrument Co., et al., 5 N. L. R. B. 835, 845.
Ingraham Mfg. Co., 5 N. L. R. B. 908, 925.
Taylor Trunk Co., 6 N. L. R. B. 32, 42.
Grace Co., 7 N. L. R. B. 766, 772.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1224.
Harter Corp., 8 N. L. R. B. 391, 395.
Harnishfeger Corp., 9 N. L. R. B. 676, 687.
Lane Cotton Mills Co., 9 N. L. R. B. 952, 968.
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1131, modifying 104 F. (2d) 49 (C. C. A. 8).
American Numbering Machine Co., 10 N. L. R. B. 536, 542–550.
H. J. Heinz Co., 10 N. L. R. B. 963, 970.

See following page references for additional decisions:

Vol. 26—pp. 662, 975
Vol. 28—p. 208
Vol. 31—pp. 101, 994
Vol. 38—p. 690

Vol. 40—p. 1037
Vol. 45—pp. 146, 987, 1113

15 e. Immediately preceding or following termination of agreement with outside labor organization.

Pure Oil Co., 8 N. L. R. B. 207, 211.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 42.
Pequanoc Rubber Co., 40 N. L. R. B. 541.

16 f. Upon dissolution of predecessor organization after effective date or validation of Act.

Todd Shipyards Corp., 5 N. L. R. B. 20, 30.
Hoover Co., 6 N. L. R. B. 688, 692.
Beloit Iron Works, 7 N. L. R. B. 216, 219.
Swift & Co., 7 N. L. R. B. 269, 275, modified 106 F. (2d) 87 (C. C. A. 10).
Swift & Co., 7 N. L. R. B. 287, 292, 293.
American Radiator Co., 7 N. L. R. B. 1127, 1133.
Electric Auto-Lite Co., et al., 7 N. L. R. B. 1179, 1183.
Armour & Co., 8 N. L. R. B. 1100, 1105.
Republic Steel Corp., 9 N. L. R. B. 219, 228, 231, modified 107 F. (2d) 472 (C. C. A. 3) cert. granted as to work relief provisions only, U. S. (U. S. Sup. Ct.), may 20, 1940.
Inland Steel Co., 9 N. L. R. B. 783, 804, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).
Armour & Co., 9 N. L. R. B. 1295, 1299.
West Kentucky Coal Co., 10 N. L. R. B. 88, 95.
Douglas Aircraft Co., Inc., 10 N. L. R. B. 242, 250.

See following page references for additional decisions:
Vol. 25—pp. 672, 1190, 1332
Vol. 26—pp. 1059, 1234
Vol. 28—p. 442
Vol. 29—pp. 360, 456, 837
Vol. 31—p. 440
Vol. 32—p. 338
Vol. 33—p. 1033
Vol. 35—p. 621

17 g. Securing approval of management prior to formation.

Finding of Board that employer, engaged in operating two ferry boats, had dominated and interfered with the formation and administration of a committee of its employees as an agency for collective bargaining *sustained* where the record disclosed that: (1) the notion of forming the committee originated with the captain of one of the vessels; (2) he interested and secured the assistance of the captain

of the other ship and a number of other officers in perfecting the idea; and (3) these men formed a committee only after securing the approval of the employer's general superintendent. *Virginia Ferry Corp.* v. *N. L. R. B.*, 101 F. (2d) 103, 105 (C. C. A. 4) modifying 8 N. L. R. B. 730. See also:

Lion Shoe Co., 2 N. L. R. B. 819, 826, set aside 97 F. (2d) 448 (C. C. A. 1).

Simplex Wire and Cable Co., 6 N. L. R. B. 251, 254.

David E. Kennedy, Inc., 6 N. L. R. B. 699, 703.

Heller Brothers Co., 7 N. L. R. B. 646, 651.

American Radiator Co., 7 N. L. R. B. 1127, 1137.

Western Garment Mfg. Co., et al., 10 N. L. R. B. 567, 570.

Evidence *held* to sustain finding of employer encouragement of formation of "independent" union where organizers formed tentative plan but did not execute it until after receiving employer's advice and approval. *International Shoe Co.*, 12 N. L. R. B. 728.

See following page references for additional decisions:

Vol. 27—pp. 613, 856

Vol. 29—p. 837

Vol. 36—p. 710

Vol. 37—p. 1059

Vol. 39

Approval of formation of successor "inside" union received from employer by the transfer of its contract with the predecessor to the successor "inside" union, 1269.

Vol. 41—p. 1474

Vol. 44

Proposed organization to counteract activity of national affiliated union was first discussed with general manager and its formation was spurred by his approval thereof, 1.

18 h. In the absence of cleavage from "predecessor" dominated organization.

Respondent held to have violated Section 8 (2) when he failed to "mark the separation between two organizations and publicly to deprive the successor of the advantage of its apparently continued favor." *Westinghouse Electric & Mfg. Co.*, 112 F. (2d) 657 (C. C. A. 2) aff'd in 312 U. S. 680. See also: *E. I. duPont de Nemours & Co.*, 49 N. L. R. B. 1362.

Providence Gas Co., 41 N. L. R. B. 1121. (Employer held not to have dominated an organization notwithstanding its failure to disestablish a predecessor dominated organi-

zation, when employee disssatisfaction with the dominated union preceded and resulted in the formation of the new organization which reflected an honest rebellion against the respondent's domination and a desire for bona fide representation.)

See following page references for additional decisions:

Vol. 31—p. 196
Vol. 33—p. 858
Vol. 39

Failure of employer to disestablish "predecessor" organization prior to organization of "successor" *held* to have made possible the initiation and establishment of the "successor," 825.

Vol. 41—pp. 693, 807, 1428
Vol. 43—p. 12
Vol. 44—p. 920
Vol. 45—pp. 214, 482, 1318

§ 319 i. When continued after passage of Act.

Employer held to have dominated employee representation plan which had developed prior to the effective date of the Act out of a company-sponsored group insurance plan, when employer had not disassociated itself from the organization after the Act became effective and when its later discontinuance of substantial forms of support did not free the organization from the effect of its previous domination and support. *Wright Aeronautical Corporation*, 44 N. L. R. B. 959. See also: *Budd Manufacturing Company, Edward G.*, 41 N. L. R. B. 872. *New York Merchandise Company, Inc.*, 41 N. L. R. B. 1078.

Cleveland Worsted Mills Company, The, 43 N. L. R. B. 545 (employee representation plan formed prior to the effective date of the Act, but continued thereafter with the aid and support of the respondent, and which was so organized that it was incapable of functioning independent of the respondent).

§ 330 j. Other circumstances.

See following page references for decisions:

Vol. 25

Appearance of unaffiliated labor organization at one plant of employer concurrently with appearance of similar labor organizations at several other plants of same employer, 1190.

Vol. 32

Pamphlet issued by employer, "Facts About the Wagner Act," distorting rights under the Act, *held* to have served to invite and give impetus to formation of inside organization, 895.

Vol. 35

Conduct on part of employer's vice president in celebrating "outside" union's defeat at Board election coupled with employer's hostile attitude toward "outside" union, *held* to have provided impetus for the creation of "inside" union, 1334.

Vol. 40

Testimony concerning acts of misconduct by strikers in connection with a labor dispute held not to have motivated formation of "inside" union, where employer's unfair labor practices provoked the labor dispute and were calculated to divert self-organization from the legitimate union to another organization acceptable to the employer, 867.

Vol. 43

Following refusal of "outside" union to consent to wage reduction, 1322.

Vol. 45

Organization modeled after an employee representation plan ordered disestablished at another of respondent's plants and which was formed at that plant while employees in question were located there for a training period, 977.

31 7. *Inactivity of organization following its establishment.*

An order of the Board directing an employer to withdraw recognition from an employees association and disestablish it as a bargaining agency is justified where it is shown that counsel for the employer obtained the charter for the association on a petition from the employees which they had signed upon solicitation of a foreman, and the signatures were obtained in some cases under threats of discharge; and that while the professed objectives of the association were to encourage friendship, loyalty, and good will, a shop committee was provided for and actually appointed but there was no evidence that it had ever functioned as a bargaining agency. *N. L. R. B.* v. *J. Freezer & Son*, 95 F. (2d) 840, 841 (C. C. A. 4) enforcing 3 N. L. R. B. 120. See also:

Alaska Juneau Gold Mining Co., 2 N. L. R. B. 125, 136.
Hill Bus Co., Inc., 2 N. L. R. B. 781, 785.

S. Blechman & Sons, Inc., 4 N. L. R. B. 15, 18, 19.
Taylor Trunk Co., 6 N. L. R. B. 32, 45.
Marks Brothers Co., 7 N. L. R. B. 156, 165.
Beloit Iron Works, 7 N. L. R. B. 216, 221.
American Mfg. Concern, 7 N. L. R. B. 753, 761.
Union Die Casting Co., Ltd., 7 N. L. R. B. 846, 851.
Utah Copper Co., 7 N. L. R. B. 928, 943.
Aluminum Products Co., et al., 7 N. L. R. B. 1219, 1229.
Sunshine Mining Co., 7 N. L. R. B. 1252, 1271, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.
Ronni Parfum, Inc., et al., 8 N. L. R. B. 323, 329, enforced 104 F. (2d) 1017 (C. C. A. 2).
Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358.
Harter Corp., 8 N. L. R. B. 391, 399.
Serrick Corp., 8 N. L. R. B. 621, 627, enforced 110 F. (2d) 29.
Hemp & Co. of Illinois, 9 N. L. R. B. 449, 458.
Harnishfeger Corp., 9 N. L. R. B. 676, 688.
McKaig-Hatch, Inc., 10 N. L. R. B. 33, 45.
West Kentucky Coal Co., 10 N. L. R. B. 88, 97.
Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288, 304.
Centre Brass Works, Inc., 10 N. L. R. B. 1060, 1067.
Rath Packing Co., 14 N. L. R. B. 805.
Berkshire Knitting Mills, 17 N. L. R. B. 239.
Keystone Freight Lines, 24 N. L. R. B. 1153.

See following page references for additional decisions:
Vol. 25—pp. 1126, 1190
Vol. 26—p. 88
Vol. 27—p. 757
Vol. 28—pp. 208, 257
Vol. 29

No grievances or negotiations looking toward a trade union agreement conducted, 1044.

Vol. 31—pp. 715, 1179
Vol. 32

Both predecessor and successor-dominated organization had no constitution, bylaws, or bank account, conducted no meetings since their inception and made no attempt to engage in collective bargaining in behalf of their members, 1020.

Vol. 34—p. 625
Vol. 35—pp. 968, 1262
Vol. 36—p. 710
Vol. 37—pp. 50, 1090

that right, intimidate or coerce its employees with respect to their self-organization and representation. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, 46, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

The Act permits the discharge of an employee for any reason other than activity or agitation for collective bargaining with employees. *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 132, enforcing 1 N. L. R. B. 788, and affirming 85 F. (2d) 56 (C. C. A. 2).

The Act does not attempt to regulate the employer's control of his business in the employment, promotion, or discharge of employees so long as he does not attempt thereby to interfere with the right to self-organization of his employees, or to intimidate or coerce them. *Applachian Electric Power Co.* v. *N. L. R. B.*, 93 F. (2d) 985, 989 (C. C. A. 4), setting aside 3 N. L. R. B. 240.

The right of an employer to discharge his employees is not absolute, but if it regulates, burdens, or obstructs interstate commerce, it is subject to the limitations that Congress may prescribe. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 145, 146 (C. C. A. 9), enforcing 2 N. L. R. B, 248, cert. denied 304 U. S. 575. See also:

N. L. R. B. v. *Sands Mfg. Co.*, 96 F. (2d) 721, 726 (C. C. A. 6), setting aside 1 N. L. R. B. 546, affirming 306 U. S. 332.

N. L. R. B. v. *Thompson Products*, 97 F. (2d) 13, 16 (C. C. A. 6), setting aside 3 N. L. R. B. 332.

N. L. R. B. v. *Union Pacific Stages, Inc.*, 99 F. (2d) 153, 168 (C. C. A. 9), modifying, and denying rehearing 2 N. L. R. B. 471.

Jefferson Electric Co. v. *N. L. R. B.*, 102 F. (2d) 949, 957 (C. C. A. 7), setting aside 8 N. L. R. B. 284.

Waterman Steamship Corp. v. *N. L. R. B.*, 103 F. (2d) 157, 160 (C. C. A. 5), modifying 7 N. L. R. B. 237, modified 309 U. S. 206.

Agwilines Inc., 2 N. L. R. B. 1, 13, modified 87 F. (2d) 146 (C. C. A. 5).

Consumers' Research, Inc., 2 N. L. R. B. 57, 73.

Montgomery Ward & Co., Inc., 4 N. L. R. B. 1151, 1166, remanded for new hearing 103 F. (2d) 147 (C. C. A. 8).

Kelly-Springfield Tire Co., 6 N. L. R. B. 325, 337.

Although an employer may properly prohibit its supervisory employees from interference with employee self-organiza-

tion by adopting a non-discriminating rule requiring them to refrain from activity in any labor organization and from participation in inter-union rivalry, it may not, in the absence of such a rule and without warning, discriminate against a supervisory employee for his union membership or interest; particularly is the case such with regard to working foremen. *Chambers Corp.*, 21 N. L. R. B. 808, 830. See also: *Rock Hill Printing and Finishing Co.*, 29 N. L. R. B. 673, 720. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

[*See* §§ 30, 412 (as to employer's duty to remain neutral notwithstanding that activities are directed to a supervisory employee).]

Employer's normal right to select employees as guaranteed by Fifth Amendment to Federal Constitution held not infringed by interdicting discriminatory blacklisting. *Mountain City Mill Company*, 25 N. L. R. B. 397.

Employer's contention that "an employer has the right to discharge a striking employee merely because he has struck" is refuted by the express language of Section 13 of the Act which specifically safeguards the right to strike. *Cudahy Packing Company*, 29 N. L. R. B. 837, 868.

An employer is justified in discharging employees who engage in activities which are in derogation of the employer's right to conduct and manage its plant. *Armour and Company*, 32 N. L. R. B. 536.

02 b. Right to replace employees on strike caused or prolonged by unfair labor practices.

Where employees have gone out on strike in absence of any unfair labor practices, the ordinary right of the employer to select his employees becomes vulnerable from the date the employer first engages in an unfair labor practice and thereby prolongs the strike.

Black Diamond Steamship Corp. v. *N. L. R. B.*, 94 F. (2d) 875, 879, enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579. See also:

McKaig-Hatch, Inc., 10 N. L. R. B. 33, 49, 50.
Western Felt Works, 10 N. L. R. B. 407, 428.
Denver Automobile Dealers Assn., et al., 10 N. L. R. B. 1173, 1208–1210.
Stehli & Co., Inc., 11 N. L. R. B. 1397, 1436.
Stewart Die Casting, 14 N. L. R. B. 872.
Ritzwoller Co., 15 N. L. R. B. 15, 28.
Manville Jenckes Corp., 30 N. L. R. B. 382, 413.

United Dredging Co., 30 N. L. R. B. 739, 796.
Hardy Co., 44 N. L. R. B. 1013, 1027.
Lettie Lee, Inc., 45 N. L. R. B. 448.

403 c. Right to replace employees on strike not caused or prolonged by unfair labor practices.

An employer, not guilty of any violation of the Act, whose employees have gone on strike, may hire new employees to fill the places left vacant by the strikers, and it is not an unfair labor practice to promise permanent employment to the new employees so hired, nor is it an unfair practice to reinstate only so many of the strikers as there were vacant places to be filled. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 346, enforcing 1 N. L. R. B. 201, and reversing 92 F. (2d) 761 and 87 F. (2d) 611 (C. C. A. 9). See also:

Calmar Steamship Corporation, 18 N. L. R. B. 1, 11–12, 15, 17–20.
Isthmian Steamship Company, 22 N. L. R. B. 689, 694.
Lansing Co., 20 N. L. R. B. 434, 444.
Kroger Grocery & Baking Co., 27 N. L. R. B. 250, 259.
Mooremack Gulf Lines, Inc., 28 N. L. R. B. 869, 881.
Ore Steamship Corp., 29 N. L. R. B. 954, 965.
Jackson, Sam M., 34 N. L. R. B. 194, 215.

404 d. Right to discharge or change terms or conditions of employment, because employees have engaged in misconduct or concerted activity beyond the protection of the Act.

Unfair labor practices of an employer afford no excuse for the subsequent seizure and holding of its buildings, and it may exercise its normal rights of redress which include the right to discharge employees who have engaged in a sit-down strike. *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 253, 254, modifying 5 N. L. R. B. 930, and modifying 98 F. (2d) 375 (C. C. A. 7). See also:

Lansing Co., 20 N. L. R. B. 434.
Aladdin Industries Inc., 22 N. L. R. B. 1195, 1216.
Swift & Co., 21 N. L. R. B. 1169.
Southern S. S. Co., 316 U. S. 31, reversing 23 N. L. R. B. 26 (mutiny).

The Act does not destroy the right of an employer to discharge or to refuse to reinstate a man who has committed a crime which endangers the safety of his fellow workers or the integrity of the plant, or require an employer to continue to employ or to treat as employees men who have engaged

in unlawful conduct of this character. *Standard Lime & Stone Co.* v. *N. L. R. B.*, 97 F. (2d) 531, 535, 536, (C. C. A. 4), setting aside 5 N. L. R. B. 106. See also: *Peninsular & Occidental Steamship Co.* v. *N. L. R. B.*, 98 F. (2d) 411, 414 (C. C. A. 5), setting aside 5 N. L. R. B. 959, cert. denied 305 U. S. 653; (threats of sabotage and sit-down strikes by members of ship's crew).

Republic Creosoting Company, 19 N. L. R. B. 267. (An employer may refuse to reinstate a striking employee who has engaged in misconduct of a serious nature.)

A discharge of employees for protecting a union organizer from danger of personal harm or intimidation at the hands of supervisory employees is not justified by the hostility displayed by discharged employees in this altercation, for their technical assault upon the supervisory employees while protecting the union's interest was legitimate union activity and was provoked by unlawful conduct of supervisory employees. *Mexia Textile Mills*, 11 N. L. R. B. 1167, 1172–1174, enf'd 110 F. (2d) 565 (C. C. A. 5).

Ford A. Smith, etc., d/b/a Smith Cabinet Mfg. Co., 1 N. L. R. B. 950, 959. (The action of an employee and other members of a labor organization during a lock-out in persuading a conductor on a railroad serving the plant not to deliver a car of boxes which the employer expected is within the bounds of legitimate union activity during a strike or lock-out and is not a ground for refusing reinstatement to the employee.)

Reed & Prince Manufacturing Company, 12 N. L. R. B. 944, 975. (Strike for an arbitration provision was illegal under State law. Board held 8 (3) as to discharge of certain strikers, and ordered their reinstatement, distinguishing *Fansteel* case.)

Chesapeake Shoe Co., 12 N. L. R. B. 832, 846 (knowledge of employees criminal record prior to discharge).

El Paso Electric Co., 13 N. L. R. B. 213, 238 (subsequent offer to reemploy strikers who engaged in alleged acts of sabotage).

Acme-Evans Company, 24 N. L. R. B. 71. (Board found discrimination in reemploying unfair labor practice strikers to inferior positions. Board rejected respondent's defense of violence of strikers as reasons for not reinstating, distinguishing the *Fansteel* case.)

Aladdin Industries, Incorporated, 22 N. L. R. B. 1195, 1216–1217. (A striking employee, who although not partici-

pating in a sit-down strike voted in favor of it and did not openly disclaim responsibility therefor, has not engaged in proscribed conduct which would justify his discharge or denial of reinstatement.)

Cudahy Packing Company, 29 N. L. R. B. 837. (Stoppages of work which did not involve seizure or destruction of or damage to property with resultant financial loss to the employer *held* not sit-down strikes or " an outlaw enterprise" as the employer contends and that there is no warrant for holding that these "concerted activities for the purpose of . . . mutual aid or protection" are not protected by the Act.)

United Dredging Company, New Orleans, Louisiana, 30 N. L. R. B. 739. (Contention of employer that it lawfully discharged its employees and thereafter refused to reinstate them because they engaged in a "sit-down" strike is rejected where the strike on board dredge was peaceful and without interference with operations; there was no seizure or retention of the dredge as a result of the strike; and where the conduct of the employees was lawful and did not place them outside the protection of the Act.)

Violence by any party to a labor dispute cannot be condoned, but an employer may not use the fact that violence has been committed during a strike as a pretext for not reinstating employees where the real motive behind its refusal is the union activities of such employees and not an honest belief that they have engaged in illegal acts. *Kentucky Firebrick Co.*, 3 N. L. R. B. 455, 464, 465, enforced and rehearing denied 99 F. (2d) 89 (C. C. A. 6). See also: *Ford Motor Co.*, 23 N. L. R. B. 342. *Armour & Co.*, 25 N. L. R. B. 989.

[*See* § 524 (as to assigning unconvincing reasons as justifying a discharge).]

An employer may refuse to reinstate a striking employee where he believes, not without reason, that the employee has engaged in misconduct of a serious nature. *Republic Creosoting Company*, 19 N. L. R. B. 267, 289, 290. See also: *Titmus Optical Company*, 9 N. L. R. B. 1026, 1034. *Decatur Newspapers, Inc.*, 16 N. L. R. B. 489, 498.

There is not substantial evidence to refute the inference that an employer discriminatorily refused to reinstate employees following a strike where the employer alleges that its refusal to reinstate them was because they had been guilty of violence and supports such conclusion by an investiga-

tion carried on by its attorney wherein he procured affidavits which were not introduced in evidence, the employer's excuse for withholding them being that the revelation of their contents would probably have resulted in further violence; nor is the situation materially changed by the contention that the refusal to reinstate was made in good faith upon the advice of counsel. *N. L. R. B.* v. *Kentucky Fire Brick Co.*, 99 F. (2d) 89, 92, 93 (C. C. A. 6), enforcing 3 N. L. R. B. 455.

Where a general strike affecting all boats of the respondent has been declared, and a sit-down has occurred upon several of the boats as they came into their home port, and the respondent has reasonable fear of sit-down strike on other boats, the respondent is held justified in discharging members of the striking union and replacing them with members of another union. *Calmar Steamship Corporation*, 18 N. L. R. B. 1, 11–17.

In determining whether an employer, in refusing to reinstate strikers because of alleged misconduct during a strike, has violated Section 8 (3), the Board will consider whether or not the strike was caused by employer's unfair labor practices, and whether or not misconduct, similar to that alleged by the employer, has been engaged in by the employer or nonstriking employees; but will also take into consideration the fact that "emotional tension of a strike almost inevitably gives rise" to minor disorders which should not bar reinstatement to those strikers engaging therein. *Republic Creosoting Company, et al.*, 19 N. L. R. B. 267, 288, 289.

[*See* § 767 (as to effect of misconduct of employees upon employer's duty to bargain), DEFINITIONS § 8 (as to employee status of persons who engaged in misconduct, and REMEDIAL ORDERS §§ 107–110 (as to effect of misconduct upon reinstatement and back pay orders).]

Notwithstanding that an employer was bent upon denying an employee his rights under the Act, it was privileged in discharging the employee when the employee in his attempt to assert his rights under the Act, engaged in conduct which exceeded all necessary and reasonable bounds and constituted persistent and extensive insubordination which was beyond the protection of the Act. *Wilson & Co.*, 43 N. L. R. B. 804, 820.

Firth Carpet Company, The, 33 N. L. R. B. 191. (An employer is justified in discharging employees for insubordi-

nation in refusing to obey a legitimate order of their superior.)

Ohio Calcium Company, The, 34 N. L. R. B. 917. (Employer *held* justified in discharging and refusing to reinstate individuals who refused to obey legitimate order of their superior. Persons without authorization from the union, their statutory representative operating under an exclusive recognition contract, refused to work upon employer's refusal to grant them extra help.)

Heilig Bros. Co., 32 N. L. R. B. 505. (Prominent union employee's abusive and indecent retort to superintendent, when told of transfer to another job for reasons which he thought invalid, justify discharge.)

Phelps Dodge Refining Corporation, 38 N. L. R. B. 555, 578. (*Held:* an employee's remark to his employer that resort might be had to the Act in order to remedy the employer's alleged unfair labor practices cannot be considered "insubordination" to warrant his dismissal.)

[*See* § 507 (as to acts of discrimination directed against employees who refuse to do work assigned by employer and such conduct amounts to a partial strike).]

505 e. Right to discharge employees for breach of agreement as to terms or conditions of employment.

An employer is justified in discharging his employees for insisting upon an interpretation of their collective bargaining agreement which amounts to a breach thereof. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 344, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

Where an employer is justified in discharging his employees because they have breached their contract, of employment, he may, upon resuming operations, employ members of another labor organization, for the labor organization to which his former employees had belonged is no longer representative of a majority, and the fact that the employer did not recall them was not, therefore, a discrimination in tenure. *N. L. R. B.* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 726 (C. C. A. 6), setting aside 1 N. L. R. B. 546, affirmed 306 U. S. 332.

Although a breach of an agreement, under certain circumstances, might be grounds for discharge, employees who struck on breach of an agreement, *held* to have remained employees and protected against unfair labor practices denounced by the Act, when the employer did not take

advantage of such ground as reasons for denying them reinstatement or terminating their employment, but on the contrary treated them as employees having rights to the positions which they had vacated by going on strike. *Lone Star Gas Co.*, 18 N. L. R. B. 420, 458, 459.

Where a dissident minority group within a union takes action contrary to the terms of an existing exclusive bargaining contract between the employer and the union and contrary to the wishes of the duly designated representative chosen by the majority of the employees, disciplinary action by the employer with the acquiescence of the union does not constitute discrimination within the meaning of Section 8 (3). *International Envelope Corporation*, 34 N. L. R. B. 1277.

[*See* DEFINITIONS § 8 (as to status of persons who have ceased work as a result of discharge for breach of contract).]

10 f. Other circumstances.

2. *Persons entitled to the protection afforded by Section 8 (3).* [See DEFINITIONS §§ 1–30 (as to employees within the meaning of the Act).]

11 a. In general.

The provisions of the Act making interference, restraint, and coercion of employees and discrimination against them unfair labor practices, are operative irrespective of the majority rule provision regarding collective bargaining, and therefore there is no merit to a contention of an employer that since a labor organization did not represent a majority of its employees, three employees who were committeemen of the labor organization and were seeking to negotiate the reinstatement of a previously discharged employee were exercising no right under the Act and the employer was justified in discharging them. *Cleveland Chair Co.*, 1 N. L. R. B. 892, 904.

Discrimination to discourage union membership is no less a violation of Section 8 (3) of the Act when it is directed against a non-union employee. *Hazel-Atlas Glass Company*, 34 N. L. R. B. 346.

Members of one union or even non-union employees may join sympathetically in the activities of another union in which they are not eligible for membership, or may even assist the employees of another employer, without relinquishing the protection of the Act. *Hazel-Atlas Glass Company*, 34 N. L. R. B. 346.

2 b. Supervisory employees.

The discharge of a foreman because he was a member of a labor organization constitutes a violation of Section 8 (3). *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

The statutory definition of an employee in Section 2 (3) of the Act is of wide comprehension, and although anti-union conduct of managerial or supervisory employees has been repeatedly held to be proof that the employer has engaged in unfair labor practices, it does not follow that managerial or supervisory employees are not employees within the meaning of Section 2 (3) of the Act, and the discriminatory discharge of such an employee constitutes a violation of Section 8 (3). *Atlantic Greyhound Corp.*, 7 N. L. R. B. 1189, 1196.

An employer is not permitted to advise his employees who happen to be foremen that they may not join unions or discharge them if they do, particularly where such position is taken as part of a definitely anti-union campaign. *Golden Turkey Mining Company*, 34 N. L. R. B. 760. *Fruehauf Trailer Co.*, 1 N. L. R. B. 68, 76, enforced 301 U. S. 49, reversing 85 F. (2d) 391 (C. C. A. 6); (discharge of subforeman). *American Potash & Chemical Corp.*, 3 N. L. R. B. 140, 158, 159 enforced 98 F. (2d) 448, (C. C. A. 9), cert. denied, 306 U. S. 643; (resignation of foreman induced by discriminatory demotion).

Star Publishing Co., 4 N. L. R. B. 498, 505, enforced 97 F. (2d) 465 (C. C. A. 9) (transfer of district and branch managers of newspaper).

Warfield Co., 6 N. L. R. B. 58, 61–64 (discharge of chief engineer of power house).

Crossett Lumber Co., 8 N. L. R. B. 440, 466, 467 (discharge of supervisory employee).

Horace Prettyman, 12 N. L. R. B. 640 (Foreman discharged for joining union).

Skinner & Kennedy, 13 N. L. R. B. 1186, 1193.

Eagle-Picher Co., 16 N. L. R. B. 727, 822.

Chambers Corp., 21 N. L. R. B. 808, 829.

Condenser Corp., 22 N. L. R. B. 347, 386 (discharge of supervisory employees for attempting to obtain increase in wages for those under his supervision).

Hearst Publications, Inc., 25 N. L. R. B. 621 (demoting and discharging supervisor of the district managers of newspaper).

Gregory, Joseph R., 31 N. L. R. B. 71 (discharge of an employee who exercised supervisory authority and who was described by the employer as its "leaderman").

Hazel-Atlas Glass Company, 34 N. L. R. B. 346 (denial of reinstatement to a foreman after a short-lived strike, because he refused to replace a striking production employee at work constitutes a violation of Section 8 (3).)

Whiting-Mead Co., 45 N. L. R. B. 987 (employer found to have discriminatorily discharged supervisory employee because of his union activity).

Whereas an employer might have been warranted in demoting supervisory employees engaging in union activity had it done so for the purpose of maintaining neutrality in matters relating to self organization of its employees, such demotions were discriminatory within the meaning of Section 8 (3) when employer was clearly opposed to the union in whose behalf these employees were active and when it maintained no semblance of neutrality. *Security Warehouse and Cold Storage Company*, 35 N. L. R. B. 857.

General Motors Sales Corporation, 34 N. L. R. B. 1052. (Employer's requirement that supervisory employees relinquish either supervisory status or union membership, *held* not discriminatory where employees were in position to use and did use supervisory positions to further union's cause to detriment of management, and where union and employees in question agree to relinquishment of supervisory functions after negotiations.) See also: *Marshall Field & Co.*, 34 N. L. R. B. 1; (demotion of supervisory employee).

Granted that the respondent may properly inhibit its foremen from interference with employee self-organization by adopting a non-discriminatory rule requiring foremen to refrain from activity in any labor organization and from participation in inter-union rivalry, it may not, in the absence of such a rule and without warning, discriminate against a foreman for his union membership or interest. Particularly is the case as regards working foremen. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

Beckerman Shoe Corporation of Kutztown, 43 N. L. R. B. 435. (Working foremen, *held* entitled to the protection of the Act.)

Held: that it was discriminatory to deprive an employee of his turn to part-time supervisory position because of his union membership and activity when membership in labor organizations had not been regarded by employer as a disqualification for a supervisory position. *American Rolling Mill Company*, 43 N. L. R. B. 1020.

[*See* §§ 11–20 (as to the responsibility of employers for the activities of special classes of employers); DEFINITIONS §§ 24–24.6 (as to status of employees allied with management); § 30 (as to employer's duty to remain neutral; UNIT §§ 86–90.9 (as to units confined to special classes of employees); and §§ 101–110.9 (as to exclusion or inclusion of employees allied with management).]

:13 c. Independent contractors.

An employer has not discriminated against a person because of his membership and activities in a labor organization where the person alleged to have been the victim of such discrimination was in fact an independent contractor rather than an employee. *Crosset Lumber Co.*, 8 N. L. R. B. 440, 476.

:14 d. Stockholders.

That an employee may also have the rights and privileges of a stockholder is, of itself, not sufficient to debar him from availing himself, in his capacity as an employee, of the rights and privileges of an employee under the Act. *Olympia Shingle Company, et al.*, 26 N. L. R. B. 1398.

:15 e. Non-union employees.

An employer's contention, that it was justified in refusing to reinstate a supervisory employee, insofar as it was based on his lack of membership in the union, *held* without merit, for discrimination to discourage union membership is no less a violation of Section 8 (3) when it is directed against a non-union employee or an employee ineligible to membership in the union; for members of one union or even non-union employees, may join sympathetically in the activities of another union in which they are not eligible for membership, or may even assist the employees of another employer without relinquishing the protection afforded by the Act. *Hazel-Atlas Glass Co.*, 34 N. L. R. B. 346, 414 and cases cited therein.

An employer's motion to dismiss the complaint with respect to the employees named on the ground that they were not members of the union at the time they were discharged was properly denied by the Trial Examiner, for the Act

protects employees engaged in concerted activities even when such employees are not members of any labor organization. *Atlanta Flour and Grain Co., Inc.*, 41 N. L. R. B. 409, 416 and cases cited therein.

It is not necessary that discrimination against an employee be for his own union membership and activities; if proven anti-union discrimination victimizes non-union employees alike with union, the remedy afforded extends evenly to all, for the one group is as truly discriminated against as the other for an end unlawful under the Act. *American Rolling Mill Co.*, 43 N. L. R. B. 1020, 1149.

Majestic Flour Mills, 15 N. L. R. B. 541. (Respondent, by locking out and refusing to reinstate its employees, discriminated against a non-union employee as well as the other employees named in the complaint, since the discrimination consisted, not in selecting union members for dismissal, but in locking out all its employees because a substantial number had joined the union.)

Crowell Portland Cement Company, 40 N. L. R. B. 652, 678. (Persons not shown to be members of a labor organization whose tenure was affected by a lock-out of all employees because a large majority were members of union opposed by employer found to have been discriminated against.)

[*See* § 503 (as to discrimination practiced against an employee because of his supposed membership in a labor organization), § 504 (as to discrimination practiced against an employee because of his relationship to, or friendliness with, a member of a labor organization), § 505 (as to discrimination practiced against an employee because of his former membership in a labor organization), § 506 (as to discrimination practiced against employees because of concerted activities in the absence of their membership in a labor organization), and § 526 (as to knowledge of union membership as an indicia of discrimination).

16 f. Confidential employees.

Act does not withhold exercise of right to self-organization from confidential employees. *Southern Colorado Co.*, 13 N. L. R. B. 699, 710.

17 g. Former employees, or applicants for initial employment. [*See* §§ 442, 443 (as to acts of discrimination by refusal to employ).]

Individuals who no longer retained their status as employees at the time respondent resumed operations 3 years after a shut-down are within the protection afforded by the Act

for a refusal to hire such individuals upon resumption of operations because of their union membership and activity would be a violation of the Act. *Nevada Consolidated Chemical Corp.*, 26 N. L. R. B. 1182.

h. Persons not parties to the conflict.

Finding of failure to reinstate laid-off employees because of their union membership and activities, *held* applicable to those lay-offs which were not discriminatory as well as to those discriminatorily laid off, although finding not necessary to the latter. *Lexington Telephone Company*, 39 N. L. R. B. 1130.

i. Other persons.

B. ACTS OF DISCOURAGEMENT (OR ENCOURAGEMENT) WITHIN THE MEANING OF SECTION 8 (3).

1. *In general.*

a. Discriminatory action of fellow employees or outside persons or groups authorized or acquiesced in by employer. [*See* §§ 3, 29 (as to an employer's responsibility for the acts of outsiders), and § 278 (as to the delegation of the authority to discharge as indicia of an 8 (2)).]

An employer has caused the discriminatory discharge of employees who were members of a legitimate labor organization by permitting members of an inside labor organization found to be employer-dominated to evict the employees who were members of the outside legitimate organization, and further permitting a committee of the inside organization to pass upon the qualifications of evicted employees who attempted to return to work by requiring them to renounce their union affiliation and to join the employer-dominated organization. *General Shoe Corp.*, 5 N. L. R. B. 1005, 1013–1016.

Clover Fork Coal Co. v. *N. L. R. B.*, 97 F. (2d) 331, 335 (C. C. A. 6), enforcing 4 N. L. R. B. 202. (Contention that employees had not been discharged because of their union activities but had been forced out by the determined attitude of the employer's non-union men who refused to work with members of the union, rejected where the evidence supports findings that the attitude of the employer's non-union men was, if not inspired by, at least encouraged and promoted by, the employer and its agents.)

Greenebaum Tanning Company, 11 N. L. R. B. 300, 421 (also 3, 29); Employees held to have been discriminatorily discharged when action of non-supervisory employees in

dismissing three employees who had not joined the company-dominated union found to have been sanctioned and approved by the employer, witnessed by supervisory officials without interfering therein, the non-supervisory employees secured final pay checks for the discharged employees without difficulty, contrary to the employer's strict rule concerning pay checks.

Nekoosa-Edwards Paper Co., 11 N. L. R. B. 446, 466. (Contention that an employee was refused reinstatement to his former position on the ground that other employees were hostile to him, rejected when the hostility was engendered by employer's attitude and by the action of supervisory employees.)

Riverside Manufacturing Co., 20 N. L. R. B. 394, 418. (An employer has caused the discriminatory discharge of union employees, when its conduct in condoning the eviction of the union employees through its failure to discipline non-union employees and its refusal to afford union employees adequate protection during working hours, in effect adopted a closed shop, limiting employment to those who were not members of the union.)

Isthmian S. S. Co., 22 N. L. R. B. 689, 697–699. (Ejection of members of a labor organization by members of a rival labor organization upon their refusal to join the latter organization.)

Ford Motor Company, 26 N. L. R. B. 322, 393. (Banishment of an employee from the plant, under threats of physical violence by fellow-employees acting on behalf of the respondent, because of his union membership.)

Weirton Steel Company, 32 N. L. R. B. 1145, 1254–1261. (An eviction of union employees from plant by non-union employees.)

Hudson Motor Car Company, 34 N. L. R. B. 815 (evictions by members of rival-favored union of dissident co-workers).

Boswell Company, 35 N. L. R. B. 968 (evictions of union employees from plant by non-union employees).

Delegating authority to a committee of employees, who had actively opposed a strike, to pass on the reinstatement of the striking employees, and permitting the committee to exclude large numbers of the strikers from reinstatement because they had been active on the picket line constitutes discrimination not only as to strikers who actively participated in the strike, by picketing, but also as to "neutral"

or non-active strikers whose reinstatement was thereby discriminatorily conditioned upon the acceptance by them of the denial of reinstatement to, and the discharge of, the active strikers. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1269, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.

The Grace Co., 7 N. L. R. B. 766, 775. (An employer has discriminated in regard to hire and tenure of employment within the meaning of Section 8 (3) where employees who were members of a labor organization found to be employer-dominated refused to allow other employees to enter the plant, on the day of its reopening, unless they joined the organization, and the employer is responsible for the lock-outs for the reason that such acts were known to it and were within the scope of the authority purported to be granted to the organization by a closed-shop agreement.)

Shellabarger Grain Products Co., 8 N. L. R. B. 336, 358. (An employer, by permitting a committee representing an inside labor organization and opposing an outside labor organization to decide upon and refuse reinstatement of striking employees who belonged to the outside labor organization, has discriminated in regard to hire and tenure of employment in violation of Section 8 (3).) See also: *Denver Automobile Dealers Ass'n.*, 10 N. L. R. B. 1173, 1208.

Shenandoah-Dives Mining Company, 35 N. L. R. B. 1153. (Employer held to have refused reinstatement to unfair labor practice strikers by delegating to dominated organization authority to determine who should be recalled to work.)

Republic Steel Corp., 9 N. L. R. B. 219, 357, 358, modified 107 F. (2d) 472 (C. C. A. 3), cert. granted as to work-relief provisions only 309 U. S. 684. (The action of an employer in permitting an employee who was an official of a labor organization found to be employer-dominated to withhold the issuance of a pass to another employee who had participated in a strike, thus preventing the latter from entering the plant through lines of the National Guard, constitutes a refusal to reinstate.)

McKesson & Robbins, Inc., 19 N. L. R. B. 778. (Where, 2 days after the respondent made a closed-shop contract found to be invalid, employees who refused to join the contracting union were prevented from working by organizers of the contracting union stationed within the re-

spondent's plant and acting in the presence and with the acquiescence of an officer of the respondent, the Board held that the said activities of the organizers were attributable to the respondent, and that the respondent had unlawfully discriminated against the employees so prevented from working.)

[*See* § 278 (as to contracts with dominated organizations which grant the organization the right of discharge as indicia of discrimination).]

An employer who discharged an employee because the committee of a labor organization representing a majority of its employees opposed her continued employment, has violated Section 8 (3), when no closed-shop contract existed that would justify her discharge because of her non-membership in that organization, and by such action it surrendered its managerial responsibilities with regard to the employee's employment and acquiesced in and adopted the committee's factional animus. *Borg-Warner Corp.*, 38 N. L. R. B. 866, 873.

Boswell Company, J. G., et al., 35 N. L. R. B. 968. (An employer has engaged in conduct violative of Section 8 (3) in acceding to the desires of a group of local citizens who sought the discharge of an employee because of her alleged union sympathies and activities.)

Metal Mouldings Corporation, 39 N. L. R. B. 1077. (An employer by acquiescing in and granting the demand of a dominated union that an employee who had opposed the dominated organization and had attempted to set up a rival labor organization be discharged, has discriminated in regard to hire and tenure of employment in violation of Section 8 (3).)

Borg-Warner Corp., 44 N. L. R. B. 105. (Employer who was motivated by a recognition of the superior force of the union as compared to that of complainants and purportedly discharged them pursuant to a no-absence rule—also a provision of contract with union—although they properly notified employer that their absence was due to the union's action in preventing their entering plant to induce them to pay up their dues, *held* to have thereby encouraged membership in a labor organization in violation of 8 (3), when there was no provision in contract with the union requiring membership or the maintenance of membership in the union as a condition of employment, when

under the contract the employer could have, if it so desired, avoided the discharge, and when the necessary effect of its acts resulted in the discharge of the complaints, [at the instance of the union] because of their failure to become or remain members of the union.)

Borg-Warner Corporation, Marvel-Schebler Division, 38 N. L. R. B. 866. (Where a committee of bargaining representative, although having a factional motive, based its protest as to reemployment of an employee upon an arguable interpretation of seniority rights under or collective bargaining contract, an employer who in good faith yielded to such protest, *held* not to have engaged in conduct violative of Section 8 (3), for by such action it had not surrendered its managerial function in a sphere in which it had exclusive jurisdiction since the union had equal and coextensive interest in administrating the seniority provisions.)

The action of an employer in refusing to recall or reinstate laid-off employee because of his union membership and activity induced by threat of rival union to call strike if such employee was recalled or reinstated constitutes a violation of Section 8 (3). *Greer Steel Company, The,* 38 N. L. R. B. 65.

[*See* § 1 (as to economic necessity as a justification for conduct violative of the Act).]

Action of storekeeper, who had arrangement with respondent to extend credit under wage deductions plan with employer, in refusing credit to known union employees held not sufficient per se to charge discrimination by respondent. *Whiterock Quarries, Inc.,* 45 N. L. R. B. 165.

22 b. Inducing or compelling employee to resign.

Where employees who have been discharged because of their membership in a labor organization have thereupon gone on strike and on the following day are joined in the strike by another employee who was a member of the labor organization but who was not present at the time of the discharges, the employment of the latter employee has been severed by the unfair labor practices of the employer, for continuation or return to work by the employee under the circumstances would have meant loss or suspension of his union membership. *Clark & Reid Co., Inc.,* and *Curtis & Croston, Inc.,* 2 N. L. R. B. 516, 526.

Requiring employees either to give up connection with a labor organization and abandon their legitimate weapon,

the strike, or leave their jobs is to condition employment upon the abandonment by employees of rights guaranteed them in the Act, and is equivalent to discharging them outright for union activities. *Atlas Mills, Inc.*, 3 N. L. R. B. 10, 17.

An employer has discharged an employee in violation of Section 8 (3) by inducing the employee to believe he was being discharged because of his membership in a labor organization and permitting him to leave his employment without dissipating the impression so created. *Planters Mfg. Co., Inc.*, 10 N. L. R. B. 735, 749, enforcing 105 F. (2d) 750 (C. C. A. 4), rehearing denied 106 F. (2d) 524. See also: *Chicago Apparatus Co.*, 12 N. L. R. B. 1002, 1019. *Beckerman Shoe Corp.*, 43 N. L. R. B. 435, 444.

Boswell Company, J. G., et al., 35 N. L. R. B. 968. (An employee who was absent from work on account of illness and who did not apply for reinstatement because of a registered letter he had received stating that his employment was terminated, has in effect been discriminatorily discharged where the employer offered no evidence to show that it had ever before employed the medium of registered mail to notify employees absent from work on account of illness that they were laid-off and where regardless of whether the employer considered its letter a notice of discharge it conveyed to the employee in question, in view of its past acts of discrimination, that as a member of the union his employment with the Company was "terminated"—finally.)

An employer's contention that it was absolved of any responsibility for an employee's leaving because he signed a resignation card, and because he stated at the hearing in the earlier case that he left its employ "voluntarily," *rejected*, when at the time the employee resigned the employer's discriminatory action had already been taken and the employee had been notified of his discharge, so that his leaving, was "voluntary" only in the sense that he quit in anticipation of the discharge, and was tantamount to a discharge. *Federbush Co., Inc.*, 34 N. L. R. B. 539, 553.

An employer cannot avoid his responsibilities under the Act by creating a situation so unbearable to an employee, so detrimental to harmonious and constructive working conditions, that the employee relinquishes his position

rather than continue in such a situation. *Chicago Apparatus Co.*, 12 N. L. R. B. 1002, 1020.

Although the Board found without merit an employer's contention that an employee, alleged to have been discriminatorily discharged had quit his employment, *held* that even had he quit when he was assigned out of order of seniority to work regarded as degrading and inferior to pay and rank to that which he had done before with merit, the Board would still investigate the circumstances for discriminatory intent in violation of the Act, for an employee who quits his job because of a justified belief that he is being subjected to discrimination, does not thereby waive any of his rights, and does not immunize his employer to proceedings by the Board under the Act, as for a constructive discharge, to remedy the unfair labor practices. *American Rolling Mill Co.*, 43 N. L. R. B. 1020, 1141.

Waggoner Refining Co., Inc., et al., 6 N. L. R. B. 731; (The discriminatory demotion of an employee and his resultant resignation rather than accept the demotion constitutes a violation of Section 8 (3) on the part of the employer. See also:

American Potash & Chemical Corp. 3 N. L. R. B. 140, 158, 159.

Continental Oil Co., 12 N. L. R. B. 789, 806.

Newberry Lumber & Chemical Co., 17 N. L. R. B. 795.

Niles Fire Brick Co., 30 N. L. R. B. 426.

Sun Shipbuilding & Dry Dock Co., 38 N. L. R. B. 234.

American Rolling Mill Co., 43 N. L. R. B. 1020, 1141.

Hancock Brick & Tile Co., 44 N. L. R. B. 920.

Sterling Corset Co., Inc., 9 N. L. R. B. 858, 870. (An employer, by constantly warning and questioning employees about their membership and activities in a labor organization and by subjecting them to surveillance, thereby compelling them to leave their employment, has discriminated in regard to tenure of employment in violation of Section 8 (3). See also: *Chicago Apparatus Co.*, 12 N. L. R. B. 1002, 1019, 1020; respondent subjected an employee to constant admonitions and cross-examination with respect to his union activities, advised him that his continued employment was distasteful to the respondent, and urged him to resign).

Crossett Lumber Co., 8 N. L. R. B. 440, 478. (An employer has discriminated in regard to hire and tenure of employ-

ment where, after learning of an employee's membership in a labor organization, it complained that he was not getting enough work done, told him that he would be fired if he did not get out a specified amount of work, and since it was impossible to do the specified work, the employee left his job.)

Highway Trailer Co., 3 N. L. R. B. 591, 611, 612. (Forcing an employee to resign by compelling him to either join a labor organization found to be employer-dominated or lose his seniority rights is tantamount to a discharge and constitutes discrimination in regard to hire and tenure of employment for the purpose of encouraging membership in a labor organization in violation of Section 8 (3).)

Phelps Dodge Refining Corporation, 38 N. L. R. B. 555. (Employer, *held* in effect to have constructively discharged an employee where its refusal, because of the employee's union activities, to reinstate him to a less unhealthy job as it had done before the commencement of union activities, caused the employee to quit his employment because of resulting illness.)

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (Where employer assigned returned unfair labor practice strikers to the most undesirable tasks in the plant and compelled them, in the contradistinction to its treatment of other employees, to perform these tasks under conditions calculated to cause hardship and physical suffering, *held* such conduct constituted unlawful discrimination and was the reason underlying the returned strikers' refusal to continue to work; and that their departure under such circumstances amounted in effect to a constructive and discriminatory discharge of each of them.)

Hancock Brick & Tile Company, The, 44 N. L. R. B. 920. (Employer, *held* to have discriminatorily discharged employee; and finding not altered even if employer's contention were true, that it had offered employee work at a job he had occupied as the result of a discriminatory demotion, for employee's rejection of such offer would have been justified as a refusal to acquiesce in the discriminatory demotion.)

[*See* § 431 (as to what constitutes a discharge) § 508 (as to actual discharges for refusal to comply with unlawful conditions imposed by employer), and Remedial Orders §§ 116, 117 (as to effect upon reinstatement and back-pay

orders of a refusal to accept reinstatement offered upon a discriminatory basis).]

430 c. Other acts.

2. *Discharge.*

431 a. In general; what constitutes.

An employer by discharging employees because of their membership and their activities in a labor organization has discriminated in regard to tenure of employment thereby discouraging membership in the labor organization in violation of Section 8 (3). *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 34, 36, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3). See also:

Friedman-Harry Marks Clothing Co., Inc., 1 N. L. R. B. 411, 429; 1 N. L. R. B. 432, 451, enforced 301 U. S. 58, reversing 85 F. (2d) 1 (C. C. A. 2).

Jones & Laughlin Steel Corp., 1 N. L. R. B. 503, 516, enforced 301 U. S. 1, reversing 83 F. (2d) 998 (C. C. A. 5).

Washington, Virginia and Maryland Coach Co., a corp., 1 N. L. R. B. 769, 784, enforced, 301 U. S. 142, affirming 85 F. (2d) 990 (C. C. A. 4).

Associated Press, 1 N. L. R. B. 788, 799, enforced 301 U. S. 103, affirming 85 F. (2d) 56 (C. C. A. 2).

Benjamin & Marjorie Fainblatt, d/b/a Somerville Mfg. Co. and Somerset Mfg. Co., 1 N. L. R. B. 864, 876, enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

An employer has discriminated in regard to hire and tenure of employment where it discharged three members of a union when they sought to negotiate with it for the reinstatement of a union member who had previously been discharged. *Cleveland Chair Co.*, 1 N. L. R. B. 892, 901.

Requiring employees either to give up connection with a labor organization and abandon their legitimate weapon, a strike, or leave their jobs is to condition employment upon the abandonment by employees of rights guaranteed them in the Act, and is equivalent to discharging them outright for union activities. *Atlas Mills, Inc.*, 3 N. L. R. B. 10, 17.

Refusal of an employee to submit to an unfair labor practice in accepting a demotion because of activities in behalf of a labor organization is not an act of insubordination and cannot justify a discharge. *Waggoner Refining Co., Inc.*, et al, 6 N. L. R. B. 731, 756, 757.

Newberry Lumber & Chemical Co., 17 N. L. R. B. 795. (Failure of employee to report to work because of employer anti-union violence, *held* equivalent to discriminatory discharge.)

Continental Oil Co., 12 N. L. R. B. 789. (Dismissal of employees following their refusal to accept discriminatory transfers, *held* equivalent to discharge and an 8 (3).)

The lay-off of an employee, allegedly because of lack of work, and the replacement of such employee on the day following his lay-off by a new employee engaged to do the same work that he had performed, constitutes a discharge. *Empire Furniture Corp.*, 10 N. L. R. B. 1026, 1032, set aside 107 F. (2d) 92 (C. C. A. 6).

Burk Bros., 21 N. L. R. B. 1281, 1288, 1289. (The termination of employment of an employee was a discharge and not a lay-off as alleged, when the employer contrary to its general custom and without explanation for its discriminatory treatment paid the employee immediately, whereas its normal policy was to pay discharged employees immediately, and laid-off employees on the regular pay day.)

Jensen Radio Manufacturing Company, 27 N. L. R. B. 813. (The respondent's decision after a non-discriminatory lay-off not to reemploy an employee because of union activity amounts to a discharge.)

Cleveland-Cliffs Iron Co., 30 N. L. R. B. 1093, 1109, 1110. (Termination of the employment of two employees was in effect a discharge, when they were laid-off for alleged inefficiency while employees with less seniority who had been guilty of similar inefficiency were retained, and although they were under no obligation to apply for reinstatement, were told when they did apply, that no work was available when in fact there existed available work.)

Lexington Telephone Company, 39 N. L. R. B. 1130. (By continuing the lay-off of an employee beyond temporary period for which originally made, such employee was in effect discharged.)

American Laundry Machinery Company, The, 45 N. L. R. B. 355. (The termination of employees' employment, *held* to constitute a discharge notwithstanding employer's policy never to discharge, but to lay off employees, and employer's allegation that such employees were merely suspended, when employees had been paid in full as of date of their discharges and employer had at no time made them an offer of reemployment.)

[*See* § 421 (as to discriminatory discharges arising from discriminatory action of fellow employees or outside persons or groups authorized or acquiesced in by employer) and §422 (as to discharges arising from an employer's discriminatory acts which induce or compel employees to resign).]

See following page references for decisions in which discriminatory discharges were found:

Vol. 25—pp. 92, 168, 193, 456, 621, 837, 869, 946, 989, 1126, 1166
Vol. 26—pp. 177, 198, 424, 582, 662, 765, 823, 878, 921, 1094, 1244, 1419, 1440
Vol. 27—pp. 118, 521, 864, 878, 976, 1040, 1274, 1321
Vol. 28—pp. 79, 116, 357, 442, 540, 572, 619, 869, 975, 1051, 1197
Vol. 29—pp. 556, 673
Vol. 30—pp. 60, 146, 170, 426, 550, 739, 809, 888, 1093
Vol. 31—pp. 71, 101, 196, 365, 621, 786
Vol. 32—pp. 338, 387, 823, 863, 895, 1020, 1145
Vol. 33—pp. 351, 393, 511, 557, 710, 858, 885, 954, 1170
Vol. 34—pp. 1, 346, 502, 539, 610, 760, 785, 866, 896, 968, 1028, 1052, 1068
Vol. 35—pp. 63, 120, 217, 605, 810, 857, 1100, 1128, 1220, 1334
Vol. 36—pp. 240, 411, 545, 1220, 1294
Vol. 37—pp. 334, 499, 578, 631, 700, 725, 1059, 1174
Vol. 38—pp. 234, 555, 690, 778, 866, 1176, 1210, 1245, 1359
Vol. 39—pp. 107, 344, 709, 1269
Vol. 40—pp. 223, 323, 424, 652, 736, 967, 1058
Vol. 41—pp. 288, 326, 409, 521, 537, 674, 807, 872, 1454, 1474
Vol. 42—pp. 377, 457, 593, 852, 942, 1051, 1073, 1160, 1375
Vol. 43—pp. 73, 125, 179, 457, 1020
Vol. 44—pp. 1, 184, 257, 404, 632, 920, 1342
Vol. 45—pp. 105, 230, 241, 355, 509, 638, 709, 799, 869, 889, 987, 1027, 1113, 1163, 1272

See following page references for decisions in which discharges were not found to be discriminatory:

Vol. 25—pp. 92, 821, 946, 1190
Vol. 26—pp. 74, 177, 192, 198, 447, 582, 630, 765, 1004, 1440
Vol. 27—pp. 204, 235, 856, 976, 1257, 1274
Vol. 28—pp. 40, 202

Vol. 29—pp. 60, 663, 746, 954
Vol. 30—pp. 212, 550, 739, 1093, 1201
Vol. 31—pp. 196, 258, 621, 715, 900
Vol. 32—pp. 141, 387, 536, 773, 823, 1056, 1145
Vol. 33—pp. 511, 1155
Vol. 34—pp. 502, 700, 760, 968, 1068, 1095, 1129, 1255, 1277
Vol. 35—pp. 120, 605
Vol. 36—p. 240
Vol. 37—pp. 334, 631, 662
Vol. 38—pp. 159, 690, 813, 866, 1210
Vol. 39—p. 1269
Vol. 40—pp. 223, 652
Vol. 41—pp. 326, 521, 674, 807, 843, 872, 921, 1078, 1105, 1288, 1383
Vol. 42—pp. 377, 814, 1160
Vol. 43—pp. 394, 545, 1309
Vol. 44—pp. 1, 404, 1033, 1234
Vol. 45—pp. 241, 509, 709, 869, 1163

0 b. Of strikers for not returning to work: real or tactical.

The contention of an employer that all striking employees who failed to return to work were automatically discharged following issuance of a notice, during a strike, stating that after a certain date the jobs of the striking employees would be declared vacant and the company would be free to fill their positions with new men, cannot be sustained where such notice was issued and intended only as a threat of the loss of jobs for the purpose of demoralizing union membership in pursuance of the employer's unlawful refusal to bargain collectively and it was so construed by the striking employees, and thereafter, notwithstanding the notice, up to the date of the hearing many striking employees were reinstated. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679, 701, enforced 98 F. (2d) 18 (C. C. A. 9). *American Mfg. Concern*, 7 N. L. R. B. 753, 759, 760. (The purported dismissal of employees who had gone on strike does not constitute a discharge within the meaning of the Act, for the employees by engaging in a strike had no intention at that time of returning to work upon the employer's terms, and consequently the employer's statements that they were discharged had at that time no actual effect upon the tenure of their employment, but rather the statements were primarily intended, not to effect a discharge, but a tactical step to coerce the em-

ployees into resuming work or to defer those remaining at work from going out on strike.) Cf. *Standard Lime & Stone Co.* v. *N. L. R. B.*, 97 F. (2d) 531, 533 (C. C. A. 4), setting aside 5 N. L. R. B. 106.

Poultrymen's Service Corporation, 41 N. L. R. B. 444. (Employer's threat to displace striking employees, *held* not to constitute a discharge of striking employees but to have been merely a tactical maneuver designed to break the strike.)

In determining whether or not a notice purporting to discharge strikers who did not return to work by a certain date constituted a "real" or "tactical" discharge of the strikers, the Board considered all the circumstances, including those following as well as those surrounding the alleged discharge and found that since the employer had entered into a closed-shop contract with an assisted organization prior to the notice, that the notice coupled with the closed-shop contract imposed upon these employees the unlawful condition that they abandon the strike, return to work, and join the assisted organization or that they lose their opportunity of future employment, and therefore that those employees who failed to abide by the notice were as a result of the notice discriminatorily discharged. *Northwestern Cabinet Company*, 38 N. L. R. B. 357.

Sunshine Hosiery Mills, 1 N. L. R. B. 664, 673. (To permit an employer to discriminate against strikers when they apply for reinstatement merely because they had previously refused an offer to return to work at the height of a strike is a deliberate rebuke to concerted action by members of a labor organization.)

Lone Star Gas Company, 18 N. L. R. B. 420, 456–457. (The discharge by the employer of striking employees for the reason that such employees continued to strike beyond the deadline fixed by the employer, *held* to constitute discrimination within the meaning of Section 8 (3) of the Act.)

Register Publishing Co., Ltd., 44 N. L. R. B. 834. (Employer by its letter advising the union that because the striking employees had refused to return to work their positions had permanently been filled by new employees who would not be displaced to afford positions to them, *held* to have unlawfully discharged these employees in violation of Section 8 (3).)

c. By reason of contract violative of the Act. (*See* §§ 481–500.)

d. By application of discriminatory working rules. (*See* § 532.)

3. *Refusal to employ.*

41 a. *In general.*

Assumed, without deciding, that it constitutes an unfair labor practice under the Act to refuse, because of prior labor affiliations or activities, to employ one who is not at the time an employee. *Appalachian Electric Power Co.* v. *N. L. R. B.*, 93 F. (2d) 985, 988 (C. C. A. 4), setting aside 3 N. L. R. B. 240.

It is not essential in all cases to a finding of unfair labor practices under Section 8 (3) of the Act that the status of an employee be held by the person against whom the alleged discrimination has been directed, for the provision of the Section has express application to a discrimination as to hire; and, therefore, where the charge of discrimination does relate to hire, the fact that an employee status has not existed is wholly without probative bearing on the issue whether an unlawful discrimination has occurred. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 337.

An employer's contention that the Act has no application whatever prior to the formation of the employer-employee relationship is clearly and specifically contradicted by the terms of Section 8 (3) of the Act which provides, "It shall be an unfair labor practice for an employer—By discrimination in regard to *hire* or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ." A reference to the legislative history of the Act indicates that the provision means exactly what it says. In addition, the broad purposes of the Act to further industrial peace by "encouraging the practice and procedure of collective bargaining" is irreconcilable with the proposition that employers may debar union applicants with impunity. *Waumbec Mills, Inc.*, 15 N. L. R. B. 37, 46.

The position urged by an employer that the Act, if construed to forbid discrimination in selecting among applicants for employment, would violate the Fifth Amendment to the Constitution of the United States since thus construed it would compel an employer to enter into contracts with, or to pay money to, persons with whom the employer has no contractual relations, involves a fundamental misconcep-

tion of the operation of the Act. Interdiction of discrimination in selecting among applicants imposes no restraint upon the employer which is substantially different from the ban upon discrimination in discharging employees; in each case the employer's freedom to choose those with whom he desires to initiate or maintain the employment relationship is limited to precisely the same degree. The employees' (persons who are employed) freedom of self-organization, protection of which has been judicially held to justify restriction upon the employer's freedom of choice, is equally threatened in each case if the freedom of choice may be discriminatorily exercised. *Mountain City Mill Co.*, 25 N. L. R. B. 297, 441.

The prohibition of Section 8 (3) of the Act forbidding "discrimination in regard to hire" must be applied as a means towards the accomplishment of the main object of the Act *viz*: the preservation of the right of employees to self-organization, and as it is within the power of Congress to deny an employer the freedom to discriminate in discharging, it is no greater limitation to deny an employer the right to discriminate in hiring, for like a discharge, a discriminatory refusal to hire equally thwarts the right to collective bargaining through self-organization. *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, modifying and remanding 113 F. (2d) 202 (C. C. A. 2), enforcing as modified 19 N. L. R. B. 547.

42 b. Former employees.

Section 8 (3) in forbidding discrimination in employment, is not limited to those who are employees at the time of the discrimination, but forbids discrimination in regard to hire generally, and the refusal of an employer to rehire a former employee because of his activities in a labor organization which are well known to his former fellow-workers, discourages the latter and so restrains them in the exercise of their rights to self-organization. *Algonquin Printing Co.*, 1 N. L. R. B. 264, 269, 270. See also:

Cherry Cotton Mills, 11 N. L. R. B. 478, 491.

Phelps Dodge, 19 N. L. R. B. 547.

Nevada Consolidated Chemical Corp., 26 N. L. R. B. 1182, 1193.

Swift & Company, 30 N. L. R. B. 550, 568.

Greer Steel Company, 31 N. L. R. B. 365, 373–381.

Gallup American Coal Company, 32 N. L. R. B. 723, 836–838.

Gates Rubber Company, 40 N. L. R. B. 424, 433–435.

An employer by refusing to hire a person who had previously been irregularly employed because he belonged to a labor organization has discriminated in regard to hire and tenure of employment, thereby discouraging membership in a labor organization in violation of Section 8 (3). *Montgomery Ward & Co., Inc., a corp.*, 4 N. L. R. B. 1151, 1167, remanded for new hearing, 103 F. (2d) 147 (C. C. A. 8).

Even if it were assumed contrary to the Board's findings that seasonal employees who were discriminatorily denied reemployment because of their union membership and activities were not employees of the respondent at the time of the discrimination, the Board's conclusion that the respondent had committed unfair labor practices would be the same, for Section 8 (3) of the Act is not limited to discrimination against "employees" since a refusal by an employer to hire any applicant for employment who would have been hired but for his membership in or activities on behalf of any labor organization, is an unfair labor practice within the meaning of Section 8 (3). *Security Warehouse and Cold Storage Company*, 35 N. L. R. B. 857, 917.

Knoxville Publishing Co., 12 N. L. R. B. 1209, 1223 (person hired but who was "discharged" before he was to have commenced work).

Southern S. S. Co., 23 N. L. R. B. 26, 36 (assuming that employee status of seamen terminated at end of voyage).

Sierra Madre-Lamanda Citrus Ass'n, 23 N. L. R. B. 143, 159 (assuming that employee status of seasonal employees terminated at end of season).

Hazel-Atlas Glass Company, 23 N. L. R. B. 346, 380 (assuming that person was previously discharged because of violation of respondent's rule requiring laid-off employees to report back to work).

Cleveland Worsted Mills Co., 43 N. L. R. B. 545, 571 (whether or not economic strikers remained employees).

443 c. Applicants for initial employment.

An employer by refusing to hire an applicant seeking employment because of his union membership and activities has violated Section 8 (3). *Waumbec Mills, Inc.*, 15 N. L. R. B. 37, 40–46, enf'd as modified, 114 F. (2d) 226 (C. C. A. 1). See also: *New York and Porto Rico Steamship Com-*

pany, The, et al., 34 N. L. R. B. 1028. *Veta Mines, Inc.*, 36 N. L. R. B. 288, 291–297.

Cf. *American Rolling Mill Company*, 43 N. L. R. B. 1020, 1067–1071; (Alleged refusal to hire an applicant for employment dismissed when aside from the possible existence of a discriminatory motive, the record did not support a finding that a position existed for which the applicant was qualified or into which he would normally have been hired.)

Employer discriminated with respect to hire, thereby discouraging union membership, by failing to hire any of 42 applicants for employment who formerly had been employed by another company which formerly operated the plant in which the respondent employer is presently operating and who while so employed by former employer had joined an outside union and refused to participate in an inside union's strike for a closed shop while plant was still operated by former employer, which action publicized their membership in the outside union where respondent employer hired 62 percent of other persons formerly employed in plant and 82 persons who were never employed in the plant, so that in hiring 62 percent of persons formerly employed in plant the 42 applicants who refused to participate in inside union strike had a minimum expectancy of 26 jobs with respondent employer. In reaching conclusion, Board considered fact that employer, with knowledge that local business men opposed the outside union, required applicants for employment to give two local business men as references and hired a stranger to the community to pass upon applicants for employment. *Milan Shirt Co.*, 22 N. L. R. B. 1143, 1159.

Mountain City Mill Co., 25 N. L. R. B. 397, 435–441 (refusal to employ former employees of predecessor employer).

Olympia Shingle Co., 26 N. L. R. B. 1398, 1407 (refusal to employ former employees of predecessor employer).

Phelps, 45 N. L. R. B. 1163 (refusal to employ persons who were discharged by trustee in bankruptcy).

Cf. *Columbia Box Board Mills, Inc.*, 35 N. L. R. B. 1050, 1057; (Neither respondents nor A or B has discriminated in regard to the hire and tenure of employment of persons who were former employees of A, when B purchased A's trucking operation for legitimate business reasons and had not acted as agent or in the interest of A to deprive A's former employees of rights guaranteed in the Act.)

Where a respondent actively undertook to solicit prospective workers from among past employees of a predecessor company, failed to solicit particular persons because of their membership or activity in the union, and but for such persons' union membership or activity would have offered them employment, *held* that it was unnecessary for these persons to have made a request for employment and that the respondent by discrimination in regard to their hire, had discouraged membership in the union and thereby engaged in unfair labor practices in violation of Section 8 (3). *Olympia Shingle Co.*, 26 N. L. R. B. 1398, 1413–1415.

[*See* § 453 (as to when applications for reinstatement are excused and a discriminatory refusal to reinstate is found).]

4. *Refusal to reinstate following strike or other temporary interruption of employment not constituting discrimination.*

44 a. In general.

The refusal of an employer whose unfair labor practices have either caused or prolonged a strike to reinstate the strikers upon application and to displace, if necessary, persons first hired after the strike began constitutes a violation of Section 8 (3). *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879, enforcing, 3 N. L. R. B. 84, cert. denied, 304 U. S. 579. See also:

McKaig-Hatch, Inc., 10 N. L. R. B. 33, 49, 50.
Western Felt Works, 10 N. L. R. B. 407, 428.
Denver Automobile Dealers Ass'n., 10 N. L. R. B. 1173, 1208–1210.
M. H. Ritzwoller Company, 15 N. L. R. B. 15, 29, enf'd as modified, 114 F. (2d) 432 (C. C. A. 7).
Stehli and Co., Inc., 11 N. L. R. B. 1397, 1437.
American Hair and Felt Company, 19 N. L. R. B. 202, 215–216.
Mountain City Mill Company, 25 N. L. R. B. 397.
Mall Tool Company, 25 N. L. R. B. 771.
Manville Jenckes Corporation, 30 N. L. R. B. 382.
United Dredging Company, 30 N. L. R. B. 739.
Rapid Roller Co., 33 N. L. R. B. 557.
Bear Brand Hosiery Co., 34 N. L. R. B. 325.
United Biscuit Company of America, 38 N. L. R. B. 278.
Poultrymen's Service Corporation, 41 N. L. R. B. 444.
Barrett Company, The, 41 N. L. R. B. 1327.

Discrimination in reinstating employees who have engaged in a strike not caused or prolonged by unfair labor practices for the sole reason that they have been active in a

union is prohibited by Section 8. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 303 U. S. 333, 346, enforcing 1 N. L. R.B. 201, and reversing 92 F. (2d) 761 (C. C. A. 9) and 87 F. (2d) 611. See also:

Mountain City Mill Company, 25 N. L. R. B. 397.
Wilson & Co., Inc., 30 N. L. R. B. 314.
Firth Carpet Company, 33 N. L. R. B. 191.
Cleveland Worsted Mills Company, The, 43 N. L. R. B. 545.

The refusal of an employer upon the opening of its plant after a temporary shut-down, to rehire employees because of their membership and activities in a labor organization is discriminatory in regard to terms of employment and discourages membership and activity in a labor organization in violation of Section 8 (3). *Algonquin Printing Co.*, 1 N. L. R. B. 264, 272. See also: *Greensboro Lumber Co.*, 1 N. L. R. B. 629, 635, 637. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 855–857.

Dain Manufacturing Company, et al., 25 N. L. R. B. 821 (refusal to reinstate following lay-off).

Ohio Fuel Gas Company, a corporation, 25 N. L. R. B. 519 (refusal to reinstate following lay-off).

Sorg Paper Company, 25 N. L. R. B. 946 (refusal to reinstate following shut-down).

Triplex Screw Company, 25 N. L. R. B. 1126 (refusal to reinstate following lay-off).

Texarkana Bus Company, Inc., et al., 26 N. L. R. B. 582 (refusal to reinstate following leave of absence).

Tex-O-Flour Mills, 26 N. L. R. B. 765 (refusal to reinstate following illness).

Wilson & Co., Inc., 26 N. L. R. B. 297 (refusal to reinstate laid-off employees).

Wilson & Co., Inc., 26 N. L. R. B. 273 (delayed reinstatement following seasonal lay-off).

Jergens Co. of California, Andrew, 27 N. L. R. B. 521 (delayed reinstatements following lay-off; refusal to reinstate following lay-off).

Cudahy Packing Company, The, 27 N. L. R. B. 118 (refusal to reinstate employee following his illness).

Ford Motor Company, 29 N. L. R. B. 873 (following lay-off).

American Smelting & Refining Company, 29 N. L. R. B. 360 (delayed reinstatement).

Cleveland-Cliffs Iron Company, 30 N. L. R. B. 1093 (refusal to reinstate following lay-off).

Greer Steel Company, The, 31 N. L. R. B. 365 (refusal to reinstate employee temporarily laid-off).

Montgomery Ward & Company, Incorporated, 31 N. L. R. B. 786 (delayed reinstatement following lay-off).

Armour and Company, 32 N. L. R. B. 536 (refusal to reinstate following lay-off).

Gallup American Coal Company, 32 N. L. R. B. 823 (refusal to reinstate after furlough).

Hazel-Atlas Glass Company, 34 N. L. R. B. 346 (refusal to reinstate employees following non-discriminatory lay-off for production curtailment).

Golden Turkey Mining Company, 34 N. L. R. B. 760 (refusal to reinstate pursuant to agreement with union following non-discriminatory lay-off).

Davies Co., Inc., 37 N. L. R. B. 634 (refusal to reinstate laid-off employee).

McCleary Timber Company, Henry, 37 N. L. R. B. 725 (refusal to reinstate an employee following shut-down).

Marlin-Rockwell Corporation, 39 N. L. R. B. 501 (refusal to reinstate laid-off employees because of their union membership and activity).

Lexington Telephone Company, 39 N. L. R. B. 1130 (failure to recall laid-off employees).

Budd Manufacturing Company, Edward G., 41 N. L. R. B. 872 (failure to reinstate employee temporarily laid off).

Jergens Co. of California, Andrew, 43 N. L. R. B. 457 (delayed reinstatement following lay-off; refusal to reinstate following lay-off).

Board dismissed 8 (3) allegations without prejudice as to unfair labor practice strikers, when it did not appear that they applied for reinstatement. *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

[*See* §§ 452, 453 (as to when application for reinstatement is necessary or unnecessary).]

See following page references for decisions in which refusals to reinstate were not found to be discriminatory.

Vol. 25—p. 506
Vol. 26—pp. 88, 553, 1440
Vol. 27—pp. 250, 976
Vol. 29—pp. 360, 873
Vol. 30—p. 314
Vol. 32—p. 895
Vol. 34—p. 194

Vol. 35—pp. 772, 1153
Vol. 39—p. 501
Vol. 41—pp. 263, 872, 1288

445 b. Reinstatement to different position.

The reinstatement of employees after a strike to positions of less pay or less authority than they have previously enjoyed for the reason that they had joined and assisted a labor organization constitutes a violation of Section 8 (3). *Douglas Aircraft Co., Inc.*, 10 N. L. R. B. 242, 279, 280.

Eastern Footwear Corp., 8 N. L. R. B. 1245, 1251 (offer to reinstate employee to position to which he had been discriminatorily transferred immediately prior to his discharge).

West Kentucky Coal Co., 10 N. L. R. B. 88, 121, 122 (offer to reinstate employee to position other than that from which he was discharged and where the work would be beyond his physical ability).

Nekoosa-Edwards Paper Co., 11 N. L. R. B. 446 (refusal to reinstate after illness held discriminatory despite offer of comparable job in different municipality 4 miles away).

Gates Rubber Company, 40 N. L. R. B. 424 (reinstatement of an employee following a shut down to a less remunerative position because of his union membership and activities).

447 c. Refusal to employ in former or different position by promoting or hiring other employees to available positions.

Where, prior to the passage of the Act, an employer had thrown out of work a high percentage of union men as a result of a reduction of its force, and later rehired only a part of the old employees and along with them some new employees and, after the effective date of the Act, and nearly 2 years after the reduction of force had taken place, promoted three of the new employees to positions formerly held by some of the old employees who were still out of work, the Board was not justified in concluding that the promotions constituted an unfair labor practice. *Appalachian Electric Power Co.*, v. *N. L. R. B.*, 93 F. (2d) 985, 988 (C. C. A. 4), setting aside 3 N. L. R. B. 240.

The promotion of three employees hired after the effective date of the Act, and the refusal to employ 12 persons, who prior to the effective date of the Act, were either laid off or discharged, constitutes discrimination against 3 such persons only, and not as against all 12 of them, and the specific victims of the discriminatory conduct are those of

the ex-employees who hold seniority or have served in a position to which a promotion has been made and are, therefore, entitled to preference in reinstatement. *Appalachian Electric Power Co.*, 3 N. L. R. B. 240, 252, 253, set aside 93 F. (2d) 985 (C. C. A. 4).

A respondent by its failure to fill openings in its plant as they occurred with employees from a closed plant of the respondent, giving due weight to the employees' seniority, and failure to retain those for whom work was unavailable as laid-off employees who were to be recalled to work as work became available, although the respondent would have done so but for the employees' refusal to join the union with which respondent made a closed-shop contract found to be invalid; *held* to have engaged in unlawful discrimination. *McKesson & Robbins, Inc.*, 19 N. L. R. B. 778, 794.

Failure to reinstate union member to his former position in filing room when position became available subsequent to his non-discriminatory demotion and lay-off, *held* discriminatory in view of fact that he had at no time been told that his work as a filer was deficient and the position was given to a non-union former employee with less experience and seniority, who had previously been receiving less pay when doing the same type of work. *Weyerhaeuser Timber Co.*, 24 N. L. R. B. 267.

Employer, who, after agreeing to give preference in employment to laid-off employees to fill jobs which could have been performed by persons named in preferential list, *held* to have discriminated against listed persons as a class although record does not show precise extent of discrimination as to each. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1.

Employer is found to have discriminatorily refused reinstatement to laid-off employees where among other indicia of discrimination it reinstated few old employees and hired a large number of new ones in the departments where they worked. *Marlin-Rockwell Corporation*, 39 N. L. R. B. 501. See also: *Feinberg Hosiery Mills*, 19 N. L. R. B. 667. *Reliance Mfg. Co.*, 28 N. L. R. B. 1051. *Fradkin*, 45 N. L. R. B. 902.

Employer, *held* to have engaged in discrimination when it deliberately sought to eliminate the employee status of unfair labor practice strikers of some of the employees by favoring the non-strikers with employment in the jobs

formerly occupied by the strikers. *Polish National Alliance of the United States of North America*, 42 N. L. R. B. 1375.

[*See*: §§ 402, 403, (as to right of employee to replace unfair labor practice and non-unfair labor practice strikers).]

448 d. By change in mode of operations.

An employer's refusal to reemploy a striking employee to his former job because of his union activity by refusing to avert to its former practice of using three engineers instead of two, constitutes a violation of Section 8 (3). *Wilson & Co., Inc.*, 30 N. L. R. B. 314.

An employer's resort to overtime rather than recall employees laid off is a matter of policy upon which the employer alone may decide and does not constitute a discriminatory practice so long as the policy is not used as a vehicle for a concealment of discrimination. *Burson Knitting Company*, 35 N. L. R. B. 772.

e. Offer of reinstatement. [*See* REMEDIAL ORDERS §§ 116, 117 (as to effect of an offer of reinstatement and a prior refusal to accept reinstatement upon reinstatement and back-pay orders).]

449 (1)—To positions not substantially equivalent.

An offer of reinstatement proceeding from a background of delaying tactics and conduct manifesting hostility to the union and its active members, and followed by the assignment of strikers to positions not substantially equivalent to their former positions and by harassment of the discrimination against the returned strikers, can hardly be considered to have been an offer presented in good faith, and reinstatement or an offer thereof under such circumstances constitutes no reinstatement or offer at all. *Sartorius & Co., Inc., A.*, 40 N. L. R. B. 107.

Offer of reinstatement to unfair labor practice striker who abandoned concerted activity by attempting to return to work while strike was in progress upon condition that he apply "as a new applicant" which if accepted would have denied him certain vacation privileges which he enjoyed by virtue of his length of service, *held* to constitute a discriminatory refusal to reinstate. *Polish National Alliance of The United States of North America*, 42 N. L. R. B. 1375.

Cf. *Cleveland Worsted Mills Company*, 43 N. L. R. B. 545 [(In the absence of a clear showing of discriminatory purpose in offering a claimant work on a shift other than that upon which he formerly worked, discrimination was not

inferred merely by virtue of such an offer and respondent was found to have performed its obligation of offering reinstatement).]

[*See* § 422 (as to constructive discharges).]

(2)—Imposing unlawful conditions. [See § 508 (as to discrimination in violation of Section 8 (3) when terms and tenure of employment are changed because employees refuse to comply with unlawful conditions).]

Attempts by an employer to illegally condition further employment thereby foreclosing the effective exercise of rights under the Act, constitutes a violation of Section 8 (3). *Draper Corp.*, 52 N. L. R. B., No. 251.

For kinds of illegal conditions, *see: Clinton Cotton Mills*, 1 N. L. R. B. 97, 107 (abandonment of union). See also:

Lion Shoe Co., 2 N. L. R. B. 819, 831.
Club Troika, 2 N. L. R. B. 90.
National Motor Bearing Co., 5 N. L. R. B. 409.
Triplett Electrical Instrument Co., 5 N. L. R. B. 835.
Charles Bank Stout, 15 N. L. R. B. 738.
Eagle-Picher Mining & Smelting Co., 16 N. L. R. B. 800.
Lancaster Iron Works, 20 N. L. R. B. 738.
Swift & Co., 30 N. L. R. B. 550.

Carlisle Lumber Co., 2 N. L. R. B. 248, 263–266 ("yellow dog" contracts). See also:

Fainblatt, 1 N. L. R. B. 864, 876.
Hopwood Retinning Co., 4 N. L. R. B. 922, 932.
American Mfg. Co., 5 N. L. R. B. 443, 460.
Federal Carton Corp., 5 N. L. R. B. 879, 888.

American Mfg. Co., 5 N. L. R. B. 443 (abandonment of right to return as a group). See also: *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1269. *Good Coal Co.*, 12 N. L. R. B. 136. *Draper Co.*, 52 N. L. R. B., No. 251.

Kelly-Springfield Tire Co., 6 N. L. R. B. 325, 334, 335 (refrain from exercising right to act as a representative).

Newark Rivet Works, 9 N. L. R. B. 498, 515 (individual contracts). See also: *Adel Clay Products Co.*, 44 N. L. R. B. 386.

Douglas Aircraft Co., Inc., 18 N. L. R. B. 43 (covenant not to strike).

Lone Star Gas Co., 18 N. L. R. B. 420, 456 (abandonment of strike). See also: *Stehli & Co.*, 11 N. L. R. B. 1397, 1437.

[*See* § 440 (as to real or tactical discharge of strikers for not returning to work).]

Fein's Tin Can Co., Inc., 23 N. L. R. B. 1330 (abandonment of union activities).

[*See* § 449 (as to offers of positions which are not substantially equivalent because of various conditions imposed).]

451 (3)—Others.

An offer by an employer during a hearing to reinstate all employees who had not already been reinstated is not an unqualified offer of reinstatement where the employer had caused the discharge of the employees in violation of Section 8 (3) by permitting members of an inside organization found to be employer-dominated to evict the employees in question who were members of an outside legitimate organization, and who further permitted a committee of the inside organization to pass upon the qualifications of evicted employees who attempted to return to work by requiring them to renounce their union affiliation and to join the employer-dominated organization, for the offer to reinstate, made at the hearing, did not guarantee these employees the full protection at their employment which every employer normally owes to its employees. *General Shoe Corp.*, 5 N. L. R. B. 1005, 1011–1014, 1018.

The refusal of an employer to collectively bargain with a labor organization representing a majority of its employees does not operate to invalidate its offer of reinstatement to some of the employees who had been previously discriminatorily discharged but who participated in a strike, caused by the refusal to bargain, together with the remaining employees, for the employees who had been wrongfully discharged and later offered reinstatement could have returned to work and sought an adjudication of their rights through the medium of the Act, but when they elected to remain away from work with the other strikers in protest against the employer's refusal to bargain their status changed after that date from discharged employees to strikers. *Harter Corp.*, 8 N. L. R. B. 391, 411.

f. Application for reinstatement.

452 (1)—When necessary.

The failure of discharged employees to apply for reinstatement can in no way affect the unfair labor practice completed by their discharge. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 38, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

An employer is under a duty to offer reinstatement, upon the reopening of its plant, to employees who were locked out

when the employer shut down the plant in order to discourage membership in a labor organization, and under such circumstances the failure of some of the employees to apply for reinstatement is immaterial. *Smith Cabinet Mfg. Co.*, 1 N. L. R. B. 950, 960.

While ordinarily employees who had been discriminatorily discharged or locked out are not required to apply for reinstatement nevertheless employees who have been locked out must request reinstatement where they have taken the position at the hearing that they would not accept an offer of reinstatement unless the employer would recognize the labor organization of which they were members as their bargaining representative, and where other employees had previously refused an offer of reinstatement during the lock-out for the same reason. *Hemp & Co. of Illinois, a corp.*, 9 N. L. R. B. 449, 462.

Finding of discriminatory refusal to reinstate striking employee cannot be made where an employee applied for reinstatement at time plant was not operating at full capacity and was told no work was then available but to return later and he did not again apply for reinstatement or show any reason for his failure to do so, for under such circumstances it is not disclosed that a request for reinstatement would have been futile. *Philips Packing Co.*, 5 N. L. R. B. 272, 282; *Art Crayon Co.*, 7 N. L. R. B. 102, 115.

Application for reinstatement held under the circumstances to be necessary although employer's failure to recall employees might have been a violation of its alleged promise to do so. *Hoak*, 42 N. L. R. B. 814.

53 (2)—When unnecessary.

Placing the names of striking employees upon a blacklist and thereby inducing them, because of the reasonable belief that they would not be returned to work, to postpone applying for reinstatement, followed by setting a time limit within which such employees could apply after the employer had already ascertained that all vacancies had been filled by others, constitutes a discriminatory refusal to reinstate within the meaning of Section 8 (3). *Mackay Radio & Telegraph Co.*, 1 N. L. R. B. 201, 222, enforced 304 U. S. 333, reversing 92 F. (2d) 761 and 87 F. (2d) 611 (C. C. A. 9).

The failure of an employer to recall an employee who had been temporarily laid off, in accordance with its general policy of notifying employees to return to work because of

the employee's membership and activities in a labor organization constitutes a refusal to reinstate within the meaning of Section 8 (3), and under such circumstances it is unnecessary that the employee make application for reinstatement. *Atlanta Woolen Mills*, 1 N. L. R. B. 316, 323. See also: *Appalachian Electric Power Co.*, 3 N. L. R. B. 240, 250–252, set aside 93 F. (2d) 985 (C. C. A. 4).

Western Felt Works, 10 N. L. R. B. 407, 426, 427 (individual applications not required where strikers informed by employer they would be recalled when needed).

National Casket Co., Inc., 12 N. L. R. B. 165, 171, 172, modified 107 F. (2d) 992 (C. C. A. 2) (discharged employees who have been refused reinstatement need not make subsequent applications but duty is on employer to offer reemployment when vacancies occur).

West Oregon Lumber Company, 20 N. L. R. B. 1, 71 (individual applications not required of laid-off employees in view of employer's policy of notifying employees to return to work and to an unlawful shut-down).

Publication of a notice requiring as a condition for reinstatement of striking employees that they renounce their affiliation with the labor organization of which they were members relieves such employees of the necessity of making a formal application for reinstatement. *Carlisle Lumber Co.*, 2 N. L. R. B. 248, 266, enforced except as to back-pay provisions, 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575; back-pay provisions enforced, 99 F. (2d) 533, cert. denied 306 U. S. 646.

Striking employees are relieved from the necessity of applying for reinstatement where the employer has conditioned employment upon membership in a labor organization found to be employer-dominated, nor is the employer in a position to contend that the employees would have refrained from applying even if the condition has not been imposed. *Lion Shoe Co.*, 2 N. L. R. B. 819, 831, set aside 97 F. (2d) 448 (C. C. A. 1).

The Grace Co., 7 N. L. R. B. 766, 775 (employees laid off during shut-down).

It is unnecessary to produce specific evidence that each employee affiliated with a labor organization personally applied for reinstatement following a strike and was refused where the employer denied jobs to members of the union who applied for reinstatement and its attitude was shown to be one of uncompromising hostility to employ-

ment of members of the labor organization. *Alabama Mills, Inc.*, 2 N. L. R. B. 20, 33. See also: *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 140.

Denver Automobile Dealers Ass'n., 10 N. L. R. B. 1173, 1214 (individual applications not required where collective request for reinstatement rejected).

Good Coal Company, Inc., 12 N. L. R. B. 136, 149, enf'd 110 F. (2d) 501 (C. C. A. 6), cert. denied 310 U. S. 630. (Application for reinstatement by employees absent from work on Labor Day because of illness or lay-off would have been futile and under the circumstances is unnecessary, where such employees knew that their employer—due to a refusal of other employees to work on Labor Day—would not permit anyone absent on Labor Day to return to work.)

Stewart Die Casting Corporation, 14 N. L. R. B. 872, 895 (A list of names of striking employees submitted by the union at conclusion of an unfair labor practice strike, with the request that such employees be reinstated, *held* constitutes an application for reinstatement on behalf of each individual employee named thereon.)

Theurer Wagon Works, Inc., 18 N. L. R. B. 837, 858–859 (request by union committee for reinstatement of all employees on strike).

Nevada Consolidated Copper Corporation, 26 N. L. R. B. 1182 (where employer's policy was to blacklist members of the union).

United Dredging Company, 30 N. L. R. B. 739 (employees justified in not making individual applications for reinstatement where employer's refusal to reinstate members of the union were generally known to the employees).

Greer Steel Company, 31 N. L. R. B. 365. (*Held*: filing of application not a necessary condition for being considered for employment and that failure to rehire former employee was not predicated upon the absence of employees to file applications).

Neither striking employees who were active as pickets nor "neutral" strikers who were not active during a strike are required to make application for reinstatement after the strike where the employer delegated authority to a committee of employees who had actively opposed the strike to pass on the reinstatement of the striking employees and permitted the committee to exclude large numbers of such employees who applied for reinstatement because they had served on the picket line, for not only the active

strikers, but the neutral ones as well, were discriminated against since the employment of the latter was thus conditioned upon their acceptance of the denial of reinstatement to and the discharge of the active strikers. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1269.

Lone Star Gas Company, 18 N. L. R. B. 420, 455 (applications for reinstatement not required of individuals whom employer had declared during strike settlement negotiations would not be reinstated).

Lone Star Gas Company, 18 N. L. R. B. 420, 456 (discharge of striking employees for not abandoning strike at deadline fixed by employer makes their applications for reinstatement futile).

Northwestern Cabinet Company, 38 N. L. R. B. 357. (*Held:* that it was necessary for unfair labor practice striking employees to apply for reinstatement where the respondent would have reinstated them, if at all, only on condition that they comply with an illegal requirement that they join an assisted organization.)

Rapid Roller Co., 33 N. L. R. B. 557. (Blanket application for reinstatement which the respondent refused, *held* rendered unnecessary subsequent individual applications of strikers, since they were entitled to feel that this would be fruitless.)

United Biscuit Company of America, 38 N. L. R. B. 778 (where collective request rejected).

Register Publishing Company, Ltd., 44 N. L. R. B. 834. (Employer's letter advising union that because striking employees had refused to return to work their positions had been permanently filled by new employees who would not be displaced to afford positions to them, precluded any possibility of striking employees' obtaining reemployment and thereby relieved them of the necessity of making formal application, since such application, under the circumstances, would have been a "useless gesture.")

Those striking employees who have left a community prior to the date on which the employer denied reinstatement to all striking employees by imposing a discriminatory condition of employment stand in the same position as employees who remained in the community, and need not, therefore, apply for reinstatement where there is nothing in the record to show that such employees lost contact with the community and were not fully informed of the developments in the situation, and where, moreover, a

number of these employees left as a result of the employer's unfair labor practices and acts of terrorization. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1269, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.

The conduct of an employer in informing employees following a strike caused by the employer's unfair labor practices to return to their homes and that they would be called when needed foreclosed the requirement of individual applications for reemployment by such employees, and the failure of the employer to recall them after it had resumed operations constituted a refusal to reinstate. *Western Felt Works, a corp.*, 10 N. L. R. B. 407, 426, 247.

Where a strike has been caused by unfair labor practices, employees whose names were placed on a list comprised of individuals whose reinstatement was to be further arbitrated under the terms of the strike-settlement agreement need not make individual applications for reinstatement. *Douglas Aircraft Co.*, 10 N. L. R. B. 242, 281.

Where the reinstatement of employees discriminatorily discharged is agreed to by an employer but the employer puts off their reinstatement when they report for work in accordance with its instructions, such employees are not required to continue returning. *Republic Creosoting Co.*, 19 N. L. R. B. 267, 277, 297.

Application for reinstatement not necessary after lay-off where nonunion employee is recalled and where employee not recalled has special skill and employer knows where he is and could easily have called him to work instead of breaking in new employees at considerable expense. Board found refusal to reinstate. *Hartland Tanning Co.*, 22 N. L. R. B. 25.

Where strike not caused by unfair labor practices, but strike settlement agreement provided that employer should offer jobs as vacancies occurred, strikers need make no further application in order to be entitled to nondiscriminatory consideration by employer in filling vacancies. *Kokomo Sanitary Pottery Co.*, 26 N. L. R. B. 1.

Employer's contention that mass applications for reinstatement following termination of strike are insufficient because filed by the union is without merit where among other reasons its refusal to reinstate the strikers was not based on this ground. *Shenandoah-Dives Mining Company*, 35 N. L. R. B. 1153.

Failure of employees temporarily laid off to secure reinstatement, *held* not attributable to their failure to make application in accordance with employer's alleged reinstatement practice, requiring formal written application for employment, where such practice, although customary, was not a prerequisite to reinstatement; where employees were not so advised; and where employer assigned other reasons as defenses for its failure to reinstate them. *Marlin-Rockwell Corporation*, 39 N. L. R. B. 501.

Application for reemployment held unnecessary when no work was available at time employee reported back after illness—foreman notified her he would call her when work was available, and it was company practice to recall old employees. *Joseph Fradkin, et al.*, 45 N. L. R. B. 902.

54 (3) Conditional application.

A refusal to reinstate striking employees upon request constitutes a violation of Section 8 (3) where the strike was prolonged by the unfair labor practices of the employer in refusing to bargain with the labor organization of which the employees were members after it had been certified by the Board during the course of the strike, and the employer is not justified in refusing to reinstate such employees by reason of the fact that their applications for reinstatement were coupled with demands for collective bargaining, for the labor organization was entitled to make such demands and the employer was required to heed them under the Act. *Black Diamond S. S. Corp.*, 3 N. L. R. B. 84, 91, 92, enforcing 94 F. (2d) 875 (C. C. A. 2), cert. denied 304 U. S. 579.

A demand for recognition and collective bargaining made by a committee of a labor organization does not constitute a collective request for reinstatement of the employees who had engaged in a strike because of the employer's refusal to bargain and who had refused to return to work unless the employer bargained with them, for as long as strikers are unwilling to resume their employment under conditions existing at the time the strike was called, however just the grounds on which their position is based, it cannot be said that the employer is refusing to reinstate them. *Fansteel Metallurgical Corp.*, 5 N. L. R. B. 930, 945, 946, modified 306 U. S. 240, modifying 98 F. (2d) 375 (C. C. A. 7).

Pioneer Pearl Button Co., 1 N. L. R. B. 837, 843 (no refusal to reinstate striking employees who refused to return to

work at employer's invitation because of their dissatisfaction with wage scales then in force).

National Motor Bearing Co., 5 N. L. R. B. 409, 436, modified, 105 F. (2d) 652 (C. C. A. 9) (not necessary to consider effect of attitude of employees who refused to return to work following a lock-out and shut-down unless employer recognized and bargained with the labor organization of which they were members where employer imposed on their reinstatement the condition that they join another labor organization favored by the employer and with which it had entered into a closed-shop agreement).

Prettyman, 12 N. L. R. B. 640, 670. (Application for reinstatement, conditioned upon rectification of previous unfair labor practices, not sufficient to sustain allegation of unlawful refusal to reinstate.)

V-O Milling Company, 43 N. L. R. B. 348. (Union's request for reinstatement of unfair labor practice striking employees and continuance of negotiations, constituted a conditional request, and employer's rejection thereof, *held* not to constitute discrimination.)

Where union, in offering to return strikers to work, insists on return of *all* the strikers as a prerequisite to returning to work, *held* the imposition of such a condition did not alter the nature of the offer as an "unconditional" one, since the respondent was under a duty in any event to reemploy all the strikers upon application. *Rapid Roller Co.*, 33 N. L. R. B. 557.

g. Refusal to displace employees hired during strike. (*See* § 402.)

h. By reason of economic coercion. (*See* § 1.)

i. On ground employees have gone on strike for closed-shop. (*See* § 507.)

j. On ground that employees have engaged in misconduct or concerted activity beyond the protection of the Act. (*See* § 404.)

k. Employees laid off prior to effective date of Act. (*See* DEFINITIONS § 3.)

l. By reason of contract violative of the Act. (*See* §§ 481–500.)

m. On ground that employee has other employment. (*See* REMEDIAL ORDERS § 121.)

n. On the ground that the persons were not parties to the conflict. (*See* § 418.)

o. By discriminatory action of fellow employees. (*See* § 421.)
p. On ground that employee status has terminated. (*See* DEFINITIONS §§ 1–30.)

461 5. *Lock-out.*

Where employer closed its plant on morning after its employees joined a labor organization and its president stated he would have nothing to do with the union and would close the plant, "because some of this bunch went and joined the union last night," evidence supports finding that lock-out was result of union activity and was attempt by the employer to discourage unionization. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2), modifying 4 N. L. R. B. 922. See also:

N. L. R. B. v. *National Motor Bearing Co.*, 105 F. (2d) 652, 657, 658, (C. C. A. 9), modifying 5 N. L. R. B. 409.

Santa Cruz Fruit Packing Co., 1 N. L. R. B. 454, 458–463, modified 303 U. S. 453, affirming 91 F. (2d) 790 (C. C. A. 9).

Smith Cabinet Mfg. Co., et al., 1 N. L. R. B. 950, 956–961.

Louis Hornick & Co., Inc., 2 N. L. R. B. 983, 986–995.

The Grace Co., 7 N. L. R. B. 766, 775 (permitting employees who were members of employer-dominated labor organization to deny admission of fellow employees to plant unless the latter became members of the organization).

Patriarca Store Fixtures, Inc., 12 N. L. R. B. 93, 97–99.

Edward F. Reichelt, 21 N. L. R. B. 262.

See following page references for additional decisions in which lock-out was found to be discriminatory:

Vol. 25—pp. 771, 1004
Vol. 26—p. 937
Vol. 28—pp. 64, 1051
Vol. 31

Closing plant allegedly because of disorders and threats of violence and strike, *held* lock-out in violation of Section 8 (3) where disorders were engendered by respondent's unfair labor practices; threat of strike found not to have been made; and evidence disclosed preparation for close-down antedated disorders and alleged threats, 994.

Vol. 34—p. 700.
Vol. 37

Employer's action in contracting out work of one of its departments and discharging employees thereof to defeat

the union, held tantamount to a lock-out, and to constitu
a violation of Section 8 (3), 334.
Vol. 40

Employee whom Board found would have been discharge
because of his inefficiency at normal seasonal shut-dow
date, *held* to have discriminated against when his termin
tion of employment was illegally advanced by a discrim
natory lock-out, 652.

Where an employer's discrimination consisted not in th
selection of members of the union for dismissal, but
locking out all the employees because a substanti
number of them had joined the union, *held* all employe
whose tenure was affected thereby were discriminate
against notwithstanding employees not shown to
members of the union, 652.
Vol. 42—p. 377
Vol. 43

Employees locked out by discriminatory condition
employment, namely, requirement that they join employe
assisted union, 1193.

Respondent's ordering all men wearing union buttons out
the shop found to constitute a lock-out, 1277.

Temporary shut-down of department and lay-off of employe
held not violation of Act where respondent was motivate
by reasonable belief that employees had prevented forema
from entering plant and were contemplating illegal actio
against respondent. *Link-Belt Company*, 26 N.L.R.B. 22

See following page references for additional decisions
which lock-out was not found to be discriminatory:
Vol. 30

Shut-down due to business reasons and not to anti-unio
motives; alleged lock-out of longshoremen, not sustaine
1027.
Vol. 32—p. 823
Vol. 34—p. 194

[*See* § 472 (as to change of mode of operations) and § 47
(as to removal of operations).]

§ 462 6. *Lay-off.*

The Board is justified in concluding that an employee w
laid off because of his activities in, and affiliations with,
labor organization and the lay-off was not caused by h
lack of seniority where substantial evidence exists th
the employee has been a controversial figure in the lab
organization at the plant, and there is substantial test

mony that the employee retained his seniority after he had previously quit work for a day. *Cudahy Packing Co.* v. *N. L. R. B.*, 102 F. (2d) 745, 753 (C. C. A. 8), modifying 5 N. L. R. B. 472.

The lay-off of an employee for a period of a day on one occasion and again on another occasion for a period of 2 days and the subsequent lay-off of a second employee for a day and a half, because the employees in question were members of and active in a labor organization, constitute acts of discrimination in regard to tenure of employment and thereby discouraged membership in the labor organization. *Friedman-Harry Marks Clothing Co., Inc.*, 1 N. L. R. B. 411, 429, enforced 301 U. S. 58, reversing 85 F. (2d) 1 (C. C. A. 2). See also:

Burlington Dyeing & Finishing Co. v. *N. L. R. B.*, 104 F. (2d) 736, 739 (C. C. A. 4), modifying 10 N. L. R. B. 1.

Brown Shoe Co., Inc., 1 N. L. R. B. 803, 830–833.

Benjamin Fainblatt, et al., 1 N. L. R. B. 864, 874, enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

Anwelt Shoe Mfg. Co., 1 N. L. R. B. 939, 947, petition for leave to adduce additional evidence denied 93 F. (2d) 369 (C. C. A. 1).

See following page references for additional decisions in which lay-offs were found to be discriminatory:

Vol. 25—pp. 92, 519, 1362
Vol. 26—pp. 88, 582, 765, 878
Vol. 27—pp. 118, 521, 878
Vol. 29—pp. 360, 939
Vol. 30—p. 170
Vol. 31—p. 101
Vol. 32—pp. 195, 823
Vol. 33—pp. 263, 351, 613, 954
Vol. 34—p. 346
Vol. 35—p. 1100
Vol. 36—p. 1220
Vol. 37—pp. 50, 405, 499, 839
Vol. 38—p. 813
Vol. 39—p. 1130
Vol. 40—p. 1058
Vol. 41—p. 1288
Vol. 42—p. 1051
Vol. 43—pp. 1, 457, 1020
Vol. 45—p. 679

Employer found not to have discriminatorily laid off employee although he had taken a leading part in opposition to "inside" union and in support of nationally affiliated union, and was an able worker whose advancement had been exceptionally rapid, when it appeared it had been necessary to reduce number of employees upon completion of a certain project, employee concerned had considerable less seniority than other employees, and employer had uniformly given weight to seniority in determining employees to be laid off. *Virginia Electric and Power Company*, 44 N. L. R. B. 404.

See following page references for additional decisions in which lay-offs were not found to be discriminatory:

Vol. 25—pp. 92, 168, 519, 672
Vol. 26—pp. 227, 765
Vol. 27—pp. 118, 521, 1149, 1274
Vol. 29—p. 921
Vol. 31—pp. 101, 365
Vol. 32—pp. 595, 1123
Vol. 33—pp. 191, 263, 1155
Vol. 34—p. 346
Vol. 35—p. 772
Vol. 37—p. 631
Vol. 39—p. 1130
Vol. 40—p. 1058
Vol. 43—p. 457
Vol. 45

Lay-off of union president held not discriminatory when her lay-off was customary during seasonal shut-downs and she notified employer prior to resumption of plant operations that she would not return to work, 679.

[*See* § 431 (when constituting a discharge).]

63 7. *Furlough.*

Sections 8 (1) and 8 (3) may be violated by a "furlough" for activities in a labor organization as well as by a discharge. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 36, 37, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3). See also: *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 330, 331.

64 8. *Demotion.*

The Board is warranted in finding that the demotion of an employee was motivated by his union activity where he was an active officer of a labor organization, his work as a

foreman at 80 cents per hour had been satisfactory and not complained of by the employer, as he was leaving for a 30-day vacation he was told that upon his return he might have a job as general helper at 50 cents per hour, and considering this the equivalent to a discharge, he left and did not return, his job as foreman was filled by a less experienced man, and when his demotion was protested the employer offered no explanation. *N. L. R. B.* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 493, 494, (C. C. A. 9), enforcing 3 N. L. R. B. 140, cert. denied 306 U. S. 643. See also: *Waggoner Refining Co., Inc., et al.*, 6 N. L. R. B. 731, 757. *Pulaski Veneer Co.*, 10 N. L. R. B. 136, 152–154.

The reinstatement of employees after a strike to positions of less pay or less authority than they have previously enjoyed for the reason that they had joined and assisted a labor organization constitutes a violation of Section 8 (3). *Douglas Aircraft Co., Inc.*, 10 N. L. R. B. 242, 279. 280.

Employer demoted employee from knitter to learner and then discharged him. *Held:* violation of 8 (3). *Feinberg Hosiery Mills, Jac.*, 19 N. L. R. B. 667.

See following page references for additional decisions in which demotions were found to be discriminatory:

Vol. 25—pp. 168, 621

Vol. 34

The transfer of a supervisory employee, who was a leading organizer of the union, to a non-supervisory position, *held* not a violation of the Act, 1.

Vol. 35

Demoting all-year round employees who were also seasonal supervisory employees to status of seasonal employees, 857.

Vol. 40—p. 1058

Vol. 42

Transfer of skilled employee because of his union membership and activity to unskilled work when skilled work was available, a departure from usual practice of transferring such employees only when skilled work was unavailable, *held* violation of Section 8 (3), 1051.

Vol. 42

Transfer of an employee because of his continued union activities during working hours after repeated warnings to stop such activities, *held* under circumstances not to constitute a discriminatory demotion, 898.

Vol. 43

Employee who was deprived of his turns to part-time supervisory position because of his union membership and activity, *held* to have been discriminatorily demoted when membership in labor organizations had not been regarded by employer as a disqualification for a supervisory position, 1020.

Vol. 44—p. 920
Vol. 45—p. 146

Employer's demotion of a supervisory employee who insisted in engaging in union activity tending to interfere with the self-organization of subordinate employees, conduct for *which the respondent could be held* responsible, found not discriminatory. *Armour Fertilizer Works, Inc.*, 46 N. L. R. B. 629.

See following page references for additional decisions in which demotions were not found to be discriminatory:

Vol. 25—pp. 92, 168
Vol. 26—p. 823
Vol. 27—p. 118
Vol. 30—p. 1027
Vol. 31—p. 715
Vol. 34—p. 1052
Vol. 38—p. 778
Vol. 40—p. 1058

[*See* §§ 422, 445 (as to constructive discharges and refusals to reinstate by reinstatement to different positions).]

9. *Transfer*. [*See* § 422 (as to inducing or compelling employees to resign).]

465 a. In general.

An employer has not discriminated in regard to hire and tenure of employment, where, during a strike, it relieved two watchmen from their duties as such, because it feared they were too sympathetic toward the striking labor organization's cause to be trustworthy watchmen, and offered them other positions in the plant. *United States Stamping Co.*, 5 N. L. R. B. 172, 185, 186.

[*See* § 404 (as to employer's right to discharge for anticipated misconduct).]

466 b. To temporary position.

Transfer of employees from their regular positions to temporary jobs in another department because they had refused to relinquish membership in one labor organization and join another labor organization at the employer's

request constitutes a violation of Section 8 (3); nor is the employer excused because it took such action in order to prevent disruption to its business as the result of a dispute between the two labor organizations, for the Act prohibits unfair labor practices in all cases and permits no immunity because the employer may think the exigencies of the moment require violation of the Act. *N. L. R. B.* v. *Star Publishing Co.*, 97 F. (2d) 465, 470, 471 (C. C. A. 9), enforcing 4 N. L. R. B. 498.

See following page references for additional decisions in which transfers to temporary positions were found discriminatory:

Vol. 25—p. 92

Vol. 34—p. 760

§ 467 c. To unsafe and/or unhealthy working place.

Transfer of an employee, because of his membership in a labor organization, to a place in a mine that was so dangerous he refused to enter constitutes a violation of Section 8 (3). *Clover Fork Coal Co.*, 4 N. L. R. B. 202, 226, enforced 97 F. (2d) 331 (C. C. A. 6). See also: *Harlan Fuel Co.*, 8 N. L. R. B. 25, 43.

An employer's refusal, because of union activities, to comply with previously expressed intention to retransfer an employee to a less unhealthy job, constitutes a violation of Section 8 (3). *Phelps Dodge Refining Corporation*, 38 N. L. R. B. 555.

§ 468 d. To more arduous work.

The transfer of an employee to a more arduous job, with knowledge of the employee's disinclination therefor, because of his union membership and activity, *held* a violation of Section 8 (3). *American Rolling Mill Co.*, 43 N. L. R. B. 1020. *Texarkana Bus Co.*, 26 N. L. R. B. 582; (transfer of bus drivers to more onerous runs).

§ 469 e. To another locality.

The transfer of an employee to another town, because of his membership and activities in a labor organization, where he was assigned to work for an independent contractor engaged by the employer constitutes a discriminatory discharge as of the time of the transfer and not from the date of the subsequent formal discharge when the work with the independent contractor was completed and he was told his services were no longer required. *Southport Petroleum Corp.*, 8 N. L. R. B. 792, 802–804.

Continental Oil Company, 12 N. L. R. B. 789, 802–807, enf'd as modified 113 F. (2d) 473 (C. C. A. 10), remanded 313 U. S. 212. (The transfer of an employee because of his union activity to work in another field of an oil company, even though there is no actual demotion in position, constitutes conduct violative of Section 8 (3).)

Phillips Petroleum Company, 24 N. L. R. B. 317. (Transfer to the same position in another area of operations held discrimination, refusal to accept such transfer is neither cause for discharge, nor can be considered resignation.)

70 f. Resulting in reduction of employee's earning power.

Transfer of an employee, because of his membership in a labor organization, from his former working place in a mine to another place where he would have to work free for about a month before he could earn anything constitutes a violation of Section 8 (3). *Clover Fork Coal Co.*, 4 N. L. R. B. 202, 227, enforced 97 F. (2d) 331 (C. C. A. 6). See also: *Harlan Fuel Co.*, 8 N. L. R. B. 25, 53, 54, 56, 57.

See following page references for additional decisions in which transfers resulting in reduction of employees earning power constituted discrimination:

Vol. 25—p. 837
Vol. 26—p. 1094
Vol. 35—p. 1100
Vol. 38—p. 234
Vol. 41—p. 843
Vol. 43

An employee who after his joining the union and reproval therefor was transferred to a job that resulted in a substantial loss of earnings and who was thereafter discharged, *held* to have been discriminatorily discharged, 435.

Transfer of filer from filing room to bull gang, resulting in reduction in pay, *held* non-discriminatory where the work at the mill was being curtailed at the time of the transfer, there was no evidence to show that the demotion was connected with his union activities, and a non-union employee with equal seniority was transferred at the same time. *Weyerhaeuser Timber Co.*, 24 N. L. R. B. 267.

See following page references for additional decisions in which transfers resulting in reduction of employes earning power did not constitute discrimination:

Vol. 38—234
Vol. 42—356

70.5 g. Others.

71 10. *Reduction of employee's earning power by failure to furnish proper or sufficient equipment or sufficient work.*

A refusal to permit an employee, because of her membership in a labor organization, to work on any other machine while her own was being repaired, although there were unoccupied machines available and new employees were hired to work them during that period constitutes a violation of Section 8 (3). *Canvas Glove Mfg. Works, Inc.*, 1 N. L. R. B. 519, 524.

Inducing an employee to leave the plant by refusing to permit other employees to assist her in making out her job tickets because she could not write well, although such aid had previously been given for 2 years with the knowledge and consent of the management, constitutes a violation of Section 8 (3) where the employer's action was motivated by the employee's refusal to withdraw from a legitimate labor organization and join a labor organization which the employer attempted to form. *Canvas Glove Mfg. Works, Inc.*, 1 N. L. R. B. 519, 524, 525.

Allocating necessary services during a period of a plant shut-down exclusively to employees who were not members of a labor organization constitutes a violation of Section 8 (3). *Greensboro Lumber Co.*, 1 N. L. R. B. 629, 634.

Aluminum Goods Manufacturing Company, 25 N. L. R. B. 1004. (Where an employer, during annual shut-down in the past, had habitually used for plant clean-up work men experienced in such work the employer's use of non-union inexperienced men in place of experienced active union men, *held* violation of 8 (3).)

Failure to furnish a coal miner, because of his membership in a labor organization, sufficient cars in which to load his coal, thereby decreasing his earning power, constitutes a violation of Section 8 (3). *Harlan Fuel Co.*, 8 N. L. R. B. 25, 55.

Failure to provide employees with work for 2 weeks because of their membership in a labor organization constitutes a violation of Section 8 (3). *Harlan Fuel Co.*, 8 N. L. R. B. 25, 58.

Harry Schwartz Yarn Co., 12 N. L. R. B. 1139. (Union employees given less work than non-union employees, *held* 8 (3).)

Surpass Leather Company, 21 N. L. R. B. 1258. (Failure to distribute to strikers, upon their return to work, certain

maintenance work which the respondent gave non-strikers to be performed in addition to their regular production work, *held* to be for the purposes of influencing result of consent election, and a violation of 8 (3).)

It is violative of the Act to discriminatorily reduce the work-week of union employees because of their union activities. *Fraim Lock Co.*, 24 N. L. R. B. 1190.

See following page references for additional decisions in which reduction in employee's earning power by failure to furnish proper or sufficient equipment or sufficient work, constituted discrimination:

Vol. 28

Placing employees on part-time work, 619.

Vol. 35

Denying union members fair share of seasonal work, 857.

Reduction of employee's hours of employment because of his union activity, 1334.

Vol. 37

By refusing to grant to union employees an opportunity to share over-time work, equally with other employee, an employer has engaged in conduct violative of Section 8 (3), 839.

Vol. 45

Withholding regular employment and placing employees upon a "day on and bay off" basis, 1113.

See following page references for additional decisions in which reduction of employee's earning power by failure to furnish proper or sufficient equipment or sufficient work did not constitute discrimination:

Vol. 35—p. 857

Vol. 38—p. 690

Vol. 43—p. 1309

72 11. *Change of mode of operation.*

The discharge of a subforeman by abolishing his position as a subterfuge to be rid of him because of his membership in a labor organization constitutes a violation of Section 8 (3). *Triplett Electrical Instrument Co.*, 5 N. L. R. B. 835, 848.

An employer who discontinued operations of department and discharged employees thereof in order to discourage membership in union has committed a violation of Section 8 (3). *Williams Motor Company*, 31 N. L. R. B. 715.

Employer's action in contracting out work of one of its departments and discharging employees thereof to defeat the union, *held* tantamount to a lock-out and to constitute

a violation of Section 8 (3). *Newton Chevrolet, Inc.*, 37 N. L. R. B. 334.

[*See* § 461 (as to lock-out).]

Charge that employer reduced production at plant to discourage union membership, *held* unsupported by evidence. *Ford Motor Company*, 31 N. L. R. B. 994.

Columbia Box Board Mills, Inc., et al., 35 N. L. R. B. 1050. (No 8 (3) where employees were discharged as a result of employer's legitimately ceasing operations of department where they worked.)

73 12. *Removal of operations.*

An employer in closing its plant and preparing to remove its operations to another town and discharging its employees because of their membership and activity in a labor organization has committed a violation of Section 8 (3). *S & K Knee Pants Co., Inc.*, 2 N. L. R. B. 940, 947. *Klotz*, 13 N. L. R. B. 746; (run-away shop). See also: *Gerity Whitaker Co.*, 33 N. L. R. B. 393.

[*See* § 40 (as to violation of Section 8 (1) by threatened or actual removal, cessation, or change of operations).]

74 13. *Failure or refusal to grant wage increase or promotion.*

The act of an employer in refusing to grant an employee a wage increase because he had refused to sign an individual contract of employment, illegal under the Act, constitutes discrimination within the meaning of Section 8 (3), even though the employer later gave the employee the wage increase retroactive to the time when he returned to work. *Federal Carton Corp.*, 5 N. L. R. B. 879–889.

An employee who was deprived of his turn to part-time supervisory position and an inchoate right to become a supervisory employee because of his union memberhsip and activity, *held* to have been discriminated against when membership in labor organizations had not been regarded by employer as a disqualification for a supervisory position, employer having in the past permitted members of a favored organization to hold supervisory positions. *American Rolling Mill Company*, 43 N. L. R. B. 1020. Cf. *Phillips Petroleum Company*, 45 N. L. R. B. 1318; (Employer's failure to promote union employee held not discriminatory although two employees who did receive advancement were members of dominated organization, when it appeared respondent believed employee was not as well qualified for the position as were the other two employees; and when employee had received low

ratings on his work which evidence did not show to be discriminatory.) See also: *Gates Rubber Co.*, 40 N. L. R. B. 424).

75 14. *Denial of privileges ancillary to employment.*

Refusal to pay "sick-benefits" to non-union employee because of belief that she was assisting union and engaging in concerted activities, discriminatory. *Surpass Leather Co.*, 21 N. L. R. B. 1258.

Depriving employees of newspaper by-line privilege, *held* 8 (3). *Carrington Publishing Company*, 42 N. L. R. B. 356.

Depriving unfair labor strikers of group insurance privileges upon resumption of employment while restoring such privileges to employees laid off as a result of the strike constitutes a violation of Section 8 (3). *Cottrell & Sons Company, C. B.*, 34 N. L. R. B. 457.

Employer's refusal to pay bonus for continuous service through shipping season to employees who went on strike during season and were reinstated thereafter constitutes a violation of Section 8 (3). *Interstate Steamship Company, et al.*, 36 N. L. R. B. 1307. Cf. *Central Greyhound Lines*, 27 N. L. R. B. 976.

Employer discriminated with respect to the terms had conditions of employment of reinstated employees who had been discriminatorily discharged once before by discriminatorily refusing to permit them to smoke in office, refusing to explain operation of unfamiliar machines, inspecting their work discriminatorily, refusing one of them the privilege to exchange certain work, and warning them of impending discharge for unsubstantiated causes. *Feinberg Hosiery Mill, Inc., Jac.*, 38 N. L. R. B. 1359

An employer who evicted an employee because of his union activity from company-owned home the free rental of which amounts in effect to a part of his wages and constituted a term and condition of employment within the meaning of Section 8 (3) of the Act had engaged in conduct violative of Section 8 (3). *Abbott Worsted Mills, Inc.*, 36 N. L. R. B. 545. See also: *Great Western Mushroom Company*, 27 N. L. R. B. 352. Cf *Whiterock Quarries, Inc.*, 45 N. L. R. B. 165; Company's refusal to re-let homes to known union tenants under circumstances, found not discriminatory.

Original employer held to have discriminated with regard to the hire and tenure of employment of certain employees when as a result of their transfer to another employer, which arose when the original employer entered into a con-

tract with the latter for a discriminatory purpose to conceal its violations of the Act, they thereby lost valuable perquisites they had theretofore enjoyed *viz:* seniority rights, rights to sick benefits, paid vacations, and the privilege of participating the group life and hospitalization plans. *Butler Bros.*, 41 N. L. R. B. 843, 866.

§ 480 15. *Other acts of discrimination.* (*See also* §§ 421–430.)

Ford Motor Company, 29 N. L. R. B. 873 (failure to retransfer an employee to his former position). See also: *Phelps Dodge Refining Corp.*, 38 N. L. R. B. 555.

Columbia Powder Company, 40 N. L. R. B. 223. (Employee who became ill while working in the "powder room" of an explosive manufacturer, was not treated the same as other employees in similar situations by being permitted to engage in "outside" work upon advice of medical department.)

C. CONTRACTS THE EXECUTION OR ENFORCEMENT OF WHICH CONSTITUTE DISCOURAGEMENT (OR ENCOURAGEMENT) WITHIN THE MEANING OF SECTION 8 (3). (*See also* § 45.)

1. *The proviso construed.*

§ 481 a. In general.

The proviso of Section 8 (3) is permissive in character, and where its terms are met renders legal, insofar as the Act otherwise would render illegal, the making of and performance of a closed-shop agreement between an employer and a labor organization. However, mmunity is expressly withheld if the closed-shop agreement is one entered into with a labor organization which is not the designated collective bargaining unit covered by the closed shop, or with a labor organization which has been established, maintained or assisted by any action defined in the Act as an unfair labor practice. *Williams Coal Company, et al.*, 11 N. L. R. B. 579, 612–613.

An oral closed-shop contract between an employer and an unassisted organization representing an uncoerced majority of employees in an appropriate unit prior to the contract is a defense under the proviso clause of Section 8 (3) of the Act to charges of discriminatory discharges of members of a rival organization *United Fruit Company*, 12 N. L. R.B. 404, 408, 413.

The proviso clause of Section 8 (3) does not permit a discharge or other discrimination pursuant to a valid closed-shop agreement unless employees have been given notice of the

existence of the agreement. *Electric Vacuum Cleaner Company, Inc.*, 18 N. L. R. B. 591, 614, set aside 120 F. (2d) 611 (C. C. A. 6), cert. granted 62 S. Ct. 131.

Held: that although the proviso clause of Section 8 (3) speaks of a single unit, a closed-shop contract covering employees comprising two separate and mutually exclusive appropriate bargaining units is, if made with the exclusive representative of employees in each unit, in accordance with the terms of the proviso clause, and that it is immaterial that parties to such contract have incorporated into one instrument what could have been done in two. *American-West African Lines, Inc.*, 21 N. L. R. B. 691, 701–702.

Although through mutual inadvertence or mistake of the parties, a contract failed to contain the respondent's promise to require union membership as a condition of employment, a requirement known to exist by all interested parties, the Board considered and treated the contract as a closed-shop contract in accordance with the parties' understanding. *General Furniture Manufacturing Company*, 26 N. L. R. B. 74.

Ansely Radio Corporation, 18 N. L. R. B. 1028, 1054–1057. (Contract treated as if reformed so as to include a provision for a closed shop where it was shown by clear and convincing proof that the parties agreed upon such a provision but through mutual mistake or inadvertence omitted it from the contract, and all employees affected thereby had timely knowledge thereof.)

Closed-shop contract although executed with an organization which had been designated by a majority of the employees *held* not within the proviso to Section 8 (3) when it was not made as a result of bona fide collective bargaining, but was executed fraudulently to deprive employees of employment by having union deny them membership in union and by distributing their jobs to non-employee members of union, for the proviso was not intended, and may not be construed, to legalize a conspiracy between designated agent and employer to deprive of employment all employees including those upon whose designations agent's authority depends. *Monsieur Henri Wines, Ltd., et al.*, 44 N. L. R. B. 1310.

The legislative history shows that the proviso was inserted merely to avoid the interpretation of the Act [which some had given to Section 7 (a) of the National Industrial

Recovery Act] that closed-shop contracts were outlawed under all circumstances; accordingly, the proviso is so worded to protect the "making" of closed-shop contracts if certain conditions are satisfied, and by reasonable inference, the Board has held, the proviso also protects the performance of such contracts. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587. See also: *Ansley Radio Corp.*, 18 N. L. R. B. 1028.

(1) Contracts requiring membership in a labor organization as a condition of employment.

The enforcement of a closed-shop contract which has been entered into with a labor organization which does not represent a free and uncoerced majority of the employees constitutes a violation of Section 8 (3).

Clinton Cotton Mills, 1 N. L. R. B. 97, 107 (employer-dominated labor organization). See also:

Hill Bus Co., Inc., 2 N. L. R. B. 781, 789 (employer-dominated labor organization).

Lenox Shoe Co., Inc., 4 N. L. R. B. 372, 386 (legitimate labor organization).

National Motor Bearing Co., 5 N. L. R. B. 409, 432, modified, 105 F. (2d) 652, 660 (C. C. A. 9) (legitimate labor organization).

Zenite Metal Corp., 5 N. L. R. B. 509, 527, 528 (legitimate labor organization).

Missouri Arkansas Coach Lines, Inc., 7 N. L. R. B. 186, 203 (legitimate labor organization).

Jefferson Electric Co., 8 N. L. R. B. 284, 294, set aside, 102 F. (2d) 949 (C. C. A. 7) (legitimate labor organization).

The Serrick Corp., 8 N. L. R. B. 621, 639, enforcing 110 F. (2d) 29 (App. D. C.) (legitimate labor organization).

Monticello Mfg. Corp., 17 N. L. R. B. 1091 (legitimate labor organization).

Condenser Corp., 22 N. L. R. B. 347 (legitimate labor organization).

Dow Chemical Company, 13 N. L. R. B. 993, 1097, enf'd as modified (in accordance with Board request) 117 F. (2d) 455 (C. C. A. 6) (employer-dominated labor organization).

Jensen Radio Manufacturing Company, 27 N. L. R. B. 813 (employer-dominated labor organization).

Gerity Whitaker Company, 33 N. L. R. B. 393 (employer-dominated organization).

Sperry Gyroscope Company, Inc., 36 N. L. R. B. 1349 (employer-dominated union).

Ohio Valley Bus Company, 38 N. L. R. B. 838 (legitimate labor organization).

Phillips Petroleum Company, 45 N. L. R. B. 1318 (employer-dominated organization).

The enforcement of a closed-shop contract which has been entered into with a labor organization which was neither established, maintained, or assisted by any action defined in the Act as an unfair labor practice and which represented a majority of employees in an appropriate unit does not constitute a violation of Section 8 (3). *Taylor Milling Corp.*, 26 N. L. R. B. 424. See also: *United Fruit Co.*, 12 N. L. R. B. 404. *Seagram & Sons*, 32 N. L. R. B. 1056.

83 (2) Contracts requiring membership in, or in the alternative, deduction of dues for, a labor organization.

An employer by threatening to put into effect its agreement with a legitimate labor organization requiring its employees to join that organization, or have deducted from their wages sums of money equivalent to its dues, has threatened to discriminate in hire and tenure of employment and terms and conditions of employment in violation of Section 8 (3) where the labor organization did not represent a majority of the employees at the time the agreement was made, and was assisted in enlisting members among the employees by unfair labor practices of the employer. *National Electric Products Corp.*, 3 N. L. R. B. 475, 506, 507.

Contract with an employer-dominated labor organization providing in part that, upon notice to the respondent, any member of that organization who was suspended or expelled or who resigned therefrom, would be discharged by the respondent, *held* not to justify the discharge of an employee who was suspended from the organization for failure to pay dues *Sperry Gyroscope Co., Inc.*, 36 N. L. R. B. 1349, 1367.

84 (3) Contracts providing for preferential treatment.

The provisions of a preferential hiring contract do not justify the discharge of members of a ship's crew because they had transferred their affiliation to a labor organization other than the one which was a party to the agreement. *N. L. R. B.* v. *Waterman Steamship Corp.*, 309 U. S. 206, 214–220, enforcing 7 N. L. R. B. 237, and modifying 103 F. (2d) 157 (C. C. A. 5). See also:

Peninsular & Occidental Steamship Co., 5 N. L. R. B. 959, 967, 968, set aside, 98 F. (2d) 411 (C. C. A. 5), cert. denied 305 U. S. 653.

Pilot Radio Corp., 14 N. L. R. B. 1084, 1104–1105.

Isthmian S. S. Co., 22 N. L. R. B. 689, 698.

A discharge of a non-union employee, *held* not to constitute a violation of Section 8 (3) when made pursuant to a contract providing that members of contracting union "be given preference of all work" construed as requiring the employer to allow only members of contracting union to work so long as such members are available and willing to work, in absence of clear proof of contrary intention. *M. & J. Tracy*, 12 N. L. R. B. 916, 932–934. See also: *Pearce Contracting and Stevedoring Company, Inc.*, 20 N. L. R. B. 1061.

(4) Other requirements.

b. Majority status of labor organization. (*See also* § 498.)

An employer who enters into closed-shop contracts with a labor organization which did not represent a majority of its employees has committed an unfair labor practice by discriminating in regard to condition to employment to discourage membership in a labor organization, within the meaning of Section 8 (3). *N. L. R. B.* v. *National Motor Bearing Co.* 105 F. (2d) 652, 660 (C. C. A. 9), modifying 5 N. L. R. B. 409. See also:

Zenite Metal, 5 N. L. R. B. 509, 527.

Jacob Hunkele, 7 N. L. R. B. 1276, 1287, 1288.

Electric Vacuum Cleaner Co., 8 N. L. R. B. 112; dec. set aside, 12 N. L. R. B. 220; Dec. & Order 18 N. L. R. B. 591.

Hamilton Brown, 9 N. L. R. B. 1073, 1136.

McKesson & Robbins, 19 N. L. R. B. 778, 796.

Cowell Portland Cement, 40 N. L. R. B. 652, 691.

John Engelhorn & Sons, 42 N. L. R. B. 866.

Premo Pharmaceutical Laboratories, 42 N. L. R. B. 1086.

Cf. *Fiss Corp.*, 43 N. L. R. B. 125 (execution of closed-shop contract with legitimate organization in advance of employee organization, *held* a violation of Section 8 (1)).

Contract not held invalid for lack of majority where there was only one labor organization in field at time of its negotiation and a substantial number of the employees were members but there was no convincing proof either that a majority were or were not members of the union at the time the contract was negotiated. *M. & J. Tracy*, 12 N. L. R. B. 916. See also: *Sbicca, Inc.*, 30 N. L. R. B. 60.

While a contract entered into after petition is filed may not be a bar to representation proceedings, nevertheless such contract may be asserted as a defense to unfair labor practices under the Section 8 (3) provision, where the employer is without knowledge of such petition at time the contract is executed. *American West African Lines, Inc.*, 21 N. L. R. B. 691. Cf. *Engelhorn*, 42 N. L. R. B. 866. *Premo Pharmaceutical Laboratories*, 42 N. L. R. B. 1086.

[*See* § 42 (as to grant of privileges or favoritism shown to one of two or more rival legitimate labor organizations by executing contracts with notice of rival union's claims).]

93 c. With employer-dominated union.

The proviso in Section 8 (3) providing for closed-shop contracts if they have not been tainted by unfair labor practices, is not limited to unfair labor practices prohibited by Section 8 (2), but extends to all of the practices forbidden by Section 8; nor is it limited to conduct after the effective date of the Act, for it includes a labor organization established prior to that time by conduct or means characterized as unfair by Section 8; otherwise an employer could perpetuate an organization he had created prior to the effective date of the Act, by entering into a closed-shop agreement with it after the Act became operative, thus enabling it to thrive on the support afforded by the agreement, and permitting it to dispense with the constant assistance obtained from company domination and support which would otherwise be necessary. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 108. See also: *Williams Coal Co.*, 11 N. L. R. B. 579.

A closed-shop agreement entered into between an employer and a labor organization found to be employer dominated does not meet the requirements of the proviso of Section 8 (3), and provides no justification for a discharge of employees pursuant to its terms. *Clinton Cotton Mills*, 1 N. L. R. B. 97, 110. See also:

Hill Buss Co., Inc., 2 N. L. R. B. 781, 797.

Lion Shoe Co., 2 N. L. R. B. 819, 831, set aside, 97 F. (2d) 448 (C. C. A. 1).

Dow Chemical Co., 13 N. L. R. B. 993.

Quality Art Novelty Co., 20 N. L. R. B. 817, (preferential shop).

Donnelly Garment Co., 21 N. L. R. B. 164.

Jensen Radio Manufacturing Company, 27 N. L. R. B. 813, (closed shop).

Hicks Body Company, 33 N. L. R. B. 858. (closed shop).
Banner Slipper Co., Inc., 31 N. L. R. B. 621, (closed shop).
Sperry Gyroscope Company, Inc., 36 N. L. R. B. 1349, (membership maintenance).
Virginia Electric and Power Company, 44 N. L. R. B. 404, (closed-shop contract).

A contract entered into between an employer and a labor organization found to be employer-dominated, which by its terms granted the organization power to discharge any employee whom it might find undesirable, constitutes a violation of Section 8 (3). *Highway Trailer Co.*, 3 N. L. R. B. 591, 610.

[*See* § 278 (as to contracts granting right of discharge to labor organization as an indicia of 8 (2)).]

494 d. With legitimate labor organization assisted by employer.

A closed-shop contract entered into with a legitimate labor organization assisted by the employer does not fall within the proviso of Section 8 (3), and its enforcement constitutes the imposition of a discriminatory condition of employment. *Lenox Shoe Co., Inc.*, 4 N. L. R. B. 372, 386. See also:

Zenite Metal Corp., 5 N. L. R. B. 509, 527, 528.
Missouri-Arkansas Coach Lines, Inc., 7 N. L. R. B. 186, 203.
Jefferson Electric Co., 8 N. L. R. B. 284, 294, set aside 102 F. (2d) 949 (C. C. A. 7).
The Serrick Corp., 8 N. L. R. B. 621, 639, enforced, 110 F. (2d) 29 (App. D. C.).
Hazel-Atlas Glass Company, 34 N. L. R. B. 346.
Northwestern Cabinet Company, 38 N. L. R. B. 357.
Ohio Valley Bus Company, 38 N. L. R. B. 838.
Imperial Lighting Products Company, 41 N. L. R. B. 1408.
John Englehorn & Sons, 42 N. L. R. B. 866.
Premo Pharmaceutical Laboratories, Inc., 41 N. L. R. B. 1086.
Cassoff, Louis F., et al., 43 N. L. R. B. 1193.
Rutland Courts, 44 N. L. R. B. 587.
Monsieur Henri Wines, Ltd., 44 N. L. R. B. 1310.

e. Conduct of the parties under a valid contractual relationship.

95 (1) In general.

96 (2) Performance which limits employees' rights under the Act or which is beyond the scope of a valid contract.

Contract giving members of contracting union "preference of employment" and by its terms requiring such preference only "as vacancies occur" and which does not require the discharge of employees who refuse to join the contracting union, *held* provides only for preferential hiring and not for a closed shop and constitutes no defense to allegations of discriminatory discharges. *Waterman Steamship Corporation*, 7 N. L. R. B. 237, modified 103 F. (2d) 157 (C. C. A. 5), modification of Board's order reversed 309 U. S. 206, rehearing denied 309 U. S. 696. See also: *Isthmian Steamship Company*, 22 N. L. R. B. 689, 699.

Pilot Radio Corp., 14 N. L. R. B. 1084, 1104–1105. (Although the Board found that the contracting union had been assisted by the employer and consequently no valid contract conditioning employment on membership in that union could have been executed, since the contract provided only for preferential hiring, *held* that the employer could in no event under the proviso to Section 8 (3) compel old employees not hired pursuant to the preferential-shop provision to become and remain members of the contracting union.)

Contract requiring new employees after a work-probation period to join the contracting union held not to limit rights of old employees to join rival organization or to decline to join, or to drop their membership in the contracting union, or to urge new employees to change affiliation, although new employees who forsook or refused to join the contracting union after being advised of the agreement could be discharged pursuant thereto. *Electric Vacuum Cleaner Company*, 18 N. L. R. B. 591, 613–614, set aside 120 F. (2d) 611 (C. C. A. 6), cert. granted 62 S. Ct. 131.

Employer who because of a valid closed-shop contract refused to issue passes for boarding its vessels to a rival union while granting passes to contracting union, engaged in conduct violative of Section 8 (1), since the proviso clause does not provide or allow the rendering of assistance, support, or favoritism, to a labor organization having a valid closed-shop agreement, beyond that existent in conditioning employment on union membership. *American-West African Lines, Inc.*, 21 N. L. R. B. 691, 705.

The mere fact that all closed-shop contracts are not unlawful, by virtue of the proviso of Section 8 (3), is no reason for holding that closed shop may be made perpetual because validly initiated pursuant to the proviso; and so where the life of a collective contract was about to draw to a close it was *held* that employees have a right to change or advocate a change in their affiliation without fear of discharge by an employer for so doing. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 73.

Ansley Radio Corporation, 18 N. L. R. B. 1028, 1042–1044. (Discharge of employee members of a union having a valid closed-shop contract for talk and advocacy of a change in affiliation from contracting union to another union is not justified as permissive conduct under the proviso clause of Section 8 (3).)

[*See* § 42 (as to privileges accorded or favoritism shown to one of two or more rival legitimate labor organizations as an interference) and INVESTIGATION AND CERTIFICATION § 25 (as to the recognized effective donation of a contract).]

497 (3) Effect of independent unfair labor practices committed during the term of the contract but not arising thereunder.

Where the respondent committed an unfair labor practice which constituted assistance to the contracting union by his discharge of employees who advocated a change of affiliation to another union after the making of a valid closed-shop contract, the Board held that the Act does not require that the contract be voided if such assistance does not materially affect employees in self-organization or collective bargaining beyond the restraint necessarily inherent in the operation of the contract itself. *Ansley Radio Corp.*, 18 N. L. R. B. 1028, 1059.

498 (4) Existence of question as to representative status of contracting organization arising from inactivity, change of affiliation, "schism," repudiation or otherwise.

Where local labor organization A, affiliated with one parent body, entered into a closed-shop agreement with an employer, and thereafter the members of the organization formed new local B, which affiliated with a second parent body, following which local A was reorganized, a refusal to employ members of the local B and offering to employ members affiliated with local A does not constitute a violation of Section 8 (3) where the members of the former local never succeeded in withdrawing from or severing affiliation with the first parent body by reason of the fact

that such withdrawal would have required amendment of the constitution of the local and no such amendment was ever adopted; and where, further, the attempted withdrawal did not effectuate a dissolution of the original local in conformity with the rules and regulations of the first parent body. *M. & M. Woodworking Co.* v. *N. L. R. B.*, 101 F. (2d) 938, 941 (C. C. A. 9), setting aside 6 N. L. R. B. 372. See also: *Smith Wood Products, Inc.*, 7 N. L. R. B. 950, 955–957.

A provision for a closed shop in a collective contract validly made and of reasonable duration is legally enforcible at the request of the contracting union despite the withdrawal therefrom of a substantial majority of the employee members in the appropriate bargaining unit covered by the closed-shop provision and their designation of another union as their statutory representative, the withdrawal not otherwise having affected the continued existence of the contracting union as an organization or its status as a labor organization. *Ansley Radio Corporation*, 18 N. L. R. B. 1028, 1059–1061. See also: *J. E. Pearce Contracting and Stevedoring Company, Inc.*, 20 N. L. R. B. 1061, 1070–1073 (preferential-employment contract).

Respondent held to have been justified in recognizing the substitution of local unions by the parent organization as one which invested the successor local with all the rights and privileges formerly enjoyed by the predecessor under a closed-shop contract and that its action in discharging and refusing to reinstate non-members of the successor local was privileged under the Act and did not constitute unfair labor practices. *General Furniture Manufacturing Company*, 26 N. L. R. B. 74.

Pearce Contracting & Stevedoring Co., 20 N. L. R. B. 1061. (Board held that an employer properly observed a preferential-employment contract in favor of a labor organization substituted by the International Union for the contracting union in order to punish employees who deserted to the rival labor organization.)

Since the proviso to Section 8 (3) must be interpreted in light of the fundamental policy of the Act "to promote industrial peace" by encourgaging collective bargaining through representatives of the employees' free choice, the employees' right to be meaningful must necessarily include the right at some appropriate time to change representatives; accordingly, effectuation of the basic

policies of the Act requires as the life of a collective contract draws to a close that employees be able to advocate a change in their affiliation without fear of discharge by an employer for so doing, and when at about the end of a validly made 1-year closed-shop contract employer with knowledge that employees covered by agreement sought to change their collective bargaining representative for the next contractual year, discharged them for having placed their representation in question, *held* that the discharges were for union membership and activity and tended to forestall or defeat a determination of representatives in a manner consonant with the policies and provision of the Act, and that the proviso to Section 8 (3) did not constitute a defense. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587.

[*See* INVESTIGATION AND CERTIFICATION § 34 (as to the representative status of a contracting orgnization).]

99 (5) Other conduct.

00 2. *Individual contracts.*

Individual contracts of employment, providing that the employees shall not have the right to demand a closed shop or recognition by the employer of any labor organization, that the employer has the absolute and unqualified right to hire or discharge any employee for any reason or for no reason, and regardless of his affiliation or nonaffiliation with any labor organization, that such discharge is not subject to arbitration or mediation, and that any action of reinstatement will be taken voluntarily by the employer if it deems such reinstatement advisable, constitute a violation of Section 8 (3). *Atlas Bag & Burlap Co., Inc.*, 1 N. L. R. B. 292, 303. *Federal Carton Corp.*, 5 N. L. R. B. 879, 889. *Hopwood Retinning Co., Inc.*, 4 N. L. R. B. 922, 932, modified 98 F. (2d) 97 (C. C. A. 9), contempt citation granted 104 *id.* 302.

Individual contracts of employment providing that the employees would renounce affiliation with any labor organization constitute a violation of Section 8 (3). *Carlisle Lumber Co.*, 2 N. L. R. B. 248, 264–266, enforcing 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575, and 99 F. (2d) 533, cert. denied 306 U. S. 646.

3. *Contract purporting to compromise unfair labor practices.* (*See* PRACTICE AND PROCEDURE §§ 1–11.)

D. DISCRIMINATORY MOTIVES. [*See* §§ 401–410 (for activities not within the protection afforded by the Act).]

01 1. *In general.*

A discriminatory motive in the discharge of an employee is not negated by the fact that the employer failed to discharge other or more active union members. *Central Greyhound Lines, Inc., of New York*, 27 N. L. R. B. 976.

[*See* §§ 521–540 (as to indicia of discriminatory intent).]

Where a refusal to supply employment is admitted, it is immaterial whether employee was discharged or laid off so long as a discriminatory motive is shown. *Gallup American Coal Company*, 32 N. R. L. B. 823.

[*See* §§ 421–480 (as to acts of discrimination).]

02 2. *Membership or activities in labor organization.*

The discharge of employees because of their membership and activities in a labor organization constitutes an act of discrimination within the meaning of Section 8 (3). *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 34, 36, enforced, 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3).

Fort Wayne Corrugated Paper Company, 14 N. L. R. B. 1. (The protection of the Act is not limited to employee engaged in union activities with respect to his individual employer, but extends to employee engaged in union activities in behalf of the employees of respondent's customer.)

Filing of suits by union members in justice court against employer under State statute prohibiting employer from reducing wages without 30 days' notice, on assurance that union would support such activity, *held* to be union activity, a discharge for which was a violation of the Act. *M. F. A. Milling Company, et al.*, 26 N. L. R. B. 614.

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 456, 519, 621, 771, 821, 869, 946, 989, 1126, 1166, 1362

Vol. 26—pp. 88, 177, 198, 582, 765, 823, 1094, 1182, 1244, 1398, 1419, 1440

Vol. 27—pp. 118, 352, 521, 813, 864, 878, 976, 1040, 1274, 1321

Vol. 28—pp. 64, 79, 116, 357, 442, 540, 572, 619, 667, 869, 975, 1197

Vol. 29—pp. 360, 556, 673

Vol. 30—pp. 146, 170, 314, 739, 809, 888, 1093

Vol. 31—pp. 71, 101, 196, 365, 621, 786, 994

Vol. 32—pp. 195, 338, 387, 536, 823, 863, 895, 1020

Vol. 33—pp. 263, 351, 393, 511, 613, 710, 858, 885, 954, 1170

Vol. 34—pp. 1, 346, 502, 539, 610, 760, 785, 866, 896, 917, 968, 1052, 1095
Vol. 35—pp. 120, 810, 857, 1100, 1128, 1220, 1334
Vol. 36—pp. 240, 411, 545, 1220, 1294
Vol. 37—pp. 334, 499, 578, 631, 700, 725, 839, 1059, 1174
Vol. 38—pp. 65, 234, 555, 690, 778, 813, 866, 1176, 1210, 1359
Vol. 39—pp. 107, 344, 501, 709, 1130, 1269
Vol. 40—pp. 107, 223, 736, 967, 1058
Vol. 41—pp. 288, 326, 521, 537, 674, 807, 843, 872, 1078, 1278, 1288, 1454
Vol. 42—pp. 356, 377, 457, 593, 852, 1375
Vol. 43—pp. 1, 73, 125, 179, 435, 457, 545
Vol. 44—pp. 1, 184, 257, 404, 632, 920, 1342
Vol. 45—pp. 105, 146, 230, 241, 509, 679, 889, 902, 987, 1027, 1113, 1163, 1272

503 3. *Supposed membership or activities in labor organization.*

The discharge of an employee because of an erroneous belief that he was a member of a labor organization constitutes discrimination in violation of Section 8 (3). *Fashion Piece Dye Works, Inc.*, 1 N. L. R. B. 285, 289, enforced 100 F. (2d) 304 (C. C. A. 3). See also:

The Hoover Co., 6 N. L. R. B. 688, 696.
Kuehne Mfg. Co., 7 N. L. R. B. 304, 319.
Harter Corp., 8 N. L. R. B. 391, 405.
Republic Steel Corp., 9 N. L. R. B. 219, 333, modified 107 F. (2d) 472 (C. C. A. 3); (lay-off).
Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1089, 1090, modified 104 F. (2d) 49 (C. C. A. 8).
Good Coal Co., 12 N. L. R. B. 136, 149.
Dow Chemical Co., 13 N. L. R. B. 993.
Surpass Leather Co., 21 N. L. R. B. 1258.

See following page references for additional decisions:

Vol. 25—p. 456
Vol. 26—p. 765
Vol. 29—p. 673
Vol. 35—p. 968
Vol. 38—p. 690

504 4. *Relationship to, or friendliness with, a member of a labor organization.*

The discharge of an employee because he was related to another employee who was a member of a labor organization and who was also discharged constitutes a violation of

Section 8 (3). *N. L. R. B.* v. *Fashion Piece Dye Works*, 100 F. (2d) 304, 305 (C. C. A. 3), enforcing 1 N. L. R. B. 285 and 6 N. L. R. B. 274. See also:

Quidnick Dye Works, Inc., 2 N. L. R. B. 963, 966–968.

Memphis Furniture Mfg. Co., 3 N. L. R. B. 26, 33, enforced 96 F. (2d) 1018 (C. C. A. 6), cert. denied 305 U. S. 627.

Mansfield Mills, Inc., 3 N. L. R. B. 901, 913.

Sterling Corset Co., Inc., 9 N. L. R. B. 858, 869, 870.

Mexia Textile Mills, 11 N. L. R. B. 1167, 1175.

Berkshire Knitting Mills, 17 N. L. R. B. 239.

Ryan Car Co., 70 N. L. R. B. 139. (A discharge which is prompted by the fact that the discharged non-striking employees took up a collection for a Christmas present to a striking employee, *held* to be a violation of Section 8 (3).

See following page references for additional decisions:

Vol. 26

Lay-off of an employee whom employer was convinced was responsible for the filing of charges by his wife, 88.

Discharge of an employee because his wife, who is not employed by the respondent, was a member of a labor union not admitting to membership the respondent's employees, *held* violation of 8 (3), 322.

Refusal to hire complainant because of his relationship to a union member, 1182.

Vol. 27

Evicting employees from company-owned house, the free rental of which constituted part of their wages, because of the activities of certain members of the family in a prior proceeding constitutes an act of discrimination in violation of Section 8 (3), 352.

Vol. 28

Brothers of union delegate, 79.

Vol. 30—pp. 146, 1093

Vol. 31

Close relationship to active and known members of union, 101.

Association with locked-out union members, 994.

Vol. 35

Discharge of an employee because employer identified him as a friend of, and sympathetic to, discharged union president, *held* violative of Section 8 (3), 217.

Vol. 38

Although not active in union affairs, employee was discharged because of his close association with an active

union member which led employer to believe that he too was an active organizer, 690.

Vol. 41—p. 674

Vol. 43

Discrimination against a non-union employee because of his coemployment with union members, 1020.

505 5. *Former membership or activity in a labor organization.*

The discharge of employees because they had participated, as members of a labor organization, in strikes in the past constitutes an act of discrimination in violation of Section 8 (3). *E. R. Haffelfinger Co., Inc.*, 1 N. L. R. B. 760, 766.

Discrimination against employees for past activities in a labor organization is as effective in discouraging unionization as similar current activities and constitutes a violation of Section 8 (3). *Appalachian Electric Power Co.*, 3 N. L. R. B. 240, 253, set aside 93 F. (2d) 985 (C. C. A. 4).

[*See* §§ 442, 443 (as to a refusal to employ as an act of discrimination).]

506 6. *Concerted activities in absence of membership in a labor organization.*

The discharge of employees because they assisted in an attempt to form a labor organization constitutes discrimination in violation of Section 8 (3). *General Industries Co.*, 1 N. L. R. B. 678, 680–683.

National New York Packing & Shipping Co., Inc., 1 N. L. R. B. 1009, 1013, 1014, enforced 86 F. (2d) 98 (C. C. A. 2) (discharge of employee because he had voiced opposition to form of bargaining committee suggested by employer).

Stylecraft Leather Goods Co., Inc., 3 N. L. R. B. 920, 922, 923 (discharge because employee attempted to form a labor organization).

Phillips Packing Co., 5 N. L. R. B. 272, 282, 283 (discharge for acting as spokesman for employees who had stopped work to request wage increase). *Cf. Indianapolis Glove Co.*, 5 N. L. R. B. 231, 238.

Kuehne Mfg. Co., 7 N. L. R. B. 304, 318 (discharge because of assistance rendered employees on strike at another plant of employer and attempts to institute a labor organization at the plant in which the employee worked).

Meria Textile Mills, 11 N. L. R. B. 1167, 1172–1174, enf'd 110 F. (2d) 565 (C. C. A. 5) (discharge of employees for concerted activity in behalf of union by protecting a union organizer from danger of personal harm or intimidation at the hands of supervisory employees).

Stehli and Co., Inc., 11 N. L. R. B. 1397, 1450–1451 (discharge for stirring up fellow employees to protest a cut in wage rates).

Dow Chemical Company, 13 N. L. R. B. 993, 1035–1037, enf'd as modified (in accordance with Board request) 117 F. (2d) 455 (C. C. A. 6) (refusal to employ non-union employee after a lay-off because of his participation prior to such lay-off in a threat to strike unless another employee about to be discharged was retained).

Southwestern Gas & Electric Company, 16 N. L. R. B. 512, 525–526 (discharge for attempting to assert and protect the right of fellow employees to inform non-union employees of a wage increase secured by the union).

A discharge which is prompted by the fact that the discharged employee spoke at a union meeting, *held* to be a violation of Section 8 (3), although the employee was not a member of the union. *Berkshire Knitting Mills*, 17 N. L. R. B. 239.

Refusal to reinstate employees because of participation in spontaneous strike, *held* 8 (3) although no labor organization involved, since such refusal to reinstate discourages formation or organization of union. *Ryan Car Co.*, 21 N. L. R. B. 139.

Atlanta Flour and Grain Company, Inc., 41 N. L. R. B. 409. (*Held:* Act protects employees engaged in concerted activities even when such employees are not members of any labor organization and are only attempting to form a labor organization.)

Spandsco Oil & Royalty Company, 42 N. L. R. B. 942. (Discharge of several employees for filing an "unmerited and unfounded" wage suit against employer would have been discriminatory even if contention were true, since joint action of employees bore directly on their wages and working conditions and constituted concerted activity protected by the Act.)

Cleveland Worsted Mills Company, 43 N. L. R. B. 545 (discharge of employees because of their concerted and organizational activities).

Michele Pastore, et al., 45 N. L. R. B. 869. (Employer held to have discriminatorily discharged two employees because they persisted in their efforts to organize company employees.)

507 7. *For refusal to work, participation in strike or threat to strike.*

Participation in Strike

An employer is not justified in pleading a stoppage of work as the reason for severing the employment of those who participated therein concertedly, it being immaterial whether the severance be considered as a general demand for resignations, or a forced quitting or discharge, since the employer's conduct was discriminatory in regard to hire or tenure of employment in that it was an act directed at concerted conduct by its employees acting for a labor organization and necessarily discouraging membership therein, as well as direct interference with, restraint, and coercion of the rights of its employees to engage in concerted activities for mutual aid and protection. *United Aircraft Mfg. Corp.*, 1 N. L. R. B. 236, 248.

A strike for a closed shop is not illegal and employees striking for such an end are as fully entitled to the benefits of the Act as are all other striking employees, and an employer is therefore not justified in its refusal to reinstate employees on the ground that the strike was called for that purpose. *Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125, 142.

An employer is not justified in refusing reinstatement to striking employees because of their activities on behalf of a labor organization on the ground that the organization had not called off the strike at the time the employees applied for reinstatement. *Mooresville Cotton Mills*, 2 N. L. R. B. 952, 959, modified 110 F. (2d) 179 (C. C. A. 4).

Employer who discriminated against employees because they engaged in a strike, *held* to have violated Section 8 (3). *Firth Carpet Co.*, 33 N. L. R. B. 191. See also:

Armour and Company, 25 N. L. R. B. 989.
Kokomo Sanitary Pottery Co., 26 N. L. R. B. 1.
Holmes Silk Company, The, 26 N. L. R. B. 88.
Wilson & Co., Inc., 30 N. L. R. B. 314.
United Dredging Company, New Orleans, Louisiana, 30 N. L. R. B. 739.
Great Southern Trucking Company, 34 N. L. R. B. 1068.
Sport-Wear Hosiery Mills, 41 N. L. R. B. 674.

[*See* § 440 (as to real or tactical discharge for not returning to work).]

Threat to Strike

The right of employees to strike is a lawful one recognized by the Act, and the action of an employee and several

others in calling upon the employer's secretary to protest the discharge of a fellow-employee, and their refusal to return to work until their interview had been completed, is in effect a strike, and therefore the discharge of the employee thereafter cannot be justified on the ground that he had joined his fellow employees in a strike and did not return to work until a temporary settlement had been reached. *National New York Packing & Shipping Co., Inc.*, 1 N. L. R. B. 1009, 1017, 1018, enforced 86 F. (2d) 98 (C. C. A. 2).

The discharge of an employee because he expressed an intention to strike if called upon to do so by a labor organization of which he was a member constitues discrimination in regard to tenure of employment and consequent discouragement of membership in a labor organization in violation of Section 8 (3). *Louisville Refining Co.*, 4 N. L. R. B. 844, 867, 868, modified and rehearing denied, 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.

Discharge of two employees because they revealed an intention to go on strike in protest against the Company's discriminatory discharge of three other employees, *held* a violation of Section 8 (3). *Bear Brand Hosiery Co.*, 40 N. L. R. B. 323.

Other refusals to work

An employer is not justified in discharging employees who are officials in a labor organization because they instructed other employees who were members thereof to work only a designated number of hours in protest against working overtime, for although it may not be unlawful for an employer to discharge an employee for *any* activity sanctioned by a labor organization or otherwise in the nature of collective activity, the action taken was in the nature of a partial strike for which employeees may not properly be discharged. *Harnischfeger Corp.*, 9 N. L. R. B. 676, 686. See also:

Canvas Glove Mfg. Works, Inc., 1 N. L. R. B. 519, 524.

Sunshine Hosiery Mills, 1 N. L. R. B. 664, 673–675.

Cleveland Chair Co., 1 N. L. R. B. 892, 901, 902.

Black Diamond Steamship Corp., 3 N. L. R. B. 84, 91, 92, enforced 94 F. (2d) 875 (C. C. A. 2), cert. denied 304 U. S. 579.

Republic Steel Corp., 9 N. L. R. B. 219, 349, 350, modified 107 F. (2d) 472 (C. C. A. 3).

The refusal of employees to take a job which they know would result in the removal of a leader of employee activities cannot be deemed as act of insubordination to justify their discharge for their refusal, together with other employees, so to do, while not a total strike, is analogous conduct in the nature of a partial strike and is equally permissible under the Act as concerted activities for the purpose of mutual aid and protection. *Niles Fire Brick Company, The*, 30 N. L. R. B. 426.

Where respondent discharged non-striker who did not do production work for refusing to do production work replacing strikers, *held* alleged discharge of such employee for "insubordination" was not justified and was an unfair labor practice since employee was entitled to engage in such concerted activity which is in the nature of a partial strike. *Rapid Roller Co.*, 33 N. L. R. B. 557

Denial of reinstatement to a foreman after a short-lived strike, because he refused to replace a striking production employee at work constitutes a violation of Section 8 (3). *Hazel-Atlas Glass Company*, 34 N. L. R. B. 346.

Held: that non-striking employees' refusal to engage in strike breaking activity constituted concerted activity protected by the Act and that their discharges, insofar as they were motivated by such refusal, were discriminatory. *United Biscuit Company of America*, 38 N. L. R. B. 778.

[*See* § 402 (as to right to replace employees on strike caused or prolonged by unfair labor practices), § 403 (as to right to replace employees on strike not caused or prolonged by unfair labor practices), § 404 (as to right to discharge employees who have engaged in concerted activity beyond the protection afforded by the Act), § 422 (as to inducing or compelling employees to resign), § 440 (as to discharge of strikers for not returning to work), § 450 (as to refusal to reinstate when employees refuse to return to work because of unlawful conditions imposed by the employer), § 454 (as to refusal to reinstate when employees refuse to return to work unless employer complies with certain conditions), and REMEDIAL ORDERS § 116 (as to effect of conditional offers of reinstatement upon reinstatement and back-pay orders).]

508 8. *Refusal to join employer-dominated labor organization or other refusal to comply with unlawful conditions imposed by employer.* (*See also* § 448.)

Where an employer was justified in discharging all of its employees and hiring others to take their places, its offer to reemploy two of the men properly discharged on condition that they join a designated labor organization is of no consequence since the union to which the discharged men belonged no longer represented the employees. *N. L. R. B.* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 727 (C. C. A. 6), setting aside 1 N. L. R. B. 546, affirmed 306 U. S. 332.

The discharge of an employee because he was a member of and active in a labor organization, and because he refused to sign an individual anti-union or "yellow-dog" contract constitutes a violation of Section 8 (3). *Tidewater Express Lines Inc.*, 2 N. L. R. B. 560, 564, 565, enforced 90 F. (2d) 301 (C. C. A. 4).

Requiring employees either to give up connection with a labor organization and abandon their legitimate weapon, the strike, or leave their jobs is to condition employment upon the abandonment by employees of rights guaranteed them in the Act, and is equivalent to discharging them outright for union activities. *Atlas Mills, Inc.*, 3 N. L. R. B. 10, 17.

An employer has encouraged membership in one labor organization and discouraged membership in another labor organization by discharging its employees because of their membership in and assistance to one labor organization, and because of their refusal to transfer allegiance to a favored labor organization found to be employer-dominated. *Aluminum Products Co., et al.*, 7 N. L. R. B. 1219, 1237. See also:

Mooremack Gulf Lines, Inc., et al., 28 N. L. R. B. 869; (membership in one union and refusal to join rival legitimate union).

Swift & Company, 30 N. L. R. B. 586; (refusal to join dominated organization).

Cities Service Oil Company, 32 N. L. R. B. 1020; (refusal to join dominated organization).

Rushton, 33 N. L. R. B. 954; (withdrawal from dominated union and affiliation with outside union).

Hunnicutt, 35 N. L. R. B. 605; (refusal to join employer-dominated organization).

Moore, Inc., 40 N. L. R. B. 1058; (joining bona fide union and refusing to resign and join dominated union).

Cassoff, 43 N. L. R. B. 1193; (refusal to join assisted organization).

Virginia Electric & Power Co., 44 N. L. R. B. 404; (refusal to join dominated orgainzation).

Borg-Warner Corp., 44 N. L. R. B. 105; (refusal to join legitimate union).

Inducing an employer to leave the plant by refusing to permit other employees to assist her in making out her job tickets because she could not write well, although such aid had previously been given for 2 years with the knowledge and consent of the management, constitutes a violation of Section 8 (3) where the employer's action was motivated by the employee's refusal to withdraw from a legitimate labor organization and join a labor organization which the employer attempted to form. *Canvas Glove Mfg. Wks., Inc.*, 1 N. L. R. B. 519, 524, 525.

Discrimination against an employee because he attempts to free a labor organization from domination or interference by an employer is as much an unfair labor practice within the meaning of Section 8 (3) of the Act as discrimination against an employee because he joins and assists a bona fide labor organization. *Arma Engineering Company*, 14 N. L. R. B. 736, 767, enf'd part and set aside in part 122 F. (2d) 153 (C. C. A. 2).

Discharge for refusal to sign anti-union petition endorsed by respondent, *held* 8 (3). *Middle West Corporation, The, et al.*, 28 N. L. R. B. 540.

Discharge of employee for failure to ride in caravan used to escort employed workers past locked-out employees, *held* discriminatory in violation of Section 8 (3). *Ford Motor Company*, 31 N. L. R. B. 994.

Employees discharged and refused reemployment because of their unwillingness to assist the employer in combating the union, *held* to have been discriminatorily discharged. *Beckerman Shoe Corporation of Kutztown*, 43 N. L. R. B. 435.

Held: discrimination because of opposition to a company-dominated union comes within the purview of Section 8 (3) of the Act. *American Rolling Mill Company*, 43 N. L. R. B. 1020.

An employer's refusal to reemploy a person because of his refusal to sign an individual contract of employment,

held discriminatory when the requirement constituted an illegal condition of employment because it was intended to and did interfere with the rights of employees under the Act, in that the individual contract of employment were under the circumstances offered as an alternative to self-organization and collective bargaining. *Adel Clay Products Company*, 44 N. L. R. B. 386.

Washougal Woolen Mills, 23 N. L. R. B. 1, 17–18 (conditioning reinstatement of employees upon individual agreement not to engage again in concerted activity not sanctioned by the collective bargaining representative).

Bear Brand Hosiery Co., 40 N. L. R. B. 323 (individual contracts restraining their right to strike).

[*See* § 422 (as to inducing or compelling employees to resign by discriminatorily imposing unlawful conditions of employment), § 450 (as to refusal to reinstate by imposing unlawful conditions to offers of reinstatement).]

509 9. *Coexistence of a discriminatory and a proper motive for action of employer in effecting a change in hire, tenure, terms, or conditions of employment.*

The Act does not provide that, antecedent to finding a violation of Section 8 (3), it must be determined that the *sole* motive for discharge was an employee's activity in behalf of a labor organization. *Consumers' Research, Inc.*, 2 N. L. R. B. 57, 73.

An employer has committed an unfair labor practice by discharging an employee because of his activity in, and affiliation with, a labor organization, notwithstanding the fact that "proper causes" may then have existed for terminating his employment, for while proof of the presence of proper causes at the time of discharge may have relevancy and circumstantial bearing in explaining what otherwise might appear as a discriminatory discharge, such proof is not conclusive, the issue being whether such causes in fact induced the discharge or whether they are but a justification of it in retrospect. *Kelly-Springfield Tire Company*, 6 N. L. R. B. 325, 342.

Although the Act is not designed to deprive an employer of the right to discharge an employee for using obscene language in his plant, an employer has committed an unfair labor practice by seizing upon such an incident as a mere pretext for discharging the employee when the real purpose of the discharge is to discourage membership in a labor organization. *Titmus Optical Co.*, 9 N. L. R. B. 1026, 1036.

Assuming discharge was for two causes—union activity and some legal cause—it is an 8 (3) violation when respondent cannot prove discharge would have occurred regardless of union activity. *Borden Mills*, 13 N. L. R. B. 459.

Where an employer imposed an illegal condition of employment as against all employees, but claimed that certain factors were present which would have precluded some employees from reemployment even in the absence of such illegal condition, the Board stated that the employer must assume the burden of "disentangling the consequences for which it was chargeable from those from which it was immune"; for where two motives for refusal may have existed, one clearly improper and one a just cause for severance of the employer-employee relationship, and where the improper motive is found to have been present in general, the employer is required to adduce clear and convincing proof that the claimants would in any event have been refused reinstatement for proper cause entirely apart from illegal considerations. *Eagle-Pitcher Mining & Smelting Company, et al.*, 16 N. L. R. B. 727, 801, enf'd as modified 119 F. (2d) 903 (C. C. A. 8) (modifications requested in Board's brief).

Where the Board concludes that an anti-union reason was a "substantial motive" in an employer's refusal to reinstate a striking employee, the employer is, *held* to have engaged in conduct violative of Section 8 (3) even though other reasons, having no relation to the striker's union membership or activity, entered into the employer's decision. *Republic Creosoting Company, et al.*, 19 N. L. R. B. 267, 292–294.

For additional decisions, *see*:

Dow Chemical Company, 13 N. L. R. B. 993, 1019–1023.
Union Mfg. Co., 28 N. L. R. B. 357.
Phelps Dodge Corp., 28 N. L. R. B. 442.
United Dredging Co., 30 N. L. R. B. 739.
Gregory, 31 N. L. R. B. 71.
Eclipse Moulded Products Co., 34 N. L. R. B. 786, 806.

[*See* EVIDENCE § 11 (as to the burden of going forward with proof).]

10. *Other discriminatory motives.*

Discharge of an employee because he might become active in a labor organization held in violaton of Section 8 (3). *Dow Chemical Co.*, 13 N. L. R. B. 993.

If a boycott by a labor organization renders operation of the plant futile, the employer is privileged to close the plant but not to use any such shut-down to propel the employees into that labor organization. *West Oregon Lumber Co.*, 20 N. L. R. B. 1.

Discharge of employees in order to create resentment against union and thus to counteract encouragement to union activity resulting from union's success in securing reinstatement of other union men, *held* to constitute a violation of Section 8 (3) although no showing that employer knew employees discharged were members of union. *Air Associates, Inc.*, 356, 375, modified 121 F. (2d) 586 (C. C. A. 2).

In light of anti-union bias and employer admissions, plant removal to non-union community, *held* primarily for the purpose of ridding "employees of unionized employees and replacing them with non-union workers." *Isaac Schieber, et al.*, 26 N. L. R. B., 937.

An employer has violated Section 8 (3) where it discharged an employee because it believed that he would testify in regard to the discriminatory discharge of a fellow employee in the event resort be had to the Act. *Phelps Dodge Refining Corporation*, 38 N. L. R. B. 555.

Closing plant and discriminatorily locking out all employees for the purpose of compelling them to accept membership in a projected "outside" union and to force the large majority of them who had designated a rival union as their bargaining agent, to renounce their affiliations with that organization. *Cowell Portland Cement Company*, 40 N. L. R. B. 652.

E. INDICIA OF DISCRIMINATORY INTENT.

521 1. *In general.*

Where action of an employer in discharging employees is equivocal, and one of two causes may have induced it, an employer may not complain if the Board concludes that the *causa causans* is to be found in what is shown to have been the employer's deep seated and determined opposition to the Act and not to another cause, assigned by the employer and which under other circumstances has not in the past had such weight. *Agwilines, Inc.* v. *N. L. R. B.*, 87 F. (2d) 146, 153 (C. C. A. 5), modifying 2 N. L. R. B. 1.

In the absence of a declaration by an employer that it was discharging certain of its employees because of their

membership or activities in a labor organization, the actual discharges, standing alone, constitute equivocal acts where the complaint alleges discrimination and the employer advances other reasons; and in reaching a decision between these conflicting contentions, it is necessary to take into consideration the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundness of the contentions when tested against such background and inferences, for "motive is a persuasive interpreter of equivocal conduct" and the Board may properly view the activities of an employer in the light of its manifest interest and purpose. *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, 23, enforced 303 U. S. 261, reversing 91 F. (2d) 178 (C. C. A. 3). See also: *Radiant Mills Co.*, 1 N. L. R. B. 274, 281, 282.

It is not for the Board to determine whether or not infractions of an employer's rules are sufficiently grave to justify the discharge of an employee, since what the Board is concerned with is whether or not in view of all the circumstances an employee was discharged because of these infractions or whether the employer, desiring to rid himself of the employee because of his union activities, searched for some cause to cloak its real motive for the discharge; and therefore, although in practically every case which has come before the Board involving the alleged discriminatory discharge of bus or truck drivers it has been proven that the discharged employees have exceeded speed limits, left their route, or made stops not strictly in line with their duties, the Board is not impressed with the sincerity of an employer who advances such reasons for a discharge where it fails to show that such violations were flagrant or repeated and where the surrounding circumstances indicate that the employee was active in union activities to which the employer was opposed, for it is apparent that from the very nature of the work an employer has only to follow any truck or bus driver for a comparatively short time to find him guilty of many such violations. *Houston Cartage Co., Inc.*, 2 N. L. R. B. 1000, 1005, 1006.

An employer has not discriminatorily discharged employees who were members in a labor organization where the employer mistakenly believed that one of them was responsible for certain deliberate damage done in the plant and the record does not establish any other reason than such mistaken belief for the discharges. *Titmus Optical Co.*, 9 N.

L. R. B. 1026, 1034. See also: *Republic Creosoting Co.*, 19 N. L. R. B. 267, 289, 290.

Following the non-discriminatory lay-off of a union leader, an employer's refusal to reinstate or employ him thereafter does not constitute discrimination within the meaning of Section 8 (3) where the bitter personal animosity between the two engendered by the employee's derisive and contemptuous descriptions of his employer, and not the employee's union activity, was the cause of such refusal. *Trenton Mills, Inc.*, 12 N. L. R. B. 241, 249.

Board *held* that where it is apparent that certain employees were discriminatorily laid off, the fact that others were laid off at the same time for legitimate reasons is not determinative of the issues, nor does it render the employer's true motive any less perceptible to his employees. *Hubschman & Sons*, 14 N. L. R. B. 225.

Employer's capricious lay-off of three union employees in a fit of anger and not motivated by anti-union cause does not constitute a violation of Section 8 (3). *E. Hubschman & Sons, Inc.*, 14 N. L. R. B. 225, 237.

Lay-off of union member from the bull gang held non-discriminatory where there was uncontroverted testimony that he had lost interest in the work and was among the men who produced least, and where the recommendation for his lay-off had been made by a strawboss who claimed to have been a member of the same union. *Weyerhaeuser Timber Co.*, 24 N. L. R. B. 267.

The mere fact that an employee's dismissal would have occurred when it did because of slack business, and would not have been in derogation of his seniority rights, does not necessarliy establish that the dismissal was not discriminatory. *Bunte Brothers, a corporation*, 26 N. L. R. B. 1419.

Vol. 30

Refusal to reinstate an employee after a non-discriminatory lay-off held not to constitute a discriminatory discharge, in spite of the respondent's antagonism to the union and its knowledge that such employee was the most active union member, where the failure to reinstate was based on an honest report of the employee's physical condition, acted on in good faith by the respondent, 1201.

Vol. 31

Favorable treatment afforded wife of a discharged employee does not indicate that such person was not discriminated

against because of his union membership and activities nor does it negative the hostile attitude of the employer toward such person because of his union membership and activities, 786.

Increase of membership in union and advancement of union members does not alone show the absence of discriminatory conduct by the employer if in dismissing the employees in question the employer was guided by anti-union considerations, 786.

Vol. 33

An employer's secret inauguration of a rating system just prior to a general lay-off at a time when both the charging union and rival organization were actively organizing employees in the plant, suggests the likelihood that the system was used in a discriminatory manner in individual cases, where the rater did not come into direct contact with the person rated; and where the employer failed to inform the employees fully as to the system or otherwise to administer the system along fair and equitable lines, 613.

Vol. 34

The discharge of an employee who engaged in provocative conduct in a factional dispute found justified, 1236.

Discharge of several employees found not to have been intended on the part of the employer to discourage union membership and activity or to have such effect where the employer, despite the failure of the discharged employees to avail themselves of contract provisions respecting discharges, expressed complete willingness to discuss each discharge on its merits and correct any errors, 1255.

Vol. 35

An employer's discriminatory conduct in refusing to reinstate upon request unfair labor practice strikers, delegating authority to a dominated organization to determine who should be recalled to work, 1153.

Vol. 36

The fact that an employee was discharged during an argument thus giving the discharge a superficial appearance of spontaneity, cannot serve to justify the employer's discriminatory action, 240.

Vol. 37

Held: that an employer's failure to discharge additional of the union's leaders or leading members does not establish

the absence of discrimination in the face of proved discrimination, 1174.

Vol. 41

Fact that employee's membership in union was known to employer and supervisory employee had questioned him about it, although raising a suspicion that his discharge was discriminatory, *held* not sufficient to sustain charges where employee was, by his own admission, physically unable to perform new duties assigned him and had expressed his reluctance to assume the additional work required of him, 921.

[*See* EVIDENCE § 11 (as to the burden of going forward with proof).]

22 2. *Prior threats of discriminatory action.*

Where the evidence goes no further than to show the union activities of an employee and his discharge, it is insufficient, but this is not true where the evidence covered the entire relationship of the parties over a long period of time, including warnings of possible discharge for trivial offences if labor union activity were not suspended. *N. L. R. B.* v. *Pacific Greyhound Lines*, 91 F. (2d) 458, 459 (C. C. A. 9), modifying 2 N. L. R. B. 431, reversed 303 U. S. 272.

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 397, 519, 621, 771, 837, 1004, 1126, 1166
Vol. 26—pp. 424, 765, 878, 921, 1419
Vol. 27—pp. 352, 521, 813, 1274
Vol. 28—pp. 64, 442
Vol. 29—p. 873
Vol. 30—pp. 170, 739, 888, 1093
Vol. 32—pp. 338, 1020
Vol. 33—pp. 263, 858
Vol. 34—pp. 1, 346
Vol. 35—p. 1334
Vol. 36—pp. 240, 411, 1220
Vol. 37—pp. 578, 631, 839
Vol. 38—pp. 555, 690, 813, 1176
Vol. 39—pp. 501, 1130
Vol. 40—pp. 223, 424, 967, 1058
Vol. 41—pp. 1078, 1278, 1474
Vol. 42—pp. 377, 457, 852, 942, 1160
Vol. 43—pp. 125, 457
Vol. 45—pp. 522, 799, 869, 889, 987, 1027

23 3. *Anti-union statements or conduct of employer.*

Hostility of an employer to the organization of its employees as shown by public statements of its president and by notices given the employees constitutes ample evidence from which the conclusion could be drawn that employees were discharged because of their union membership and activities. *N. L. R. B.* v. *Nebel Knitting Co., Inc.*, 103 F. (2d) 594, 595 (C. C. A. 4), modifying 6 N. L. R. B. 284.

The sudden discharge by an employer of several employees of long standing immediately following their affiliation with a legitimate labor organization is not satisfactorily explained by the resurrection of a number of charges concerning offences, many of which had occurred a considerable time prior to the discharges, and on account of which the offenders had already been penalized, where the employer had in the past made persistent efforts to ward off the influence of the legitimate labor organization and then turned to the formation of an employer-dominated labor organization to accomplish this purpose. *Hill Bus Co., Inc.*, 2 N. L. R. B. 781, 797, 798.

Partial reliance on the following indicia of discriminatory intent is placed from time to time on: anti-union statements and conduct of employers; failure of employer to show reason; conflicting or unconvincing reasons for alleged discriminatory action; shortness of period elapsing between employers' action and time employees' membership or activity in labor organization became known; prominence of employees' activity or position in connection with labor organization; closely following employees' indication of opposition to, and refusal to join, company-dominated labor organization. *Condenser Corp. of America*, 22 N. L. R. B. 347.

Statement held to have been made by supervisory employee that the employee would not have been discharged had he "stayed out of the union." *Entwistle Manufacturing Company*, 23 N. L. R. B. 1058.

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 397, 519, 621, 771, 821, 837, 946, 1004, 1126, 1362

Vol. 26—pp. 88, 177, 198, 424, 765, 878, 921, 1182, 1419

Vol. 27—pp. 118, 352, 521, 813, 864, 976, 1274

Vol. 28—pp. 64, 79, 116, 442, 572, 975

Vol. 29—pp. 873, 939

Vol. 30—pp. 739, 809, 888

Vol. 31—pp. 101, 365, 621, 786
Vol. 32—pp. 195, 387, 536, 863, 895, 1020
Vol. 33—pp. 263, 351, 710, 885, 954, 1170
Vol. 34—pp. 346, 866, 917, 968
Vol. 35—pp. 1128, 1220, 1337
Vol. 36—p. 240
Vol. 37—pp. 499, 725, 839, 1174
Vol. 38—pp. 555, 690, 813, 1176, 1210
Vol. 39—pp. 501, 1130
Vol. 40—pp. 967, 1058, *and*

Employer's statements made to a union negotiating committee which merely expressed its reasoned preference for dealing with one, rather than two unions, although not viewed as coercive within the meaning of Section 8 (1) of the Act, were found material as further evidence of the employer's opposition to organization whom the committee in question represented and as a fact or bearing upon the discharge of members of that committee which followed, 736.

Vol. 41—pp. 521, 807, 1078, 1278, 1288, 1454, 1474
Vol. 42—pp. 377, 457, 1051, 1375
Vol. 43—pp. 73, 179, 457, *and*

Entire pattern of respondent's hostility and active opposition to the union which permeated its labor relations over a long period of years and culminated in the events current at the time of the hearing considered as an over-all factor in individual motive issues of the discrimination cases, 1020.

Vol. 44—pp. 404, 920
Vol. 45—pp. 105, 230, 241, 799, 869, 1027, 1113, 1272

Failure to Assign Reasons

4 4. *Failure of employer to assign reason, assignment of conflicting or unconvincing reasons for alleged discriminatory action.*

A general allegation of inefficiency, unsupported by any evidence, is clearly insufficient to overcome a logical inference of discrimination because of union activities created by reason of the fact that employees, who were not recalled to work when operations were resumed following a closing of the plant, were prominent officers in a labor organization and had splendid service records for long periods of time. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 857.

General allegations of inefficiency or neglect, unsupported by any specific testimony, are not in themselves convincing proof that the discharge of an employee has not been discriminatory. *Bell Oil & Gas Co., et al.*, 2 N. L. R. B. 577, 583, enforced 91 F. (2d) 509 (C. C. A. 5), rehearing denied 93 F. (2d) 1010.

[*See* EVIDENCE § 33 (as to the effect of a failure to testify or produce evidence).]

See following page references for additional decisions:

Vol. 34

Refusal to explain reasons for refusal to reinstate non-unfair labor practice strikers, 917.

Vol. 37—pp. 50, 499
Vol. 38—pp. 555, 813
Vol. 40—p. 1058
Vol. 41—p. 1454
Vol. 45—p. 679

Despite the contention of an employer that the discharge of an employee was attributable to inefficiency the findings of the Board in respect to this discharge are supported by substantial evidence where the contention of the employer is in conflict with direct evidence and the permissible inferences to be drawn from the employee's record and the time and the circumstances of the discharge. *N. L. R. B.* v. *Colten, (d/b/a Kiddie Kover Mfg. Co.)*, 105 F. (2d) 179, 182 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

District manager, immediately after discharge, specifically assigned incidents connected with the accident preceding the discharge, especially, the failure of bus driver to notify right source of accident as sole reason for discharge. At the hearing, respondent attemped to base discharge on a consideration of bus driver's entire driving record, extending over a period of approximately 7 years. *Ohio Greyhound Lines, Inc.*, 21 N. L. R. B. 751.

See following page references for additional decisions:

Vol. 30—p. 170
Vol. 31

Little credence can be given an employer's testimony as to its reasons for closing one of its departments where at the two hearings in the case it adopted inconsistent positions, 715.

Vol. 33

Employer assigned as a reason for discharging employees in question that there was not sufficient work and thereafter

contended that it discharged these employees because they refused to perform work which was assigned to them, 557.
Vol. 36—p. 240
Vol.37—p. 700
Vol. 38—p. 813, *and*

Inconsistency between reasons given employees for termination of their employment, the reasons appearing on their employment record, and the reasons advanced at hearing, 1210.
Vol. 39.

Inconsistency of reasons offered by respondent through its operative heads and in its answer, and variance between reasons assigned and conditions obtaining in plant throughout the period in question, 709.
Vol. 40

Conflicting reasons offered as explanation of selection of employees for transfer and lay-off: certain supervisory employees testified that several factors formed basis for selection; other supervisory employees testified that ability was sole factor; all denied ever considering seniority despite employer's asserted policy to contrary, 1058.
Vol. 42

Variance between reasons assigned in answer and those made at hearing, 1051.
Vol. 45—pp. 448, 902, 987

Although the Act is not designed to deprive an employer of the right to discharge an employee for using obscene language in his plant, the employer has committed an unfair labor practice by seizing upon that incident as a pretext for discharging the employee when the real purpose is to discourage membership in a labor organization *Titmus Optical Co.*, 9 N. L. R. B. 1026, 1036.

An employer's failure to reinstate employees *held* discriminatory, notwithstanding its contention that it was due to a reduction of business, when it reduced operations at the plant in question by its own act and without plausible explanation transferred production to other plant, and coupled with a background of hostility to and campaign against the union, indicated that it sought to decrease its force at that plant so that it could freeze out employees engaging in union activity. *Ford Motor Co.*, 29 N. L. R. B. 873, 886.

Removing company records, 977.
Shortage of work, 488, 977, 1113.
Sleeping on duty, 1163.
Talking, 105.
Violating rule, 241, 638, 889, 1113, 1272.
Voluntarily terminating employment, 241.

525 5. *Proportion of union to non-union employees affected by employer's action.*

No inference of innocence may be derived from the fact that an employer did not discharge all employees who were members in a labor organization, since it is not necessary to discharge every member of the labor organization to discourage membership therein or to break it. *Pennsylvania Greyhound Lines, Inc., et al.*, 1 N. L. R. B. 1, 38, enforced 303 U. S. 621, reversing 91 F. (2d) 178 (C. C. A. 3).

American Rolling Mill Company, 43 N. L. R. B. 1020. (Employer's retention of union adherents *held* not to disprove discriminatory intent as to discharge of other union adherents but merely affects the weight of such relevant evidence as tends to prove the employer innocent of discriminatory motive in general and particular.)

Aintree Corporation, 37 N. L. R. B. 1174. (An employer's failure to discharge additional of the union's leaders or leading members does not establish the absence of discrimination in the face of proven discrimination.)

The Board in finding violations of Section 8 (3) on the basis of the proportion of lay-offs of union to non-union employees, it stated, "It would be expected that in a selection of employees to be laid off without regard to union affiliation the proportion of union members among those laid off would approximate the proportion existing in the group from which selection was made. Similar considerations would be expected to characterize the distribution of union captains. The natural assumption would be that in any selection to which the factor of union affiliation was irrelevant, union membership would be distributed among those laid off and those retained as if by the operation of chance. Of course any combination is a possible result on the basis of pure chance. Variation from the expected does not necessarily establish that the operation of chance has been frustrated by intelligent selection. When, however, the variation is marked or is manifested consistently in repeated samplings, the hypotheses that union

membership was irrelevant to the selection gives way to the inference that the selection was made upon a discriminatory basis." *Woolworth Co.*, 25 N. L. R. B. 1362, 1373. See also:

Hamilton-Brown Shoe Co. v. *N. L. R. B.* 104 F. (2d) 49, 53 (C. C. A. 8), modifying 9 N. L. R. B. 1073.

Montgomery Ward & Co. v. *N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7) enf'g as modified 9 N. L. R. B. 538.

Boldemann Chocolate Company, 13 N. L. R. B. 1281, 1287.

West Oregon Lumber Company, 20 N. L. R. B. 1, 69–71.

Milan Shirt Manufacturing Company, 22 N. L. R. B. 1143, 1156–1157.

Phelps Dodge Corporation, 32 N. L. R. B. 338, 362.

Northwestern Photo Engraving Co., 38 N. L. R. B. 813, 831.

Moore, Inc., 40 N. L. R. B. 1058.

The fact that an employer has failed to reinstate a disproportioned number of employees who were committeemen and prominent leaders in a labor organization following a strike discloses more than the operation of mere chance and indicates a studied plan by the employer to eliminate the leaders of the labor organization from its staff. *Timken Silent Automatic Co., a corp.*, 1 N. L. R. B. 335, 344, 345. See also:

Louisville Refining Co., 102 F. (2d) 678, 680, 681 (C. C. A. 6), modifying 4 N.L.R.B.844, cert. denied 308 U.S. 568.

Rollway Bearing Co., Inc., 1 N. L. R. B. 651, 657.

Crucible Steel Co. of America, 2 N. L. R. B. 298, 307.

American Cloak Co., 5 N. L. R. B. 819, 831, 832.

Highland Shoe, Inc., (Gross disparity between increase in plant employment generally and proportion of union officials recalled following temporary shut-down is convincing evidence that employer determined against employing union officials as a group, and did not consider them for reemployment, because of their union status and activities.) (See also: *Ford Motor Co.*, 23 N. L. R. B. 342, 374; 29 N. L. R. B. 873.

Midwest Steel Corporation, 32 N. L. R. B. 195. (Where an employer with knowledge of the fact that organizational activities began in one of its departments laid off all employees in this department thus ridding itself of most of those who joined the union, the fact that several employees who did not belong to the union were laid off and the absence of lay-offs of certian union members who were

not employed in this department does not disprove the reasons as stated above for the lay-offs but shows that in accomplishing its unlawful purpose the employer adopted a means in accord with its business convenience and, by the same token, the means most likely to accomplish its purpose, to conceal its real motive.

Gantner & Mattern Co., 32 N. L. R. B. 773. (There is no basis for an inference that the employer refused or delayed reemployment to 25 named employees in the complaint because of their union membership in general where the record contains no evidence that any or all of the 25 employees alleged to have been discriminated against had been more active union members than the 35 employees who were employed after the alleged discrimination.)

[*See* § 447 (as to refusal to reinstate by promoting or hiring other employees to available positions).]

26 6. *Knowledge by employer of employee's membership in labor organization.*

Board was justified in relying on substantial evidence of discrimination and was not required to deny relief because there was no direct evidence that the employer had knowledge of the discriminated employee's union membership. *Link-Belt Co., N. L. R. B. v.*, 311 U. S. 584, reversing modification of Board's order in 110 F. (2d) 506 (C. C. A. 7), enforcing as modified 12 N. L. R. B. 854.

Gallup American Coal Company, 32 N. L. R. B. 823 at 841–843 (where knowledge of union membership was inferred from circumstances).

American Rolling Mill Company, 43 N. L. R. B. 1020. (*Held*: that irrespective of employer's knowledge or want of knowledge as to an employee's union membership, his departure from established policy and refusal to accord union adherents their full rights was sufficient to infer an improper motive.)

Cf. *Morton-Davis Company*, 43 N. L. R. B. 394. (Employee held not to have been discriminatorily discharged when Board was of the opinion that employer was unaware of his union affiliation or that any such knowledge it had motivated the acts leading to the discharge.)

Since the prohibition of the Act extends to any discharge which is intended, or has as its purpose and effect, to discourage membership in a labor organization; a discharge for that purpose having been found, an employer's know-

ledge of the union membership of the discharged employee becomes immaterial. *Air Associates, Incorporated,* 20 N. L. R. B. 356, 375, modified 121 F. (2d) 586.

An employer who is found to have been well aware of the union activities of employees whom it discharged *held* in its efforts to conceal this knowledge to have clearly indicated its illegal motive in discharging such employees. *Weyerhaeuser Timber Company, Clemons Branch,* 35 N. L. R. B. 810.

§ 415 (as to the protection afforded non-union employees).]

Respondent's refusal to hire 42 persons was found to be motivated by the knowledge that they were known supporters of the Amalgamated Union. *Milan Shirt Mfg. Co.,* 22 N. L. R. B. 1143.

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 397, 519, 621, 771, 821, 837, 869, 946, 989, 1004, 1126, 1166, 1362
Vol. 26—pp. 1, 88, 177, 198, 273, 297, 491, 614, 765, 878, 921, 1094, 1398, 1419
Vol. 27—pp. 118, 352, 521, 813, 864, 976, 1274
Vol. 28—pp. 79, 116, 357, 442, 619
Vol. 29—pp. 556, 873, 939
Vol. 30—pp. 739, 1093
Vol. 31—p. 365
Vol. 32—pp. 195, 823, 863, 1020
Vol. 33—pp. 858, 885, 954
Vol. 34—pp. 346, 610, 866, 968, 1052
Vol. 35—pp. 120, 810, 857, 1220, 1334
Vol. 36—pp. 240, 411
Vol. 37—pp. 499, 578, 700, 839
Vol. 38—pp. 555, 690, 813, 1176, 1210
Vol. 39—pp. 501, 1130
Vol. 40—pp. 424, 1058
Vol. 41—pp. 288, 326, 674, 807, 843, 1078, 1278, 1288, 1454, 1474
Vol. 42—pp. 377, 593, 852, 1051, 1160, 1375
Vol. 43—pp. 73, 457, 545
Vol. 44—pp. 1, 184, 257, 404, 920
Vol. 45—pp. 105, 146, 230, 509, 638, 679, 799, 869, 889, 902, 1027, 1113, 1272

Period elapsing between employer's action and time employee's membership or activity in labor organization became known or suspected.

Althought there is testimony on behalf of an employer to the effect that the discharge of a number of employees was caused by their inefficiency, but it nevertheless appeared that the employees, all of them being union men, were discharged within a period of 10 days after the first step towards formation of a local was taken, and within a week after the officials of the company received information thereof, and during this period the employer was actively endeavoring to prevent the union movement and to persuade its employees from joining or remaining members and when these efforts failed the discharges followed, the Board is justified in finding that the discharges were discriminatory. *N. L. R. B.* v. *Washington, Virginia and Maryland Coach Co.*, 85 F. (2d) 990, 993 (C. C. A. 4) enforcing 1 N. L. R. B. 769, affirmed 301 U. S. 142.

Where an employer precipitatedly closed its plant and laid off its employees without advance notice the day after the employees had attended a meeting of a labor organization and had signed application cards for membership therein, the closing constitutes an act of discrimination, notwithstanding the fact that the plant would have been closed for business reasons shortly thereafter, since it had been customary in previous shut-downs to stop operations at each successive step in the manufacturing processes, and some advance notice had always been given the employees. *American Radiator Co., a corp.*, 7 N. L. R. B. 1127, 1145–1148.

Although the lay-off of an employee which occurred shortly after her union activities had been brought to the attention of the employer might ordinarily create some suspicion as to the employer's motive, such employee is found not to have been discriminated against where it is clear from undisputed evidence that the lay-off was occasioned by the elimination of the department in which she worked and where other employees engaged in similar work were likewise laid off at that time. *Hygrade Food Products Corporation*, 35 N. L. R. B. 120.

See following page references for additional decisions:
Vol. 25—pp. 92, 168, 193, 519, 771, 989, 1004
Vol. 26—pp. 198, 322, 1094, 1244
Vol. 27—pp. 521, 1321
Vol. 28—pp. 79, 442, 975
Vol. 29—pp. 556, 873

Vol. 32

Discharges shortly followed meeting at which outside organization was formed, 863.

Vol. 33

Employee was discharged soon after he commenced activities on behalf of the union, 858.

Vol. 34

Employee was discharged 3 days after he solicited membership for the union, 610.

Discharge without notice at noon on the day following disclosure to Company of the discharged employee's leadership in organizational effort, 1052.

Vol. 35

Employee was discharged 2 days after he attended a union meeting, 120.

Discharges shortly after employer acquired knowledge of union organization, 1128.

Employee was dismissed in the midst of his work the day after the union meeting was conducted on his farm, of which employer has knowledge, 1334.

Vol. 36—pp. 411, 545

Vol. 37

Discharge or lay-off of union officers 4 months after the beginning of organization activity, 499.

Employees were laid off when union activity was at its height and the "inside" organization was in the process of formation, 839.

Vol. 38—pp. 690, 1176

Vol. 40

Discharge of leading proponents of union who were representatives of union at conference with employer 3 days after conference, 736.

Discharge of employees on the morning after attending union meeting, 967.

Vol. 41

Discharges occuring 13 days after employees had actively engaged in distribution of union application cards in the presence of supervisory employees and 4 days after two of the employees discharged had been elected president and vice president, respectively, of the union, 288.

Criticism of employee and his work dating from time he joined union and strongly advocated it in conversation, 521.

Vol. 42

Discriminatory treatment immediately following "open" union activities, 1051.

Vol. 43—p. 457

Vol. 44

Known active union adherent discharged during period that her active role in union affairs became known to the respondent and when union organizational activity was increasing, 184.

Active union employees discharged at height of their organizational efforts for an offense which had been permitted to continue for a period of years without disciplinary action, 1342.

Vol. 45

Discharge day after employee had induced a substantial portion of employees to join union *en masse*, 105.

Discharge 2 days after employee presented union's petition to employer, 230.

Discharge day after employee joined union and began wearing union button, 241.

Seizing upon offense for which to discharge employee within week after employee's election as union committee chairman, 638.

Change in attitude toward employee after he began to wear a union button, 987.

Discharge night after union members sought dissolution of dominated organization, 987.

Discharge within a week after employer had knowledge of employees' union membership, 1027.

528 8. *Prominence of employee's activity or position in labor organization.*

Evidence of service of employees on union committees or on the picket line, or membership in a union, coupled with a refusal of reinstatement is sufficient to support a finding of discrimination. *Mooresville Cotton Mills* v. *N. L. R. B.* 94 F. (2d) 61, 65 (C. C. A. 4), modifying 2 N. L. R. B. 952.

The Board is justified in finding that the discharge of an employee had been an act of discrimination where it was shown that the employee had been a picket and had acted as secretary of the union and where there was testimony that the plant superintendent had said that his union activity would cause his discharge. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 871 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

A general allegation of inefficiency, unsupported by any evidence, is clearly insufficient to overcome a logical inference of discrimination because of union activities created by reason of the fact that employees who were not recalled to work when operations were resumed following a closing of the plant were prominent officers in a labor organization and had splendid service records for long periods of time. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 857.

Where of three employees permanently laid off two were prominent leaders in the labor organization and recently elected as officers, and each was senior to a number of employees in his department, such a coincidence is too striking to be accidental, for to discourage labor activities among employees newly organized and very little experienced is for an employer a comparatively simple thing, and the discharge of two leaders without more brings a clear and forceful message to men who are acutely aware of their employer's power and the favor upon which they must rely for economic livelihood. *Crucible Steel Co. of America*, 2 N. L. R. B. 298, 307.

The Board in dismissing the Trial Examiner's recommendation that the complaint be dismissed as to an employee because of the "comparatively small amount and uncertain character" of his union activity, *held* that the lack quantum of an employee's union activity is not decisive of whether or not his employer has engaged in discrimination. *Minneapolis-Honeywell Regulator Company*, 33 N. L. R. B. 263, 298.

See following page references for additional decisions:

Vol. 25—pp. 92, 168, 193, 397, 621, 771, 821, 837, 869, 946, 1004, 1126

Vol. 26—pp. 88, 177, 273, 297, 582, 614, 662, 765, 921, 1094, 1244, 1398, 1419, 1440

Vol. 27—pp. 118, 352, 521, 864, 1274, 1321

Vol. 28—pp. 64, 116, 357, 442, 540, 619, 975, 1197.

Vol. 29—pp. 873, 939

Vol. 30—pp. 146, 314, 739

Vol. 31—pp. 101, 196, 365, 786

Vol. 32

Leader of labor organization movement, 195.

Leaders in the opposition to dominated organization, 1020.

Officers of the union, 338.

Outstanding union member, 536, 863.

President of the union and most active union man in the plant, 895.
Vol. 33—p. 511
Vol. 34—pp. 346, 610, 866, 968, 1052, 1095
Vol. 35—pp. 1100, 1220, 1334
Vol. 36—pp. 240, 411, 1220
Vol. 37—pp. 50, 499, 578, 631, 839, 1174
Vol. 38—pp. 234, 555, 690, 813, 1210
Vol. 39—pp. 344, 501, 709, 1130, 1269
Vol. 40
Union leader, 223, 967, 1058.
Leader in organizing union and employee, although less active, who was closely associated with him, 736.
Vol. 41
Active union organizers, 807, 1454, 1474.

29 9. *Employee's record, length of employment, wage increases, or other indicia of satisfactory service.*

A general allegation of inefficiency, unsupported by any evidence, is clearly insufficient to overcome a logical inference of discrimination because of union activities created by reason of the fact that employees who were not recalled to work when operations were resumed following a closing of the plant were prominent officers in a labor organization and had splendid service records for long periods of time. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 857.

The Board is justified in finding that an employee who had had long experience as a waiter and a good record during the period of his employment had been discharged because of his union activity and not on the ground, advanced by the employer, that he had served one order incorrectly, where other employees who shared his responsibility were not discharged or reprimanded. *N. L. R. B.* v. *Willard, Inc.*, 98 F. (2d) 244 (App. D. C.), enforcing 2 N. L. R. B. 1094.

Despite the contention of an employer that the discharge of an employee was attributable to inefficiency, the Board is justified in finding that the discharge was discriminatory where the contention of the employer is in conflict with direct evidence and the permissible inferences to be drawn from the employee's record and the time and the circumstances of the discharge. *N. L. R. B.* v. *Colten (d/b/a Kiddie Korer Mfg. Co.)*, 105 F. (2d) 179, 182 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

Long service does not necessarily indicate efficiency, it does however, indicate that the employee's work is not considered so unsatisfactory as to merit discharge. *Hicks Body Company*, 33 N. L. R. B. 858.

Vol. 29—pp. 873, 939
Vol. 30—p. 739
Vol. 31—pp. 365, 786
Vol. 32—pp. 195, 387, 863, 895
Vol. 33—pp. 263, 351, 858
Vol. 34—pp. 1, 346, *and*

Use of intemperate language as justification for discharging an employee held to have been seized upon by the employer as a pretext as it is highly improbable that a person who had given satisfactory service for 15 years would be subject to so drastic a penalty and where such discharge is more logically explained by the fact that the person had been the most active member of the union and had in the 2 or 3 weeks prior to his discharge been engaged in a vigorous campaign to recruit union members, 610.

Vol. 35—pp. 217, 968, 1128, 1220
Vol. 36—pp. 240, 411, 1220
Vol. 37—pp. 50, 334, 578, 725, 1059, 1174
Vol. 38—pp. 234, 690, 1176, 1210
Vol. 39—pp. 344, 501, 1130
Vol. 40—pp. 424, 736, 967, 1058
Vol. 41—pp. 288, 843
Vol. 42—pp. 377, 593, 1051, 1160, 1375
Vol. 43—pp. 179, 457, 545
Vol. 44—pp. 257, 920
Vol. 45—pp. 105, 146, 241, 509, 638, 679, 799, 889, 902 987, 1027, 1163, 1272

530 10. *Following employee's indication of opposition to, or refusal to join, company-dominated labor organization.*

Discharge of an employee because of his refusal to join an employer-dominated labor organization at the request of a foreman constitutes an act of discrimination. *Wheeling Steel Corp.*, 1 N. L. R. B. 699, 708. See also: *Highway Trailer Co.*, 3 N. L. R. B. 591, 612, 613. *Republic Steel Corp.*, 9 N. L. R. B. 219, 237, modified 107 F. (2d) 472 (C. C. A. 3).

Although an employee refused to join a labor organization which company had assisted in organizing, *held* there was no justification for an inference that his discharge 2 years later was occasioned by his union activity where circumstances show reasonable conviction by respondent that he was deficient in his work. *California Prune and Apricot Growers Association*, 27 N. L. R. B. 204.

See following page references for additional decisions:
Vol. 26—pp. 88, 878, 1244
Vol. 31—pp. 621, 994
Vol. 36 — p. 1220
Vol. 41 — pp. 807, 1474
Vol. 42 — p. 377
Vol. 44 — p. 1
Vol. 45 — pp. 146, 241

531 11. *Failure of employer to follow seniority or other non-discriminatory system previously used.*

Where an employer has discriminatorily laid off employees who were members of a labor organization in violation of a seniority agreement which the employer arbitrarily abrogated, it is immaterial that about as many union as non-union employees were laid off and that the union leaders were not affected, for it was within the employer's power to set an example, which it did by laying off the employees whom it knew to be union members. *Brown Shoe Co., Inc., a corp.*, 1 N. L. R. B. 803, 833.

The uncertainty of an employer about seniority rules does not in itself prove an absence of discrimination in its failure to recall certain employees of long service who had been previously furloughed. for it does not follow that certainty in seniority rules is a *sine qua non* of a finding of discriminatory failure or refusal to employ, since the presence or absence of such rules constitutes but one circumstance to be considered along with other facts in the case. *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, 335, 336.

An employer has violated Section 8 (3) by making necessary reduction of personnel on basis of discriminatory application of a merit rating system. *Interlake Iron Corporation*, 33 N. L. R. B. 613.

Whereas respondent's efforts to render its organization compact, complete, and flexible, to that end sifting out and reorganizing its forces along any lines deemed expedient by it, is of no concern of the Board, the Board does have to determine whether (in view of the allegations of discrimination) the efforts were sincerely motivated to that goal alone, the plan was geared to achieve it, and the execution accomplished it. When such efforts, plan, and execution are a palpable departure form certain forms of seniority policy controlling on all departments of the plant and are in inner conflict with the very rationale submitted in justification of them, it is the Board's

province to find that fact for its bearing of the issues of good faith and motive. *American Rolling Mill Co.*, 43 N. L. R. B. 1020.

Employer's departure from policy and changes of policy in seniority matters when considered along with entire pattern of respondent's hostility and active opposition to the union which permeated its labor relations, *held* sufficient to infer that lay-offs, transfers, and demotions resulting from such policy were ascribable to discriminatory intent. *American Rolling Mill Company*, 43 N. L. R. B. 1020.

See following page references for additional decisions:

Vol. 25—pp. 92, 193, 672, 869, 946, 1004, 1126
Vol. 26—pp. 297, 582, 765, 878
Vol. 27—pp. 118, 521
Vol. 28—pp. 442, 975, 1051
Vol. 29—pp. 556, 873
Vol. 30

Disregard of usual policy of lay-off, 1093.

Seniority, 1093.

Without regard for expressed policy in recalling employees laid off when work became available, hiring new employees and transferring them and others to work which laid-off employees were better qualified to perform, 170.

Vol. 31—pp. 101, 365, 786
Vol. 32

Failure of employer to explain deviation from seniority policy he claimed to follow, 823.

Vol. 33

Lay-offs in disregard of seniority policy, 263.

Reduction of personnel on basis of discriminatory application of merit rating system, 613.

Vol. 34—p. 346
Vol. 35

No reason offered for departing from previous custom of dividing work during slack periods, 110.

Practice of staggering employment, 1334.

Vol. 36—p. 240
Vol. 37—pp. 50, 499, 1059
Vol. 39—p. 1130
Vol. 40

Disregard of usual policy of rehiring former employees when work was available, 424.

Disregard of usual policy of considering ability when transferring or laying off employees, 1058.

Vol. 41—p. 1278
Vol. 42
Disregard of usual practice of transferring skilled employee to unskilled work when skilled work was available, 1051.
Vol. 43
Respondent's contention that it reinstated strikers and former employees on the basis of relative efficiency, not supported by the record when a greater proportion of former employees with lower or the same efficiency ratings were hired in preference to the strikers, 545.
Employer's departure from policy and changes of policy in seniority matters when considered along with entire pattern of respondent's hostility and active opposition to the union which permeated its labor relations, *held* sufficient to infer that lay-offs, transfers, and demotions resulting from such policy were ascribable to discriminatory intent, 1020.
Vol. 44—p. 1342
Vol. 45—pp. 509, 889, 902

532 12. *Working rules discriminatory in character or discriminatorily enforced.*

It is not for the Board to determine whether or not infractions of an employer's rules are sufficiently grave to justify the discharge of an employee, since what the Board is concerned with is whether or not an employee actually was discharged because of these infractions or whether the employer, desiring to rid himself of the employee because of his union activities, searched for some cause to cloak its real motive for the discharge. *Houston Cartage Co., Inc.*, 2 N. L. R. B. 1000, 1005, 1006.

Discrimination involves an intent to distinguish in the treatment of employees on the basis of union affiliation or activities, thereby encouraging or discouraging membership in a labor organization, and it is immaterial whether this be done by means of discriminatory company rules, or the discriminatory application of non-discriminatory rules, or in the absence of any rules. *Botany Worsted Mills*, 4 N. L. R. B. 292, 300, remanded 106 F. (2d) 263 (C. C. A. 3).

The Board does not attempt to interpret an employer's rules or pass upon their reasonableness, and in determining whether an employee has been discriminatorily discharged the issue with which the Board is concerned is whether the employer would have invoked a violation of its rules for dismissing the employee had the employee not been

active or connected with the affairs of a labor organization. *Montgomery Ward & Co., Inc.*, 4 N. L. R. B. 1151, 1166, remanded for new hearing 103 F. (2d) 147 (C. C. A. 8).

Discharge of an employee who was a member of an outside labor organization for breaking a rule, which at the time of his lay-off was generally being broken with impunity by employees who favored an inside labor organization, constitutes an act of discrimination. *Ballston-Stillwater Knitting Co., Inc.*, 6 N. L. R. B. 470, 480, set aside 98 F. (2d) 758 (C. C. A. 2). See also:

Republic Steel Corp., 9 N. L. R. B. 219, 330, modified 107 F. (2d) 472 (C. C. A. 3); (discriminatory enforcement of rule).

Pulaski Veneer Corp., 10 N. L. R. B. 136, 147–149; (discriminatory enforcement of rule).

Empire Furniture Corp., 10 N. L. R. B. 1026, 1037, set aside 107 F. (2d) 92 (C. C. A. 6); (discriminatory enforcement of rule).

[*See* § 47 (as to promulgation or enforcement of working rules as violative of Section 8 (1)).]

See following page references for additional decisions:

Vol. 25—p. 869

Vol. 34

Discriminatory enforcement of Company's rule requiring employees laid off to report for work, 346.

Vol. 35

Discriminatory enforcement of rule by a logging Company in discharging employee for "stumping" a tree, 810.

Discriminatory enforcement of rule prohibiting circulation of petitions without permission where belief of employees that they were free to do so at certain hours was not corrected by the employer, 1220.

Although employer had no rule prohibiting solicitation or talking among employees in plant of matters unrelated to company matters, it discharged an employee, allegedly, for soliciting union members on company property without warning him against this practice, whereas in past, activity not concerned with union matters was permitted in plant during working hours, 1334.

Vol. 36—p. 1220

Vol. 37

Discriminatory enforcement of working rule as to a practice which it regularly condoned, 499.

Discharges for alleged violation of no-solicitation rule which is found to be discriminatory both in character and in its application, 631.

Restricting activities of union employee which it did not require of other employees, 839.

Vol. 27—pp. 813, 864, 878, 976, 1040, 1321
Vol. 28—pp. 442, 975
Vol. 30

Discharging employee allegedly for violating working rule where other employees had violated working rules and regulations and had not been discharged therefor, 739.

Discharging an employee for soliciting members during working hours in violation of an alleged working rule which was not impartially enforced, 809.

Vol. 31—pp. 101, 365
Vol. 32

Violation of no smoking rule, discriminatorily enforced; penalty of discharge therefor, not having previously been invoked, 863.

Held: that the employer did not have a settled policy of discharging seamen who missed a watch because of drunkenness and that although a number of such instances had occurred, none had resulted in discharge other than the employee in question, 1020.

Vol. 38

Employee discharged for warming himself at "fire" where such conduct is found to have been a customary practice, 234.

Discharge for violating alleged company rule against leaving work during working hours which had been repeatedly violated without retribution, 690.

Vol. 39—pp. 1130, 1269
Vol. 40

Employee of explosive manufacturer who employer contended was unqualified to work in "powder room" in that he at times became ill from engaging in such work was not treated the same as other employees in similar situations by being permitted to engage in "outside" work upon advice of medical department, 223.

Board *held* the offense for which employees were guilty was one which employer would normally have condoned, or passed with a reprimand or minor penalty and that their discharge for this reason was unexplainable in view of their length of service, absence of any previous reprimand

for failure to obey rule, and admission by employer that no other employee had been laid off or discharged for violation of rule in question, 736.

Rule concerning leaving "lease" during working hours discriminatorily enforced, 1058.

Vol. 41

Discharge without warning for wrestling in plant in marked contrast to employer's confessed leniency with regard to discipline, 1078.

Vol. 42

Laying off employee allegedly for violating rule forbidding "unnecessary conversations" and "participation in organizational activity" . . . "when rules were not enforced and it was common practice for employees to speak freely so long as it did not interfere with their work," 1051.

Vol. 43—pp. 1, 73, 545, 711, 1277, *and*

In determining whether an employee was discharged for violating company rule or because of his union membership and activity, *held* that it was proper to inquire into the difference of treatment accorded another employee for violation of similar rule, along with other evidence, to eliminate motives of proper cause as grounds of discharge, 1020.

Vol. 45

Discriminatory enforcement of rule, 105, 1113.

Discriminatory character of rule, 889.

33 13. *Unusual scrutiny or assignment of work.*

Company's president's departure from his long-standing business practice of delegating to subordinates personnel problems involving the discharge of employees, in ordering the investigation and personally discharging an active union employee is viewed as significant by the Board in determining such discharge as discriminatory. *Citizen-News Company, The*, 33 N. L. R. B. 511.

An employer's secret inauguration of a rating system just prior to a general lay-off and at a time when both the charging union and a rival organization were actively organizing employees in the plant, suggests the likelihood that the system was used in a discriminatory manner in individual cases, where the rater did not come into direct contact with the persons rated; and where the employer failed to inform the employees fully as to the system or otherwise to administer the system along fair and equitable lines. *Interlake Iron Corporation*, 33 N. L. R. B. 613.

Unusual scrutiny of employees for the specific purpose of noting whether these employees would observe a safety rule and discharging such employees for their failure to observe the rule in question. *Polson Logging Company*, 40 N. L. R. B. 736.

See following page references for additional decisions:

Vol. 39—p. 344

Vol. 43

Assigning arduous work and holding employee to an unreasonable rate of output for purpose of finding pretext to discharge him, 125.

Unusual scrutiny of work to find pretext to get rid of active union member after unsuccessful attempt to cause employee to leave on his own volition, 179.

§ 540 14. *Other indicia of discriminatory intent.*

15. *Continuance or renewal of employment based upon unlawful condition.* (*See* §§ 448, 508.)

V. DISCHARGE OR OTHER DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY UNDER THE ACT: SECTION 8 (4).

§ 601 A. IN GENERAL.

The prohibitions of the statute against discrimination for filing charges is effective irrespective of whether the employer believes the charges to be false or whether the ultimate proof sustains their validity. *Poe Manufacturing Co.*, 27 N. L. R. B. 1257. See also: *Kramer*, 29 N. L. R. B. 921.

An employer who refused to entertain a settlement and to reinstate an employee in whose behalf charges were filed until the case had been tried and was directed by the court to do so cannot be said to have refused to reinstate in violation of Section 8 (4) since employer was within his legal right in refusing to agree to a settlement and in insisting upon exercising the right to a court determination granted by the Act. *Joseph L. Fradkin*, 45 N. L. R. B. 902.

[*See* § 520 (as to discrimination in anticipation of filing charges or testifying under the Act).]

§ 602 B. FILING CHARGES.

The discharge of an employee because she had filed charges under the Act constitutes a violation of Section 8 (4). *Friedman-Harry Marks Clothing Co., Inc.*, 1 N. L. R. B. 411, 428, 430, enforced 301 U. S. 58, reversing 85 F. (2d)

1 (C. C. A. 2). See also: *Aluminum Products Co., et al.*, 7 N. L. R. B. 1219, 1240, 1243, 1244.

Poe Manufacturing Co., 27 N. L. R. B. 1257 (refusal to reinstate).

Kramer, Louis, et al., 29 N. L. R. B. 921 (failure to reemploy).

Scripto Manufacturing Co., 36 N. L. R. B. 411 (failure to reinstate).

Snow Company, 41 N. L. R. B. 1288 (denial of wage increase).

For decisions in which allegations of discrimination for filing charges under Act were dismissed, *see: Merrimack Manufacturing Co.*, 31 N. L. R. B. 900. *Whitin Machine Works*, 32 N. L. R. B. 1123. *Boswell Co.*, 35 N. L. R. B. 968.

03 C. GIVING TESTIMONY.

The discharge of an employee, because he had testified against the employer in a proceeding before the Board, constitutes a violation of Section 8 (4). *Willard, Inc.*, 98 F. (2d) 244 (App. D. C.), enforcing 2 N. L. R. B. 1094. See also:

Missouri, Kansas & Oklahoma Coach Lines, 9 N. L. R. B. 597, 616, 620.

Lane Cotton Mills Co., 9 N. L. R. B. 952, 983, 998.

Model Blouse Co., 15 N. L. R. B. 133, 154, 155, 162.

Dixie Motor Coach Corp., 25 N. L. R. B. 869.

Great Western Mushroom Co., 27 N. L. R. B. 352 (eviction of employee from company-owned house).

Union Manufacturing Co., 28 N. L. R. B. 357.

Illinois Electric Porcelain Co., 31 N. L. R. B. 101.

Ex-Lax, Inc., 34 N. L. R. B. 1095.

Pick Manufacturing Company, 35 N. L. R. B. 1334 (reduction of employee's hours of employment).

Marlin-Rockwell Corporation, 39 N. L. R. B. 501 (refusal to reinstate laid-off employee because he testified at prior Board hearing).

Sartorius & Co., Inc., 40 N. L. R. B. 107. (The constructive discharge of an employee—employee was compelled to quit by reason of employer's discriminatory treatment towards her—because she had testified against the employer in a proceeding before the Board, *held* a violation of Section 8 (4).

Snow Co., 41 N. L. R. B. 1288 (denial of wage increases to employee who had caused a charge to be filed in his behalf

and who had given documentary and oral evidence concerning employer's unfair labor practices).

Carrington Publishing Co., 42 N. L. R. B. 356.

For decisions in which allegations of discrimination for testifying under Act were dismissed, *see*:

Hawk & Buck Company, Inc., 25 N. L. R. B. 837.

Weyerhaeuser Timber Co., 31 N. L. R. B. 258.

Burson Knitting Co., 35 N. L. R. B. 772.

Brown Paper Mill Company, Inc., 36 N. L. R. B. 1220.

VI. REFUSAL TO BARGAIN COLLECTIVELY WITH DULY DESIGNATED REPRESENTATIVES OF EMPLOYEES: SECTION 8 (5).

A. IN GENERAL.

01 1. *Subject matter of collective bargaining.*

The history of the Act indicates that its purpose was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made, and it is assumed that the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 342, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

Rapid Roller Co., 33 N. L. R. B. 557. (Collective bargaining is a continuous process and the obligation to bargain collectively does not cease upon the signing of a collective bargaining agreement and where a union claimed that the employer breached a collective bargaining agreement, and the employer denied that its actions constituted a violation of the agreement, *held* the union's claim that the agreement had been breached was itself a proper subject of collective bargaining.)

A refusal to bargain about legislative policies and other generalities is not included in the subject matter of collective bargaining as set forth in Section 9 (a) which provides that collective bargaining is related to rates of pay, wages, hours of employment, or other conditions of employment. *Globe Cotton Mills* v. *N. L. R. B.*, 103 F. (2d) 91, 94 (C. C. A. 5), modifying 6 N. L. R. B. 461. See also *id.* at 93.

The Board may decide whether collective bargaining negotiations have taken place, but it has no power under the Act to decide on the subject matter of substantive terms of a union agreement. *Consumers' Research, Inc.*, 2 N. L. R. B. 57, 74. Cf. *Montgomery Ward & Co.*, 37 N. L. R. B. 100.

An employer has engaged in conduct violative of Section 8 (5) by its unlawful insistence that the granting of passes aboard its ships to representatives of the union should be within its own controlled discretion. *Interstate Steamship Company, et al.*, 36 N. L. R. B. 1307, 1319.

The recognized subjects of collective bargaining are:

Atlantic Refining Co., 1 N. L. R. B. 359, 368 (wages, hours, working conditions). See also: *Singer Manufacturing Co.*, 24 N. L. R. B. 444. *V-O Milling Co.*, 43 N. L. R. B. 348. *National Laundry Co., Inc.*, 47 N. L. R. B. 961.

North American Aviation, Inc., 44 N. L. R. B. 604 (grievances and grievance procedure). See also: *Cities Service Oil Co.*, 25 N. L. R. B. 36, 44. *New York Times Co.*, 26 N. L. R. B. 1094.

Ohio Calcium Co., 34 N. L. R. B. 917 (reinstatement). See also: *Washougal Woolen Mills*, 23 N. L. R. B. 1. *Stonewall Cotton Mills*, 36 N. L. R. B. 240.

Rapid Roller Co., 33 N. L. R. B. 557 (claim of breach of collective bargaining agreement).

02 2. *Exhaustion of existing collective bargaining procedure established by contract.*

Where it was alleged that an employer refused to bargain collectively because of its conduct in taking unilateral action in a matter involving the interpretation and administration of its collective contract with a union, and several of the issues had been amicably settled but with respect to the remaining issues the union had made no attempt to utilize the grievance machinery established by the contract, *held* complaint dismissed without prejudice since the parties had not exhausted their rights and remedies under the contract it would not effectuate the policies of the Act of "encouraging the practice and procedure of collective bargaining" for the Board to exercise jurisdiction in the dispute and assume the role of policing collective bargaining contracts by attempting to decide whether disputes as to the meaning and administration of such contracts constituted unfair labor practices under the Act, for otherwise the parties would be encouraged to abandon their efforts to dispose of disputes under the contracts

through collective bargaining or settlement procedures mutually agreed upon by them and to remit the interpretation and administration of their contracts to the Board. *Consolidated Aircraft Corp.*, 47 N. L. R. B. 694, § 702 Cf. *Aluminum Ore Co.*, 39 N. L. R. B. 1286.

[*See* JURISDICTION § 20 (as to the effect of contracts providing for the arbitration of disputes).]

710 3. *Rights of minorities.*

A minority of the employees have a right to choose their own representatives for collective bargaining in the absence of an exclusive bargaining agency selected under the Act. *Consolidated Edison Co.*, v. *N. L. R. B.* 305 U. S. 197, 220, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

[*See* §§ 37, 769 (as to employer's right to deal with minority union or individual employees).]

B. CONDITIONS PRECEDENT TO EMPLOYER'S DUTY TO BARGAIN.

1. *Designation of representatives by majority of employees in appropriate unit.*

a. Methods of designation.

711 (1)—In general.

The Act imposes upon an employer only the duty of conferring and negotiating with the authorized representatives of a majority of his employees for the purpose of setting a labor dispute. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

It is not an unfair labor practice within the meaning of Section 8 (1) and (5) for an employer to refuse to discuss grievances with representatives who have not been designated as such by a majority of the employees. *Mooresville Cotton Mills* v. *N. L. R. B.*, 94 F. (2d) 61, 65, modifying 2 N. L. R. B. 952. See also:

Segall-Maigen, Inc., 1 N. L. R. B. 749, 755.
Wallace Mfg. Co., Inc., 2 N. L. R. B. 1081, 1090, enforced 95 F. (2d) 818 (C. C. A. 4).
Bemis Brothers Bag Co., 3 N. L. R. B. 267, 273, 274.
National Electric Products Corp., 3 N. L. R. B. 475, 485.
Todd Shipyard Corp., 5 N. L. R. B. 20, 37.
Altorfer Bros. Co., 5 N. L. R. B. 713, 724.
St. Genevieve Lime & Quarry Co., 10 N. L. R. B. 926.
Panther-Panco Rubber Co., Inc., 11 N. L. R. B. 1261.
Interstate Granite Corp., 11 N. L. R. B. 1261.

Foote Bros. Gear and Machine Corp., 14 N. L. R. B. 1045.
Christian Board of Publication, 13 N. L. R. B. 534.
Eagle-Picher Mining & Smelting Co., 16 N. L. R. B. 727.
Monte Glove Co., Inc., 17 N. L. R. B. 405.
Omaha and Council Bluffs Street Railway Co., 18 N. L. R. B. 82.
Niles Fire Brick Co., 18 N. L. R. B. 883.
Electric Vacuum Cleaner Co., 18 N. L. R. B. 591.
Feinberg Hosiery Mills, 19 N. L. R. B. 667.
Fox-Coffey-Edge Millinery Co., 20 N. L. R. B. 637.
Ideal Electric & Mfg. Co., 20 N. L. R. B. 894.
Lansing Co., 20 N. L. R. B. 434.
Pearce Constructing and Stevedoring Co., 20 N. L. R. B. 1061.
Trojan Powder Co., 41 N. L. R. B. 1308.
Karron, 41 N. L. R. B. 1454, 1467.
Stein, 46 N. L. R. B. 129.

Where an employer was found to have negotiated in good faith with a labor organization and allegations of violation of Section 8 (5) where dismissed, *held* that it was unnecessary to make any determination as to the appropriate unit or as to the majority status of the labor organization within that unit. *Levy*, 24 N. L. R. B. 786, 798. See also: *Westchester Newspaper, Inc.*, 26 N. L. R. B. 630, 643.

12 (2)—By express authorization.

A majority of the employees in an appropriate unit have designated a labor organization as their representative for the purposes of collective bargaining where they signed individual proxies authorizing the labor organization to represent their interests in all labor disputes which might occur in the plant. *Edw. E. Cox, Printer, Inc.*, 1 N. L. R. B. 594, 598.

Atlas Mills, Inc., 3 N. L. R. B. 10, 14, 15; *Suburban Lumber Co.*, 3 N. L. R. B. 194, 197 (designated by application for membership and authorization granted representative to act as bargaining agent).

Biles-Coleman Lumber Co., 4 N. L. R. B. 679, 688, 689, enforcing 98 F. (2d) 18 (C. C. A. 9) (petitions expressly designating organization as bargaining agency).

See following page references for additional decisions:
Vol. 25—p. 869
Vol. 26—pp. 582, 679
Vol. 27—p. 1338
Vol. 28—p. 208

Vol. 37—p. 649
Vol. 38—p. 778
Vol. 40—p. 1367
Vol. 41—p. 807
Vol. 42—p. 1375

The fact that some of the employees who have designated a labor organization as their bargaining agent are not members of the organization or are not members in good standing because of non-payment of dues, is immaterial for purposes of determining the existence of a majority in the appropriate unit because Section 9 (a) of the Act requires only that the representatives be "designated or selected" by the employees, and such designation or selection is not dependent upon membership in a labor organization but rests upon an express authorization for that purpose. *St. Joseph Stock Yards Co.*, 2 N. L. R. B. 39, 43, 44. *Webster Manufacturing, Inc.*, 27 N. L. R. B. 1338. (Absence of membership on part of employees who have designated a union as their bargaining representative does not affect the authority of the union to act on their behalf.)

13 (3)—By signing application or registration cards.

It is not the province of the Board to go into the mental processes of employees who sign application cards, and where it is uncontradicted that the employees knew that they were applying for membership in a labor organization, there is no merit to contentions that the sole purpose of the employees in signing application cards and paying initiation fees was to be able to vote against a strike, that some employees were unaware of the effect of signing application cards, and that none of the employees intended to designate the organization as their representative for collective bargaining. *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1261, 1262, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.

Somerset Shoe Co., 5 N. L. R. B. 486, 490, remanded 111 F. (2d) 681 (C. C. A. 1). (In the absence of evidence to the contrary, an application for membership in a labor organization may be considered as a designation of the organization as the applicant's representative for the purposes of collective bargaining.)

Employees have designated a labor organization as their representative for the purposes of collective bargaining by applying for membership therein and it is immaterial for purposes of determining a majority whether any of

the applicants have paid their initiation fee, or are ever voted upon or admitted to membership, or, although admitted, are thereafter subsequently ousted, since Section 9 (a) of the Act, states "representatives designated or selected for purposes of collective bargaining by the majority of employees," and says nothing about membership in a labor organization. *C. M. DeKay, d/b/a S. & M. Motor Freight Co.*, 2 N. L. R. B. 231, 237.

Benjamin & Marjorie Fainblatt, d/b/a Somerville Mfg. Co., et al., 1 N. L. R. B. 864, 869, enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

Chicago Apparatus Company, 12 N. L. R. B. 1002, 1007, enf'd 116 F. (2d) 753 (C. C. A. 7) (immaterial whether or not applicants, who had not paid initiation fees and dues, perfected their applications and became members of union; sufficient that by signing applications employees signified their desire to be represented by the union).

The evidence is sufficient to support a finding of the Board that a labor organization was designated bargaining agent by a majority of the employees where the secretary-treasurer of the organization so testified and where signed applications for membership in the labor organization executed by a majority of the employees were submitted in evidence. *N. L. R. B.* v. *Louisville Refining Co.*, 102 F. (2d) 678, 680 (C. C. A. 6), modifying 4 N. L. R. B. 844, cert. denied 308 U. S. 568.

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690, 708. (Testimony of employees that they had not signed designation cards although viewed with suspicion where adduced in the presence and at the instance of the employer, is accepted as true; such testimony, however, *held* not to cast doubt upon the validity of the other cards in evidence.)

Hancock Brick & Tile Co., 44 N. L. R. B. 920 (uncontradicted testimony of union organizer that 55 of the 90 employees within the unit had signed membership cards designating union as their collective bargaining representative).

Metal Textile Corp., 47 N. L. R. B. 743. (Respondent's objection to the authenticity of union application cards offered to establish union's majority status, found without merit when the union representative testified that a substantial number of the cards were signed in his presence and the remainder were given to him by employees to whom he had distributed the cards to solicit signatures thereon, and when the respondent did not demonstrate in what

respect the cards were not genuine though it had the addresses of the signers and doubtless possessed cancelled checks or other documents bearing their signatures.) See also: *Richfield Oil Corp.*, 7 N. L. R. B. 639.

Held: that it was immaterial that applicants were not formally initiated as members or that labor organization was not authorized to bargain by formal resolution. *National Motor Bearing Co.*, 5 N. L. R. B. 409, 427, 428, modified 105 F. (2d) 652 (C. C. A. 9). See also: *Coca-Cola Bottling Wks.*, 46 N. L. R. B. 180.

The recital of the name of the predecessor employer rather than successor, on some authorization cards signed by a majority of the employees found not to affect the authority of the union to act as the bargaining representative of the employees where the employment relationship continued without interruption. *Webster Manufacturing, Inc.*, 27 N. L. R. B. 1338.

Charging union found not to have been designated by a majority of the employees within an appropriate unit when a number of employees had about the same time designated a rival-assisted union, and notwithstanding that the record failed to establish affirmatively that any of the assisted-organization's designations were signed prior to the respondent's extensive coercion and assistance, the duplicate designations did not lose their ambiguity, since the charging union's alleged majority was not established affirmatively. *Karron*, 41 N. L. R. B. 1454, 1467. See also: *Stein*, 46 N. L. R. B. 129.

Oral persuasion without threat of physical violence in obtaining union applications, *held* not improper persuasion and not to affect validity of designations. *Karp Metal Products Co., Inc.*, 42 N. L. R. B. 119. See also:

Dahlstrom Metallic Door Co., 112 F. (2d) 756, enforcing 11 N. L. R. B. 408.

Delaware-New Jersey Ferry Co., 30 N. L. R. B. 820.

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.

Sartorius Co., Inc., 40 N. L. R. B. 107.

McClachlan & Co., 45 N. L. R. B. 113.

Dedourian Export Corp., 46 N. L. R. B. 498.

[*See* EVIDENCE § 20 (as to relevancy and materiality of labor organizations in enlisting members).]

Majority established by application for membership cards designating the union or an affiliated organization, for although some employees signed membership cards for

the union and others for the affiliated organization, the employees were aware, because of the known interrelationship of the labor organization, that they were applying for membership in the union. *Franks Bros Co.*, 44 N. L. R. B. 898, 910. See also: *N. L. R. B.* v. *Chicago Apparatus Company*, 116 F. (2d) 753 (C. C. A. 7), enf'g 12 N. L. R. B. 1002. *A Sartorius & Co., Inc.*, 40 N. L. R. B. 107. *Northwestern Cabinet Company*, 38 N. L. R. B. 357. *J. Cohen*, 4 N. L. R. B. 720, 724, 725. ("Joint board" composed of three locals of labor organization designated by application for membership in any of the three locals). *Nekoosa-Edwards Paper Co.*, 11 N. L. R. B. 446. (Membership in any one of three affiliated international unions held to authorize all three to bargain together for employee.) *Webster Manufacturing, Inc.*, 27 N. L. R. B. 1338. (Committee composed of representatives of three unions found to have been duly designated to jointly represent the employees, notwithstanding the fact that some of the employees signed cards authorizing one of the three unions, rather than the joint committee, to represent them.)

See following page references for additional decisions.

Vol. 27—p. 864
Vol. 28—p. 208
Vol. 29—p. 873
Vol. 30—pp. 382, 440, 820, 1027
Vol. 31—p. 1179
Vol. 34—p. 700
Vol. 36—p. 1329
Vol. 37—pp. 662, 725, 839
Vol. 38—pp. 357, 778
Vol. 39—p. 970
Vol. 41—pp. 444, 807, 1428
Vol. 42—pp. 119, 898, 1160, 1375
Vol. 43—pp. 125, 348
Vol. 44—pp. 898, 1013
Vol. 45—pp. 377, 448, 836, 869, 987, 1113

14 (4)—By membership in labor organization.

There is no merit to a contention that employees did not designate a labor organization to bargain over wages and hours at the time they joined, for to so hold would be to ignore the generally known fact that men join a labor organization for the precise purpose of collective bargaining over wages, hours, and working conditions. *N. L. R. B.* v. *Louisville Refining Co.*, 102 F. (2d) 678, 680 (C. C. A.

6), modifying 4 N. L. R. B. 844, cert. denied 306 U. S. 568.

Membership in a labor organization is in itself a sufficient designation of that organization as a representative for purposes of collective bargaining. *Louisville Refining Co.*, 4 N. L. R. B. 844, 852, modified 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568. See also:

Marbot Boat Building Co., 1 N. L. R. B. 349, 353, 354.
Columbia Radiator Co., 1 N. L. R. B. 847, 859.
Globe Mail Service, Inc., 2 N. L. R. B. 610, 620.
Boss Mfg. Co., 3 N. L. R. B. 400, 411, modified 107 F. (2d) 574 (C. C. A. 7).
Standard Lime & Stone Co., 5 N. L. R. B. 106, 113–115, set aside 97 F. (2d) 531 (C. C. A. 4).

See following page references for additional decisions.
Vol. 25—pp. 456, 1166
Vol. 26—pp. 679, 937, 975
Vol. 27—p. 1021
Vol. 41—pp. 1327, 1428
Vol. 30—pp. 146, 739, 1027
Vol. 31—pp. 71, 715
Vol. 32—p. 895
Vol. 34—pp. 651, 760, 917, 984
Vol. 35—pp. 217, 936
Vol. 37—pp. 100, 334
Vol. 41—pp. 1327, 1428
Vol. 42—p. 898
Vol. 43—p. 1277

Designation of representative by membership in a labor organization is sufficient without a determination by the Board as to whether union acted *ultra vires* in accepting such membership. *Pueblo Gas & Fuel Co.*, 23 N. L. R. B. 1028, 1037. See also: *National Seal Corp.*, 30 N. L. R. B. 188.

715 (5) By election.

A labor organization has been designated as the exclusive representative of the employees in an appropriate unit where it received a majority of the votes cast in a consent election held under the supervision of an agent of the Board. *H. J. Heinz Co.*, 10 N. L. R. B. 963, 976, 977, enforced 110 F. (2d) 843 (C. C. A. 6).

N. L. R. B. v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143, 144, modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 575 (election conducted by N. L. R. B. under National Industrial Recovery Act).

Shell Oil Co., 2 N. L. R. B. 835, 848, 849 (election conducted by Petroleum Labor Policy Board).

Millfay Mfg. Co., Inc., 2 N. L. R. B. 919, 926, 927, enforced 97 F. (2d) 1009 (C. C. A. 2) (vote taken upon suggestion of employer).

Scandore Paper Box Co., 4 N. L. R. B. 910, 916–918 (consent election under supervision of Board agent).

Wilcox Oil and Gas Company, H. F., et al., 28 N. L. R. B. 79 (consent election).

Kellogg Switchboard and Supply Co., 28 N. L. R. B. 847 (consent election).

Neuhoff Packing Company, 29 N. L. R. B. 746 (consent election).

Bingler Motors, Inc., 30 N. L. R. B. 1080 (consent election).

Scripto Manufacturing Company, 36 N. L. R. B. 411 (consent election).

Where proof of majority founded upon Board election, employer's offer to prove union's membership cards do not truly reflect its membership held irrelevant and immaterial. *Whittier Mills Co.*, 15 N. L. R. B. 457.

An employer is not justified in its refusal to bargain with its employees' duly certified bargaining representative because of the small mumber of participants in Board election since it is an established principle of democratic election that nonparticipants are presumed to assent to the will of the majority of those voting. *National Mineral Company*, 39 N. L. R. B. 344. See also:

Virginia Railway Co., v. *System Federation No. 40 Railway Employees Department of the American Federation of Labor, et al.*, 300 U. S. 515.

New York Handkerchief Mfg. Co., v. *N. L. R. B.*, 114 F. (2d) 144 (C. C. A. 7).

Marlin-Rockwell Corp., 19 B. L. R. B. 648.

The American Thread Company and Kerr Mills and Weavers Protective Association (A. F. T. O.), 35 N. L. R. B. 579.

National Laundry Co. Inc., 47 N. L. R. B. 961.

[*See* INVESTIGATION AND CERTIFICATION § 131 (as to "majority" construed).]

16 (6) By certification.

A lobar organization has been designated as the exclusive representative of the employees in an appropriate unit upon certification by the Board. *Black Diamond Steamship*

Corp., 3 N. L. R. B. 84, 90, 91, enforced 94 F. (2d) 875 (C. C. A. 2). cert. denied 304 U. S. 579. See also:
Sheba Ann Frocks, Inc., 5 N. L. R. B. 12, 16.
United States Stamping Co., 5 N. L. R. B. 172, 182.
Fedders Mfg. Co., Inc., 7 N. L. R. B. 817, 821.
Lane Cotton Mills Co., 9 N. L. R. B. 952, 967, 968, enforced 111 F. (2d) 814 (C. C. A. 5).

See following page reference for additional decisions:
Vol. 25—pp. 946, 1312
Vol. 27—p. 1300
Vol. 30—p. 314
Vol. 33—p. 1184
Vol. 36—pp. 240, 1307
Vol. 37—p. 100
Vol. 39—pp. 344, 1245, 1256, 1286
Vol. 40—p. 107
Vol. 41—pp. 218, 1383
Vol. 42—pp. 85, 866
Vol. 44—p. 604

17 (7) By virtue of closed-shop agreement.

A majority of the employees in an appropriate unit have designated a labor organization as their representative for purposes of collective bargaining where the employer has operated on a closed-shop basis for several years by reason of an agreement to that effect entered into with the labor organization. *Louis Hornick & Co., Inc.*, 2 N. L. R. B. 983, 988.

18 (8) By engaging in or voting for strike called by labor organization.

A majority of the employees in an appropriate unit have designated a labor organization as their representative for the purposes of collective bargaining where, although they were not members of the organization, a majority of the workers accepted strike benefits from it and adhered constantly to its leadership during a strike, for the leadership of a strike is necessarily entrusted with collective bargaining during the strike. *Rabhor Co., Inc.*, 1 N. L. R. B. 470, 476.

An important consideration in determining whether a labor organization represents a majority of employees in an appropriate unit is the fact that a majority of employees within the unit followed the leadership of the organization in going on strike, although the labor organization did not

call out all of its members. *Denver Automobile Dealers Assn., et al.*, 10 N. L. R. B. 1173, 1189, 1191.

Rollway Bearing Co., Inc., 1 N. L. R. B. 651, 655 (participation in strike by majority of employees in unit).

Consumers' Research, Inc., 2 N. L. R. B. 57, 65 (participation in strike by majority of employees in unit).

Remington Rand, Inc., 2 N. L. R. B. 626, 643, 644, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576 (participation by majority of employees in unit in strike vote conducted by labor organization among its members).

Stehli and Co., Inc., 11 N. L. R. B. 1397, 1425–1426 (participation by a majority of employees in strike called by union and preferred by employer as means of testing union membership places burden on employer to offer reasonable method of determining majority, if he doubts union's majority).

Chicago Casket Company, 21 N. L. R. B. 235. (The Board held that the union had proved that it was designated by a majority when a majority of the employees responded to a strike call and remained on strike for its duration.)

See following page references for additional decisions:

Vol. 30—p. 188

Vol. 34

Strikers who had not joined or applied for membership in union, *held* to have designated union by their voluntary participation in strike and their subsequent representation by the union, 917.

Vol. 43—p. 125

Vol. 44—p. 834

Vol. 45—p. 836

(9) By other methods.

Mailing lists of union used to determine majority status. *Reliance Manufacturing Company*, 28 N. L. R. B. 1051.

Ford Motor Company, 29 N. L. R. B. 873 (lists compiled from union membership cards and financial records, inspected by the respondent).

Cowell Portland Cement Company, 40 N. L. R. B. 652 (union roll book entries; duplication receipts for initiation fees and dues payments).

Gerity Whitaker Company, 33 N. L. R. B. 393 (union's majority admitted to employer).

Golden Turkey Mining Company, 34 N. L. R. B. 760 (admitted in answer).

Rapid Roller Co., 33 N. L. R. B. 557 (parties stipulated that union represented a majority).

Holston Manufacturing Company, 46 N. L. R. B. 55 (majority established by stipulation).

Employees who sign check-off cards containing no application for union membership and no express designation of a collective bargaining agency, but authorizing deduction of union dues from their wages during the life of a contract to be made by the employer and the union, *held* to have thereby designated the union as their collective bargaining agency. *Lebanon Steel Foundry*, 33 N. L. R. B. 233. See also: *Shenandoah-Dives Mining Co.*, 35 N. L. R. B. 1153.

b. Continuance of majority designation.

719 (1) Presumption as to continuance of designation by majority.

A motion for leave to adduce additional evidence in proceeding for enforcement of an order of the Board will be denied where its purpose is to show that, after the order had made made, the union may have ceased to be the bargaining agent of a majority of the employees by reason of the fact that a number of the employees ordered reinstated by the Board had refused reemployment, for the court is entitled to presume that the union recognized by the Board has continued to be such a bargaining agency during the period between the date of the Board's order and that of the motion. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 198 (C. C. A. 9), leave to adduce additional evidence denied 4 N. L. R. B. 679.

N. L. R. B. v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576. (An order of the Board requiring an employer to negotiate with a union representing the majority of its employees carries with it no assurance of perpetual tenure but merely means that the union will be the last representative, and if it later loses its majority a refusal of the employer to treat with it for that reason in good faith will not be treated as contempt by the court until after the Board has conducted an investigation of representatives pursuant to Section 9 (c) and has certified the result.)

The rule that a state of affairs once shown to exist is presumed to continue is applicable where no contention is made that a number of employees who had designated a labor organization as their bargaining agent either lost the right to claim inclusion in a unit found to be appropriate or that they rescinded the designation of that organization as their

agent. *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9), modifying 5 N. L. R. B. 409.

N. L. R. B. v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143, 144, modifying 2 N. L. R. B. 248, cert. denied 304 U. S. 575. (Where a labor organization was designated as representative of the employees in an election conducted by the N. L. R. B. under the National Industrial Recovery Act in December 1934, and from that time to May 3, 1935, membership in the union increased, the Board can properly infer that the labor organization had been designated as their representative by a majority of the employees on July 5, 1935, the effective date of the Act.)

Blount, R. A., Hearst B., 37 N. L. R. B. 662. (Resumption of work by majority of employees despite union's strike, particularly where not shown to precede the refusal to bargain, found under circumstances not to rebut the presumption of continuance of union's majority established by designation cards.)

Sartorius & Co., Inc., 40 N. L. R. B. 107. (Union's majority designation secured by signed authorization, *held* to continue despite employer's contention that the union had lost its status as an exclusive representative after it had called a strike because it did not have a majority of the group which included strikers and those replacing strikers, when strike was caused by employer's unfair labor practices and strikebreakers were not entitled to participate with the strikers in the selection of a bargaining representative.) See also: *Great Southern Trucking Co.*, 34 N. L. R. B. 1068.

Dedourian Export Corp., 46 N. L. R. B. 498. (Testimony of witnesses 10 months after they had unequivocally designated the union as their bargaining representative that they did not wish such representation, found insufficient to rebut the presumption that their designations continued for a reasonable time after they were executed.

Porcelain Steels, Inc., 46 N. L. R. B. 1235. (Union's majority status established by designation cards found not affected by an expansion of business increasing the number of employees in the appropriate unit when the increase occurred after a refusal to bargain and absent the unfair labor practices of the respondent it was reasonable to infer that the union which then represented at least three-fourths of the employees would have been able to recruit from among the new employees a sufficient number to maintain its majority.)

Alleged refusal to bargain 7 months after certifications by Board, *held*: that respondent's proof of diminished employment, allegedly vitiating certifications, was not sufficient to rebut presumption of continuing effectiveness of the certifications. Further held that since certifications were based on elections, respondent's offer to show loss of majority by the union membership cards was irrelevant and immaterial, for the Congress cannot have intended by Section 9 (c) of the Act to authorize the Board to do a futile and meaningless thing. A certification would be futile and meaningless, could an employer, shortly thereafter require the certified representative to prove anew its status as a majority representative. *Whittier Mills Co.*, 15 N. L. R. B. 457, 463.

United States Stamping Co., 5 N. L. R. B., 172, 182. (There is a presumption that the majority secured by a labor organization in an election conducted by the Board has continued, in the absence of proof to the contrary, over a period of 9 months, during which time the labor organization intermittently met with and unsuccessfully sought to bargain with the employer.)

H. J. Heinz Co., 10 N. L. R. B. 963, 976, 977, enforced 110 F. (2d) 843 (C. C. A. 6) (presumption that majority secured in consent election continued over period of 3 months). See also: *Shell Oil Co.*, 2 N. L. R. B. 835, 848, 849.

Pacific Greyhound Lines 22 N. L. R. B. 111 (continuing authority of certified representative presumed to continue after majority designation of another representative less than a reasonable time subsequent to the certification).

Westinghouse Air Brake Company, 25 N. L. R. B. 1312. (Effectiveness of Board's certification presumed to continue although the respondent's answer set forth that it has no knowledge as to whether the certified union had represented, during the period of the alleged refusal to bargain, or now represented a majority of its employees in said unit, when there was nothing in the record to indicate, nor did the respondent endeavor to prove that the union at any time after the certification ceased to be the exclusive bargaining representative.)

Sbicca, Inc., 30 N. L. R. B. 60, 70 (authority of a certified representative held not to have continued beyond a year).

Botany Worsted Mills, 41 N. L. R. B. 218. (Presumption of union's continuing majority status established by Board

election, *held* not rebuted by "newly discovered evidence" offered 1 month after certification although that evidence was in respondent's possession prior to the certification.)

John Engelhorn & Sons, 42 N. L. R. B. 866. (Majority status of union certified approximately a year prior to issuance of decision, *held* to continue in the absence of evidence to the contrary.)

Marshall Field & Company, 43 N. L. R. B. 874. (Organization which was certified 7 months prior to present decision, *held* to have continued to represent a majority of respondent's employees in the absence of evidence to rebut the presumption of continuance arising from the certification.)

Appalachian Electric Power Co., 47 N. L. R. B. 821. (Petition revoking the authority of a certified union, presented 2½ months after issuance of a Board certification, found not to nullify the certification nor to justify a refusal to bargain for it is essential to the effectuation of the policies of the Act that the representative status, once established, be vested with a substantial degree of stability.)

Century Oxford Mfg. Corp., 47 N. L. R. B. 835 (majority status established at consent election, not affected by a showing of 60 percent labor turn-over thereafter).

[*See* EVIDENCE § 21 (as to the materiality of proof of lack of majority status of a certified representative).]

The majority status of a labor organization, *held* not presumed to have continued where the certified organization solicited unfair labor practices on the part of the respondent which effectively impaired the possibility of a free choice by the employees. *Electric Vacuum Cleaner Co.*, 18 N. L. R. B. 591, 626.

(2) Effect of withdrawal of designation as result of employer's unfair labor practices. (*See also* § 794.)

The Board is justified in finding that a labor organization was the exclusive representative of all the employees in an appropriate unit and that its designation as such representative was unaffected by a subsequent shift in membership to another labor organization which had been induced by the unfair labor practices of the employer, for an employer cannot, by its unfair labor practices, "operate to change the bargaining representative previously selected by the untrammeled will of the majority." *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318, enforcing 4 N. L. R. B. 604, and reversing 106 F. (2d) 119 (C. C. A. 1).

An employer is not justified in its refusal to meet with a labor organization duly authorized to represent the employees on the ground that the organization no longer represents a majority, when the record shows that such majority was dissipated by the unfair labor practices of the employer. *Arthur L. Colten and A. J. Colman, Co-partners, d/b/a Kiddie Kover Mfg. Co.*, 6 N. L. R. B. 355, 368, enforced 105 F. (2d) 179 (C. C. A. 6).

Delaware-New Jersey Ferry Co., 2 N. L. R. B. 385, 389, set aside 90 F. (2d) 520 (C. C. A. 3), cert. denied 302 U. S. 738 (labor organization not superseded as exclusive representative by designation of non-union committee which was not a free choice of the employees).

Taylor Truck Co., 6 N. L. R. B. 32, 36, 37 (designation not affected by subsequent shift in membership to labor organization found to be employer dominated). See also:

Kiddie Kover Mfg. Co., 6 N. L. R. B. 355, 367, enforcing 105 F. (2d) 179 (C. C. A. 6).

Art Crayon Co., et al., 7 N. L. R. B. 102, 116, 117.

National Licorice Co., 7 N. L. R. B. 537, 553, modified 309 U. S. 350, modifying 104 F. (2d) 655 (C. C. A. 2).

American Radiator Co., 7 N. L. R. B. 1127, 1149, 1150.

Missouri-Arkansas Coach Lines, Inc., 7 N. L. R. B. 186, 192, 193 (designation not affected by subsequent shift in membership to rival legitimate labor organization assisted by employer). See also: *Missouri, Kansas, and Oklahoma Coach Lines*, 9 N. L. R. B. 597, 618.

Sunshine Mining Co., 7 N. L. R. B. 1252, 1262, enforced 110 F. (2d) 780 (C. C. A. 9) (designation not affected by fact many employees walked through picket line established during strike called by labor organization, because of employer's refusal to bargain collectively).

Denver Automobile Dealers Assn., 10 N. L. R. B. 1173 (designation not affected by failure of employees to pay dues after strike caused by refusal to bargain collectively).

Chicago Apparatus Company, 12 N. L. R. B. 1002, 1025, enf'd 116 F. (2d) 753 (C. C. A. 7) (designation not affected by resignations from union occasioned by employer's violation of Section 8 (1)).

West Oregon Lumber Co., 20 N. L. R. B. 1, 37. (Employer's contention that it was not obligated to bargain with the statutory representative because of a rival organization's claim to such status rejected as not advanced in good faith,

when shift in membership to rival organization was induced by employer's unfair labor practices.)

Valley Mould & Iron Co., 20 N. L. R. B. 211. (Loss of majority by labor organization resulting from unfair labor practices of employer no bar to exclusive recognition.)

Tehel Bottling Co., Wm., et al., 30 N. L. R. B. 443 (defection caused by questioning employees following strike concerning their union affiliation, *held* not to affect union's status as majority representative).

Great Southern Trucking Company, 34 N. L. R. B. 1068 (majority not destroyed by discharge and replacement of strikers—strike having been caused by employer's refusal to bargain). See also: *Saritorius & Co.*, 40 N. L. R. B. 107.

Cowell Portland Cement Company, 40 N. L. R. B. 652 (designated not affected by lock-out).

Poultrymen's Service Corporation, 41 N. L. R. B. 444. (Employees' action in negotiating independently of union after employer's commission of unfair labor practices, *held* not to affect union's majority.)

Crown Can Company, 42 N. L. R. B. 1160 (designations not affected by withdrawals after and as a result of respondent's refusal to bargain).

Cassoff, Louis F., et al., 43 N .L. R. B. 1193 (designation not affected by loss of membership attributed to respondent's unfair labor practices in refusing to bargain collectively).

Medo Photo Supply Corporation, 43 N. L. R. B. 989. (Defections which were induced by respondent's unlawful conduct in dealing directly with employees after recognizing union when at employees' request and upon their agreement to abandon union it granted them wage increases.)

Coca-Cola Bottling Works, 46 N. L. R. B. 180, 199 (designation not affected by request for individual bargaining).

The fact that a majority of the employees have voted against a labor organization of which they were members in an election conducted by the employer does not indicate that they have thereby withdrawn from the organization where the vote was neither secret nor uninfluenced, and therefore could not be taken to represent a free expression of choice on the part of the employees. *N. L. R. B.* v. *Colten, d/b/a Kiddie Kover Mfg. Co.*, 105 F. (2d) 179, 181, 182 (C. C. A. 6), enforcing 6 N. L. R. B. 355.

Riverside Mfg. Co., 20 N. L. R. B. 394, 408. (Board held that it was not necessary for union to make new request

for recognition where employer, by its unlawful conduct, had made questionable the union's ability to prove its majority by a consent election.)

H. McLachlan & Company, Incorporated, 45 N. L. R. B. 1113. (Where consent election was declared null and void because of respondent's unfair labor practices, respondent held not justified in relying upon union's failure to demonstrate its majority at the election as a defense to its refusal to bargain.)

21 (3) Effect of withdrawal of designations during a period of but not caused by employer's unfair labor practices.

Respondents were justified when confronted with the fact that a substantial number of employees were shifting their allegiance back and forth between two labor organizations in rejecting the suggestion that the question concerning representation be determined on the basis of designations alone and in insisting that they would not bargain with the charging union unless and until the Board certified that organization, when notwithstanding that one of the organizations was unlawfully assisted, membership in the assisted union immediately and prior to the shift was not to any material degree attributable to the continuing effects of the respondents unfair labor practices. *Abinante & Nola Packing Co.*, 26 N. L. R. B. 1288, 1322.

Charging union found not to have been designated by a majority of the employees within an appropriate unit when a number of employees had about the same time designated a rival-assisted union, and notwithstanding that the record failed to establish affirmatively that any of the assisted-organization's designations were signed prior to the respondent's extensive coercion and assistance, the duplicate designations did not lose their ambiguity, since the charging union's alleged majority was not established affirmatively. *Karron*, 41 N. L. R. B. 1454, 1467. See also: *Stein*, 46 N. L. R. B. 129.

22 (4) Existence of question as to the majority status of a representative arising from inactivity, change of affiliation, "schism," repudiation, or otherwise. [*See* § 498 (as to effect of existence of question as to majority status of a representative upon the validity of closed-shop contracts), and § 720 (as to effect of existence of question as to majority status of a representative when caused by unfair labor practices).]

An employer is not excused from bargaining with a labor organization duly authorized to represent its employees by reason of the fact that less than a majority of the members of the organization ratified the action of its executive counsel which had voted to affiliate itself with another parent body where there was no interruption in the course of a strike which was then in existence, and there was no break in the continuity of the attempts at bargaining, for but one organization continued to function in exactly the same manner for the period under consideration and the change in affiliation did not result in the existence of two labor organizations in the plant. *Newark Rivet Works*, 9 N. L. R. B. 498, 511.

Employer, *held* under no obligation to bargain with a union which changed its affiliation after securing a majority. Union was a city-wide local which had voted to change affiliation and it did not appear how many of repondent's employees participated in this vote, while there was an affirmative showing that, because of defection of members, this union under its new affiliation, did not have a majority status at any time. *Foote Brothers Gear and Machine Corporation*, 14 N. L. R. B. 1045.

Employees, *held* to have remained a member of the union in the absence of a clear manifestation of a contrary intention. Employee, *held* not to have indicated such an intention when her action in signing a protest from the union to the respondent negatived her prior expression of desire to withdraw from the union. *Polish National Alliance of the United States of North America*, 42 N. L. R. B. 1375.

Food Machinery Corporation, 41 N. L. R. B. 1428. (An application for membership in a labor organization constitutes a sufficient designation and failure of employees who had signed such applications to sign a subsequent petition designating union, *held* not to indicate a disavowal of their designation, particularly when many members of union failed to sign the petition and petition was subject to surveillance.)

Crown Can Company, 42 N. L. R. B. 1160 (alleged intention on part of an employee to withdraw from union was not given effect where there was absent any overt act unequivocally indicating such intention).

Dadourian Export Corp., 46 N. L. R. B. 498, 504. (Informal request to union representative for return of authorization paper, found an effective revocation.)

Union's status as representative established by certification held not affected when its name appeared on ballot in somewhat different form from that on petition and there was no showing that change of name operated to the damage or detriment of the respondent or employees, for Board certifies a union and not a name in representation proceedings. *Walgreen Co.*, 44 N. L. R. B. 1200. See also: *Metal Hose & Tubing Co.*, 23 N. L. R. B. 1121.

Petition of withdrawal signed by a majority of employees less than 2 months after selection of a union at a consent election, found ineffectual to defeat union's majority status. *Century Oxford Mfg. Corp.*, 47 N. L. R. B. 835.

[*See* § 719 (as to a presumption of continuance when the representative status of the labor organization is determined by Board action).]

23 (5) Majority status of organization as affected by the eligibility of employees who have ceased work and/or employees hired to replace striking employees to select a representative. [*See* § 719 (as to the continuance of majority), DEFINITIONS §§ 2–10 (as to employee status of persons who have ceased work), and INVESTIGATION AND CERTIFICATION §§ 55-61.8 (as to eligibility to vote).]

Where a strike is caused by unfair labor practices and employer must therefore displace the strikebreakers if necessary to reinstate strikers, the strikebreakers are not entitled to participate with the strikers in the selection of a bargaining representative, for to hold otherwise and to accept an employer's contention, in face of employer's unfair labor practices, that union lost its status as exclusive representative because it did not have a majority among the strikers and strikebreakers, would be to allow an employer by engaging in unfair labor practices to escape its obligations under the Act. *Sartorius & Co., Inc., A.*, 40 N. L. R. B. 107, 121.

Union's majority not affected by employer's discriminatorily discharging and replacing employees who had designated the union as their representative. *Sartorius & Co., Inc., A.*, 40 N. L. R. B. 107.

(5) dismissed without discussion as to the course of bargaining after a labor organization which had represented a majority of the employees resumed negotiations following a strike not caused by unfair labor practices, when persons who replaced the strikers were regarded as constitutents of the appropriate unit entitled to participate in the selec-

tion of a bargaining representative and in the absence of a showing that these persons became union adherents the union had lost its majority status. *Natt*, 44 N. L. R. B. 1099, 1107, 1109. See also: *Kroger Grocery & Baking Co.*, 27 N. L. R. B. 250; (No. 8 (5) where strike which resulted after an impasse over a closed-shop issue, was not caused or prolonged by unfair labor practices and employer was therefore privileged to hire replacements for the strikers.)

30 (6) Other circumstances.

2. *Demand by representatives of employees.*

31 a. In general.

Before an employer can be put in default for a refusal to bargain the employees must at least have signified to him their desire to negotiate. *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 297, 298, setting aside 1 N. L. R. B. 181, and affirming 96 F. (2d) 948 (C. C. A. 7).

There can be no breach of an employer's duty to bargain collectively—when he has not refused to receive communications from his employees—unless some indication is given to him by them or their representatives of their desire or willingness to bargain, and in the normal course of transactions between them, willingness of the employees is evidenced by their request, invitation, or expressed desire to bargain, communicated to their employer. *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 297, setting aside 1 N. L. R. B. 181, and affirming 96 F. (2d) 948 (C. C. A. 7).

Irrespective of the fact that the general manager of an employer had no authority to bargain with a labor organization representing a majority of the employees, requests for collective bargaining made to him by the labor organization were, in effect, notices to him as agent of the employer, that the labor organization desired to bargain collectively. *Pioneer Pearl Button* Co., 1 N. L. R. B. 837, 842, 843.

It is unnecessary for a labor organization to request each employer-member of an association of automobile dealers and distributors to bargain collectively upon an individual basis where the members of the association agreed among themselves that any member who signed a contract with the labor organization without the consent of a majority of the association's negotiating committee which was then

conferring with the labor organization would forfeit $1,000, and thereafter the labor organization was informed by the individual employees that the committee was acting for them and they therefore could not negotiate individually. *Denver Automobile Dealers Ass'n.*, 10 N. L. R. B. 1173, 1200.

Request by a majority representative to bargain for members only, *held* sufficient. *Reed & Prince Mfg. Co.*, 12 N. L. R. B. 944, 970–971. See also: *Louisville Refining Co.*, 4 N. L. R. B. 844, 860. *McQuay Norris Mfg. Co.*, 21 N. L. R. B. 709.

[*See* § 813 (as to effect of request for recognition of members only upon duty to accord representative exclusive recognition).]

Where one of two corporate enterprises under identical ownership and control transferred its business to the second, a union demand, prior to such sale, for recognition to the president of the first corporation who was also president of the second, was, *held* to constitute a continuing demand for recognition from the second corporation. *Norwich Dairy Company, Inc.*, 25 N. L. R. B. 1166.

Where an employer has removed his plant, under circumstances amounting to an unfair labor practice and the union has indicated its desire to bargain, the union is under no further duty to request collective bargaining since the employer by his conduct has demonstrated the futility of such request. *Isaac Schieber, et al.*, 26 N. L. R. B. 937.

A tacit agreement by both an employer and a union having a majority representation that negotiations would be undertaken at a meeting between the two parties, *held* to have rendered superfluous a *pro forma* request by the union that the employer bargain collectively. *Cowell Portland Cement Company*, 40 N. L. R. B. 652.

Although a union represented a majority of employees within an appropriate unit, employer's refusal to meet with it on certain dates or at conference of a State Board of Conciliation to which the union applied for settlement of a dispute, *held* not to constitute a refusal to bargain collectively since neither the union nor State Board notified the employer of the union's majority claim. *Hobbs*, 41 N. L. R. B. 537.

Employer held to have refused to bargain collectively, when it failed to answer a request for a collective bargaining conference by registered mail visibly bearing the name and

return address of a labor organization representing a majority of its employees in an appropriate unit, because it believed that a personal visit by the union representative was necessary. *Dominic Meaglia*, 43 N. L. R. B. 1277.

A communication by the union to the company during a strike indicating that it was "prepared forthwith to terminate the Strike" and that it was "prepared to meet with you [the company] at your convenience to make such arrangements for reinstatement as may be necessary" *held* not to constitute a request to bargain. *Solvay Process Co.*, 47 N. L. R. B. 1113.

32 b. By third persons.

The Act does not compel an employer to seek out his employees or request participation in negotiations for purposes of collective bargaining, and he may ignore or reject proposals for such bargaining which come from third persons not purporting to act with authority of his employees. *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 297, setting aside 1 N. L. R. B. 181, affirming 96 F. (2d) 948 (C. C. A. 7).

Reliance Manufacturing Company, 28 N. L. R. B. 1051, 1099. (Request by mayor of city held sufficient when union had authorized him to do so.)

33 c. Failure of representatives to make known their identities or purpose.

Evidence disclosed that during the course of a strike conciliators for the Department of Labor upon request of a committee of the union representing the striking employees sought to arrange a meeting between the committee and the employer, and the employer at first agreed, but several days later informed one of the conciliators that he would not meet "with him or with the Scale Committee." Board found employer refused to bargain collectively with the union. *Held*: Finding not supported by substantial evidence. There is no hint that the union communicated to the employer its willingness to bargain or that the conciliators, in asking a meeting and discussing the matter with the employer, purported to speak for the union. The testimony is consistent throughout with the inference that the conciliators, so far as known to the employer, appeared in their official role as mediators to compose the long-standing dispute between the employer and its employees; that the employer first consented to attend a meeting, and later withdrew its consent when they failed for some days

to arrange it. There is no showing that in the meantime the Scale Committee or any other representative of the union was in fact willing to attend a meeting. *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299, setting aside 1 N. L. R. B. 181, and affirming 96 F. (2d) 948 (C. C. A. 7).

It is not necessary for the representatives of employees to make known their identity and the purpose of their visit to an official of the employer who was aware of both those facts and stated when approached that he was "too busy" to see them at that time and intimated that he would be too busy to meet with them in the future. *C. M. DeKay, d/b/a D. & H. Motor Freight Co.*, 2 N. L. R. B. 231, 237, 238. *Burke Machine Tool Company, The*, 36 N. L. R. B. 1329. (An employer is in no position to maintain that there was no request to bargain where its conduct during a meeting with a representative of the employees designedly and effectively prevented discussion of the purpose of the visit.)

40 d. Other circumstances.

3. *Presentation of proof of majority to employer.* [*See* § 719 (as to presumption of continuance of a majority status).]

41 a. In general.

An employer's duty to bargain collectively with a labor organization as representative of its employees includes the duty to cooperate with the labor organization to a reasonable extent in an inquiry as to the claim of the organization that it has been designated as exclusive bargaining representative. *Burnside Steel Foundry Co.*, 7 N. L. R. B. 714, 723. See also:

Serrick Corp., 8 N. L. R. B. 621.
Texas Mining & Smelting Co., 13 N. L. R. B. 1163
New Era Die Co., 19 N. L. R. B. 227.
Moltrup Steel Products Co., 19 N. L. R. B. 471.
Henry Glass & Co., 21 N. L. R. B. 727.
National Steel Corp., 30 N. L. R. B. 188.
Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690.
Clinton E. Hobbs Co., 41 N. L. R. B. 537.
Karp Metal Products Co., 42 N. L. R. B. 119.

While it may be assumed that an employer who is in doubt as to the authority of the representatives of his employees need not recognize them at his peril, it does not follow that he need be satisfied with no evidence except the Board's certification, for it may be that evidence of authority is entirely apparent from other sources. *N L. R. B.* v. *Rem-*

ington Rand, Inc., 94 F. (2d) 862, 868, (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

An employer is not excused by its refusal to bargain with the duly designated representative of its employees on the ground that no election had ever been held by the employees to select a bargaining representative, for Section 9 (a) provides only that a representative be designated or selected by a majority of the employees in an appropriate unit. *Benjamin Fainblatt, et al.*, 4 N. L. R. B. 596, 600, enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (Board's practice in representation proceedings (as enunciated in *Cudahy* case, 13 N. L. R. B. 526) to direct an election to resolve a dispute as to wishes of majority and not to certify on basis of record, *held* not applicable to unfair labor practice proceedings alleging a refusal to bargain collectively since in the latter proceedings Board is confronted with the necessity of deciding, upon the testimony and documentary evidence in the record whether on the date of an alleged refusal to bargain, the union represented a majority in an appropriate unit, and that question cannot be answered by directing an election, since the election would not show union's majority on the particular date in question.)

An employer had knowledge that a labor organization was the designated bargaining agent of a majority of its employees and a finding of the Board to that effect is sustained by the evidence where it was shown that a committee of the organization called upon the employer's president and introduced an agent of the parent organization with which the local group was affiliated and presented a proposed contract which stated that the agreement was between the company and the labor organization, for to hold otherwise would be to ignore the proposed contract and the presence of the local union members, and further, the employer's president at no time raised the point that he did not know that the labor organization had been duly designated as the bargaining agent of the employees. *N. L. R. B.* v. *Louisville Refining Co.*, 102 F. (2d) 678, 680 (C. C. A. 6), modifying 4 N. L. R. B. 844, cert. denied 308 U. S. 568.

42 b. Circumstances excusing presentation. (*See also* § 793.)

An employer may not justify its refusal to bargain with a labor organization on the ground that no proof of majority had been submitted to it where it knew that a large majority

of its employees had designated the labor organization as their bargaining representative, and at no time prior to the hearing had it asked for such proof. *Millfay Mfg. Co., Inc.*, 2 N. L. R. B. 919, 929, enforced 97 F. (2d) 1009 (C. C. A. 2). See also: *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, 879.

An employer is not justified in refusing to bargain with a labor organization as the representative of its employees on the ground that it was reluctant to recognize the organization in the absence of proof that it represented a majority of its employees where it refused to agree to a proposal that a consent election be held, which would have resolved the uncertainty. *Piqua Munising Wood Products Co.*, 7 N. L. R. B. 782, 789.

Burnside Steel Foundry Co., 7 N. L. R. B. 714, 722–724 (refusal of employer to submit its pay roll to Board agent for purpose of checking against membership cards of labor organization).

Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1130, modified 104 F. (2d) 49 (C. C. A. 8) (refusal of employer to agree to consent election after labor organization declined to submit list of its members because of fear they would be discharged).

Dahlstrom Metallic Door Company, 11 N. L. R. B. 408 (8 (5) sustained when employer rejected reasonable suggestions for proving union's majority.)

Hyman S. Levy, 11 N. L. R. B. 964 (8 (5) sustained when employer, though questioning union's majority, refused a check of union cards against pay roll.)

Stehli & Co., 11 N. L. R. B. 1397. (Respondent having preferred a strike to a consent election as a means of testing union's strength, the Board *held* that the strike in which a great majority of employees participated was notice to respondent of strong likelihood that union represented a majority and that under these cirumstances it was respondent's duty to propose a reasonable method of determining majority if it desired other proof of majority.)

Algoma plywood & Veneer Company, 26 N. L. R. B. 975. (Employer's refusal to accept a fair method of ascertaining union's strength among employees and insistence upon a method which would reflect results of employer's unfair labor practices, *held* a refusal to bargain.)

Franks Bros. Company, 44 N. L. R. B. 898. (A union, *held* fully warranted in withdrawing from a consent election

agreement and proving its majority by instituting charges that the respondent had refused to bargain collectively, when on the eve of the consent election the respondent engaged in unfair labor practices that would effect the outcome of the election.)

Whiting-Mead Co., 45 N. L. R. B. 987. (Employer found to have refused to bargain in good faith notwithstanding its contention that it was under no duty to enter into negotiations until satisfied that union represented a majority of employees when employer without raising any question of majority at first conference with union immediately thereafter undertook to destroy that majority by urging employees to abandon union and to revive company-dominated organization to which it granted recognition, and when after its campaign to stamp out union was well under way, it refused to submit union application cards to an impartial pay-roll check and withdrew its consent to union's subsequent offer to submit to an election insisting that dominated organization appear on ballot.) Cf. *Hardy Company, The L.*, 44 N. L. R. B. 1013, where Board found that although it is not a refual to bargain for an employer in good faith to request proof of union's majority status before bargaining negotiations, respondent had violated Section 8 (5) when its refusal was part of a deliberate plan to destroy union and frustrate efforts of employees to exercise their rights under the Act.

H. McLachlan & Company, Incorporated, et al., 45 N. L. R. B. 1113. (Labor organization found justified in establishing its proof of majority by proceeding before Board on 8 (5) charges when employer's unfair labor practices culminating in its interference with consent election prevented bona fide showing of the union's majority.

Kirk & Son, Inc., 41 N. L. R. B. 807. (An employer by its rejection of union's suggestion that issue as to its majority representation be determined by a cross check, its arbitrary offer requiring an election his presence with the ballot box on his desk, its derogatory statement made in presence of union officials and its refusal to again meet with the union representatives refused to bargain collectively since such activities, in the light of employer's activities in dominating an "inside" organization, shows that employer at no time intended to bargain with the union in the manner contemplated by the Act.)

Helena Rubinstein, Inc., 42 N. L. R. B. 898. (Employer failed to bargain collectively in good faith although when meeting with the statutory representative of its employees it advanced *bona fide* doubts as to union's status as majority representative, when its subsequent action, in seeking to delay the establishment of union's majority designation by consent election agreed upon until a dominated organization could be revived in order to render ineffective the consent election, showed no genuine intention on its part to recognize or deal with the union.)

43 c. Ability to raise question after refusal to bargain on other grounds.

An employer is not excused in its refusal to recognize the representatives of its employees on the ground that it was in doubt as to their authority where it is plain that its position was not based upon any doubt, but upon its unwillingness to treat with "outside" representatives. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 868 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

Heilig Bros. Co., 32 N. L. R. B. 505. (An employer is not justified in its refusal to bargain with the union because it wanted an election in order to establish the union's majority where its course of action was dominated, not by any honest or reasonable doubt of the union's majority, but by a fixed intention not to deal with the union at all.)

Lebanon News Publishing Co., 37 N. L. R. B. 649. (Employer who could have had no honest doubt of union's majority when only basis upon which it could assert such doubt was revocations which resulted because of its own unfair labor practices, *held* to have engaged in conduct violative of Section 8 (5) by conducting a poll among its employees to ascertain whether or not they desired the union to represent them and following the results of the election, in which the union failed to obtain a majority, indicated that it would bargain for union members only.)

Sanco Piece Dye Works, Inc., 38 N. L. R. B. 690; (An employer is not excused in its refusal to recognize the representative of its employees because of its alleged doubt as to the validity of their claim to majority where such doubt constituted nothing more than a subterfuge which employer hoped would enable it to escape its obligation under the Act.)

Hardy Company, The L., 44 N. L. R. B. 1013; (Although an employer need not bargain with a union if he entertains a genuine doubt that it represents a majority, where the respondent's refusal to bargain was part of a deliberate plan based upon rejection of the principle of collective bargaining in order to destroy the union, and to frustrate the efforts of its employees to exercise the rights guaranteed them in the Act, *held* employer refused to bargain within the meaning of the Act.)

For additional decisions in which an employer's alleged doubt of majority status was not a defense to a refusal to bargain after it refused to bargain on other grounds, *see*:

Louisville Refining Co., 4 N. L. R. B. 844, 853, modified 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.
Omaha Hat Corp., 4 N. L. R. B. 878, 884, 885.
American Radiator Co., 7 N. L. R. B. 1127, 1150, 1151.
Chicago Apparatus, 12 N. L. R. B. 1002.
Federbush, 24 N. L. R. B. 829.
Clarksburg Publishing Co., 25 N. L. R. B. 456.
Manville Jenckes Corp., 30 N. L. R. B. 283, 411.
Delaware-New Jersey Ferry Co., 30 N. L. R. B. 820.
Long Lake Lumber Co., 34 N. L. R. B. 700.
Northwestern Cabinet Co., 38 N. L. R. B. 357.

It is no defense to a refusal to bargain for an employer to point out that the labor organization, in presenting a proposed contract, did not claim to be the representative of the employee in the appropriate unit, as distinguished from all the employer's workers, where the employer made no objection to the contract on the basis of the property of the unit for which it was being presented; and under such circumstances, the Board was entitled to draw the inference that the refusal was motivated, not by doubt as to the appropriate unit, but by a rejection of the collective bargaining principle. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

[*See* § 793 (as to 8(5) when refusal to bargain because of alleged doubt as to the appropriate unit was in fact otherwise motivated).]

[*See* § 790 (as to issues raised in bad faith for the purpose of impeding negotiations).]

44 d. Circumstances requiring presentation.

For decisions in which an employer is justified in refusing to bargain when in good faith it doubted a representative's

majority status and offered to cooperate to a reasonable extent in an inquiry as to its majority status, *see*:

Huch Leather Co., 11 N. L. R. B. 394, 398–401. (Employer agreed to a consent election to be held under Board auspices and refused to agree after the union had withdrawn its consent on the eve of the election, that the question be determined by a check of membership cards.)

Abinante & Nola Packing Co., 26 N. L. R. B. 1288, 1322. (Respondents were justified when confronted with the fact that a substantial number of employees were shifting their allegiance back and forth between two labor organizations in rejecting the suggestion that the question concerning representation be determined on the basis of designations alone and in insisting that they would not bargain with the changing union unless and until the Board certified that organization, when notwithstanding that one of the organizations was unlawfully assisted, membership in the assisted degree attributable to the continuing effects of the respondents unfair labor practices.)

Allied Yarn Corporation, 26 N. L. R. B. 1440. (Where during negotiations with the union there had been an increase in personnel, which cast a reasonable doubt upon the majority of the union, respondent, *held* justified in requesting such proof of majority before continuing the negotiations.)

Sbicca, Inc., 30 N. L. R. B. 60, 69, 70. (Respondent was not unreasonable in insisting upon proof of representation when union offered no proof of its asserted right to exclusive representation of employees and relied without justification upon an earlier proof of majority received in a consent election held approximately a year prior to the request.)

American Products, Inc., 34 N. L. R. B. 442. (An employer acted in good faith where it refused to negotiate with either of rival unions until the unions arrived at an amicable settlement independently of the Board's assistance or until the Board through the pending representation proceedings instituted by one of the organizations resolved the question concerning representation.) See also: *Brewer-Titchener Corporation*, 19 N. L. R. B. 160, 168.

Norwood Sash & Door Mfg. Co., The, 42 N. L. R. B. 678, 690. (An employer's insistence that an unaffiliated union be accorded place on ballot in any consent election was,

held not to reflect on its good faith where such organization was found not to have been dominated.)

50 e. Other circumstances.

C. DUTY OF EMPLOYER TO MEET AND NEGOTIATE.

1. *Conduct constituting a refusal to meet and negotiate.*

51 a. In general.

52 b. Failure to reply to, refusal to accept, or return of communications.

An employer has refused to bargain collectively with a labor organization where the employer, although informed that a committee which was acting on behalf of the labor organization and was waiting to confer with him was under surveillance of guards, nevertheless failed to call off the guards and make it possible for the committee to see him; failed to get in touch with the representatives after they had left their address and telephone number with him: and even after a strike was called, made no effort to deal with the labor organization until he was notified that a charge had been filed with the Board. *Globe Mail Service, Inc.*, 2 N. L. R. B. 610, 621.

An employer has refused to bargain collectively with a labor organization duly authorized to represent its employees where a union representative made two trips to its offices, and, not finding its president in, left word where he could be reached, but no attempt was ever made to contact him, except by a letter from the president, stating that he did not care to discuss the matter with the representative either in person or over the telephone. *Suburban Lumber Co.*, 3 N. L. R. B. 194, 203.

The failure of an employer to answer a letter of a labor organization requesting a bargaining conference after the organization had been duly certified by the Board constitutes a violation of Section 8 (5). *Sheba Ann Frocks, Inc.*, 5 N. L. R. B. 12, 16. 17.

J. Cohen, et al., trading as S. Cohen & Sons, 4 N. L. R. B. 720, 723, 724 (failure of employer to reply to letter of labor organization requesting a conference which had been submitted upon suggestion of employer).

Standard Lime & Stone Co., 5 N. L. R. B. 106, 115, set aside 97 F. (2d) 531 (C. C. A. 4) (failure to reply to letter requesting conference).

Somerset Shoe Co., 5 N. L. R. B. 486, 492, remanded 111 F. (2d) 681 (C. C. A. 1) (failure to reply to written request for conference).

Trenton-Philadelphia Coach Co., 6 N. L. R. B. 112, 121 (refusal to talk to representative over telephone).

C. A. Lund Co., 6 N. L. R. B. 423, 435, 436, remanded 103 F. (2d) 815 (C. C. A. 8) (failure to reply after contract left in office and registered letter sent requesting conference).

Moltrup Steel Products Co., 19 N. L. R. B. 471; (refusal to reply to union demand for meeting after having told union would bargain only after shown a list of union members, *held*, refusal to bargain where union had suggested reasonable alternative method of proving its claim to represent majority.)

Clarksburg Publishing Co., 25 N. L. R. B. 456 (failure to reply to letter requesting employer to meet with representatives of union).

Delaware-New Jersey Ferry Company, 30 N. L. R. B. 820 (failure to reply to communications).

Gregory, Joseph R. 31 N. L. R. B. 71 (failure to reply to communications).

Williams Motor Company, 31 N. L. R. B. 715 (failure to reply to union's letter requesting a conference).

Northwestern Cabinet Company, 38 N. L. R. B. 357 (failure to reply to communications).

Sartorius & Co., 40 N. L. R. B. 107. (Employer by its failure to reply to certified union's request for a bargaining conference after Board had denied its application for reconsideration of the certification constitutes a violation of Section 8 (5).)

Crown Can Company, 42 N. L. R. B. 1160 (failure to reply to letter requesting conference).

Dominic Meaglia, 43 N. L. R. B. 127. (Employer failed to meet with its employees' designated representative and thereby refused to bargain collectively where on several occasions it refused to accept mail containing a request for collective bargaining by the union and returned the communications, which bore the name and return address of the union on the envelope, unopened.) See also: *Harry Schwartz Yarn Co.*, 12 N. L. R. B. 1139, 1156. *Heilig Bros., 32 N. L. R. B. 505.*

[*See* § 789 (as to lack of good faith in bargaining by unreasonable delay and postponement of negotiations).]

53 c. Failure to attend meeting.

An employer has refused to bargain collectively where, during the course of a strike, he failed to attend some of the conferences which had been arranged with representatives of a majority of the employees, and, at those which he did attend, refused to enter any discussion designed to effect collective bargaining. *N. Kiamie*, 4 N. L. R. B. 808, 811, 812. See also: *Taylor Truck Co.*, 6 N. L. R. B. 32, 41.

Martin Brothers Box Company, 35 N. L. R. B. 217 (failure to keep appointment with union committee).

[*See* § 789 (as to lack of good faith in bargaining by unreasonable delay and postponement of negotiations).]

54 d. Failure to arrange personal conferences at reasonable time and place.

An employer which took the position that personal conferences were unnecessary, refused to furnish representatives at the place where the plant was situated and contended that bargaining should be carried on elsewhere, although bargaining related only to that plant has refused to bargain collectively, for the employer's obligation under Section 8 (5) is the obligation to accept in good faith the procedure of collective bargaining as historically practiced which normally involves personal conferences and negotiations between representatives of the employer and employees, and while it may be that negotiations through the mails or by other indirect methods fulfills the statutory requirement when both parties accept that procedure, under ordinary circumstances personal conferences should be held if requested by either party. Further, the procedure of collective bargaining requires that the employer make his representatives available for conferences at reasonable times and places and in such a manner that personal negotiations are practicable. *Lorillard Co.*, 16 N. L. R. B. 684, 703.

[*See* § 789 (as to dilatory tactics by failing to arrange for meeting).]

55 e. Failure to make available authorized representatives.

The procedure of collective bargaining requires that the employer make his representatives available for conferences at reasonable times and places and in such a manner that personal negotiations are practicable. *Lorillard Co.*, 16 N. L. R. B. 684, 703.

Martin Brothers Box Company, 35 N. L. R. B. 217, 239. (Failure of employer within a reasonable time to meet and bargain with the union or to appoint a fully authorized agent to do so, evidences bad faith, and constitutes a refusal to bargain collectively.)

Heilig Bros. Co., 32 N. L. R. B. 505. (Employer's reasons for cancelling a scheduled meeting with the union because it wanted a certain person to be present when it met with the union, *held* invalid where the record does not disclose why a bargaining conference could not be had without such person and where the union had not been informed that the employer considered such person's presence essential.)

Easton Publishing Co., 19 N. L. R. B. 389, 397. (Although a respondent may not postpone bargaining indefinitely on account of the disability of one of its officers, Board did not view its suggestion that further negotiations be withheld pending the recovery of its president as constituting a refusal to meet with the union, particularly when the union was aware that the company's president was the sole person empowered to contract for the respondent with the union.)

Where parties agreed that authority to recognize a collective bargaining representative would have to come from another office of the respondent and after the request had been forwarded to such office neither the respondent nor the union communicated with the other with respect to the issue of recognition, *held* that the respondent had not refused to bargain collectively within the meaning of Section 8 (5). *Jergen Co. of California*, 43 N. L. R. B. 457, 510.

[*See* § 787 (as to lack of good faith in bargaining by making available representatives without authority to offer counter-proposals or enter into agreement, and § 789 (as to dilatory tactics in failing to make authorized representatives available).]

60 f. Other conduct.

Where 2 days after a labor organization representing a majority of employees in an appropriate unit had requested to bargain with the employer and had presented it with a proposed contract, conduct of the employer's president in calling a mass meeting of the employees at which he told them that he had been presented with a list of demands from the "so-called" union, advised them it was impossible to meet any of the demands, stated that the workers

would be better off if they paid no heed to outside organizer and told them that his answer was final, and that they had best go home and talk it over with their wives, constituted sufficient evidence to warrant a finding of the Board that the employer had refused to bargain collectively within the meaning of Section 8 (5). *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

An employer is not justified in its refusal to negotiate on the ground it would await the outcome of a decision by the Supreme Court upon the constitutionality of the Act. *Delaware-New Jersey Ferry Co.*, 1 N. L. R. B. 85, 91, 92, 96, set aside 90 F. (2d) 520 (C. C. A. 3), cert. denied 302 U. S. 738.

An employer has refused to bargain collectively where an agent of a labor organization representing a majority of the employees made two efforts to negotiate a contract with the employer and the employer put him off by asking him to wait until a certain date and later told him the employer was forming an inside union. *Atlas Bag & Burlap Co., Inc.*, 1 N. L. R. B. 292, 298, 302.

An employer has refused to bargain collectively where it persistently refused upon request to meet with representatives of a majority of the employees in an appropriate unit for the purpose of accomplishing the reinstatement of a number of employees who had been discharged, but instead insisted that it would deal with the employees individually. *Rollway Bearing Co., Inc.*, 1 N. L. R. B. 651 658–660. See also: *Consumer's Research, Inc.*, 2 N. L. R. B. 57, 68–70.

An employer has refused to bargain collectively where it failed to reply to a statement made by the representatives of the employees that a strike was contemplated not only because of the failure to arbitrate a wage dispute which had resulted in a shut-down of the plant but also because of the employer's discriminatory conduct in failing to recall some employees upon the reopening of the plant, for the question of discrimination was a new one with respect to which the employer had a duty to bargain collectively, if requested to do so. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 859, 860.

An employer has refused to bargain collectively where, after a representative of its employees had presented demands to an official of the company and the latter had agreed to

consider them and notify the representatives of his answer in a few days, the official thereafter refused to meet with the representatives on the ground that he would not let an outsider run his business; and, after the employees went on strike because of the refusal to bargain, still refused to meet and negotiate the dispute with the representatives of the employees. *Benjamin and Marjorie Fainblatt, d/b/a Somerville Mfg. Co., et al.*, 1 N. L. R. B. 864, 870, 871 enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

An employer has refused to bargain collectively with a labor organization representing a majority of its employees in an appropriate unit, where it refused to enter into negotiations with the organization to settle a strike and for the purposes of collective bargaining, and wrote to the striking employees, giving reasons why it could not and would not sign any contract with a labor organization. *Jacobs Bros. Co., Inc.*, 5 N. L. R. B. 620, 639, 640.

An employer has refused to bargain collectively with a labor organization duly designated to represent its employees where, after several efforts on the part of representatives of the labor organization to arrange a conference, its president refused by telegram to meet with them. *Missouri, Kansas & Oklahoma Coach Lines*, 9 N. L. R. B. 597, 619.

The individual members of an employers' association have refused to bargain collectively with a labor organization duly authorized to represent the employees of each member where, after rejecting negotiations which had been carried on by the association in their behalf, the individual employers entered into an agreement which provided that any member who signed a contract with the labor organization without the consent of a majority of the association's negotiating committee would forfeit $1,000, thereby precluding any bargaining upon an individual basis. *Denver Automobile Dealers Association*, 10 N. L. R. B. 1173, 1199, 1200.

An employer has failed to bargain when it had negotiated with a union in bad faith and thereafter refused to confer with the union's representative. *Ford Motor Co.*, 29 N. L. R. B. 873, 909–911.

An employer has refused to bargain collectively where it refused to meet and negotiate with union representative regarding reinstatement of non-unfair labor practice strikers upon application, although employment vacancies

existed. *Ohio Calcium Company, The*, 34 N. L. R. B. 917.

An employer has refused to bargain collectively where in bad faith by its dilatory tactics it indefinitely postponed recognition and negotiation with the union. *United Biscuit Company of America*, 38 N. L. R. B. 778.

An employer has refused to bargain collectively by consistently evading and refusing to fulfill its obligation to deal with the exclusive representative of its employees, when it ignored the union agent's telephone calls, refused to grant the union exclusive recognition or to assure the union that it would bargain collectively although the union, at a conference, had submitted its proof of majority and the employer did not question the sufficiency thereof; thereafter ignored the union's persistent efforts to secure a conference, and continued in its refusal to bargain after the union had put into operation a previously authorized strike, though the strike did not suspend or annul its obligation to bargain. *Quality and Service Laundry, Inc.*, 39 N. L. R. B. 970, 983.

A company which attempted to delay negotiations for an unreasonably long period, suggested a strike as a substitute for bargaining negotiations, and flatly refused at the outset to enter into any agreement with the union, without discussion of proposed terms and without so much as knowing or even inquiring into the nature and extent of the union's demands, *held* to have violated the Act. *Franks Bros. Company*, 44 N. L. R. B. 898.

g. Refusal to accord recognition to duly authorized representatives. (*See* §§ 811–820.)

2. *Duty to meet and negotiate as affected by particular circumstances.*

761 a. Awaiting decision in case pending before Board.

An employer's contention that it is not required to bargain with a labor organization certified by the Board as the authorized representative of the employees until the Board renders a decision on pending charges of unfair labor practices, and until the decision and certification of representatives are reviewed by the court is without merit, for the issuance or withholding of a decision on a complaint cannot relieve the employer of its obligation to observe the provisions of the Act. *Sheba Ann Frocks, Inc.*, 5 N. L. R. B. 12, 16.

Cf. *Delaware-New Jersey Ferry Co.*, 1 N. L. R. B. 85, 91, 92, 96, set aside 90 F. (2d) 520 (C. C. A. 3), cert. denied 302

U. S. 738; (refusal to bargain until supreme Court rendered decision on constitutionality of Act).

Boss Mfg. Co., 11 N. L. R. B. 432, 443, 444, modified 107 F. (2d) 574 (C. C. A. 7) (refusal to bargain until Circuit Court of Appeals affirmed order of Board).

West Oregon Lumber Co., 20 N. L. R. B. 1, 37. (The currency of a Board hearing does not excuse the employer's obligation to bargain with the statutory representative.)

Lebanon Steel Foundry, 33 N. L. R. B. 233. (Termination of conferences by employer upon union's filing charge constitutes a refusal to bargain collectively since the pendency of a proceeding before the Board does not in any way suspend the operation of the Act or relieve an employer of any duties thereunder.)

Ellis-Klatscher & Co., 40 N. L. R. B. 1037 (refusal to bargain not excused by pendency of complaint proceeding).

No motions, exceptions, or objections filed by an employer or by any other party to a representation proceeding, subsequent to a certification of representatives by the Board, can render such certification ineffective or excuse the employer from bargaining with the certified representative until and unless such certification is set aside by the Board. *Borg-Warner Corp.*, 23 N. L. R. B. 114, 136.

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (An employer may not justify its refusal to bargain with the certified representative of its employees because of the pendency of its application for reconsideration of the certification before the Board.)

After a labor organization had been chosen in a consent election as the exclusive representative and after the Regional Director, as empowered by the election agreement, had finally overruled the losing union's objection to the election, the employer was not justified in refusing to bargain with the exclusive representative, because thereafter the losing union had filed with the Regional Director a petition for an investigation of representatives, especially when employer refused to consult the Regional Director concerning the effect of the petition on the exclusive representative status of the selected union. *Kellog Switchboard and Supply Co.*, 28 N. L. R. B. 847.

An employer has not refused to bargain collectively where in good faith when confronted with conflicting claims of rival labor organizations, refused to enter into agreements or negotiate further with either of the organizations until

the unions arrived at an amicable settlement independently of the Board's assistance or until the Board through the pending representation proceedings instituted by the charging union resolved the question concerning representation. *American Products, Inc.*, 34 N. L. R. B. 442.

An employer's contention that it was precluded from bargaining during pendency of proceedings before Board wherein there was under consideration the validity of a contract claimed by it as justifying its refusal to engage in bargaining negotiations with the union, *held* without merit, when the contract was invalid and had been executed with an assisted union in advance of employee organization, for one cannot utilize the pendency of proceedings involving one's own unlawful conduct as a shield for the commission of new unfair labor practices. *Fiss Corp.*, 43 N. L. R. B. 125.

62 b. Absence of grievances on part of employees.

An employer is not excused from its duty to bargain collectively with the representatives of its employees on matters of wages, hours, and basic working conditions, because it has in the past satisfactorily settled all individual complaints as to working conditions. *Atlantic Refining Co.*, 1 N. L. R. B. 359, 368.

The presence or absence of "problems" or "grievances" on the part of the employees has nothing to do with their right, under the Act, to self-organization and collective bargaining through representatives of their own choosing, and an employer's plea of "no problems" and "no grievances" as its reason for avoiding and flatly refusing a meeting with the chosen representatives of its employees for the purpose of collective bargaining cannot be availed of as an excuse or defense of its refusal to fulfill its statutory duties to bargain. *International Filter Co.*, 1 N. L. R. B. 489, 498, 499.

An employer's contention that inasmuch as conditions concerning which the union desired to bargain were already in effect and that there was no need to discuss them is specious, for the union may have reasonably desired an express agreement regarding these matters, and as discussion would presumably afforded a basis for such an agreement, the employer by refusing to discuss the subject necessarily indicated an objection on its part to the making of any agreement. *Chesler & Sons Company*, 13 N. L. R. B. 1, 9.

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763 c. Discussion of individual grievances.

The duty of an employer to bargain collectively is not at all exhausted when he considers individual grievances and matters of ordinary detail which do not pertain to the employees as a group, since the recognized subjects of collective bargaining are wages, hours and basic working conditions. *Atlantic Refining Co.*, 1 N. L. R. B. 359, 368.

An employer is not justified in refusing to recognize a labor organization, which represents a majority of the employees, as their exclusive bargaining representative and offering to bargain with it for its members only on the ground that it is not a violation of its duty to bargain individually with the employees, for although the employees, either individually or in groups, may present grievances to it, the Act imposes upon an employer an obligation to bargain exclusively with the representative of a majority of its employees in respect to rates of pay, wages, hours of employment, or other conditions of employment. *The Hanson-Whitney Machine Co.*, 8 N. L. R. B. 153, 159.

An employer who unilaterally established individual raises and announced them to the employees involved although a labor organization sought to discuss the subject may not justify its action by a contention that the grievance procedure provided by its contract with the union afforded the union a satisfactory opportunity to bargain collectively as to these increases after they were established, for the respondent could not avoid its duty to bargain collectively with reference to, and in advance of, the grant of the proposed increases by offering to consider individual increases after the increases were established, and by insisting that the union resort to the grievance procedure, it not only postponed discussion of the increases, but also sought to substitute a series of narrow, individual controversies of remote interest to the employees not directly involved for broad collective bargaining with the union on behalf of, and with the interested support of all the employees in the unit. Moreover, the contract, in its provision for collective bargaining as well as for the consideration of grievances, did not justify such a postponement or substitution. Nor could it. Inconsistency with the policy and provisions of the Act would render such a limitation upon bargaining ineffective. *Aluminum Ore Co.*, 39 N. L. R. B. 1286, 1296.

64 d. Absence of collective agreements among competitors.

An employer cannot refuse to bargain collectively on the ground that his competitors have not entered into negotiations or made agreements with their employees. *Harbor Boat Building Co.*, 1 N. L. R. B. 349, 354, 355. See also:

Harry Schwartz Yarn Co., Inc., 12 N. L. R. B. 1139.

American Range Lines, Inc., 13 N. L. R. B. 139.

George P. Pilling & Son Co., 16 N. L. R. B. 650.

Westinghouse Electric & Manufacturing Company, et al., 22 N. L. R. B. 147.

McQuay-Norris Manufacturing Company, 21 N. L. R. B. 709.

Newton Chevrolet, Inc., 37 N. L. R. B. 334.

[*See* § 785 (as to lack of good faith in bargaining by imposing acceptance of demand that agreement be obtained from competitors as a condition precedent to bargaining).]

65 e. Seasonal operations or removal, cessation, or contemplated sale of business. (*See also* §§ 40, 791.)

The Board is justified in finding that an employer attempted to evade its duty to bargain collectively where, following the request of a labor organization to meet and negotiate, the employer established a new company in an adjoining State to which it transferred its machinery and business. *N. L. R. B.* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2), modifying 4 N. L. R. B. 922.

An employer is not relieved from the duty of bargaining collectively with its employees because it contemplates cessation of operations and the removal of its plant to another State. *Omaha Hat Corp.*, 4 N. L. R. B. 878, 885.

An employer is not relieved of its obligation under the Act to bargain with its employees or their duly chosen representative by discriminatorily locking out its employees, closing its plant, and removing its operations to another plant. *Kuehne Mfg. Co.*, 7 N. L. R. B. 304, 320, 321.

An employer is not absolved from the duty of recognizing and bargaining with the duly designated representative of its employees, even though its business is intermittent in nature, by reason of the fact that it produces goods only upon receipt of orders, where meetings were continued during a period when the plant was not in operation, and where the employer always had stock on hand to begin immediate operations upon receipt of orders, and was operating its plant subsequent to the holding of the first few conferences. *J. W. Beasley, individually and trading*

as Standard Memorial Works, 7 N. L. R. B. 1069, 1072.

Refusal by corporate employer to negotiate concerning the transfer of employees, whose work ceased as a consequence of removal of operations from one plant, to work at plant to which operations were removed is not justified on ground that latter plant is owned by a separate corporation, where such separate corporation is but the *alter ego* or instrumentality of corporate employer. *Brown-McLaren Manufacturing Company*, 34 N. L. R. B. 984.

[*See* REMEDIAL ORDERS § 100 (as to effect of cessation of operation upon orders to bargain collectively).]

766 f. Demand by employees for closed shop.

An apprehension that employees may demand a closed shop is no excuse for a flat refusal by an employer to bargain collectively. *International Filter Co.*, 1 N. L. R. B. 489, 499.

The incorporation of a closed-shop provision in a contract proposed by a labor organization representing a majority of the employees does not indicate that the organization will not accept a contract without such provision, and an employer is not justified in refusing to bargain on the ground that the labor organization's demand was for a closed-shop contract which the employer is not required to accede to where the organization had not taken the position that an agreement without such a provision would not be acceptable. *United States Stamping Co.*, 5 N. L. R. B. 172, 182.

An employer is not justified in refusing at the outset of negotiations to enter into a signed agreement with the duly authorized representative of its employees on the ground that to do so would lead to the closed shop and check-off and would undermine morale and efficiency in the plant, for such allegations are mere speculation and have no relevance to the question whether or not the employer's conduct constituted a refusal to bargain. *Inland Steel Co.*, 9 N. L. R. B. 783, 802, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

[*See* § 774 (or to duty to continue negotiations in face of an impasse on particular demands) and § 785 (as to lack of good faith in bargaining by insisting that particular demands be withdrawn as a condition precedent to bargaining).]

67 g. Irresponsibility or misconduct of employees or representatives.

Where an employer has lawfully discharged its employees because they have breached an existing contract, has secured others to fill their places, and has recognized a new union which represented a majority of its new employees, the old union is no longer in a position to demand that the employer bargain collectively with it. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 344, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721.

Fansteel Metallurgical Corp. v. *N. L. R. B.*, 98 F. (2d) 375, 382 (C. C. A. 7), setting aside 5 N. L. R. B. 930, modified 306 U. S. 240. (The commission of a crime by strikers by reason of the fact that they have engaged in a sit-down strike does not preclude their right to bargain with their employer, provided they are still employees and represent the majority of all; but where they have been discharged for their illegal conduct, they are no longer employees and cannot be considered in determining a majority.)

Kuehne Mfg. Co., 7 N. L. R. B. 304, 321. (An employer is not justified in refusing to bargain collectively with a labor organization because of misconduct of strikers in interfering with the movement of its property for which appropriate remedies exist under State laws, for the Act imposes an unconditional duty upon an employer to bargain collectively with the representative designated by a majority of its employees in an appropriate unit.)

Universal Film Exchange, 13 N. L. R. B. 484. (Duty to bargain persists after sit-down strike, when employer has voluntarily taken strikers back.)

Quality and Service Laundry, Inc., 39 N. L. R. B. 970 (unsupported accusations of sabotage by union and other wrong, doing on part of striking drivers *rejected* as a defense to continuing refusal to bargain).

[*See* § 404 (as to employer's right to discharge employees who have engaged in misconduct or concerted activities beyond the protection of the Act), DEFINITIONS § 8 (as to employee status of persons who have ceased work as a result of discharge for misconduct), and REMEDIAL ORDERS §§ 107–110 (as to effect of misconduct upon reinstatement and back-pay orders).]

Where an employer had refused to bargain with the union representing his employees, a defense that the union had disqualified itself by its own misconduct from appealing

to the Board is without merit, for though the union may have misconducted itself, it has a *locus poenitiae*, and if it offers in good faith to treat, the employer may not refuse because of its past sins. *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872, 873 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576.

Rabhor Co., Inc., 1 N. L. R. B. 470, 477. (An employer is not justified in its refusal to bargain on the grounds that the labor organization brought the workers out on strike by false statements and promises and with having induced strikers to engage in acts of violence, or on the grounds that the organization told the workers their wages were lower in its plant than in "Union shops" and it would secure certain union wage scales for them.)

Rabhor Co., Inc., 1 N. L. R. B. 470, 478. (An employer is not justified in its refusal to bargain on the ground that a labor organization has encouraged violence on the part of pickets and strikers, where it appears that some of them were found guilty of assault upon workers in the plant, and that about a month after the strike was called a State court enjoined the strikers against picketing on the ground of violence, for the fact that during a strike, necessarily a time of heated emotions, the bounds of permissible conduct may have been overstepped, may not be used to deny to employees their full right of representation.)

Consumers' Research, Inc., 2 N. L. R. B. 57, 73. (Evidence of violence on the part of striking employees is irrelevant with regard to an issue of whether or not an employer has refused to bargain within the meaning of the Act, and a Trial Examiner has committed no error in excluding such evidence from the record, for the Act may not be interpreted to mean that upon appearance of industrial strife in a particular case the duty to bargain collectively is extinguished.) See also *id.* at 74 (allegation that labor dispute was simply a plot to seize control of organization).

Federal Carton Corp., 5 N. L. R. B. 879, 886. (An employer has refused to bargain collectively, notwithstanding the fact that it never refused to meet with a labor organization duly authorized to represent the employees, by insisting that any agreement arrived at must be with the employees themselves on the ground that it distrusted the organization because it had submitted a contract which differed in several respects from matters discussed at a prior conference, for the alteration of proposed terms by a labor

organization during the course of incomplete negotiations does not alone relieve an employer from his duty to bargain collectively.)

Dominic Meaglia, 43 N. L. R. B. 1277. (Employer, *held* not justified in refusing to bargain collectively on ground that union representative allegedly had a reputation as a communist and was responsible for the wildcat strike at the plant of another Company, for the Act requires an employer to bargain collectively with the freely chosen representative of his employees, however unfit such representative or its agents may be thought to be.)

An employer is not justified in refusing at the outset of negotiations to enter into a signed agreement with a labor organization representing a majority of the employees on the ground that the organization is irresponsible, for an employer is not privileged to deny collective bargaining to his employees merely because he views their representatives as irresponsible, nor is the alleged irresponsibility relevant in determining whether the employer is under an obligation to embody understandings in a signed agreement. *Inland Steel Co.*, 9 N. L. R. B. 783, 802, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7). See also *Westinghouse Air Brake Co.*, 25 N. L. R. B. 1312. *Cottrell & Sons*, 34 N. L. R. B. 457. *Scripto Mfg. Co.*, 36 N. L. R. B. 411, 428.

[*See* § 39 (as to violation of Section 8 (1) for refusal to deal with labor organizations because of their internal policies or ideals), § 785 (as to lack of good faith in bargaining by requiring union to incorporate, post bond, or comply with other matters as a condition to bargaining), § 795 (as to lack of good faith in bargaining by imposing preference of representatives as a condition precedent to bargaining).]

[*See* EVIDENCE § 22 (as to the admissibility of matters concerning violence or misconduct of employees or representatives).]

68 h. Shut-down, lock-out, or strike.

An employer cannot rid himself of the obligation to negotiate during the course of a strike by declaring further negotiations to be useless and refusing to recognize as employees those failing to return to work on his terms. *Jeffrey DeWitt Insulator Co.* v. *N. L. R. B.*, 91 F. (2d) 134, 140 (C. C. A. 4) enforcing 1 N. L. R. B. 618, cert. denied 302 U. S. 731.

A refusal of an employer to bargain with the authorized representatives of his employees who were out on strike constitutes a violation of Section 8 (5). *Black Diamond Steamship Corp.* v. *N. L. R. B.*, 94 F. (2d) 875, 879 (C. C. A. 2), enforcing 3 N. L. R. B. 84, cert. denied 304 U. S. 579.

An employer is not justified in its refusal to bargain collectively after the effective date of the Act with a labor organization representing a majority of its employees who went on strike and were discharged prior thereto, where the strike continued as a current labor dispute at the time of the refusal to bargain, for under such circumstances, the employees retained their status as such by virtue of Section 2 (3) and the employment relationship was not broken at the time the refusal occurred. *Carlisle Lumber Co.*, 2 N. L. R. B. 248, 262–263, enforced 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575, and 99 F. (2d) 533, cert. denied 306 U. S. 646.

An employer is not relieved of its duty to bargain collectively because its employees engage in a strike which under State law may be tortious or enjoinable, for were the contrary true it would mean that, at the very point when an industrial controversy becomes most bitter and when the collective bargaining provisions of the Act should provide a peaceful means of settlement those provisions are cast aside and the employer is permitted to engage in unrestricted violation thereof. *Reed & Prince Manufacturing Company*, 12 N. L. R. B. 944, 971, enf'd as modified 118 F. (2d) 874 (C. C. A. 1), cert. denied 313 U. S. 595.

Union's strike vote, which did not provide for an immediate strike or fix a date for a strike, did not foreclose the possibility and therefore did not relieve the employer from the duty to negotiate. *Algoma Plywood & Veneer Company*, 26 N. L. R. B. 975.

An employer has refused to bargain collectively where it refused to meet with the union during a shut-down. That the employer decided to keep its plant closed indefinitely does not justify a refusal to meet with the union during this period. *Manville Jenckes Corporation*, 30 N. L. R. B. 382.

Existence of a labor dispute, *held* not to have justified an employer's refusal to bargain collectively because in its opinion dispute was unjustified. *Cowell Portland Cement Company*, 40 N. L. R. B. 652.

Employer held not justified in its refusal to continue negotiations upon abandonment of strike on the ground that such negotiations would be in its belief "forced negotiations" resulting from the strike. *Johnson*, 41 N. L. R. B. 263.

M. H. Birge & Sons Co., 1 N. L. R. B. 731, 744, 745 (employer not justified in refusing to bargain, because employees on strike). See also:

Columbia Enameling & Stamping Co., 1 N. L. R. B. 181, 195, set aside, 306 U. S. 292, affirming 96 F. (2d) 948 (C. C. A. 7).

Allen & Co., Inc., 1 N. L. R. B. 714, 728.

Fainblatt (Somerville Mfg. Co.), 1 N. L. R. B. 864, 870, 871, enforced 306 U. S. 601, reversing 98 F. (2d) 615 (C. C. A. 3).

Standard Lime & Stone Co., 5 N. L. R. B. 106, 115, set aside 97 F. (2d) 531 (C. C. A. 4).

Art Crayon Co., et al., 7 N. L. R. B. 102, 118.

Kuehne Mfg. Co., 7 N. L. R. B. 304, 321, 322.

Great Southern Trucking Company, 34 N. L. R. B. 1068.

Burke Machine Tool Company, 36 N. L. R. B. 1329.

Quality and Service Laundry, Inc., 39 N. L. R. B. 970.

Karp Metal Product Co., Inc., 42 N. L. R. B. 119.

Hardy Company, 44 N. L. R. B. 1013.

Somerset Shoe Co., 5 N. L. R. B. 486, 492, remanded 111 F. (2d) 681 (C. C. A. 1) (employer not relieved of duty to bargain because plant shut down). See also: *McCleary Timber Co.*, 37 N. L. R. B. 725.

Kuehne Mfg. Co., 7 N. L. R. B. 304, 321 (employer not justified in refusing to bargain because plant closed as result of lock-out). See also: *American Radiator Co.*, 7 N. L. R. B. 1127, 1150, 1151.

[*See* § 785 (as to lack of good faith in bargaining by conditioning bargaining upon abandonment of strike).]

769 i. Negotiating with individual employees. (*See also* § 792.)

An employer is not justified in refusing, upon request, to meet with representatives of a majority of the employees in an appropriate unit for the purpose of accomplishing the reinstatement of a number of employees who had been discharged on the ground that he was willing to deal with the employees individually. *Rollway Bearing Co., Inc.*, 1 N. L. R. B. 651, 658, 659, 660.

An employer is not justified in refusing to bargain with an outside labor organization as the representative of its employees by reason of the fact that it entered into a contract with individual employees through an independent bargaining committee, which was formed solely because the employer refused to deal with the outside labor organization, for although the employer was not directly responsible for the formation of the committee, the latter was not the freely chosen representative of the employees and the outside organization remained their duly designated representative. *Scandore Paper Box Co.*, 4 N. L. R. B. 910, 918.

An employer which refused to grant recognition to a majority representative in an appropriate unit because it "reserved the right to bargain with any individual or with any group of individuals" *held* to have violated Section 8 (5), for the proviso to Section 9 (a) which relates solely to the presentation of grievances cannot be construed to nullify the affirmative declarations of the same section or to relieve the respondent of its duty to bargain collectively. *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, 888.

An employer's insistence that individual contracts i. e., shipping articles—covering wages, hours, working conditions, and presentation of grievances which it draws up and which are signed by each employee on each pay day—should take precedence over the collective contract with the union, is clearly unlawful within the meaning of Section 8 (5). *Interstate Steamship Company, et al.*, 36 N. L. R. B. 1307.

The Act expressly declares that the public policy is to encourage the practice and procedure of collective bargaining and imposes upon employers the duty to bargain exclusively with the duly designated representatives of their employees. The duty is necessarily paramount to the freedom of contract which the employer may have enjoyed prior to the enactment of the statute or before the collective agent has been chosen. Until such representative is designated, the employer, may, of course, deal individually with his employees concerning any aspect of the employment relationship so long as he does not exact terms repugnant to the Act and does not offer the contracts for the purpose of infringing rights under the Act. The employee is not, however, presumed thereby to have surrendered his right to collective bargaining during the

period of his individual agreement. The right and its correlative duty are merely in abeyance pending the choice of a collective agent. When once a majority of the employees have exercised their right to choose a representative for concerted bargaining in an appropriate unit, the employer's statutory obligation to deal exclusively with such representative as to all terms and conditions of employment is immediate and unconditional and its performance may not be deferred or qualified by reason of any individual bargain which he may have made with his employees. *Case Co.*, 42 N. L. R. B. 85.

Stolle Corporation, 13 N. L. R. B. 370, 381. (An employer is not justified in refusing to bargain with a labor organization on the ground that it could legally bargain with its employees by means of individual contracts rather than a collective agreement, for an employer's right to make individual contracts is not a permissible alternative to his obligation of collective bargaining where a majority of its employees have selected a representative therefor. See also: *Schierbrock Motors*, 15 N. L. R. B. 1109, 1114.

Employer held not to have been justified in directly dealing with its employees after they had designated and the respondent had recognized an exclusive bargaining representative, by the fact that the direct dealing emanated from the employees rather than the employer. *Medo Photo Supply Corp.*, 43 N. L. R. B. 989. Cf. *Huch Leather Co.*, 11 N. L. R. B. 394, 401.

[*See* § 37 (as to dealing with individual employees as constituting a violation of Section 8 (1) when an exclusive representative exists), § 45 (as to individual contracts when constituting a violation of Section 8 (1), § 500 (as to individual contracts when constituting a violation of Section 8 (3)), and M-1590 (as to opinion of the General Counsel interpretating the proviso to Section 9 (a)).]

70 j. Threatened strike or other economic reprisals by rival labor organization.

Refusal of employer to insert written full exclusive recognition clause in contract not excused by fear of reprisals from rival labor organizations. *McQuay-Norris Mfg. Co.*, 21 N. L. R. B. 709.

A company's refusal to grant exclusive recognition to a union certified by the Board held not justified by an alleged threatened strike by a dissenting minority group of

employees. *Combustion Engineering Company, Inc.*, 20 N. L. R. B. 602.

An employer's refusal to enter into a signed agreement because of the possibility of retaliatory action by a rival organization does not excuse him from complying with the requirements of the Act. *Hobbs, Wall and Company*, 30 N. L. R. B. 1027.

Threatened court action, boycott, and other economic reprisals by an assisted organization to enforce its contract with the respondent, *held* not to clothe the respondent with immunity to violate the Act by refusing to bargain with a labor organization representing a majority of the employees in an appropriate unit. *Engelhorn & Sons*, 42 N. L. R. B. 866.

Threats by a labor organization that it would enforce the exclusive bargaining contract it made with the respondent with notice of the charging union's claim to a majority, *held* not to have justified respondent's refusal to bargain with the charging union, for the respondent was obligated under the Act to bargain with the union that was certified. *Walgreen Co.*, 44 N. L. R. B. 1200, 1214.

[*See* § 1 (as to threats of economic reprisals as justifying commission of unfair labor practices).]

772 k. Agreements. [*See* § 769 (as to individual contracts).]

A truce agreement entered into between a labor organization and an employer which was used as the basis for an order of a State court in a proceeding to enjoin the organization from picketing the employer's plant, and which provided for the suspension of the strike pending a proposed election to be conducted by the Board for the return of employees to work and for the early conduct of negotiations by the employer with the labor organization, cannot operate as a satisfaction of the employer's duty to bargain collectively since the power of the Board to prevent unfair labor practices is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. *The Serrick Corp.*, 8 N. L. R. B. 621, 648, 649, enforced 110 F. (2d) 29 (App. D. C.).

[*See* JURISDICTION § 20 and PRACTICE and PROCEDURE §§ 1–11 (as to effect of agreements purporting to compromise unfair labor practices).]

Outstanding collective agreement made prior to representation proceeding and providing for exclusive recognition of

union other than one certified in proceeding and for a closed shop, *held* no justification for employer refusing to bargain collectively with certified representative. *Pacific Greyhound Lines*, 22 N. L. R. B. 111, 138–142.

Leyse Aluminum Company, 37 N. L. R. B. 839. (An employer has refused to bargain collectively with a union representing a majority of its employees in an appropriate unit where it made no pretense to recognize or negotiate with the union becuase of an exclusive recognition contract it had entered into with a dominated organization.) See also: *Williams Motor Co.*, 31 N. L. R. B. 715.

Engelhorn 42 N. L. R. B. 866. (Existence of an exclusive recognition contract with an organization during the pendency of a representation proceeding, *held* not to justify employer's refusal to deal with another organization certified as the exclusive representative of the employees, for the contract made under such circumstances was subject to the final result of the Board's determination, and cannot take precedence of the will of the majority of the employees as expressed in the election conducted by the Board.) See also: *Walgreen Co.*, 44 N. L. R. B. 1200.

Fiss Corporation, 43 N. L. R. B. 125. (Employer may not justify its refusal to bargain collectively with its employees' statutory representative because of existence of an invalid exclusive-recognition contract entered into with an assisted organization.)

[*See* INVESTIGATION and CERTIFICATION §§ 21–40 (as to effect of existing contracts upon a question concerning representation particularly § 34 where there is a question as to the representative status of a contrasting organization arising from inactivity, change in affiliation, "schism," repudiation or other wise).]

The history of the Act indicates that its purpose was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made, and it is assumed that the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 342, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

Rapid Roller Co., 33 N. L. R. B. 557. (Collective bargaining is a continuous process and the obligation to bargain collectively does not cease upon the signing of a collective bargaining agreement and where a union claimed that the employer breached a collective bargaining agreement and the employer denied that its actions constituted a violation of the agreement, *held* the union's claim that the agreement had been breached was itself a proper subject of collective bargaining.) Cf. *Lone Star Gas*, 18 N. L. R. B. 420, 445; (Where union sought a new agreement because employee allegedly violated an existing agreement, employer, *held* not to have violated 8 (5) when it refused to dismiss the new agreement and insisted on discussing the alleged violation.)

Essex Wire Corp., 19 N. L. R. B. 51, 63. (Where an impasse arose in negotiations concerning the status of contract, *held* there was no refusal to bargain. See decision as to the requirement that employer continued further bargaining concerning substantive terms.)

[*See* § 701 (as to subject matter of collective bargaining).]

Where it was alleged that an employer refused to bargain collectively because of its conduct in taking unilateral action in a matter involving the interpretation and administration of its collective contract with a union, and several of the issues had been amicably settled but with respect to the remaining issues the union had made no attempt to utilize the grievance machinery established by the contract, *held* since the parties had not exhausted their rights and remedies under the contract it would not effectuate the policies of the Act of "encouraging the practice and procedure of collective bargaining" for the Board to exercise jurisdiction in the dispute and assume the role of policing collective bargaining contracts by attempting to decide whether disputes as to the meaning and administration of such contracts constituted unfair labor practices under the Act, for otherwise the parties would be encouraged to abandon their efforts to dispose of disputes under the contracts through collective bargaining or settlement procedures mutally agreed upon by them and to remit the interpretation and administration of their contracts to the Board. *Consolidated Aircraft Corp.*, 47 N. L. R. B. 694.

73 1. Appropriateness of unit.

It is no defense to a refusal to bargain by an employer to point out that the labor organization, in presenting a proposed contract, did not claim to be the representative of the employees in the appropriate unit, as distinguished from all the employer's workers, where the employer made no objection to the contract on the basis of the propriety of the unit for which it was being presented; and under such circumstances the Board was entitled to draw the inference that the refusal was motivated, not by doubt as to the appropriate unit, but by a rejection of the collective bargaining principle. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

N. L. R. B. v. *National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9), modifying 5 N. L. R. B. 409. (An employer is not justified in refusing to bargain with a labor organization on the ground that it sought to represent all the employees instead of those in a unit found to be appropriate where the employer entered into a closed-shop contract with a second labor organization which did not represent a majority of its employees after the first organization had made an attempt to bargain and thus precluded all further attempts on the part of the organization authorized to represent the employees to secure the recognition to which it was entitled.)

Union Envelope Co., 10 N. L. R. B. 1147, 1155, 1156. (An employer is not justified in refusing to bargain collectively on the ground that a finding of the Board that two labor organizations affiliated with the same parent organization were designated to represent employees in a single unit varies from the allegations of the complaint which alleged a refusal to bargain as to both organizations for separate units where both organizations jointly sought to negotiate at the same times and places for employees in the single unit found and the employer's refusal was based on a rejection of the collective bargaining principle irrespective of the question of the unit.)

Illinois Knitting Co., 11 N. L. R. B. 48. (Employer's plea of refusing to bargain because of doubt as to appropriateness of unit rejected since employer's doubt arose from claim of company-dominated union.)

Bussman Mfg. Co., 14 N. L. R. B. 322, 333, 334. (Contention during course of bargaining that a unit of tool and die workers was not an appropriate unit is not a defense to 8 (5) violation where such contention was found not to have been advanced in good faith and where under the circumstances such a unit was clearly appropriate and respondent's doubt was unreasonable.)

General Dry Batteries, Inc., 27 N. L. R. B. 1021, 1035. (Where unit claimed by the union, comprising machinists, machinists' helpers, tool and die makers, electricians and welders, represents a customary grouping of skilled employees and the employer's claim for a different unit composed of all its employees grew primarily out of the claim of the industrial unions which Board found were the product of the employer's unfair labor practices, *held* the employer's alleged doubt as to the appropriateness of the unit cannot operate to relieve it of its obligation to bargain.)

Delaware-New Jersey Ferry Company, 30 N. L. R. B. 820 (employer did not predicate its refusal to bargain on any asserted doubts concerning the appropriate unit).

McCleary Timber Company, Henry, 37 N. L. R. B. 725. (Employer's contention that its refusal to recognize the union was in good faith because it believed that the bargaining unit claimed by the union was inappropriate, *held* without merit where at no time did it question the appropriateness of the unit.)

Sartorius & Co., Inc., A., 40 N. L. R. B. 107. (An employer's alleged doubt as to the union's proposed unit does not excuse its refusal to bargain collectively with union where its doubt as to appropriateness of the unit was based upon its desire to interfere with self-organization of its employees and further to delay their attempts to bargain collectively.)

Lettie Lee, Inc., 45 N. L. R. B. 448. (Employer held to have refused to bargain collectively notwithstanding its contention that its failure to deal with union was due to its belief that proposed unit was inappropriate and notwithstanding fact that unit found appropriate by Board differed in some respects from that proposed by union, when by its failure to respond to union's request for bargaining conferences and its solicitation of strikers as individuals to return to work, respondent precluded any discussion

of unit and in effect refused to bargain with union for employees in any union.)

Max Ulman, Inc., et al., 45 N. L. R. B. 836. (Employer held to have failed to bargain in good faith, and its position that unit contentions of union were inappropriate found not to justify its breaking off negotiations but to have been taken to evade its duty to bargain with employees' designated representative, when employer failed to reply to union's communications, questioned union's majority even though union's strength had been fully demonstrated by number of employees who went on strike, refused to submit disputed matters to arbitration, and when it engaged in acts of interference and restraint.)

[*See* PRACTICE and PROCEDURE § 182 (as to materialtity of variance between the unit found appropriate and that alleged).]

[*See* § 790 (as to issues raised in bad faith for the purpose of impeding negotiations).]

A respondent which reasonably and in good faith contended throughout its negotiations with the union and at the hearing that a unit different from that proposed by the labor organization was appropriate, *held* not to have unlawfully refused to bargain collectively. *Bonafide Mills, Inc.*, 38 N. L. R. B. 661, 666.

Coldwell Lawnmower Coompany, 14 N. L. R. B. 38. (Allegations of refusal to bargain dismissed where parties could not agree upon appropriate unit and Board found unit for which employer contended was appropriate.)

Libby-Owens-Ford Glass Company, 31 N. L. R. B. 243. (Employer's refusal to include employees at one of its plants with the unit for which it recognized and dealt with the union, *held* not to constitute a refusal to bargain collectively where the Board found such employees to constitute a separate unit appropriate for collective bargaining.)

Harkins Wholesale, 47 N. L. R. B. 850. (Charges of a refusal to bargain collectively, dismissed when, Board was not convinced that the proposed single-employer unit was appropriate in view of evidence indicating that the respondent was one of a city-wide group of employers engaged in the same business, all of whom had participated in collective bargaining and had executed identical contracts covering their employees; and when, assuming the proposed unit to be appropriate, the union had not established a

majority therein since only one person was employed prior to the execution of a closed-shop contract with the union and the other two employees included within its alleged majority had been employed subsequent to the execution of the contract.)

An employer has not refused to bargain collectively, notwithstanding its refusal to negotiate with a labor organization, where it is neither alleged nor shown which group or groups of employees constitute a unit appropriate for collective bargaining or are eligible for membership in the labor organization, and when the composition of the unit and the number of employees who are members therein and are represented by the labor organization cannot be determined. *Greensboro Lumber Co.*, 1 N. L. R. B. 629, 635, 636.

Irrespective of the question of the respondent's good faith in questioning the appropriateness of the unit as justification for its refusal to bargain, Board held that under the circumstances of the case respondent's doubt as to the unit was so unreasonable that it plainly could not be asserted as a defense. Further, Board was not convinced by the argument of the respondent that it should not be forced at its peril to choose the appropriate unit, when the peril was illusory in that the complaining union was the only labor organization requesting it to bargain, and there was, therefore, no danger of the respondent being caught between conflicting demands of competing labor organizations. *Bussman Mfg. Co.*, 14 N. L. R. B. 322, 333, 334.

Employer held not justified in refusing to deal with a certified representative because of claim that the Board had erred in determining the appropriate unit, when the affirmative matters urged by the employer in justification, were considered in the prior representation case and found without merit. *Hearst Publication*, 39 N. L. R. B. 1245, 1256. See also: *Blount*, 37 N. L. R. B. 662. *Marshall Field & Co.*, 43 N. L. R. B. 874. Cf. *Libby-Owens-Ford Glass Co.*, 31 N. L. R. B. 243, 248; (Where the Board in the exercise of its discretion and upon sufficient ground reexamined its prior unit determination and found that the employer was justified in refusing to include employees at one of its plants with the multiple plant unit certified by the Board, since that plant constituted a separate unit.)

[*See* EVIDENCE § 15 (as to the Board's treatment of matters determined in prior proceedings), and UNIT § 1 (as to

conclusiveness of prior unit determination by the Board).]

An employer is not justified in its refusal to bargain with its employees' duly certified bargaining representative because the units for which the union demanded recognition varied from time to time both before and after the certification, where it admitted that it refused to recognize the union in the appropriate unit, and where the union requested recognition for a unit other than the one found appropriate by the Board only when the employer refused its demand for recognition as representative of the employees in the appropriate unit as certified. *National Mineral Company*, 39 N. L. R. B. 344.

An employer was justified in its refusal to negotiate with a labor organization following its certification by Regional Director pursuant to a pay-roll check agreement notwithstanding the fact that it had consented to bargain with that organization if its majority was established thereby when no effect was given to the certification establishing the union's majority within an appropriate unit since: employer had entered into the agreement under a misunderstanding of a material fact, believing erroneoulsy but in good faith and in reliance upon representation by an agent of the Board that the union had agreed to eliminate foremen from its membership; when except for such misunderstanding it would not have made the agreement, thereby relinquishing its opportunity to have the question concerning representation and the incidental question concerning eligibility of foremen in the union determined in a representation proceeding; and employer, in effect, asserted its right to rescind the agreement as soon as it became aware of the mistake by refusing to negotiate. *Granite City Steel Co.*, 47 N. L. R. B. 712.

4 m. Impasse: in general.

From the duty of the employer to bargain collectively with his employees, there does not flow any duty on the part of the employer to accede to the demands of the employees, but before the obligation to bargain collectively is fulfilled a forthright, candid effort must be made by the employer to reach a settlement of the dispute with its employees, and every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. *Sands Mfg. Co.*, 1 N. L. R. B. 546, 557, set aside 306 U. S. 332, affirming 96 F. (2d) 721 (C. C. A. 6).

An employer has not refused to bargain collectively where, throughout negotiations with regard to an agreement, the labor organization insisted upon either a closed or preferential shop, and the employer, while willing to meet many of the demands, was not willing to sign an agreement for either a closed or preferential shop but suggested an agreement providing that lay-offs and rehiring be on the basis of seniority, and the record discloses that it acted in good faith and honestly attempted to reach an agreement. *Trenton Garment Co.*, 4 N. L. R. B. 1186, 1195.

An employer has not refused to bargain collectively with a labor organization where it appears from the record that it was sincere in its belief that it could not conform to the union scale and continue to operate successfully in the industry, being a relatively small concern, and where the labor organization insisted that it sign a particular contract embodying the union wage scale and hours, and made no further effort to bargain with the employer after its refusal to sign such an agreement, even though the employer indicated a willingness to bargain with the labor organization on some other basis. *John Minder and Son, Inc.*, 6 N. L. R. B. 764, 767, 768.

Although a respondent took position that it would not reduce terms agreed upon to a signed, written contract, *held* no 8 (5) because this was not a factor in the negotiations, an impasse in negotiations having been reached on the closed-shop issue. *Cullom & Ghertner Company*, 14 N. L. R. B. 270. See also: *American Shoe Co.*, 23 N. L. R. B. 1315, 1325. *Wilson & Co.*, 30 N. L. R. B. 314.

An employer has not refused to bargain collectively when the several conferences held between the employer and the labor organization, the detailed discussions, the successive counterproposals of the respondent, and its substantial concessions leads to the conclusion that the employer negotiated in good faith and sought to reach an agreement with respect to wages, hours of work, and other conditions of employment, and that negotiations ceased when the union insisted that the employer accept a closed-shop provision and the employer refused to accede thereto. *Adams Bros. Manifold Printing Co.*, 17 N. L. R. B. 974, 979.

Respondent never refused to meet with union for purpose of negotiation and was not responsible for termination of negotiations. Respondent made various counterproposals to union's demands on several occasions receding from its

original position on an issue. Union never receded from original position and always rejected respondent's counter-proposals. *Held:* no 8 (5). *Pacific Gas Radiator Co.*, 21 N. L. R. B. 630.

The duty to bargain collectively which the Act imposes upon employers is not limited to the recognition of the employees representatives or to a meeting and discussion of terms with them. Rather, there is a duty on both sides to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages, hours, and conditions of labor and if such a basis of agreement is found, to embody it in a contract as specific as possible, which shall provide a statement of principles and rules for the orderly government of the employer-employee relationship. However, that duty, as set forth above, does not require an agreement on terms. Accordingly, where an employer had met with representatives of its employees, whenever requested to do so and freely discussed with them questions concerning wages, hours, and working conditions, and the parties had fully discussed the issues concerning which they were in disagreement but neither of them made or indicated a willingness to make any substantial retreat from the positions they had taken, *held* that an impasse had resulted and that the employer had not violated Section 8 (5). *American Shoe Machinery & Tool Co.*, 23 N. L. R. B. 1315, 1324.

An employer has not refused to bargain collectively when negotiations had ceased and a strike ensued as a result of an impasse over a closed-shop issue. *Kroger Grocery & Baking Co.*, 27 N. L. R. B. 250, 259.

An employer found not to have refused to bargain collectively where under the circumstances it was not bound to accede to union's minimal demands for preferential shop, seniority, and arbitration, and where but for the honestly taken, but irreconcilable positions of the parties in regard to the union's demands, the negotiations would have resulted in a mutually satisfactory agreement concerning wages, hours, and other terms and conditions of employment. *Montgomery Ward & Co., Incorporated*, 39 N. L. R. B. 229, 240.

An employer has not refused to bargain collectively despite other findings of unfair labor practices upon its part to discourage employees from their allegiance to the union, where parties had agreed as to certain matters and the termination of bargaining negotiations resulted from their

inability to agree upon the closed-shop issue. *Out West Broadcasting Company*, 40 N. L. R. B. 1367.

[*See* § 781 (as to duty to negotiate in good faith) § 788 (as to effect of unilateral change of wages, hours, or other terms or conditions of employment following an impasse), and § 785 (as to effect of conditioning further bargaining upon withdrawal of demands concerning which an impasse had been reached upon employer's duty to negotiate in good faith).]

775 n. Impasse: where circumstances have changed.

When an impasse has been reached in negotiations concerning the interpretation of an agreement between an employer and the representatives of his employees, each having rejected the proposals of the other, neither is under a duty to enter into further negotiations for collective bargaining in the absence of a request therefor by the employees. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 343, 344, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

An employer's contention that it was not guilty of an unfair labor practice in refusing to bargain with the representative of its employees during the course of a labor dispute for the reason that previous efforts to bargain had resulted in failure and an impasse in negotiations had resulted, will not be sustained where nearly a month of "cooling time" had elapsed since prior negotiations had taken place, and the status of the controversy had undergone considerable change as a result of the resumption of operations in the plant while the employees remained out on strike. *Jeffrey DeWitt Insulator Co.* v. *N. L. R. B.*, 91 F. (2d) 134, 139 (C. C. A. 4), enforcing 1 N. L. R. B. 618, cert. denied 302 U. S. 731.

Where in the course of a strike, supervening events, such as a formal discharge of the strikers and the importation of strikebreakers, introduce new issues after the parties had reached an impasse in negotiations, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining. *S. L. Allen & Co., Inc., a Corp.*, 1 N. L. R. B. 714, 728.

An employer has refused to bargain collectively where it failed to reply to a statement made by the representatives of the employees that a strike was contemplated not only because of the failure to arbitrate a wage dispute which had resulted in a shut-down of the plant, but also because

of the employer's discriminatory conduct in failing to recall some employees upon the reopening of the plant, for the question of discrimination was a new one with respect to which the employer had a duty to bargain collectively, if requested to do so. *Columbia Radiator Co.*, 1 N. L. R. B. 847, 859, 860.

Following extended negotiations with the union, in which the union refused employer's request for wage reductions, employer transferred operations to another plant to diminish or avoid loss by having work performed at a lower labor cost. Although by virtue of said negotiations and the steps taken as a result thereof the employer was relieved from negotiating with union in regard to the removal or transfer of operations, the employer was not relieved from bargaining collectively with the union about the transfer to and employment at the plant, to which operations were removed, of employees who would be or were laid off incident to the removal or transfer of operations, since the erection of said plant, its control by the employer, and the availability of employment there created a new situation changing the status of the controversy between the respondent and the union. *Brown-McLaren Manufacturing Company*, 34 N. L. R. B. 984.

o. Scope of the Act's jurisdiction. (*See also* JURISDICTION §§ 22–90.)

Employer refused to bargain collectively with the union contending that its business did not fall within the jurisdiction of the Act. Board found jurisdiction and a refusal to bargain collectively. *Green, Incorporated*, 33 N. L. R. B. 1184. See also: *Polish National Alliance*, 42 N. L. R. B. 1375.

p. Employees within the Act. (*See also* DEFINITIONS §§ 1–30.)

Employer's contention that persons involved were independent contractors and not employees, *held* without merit. *Blount, R. A., Hearst, B., et al.*, 37 N. L. R. B. 662. See also: *Hearst Publications, Inc.*, 39 N. L. R. B. 1245, 1256.

An employer has not refused to bargain collectively within the meaning of Section 8 (5) where the request to bargain was made for a unit consisting substantially of agricultural laborers who were not employees within the meaning of Section 8 (3) of the Act. *Stark Brothers Nurseries and Orchards Company*, 40 N. L. R. B. 1243.

80 q. Other circumstances.

An employer is not justified in refusing to bargain with a committee of a labor organization which had previously been certified as a representative of the employees on the ground that a majority of the employees were not present at the union meeting at which the committee was elected and that therefore the committee did not represent the employees, for the employer has no standing to question the method of selection by a union of its bargaining committee, since that is solely an intra-union matter. *Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 967, 968, enforced 111 F. (2d) 814 (C. C. A. 5).

[*See* EVIDENCE §§ 23, 41 (as to privileged character of matter affecting the internal affairs of labor organizations), and PRACTICE AND PROCEDURE §§ 226 (as to denial of subpenas concerning matters relating to internal affairs of labor organizations).]

The fact that an employer's labor relations are "highly involved" does not excuse the employer's obligation to bargain with the statutory representative. *West Oregon Lumber Co.*, 20 N. L. R. B. 1, 37.

An employer may not justify its refusal to supply union with requested job classification and pay-roll information necessary to an understanding of its position as to a controversial wage revision because of its alleged confidential nature, nor would the employees be privileged against its disclosure when such information was essential to intelligent bargaining. *Aluminum Ore Company*, 39 N. L. R. B. 1286.

Employer's alleged fear for its trade secrets because of its alleged suspicions that the employees of its chief competitor were the only other members of the union, *held* not to absolve employer of its duty to bargain with a majority union where it neither introduced evidence or showed basis for belief that there existed a plan or conspiracy between the union and its competitor with respect to its trade secrets. Further employer is under a duty to accord a majority union recognition regardless of whether it approves of the internal structure, membership or agents of that union. *Sartorius & Co., Inc., A.*, 40 N. L. R. B. 107.

An employer is not justified in refusing to bargain collectively with the union concerning the transfer of employees to work at plant to which operations were removed by virtue

of a previous oral "understanding" with residents of town, which contemplated a donation by townsfolk of plant site and a preferment, where possible, in employment at the plant of persons residing in and about said town. *Brown-McLaren Manufacturing Company*, 34 N. L. R. B. 984.

r. Failure of employees to expressly designate labor organization as bargaining agent. (*See* §§ 711–718.5.)

s. Existence of question as to the majority status of a representative arising from inactivity, change of affiliation, "schism," repudiation, or otherwise.

[*See* §§ 719–730 (as to continuance of majority designation), and § 794 (as to lack of good faith in bargaining by destroying majority of labor organization after request to bargain).

t. Lack of demand by representatives of employees. (*See* §§ 731–740.)

u. Failure to present proof of majority to employer. (*See* §§ 741–750.)

D. DUTY OF EMPLOYER TO CARRY ON NEGOTIATIONS IN GOOD FAITH.

1. *The requirement of good faith in general.*

Collective bargaining, as contemplated by the Act, is a procedure looking toward the making of a collective agreement by the employer with the accredited representatives of its employees concerning wages, hours, and other conditions of employment. The duty to bargain collectively, which the Act imposes upon employers, has as its objective the establishment of such a contractual relationship to the end that employment relations may be stabilized and obstruction to the free flow of commerce thus prevented; and, indeed, the protection to organization of employees afforded by the first four subdivisions of Section 8 of the Act is intended to make possible and to implement the stabilization of working conditions through collective bargaining conducted between employers and the freely designated representatives of their employees as equals. The duty to bargain collectively is not limited to the recognition of the employees' representatives *qua* representatives, or to a meeting and discussion of terms with them. The duty encompasses an obligation to enter into discussion and negotiations with an open and fair mind and with a sincere purpose to find a basis of agreement concerning the issues presented, and to make contractually binding the understanding upon terms that are reached.

Singer Manufacturing Co., 24 N. L. R. B. 444, 463, 464. See also:

International Filter Co., 1 N. L. R. B. 489, 498.
National Licorice Co., 7 N. L. R. B. 537, 551.
Highland Park Mfg. Co., 12 N. L. R. B. 1238.
Rapid Roller Co., 33 N. L. R. B. 557.
Stonewall Cotton Mills, 36 N. L. R. B. 240.
V-O Milling Co., 43 N. L. R. B. 348, 458.
Register Publishing Co., 44 N. L. R. B. 834.

N. L. R. B. v. *Sands Mfg. Co.*, 96 F. (2d) 721, 725 (C. C. A. 6) setting aside 1 N. L. R. B. 546, affirmed 306 U. S. 442. (The test of an employer's sincerity in negotiating with the representatives of his employees is the length of time involved, frequency of negotiations, and the persistence with which the employer offers opportunity for agreement.)

S. L. Allen & Co., Inc., a Corp., 1 N. L. R. B. 714, 727, 728. (To meet with the representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations under Section 8, since he is required to make a bona fide attempt to come to terms and not substitute endless and profitless negotiations for a failure to recognize the labor organization, for the essence of the bargaining process consists of interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion, and an opportunity to modify demands in accordance with the total situation revealed at the bargaining conference.)

M. H. Birge & Sons Co., 1 N. L. R. B. 731, 739. (The question whether an employer has failed in its affirmative duty to bargain collectively in refusing to continue negotiations previously carried on with the representatives of his employees has meaning only when considered in connection with the facts of a particular case, and the history of the relationship between the particular employer and its employees, the practice of the industry, the circumstances of the immediate issue between the employer and its employees are all relative factors that must be given weight, and therefore, a proper evaluation of the employer's conduct requires consideration of the labor relations background of the industry and the action of other employers in the industry who, through their representatives, have engaged in collective bargaining with representatives of employees in the period under examination.)

N. L. R. B. v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872, 873 (C. C. A. 2), modifying 2 N. L. R. B. 626, cert. denied 304 U. S. 576. (A union may at times seek to give the appearance of wishing to treat with the employer after it knows that all chance of agreement is gone; and therefore, the conduct of a union, like that of an employer, not only during the negotiations when there are any, but before there are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight.)

Atlas Mills, Inc., 3 N. L. R. B. 10, 21. (Meeting with representatives of its employees, receiving proposals, and putting forward counter-proposals does not in itself fulfill the employer's obligation, for if the Act is to produce more than a series of empty discussions, bargaining must mean, not mere negotiation, but negotiation with a bona fide intent to reach an agreement if possible, and negotiations with intent only to delay and postpone a settlement until a strike can be broken is not collective bargaining within the meaning of Section 8 (5).)

Louisville Refining Co., 4 N. L. R. B. 844, 858, 859, modified 102 F. (2d) 448 (C. C. A. 6), cert. denied 308 U. S. 568. (An employer has not bargained in good faith merely by reason of the fact that he had continued discussions and at times may have come to apparent agreement on some of the provisions of a proprosed contract, for the obligation under the Act is to make a bona fide attempt to come to terms and not merely to meet with employee representatives, however frequently, to discuss a proposed agreement, without the intention of composing differences.)

Isaac Schieber, et al., 26 N. L. R. B. 937. (More fact of existence of agreement does not bar consideration of facts showing that employer did not deal with Union in good faith.)

Lebanon Steel Foundry, 33 N. L. R. B. 233. (Refusal of an employer, at request of an agent for the Board to enter into usual form of consent election agreement or otherwise to state in writing intention to comply with statutory duty to bargain shows an aversion on the part of the employer to collective bargaining.)

Rapid Roller Co., 33 N. L. R. B. 557. (Where an employer and a union disagree as to the interpretation of certain clauses of a collective bargaining agreement, the employer is under a duty to bargain collectively with the union as

to the meaning of the clause, and this duty entails an obligation not to enter the discussions with a rigid predetermination not to yield from the position it had taken in the first instance.)

Montgomery Ward & Company, 37 N. L. R. B. 100. (Since it takes the affirmative effort of at least two parties to make a collective bargain, an employer has failed to bargain in good faith where it takes the negative attitude that it had no affirmative duty to do anything and that the initiative continues to lie with the union throughout the bargaining process.)

Montgomery Ward & Co., Incorporated, 39 N. L. R. B. 229. (The difference between the semblance and the substance of collective bargaining may be tested by the extent to which the parties evidence a sincere purpose to explore the total situation and find a basis for agreement.)

Montgomery Ward & Co., Incorporated, 39 N. L. R. B. 229. (Whereas an employer must in a very real sense undertake to discover with the union such common ground as may exist between the parties, satisfaction of the statutory obligation does not require him to capitulate to the demands addresssed to him.)

American Sheet Metal Works, 41 N. L. R. B. 1383. (An employer who was aware that success of the negotiations depended upon its acceding to some form of wage betterment that would be satisfactory to the union held to have been under an obligation, if it would fulfill the requirements of bargaining in good faith, to advance its theory of wage determination for the union's consideration as a possible basis of agreement.)

Register Publishing Co., Ltd., 44 N. L. R. B. 834. (Although the Act does not require that an employer agree to any particular terms and failure to conclude an agreement may not alone establish a refusal to bargain, such matter may be relevant, in connection with the entire course of conduct, in evaluating the intent of the parties.)

[*See* § 774 (as to what constitutes impasse).]

Employer found to have failed to bargain in good faith, when its recognition of union as bargaining agent was no more than an empty gesture devoid of any intention seriously to bargain with such representative as demonstrated by its delay of bargaining conferences, rejection of union proposals and failure to advance counterproposals, and

unilateral grant of wage increase without prior notice to and after rejection of similar demand by statutory representative, in contrast to its ready acquiescence in past to virtually all demands of dominated organization. *Hancock Brick & Tile Company*, 44 N. L. R. B. 920.

The Timken Silent Automatic Co., 1 N. L. R. B. 335, 340–342. (An employer has failed to bargain in good faith where, although it did meet from time to time with a committee of a labor organization duly authorized to represent its employees, it treated the demands of the employees as suggestions upon which it would act, if at all, as a matter of grace and not as a matter of a collective bargain or agreement, and when asked to consider an agreement regulating relations between it and its employees in a comprehensive manner with respect to hours and wage scales, closed shop, and recognition of the union, it refused to discuss the idea and made it clear it had a fixed policy precluding such discussion, repeatedly stating it would not at any time sign an agreement with its employees, thus refusing to accede even to the forms and procedure of collective bargaining.)

Dallas Cartage Co., 14 N. L. R. B. 411, 424. (Good faith in bargaining on the part of employer found lacking, in merely meeting, conferring, and corresponding with union concerning latter's bargaining demands, criticising provisions of its proposed contract, and offering no counterproposals except to recognize and "consult" with union while reserving to itself the right to change at will existing wages, hours, and conditions of employment.)

Westinghouse Air Brake Company, 25 N. L. R. B. 1312. (Employer's refusal to confer with union on a basis of equality, as evidenced by its efforts to confine its bargaining relations with said union to consideration of grievances presented by the union and concomitantly to reserve to itself freedom to determine conditions of employment, *held* an 8 (5) violation.)

2. *Counterproposals.*

FAILURE TO OFFER COUNTERPROPOSALS

While a counterproposal is not indispensable to collective bargaining when from the discussion it is apparent that what the one party would thus offer is wholly unacceptable to the other, nevertheless, when a counterproposal is directly asked for, the employer ought to make it, for the

resistance in discussion may have been only strategy and not a fixed final intention, and a refusal on the part of an employer to make any proposal for an agreement concerning wages, hours, and conditions of employment (partly on the ground that some of the matters suggested were already a part of its established policy) constitutes a violation of Section 8 (5). *Globe Cotton Mills* v. *N. L. R. B.*, 103 F. (2d) 91, 94, (C. C. A. 5), modifying 6 N. L. R. B. 461.

An employer has not fulfilled its obligation to bargain collectively by listening to a member of a committee representing a majority of its employees read a proposed agreement and then turning the proposals down in their entirety without submitting counterproposals or entering into an honest and sincere discussion of the proposals. *Edw. E. Cox, Printer, Inc.*, 1 N. L. R. B. 594, 600.

Although an employer has bargained in good faith before and directly after a strike, and an impasse has been reached, he may not attempt to confine the labor organization's subsequent efforts to secure a settlement to written offers which he may reject or accept without explanation, for the interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process. *S. L. Allen & Co., Inc.*, 1 N. L. R. B. 714, 728.

An employer has failed to bargain in good faith where it offered no counterproposals to a tentative contract offered by a labor organization representing a majority of its employees on the ground that the contract presented a question of wages which the employer could not meet, although in fact the proposed agreement consisted of 21 provisions, only 4 of which dealt with wages, directly or indirectly. *Farmco Package Corp.*, 6 N. L. R. B. 601, 608–610. See also:

American Mfg. Co., et al., 5 N. L. R. B. 443, 466, modified 309 U. S. 629, modifying 106 F. (2d) 61 (C. C. A. 2).

C. A. Lund Co., et al., 6 N. L. R. B. 423, 435, 436, remanded 103 F. (2d) 815 (C. C. A. 8).

Hanson-Whitney Machine Co., 8 N. L. R. B. 153–158.

Western Felt Works, 10 N. L. R. B. 407, 413–422.

Although an employer's refusal to offer counterproposals may be persuasive of a lack of good faith in bargaining, employer held not to have violated Section 8 (5), when Board

found under the circumstances that employer was justified for its failure to do so. *Easton Publishing Co.*, 19 N. L. R. B. 387, 397.

An employer's lack of good faith in negotiating with a labor organization was indicated, when in rejecting the union's proposals it made lengthy speeches but exerted no effort to submit any plan or offer which could be considered evidence of its intention to bargain in good faith, and by such failure made productive negotiations impossible. *Wilson & Co.*, 19 N. L. R. B. 990, 1000.

There has been no attempt to bargain collectively in good faith where an employer while not agreeing to proposals of union avoids any affirmative indication of possible terms to which it might agree and though continuing attendance at bargaining conferences at the same time evinces true attitude toward union by various anti-union acts culminating in the discriminatory discharges of all union members. *Capital Broadcasting Company, Inc.*, 30 N. L. R. B. 146.

An employer who was aware that success of the negotiations depended upon its acceding to some form of wage betterment that would be satisfactory to the union, *held* to have been under an obligation, if it would fulfill the requirements of bargaining in good faith, to advance its theory of wage determination for the union's consideration as a possible basis of agreement, and neither was it justified in refusing to submit counterproposals upon the mere assumption that it would have been futile. *American Sheet Metal Works*, 41 N. L. R. B. 1383.

[*See* § 774 (where offer of counterproposal was considered in determining that employer had in good faith bargained to an impasse).]

For additional decisions in which Board found the failure by the employer to offer counterproposals to be persuasive of the fact that it had not bargained in good faith, *see:*

Lightner Publishing Co., 12 N. L. R. B. 1255.
Westinghouse Air Brake Company, 25 N. L. R. B. 1312.
Westchester Newspapers, Inc., 26 N. L. R. B. 630.
Uhlich & Co., Inc., Paul, 26 N. L. R. B. 679.
Algoma Plywood & Veneer Company, 26 N. L. R. B. 975.
Kellogg Switchboard and Supply Co., 28 N. L. R. B. 847.
Nuehoff Packing Company, 29 N. L. R. B. 746.
Capital Broadcasting Company, Inc., 30 N. L. R. B. 146.
Manville Jenckes Corporation, 30 N. L. R. B. 382.

Bingler Motors, Inc., 30 N. L. R. B. 1080.
Gregory, Joseph R., 31 N. L. R. B. 71.
Sherwin-Williams Company, 34 N. L. R. B. 651.
Cottrell & Sons Company, 34 N. L. R. B. 457.
Great Southern Trucking Company, 34 N. L. R. B. 1068.
Kansas Utilities Company, 35 N. L. R. B. 936.
Montgomery Ward & Company, 37 N. L. R. B. 100.
McCleary Timber Company, Henry, 37 N. L. R. B. 725.
Quality and Service Laundry, Inc., 39 N. L. R. B. 970.
Hancock Brick & Tile Company, 44 N. L. R. B. 920.

SUFFICIENCY OF COUNTERPROPOSALS

An employer has not bargained in good faith where, although admitting that prior to strike negotiations with union could have settled differences between parties, it abandoned its efforts to reach an agreement acceptable to both parties and instead, as part of a larger plan to avoid any concession acceptable to the union and in the meantime to break the ranks of the union, it stood flatly on the contract it offered as an ultimatum. *Reed & Prince Manufacturing Company*, 12 N. L. R. B. 944, 969–970, enf'd as modified 118 F. (2d) 874 (C. C. A. 1), cert. denied 313 U. S. 595. See also: *National Seal Corp.*, 30 N. L. R. B. 188. *Interstate Steamship Company*, 36 N. L. R. B. 1307, 1321 (employer in its counterproposals took a final position which foreclosed further bargaining).

An employer's submission of complicated counterproposals, *held* not to constitute evidence of bad faith on the part of the employer. *Carbola Chemical Co.*, 13 N. L. R. B. 937, 943, 944.

An employer's contention that he had in effect submitted a counterproposal by making it clear at a conference with the union that he desired the then existing working conditions to continue, *held* without merit, when at no time had he affirmatively offered or indicated that he was willing to enter into an agreement of any kind with the union. *Express Publishing Co.*, 13 N. L. R. B. 1213, 1224. See also: *Stonewall Cotton Mills*, 36 N. L. R. B. 224.

A counterproposal which promised adherence to the Act's prohibition of any discrimination against employees for their union affiliation, and emphasized the management's right to change at will the "business policy" of the company and which limited the respondent's conception of collective bargaining to "consultation" with the union whenever it

decided to make any changes in existing wages, hours and conditions of employment, *held* "wholly illusory" and indicative of the lack of good faith on the part of the respondent in its attitude toward collective bargaining. *Dallas Cartage Co.*, 14 N. L. R. B. 411, 428.

Valley Mould and Iron Corp., 20 N. L. R. B. 211, 232; (refusal to submit genuine counterproposals). See also: *Hirsch Mercantile Co.*, 45 N. L. R. B. 377.

Lack of good faith in collective bargaining, *held* evidenced by respondent's insistence that union agree to restrict employees freedom to engage in collective action, by sweeping no-strike clause and restraint on union activities, and by respondent's refusal, at some time, to include correlative restrictions on its own power to lock out. *Singer Mfg. Co.*, 24 N. L. R. B. 444, 466.

A respondent who in the past had granted certain benefits in its contracts with the union, and who in instant case at request of the union for submission of counterproposals, without justification shown, insisted upon a surrender of these benefits, *held* to have failed to bargain in good faith, for the respondent thereby evinced an antithesis of any desire to reach a mutually acceptable agreement. *Register Publishing Co., Ltd.*, 44 N. L. R. B. 834. See also: *Interstate Steamship Co.*, 36 N. L. R. B. 1307, 1320.

83 3. *Distraction of representatives by misrepresentations.*

An employer has not bargained in good faith where he has deliberately presented to the representatives of the employees a false picture of the situation by stating that only a certain number of vacancies existed following a strike, whereas in reality a greater number of positions were available, for such distortion of the situation obviously transcends the exaggerations that often accompany negotiations in this field and reveals a determination to thwart the process of collective bargaining and to render it wholly ineffective. *M. H. Birge & Sons Co.*, 1 N. L. R. B. 731, 744.

National Seal Corporation, 30 N. L. R. B. 188, 196, 202 (bad faith in negotiations with union revealed by statement of employer representative that he lacked authority to change any proposals when he in fact had such authority).

McCleary Timber Co., 37 N. L. R. B. 725, 736, 639. (Employer engaged in 8 (5) when among other indicia of bad faith it misrepresented to the union in its reply to the union's request for a conference that it did not contemplate

resuming operations and saw no need for such a conference although contrary to such representations it had definite plans for the reopening of the mill.)

84 4. *Disregard of entire proposed agreement because some provisions are unacceptable.*

The incorporation of a closed-shop provision in a contract proposed by a labor organization representing a majority of the employees does not indicate that the organization will not accept such a contract without such provision, and an employer is not justified in refusing to bargain on the ground that the labor organization's demand was for a closed-shop contract which the employer is not required to accede to where the organization had not taken the position that an agreement without such a provision would not be acceptable. *United States Stamping Co.*, 5 N. L. R. B. 172, 182.

[*See* § 766 (as to duty to meet and negotiate as affected by demand by employees for closed shop).]

An employer has failed to bargain in good faith where it refused to consider a tentative contract offered by a labor organization representing a majority of its employees on the ground that the contract presented a question of wages which the employer could not meet, although in fact the proposed agreement consisted of 21 provisions, only four of which dealt with wages, directly or indirectly. *Farmco Package Corp.*, 6 N. L. R. B. 601, 608–610.

'85 5. *Imposing acceptance of demands as prerequisite to bargaining.*

Imposition by a respondent of withdrawal of charges as a condition precedent to bargaining collectively constituted a refusal to bargain within the meaning of Section 8 (5), for the Act establishes a duty on the part of an employer to bargain with the representative of a majority of its employees concerning wages, hours, and other condition of employment, and does not at the same time permit the employer to hedge about this duty by imposing unreasonable conditions precedent to bargaining collectively, which in the instant case was particularly repugnant to the spirit of the Act in that it combined a restraint on the right to bargain collectively with an inducement to the labor organization to forego its redress for the employer's wrongful conduct. *Hartsell Mills Co.*, 18 N. L. R. B. 268, 280.

Louis Hornick & Co., Inc., 2 N. L. R. B. 983, 994. (Assumption by an employer of an arbitrary position concerning an

issue in dispute between it and a labor organization and a refusal to meet unless the labor organization acceded to the employer's view constitutes a failure to bargain in good faith.) See also: *Newark Rivet Works*, 9 N. L. R. B. 498, 511, 512.

Samuel Youlin, 22 N. L. R. B. 879; 8 (5): Insistence that union first secure an agreement from a majority of competitors as a condition precedent to negotiation of an agreement with the respondent held violation. See also: *Pilling & Son Co.*, 16 N. L. R. B. 650 (unionization industry).

Allied Yarn Corporation, 26 N. L. R. B. 1440, 1450. (Reluctance of respondent to enter into a contract with the Union because its competitors in the industry had not yet done so, *held* not to have been intended by the respondent to be a condition precedent to reaching an agreement with the Union.)

[*See* § 764 (as to effect of absence of collective agreements among competitors upon duty to meet and negotiate).]

Kellogg Switchboard and Supply Co., 28 N. L. R. B. 847 (conditioning bargaining upon abandonment of strike). Cf. *Reliance Mfg. Co.*, 28 N. L. R. B. 1051 (insistence on removal of picket line). *Poultrymen's Service Corp.*, 41 N.L.R.B. 444 (abandonment of boycotting and picketing).

[*See* § 768 (as to effect of shut-down, lock-out or strike upon duty to meet and negotiate).]

Golden Turkey Mining Company, 34 N. L. R. B. 760 (conditioning negotiations upon union's withdrawal of charges). See also: *Hartsell Mills*, 18 N. L. R. B. 268, 279.

[*See* § 761 (as to duty to bargain during pendency of proceedings).]

Scripto Manufacturing Company, 36 N. L. R. B. 411, 428. (An employer by its refusal to execute an agreement respecting terms and conditions of employment unless the union posted a bond or incorporated has refused to bargain collectively with the exclusive representative of its employees within the meaning of Section 8 (5) of the Act since by such action it was attempting by unilateral action to add a condition precedent to bargaining not found in terms of the Act.) See also: *Valley Mould and Iron Corp.*, 20 N. L. R. B. 211, 231. *Jasper Blackburn Products Corp.*, 21 N. L. R. B. 1240. *Interstate Steamship Co.*, 36 N. L. R. B. 1307.

[*See* § 767 (as to effect of irresponsibility of representatives upon duty to meet and negotiate).]

V–O Milling Co., 43 N. L. R. B. 348, 360; (An employer who insisted first upon a union's abandonment of its union shop and preferential hiring demands before it would bargain on other issues and who claimed that because of the union's adamant position through negotiations on these issues it was justified in putting into effect a new wage scale without negotiating with the union, *held* to have refused to bargain collectively, when contrary to the employer's assertion that an impasse had been reached, the union had indicated its willingness to modify its demands in some respects, and as such it could not be said that the union's demands was the cause of the failure to reach an agreement, for had the employer undertaken in good faith to explore the entire situation and had attempted to reach an accord on other issues, negotiations could have resulted in an agreement.)

See also: *McLachlan & Co.*, 45 N. L. R. B. 1113; (Where union in fact represented a majority of employees and respondent did not question that majority, respondents' attempt to condition acceptance of proof of union's majority and ultimate recognition upon an advance commitment by union that it would forego closed shop, found to evince respondents had faith in bargaining, since respondent unlawfully undertook to convert recognition to which the union was entitled as a matter of right to a subject for which union must bargain.)

Cf. *Purity Biscuit Co.*, 13 N. L. R. B. 917; (No 8 (5) where impasse was reached as to closed-shop issue, and refusal to bargain subsequent to strike for a closed shop, unless the closed shop was first disposed of, found not to have been unreasonable.)

[*See* § 766 (as to effect of demand for closed shop upon duty to meet and negotiate).]

Register Publishing Co., Ltd., 44 N. L. R. B. 834. (Employer's refusal to bargain during a strike by requiring that the reinstatement of the strikers be considered on an "individual" basis and by removing the basis for negotiations by permanently replacing the union members found to constitute a violation of Section 8 (5).)

[*See* § 37 (as to violation of Section 8 (1) in the absence of an allegation of a violation of Section 8 (5) when employer imposes conditions as a prerequisite to bargaining).]

86 6. *Failure or refusal to substantiate position.*

To meet with representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations under Section 8 (5), since he is required to make a bona fide attempt to come to terms and not substitute endless and profitless negotiations for a failure to recognize the labor organization, for the essence of the bargaining process consists of interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion, and an opportunity to modify demands in accordance with the total situation revealed at the bargaining conference. *S. L. Allen & Co., Inc.*, 1 N. L. R. B. 714, 727.

Pioneer Pearl Button Co., 1 N. L. R. B. 837, 841–843. (An employer has failed to bargain in good faith with a labor organization representing a majority of its employees in an appropriate unit where, in response to a request for a revision of the scale of wages and hours, it did nothing more than take refuge in the assertion that its financial condition was poor, refusing either to prove its statement or to permit independent verification.)

Singer Mfg. Co., 24 N. L. R. B. 444. (Lack of good faith in collective bargaining, *held* evidenced, under circumstances of case, by respondent's insistence, on grounds of business necessities, that union agree to 10 percent wage cut and other clauses, while respondent refused to submit books to examination by accountant and does not otherwise seek to demonstrate the necessities of its business which are urged as requiring the clauses desired.)

Manville Jenckes Corporation, 30 N. L. R. B. 382 (failure to furnish records with respect to financial ability to grant wage increases).

Stonewall Cotton Mills, 36 N. L. R. B. 240. (An employer has failed to bargain in good faith where it made no effort to prove its assertion or to persuade the union that competition was the real reason for its rejection of the union's demands.)

Montgomery Ward & Company, 37 N. L. R. B. 100. (An employer has failed to fulfill its obligation "to discuss freely and fully their (the parties') respective claims and demands and when these are opposed, to justify them on reason" where it simply relied on existing practice as a reason for not agreeing to union proposals.)

Aluminum Ore Company, 39 N. L. R. B. 1286. (An employer has failed to bargain in good faith with the representative of its employees where it failed to clarify its position as to a controversial wage revision by refusing the union requested job-classification and pay-roll information necessary to an understanding of its position as to the wage matters and therefore essential to intelligent bargaining by the union.)

Employer by its refusal to divulge details as to its survey of competitive wage rates when placing its wage proposal before the union has not engaged in conduct violative of Section 8 (5), where there was no indication that such refusal was grounded in a purpose to defeat the negotiations; where the union did not claim that competitive rates were not sufficiently known to it as a result of its own organizational experience in the industry. *Montgomery Ward & Co., Incorporated*, 39 N. L. R. B. 229.

Knipschild, 45 N. L. R. B. 1027. (Employer's conduct in its entirety did not constitute a refusal to bargain collectively, although it had first refused to recognize union, then later ostensibly accepted a tentative agreement proposed by the union but covertly attempted to influence employees to form an independent union, when during final phase of negotiation and prior to dissolution of company it indicated its willingness to bargain by holding a frank discussion with union representatives in which it outlined the difficulties under which it was operating and possibility of changing plant structure and management because of financial and changed business conditions, and offered to bargain in good faith, and union agreed to await employer's decision concerning these problems before insisting upon further negotiations.)

87 7. *Lack of authority in employer's representatives to offer counterproposals or enter into agreement.*

An employer has failed to bargain in good faith with the representatives of its employees, made productive negotiations impossible, and revealed a "determined course of deliberate non-compliance" with the Act by failing to delegate to its representative, who attended the bargaining conference, requisite authority to make changes in existing policies, and by the action of its president, who had the requisite authority, in refusing to meet with the union. *V–O Milling Co.*, 43 N. L. R. B. 348, 360.

Agwilines, Inc., 2 N. L. R. B. 1, 14–17, modified 87 F. (2d) 146 (C. C. A. 5). (An employer has failed to bargain in good faith with the representatives of its employees where, although there were several meetings between the employees' representatives and a committee representing an association composed of the employer and others, the committee had no authority to enter into any binding agreement with the employees' representatives, and the employer, although kept informed of the progress of the negotiations, nevertheless gave no instructions to its representatives on the committee, nor did such representatives ask for authority to make any agreement, or to make any offer that might be used as a basis for an agreement, or, acting on their own authority, make any proposals or counterproposals to the employees' representatives.)

Remington Rand, Inc., 2 N. L. R. B. 626, 638–640, 723–731, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576. (An employer has failed to bargain in good faith, notwithstanding the fact that an official of the company met with representatives of its employees, where that official had no information or power to act on basic issues in dispute and an official having such capacity refused to meet with the representatives, it made no reply to a written request for a meeting after a strike vote by the organization; and, thereafter, before and during an ensuing strike, at all times refused to meet with the organization, federal conciliators, or other responsible agencies seeking to mediate the labor dispute, and instead embarked upon a campaign to break the strike through the use of "back-to-work" movements and strikebreaking agencies.) Cf. *Denver Automobile Dealers Ass'n.*, 10 N. L. R. B. 1173, 1199, 1200.

Union Manufacturing Company, Inc., 27 N. L. R. B. 1300 (representatives were authorized to agree to matters "tentatively").

Service Wood Heel Company, Inc., 31 N. L. R. B. 1179. (An employer who consistently refused to meet with the union, delegating that task to his attorney who had no authority to bargain with the union, accord it recognition, or to determine whether or not it represented a majority of his employees has refused to bargain collectively within the meaning of the Act.)

Great Southern Trucking Company, 34 N. L. R. B. 1068 (officer who had authority to meet and negotiate vested negotia-

tions in supervisory employee who had no such authority).
Kansas Utilities Company, The, 35 N. L. R. B. 936. (Board of Directors failed to grant its president, who met with the union's representatives, authority to negotiate with the union.)
Northwestern Cabinet Company, 38 N. L. R. B. 357 (employer's representative lacked authority to negotiate a contract).
[*See* § 755 (as to the duty to make available authorized representatives to meet and negotiate).]

88 8. *Effecting change in wages, hours, or other terms or conditions of employment subject to negotiations without opportunity for discussion, or after refusal to do so upon request of labor organization.*

WHEN INDICATIVE OF BAD FAITH

Where the question of hours of work has been discussed at previous conferences with representatives of a labor organization, an employer has a duty to confer with the organization as to a proposed change in the schedule of work hours which results in the discharge of employees who are members of the organization so that the latter may make counterproposals or suggest a possible equitable basis for the discharges, and under such circumstances the institution of the changed schedule after individually notifying the employees and not the labor organization, and the discharge of a substantial portion of the employees constitutes a failure to bargain in good faith. *Louisville Refining Co.*, 4 N. L. R. B. 844, 859, 860, modified 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.

Wage reduction effected by employer without notifying or consulting union, at time union was seeking collective bargaining, constitutes refusal to bargain, for it is the essence of collective bargaining that no rupture be created in the dealings between the parties by forcing upon the union a *fait accompli* in a matter when under negotiation. *Dallas Cartage Co.*, 14 N. L. R. B. 411, 429.

Unilateral wage-cut action by employer during bargaining negotiations with union without notifying or consulting union, *held* a refusal to bargain, notwithstanding employer's contention that business necessity prompted it to effect the wage reduction, for it is the respondent's failure to give prior notice to or to consult with the union regarding the reduction and not the reductions themselves which

evidences lack of good faith in bargaining. *Whittier Mills Co.*, 15 N. L. R. B. 457, 466.

When an employer unilaterally grants concessions to his employees at a time when their designated union is attempting to bargain concerning the same subject matter, such action constitutes a violation of the employer's duty to bargain with the accredited union. *Pilling*, 16 N. L. R. B. 650, 658.

An employer who relocated its business without notice to a labor organization representing a majority of its employees in an appropriate unit although the organization had notified the employer of its interest therein, *held* to have refused to bargain collectively within the meaning of Section 8 (5) of the Act, when such action was in part planned to thwart the union and evade its obligation under its contract with the union and the Act, and as part of the unlawful plan employer settled unilaterally a fundamental question concerning terms and conditions of employment in which its employees were vitally interested. *Gerity Whitaker Co.*, 33 N. L. R. B. 393, 406.

An employer has refused to bargain collectively with a labor organization representing a majority of its employees in an appropriate unit when it granted individual wage increases to almost all of its employees and refused to make such concessions at bargaining conferences in order to withhold from the union the prestige it would derive from a negotiated increase. *Johnson*, 41 N. L. R. B. 263.

Newton Chevrolet, Inc., 37 N. L. R. B. 334. (Employer put into effect changes in wages, hours, and working conditions substantially in accordance with demands of union without giving union any credit for such changes.)

Crown Can Company, 42 N. L. R. B. 1160. (An employer has failed to bargain collectively in good faith when representative of management with knowledge that wage increases were imminent, used this information to show employees that the respondent was ready and willing to adjust unilaterally any grievances they might have and that resort to self-organization was plainly unnecessary.)

Employer's alleged opinion that certain changes in conditions of employment would be unacceptable to union with which it was negotiating found not to excuse the unilateral granting of such changes to employees for purposes of interfering with their freedom of choice of

representatives. *Hirsch Mercantile Company*, 45 N. L. R. B. 377, 395.

Leo L. Lowy, d/b/a Tapered Roller Bearing Corp., 3 N. L. R. B. 938, 941, 942. (An employer has failed to bargain in good faith with a labor organization as representative of its employees where he called a meeting of his employees and put into effect a 40-hour week on the day a labor organization had made such a request, at which time he had said he would let the organization know if he could do so; and where he subsequently called a meeting of employees at which they were required to vote on the question of remaining with the labor organization, and when they voted unanimously in favor of the organization, discharged them and closed its plant.)

Schmidt Baking Co., Inc., 27 N. L. R. B. 864. (Action of employer in calling meeting of employees and granting them concessions which had already been agreed upon with the union and offering them a wage increase at time when question of wages remained a subject of negotiations with the union constitutes a refusal to bargain.)

Manville Jenckes Corporation, 30 N. L. R. B. 382 (effecting change in wages after refusal to do so upon request of labor organization).

Great Southern Trucking Company, 34 N. L. R. B. 1068 (granting vacations and wage increases which were clauses in union's proposed contract during period of negotiations with the union).

Pacific States Cast Iron Pipe Company, 37 N. L. R. B. 405 (unilaterally granting a wage increase after union had requested bargaining conference on the subject).

McCleary Timber Company, 37 N. L. R. B. 725 (granting wage increases without notice to the representatives).

Aluminum Ore Company, 39 N. L. R. B. 1286 (unilaterally establishing raises and individually informing recipients thereof after refusing union's request for a prediscussion of the increases on the only basis agreeable to employer).

American Sheet Metal Works, 41 N. L. R. B. 1383. (Employer failed to bargain in good faith when it failed to submit contemplated individual wage increases as possible basis of agreement and granted them throughout plant following its assertion during negotiations that it could not afford union's request for a blanket increase.)

Barrett Company, The, 41 N. L. R. B. 1327 (unilaterally granting a wage increase, which was subject of negotiations

then pending with union, and refusing to give union credit therefor).

Hancock Brick & Tile Company, The, 44 N. L. R. B. 920 (unilateral grant of a wage increase without prior notice to and after rejection of demand by union).

Hirsch Mercantile Company, 45 N. L. R. B. 377 (refusing to discuss certain improvements in working conditions with union while granting them directly to employees).

See § 37 (as to "underrating" a representative as an act of interference).]

When Not Indicative of Bad Faith

Posting of notice raising wages and reducing hours of employees during negotiations with unions, *held* not an unfair labor practice where, among other circumstances, immediately after the posting the employer continued to discuss and consider the proposals of the unions. *Jackson, Sam M., et al.*, 34 N. L. R. B. 194.

Employer's effectuation of wage increases without consulting union during a period when negotiations with the union were in "suspension" does not constitute a violation of Section 8 (5), where such increases were put into effect pursuant to normal management policy and with no purpose of bypassing the union, and where in view of "suspension" of negotiations employer was under no duty to withhold normal action respecting wages pending consultation with the union. *Montgomery Ward & Co., Incorporated*, 39 N. L. R. B. 229.

Westchester Newspapers, Inc., et al., 26 N. L. R. B. 630. (Issuance by the respondent of a notice changing the basis of pay, occasioned by the Wages and Hours Law, without consultation with the union, during a period when the union had suspended negotiations, was found not to constitute a refusal to bargain in good faith in view of the suspension of negotiations by the union, the subsequent embodiment by the respondent of the provisions of the notice in its counterproposals, and the absence of evidence indicating that the respondent by this action sought to undermine the union.)

. *Unreasonable delay and postpoenment of negotiations.*

An employer has failed to bargain in good faith with a labor organization as the representative of his employees where he employed dilatory tactics in shifting his position when-

ever an agreement seemed to have been reached, where he arranged a number of conferences at which either he or his attorney was not present and each gave the excuse that he could reach no conclusion in the absence of the other, and where, finally, he refused to enter into a written contract after having exhausted his objections to the substantive terms of the contract. *Sigmund Freisinger, d/b/a North River Yarn Dyers*, 10 N. L. R. B. 1043, 1050, 1051.

Union Envelope Co., 10 N. L. R. B. 1147, 1153–1156. (An employer has failed to bargain in good faith where it postponed negotiations requested by labor organizations claiming to represent separate appropriate units on the ground that it believed that by the terms of the Walsh-Healy Act it was not free to sign collective bargaining contracts, with labor organizations and when advised by the Department of Labor that it could enter into such agreements, for the first time requested proof of majority from the organizations, and although it thereupon agreed to submit its pay roll for a comparison with the membership cards of the organizations, it thereafter formed an inside labor organization and notified the outside labor organizations that the claims of the inside organization would have to be considered, but refused to submit the pay rolls for comparison.)

Jack Schwab & Murray Schwab, Individuals, d/b/a Schwab & Schwab, 10 N. L. R. B. 1455, 1459. (An employer has failed to bargain in good faith where it evaded and delayed responding to telephonic and written requests for bargaining negotiations made by the labor organization designated by its employees to represent them, where it held meetings of its employees on company time and property at which it suggested the formation of an inside organization and thereafter forwarded to the outside organization written resignations of most of its members, signed on the day the inside organization was formed, and informed the outside organization that it had been notified by the employees that that organization no longer represented them.) See also:

Atlas Bag & Burlap Co., Inc., 1 N. L. R. B. 292, 298–302.
Atlas Mills, Inc., 3 N. L. R. B. 10, 21.
J. W. Beasley, Individually, and trading as Standard Memorial Works, 7 N. L. R. B. 1069, 1072.

Ritzwoller Co., 15 N. L. R. B. 15, 25. (An employer which at a meeting with its employee's representative did not unequivocally refuse to negotiate but failed to fix a date for a conference and suggested that they get in touch with him when he returned to the city, *held* to have failed to bargain in good faith, when the union thereafter unsuccessfully sought to obtain a conference, and the employer although claiming that it had received no message from the union, failed upon his return to the city to communicate with the union's representative and thereby indicated a disposition to avoid or delay a conference with the union.)

Webster Manufacturing, Inc., 27 N. L. R. B. 1338. (Evading and delaying negotiations by referring representatives of employees from one official of management to another, each of whom in turn denied that he had authority to enter into an agreement, constitutes a failure to bargain in good faith.)

Manville Jenckes Corporation, 30 N. L. R. B. 382 (failure to provide representative during the absence of the president of the Company, who had departed for Europe without notifying the union while strike was in progress).

Lebanon Steel Foundry, 33 N. L. R. B. 233 (dilatory and evasive treatment in setting dates for meetings with union).

Cottrell & Sons Company, 34 N. L. R. B. 457 (employer continually delayed presenting its position concerning individual points raised in negotiations with union).

Long Lake Lumber Company, 34 N. L. R. B. 700. (*Held*: employer's expressed doubts as to union's majority was motivated by its desire to delay and prevent bargaining negotiations.)

United Biscuit Company of America, 38 N. L. R. B. 778. (An employer has refused to bargain collectively where in bad faith by its dilatory tactics it indefinitely postponed recognition and negotiation with the union.)

Hardy Company, 44 N. L. R. B. 1013. (Where a respondent at various conferences with union pursued a technique of vacillation in order to avoid the presentation of proof of majority and its duty to bargain, while it stated that it desired to have the matter of majority settled by a formal election conducted by the Board, *held* that the respondent's failure to cooperate in the resolution of the majority question raised by it constituted continued refusals to bargain which prolonged the strike.)

[*See* §§ 751–760 (as to conduct which constitutes a refusal to meet and negotiate).]

An employer's refusal to submit answers to a representative's proposed contract within the same day of its submission and its request for time over the week-end to consider the terms of the contract, *held* to be reasonable and not to constitute a refusal to bargain collectively. *Natt*, 44 N. L. R. B. 1099.

The Norwood Sash & Door Mfg. Co., 42 N. L. R. B. 678. (Employer was, *held* not to have refused to bargain collectively where there was no showing of anti-union animus and its delays in entering into negotiations which covered a period of 2 months, during which period it sought in good faith to obtain advice, were found not to have been unreasonable.)

790 10. *Changing position for purpose of impeding negotiations.* An employer has failed to bargain in good faith with the duly authorized representative of its employees where: (1) it refused to meet with them until a strike had been called; (2) refused to discuss proposals other than one concerned with wages; (3) insisted on the withdrawal of the wage demands before it would bargain on other matters; (4) raised another objection when these demands were withdrawn; (5) carried on negotiations in an evasive manner, failed to submit counterproposals, and failed to take any initiative whatever in an attempt to achieve a settlement, and (6) refused to accord formal recognition to the representative of the employees. *Newark Rivet Works*, 9 N. L. R. B. 498, 513.

An employer has refused to bargain with a labor organization as the representative of his employees where he employed dilatory tactics in shifting his position whenever an agreement seemed to have been reached, where he arranged a number of conferences at which either he or his attorney was not present and each gave the excuse that he could reach no conclusion in the absence of the other, and where, finally, he refused to enter into a written contract after having exhausted his objections to the substantive terms of the contract. *Sigmund Freisinger d/b/a North River Yard Dyers*, 10 N. L. R. B. 1043, 1050, 1051. See also: *Atlas Mills, Inc.*, 3 N. L. R. B. 10, 22.

A respondent which after several conferences raised the question as to whether the union made a proper request for collective bargaining, *held* to have engaged in conduct

violative of Section 8 (5), when it was probable that had the objection been voiced as the reason for a refusal to bargain, the union would have obviated the difficulty. *Reed & Prince Mfg. Co.*, 12 N. L. R. B. 944, 970.

An employer's contention that the unit was inappropriate was advanced in bad faith, when such contention was advanced for the first time at the last meeting between the employer and the union, despit the fact that there had been several previous discussions concerning collective bargaining, and in view of the employer's previous conduct which demonstrated that it had no intention of ever bargaining with the union, the professed doubt about the appropriate unit was merely a convenient afterthought for the purpose of impending the negotiations. *Bussman Mfg. Co.*, 14 N. L. R. B. 322, 333. Cf. *Allied Yarn Corp.*, 26 N. L. R. B. 1440.

[*See* §§ 743, 773 (as to disputing in bad faith the majority status of the representative and the appropriateness of the unit).]

Shifting position by representative of management with respect to entering into signed agreement constitutes a failure to bargain in good faith. *Webster Manufacturing, Inc.*, 27 N. L. R. B. 1338, 1354.

Where the evidence established that an employer conducted an energetic campaign in opposition to a union and that when despite such campaign the union obtained majority representation within an appropriate unit, it first agreed to enter into a contract providing for recognition of the union as the exclusive representative of the employees within the appropriate unit; that, thereafter and, without explanation, the employer shifted its position, insisted that its proposal could not be changed, and flatly refused to recognize the union, as exclusive representative as required by the Act, but only for its members, *held* that such conduct was clearly in violation of the Act. *United Biscuit Co. of America*, 38 N. L. R. B. 778, 790.

An employer failed to bargain collectively in good faith, when its representative, who although authorized to negotiate with the union, imposed limitations upon his own authority in requiring counterproposals which he submitted to the union to be subject to the stockholder's approval whom he had in turn influenced adversely to the union. *Poultrymen's Service Corp.*, 41 N. L. R. B. 444.

791 11. *Threatened or actual cessation, change, or removal of operations.* (*See also* §§ 40, 765.)

The fact that an employer was willing to meet with representatives of a labor organization to which a majority of his employees belonged is of no importance in the face of closing down its plant in preference to negotiating with the labor organization, and in so doing it has failed to bargain in good faith. *Leo L. Lowy, Individually, d/b/a Tapered Roller Bearing Corp.*, 3 N. L. R. B. 938, 942. See also: *Piqua Munising Wood Products Co.*, 7 N. L. R. B. 782. *Crystal Spring*, 12 N. L. R. B. 1291. *Texas Mining*, 13 N. L. R. B. 1163.

An employer has failed to bargain in good faith with a labor organization representing a majority of his employees in an appropriate unit where he took the position that he would prefer to close down his plant for 6 months rather than deal with an outside labor organization. *Cating Rope Works, Inc.*, 4 N. L. R. B. 1100, 1112. See also: *Reed & Prince*, 12 N. L. R. B. 944. *Pilling & Son Co.*, 16 N. L. R. B. 650.

An employer has refused to bargain collectively within the meaning of Section 8 (5) when it relocated its business without notice to the union representing a majority of its employees in an appropriate unit to thwart the union and evade its obligations under the Act. *Gerity Whitaker*, 33 N. L. R. B. 393, 406. *Isaac Schieber*, 26 N. L. R. B. 937; (removal of plant to a non-union community to avoid duty to bargain).

792 12. *Negotiating with individual employees or with other than authorized representatives.*

To permit an employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committee, in spite of the fact that they had not revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed purpose of the Act to avoid—or mitigate; accordingly the Board held that the effect of an employer's bargaining directly with employees upon their request and upon their agreement to abandon the union, after recognizing the union, and when union had not ceased to represent the employees, and employees had not withdrawn their designation nor their action in

approaching the employer constituted an implied revocation of their designation so as to relieve employer of the obligation to deal solely with the union, was to deny to the union its statutory status and was, therefore, a refusal to bargain collectively. *Medo Photo Supply Corp.*, 43 N. L. R. B. 989. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332 345, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6); (Where employees have been discharged because of a breach of their contract of employment, an offer to rehire some of the old employees upon a new and different basis does not constitute discrimination against the union, for if the whole body of employees were lawfully discharged, the law does not prohibit the making of individual contracts with men whose prior relations had thereby been severed.)

Where members of a union representing a majority of employees within an appropriate unit authorized a strike vote in event no agreement was reached with the employer but did not thereby foreclose the possibility of reaching an agreement through the process of negotiation, and the employer instead of seeking to negotiate further, conducted a strike vote himself to induce the employees to vote against the strike, *held* that the employer by such conduct had violated Section 8 (1) and also Section 8 (5), for the employer in holding the strike vote ignored the chosen representative of employees, undercut the authority of these representatives by dealing directly with the employees, and thereby avoided its duty to bargain collectively. Further, to find that the employer's action in holding the strike vote constituted an unfair labor practice only under Section 8 (1) of the Act would nullify Section 8 (5), and to so restrict the Board's findings "would be to hold that the obligation of one provision of the Act may be evaded by successful violation of another." *Algoma Plywood & Veneer Co.*, 26 N. L. R. B. 975, 995. See also: *Chicago Apparatus Co.*, 12 N. L. R. B. 1002, 1012. Cf. *Lengel-Fencil Co.*, 8 N. L. R. B. 988; (Back to work ballot conducted by the employer, *held* not violative conduct when his general course of conduct had included numerous negotiations with the union both before and after the ballot in question.)

For additional decisions in which an employer negotiated or attempted to negotiate with individual non-striking

employees in order to undermine the authorized representative, *see*:

N. L. R. B. v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2), modifying 4 N. L. R. B. 922. (A contract offered by an employer to its individual employees, after they had been locked out, which provided by its terms that "the employees, or any of them, shall not and have not the right to demand a closed shop or recognition by the Employer of any union, and the Employer has the absolute and unqualified right to hire or discharge any Employee or Employees for any reason, or for no reason, and regardless of his or their affiliation or no affiliation with any Union," while allowing the employees the right to join the labor organization constituted a denial to them of any right of collective bargaining and would allow the employer to discharge them for any reason one of which might be union activity.)

Western Felt Works, 10 N. L. R. B. 407, 415, 416 (attempt to deal directly with employees while conducting negotiations with representatives). See also: *American Numbering Machine Co.*, 10 N. L. R. B. 536, 544, 545, 546–548.

Chesapeake Shoe Co., 12 N. L. R. B. 832. (An employer, by offering to a small group of his employees the choice of working 40 or 44 hours a week immediately after having refused a request by the representative of those employees for a 40-hour week, was attempting to evade its duty to bargain collectively with such representative.)

Stolle Corporation, 13 N. L. R. B. 370, 381–382 (employer induced employees to execute individual contracts after refusing to bargain with union).

Bussman Mfg. Co., 14 N. L. R. B. 322. (Respondent, *held* not to have bargained in good faith when during course of negotiations, it attempted to persuade employees to bargain individually and not collectively, disparaged the union and sought to get employees to abandon it, and complained about composition of the shop committee of the union.)

Westinghouse Air Brake Company, 25 N. L. R. B. 1312. (While negotiating with union, employer stressed to the employees that they were entitled to present their grievances either individually or in groups without resort to the union.)

Schmidt Baking Co., 27 N. L. R. B. 864 (offer to grant terms demanded by the union).

Union Manufacturing Company, Inc., 27 N. L. R. B. 1300 (indicating to employees while meeting with the union that it intended to deal with the employees independently of the union).

McCleary Timber Company, 37 N. L. R. B. 725 (bargaining directly with the employees with respect to wages while evading the union's repeated demands that it negotiate with it concerning this fundamental object of collective bargaining).

R. M. Johnson, 41 N. L. R. B. 263. (Employer engaged in conduct violative of 8 (5) by offering to deal individually with employees who struck because of its unfair labor practices while at the same time ignoring union's request for a reopening of negotiations; and by its attempt, after negotiations with bargaining representative were broken off, to undercut representative's authority by addressing employees directly, promising them individual wage increases, exhorting them against possible concerted strike activity, and misrepresenting the bargaining conferences.)

Poultrymen's Service Corporation; 41 N. L. R. B. 444. (An employer manifested an intention to evade its duty to bargain collectively with its employees statutory representative by the action of its stockholders who after adopting a resolution drawn up by its representative authorized to negotiate with the union, which in effect rejected union's proposals and took cognizance that a strike would ensue, instructed the Board of Directors to deal individually with the employees.)

Pastore, 45 N. L. R. B. 869 (undermining representative by advising employees that they did not need a union to get wage increases on a parity with the union's demands, and thereafter granting such wage increases at request of former union pledgees).

McLachlan & Co., 45 N. L. R. B. 1113 (advising employees to repudiate the union and settle their grievances directly with the management).

For additional decisions in which an employer negotiated or attempted to negotiate with individual striking employees in order to undermine the authorized representative, see:

Biles-Coleman Lumber Co., 4 N. L. R. B. 679, 699–700, enforcing 98 F. (2d) 18 (C. C. A. 9). (An employer has not bargained in good faith with a labor organization where, during a strike, he sought to destroy collective bargaining by going over the heads of a strike committee

which represented his employees, and attempted to deal directly with individual employees.)

McNeely and Price Co., 6 N. L. R. B. 800, 811, 812, modified 106 F. (2d) 878 (C. C. A. 3). (The refusal of an employer to address a strike settlement proposal to a labor organization which represented a majority of the employees, and an attempt to use the proposal as a basis for individual bargaining with the employees constitute a failure to bargain in good faith.

Algoma Plywood & Veneer Company, 26 N. L. R. B. 975. (Employer's conduct of strike vote among its employees on day after union members authorized strike in event no agreement was reached with employer constituted a refusal to bargain where union was still seeking to negotiate.)

National Seal Corporation, 30 N. L. R. B. 188, 199 (attempts to undermine authority of union by appealing directly to striking employees).

Northwestern Cabinet Company, 38 N. L. R. B. 357 (seeking to induce striking employees to return to work).

Manville Jenckes Corporation, 30 N. L. R. B. 382 (seeking to induce striking employees to return to work under conditions as those prevailing when strike was called in disregard of decision of their union and authority of union leadership)

Bingler Motors, Inc., 30 N. L. R. B. 1080 (attempts to bargain with striking employees over the heads of representatives). See also: *Reed & Prince Mfg. Co.*, 12 N. L. R. B. 944, 961.

Montgomery Ward & Company, 37 N. L. R. B. 100 (soliciting individual striking employees to return to work). See also: *Lettie Lee*, 45 N. L. R. B. 448.

An employer has failed to bargain in good faith with a labor organization representing a majority of its employees where it persistently refused to recognize any representative of the organization who came to discuss working conditions, where it made no reply to the proposal of the organization that it join with the organization in making a request of the Board to hold an election to determine whether the organization had a right to represent the employees, and where it sought to negotiate with groups other than the authorized representatives of the organization. *Elbe File and Binder Co., Inc.*, 2 N. L. R. B. 906, 910–913.

M. H. Birge & Sons Co., 1 N. L. R. B. 731, 741. (By submitting proposals to the president of a labor organization, who was also one of its employees, where the presi-

nt was not the representative of the labor organization negotiations with employers and had no authority to rgain on such matters, and in its past dealing with the or organization the employer had never bargained with hrough the president as the labor organization's repre- ntative despite his presence in the plant as an employee d his position as president of the organization.)

Oregon Lumber Co., 20 N. L. R. B. 1. (By executing exclusive representation closed-shop contract with a or organization other than the statutory representa- e at a time when the statutory representative was ively asserting its rights, the employer violated its ty within Section 8 (5) to respect the exclusive quality he latter's representation.)

nce Manufacturing Company, 28 N. L. R. B. 1051 hile purporting to negotiate in good faith, attempting bribe two union officials to bring about a reopening of varehouse).

ox Furnace Co., Inc., 28 N. L. R. B. 208 (by recognition and dealing with company-dominated union).

-Klatscher & Co., 40 N. L. R. B. 1037. (An employer s failed to bargain collectively where it sought to evade duty to bargain with its employees' duly designated presentative by unlawfully inducing withdrawals from ion during negotiations with union, in order to under- ne union's majority, and by encouraging formation of employer-dominated organization, after which it estioned union's majority and continued to deal with e dominated organization to which it readily granted ncessions in contrast to its adamant attitude in dealing h the union.)

§ 37 (as to negotiation with individual employees or h other than authorized representatives when considered lative of Section 8 (1) in the presence or absence of a ding of a violation of Section 8 (5), § 763 (as to effect the discussion of individual grievances on the duty to et and negotiate), § 769 (as to the effect of negotiating h individual employees on the duty to meet and gotiate), § 796 (as to refusal to recognize a labor organ- tion for the purpose of entering into an agreement by quiring membership ratification); and § 811 (as to the ty of employer to acknowledge the existence of a presentative and its exclusive authority to represent all ployees within the unit).]

793 13. *Preventing proof of majority by entering into closed-shop agreement with rival labor organization not representing a majority or assisted by unfair labor practices.* (*See also* § 742.)

Execution of a closed-shop contract with a labor organization which did not represent a majority of the employees after another labor orgnization which did represent a majority of the employees had attempted to negotiate constitutes a refusal to bargain, for the execution of the closed-shop agreement precluded all further attempts on the part of the latter organization to secure the recognition to which it was entitled. *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9), modifying 5 N. L. R. B. 409.

Zenite Metal Corp., 5 N. L. R. B. 509, 524–526 (closed-shop contract entered into with rival legitimate labor organization which did not represent majority at time both organizations were seeking to prove their claims). See also: *Burnside Steel Foundry Co.*, 7 N. L. R. B. 714, 722–724.

Hamilton-Brown Shoe Co., 9 N. L. R. B. 1073, 1130, 1131, modified 104 F. (2d) 49 (C. C. A. 8) (closed-shop contract entered into with employer-dominated labor organization after bona fide organization sought to bargain).

Cowell Portland Cement Company, 40 N. L. R. B. 652, 690 (precluding bona fide statutory representative from obtaining recognition by executing closed-shop contract with a minority organization assisted and maintained by employer).

Employer which under misapprehension of its obligations under a closed-shop contract, discriminatorily discharged employees who sought to change their affiliation to the complaining union when the term of the closed-shop contract with the rival organization was drawing to a close, and which thereafter executed a renewal closed-shop agreement with the rival organization, *held* not to have refused to bargain collectively, where employer had genuine doubt as to the majority status of the complaining union, and the appropriate method of determining who was the exclusive representative, if any, in a situation as presented here involving *bona fide* rival claims to exclusive representation by previously unassisted organization, would be by an election in a representation proceeding. *Rutland Court Owners, Inc.*, 44 N. L. R. B. 587, 597–599.

Discharge of members of labor organization after request bargaining conference or destroying majority status or or organization by inducing employees to renounce membership, to designate employer-dominated organization, or by er unfair labor practices. (*See also* § 720.)

nswer a request for collective bargaining from a duly thorized labor organization by the discharge of all ployees who refuse to give up their affiliation with it in itself a conclusive and effective refusal to bargain. *as Mills, Inc.*, 3 N. L. R. B. 10, 18.

rban Lumber Co., 3 N. L. R. B. 194, 203 (employees charged following request of labor organization to gain).

. Lowy, d/b/a Tapered Roller Bearing Corp., 3 N. L. R. 938, 942 (employees discharged and plant closed after ployees had voted in favor of labor organization which d attempted to bargain).

ville Refining Co., 4 N. L. R. B. 844, 854–858, modified 2 F. (2d) 678 (C. C. A. 6), cert. denied, 308 U. S. 568 nployees discharged while labor organization seeking to gotiate agreement).

Motor Company, 29 N. L. R. B. 873 (employer's bad th with respect to the union shown by its refusal to nstate large number of union employees following a t-down).

al Broadcasting Company, Inc., 30 N. L. R. B. 146. here has been no attempt to bargain collectively in good th where an employer while not agreeing to proposals of on avoids an affirmative indication of possible terms which it might agree and though continuing attendance bargaining conferences at the same time evinces true itude toward union by various anti-union acts culminating in the discriminatory discharges of all union mbers.)

d Dredging Company, New Orleans, Louisiana, 30 L. R. B. 739. (Mass discharge of union members for liation with union, following request for collective gaining constitutes a refusal to bargain within the aning of the Act.)

Lake Lumber Company, 34 N. L. R. B. 700. (An ployer has refused to bargain collectively where after a liminary bargaining conference it shut down and locked its employees in order to avoid further bargaining with

the union.) See also: *Chicago Apparatus Company*, 12 N. L. R. B. 1103, enf'd 116 F. (2d) 753 (C. C. A. 7). *United Dredging Company*, 30 N. L. R. B. 739.

Stonewall Cotton Mills, 36 N. L. R. B. 240 (discharge of prominent members of union after questioning union's majority and when Board election was about to be held).

Lebanon News Publishing Company, 37 N. L. R. B. 649 (engaging in unfair labor practices which brought about revocations and destruction of union's majority while in the process of negotiating with the union).

Newton Chevrolet, Inc., 37 N. L. R. B. 334. (Employer's discharge of union members during the course of bargaining negotiations with the union evidences its failure to negotiate in good faith. See also:

Whittier Mills Co., etc. and Textile Workers Organizing Committee, 15 N. L. R. B. 457, enf'd in *N. L. R. B.* v. *Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5).

N. L. R. B. v. *George P. Pilling & Sons Co.*, 119 F. (2d) 32 (C. C. A. 3), enf'g 16 N. L. R. B. 650.

Singer Mfg. Co. v. *N. L. R. B.*, 119 F. (2d) 131 (C. C. A. 7), enf'g as mod. 24 N. L. R. B. 444, cert. denied, 61 S. Ct. 1119.

An employer has failed to bargain in good faith with a labor organization representing a majority of its employees in an appropriate unit, where, having set a date for collective bargaining with an outside labor organization, it meanwhile revived a dormant conference delegate plan found to be employer-dominated and bargained with individual electoral units, and when it did meet with the outside labor organization, offered to bargain only with respect to those electoral units with which it had not bargained under the conference delegate plan. *Shell Oil Company of California*, 2 N. L. R. B. 835, 849–852.

Whiting-Mead Co., 45 N. L. R. B. 987 (attempts to destroy union's majority by urging employees to abandon union and revive dominated organization).

An employer has failed to bargain in good faith with a labor organization representing a majority of its employees in an appropriate unit where, although the employer knew that an outside organization had been so designated, it organized an inside labor organization, induced the employees to join it, informed them that it would not recognize or deal with the outside labor organization, and signed a bargaining agreement with the inside organization. *Bradford Dyeing*

ociation (U. S. A.), a Corp., 4 N. L. R. B. 604, 615–617, orced U. S. (U. S. Sup. Ct.) May 20, 1940, reversing F. (2d) 119 (C. C. A. 1). See also: *American Mfg. Co., l.*, 5 N. L. R. B. 443, 466, modified 309 U. S. 629, difying 106 F. (2d) 61 (C. C. A. 2). *Triplett Electrical trument Co., et al.*, 5 N. L. R. B. 835, 855.

Ester Lingerie Corp., 10 N. L. R. B. 518, 530, 531 cognition granted employer-dominated labor organi- ion).

nal Licorice Co., 7 N. L. R. B. 537, 553, modified 309 S. 350, modifying 104 F. (2d) 655 (C. C. A. 2) (execution Balleisen contracts with employer-dominated committee individual employees). See also: *American Numbering chine Co.*, 10 N. L. R. B. 536, 542–550.

& Murray Schwab, 10 N. L. R. B. 1455, 1459 (inducing ployees to resign from labor organization and form gaining committee of their own.

Klatscher & Co., 40 N. L. R. B. 1037. (An employer failed to bargain collectively where it sought to evade duty to bargain with its employee's duly designated resentative by unlawfully inducing withdrawals from on during negotiations with union, in order to under- ne union's majority, and by encouraging formation of an ployer-dominated organization, after which it questioned on's majority and continued to deal with the dominated anization to which it readily granted concessions in ntrast to its adamant attitude in dealing with the union.

nployer is not justified in its refusal to bargain collec- ely with a labor organization representing a majority of employees by refusing to meet with that organization the ground that a controversy existed between the anization in question and a rival legitimate organization ere on the day of the refusal the latter organization did have a single member among the employees but reafter was given the assistance and encouragement of employer in its effort to enroll the employees as mbers. *Missouri, Kansas & Oklahoma Coach Lines, l.*, 9 N. L. R. B. 597, 618, 619.

nployer has failed to bargain collectively by inducing employees by various devices to abandon the organi- ion they had designated as their bargaining agent. *wn Can Company*, 42 N. L. R. B. 1160. See also: *Lachlan & Co.*, 45 N. L. R. B. 1113.

New Era Die Co., 19 N. L. R. B. 227. (Respondent's campaign of opposition to union representing a majority in appropriate unit, undertaken immediately after union requested bargaining conference, constitutes a refusal to bargain, even though representative subsequently loses its majority.)

Texarkana Bus Company, Inc., et al., 26 N. L. R. B. 582. (Conditioning recognition on proof of majority while endeavoring to destroy majority by causing employees to sign letters renouncing the Union, *held* refusal to bargain.)

Pastore, Michele, et al., 45 N. L. R. B. 869. (Employer failed to bargain collectively and in good faith when after agreeing that union had a majority and that it would bargain with it, delayed negotiations while it undermined the union by telling its members advising employees they did not need a union to get wage increases for them as employer was perfectly willing to grant increases on a parity with union's demands, and then granting such wage increases when former union pledges came directly seeking wage increases, thereby causing a loss of union majority and subsequently refusing to deal with union because it did not then represent a majority.

95 15. *Imposing preference of representatives of employees as condition precedent to negotiations.* (*See also* § 39.)

An employer has failed to bargain in good faith where it refused, on several occasions, to meet with a representative of a labor organization "under any conditions" on the ground that he was "an outsider," although it knew that the organization represented the overwhelming majority of its employees, and, when the representative withdrew, limited the discussion to a definition of the term "union recognition"; refused to consider a proposed contract presented by the labor organization because it embodied the name of the union; and its only counterproposal to the organization's demands was that collective bargaining be discarded and individual bargaining substituted. *Millfay Mfg. Co., Inc.*, 2 N. L. R. B. 919, 928–930, enforced 97 F. (2d) 1009 (C. C. A. 2). See also: *Fainblatt*, 1 N. L. R. B. 864, 870, 871.

An employer has failed to bargain in good faith with a labor organization representing a majority of its employees in an appropriate unit where it refused to recognize a bargaining committee because it was affiliated with an outside labor organization, indicating, however, a willingness to deal

n it if it would renounce its affiliation with the outside
r organization and assume the status of a shop com-
tee. *Fansteel Metallurgical Corp.*, 5 N. L. R. B. 930,
942, modified 306 U. S. 240, modifying 98 F. (2d) 385
C. A. 7). See also: *N. L. R. B.* v. *Louisville Refining*
102 F. (2d) 678, 680 (C. C. A. 6), modifying 4 N. L.
3. 844, cert. denied 308 U. S. 568.
burg Publishing Co., 25 N. L. R. B. 456 (refusal to deal
n union representatives because employed by newspaper
naged by separate directors of same corporation).
Motor Company, 29 N. L. R. B. 873 (refusing to deal
n non-employee representatives).
r Motors, Inc., 30 N. L. R. B. 1080 (imposing limitation
n the size and composition of bargaining committee).
Portland Cement Company, 40 N. L. R. B. 652 (insist-
upon designation of organization which it had assisted
ead of lawful designated representative as prerequisite
ecognition of employee representative).
ployer may not dictate the personnel of the group that
mployees select to represent them; that is the necessary
exclusive right of the employees. *Hancock Brick &*
Co., 44 N. L. R. B. 920, 932. See also: *New Era Die*
19 N. L. R. B. 227, 240. *Heilig Bros. Co.*, 32 N. L.
3. 505. *Kansas Utilities Co.*, 35 N. L. R. B. 936.
39 (as to refusal to deal with representatives as an
)).]
fusal to recognize labor organization for purpose of
ing into agreement. (*See also* §§ 769, 792, 811–820.)
rm "collective bargaining" denotes in common usage,
ell as in legal terminology, negotiations looking toward
lective agreement, and if an employer adheres to a
onceived determination not to enter into any agree-
t with the representatives of his employees, then his
ing and discussing any issues with them, however
uently, does not fulfill his obligations under the Act.
e Cotton Mills, 6 N. L. R. B. 461, 467, modified 103 F.
91 (C. C. A. 5).
n Felt Works, a Corporation, 10 N. L. R. B. 407, 422.
employer has failed to bargain in good faith with a
r organization as representative of its employees, where,
ughout the negotiations, it took the position that it
d not enter into an agreement, either oral or written,
though understandings were reached, and that it
d refuse to embody any understandings in a signed

agreement. See also: *Sunshine Mining Co.*, 7 N. L. R. B. 1252, 1262–1264, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940. *Sigmund Freisinger, d/b/a North River Yarn Dyers*, 10 N. L. R. B. 1043, 1050, 1051.

Scandore Paper Box Co., Inc., 4 N. L. R. B. 910, 917. (Collective bargaining requires more than meeting with representatives of employees; it requires an honest and sincere attempt to reach an agreement, and an employer has made no such attempt where it met with the employees' representatives but flatly took the position that it would not enter into an agreement with a labor organization duly authorized to represent its employees declaring that negotiations by the organization as to conditions of employment constituted interference in the management of the business.)

Ford Motor Company, 29 N. L. R. B. 873. (An employer has failed to bargain in good faith where it entered into negotiations with the union with its mind "hermetically sealed against even the thought of entering into an agreement with the union" as evidenced by its statements that it "would never sign with any organization" and its instructions to officials of plant that it "is not required to enter into a collective contract" and may enter individual contracts.)

An employer has failed to bargain in good faith, notwithstanding the fact that it never refused to meet with a labor organization duly authorized to represent the employees, by insisting that any agreement arrived at must be with the employees themselves. *Federal Carton Corp.*, 5 N. L. R. B. 879, 886. See also: *McNeely & Price Co.*, 6 N. L. R. B. 800, 810, 812, modified 106 F. (2d) 878 (C. C. A. 3). *American Numbering Machine Co.*, 10 N. L. R. B. 536, 547.

Hopwood Retinning Co., Inc., 4 N. L. R. B. 922, 938, 940, modified 98 F. (2d) 97 (C. C. A. 2). (Although it is not requisite to collective bargaining that an employer should reach an agreement with representatives of its employees, no bargaining can be said to take place when the employer states that it would never sign a contract with a labor organization, but would do so only with a committee of its employees.) See also: *United States Stamping Co.*, 5 N. L. R. B. 172, 182.

Union Manufacturing Company, Inc., 27 N. L. R. B. 1300, 1306. (An employer has failed to bargain in good faith by

nanding that any agreement reached between it and the on be ratified by a vote of all its employees, whether or members of the union.) See also: *Interstate S. S. Co.*, N. L. R. B. 1307.

Motor Company, 29 N. L. R. B. 873 (willingness to enter individual contracts while refusing to enter into any lective contract with the union).

Requiring participation of company-dominated labor anization.

nployer has not bargained in good faith where, although vas at all times willing to meet with representatives of abor organization to which a majority of its employees onged, it nevertheless refused to grant exclusive ognition to that agency by compelling it to carry on otiations which were participated in by a labor organi- ion found to be employer-dominated. *Griswold Mfg.* , 6 N. L. R. B. 298, 307, 308, enforced 106 F. (2d) 713 C. A. 3).

Pacific States Cast Iron Pipe Co., 37 N. L. R. B. 405; peated requests to have "inside" union attend confer- es).

nsistence upon acceptance of terms discrediting the labor anization. (*See also* § 782.)

ndent's insistence on considerable wage reduction, mption from the overtime provisions of Fair Labor ndards and other unreasonable concessions, *held* dence of respondent's failure to bargain in good faith, such provisions could have only the purpose of dis- diting the designated representative in the eyes of its mbers, and denied it that equality of status which the expressly sets forth as one of its objectives and which an essential basis for collective bargaining. *Singer g. Co.*, 24 N. L. R. B. 444, 467.

ther circumstances.

UTY OF EMPLOYER TO ACCORD RECOGNI- ON TO REPRESENTATIVES OF EMPLOYEES. *e* §§ 39, 769, 792, 796.)

general.

requirements of the Act are not satisfied by the mere t that an employer meets with a labor organization resenting a majority of his employees, for the granting recognition which is an essential prerequisite to any uine collective bargaining, consists of an acknowledg- nt on the part of the employer that the union designated

by a majority of his employees for the purpose of collective bargaining, and by this acknowledgment the employer admits the existence of the organization and its authority to represent all the employees within such unit. When such acknowledgment is withheld, genuine collective bargaining impossible, no matter how many times the employer meets with the duly authorized representatives of its employees. *Stewart Die Casting Corp.*, 14 N. L. R. B. 872, 888.

Louisville Refining Co., 4 N. L. R. B. 844, 860, modified 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568. (An employer cannot, under the Act, refuse to recognize the duly designated representative of its employees for the purpose of contracting any more than for the purpose of negotiation, but he must accept his employees' representative as such throughout the entire process of collective bargaining.)

National Licorice Co., 7 N. L. R. B. 537, 551, modified 309 U. S. 350, affirming 104 F. (2d) 655 (C. C. A. 2). (The Act imposes upon employers the duty not only to meet with the duly designated representative of their employees, but also to recognize and bargain in good faith with such representatives in a genuine attempt to achieve an agreement.)

Lebanon Steel Foundry, 33 N. L. R. B. 233. (Held: in the absence of according the union exclusive recognition, discussions with union's representatives concerning provisions of a proposed contract does not constitute collective bargaining.)

For decisions in which employer violated 8 (5) when it failed to acknowledge the exclusive representative status of a labor organization by attempting to or in fact negotiating with other than the authorized representatives, *see* §§ 792, 796, and:

N. L. R. B. v. *Louisville Refining Co.*, 102 F. (2d) 678, 680 (C. C. A. 6), modifying 4 N. L. R. B. 844, cert. denied 308 U. S. 568. (Under the Act it is the duty of an employer to negotiate in good faith with whatever agent or agency a majority of its employees has selected, and it cannot legally refuse to recognize a labor organization because it prefers that a local thereof or another labor organization represent its employees.

McNeely and Price Co., 6 N. L. R. B. 800, 808–812, modified 106 F. (2d) 878 (C. C. A. 3). (The requirements of the Act

re not satisfied by the mere fact that an employer meets
ith a labor organization representing a majority of his
nployees and discusses terms if attempts are made to deal
ith the employees on an individual basis and recognition
the labor organization is withheld.)
eral Carton Corp., 5 N. L. R. B. 879, 886 (insisting that
ny agreement arrived at must be with the employees
emselves).
steel Mettallurgical Corp., 5 N. L. R. B. 930, 941, 942,
odified 306 U. S. 240, modifying 98 F. 375 (C. C. A. 7)
efusing recognition to bargain committee affiliated with
bor organization, but indicating willingness to bargain
it would renounce affiliation with the labor organization
nd assume the status of a shop committee).
wold Mfg. Co., 6 N. L. R. B. 298, 309, enforced 106 F.
2d) 713 (C. C. A. 3) (recognition of union committee only
s committee of employees). See also: *Piqua Munising*
Vood Products Co., 7 N. L. R. B. 782, 787–789, enforced
09 F. (2d) 552.
ne Air Appliance Co., Inc., 10 N. L. R. B. 1385, 1395,
396 (informing representatives at outset of negotiations
nat it was dealing with them only as individuals, and
roposing substitution of "employees" for name of labor
rganization as signatory to contract).
ific States Cast Iron Pipe Company, 37 N. L. R. B. 405.
An employer has violated the requirements of the Act
here it continued to recognize an "inside" organization
nd refused to recognize as exclusive representative an
utside" organization which had replaced the "inside"
rganization as the exclusive representative.)
decisions in which employer violated 8 (5) where it failed
o acknowledge the exclusive representative status of a
abor organization by imposing a condition precedent to
ecognition, *see* § 785, and:
s Mfg. Co., 11 N. L. R. B. 432, 443, 444, modified 107 F.
2d) 574 (C. C. A. 7). (An employer has refused to bargain
ollectively with a labor organization representing a
najority of its employees in an appropriate unit after
aving been ordered to do so by the Board, where, although
; met with the representatives of the organization and
iscussed terms, it refused to recognize the organization
the exclusive bargaining agency, until the Circuit Court
f Appeals had affirmed the Board's order.)

United Biscuit Company of America, 38 N. L. R. B. 778. (Failure of union to fulfill its promise to the respondent to submit its "request" presumably relating to terms of employment, has no bearing on whether or not the respondent in good faith deterred recognition of it as exclusive representative, where respondent did not predicate its decision to postpone recognition on that promise. Further the grant of recognition should precede rather than follow discussion of terms of employment.)

H. McLachlan & Company, Incorporated, et al., 45 N. L. R. B. 1113. (Employer found to have refused to bargain collectively with an organization representing a majority of its employees, which majority it did not question, when it attempted to condition acceptance of proof of union's majority and ultimate recognition upon an advance commitment by union that it would forego closed shop, and thereby unlawfully undertook to convert recognition to which union was entitled as a matter of right into a subject for which union must bargain.)

An employer has not refused to bargain collectively where in good faith when confronted with conflicting claims of rival labor organizations, refused to enter into agreements or negotiate further with either of the organizations until the unions arrived at an amicable settlement independently of the Board's assistance or until the Board through the pending representation proceedings instituted by the charging union resolved the question concerning representation. *American Products, Inc.*, 34 N. L. R. B. 442. See also: *Brewer-Titchener Corporation*, 19 N. L. R. B. 160, 168. *Sherwin-Williams Co.*, 37 N. L. R. B. 260.

Iowa Electric Light and Power Company, 38 N. L. R. B. 1124. (Employer who refused to bargain with charging union because of conflicting claims of a rival union affiliated with same parent and until question of proper representative is decided, has not violated the Act where, it was relieved of any necessity it may have been under to make its own decision as to the proper organization with which to bargain since charging union undertook to have the question determined by a higher authority (the parent or the Board); had equally refused to bargain with rival union; and had indicated its willingness to bargain with the organization found to be the proper representative.)

[*See* §§ 741–750 (as to the duty of a labor organization to present proof of majority to employer).]

Recognition by an employer of a labor organization as the exclusive representative of its employees within an appropriate unit is necessarily the first step in the collective bargaining procedure, and a refusal of such recognition is therefore an unfair labor practice within the meaning of Section 8 (5) of the Act. *Borg Warner Corp.*, 23 N. L. R. B. 114, 136.

United Biscuit Company of America, 38 N. L. R. B. 778. (An employer has refused to bargain collectively where in bad faith by its dilatory tactics it indefinitely postponed recognition and negotiation with the union.)

Employer asserted belief that written recognition of union might coerce employees into joining union, held no justification for failure of employer to comply with the Act requiring such recognition. *Kellogg Switchboard and Supply Co.*, 28 N. L. R. B. 847.

312 2. *Offer to bargain only for members of union.*

A refusal to recognize a labor organization which represents a majority of the employees in an appropriate unit as the bargaining representative of all such employees and an offer to negotiate with it only as the bargaining representative of its members constitutes a violation of Section 8 (5). *National Licorice Co.*, 309 U. S. 350, 358, modifying 7 N. L. R. B. 537, and modifying 104 F. (2d) 655 (C. C. A. 2). See also:

N. L. R. B. v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

Boss Mfg. Co., 3 N. L. R. B. 400, 412–414, enforced 107 F. (2d) 574 (C. C. A. 7).

Biles-Coleman Lumber Co., 4 N. L. R. B. 679, 692–700, enforced 98 F. (2d) 18 (C. C. A. 9).

Burnside Steel Foundry Co., 7 N. L. R. B. 714, 724.

Fedders Mfg. Co., Inc., 7 N. L. R. B. 817, 820, 821.

Sunshine Mining Co., 7 N. L. R. B. 1252, 1263, 1264, enforced 110 F. (2d) 780 (C. C. A. 9), cert. filed August 21, 1940.

Hanson-Whitney Machine Co., 8 N. L. R. B. 153, 158.

Harter Corp., 8 N. L. R. B. 391, 414.

Serrick Corp., 8 N. L. R. B. 621, 649, enforced 110 F. (2d) 29 (App. D. C.).

McKaig-Hatch, Inc., 10 N. L. R. B. 33, 41, 42.

Western Felt Works, a Corp., 10 N. L. R. B. 407, 413–422.

Consolidated Cigar Corporation, 17 N. L. R. B. 233.

Calumet Steel, Div. of Borg-Warner Corp.; 23 N. L. R. B. 114, 136.

Golden Turkey Mining Company, 34 N. L. R. B. 760.

United Biscuit Company of America, 38 N. L. R. B. 778.

Hirsch Mercantile Co., 45 N. L. R. B. 377.

3. *Refusal to bargain solely for members of union.*

An employer is not relieved of its obligation to bargain collectively because of the fact that a proposed agreement presented by a labor organization authorized to represent the employees stated in its title that the organization was acting only on behalf of such employees as were members thereof, for where the organization in fact has a majority at the time of the conferences, the employer must bargain collectively with it even though it does not ask for recognition, in writing, of its right to act as the exclusive representative of all employees in the appropriate unit. *Louisville Refining Co.*, 4 N. L. R. B. 844, 860, 861, enforced 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.

Calumet Steel Div. of Borg-Warner Corp., 23 N. L. R. B. 114. (The fact that a labor organization, after having been repeatedly denied recognition as the exclusive representative of employees, finally consented to negotiate with the employer as the representative of its members only, does not constitute a waiver of the labor organization's claim of right to recognition as the exclusive bargaining representative.)

4. *Offer to bargain for some but not all employees in an appropriate unit.* (*See also* § 773.)

To recognize and deal with union as representing only part of unit found to be appropriate does not constitute collective bargaining to satisfy Section 8 (5). *Wilcox Oil and Gas Company*, 28 N. L. R. B. 79, 105. See also: *American Hawaiian S. S. Co.*, 10 N. L. R. B. 1355.

Shell Oil Co., of California, 2 N. L. R. B. 835, 849–852. (An employer has refused to bargain collectively with a labor organization representing a majority of its employees in an appropriate unit, where, having set a date for collective bargaining with an outside labor organization, it meanwhile revived a dormant conference delegate plan, found to be employer-dominated, and bargained with individual electoral units, and when it did meet with the outside labor organization offered to bargain only with respect to those electoral units with which it had not bargained under the conference delegate plan.)

Cf. *Libby-Owens-Ford Glass Co.* 31 N. L. R. B. 243, 248. (Where the Board in the exercise of its discretion and upon sufficient ground reexamined its prior unit determination and found that the employer was justified in refusing to include employees at one of its plants with the multiple plant unit certified by the Board since that plant constituted a separate unit.)

15 5. *Limiting scope of bargaining.*

An employer has refused to bargain collectively with certain labor organizations where, although it does not deny that a majority of the employees have designated such organizations as their representatives for purposes of collective bargaining, it contends that the organizations have no right to bargain for all the employees in the plant and has taken the position that it is obligated merely to meet with such representatives and discuss grievance with them as it would with individual employees. *Atlantic Refining Co.*, 1 N. L. R. B. 359, 365–367.

Westinghouse Air Brake Company, 25 N. L. R. B. 1312. (Confining union activity to the handling of grievances, *held* denial of exclusive recognition).

816 6. *Limiting durations of recognition.* [*See also* §§ 719–723 (as to continuance of majority designation).]

Respondent's insistence upon recognition clause qualified by provision that respondent could call an election at its whim to determine union's majority, *held* refusal to recognize. *Woodside Cotton Mills*, 21 N. L. R. B. 42, 51.

820 7. *Other Circumstances.*

8. *Negotiating with individual employees or with other than authorized representatives.* (*See* §§ 769, 792, 796.)

9. *Requiring participation of company-dominated labor organization.* (*See* § 797)

10. *Imposing preference of representatives of employees as condition precedent to negotiations.* (*See* §§ 39, 795.)

11. *For purpose of entering into agreement.* (*See* §§ 769, 792, 796.)

F. FULFILLING THE DUTY TO BARGAIN.

821 1. *Necessity that understanding be reached.*

The Act does not compel agreements between employer and employees, but is based upon the theory that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may promote the adjustments and agreements which the Act in itself does not attempt to compel. *N. L. R. B.* v.

Jones & Laughlin Steel Corp., 301 U. S. 1, 45, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

While the Act does not require the parties to agree, but merely to negotiate with each other, nevertheless, it is based upon the idea that negotiations honestly entered into will generally result in the settlement of differences, and commands negotiations for that reason. *Jeffrey DeWitt Insulator Co.* v. *N. L. R. B.*, 91 F. (2d) 134, 139 (C. C. A. 4), enforcing 1 N. L. R. B. 618, cert. denied 302 U. S. 731.

Collective bargaining does not require the employer to reach an agreement, but it does require sincere negotiations with the representatives of the employees. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), enforcing 4 N. L. R. B. 679.

The Act does not compel agreements between employers and employees, but commands free opportunity for negotiation as likely to bring about adjustments and agreements which will promote industrial peace, the only compulsions to which are the possibility of strikes on the one side and the inability to continue business on the other. *Globe Cotton Mills* v. *N. L. R. B.*, 103 F. (2d) 91, 94. (C. C. A. 5), modifying 6 N. L. R. B. 461.

From the duty of the employer to bargain collectively with his employees, there does not flow any duty on the part of the employer to accede to the demands of the employees, but before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with its employees, and every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. *The Sands Mfg. Co.*, 1 N. L. R. B. 546, 557, set aside 306 U. S. 332, affirming 96 F. (2d) 721 (C. C. A. 6).

An employer is not obligated to agree to any of the terms of a contract presented to him by the representatives of his employees solely for the sake of reaching some agreement when genuine accord is impossible although both sides are acting in good faith, but he must negotiate in good faith in an endeavor to reach an understanding, and that understanding, if eventually achieved, must be incorporated into an agreement if the representatives of the employees so request. *St. Joseph Stock Yards Co.*, 2 N. L. R. B. 39, 55.

e obligation of an employer under the Act is to negotiate on the terms proposed by a labor organization in good faith in an effort to make an agreement, and it is not bound to accept or agree to any particular terms proposed *Harnischfeger Corp.*, 9 N. L. R. B. 676, 685.

e Act does not require an employer to agree to any particular terms with a labor organization representing a majority of its employees; and if honest and sincere bargaining efforts fail to produce an understanding, nothing in the Act makes illegal the employer's refusal ro accept particular terms submitted to him. *Inland Steel Co.*, 9 N. L. R. B. 783, 797, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

e § 781 (as to duty to negotiate in good faith).]

Duty of employer to enter into collective agreement.

In general.

hile employers have a right to conduct their business in an orderly manner without being subjected to arbitrary restraints, employees have their correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 43, 44, enforcing 1 N. L. R. B. 503, and reversing 83 F. (2d) 998 (C. C. A. 5).

e Act contemplates the making of contracts with labor organizations which is the manifest objective in providing for collective bargaining. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 236, modifying 4 N. L. R. B. 71, and modifying 95 F. (2d) 390 (C. C. A. 2).

e history of the Act indicates that its purpose was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made, and it is assumed that the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning. *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332, 342, setting aside 1 N. L. R. B. 546, and affirming 96 F. (2d) 721 (C. C. A. 6).

ere is a duty on both parties engaged in collective bargaining to enter into discussion with an open and fair mind and sincere purpose to find a basis of agreement touching

wages and hours and the conditions of labor, and, if found, to embody it in a contract as specific as possible which will stand as a mutual guarantee of conduct and as a guide for the adjustment of grievances. *Globe Cotton Mills* v. *N. L. R. B.*, 103 F. (2d) 91, 94 (C. C. A. 5), modifying 6 N. L. R. B. 461.

The making of an agreement with a labor organization is a vital and integral part of collective bargaining, and contracts entered into between an employer and its individual employees which by their terms do not prohibit a demand for union recognition but do prohibit a demand for a signed agreement with the union constitute a denial of the right of collective bargaining. *American Numbering Machine Co.*, 10 N. L. R. B. 536, 550. Cf. *Atlas Bag and Burlap Co., Inc.*, 1 N. L. R. B. 292, 300–306.

It is against the public policy declared by the Act for an employer to enter into a transaction whereby the right to have an understanding embodied in a written signed agreement is renounced by the employees or their representatives. *Producers Produce Co.*, 23 N. L. R. B. 876, 904.

An employer by taking the position that it would not put into writing the terms of any contract agreed upon has refused to bargain collectively with the union within the meaning of the Act since the matter of a signed and written contract is not a term or condition of employment about which there can be bargaining but a requirement of collective bargaining which the exclusive bargaining representative of the employees may as a matter of right request. *Cottrell & Sons Company, C. B.*, 34 N. L. R. B. 457.

[*See* § 781 (as to duty to negotiate in good faith).]

23 b. Provisions as to substantive terms.

The duration of the agreement, like any of the substantive terms of a contract, is a matter for negotiation between the parties, and the duty of an employer to enter into a contract when requested by the representative of the employees where an understanding has been reached does not require him to enter into an unalterable obligation for an extended period of time, since many collective agreements contain a clause permitting termination or modification by either party upon prescribed notice. *St. Joseph Stock Yards Co.*, 2 N. L. R. B. 39, 55.

The Board may decide whether collective bargaining negotiations have taken place, but it has no power under the

Act to decide on the subject matter or substantive terms of a union agreement. *Consumers' Research, Inc.*, 2 N. L. R. B. 57, 74, 75.

An employer has violated Section 8 (5) when it refused the union written recognition although it admitted that the union represented a majority and was willing to inform the employees that the union was the exclusive bargaining representative. *Wilson & Co.*, 19 N. L. R. B. 990, 997. See also: *McQuay Norris Mfg. Co.*, 21 N. L. R. B. 709, 716. *Montgomery Ward Co.*, 37 N. L. R. B. 100.

24 c. Refusal to enter into agreement at outset of negotiations.

The final attainment of an understanding and the signing of a contract embodying the fruits of this understanding are part and parcel of the process of collective bargaining, for the contract or agreement is part of and the culmination of the successful negotiations and not a segment separate from the negotiations which have preceded it, and an employer cannot, under the Act, refuse to recognize the duly designated representative of its employees for the purpose of contracting any more than for the prupose of negotiation, but he must accept his employees' representative as such throughout the entire process of collective bargaining. *Louisville Refining Co.*, 4 N. L. R. B. 844, 860, modified 102 F. (2d) 678 (C. C. A. 6), cert. denied 308 U. S. 568.

An employer has refused to bargain collectively with the duly authorized representatives of its employees where it refused at the outset of negotiations to embody whatever terms might be reached into a signed agreement with the labor organization concerned, for collective bargaining in good faith requires a willingness to sonsummate the negotiations, if successful, by entering into some sort of an agreement; and where the contemplated bargaining is directed toward a comprehensive set of terms covering labor relations in a large industrial plant, and the prevailing practice is to reduce such terms to a signed collective agreement, it is the employer's obligation to accede to a request that understandings reached be embodied in such an agreement. *Inland Steel Co.*, 9 N. L. R. B. 783, 803, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

An employer has failed to bargain in good faith where it entered into negotiations with the union with its mind "hermetically sealed against even the thought of entering into an agreement with the union" as evidenced by its

statements that it "would never sign with an organization" and its instructions to officials of plant that it "is not required to enter into a collective contract" and may enter individual contracts. *Ford Motor Company*, 29 N. L. R. B. 873.

A written contract, far from being a mere formal part of an agreement, constitutes the very object of collective bargaining, "the absence of which . . . tends to frustrate the end sought by collective bargaining," and as such an employer's refusal at the outset of negotiations not to agree to embody understandings that might be reached in a signed contract, is tantamount to a refusal to bargain altogether; it is immaterial in this connection that the parties had not yet reached complete understanding as to what would be included in the contracts and that in the face of the employer's action the union discussed with the employer proposed wages, hours, and other conditions of employment. *Montgomery Ward & Company*, 37 N. L. R. B. 100.

Pacific States Cast Iron Pipe Company, 37 N. L. R. B. 405. (Employer's contention that is announced unwillingness to enter into a signed agreement with the union cannot constitute a violation of the Act if it had not in fact agreed with the union upon the terms to be included in the contract is without merit since the obligation imposed by the Act requires a willingness and intent to be bound by the terms eventually agreed upon.)

Register Publishing Co., Ltd., 44 N. L. R. B. 834. (Employer, *held* to have engaged in conduct violative of Section 8 (5) by its anticipatory refusal to reduce to writing and make contractually binding any agreement which might be reached with its employees designated representative.)

For additional decisions in which an employer violated Section 8 (5) when it refused to enter a written agreement at outset of negotiations, *see*:

Freisinger, Sigmund, et al., 10 N. L. R. B. 1043, 1050.
Bethlehem Shipbuilding Co., 11 N. L. R. B. 105, 146.
Westinghouse Air Brake Company, 25 N. L. R. B. 1312.
Uhlich & Co., Inc., Paul, 26 N. L. R. B. 679.
Kellogg Switchboard and Supply Co., 28 N. L. R. B. 847.
National Seal Corporation, 30 N. L. R. B. 188.
Bingler Motors, Inc., 30 N. L. R. B. 1080.
Hobbs, Wall and Company, 30 N. L. R. B. 1027.
Cottrell, 34 N. L. R. B. 457.

Martin Bros., 35 N. L. R. B. 217.
Stonewall Cotton Mills, 36 N. L. R. B. 240.
Franks Bros., 44 N. L. R. B. 898.

Refusal to enter into agreement after understanding has been reached.

e refusal of an employer to enter into an agreement embodying an understanding reached with representatives of its employees constitutes a refusal to bargain collectively n violation of Section 8 (5). *St. Joseph Stock Yards Co.*, N. L. R. B. 39, 54.

e Act imposes upon employers the duty not only to meet with the duly designated representative of their employees, nd to bargain in good faith with them in a genuine attempt o achieve an understanding on the proposals and counter-proposals advanced, but, also, if an understanding is eached, to embody that understanding in a binding greement, and the refusal of an employer to enter into an greement with the representatives of its employees, even fter the parties had arrived at a "mutually satisfactory nderstanding," constitutes a violation of Section 8 (5). *Federal Carton Corp.*, 5 N. L. R. B. 879, 886, 887.

refusal of an employer to enter into a binding agreement fter an understanding has been reached with the labor rganization involved, constitutes a violation of Section 8 5). *Harnischfeger Corp.*, 9 N. L. R. B. 676, 684, 685. nounced refusal to sign a contract, *held* violation of 8 (5). Equivocal qualification that if union was shown to be 'responsible" *held* no defense since uneasiness as to esponsibility not communicated to union nor did respond-nt indicate standards of responsibility. *Bussmann Mfg. Co.*, 14 N. L. R. B. 322.

e § 785 (as to lack of good faith in bargaining by requiring nion to incorporate or post bond).]

anging and uncertain business conditions, or the competitive nature of an employer's business, do not justify he employer's failure to *seek* to arrive at an understanding, r to embody such an understanding, *if reached*, in a inding contract. *Pittsburgh Metallurgical Co., Inc.*, 20 N. L. R. B. 1077.

fusal to embody understanding in contract not justified y fear of loss of customers. *Producers Produce Co.*, 3 N. L. R. B. 876.

Where the respondent had indicated no unwillingness to enter into a written contract, as such, and where further negotiations were contemplated: *held* that it was not inconsistent with the duty imposed by the Act for the respondent to decline to enter into a written contract prior to the reaching of an accord as to all the basic terms then the subject of consideration. *Allied Yarn Corporation*, 26 N. L. R. B. 701.

For additional decisions in which an employer violated Section 8 (5) when it refused to enter into written agreement after understanding had been reached, *see*:

Neuhoff Packing Company, 29 N. L. R. B. 746.
Hobbs, Wall and Company, 30 N. L. R. B. 1027.
Martin Brothers Box Company, 35 N. L. R. B. 217.
Johnson, 41 N. L. R. B. 263.
Barrett Co., 41 N. L. R. B. 1327.
Hirsch Mercantile Co., 45 N. L. R. B. 377.

26 e. Necessity that agreement be in writing and signed.

The procedure of collective bargaining under Section 8 (5) not only involves meeting and discussion with the representatives of employees, but also normally contemplates the making of a collective agreement, if an understanding is reached naming the parties to the agreement and signed by the parties, for the purpose of the Act is to encourage "the practice and procedure of collective bargaining" and an employer may not decline to afford its employees the full rights and advantages of collective bargaining as normally practiced. *H. J. Heinz Co.*, 10 N. L. R. B. 963, 982, enforced 110 F. (2d) 843 (C. C. A. 6). See also:

Art Metal Construction Co. v. *N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2), modifying 12 N. L. R. B. 1308.
N. L. R. B. v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4), enforcing 12 N. L. R. B. 1238.
N. L. R. B. v. *Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), enforcing 7 N. L. R. B. 1252, cert. filed August 21, 1940.
Bethlehem Shipbuilding Corporation, Limited, 11 N. L. R. B. 105,144-147, enf'd 114 F. (2d) 930 (C. C. A. 1), cert. dismissed on motion of petitioning company 312 U. S. 710.
Westinghouse Air Brake Company, 25 N. L. R. B. 1312.
Uhlich & Co., Inc., 26 N. L. R. B. 679.
Cottrell & Co., 34 N. L. R. B. 457.
United Biscuit Co., 38 N. L. R. B. 778.

27 f. Necessity that agreement be bilateral in effect.

The term "collective bargaining" means a willingness to reach a bargaining or binding agreement, for if an employer is at all times to be free to change the terms and conditions of employment unilaterally collective bargaining will have failed to achieve one of its fundamental aims, namely, the stabilization of labor relations so that workers may deal as business equals with their employers as to such terms and conditions. *Harnischfeger Corp.*, 9 N. L. R. B. 676, 684. See also: *Griswold Mfg. Co.*, 6 N. L. R. B. 298, 307, 308.

Historically a collective agreement has normally taken the form of a written contract between the employer and the labor organization, naming the parties to the agreement and signed by the parties. *H. J. Heinz Co.*, 10 N. L. R. B. 963, 982, enforced 110 F. (2d) 843 (C. C. A. 6). See also: *Inland Steel Co.*, 9 N. L. R. B. 783, 803, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7).

United States Stamping Co., 5 N. L. R. B. 172, 183. (An employer has not fulfilled his obligation to bargain collectively by reason of the fact that he made some adjustments in wages and working conditions as a result of meetings with various departmental shop committees of a labor organization which represented a majority of the employees where the agreements were not reduced to writing, and where the employer issued a bulletin, which it placed on its bulletin board, stating that the enumerated changes would be put into effect, for such a procedure amounts to dealing with a committee composed of the employees, but refusing to deal with the labor organization whether the chosen representative of its employees or not.)

Fort Wayne Corrugated Paper Co., 14 N. L. R. B. 1. (Signed statement of policy which the employer is willing to observe as a matter of policy and not as a matter of contractual obligation, is not the equivalent of a written contract, to which the Union is entitled).

Blackburn Products Corp., 21 N. L. R. B. 1240. (Respondent's refusal to execute bilateral signed agreement unless the union posted a bond, *held*, in view of all the circumstances an attempt to evade the fundamentals of collective bargaining.)

Pittsburgh Metallurgical Co., 20 N. L. R. B. 1077. (An employer does not fulfill its duty to bargain collectively under the Act by offering to modify an already posted statement

of its policy which had been arrived at as the result of negotiations with the union representing a majority of the employees and which had been accepted by that union in satisfaction of previously made demands, but which was not a bilateral agreement or a memorandum of such an agreement.)

Westinghouse Electric & Manufacturing Company, et al., 22 N. L. R. B. 147. (Refusal to enter into binding or written agreements with the union held a refusal to bargain, even though respondent posted in the plant "statements of policy" arrived at after negotiation with the union, setting forth terms agreed upon, and stating that the union was recognized as exclusive representative.)

Producers Produce Co., 23 N. L. R. B. 876. (Observance by employer of understanding with union as a statement of policy but refusal to embrace understanding in a written signed contract is a refusal to bargain collectively.)

Westinghouse Air Brake Company, 25 N. L. R. B. 1312. (Acceptance of union proposals in so far as they conformed with established policy)

Webster Manufacturing , Inc., 27 N. L. R. B. 1338. (Presentation to employees during the course of negotiations of unilateral statements of policy which fail to grant recognition to the employees' representatives and are subject to change at the employer's will constitute a violation of the Act.)

Hobbs, Wall and Company, 30 N. L. R. B. 1027. (An employer's offer of a "statement of policy" which the union could "call" a "contract" and to which "public opinion would give . . . the force of a contract" does not satisfy the mandate of Section 8 (5) of the Act.)

Cottrell & Sons Company, C. B., 34 N. L. R. B. 457. (Employer's unfair labor practices in refusing to enter into a written contract with the union held not remedied by "statement of policy" embodying the terms agreed upon in negotiations following settlement of strike, which union agreed upon as a condition for settlement of a strike, since such statement of policy is not a written contract and does not establish a contractual relationship between the employer and the union as the exclusive bargaining representative of the employees.)

Pacific States Cast Iron Pipe Company, 37 N. L. R. B. 405. (Employer's proposal to post a set of rules instead of entering into a signed agreement with union does not

satisfy the requirements of the Act notwithstanding employer's contention that under the laws of the State of Utah, a unilateral contract is binding upon it and enforceable by the employees "individually or as a group" since such set of rules which fails to mention the union by name or to acknowledge that the terms and conditions contained therein were the results of negotiations with the union, deprives the union of its status and dignity as the exclusive representative, and completely nullifies the practice and procedure of collective bargaining as contemplated by the Act.)

V–O Milling Company, 43 N. L. R. B. 348. (Respondent's adherence to established policy, *held* not to justify it in refusing to bargain with respect to wages, *held* without merit, since the requirements of the Act cannot be subordinated to any private policy, and while an employer is not required to yield to the demands of a union, respondent's insistence upon maintaining absolute control of wages at all times was, in effect, a complete negation of principle of collective bargaining.)

g. Other circumstances.

UNIT APPROPRIATE FOR COLLECTIVE BARGAINING

I. IN GENERAL—DETERMINATION OF UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

A. CONCLUSIVENESS OF PRIOR DETERMINATION.

1. By Board.

5 2. By other governmental agencies. [*See* JURISDICTION §§ 7, 15 (as to effect of State labor relations laws and proceedings thereunder on Board's jurisdiction).]

B. CONTENTIONS OF EMPLOYER-DOMINATED OR ASSISTED LABOR ORGANIZATIONS DISREGARDED.

C. UNIT COMPRISING SINGLE EMPLOYEE.

D. FACTORS CONSIDERED.

5 1. In general.

2. History, extent, and type of organization of employees involved.

3. History of collective bargaining.

4. History, extent, and type of organization and history of collective bargaining of employees in other plants of employer, or of other employers in same industry.

5. Eligibility of the employees for membership in union or unions involved, or in other unions.

5 6. Agreements.

7. Skill, wages, work, and working conditions.

8. Relationship between proposed unit and employer's organization management, and operations.

4 9. Other factors.

10. "Globe" doctrine. [*See* § 41.]

E. DESIGNATION OF REPRESENTATIVES. [*See* DEFINITION § 92.]

II. INDUSTRIAL, CRAFT, OR DEPARTMENT UNIT IN A SINGLE PLANT.

5 A. IN GENERAL.

B. IN ABSENCE OF DISPUTE BETWEEN TWO OR MORE BONA FIDE UNIONS.

1. Proposed unit appropriate.

5.9 a. In general.

6 b. Industrial unit.

7 c. Unit industrial in scope, but excluding members of a craft.

8 d. Craft unit.

9 e. Multiple craft unit.

0 f. Departmental unit.

1 g. Unit comprising several but not all departments of a plant.

2 h. Unit comprising residual group.

0 i. Other type of unit.

2. Proposed unit rejected, or modified, or referred to election for determination.

a. Industrial unit.

0.1 (1)—In the absence of prior representation in subdivisions of the proposed unit.

In the presence of prior representation in subdivisions of the
posed unit.
epartmental unit.
dustrial unit comprising some but not all departments.
roposed heterogeneous or unconventional craft groupings.
Craft unit limited to craftsmen in several but not all departments.
Fragment of a traditional craft grouping.
Others.
her subdivisional unit.
HERE TWO OR MORE BONA FIDE UNIONS DISAGREE
TO SCOPE OF UNIT, ONE OR MORE REQUESTING AN
DUSTRIAL UNIT, AND ONE OR MORE A CRAFT UNIT
UNITS.
here other factors evenly balanced, wishes of members of craft
up normally determinative (the Globe doctrine).
here factors are not evenly balanced.
here factors favor appropriateness of craft unit, craft unit found
propriate notwithstanding contention of union urging industrial
it.
here factors favor appropriateness of industrial unit, craft unit
ims rejected.
ecial considerations.
here craft union shows no substantial membership among craft
ployees.
here the industrial union shows no substantial membership in the
posed industrial unit.
here proposed craft unit has never been historically considered as a
arate craft and does not constitute a functional group.
here industrial union and employer have entered into sole bargain-
contract covering an industrial unit which includes the proposed
ft.
here industrial union and employer have entered into sole bargaining
ntract covering an industrial unit which excludes the proposed
ft.
here craft unions have individually or jointly organized and bar-
ned on an industrial basis.
thers.
THER DISPUTES BETWEEN BONA FIDE UNIONS AS TO
COPE OF PLANT UNIT OR SMALLER UNIT.
general.
roposed department-wide units.
isputes as to scope of plant-wide units. [*See* §§ 101–151 (as to
clusion or inclusion of special classes of employees).]
MULTIPLE PLANT AND SYSTEM UNITS AMONG EM-
LOYEES OF A SINGLE EMPLOYER.
N ABSENCE OF DISPUTE BETWEEN TWO OR MORE
ONA FIDE UNIONS.
roposed unit appropriate.
nit comprising all plants of an employer or of a division of its
siness.
nit comprising one or more, but not all the plants of an employer
of a division of its business.
roposed unit modified or rejected.

Proposed unit appropriate.
Proposed unit rejected, modified, or referred to election.
OTHER EMPLOYEES.
Proposed unit appropriate.
Proposed unit rejected, modified, or referred to election.
EXCLUSION OR INCLUSION OF SPECIAL CLASSES OF EMPLOYEES.
EMPLOYEES ALLIED WITH MANAGEMENT. [*See* DEFINITIONS §§ 24–24.6 (as to the employee status of persons allied with management).]
Supervisory employees.
Excluded.
Included.
Employees intimately related to employer or officers thereof.
Excluded.
Included.
Confidential employees.
Excluded.
Included.
Stockholders.
Excluded.
Included.
Plant protection employees.
Excluded.
Included.
Others.
OFFICE AND CLERICAL EMPLOYEES IN INDUSTRIAL PLANTS.
Excluded.
Included.
Question of inclusion or exclusion referred to election among the clerical employees involved.
OTHER EMPLOYEES ON THE FRINGE OF THE UNIT.
PART-TIME, TEMPORARY, IRREGULAR, EXTRA, SEASONAL AND PROBATIONARY EMPLOYEES. [*See* INVESTIGATION AND CERTIFICATION §§ 61.9–65 (as to the eligibility of intermittent employees).]
PROPOSED EXCLUSIONS BASED SOLELY ON RACE OR SEX.

I. IN GENERAL—DETERMINATION OF UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

A. CONCLUSIVENESS OF PRIOR DETERMINATIONS.

1. *By Board.*

Nothing in the Act requires or supports the application of a principle analogous to that of the judicial doctrine of *res judicata* in matters involving the determination of the appropriate unit for collective bargaining purposes, but rather Section 9 (b) empowers the Board to decide in each case the appropriate unit, and its guide in so doing is "to insure the employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of this Act," and therefore a prior decision in regard to whether a certain unit of employees is appropriate for purposes of collective bargaining is a circumstance, but not a decisive one which the Board in the exercise of sound discretion will consider, should such question again present itself in a subsequent proceeding involving the representation of such employees. *Pacific Greyhound Lines*, 9 N. L. R. B. 557, 573-574.

See also: *Jones & Laughlin Steel Corp.*, 37 N. L. R. B. 366.

Decisions in which there was a material change in circumstances and a unit wider in scope was found appropriate:

R. C. A. Communications, Inc., 9 N. L. R. B. 915, 919, 920. (System-wide unit of a national communications industry found appropriate, notwithstanding prior determination that unit confined to "live traffic" employees in one metropolitan area was appropriate.)

Delaware-New Jersey Ferry Co., 30 N. L. R. B. 820, 834. (Unit comprising captains, mates, engineers, dockhands, oilers, firemen, bridgemen, and watchmen, on ferry boats in the water transportation industry, found appropriate notwithstanding prior determination that unit confined to engineers was appropriate.)

Borden Mills, Inc., 31 N. L. R. B. 767. (Unit comprising production and maintenance employees in the textile man-

ufacturing industry, including 3 categories of supervisory employees, found appropriate although these categories were excluded from the unit established in the prior determination.)

Decisions in which there was material change in circumstance, and a unit smaller in scope was found appropriate:

International Nickel Co., Inc., 7 N. L. R. B. 46, 49, 50. (Industrial unit exclusive of inspectors found appropriate notwithstanding the inclusion of such employees in unit established in prior determination.)

Wilson & Co., Inc., 25 N. L. R. B. 938. (Unit confined to chauffeurs and chauffeur luggers in the meat packing industry, found appropriate notwithstanding prior determination that a unit comprising all processing and operative employees was appropriate.)

Connor Lumber and Land Co., 27 N. L. R. B. 306. (Unit confined to production and maintenance employees in the lumber products manufacturing industry exclusive of railway employees of subsidiary owned and controlled by company, found appropriate, notwithstanding the inclusion of such employees in a unit established in a prior determination.)

Libbey-Owens-Ford Glass Co., 31 N. L. R. B. 243. (Where in a complaint proceeding, unit confined to one plant in the glass manufacturing industry, found appropriate notwithstanding prior determination, in a representation proceeding that a multiple-plant unit covering all company's operations was appropriate.)

Westinghouse Electric and Mfg. Co., 33 N. L. R. B. 97. (Employees at one plant of an electrical appliance manufacturer permitted to determine whether they should constitute a separate bargaining unit or be included in a two-plant unit established in prior determination.)

Jones & Laughlin Steel Corp., 37 N. L. R. B. 366. (Unit confined to unlicensed personnel in the water transportation industry exclusive of mates, found appropriate notwithstanding the inclusion of such employees in unit established in a prior determination.)

Merchants & Miners Transportation Co., 37 N. L. R. B. 1165. (Unit confined to licensed deck officers on one tugboat in the water transportation industry, found appropriate notwithstanding prior determination that a unit comprising all licensed deck officers of the company was appropriate.)

Fraim Lock Co., 39 N. L. R. B. 202. (Unit confined to molders, core-makers, and foundry employees in the lock manufacturing industry, found appropriate, notwithstanding prior determination that a unit comprising production and maintenance employees was appropriate.)

Pacific Gas & Electric Co., 40 N. L. R. B. 591. (Division-wide unit of an electric utility, found appropriate notwithstanding prior determination that a system-wide unit was appropriate.)

Decisions in which there was absent a material change in circumstance, and a unit identical in scope was found appropriate:

Bendix Products Corp., 15 N. L. R. B. 965. (Unit comprising policemen of an automobile and aircraft parts manufacturing industry found appropriate.)

Tennessee Copper Co., 25 N. L. R. B. 218. (Company-wide unit comprising employees in the mining and milling industry, found appropriate notwithstanding request of one of the unions involved for separate plant-wide units.) See also: *Inland Steel Co.*, 34 N. L. R. B. 1294.

Consumers Power Co., 25 N. L. R. B. 280. (Certain supervisory employees excluded from unit comprising employees of an electric and gas utility in accordance with prior determination, notwithstanding request of one of the organizations involved for their inclusion.)

Sorg Paper Co., 25 N. L. R. B. 946. (Single unit comprising production employees in both the paper mill and the bag division in the paper manufacturing industry, found appropriate notwithstanding respondent's request for separate units.)

Westinghouse Air Brake Co., 25 N. L. R. B. 1312. (Unit comprising production and maintenance employes of an air brake manufacturer, found appropriate.

Mt. Vernon Car Mfg. Co., 26 N. L. R. B. 413. (Unit comprising production and maintenance employees of a railroad car manufacturer, found appropriate.)

Niles Fire Brick Co., 27 N. L. R. B. 171. (Unit comprising production and maintenance employees of a firebrick manufacturer, with specified inclusions, found appropriate notwithstanding request of sole union involved for the exclusion of certain categories of employees.) See also: *S & W Cafeteria of Washington, Inc.*, 30 N. L. R. B. 1236. *Armour and Co.*, 32 N. L. R. B. 422.

Stonewall Cotton Mills, 36 N. L. R. B. 240.
Standard Felt Co., 42 N. L. R. B. 237.

National Distillers Products Corp., 28 N. L. R. B. 1260. (Single-plant unit comprising production employees of a distilled spirits manufacturer, found appropriate notwithstanding request by the company and one of the labor organizations involved for a three-plant unit.)

Bloedel-Donovan Lumber Mills, 30 N. L. R. B. 1227. (Unit confined to employees in the crib boom in the lumber industry, found inappropriate in view of prior determination that an industrial unit was appropriate.) See also: *Long-Bell Lumber Co.*, 31 N. L. R. B. 322.

Globe Newspaper Co., 31 N. L. R. B. 916. (Unit comprising editorial, maintenance, and commercial employees, and composing room boys and helpers, of a newspaper publisher, found appropriate, notwithstanding request of one of labor organizations involved for a unit confined to editorial and maintenance employees.)

Interlake Iron Corp., 38 N. L. R. B. 139. (Unit comprising employees in the iron and coal byproducts industry, with specified exclusions, found appropriate, notwithstanding request of company and one of the labor organizations involved for the inclusion of certain of the employees previously excluded; however, laboratory samplers previously excluded, included at request of all the parties.) See also: *Cudahy Packing Co.*, 38 N. L. R. B. 1009.

Post-Standard Co., 39 N. L. R. B. 1308. (Unit confined to city district managers and supervisors of newsdealers and street corner boys of a newspaper publisher, found inappropriate in view of prior determination that a unit comprising all outside circulation employees was appropriate.)

Richfield Oil Corp., 42 N. L. R. B. 175. (Unit comprising unlicensed employees in the water transportation industry, found appropriate.) See also: *General Petroleum Corp. of Calif.*, 42 N. L. R. B. 339.

Gibbs Gas Engine Co., 42 N. L. R. B. 272. (Unit comprising all employees in the shipbuilding industry, found appropriate notwithstanding request of several labor organizations involved for separate craft units.)

Decisions in which merits of appropriateness of proposed unit were not considered in prior determination establishing broader unit:

Hoffman Beverage Co., 8 N. L. R. B. 1367. (Units of firemen and operating engineers of a soft drink manufacturer and brewer, found appropriate, notwithstanding prior determination that a unit comprising production, maintenance, and delivery employees was appropriate.)

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668. (Longshoremen at three "exception" ports permitted to determine whether they should constitute separate bargaining units or part of a coast-wide unit established in prior determination.)

Bethlehem Steel Co., 39 N. L. R. B. 1230. (Patternmakers in the shipbuilding industry permitted to determine whether they should constitute a separate bargaining unit or part of a previously determined industrial unit.) See also: *Bendix Aviation Corp.*, 39 N. L. R. B. 81. *Bethlehem Steel Co.*, 40 N. L. R. B. 922. *Aluminum Co. of America*, 42 N. L. R. B. 772.

Decisions in which employees excluded from unit established in prior determination were permitted to constitute a separate bargaining unit:

Western Union Telegraph Co., 39 N. L. R. B. 1031. (Unit comprising employees at a car manufacturing and repairing of a national telegraph industry, found appropriate.)

Great Lakes Engineering Works, 40 N. L. R. B. 1254. (Unit comprising piece-work counters and timekeepers in the shipbuilding industry, found appropriate, notwithstanding company's contention that to permit such employees to constitute an appropriate unit and be represented by petitioner would, in effect, permit petitioner to enlarge the scope of the production and maintenance unit for which it had been previously certified.)

[*See* § 86–90 (as to units confined to special classes of employees).]

2. *By other governmental agencies.* [*See* JURISDICTION §§ 7, 15 (as to effect of State labor relations laws and proceedings thereunder on Board's jurisdiction).]

B. CONTENTIONS OF EMPLOYER-DOMINATED OR ASSISTED LABOR ORGANIZATIONS DISREGARDED.

The collective bargaining experience of a labor organization found to be company-dominated is not significant and

cannot be accorded weight as indicative of the employees' own desires concerning the definition of a unit appropriate for the purposes of collective bargaining. *Pure Oil Co.*, 8 N. L. R. B. 207, 216. See also:

Citizen-News, 8 N. L. R. B. 997, 1005.
Pittsburgh Plate Glass Co., 10 N. L. R. B. 1111, 1118.
Standard Oil Co., 25 N. L. R. B. 1190.
Tehel Bottling Co., 30 N. L. R. B. 440.
Norristown Box Co., 32 N. L. R. B. 895.

The contentions of an employer-assisted outside labor organization for a craft unit separate from an industrial unit were disregarded although ordinarily the Board has regarded as controlling the free choice of a majority of the employees in a well defined craft as to the form of organization they desire, when among other circumstances in the present case the respondent's conduct in influencing such choice precluded the application of this doctrine in the determination of the appropriate unit or units. *Serrick Corp.*, 8 N. L. R. B. 621, 643, enforced 110 F. (2nd) 29 (App. D. C.).

[*See* § 5 (as to the effect of inconsequential bargaining).]

C. UNIT COMPRISING SINGLE EMPLOYEE.

Although the Act creates the duty of an employer to bargain collectively, the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain, and the Act therefore does not empower the Board to certify where only one employee is involved. *Luckenbach Steamship Co., Inc., et al.*, 2 N. L. R. B. 181, 193. See also:

Schick Dry Shaver Co., 4 N. L. R. B. 246, 252.
Metro Goldwyn Mayer Studios, 8 N. L. R. B. 858, 864.
Joseph S. Finch & Co., Inc., 10 N. L. R. B. 898, 899, 900.
Trawler Maris Stella, Inc., 12 N. L. R. B. 415, 426.
Paramount Pictures, Inc., 13 N. L. R. B. 846.
RKO Radio Pictures, Inc., 13 N. L. R. B. 876.
Associated Banning Co., 19 N. L. R. B. 140.
Western Union Telegraph Co., 35 N. L. R. B. 251.
Rosenhirsch Co., 38 N. L. R. B. 619.

Merchants & Miners Transportation Co., 37 N. L. R. B. 1165. (Unit of two employees found appropriate, when two employees were required to perform the function in the normal situation, although only one employee was actively engaged at the time of the hearing, and the other was temporarily laid off.)

Crane Co., 41 N. L. R. B. 206. (Unit comprising order clerks and warehouse employees of a plumbing supplies company *held* inappropriate when all except one employee were temporarily assigned to their present duties within the unit because of a general decline in the company's operations due to a production limitation order.)

[*See* INVESTIGATION AND CERTIFICATION § 131 (as to the issuance of a certification of a representative when only one of several eligible employees voted).]

D. FACTORS CONSIDERED.

1. *In general.*

Under the terms of the Act, the Board, in determining the appropriate unit, attempts to insure to employees the full benefit of the right to self-organization and to collective bargaining. The chief object of the Board, therefore, is to join in a single unit only such employees, and all such employees, as have a mutual interest in the objects of collective bargaining. The appropriate unit selected must operate for the mutual benefit of all the employees included therein. To express it another way, the Board must consider whether there is that community of interest among the employees which is likely to further harmonious organization and facilitate collective bargaining. *Third Annual Report*, p. 174.

In attempting to ascertain the groups among which there is that mutual interest in the objects of collective bargaining which must exist in an appropriate unit, the Board takes into consideration the facts and circumstances existing in each case. *Sixth Annual Report*, p. 63.

There is no inflexible or universal rule, applicable to all industries and all situations within an industry, which points to a determination of the appropriate unit in all cases. In deciding, in each case, the unit appropriate for collective bargaining it is the statutory objective, hence the Board's function, "to insure to employees the full benefit of their rights to self-organization and to collective bargaining, and otherwise to effectuate the policies" of the Act. (Sec. 9 (b)). *Godchaux Sugars, Inc.*, 44 N. L. R. B. 874.

In setting up the unit appropriate for the purposes of collective bargaining, the Board, in each instance is guided by the surrounding circumstances, and decides the scope of the immediate bargaining unit to insure presently to all employees concerned the benefit of their right to self-

rganization under the Act. *Pacific Gas & Electric Co.*, 4 N. L. R. B. 665.

History, extent, and type of organization of employees involved.

hough Section 9 (b) of the Act vests in the Board discretion o decide in each case whether the unit shall be the employer unit, craft unit, plant unit, or a subdivision thereof, hat discretion must be exercised in a manner calculated to insure to employees the full benefit of their right to elf-organization and to collective bargaining, and otherwise to effectuate the policies of the Act." Accordingly, n determining the unit, the Board has given great weight o the desires of the employees themselves, especially as nanifested by efforts at self-organization. *Third Annual Report*, p. 163.

e form of self-organization presently existing, and the rules overning eligibility to membership in the labor organization which have engaged in organization in the field, aid in letermining the most effective method of collective argaining. *Third Annual Report*, p. 160.

ve traffic" employees located in New York metropolitan rea of an international communications system, *held* to onstitute an appropriate unit where: (1) the only effective rganizational activity has been among these employees, nd where (2) notwithstanding the fact that the organiza- on of all the employees of the communications system vas the ultimate goal of the organization that seeks to epresent them, these employees had no present desire to be racketed in a single unit with the other employees in the ommunications system, for these employees should not e denied the benefits of Act until the system as a whole was rganized. *R. C. A. Communications, Inc.*, 2 N. L. R. B. 109, 1115.

cific Gas & Electric Co., 44 N. L. R. B. 665. (In setting up he unit appropriate for the purposes of collective bargaining the Board in each instance, is guided by the surrounding circumstances, and decides the scope of the immediate argaining unit to insure presently to all employees concerned the benefit of their right to self-organization under he Act; consequently, opportunity for collective bargaining need not be denied employees until their union organization on a system-wide basis is accomplished; successful bargaining may be achieved on a less extensive scale for

groups of employees within operating sectors established by an employer for administrative efficiency.)

For additional decisions, *see*: §§ 52, 53, 75, 78.

Although it is within the authority of the Board pursuant to Section 9 (b) of the Act to find that a subdivision of employer, craft, or plant unit, constitutes an appropriate unit, and although the Board has entertained petitions for separate departmental representation of employees being organized on a plant-wide or industrial basis on the principle that organization of the employees has not yet been extended beyond such department, the Board will not set apart as an appropriate unit any subdivision or group of employees the nature of whose work is indistinguishable from that of other employees, or whose work is not functionally coherent or distinct; accordingly a unit confined to the radio program checkers in the editorial department of a magazine publisher, *held* inappropriate when they constituted an integral and indistinguishable part of the entire editorial department. *Triangle Publications, Inc.*, 40 N.L.R.B. 1330, 1332.

For additional decisions, *see*: §§ 31, 75.

For decisions in which contentions favoring a smaller unit were rejected and broad units found appropriate, where among other considerations, organization had been on a broader basis, *see*: §§ 32, 47, 74, 75, and 77.

For decisions in which contentions favoring a broad unit were rejected and a smaller unit was found appropriate when among other considerations, organization had not been extended to and/or conflicting claims of representation existed within the smaller units, *see* §§ 41.2, 76, and 78.

3. *History of collective bargaining.*

The recognition through an established course of dealing between an employer and his employees that a certain group of employees should be treated together for the purposes of collective bargaining is an important consideration in the determination of the appropriate unit. Collective bargaining is facilitated by adhering to the methods of the past, in the absence of any indication that a change in these methods has become necessary. *Third Annual Report*, pp., 160, 161.

"Controlling weight" was given to history of collective bargaining in determining that licensed and unlicensed personnel of a river towboat transportation company constituted separate appropriate units, when company and various representatives had carried on negotiations over

a number of years with such a separation consistently observed. *Hay Co.*, 40 N. L. R. B. 1002.

Acklin Stamping Co., 2 N. L. R. B. 872, 876–878. (In determining that the tool and die repair department and machine repair and maintenance department of metal stamping manufacturer constituted a single unit rather than separate units, past collective bargaining through single shop committee representing all the employees considered.)

National Distillers Products Corp., 28 N. L. R. B. 1260. (Although negotiations between company and rival union were conducted on a 3-plant basis, single plant unit proposed by petitioner, *held* appropriate, in view of Board's prior finding that such a unit was appropriate and since contracts with the company were consummated upon an individual plant basis.)

American Radiator & Standard Sanitary Corp., 35 N. L. R. B. 172. (Notwithstanding a contract signed by various craft unions, each of which purported to represent a limited group of the company's employees and had handled in the past its members' grievances by separate grievance committees, history of collective bargaining with the company found not to have developed upon a craft basis to establish the appropriateness of separate units urged by these union where: (1) the contract referred to the several signatory unions collectively as "acting as the collective bargaining units . . . hereinafter called the Union"; (2) the contract contained uniform provisions throughout for all employees; and (3) wage increases obtained after its execution were substantially plant-wide.) See also:

Todd-Johnson Dry Docks, Inc., 18 N. L. R. B. 973.
Border City Mfg. Co., 36 N. L. R. B. 678.
Arkwright Corp., 36 N. L. R. B. 687.
Boston Store of Chicago, Inc., 37 N. L. R. B. 1140.

American Warming & Ventilating Co., 38 N. L. R. B. 515. (Sheet metal workers of a heating equipment manufacturer, excluded from a unit comprising production workers, notwithstanding contention of one of the organizations involved that they should be included, for although an industrial unit including these employees would not be inappropriate, they were covered by an exclusive contract with the organization desiring their inclusion; none of the

parties attacked the validity of this contract nor did the contracting union waive any right accruing under it.)

Chrysler Motor Parts Corp., 38 N. L. R. B. 1379. (Plant protection and salaried employees of an auto parts distributing company, excluded from a unit comprising pickers, packers, or stockmen in the stock department of the company, when in a prior proceeding a unit similar in scope was found appropriate and they were expressly excluded from the contract entered into between the company and the representative certified in that proceeding.)

Phoenix Mfg. Co., 44 N. L. R. B. 1388. (17-year history of bargaining upon an industrial basis, during which time die sinkers were members of industrial union, participated in its bargaining conferences, and raised no objection to contracts signed between the company and the industrial representative; and failure of craft union for more than 16 years after company had recognized industrial union to seek to bargain with company in behalf of these employees, *held* to preclude establishment of a separate unit of die sinkers.)

Past history of collective bargaining on company-wide basis, *held* not persuasive in determining that employees of logging operations constituted an appropriate unit separate from milling employees, where the plants had been moved and substantial change in operations and conditions of employment had resulted. *Guistina Bros. Lumber Co.*, 41 N. L. R. B. 1243.

Remington Rand, Inc., 2 N. L. R. B. 626, 642, 643, modified 94 F. (2d) 862 (C. C. A. 2), cert. denied 304 U. S. 576. (Past bargaining by manufacturer of business and office equipment with employees of four of its plants as a group and subsequent extension of the bargaining agreement to employees of two other plants, considered in determining that employees in the six plants constitute an appropriate unit.)

Carnegie-Illinois Steel Corp., 37 N. L. R. B. 19. (Licensed mates included in a unit composed of licensed deck personnel, notwithstanding the fact that they were covered by a contract together with unlicensed personnel, in view of the fact that they were now required by law to be licensed.)

Bound Brook Oil-Less Bearing Co., 39 N. L. R. B. 880. (Foundry workers of a bearing manufacturer, found to constitute an appropriate unit, although the terms of a

contract purported to cover them, when among other considerations the contracting union waived all rights to represent them. See also: *Moore Drop Forging Co.*, 43 N. L. R. B. 673. *American Can Co.*, 43 N. L. R. B. 838.

Thonet Bros., Inc., 45 N. L. R. B. 582. (Craft unit in furniture manufacturing industry, *held* appropriate although bargaining following an industrial pattern had existed, when present bargaining was on a craft basis and organization of the union involved was confined to craft units.)

Where company had bargained for a period of 5 years with a nonmembership labor organization consisting of representatives from each department of the company, but had not specifically accorded it recognition as representative of the employees in the agreement which was executed with that organization, *held* that such history did not establish a pattern of collective bargaining on an industrial basis that would render proposed craft unit inappropriate.

Endicott Forging & Mfg. Co., 29 N. L. R. B. 218.

Condenser Corp. of America, 22 N. L. R. B. 347, 456. (Unit almost coextensive with that embodied in contract with employer-assisted labor organization, found under the circumstances, to be appropriate, when requested by petitioning unassisted labor organization.)

Kroehler Mfg. Co., 27 N. L. R. B. 1209. (In view of the unsuccessful results of organization and bargaining by the petitioning union on a basis of a unit more extensive than the one alleged and the intervention of a substantial period since the attempt to organize and bargain on such basis, Board found that there was no history of collective bargaining between the company and the union which would establish the appropriateness of a collective bargaining unit more extensive than the one alleged.)

Union Switch & Signal Co., 30 N. L. R. B. 922. (Bargaining history under alleged agreement, *held* not to have stabilized and defined the unit, and consequently, not determinative, because of company's unilateral power to amend any provision of the agreement, including that of the unit.)

Pidgeon Thomas Iron Co., 32 N. L. R. B. 295. (Evidence of numerous conferences between the company and one of the unions, *held* not sufficient to justify unit proposed by that union, when no agreement was reached and no written contracts entered into, and the union had not claimed in conferences to represent all the employees which it now sought to include in the unit it proposed.)

General Petroleum Corp. of Calif., 39 N. L. R. B. 1180. 42 N. L. R. B. 1260. (Statements of plant policy and rules and regulations resulting from conferences between representatives of the company and of the employees, which had assumed plant-wide proportions, found not to establish collective bargaining relations between employer and employees of a character to preclude the establishment of a smaller bargaining unit which might otherwise be appropriate.)

Yale & Towne Mfg. Co., 44 N. L. R. B. 1259. (History of collective bargaining, *held* not determinative of unit question concerning disputed categories of employees, where company and bargaining union had not entered into a written agreement, and consent election, pursuant to which bargaining negotiations had occured, had been found by Board in previous decision and order to be no longer of controlling force because of employer's interference with that election.)

[*See* INVESTIGATION AND CERTIFICATION §§ 22–31 (as to forms of contracts not precluding the determination of a question concerning representation).]

4. *History, extent, and type of organization and history of collective bargaining of employees in other plants of employer, or of other employers in same industry.*

The fact that collective bargaining has followed certain forms elsewhere in the industry involved tends to indicate that such forms will be successful with regard to the employer and the employees involved in the particular case. *Third Annual Report*, p. 161.

The form which self-organization has taken among the employers involved in a proceeding, or among workers similarly situated, is one of the most significant factors in determining the appropriate unit. Self-organization which has resulted in successful collective bargaining in the past can be relied on as a guide for future collective bargaining. *Third Annual Report*, p. 160.

Decisions in which history, extent, and type of organization and history of collective bargaining of employees in other plants of employer was considered:

Westinghouse Electric & Mfg. Co., 27 N. L. R. B. 605. (Proposed unit comprising production and maintenance employees at one of the plants of an electrical equipment manufacturer found appropriate, when among other circumstances, the unit accorded substantially with the unit which the Board found to be appropriate in other cases involving employees in other plants of the company.)

Curtiss Wright Corp., 33 N. L. R. B. 490. (Multiple-plant bargaining at other divisions of an aircraft company considered, among other circumstances, in finding appropriate a single unit comprising two plants of the company.)

United States Envelope Co., 38 N. L. R. B. 1105. (Machine construction department employees included in a unit comprising production and maintenance employees of an envelope manufacturing company, when among other considerations, they were included in a contract between the company and another union covering a similar unit at another of the company's plants.)

American Smelting & Refining Co., 42 N. L. R. B. 736. (Absence of history of collective bargaining in plant in question, coupled with collective bargaining history at other of company's plants on an industrial basis providing for single production and maintenance units, considered with other factors in establishing a unit confined to production employees and permitting maintenance employees to determine whether they should constitute a separate unit or be included in a single unit with production employees.)

Bridgeport Brass Ordnance Plant, 45 N. L. R. B. 84. (Absence of history of collective bargaining at plant involved and bargaining history upon an industrial basis at another of company's plants considered, along with the interdependence of production and maintenance departments, and fact that maintenance employees did not constitute a coherent group, in finding appropriate an industrial unit and finding inappropriate a unit confined to maintenance employees.)

Decisions classified according to industry in which history, extent, and type of organization and history of collective bargaining of employees within the industry involved was considered:

APPAREL

Unit confined to cutters of a garment manufacturer, *held* appropriate notwithstanding employer's contention that all production employees should be included in the unit and notwithstanding Board's contrary findings in other cases, when cutters were under separate supervision and were paid upon a different basis from other employees, had indicated their desire for a separate bargaining unit by going on strike upon respondent's refusal to deal with

their representative; and when there was no history of collective bargaining for respondent's employees, union organization had not extended beyond the cutter's, and within the geographic vicinity of respondent's plant, cutters had a long history of self-organization. *Ulman, Inc.*, 45 N. L. R. B. 836.

Justin McCarty, Inc., 36 N. L. R. B. 800. (Unit confined to cutters of a garment manufacturer, found inappropriate, when among other considerations the union had organized and had contracts within the industry on an industrial basis.) See also: *Morten-Davis Co.*, 36 N. L. R. B. 804. *Kohen-Ligon-Folz Inc.*, 36 N. L. R. B. 808.

Jacobs Bros., Inc., 38 N. L. R. B. 424. (Unit confined to pressers, at one plant of a garment manufacturer, found inappropriate when among other considerations history of organization within the industry indicated that pressers had not been organized separately.)

Baking

Bargaining history in the baking industry on a single unit basis, considered in determining that a single unit comprising production workers in several departments of a bakery products manufacturer constituted an appropriate unit, as contended for by one of the organizations involved, and that a separate bake shop unit, as contended for by a rival organization, was inappropriate. *United Biscuit Co. of America*, 33 N. L. R. B. 995.

Loose-Wiles Biscuit Co., 44 N. L. R. B. 865. (Bargaining history of biscuit industry generally and at other plants of the company which included production and maintenance employees in a single unit, considered in finding inappropriate a unit confined to maintenance employees.)

Insurance

Feasibility of a unit comprising one State within a territorial division of an insurance company indicated by fact that agents of other insurance companies were successfully engaged in collective bargaining upon a State-wide basis. *Metropolitan Life Insurance Co.*, 43 N. L. R. B. 962.

Lumber

Mill and wood employees, respectively, of a company engaged in logging and manufacturing lumber, *held* to constitute separate appropriate units, notwithstanding requests of

several craft unions for separate craft units, when the history of collective bargaining with the company, and within the industry as a whole had been industrial in scope. *Weyerhaeuser Timber Co.*, 29 N. L. R. B. 571. See also: *Long-Bell Lumber Co.*, 29 N. L. R. B. 586. *Polson Logging Co.*, 31 N. L. R. B. 328.

PAPER-MAKING

Employees engaged in the paper-making department and the remainder of the employees engaged in the production and maintenance department of a paper manufacturer, *held* to constitute appropriate units where these two distinct divisions in the paper-making process had been recognized in the organization of the workers in the industry, in the jurisdiction of the labor organization functioning throughout the industry, and in the organizational campaign and respective jurisdictions of the labor organizations existent in the plant involved. *Mosinee Paper Mills Co.*, 1 N. L. R. B. 393, 399. See also: *Dunn Sulphite Co.*, 42 N. L. R. B. 1104.

PRINTING, PUBLISHING, AND ALLIED TRADES

The functional interdependence of various departments of a newspaper and the greater effectiveness of a larger unit makes the employer unit appropriate notwithstanding the previous bargaining by the labor organization involved with other newspaper companies upon the basis of editorial employees as a separate unit. *Daily Mirror, Inc.*, 5 N. L. R. B. 362, 368.

"Globe Doctrine" applied in determining whether editorial department employees of a newspaper, *held* to constitute a separate unit or whether together with all employees they constitute an industrial unit, where notwithstanding functional interdependence of all departments in the newspaper industry, and although the history of bargaining had not been such as to indicate the greater feasibility of one unit rather than the other, editorial employees had in the past organized and bargained collectively as a separate unit. *Boston Daily Record*, 8 N. L. R. B. 694, 701, 702. Cf. *New York Evening Journal*, 10 N. L. R. B. 197, 207.

Composing room employees of an employer owning, printing, and publishing a newspaper, *held* to constitute a unit appropriate for the purposes of collective bargaining where the history of collective bargaining in the printing trade

showed that composing room employees had been traditionally organized as a separate group, and the contention of an organization found to be company-dominated that all of the mechanical employees constitute a single unit cannot be taken into account. *Citizen-News Co.*, 8 N. L. R. B. 997, 1005.

Western Tablet & Stationery Co., 31 N. L. R. B. 597. (Organization of printing industry which was almost universally along craft lines considered in determining that (1) composing room employees (2) pressroom employees and (3) binding employees of a stationery equipment manufacturer constituted separate craft units.) See also *Lightner Publishing Corp.*, 12 N. L. R. B. 1255; (Two units confined to composing room employees and pressroom employees found appropriate.)

Employees in the advertising department of a newspaper company included in unit composed of all employees notwithstanding contention of one of the labor organizations involved that such employees constituted a separate unit, where they formed no group distinct in employee interest; the work of all did not fall within a well-defined craft, but was diverse; there was no history of collective bargaining either as to the newspaper in question or as to the newspaper industry, which would extend such advertising workers an independent position; and in previous cases involving newspaper companies, the Board had considered employees in the advertising department a constituent part of a larger unit. *Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1278. See also: *New York Evening Journal, Inc.*, 10 N. L. R. B. 197, 206, 207.

Maskers employed by newspaper included in unit of all employees notwithstanding contention of craft labor organization that it had jurisdiction over this group, where it appeared that those engaged in masking also have duties in the line of commercial artists, and it was only the process of masking and not the employees which the craft organization claimed. *New York Evening Journal, Inc.*, 10 N. L. R. B. 197, 212. See also: *Indianapolis Times Publishing Co.*, 8 N. L. R. B. 1256, 1260.

Previously determined unit (15 N. L. R. B. 953) consisting of editorial, maintenance, and commercial employees, and composing room boys and helpers *held* appropriate although petitioner who requested such a unit in a prior proceeding

and had lost prior election, sought a smaller unit composed of editorial and maintenance employees, where the competing organization desiring an election in the previously determined unit had organized upon the basis of such a unit; where there was ample precedent throughout the industry for joint bargaining on behalf of commercial and editorial employees; and where all parties agreed upon the ultimate desirability of such a unit. *Globe Newspaper Co.*, 31 N. L. R. B. 916. See also: *Triangle Publications Inc.*, 45 N. L. R. B. 408.

Entire editorial department of a newspaper publication, *held* an appropriate unit, in view of functional integration and pattern of organization in the industry. In the absence of history of self-organization and collective bargaining demonstrating feasibility of proposed unit, consisting only of so-called professional staff members in editorial department of newspaper from which clerks, librarians, stenographers, messengers and the like would be excluded, such unit was found inappropriate, considering the above-mentioned history of organization in the industry, and the difficulty of defining proposed unit in terms of function or skill in the light of numerous individual borderline cases. *New York Times Co.*, 32 N. L. R. B. 928.

In a unit comprising all employees contributing directly to the operation of presses in a printing industry, various categories of employees which the company desired excluded therefrom, included, when union had contracts with all similar companies in same vicinity including such employees in a similar unit. *Chicago Rotoprint Co.*, 45 N. L. R. B. 1263.

SHIPBUILDING

History of collective bargaining in shipbuilding industry on an industrial basis considered in determining the appropriateness of an industrial unit and that carpenters and joiners should be included therein. *Jacobs, Inc.*, 32 N. L. R. B. 646.

Bethlehem Fairfield Shipyard, Inc., 39 N. L. R. B. 140. (Bargaining contracts with other shipbuilding firms in vicinity and throughout country which covered an industrial bargaining unit and included truck operators, considered along with other factors, in determining that a unit limited to truck drivers was inappropriate.)

STEEL

A unit confined to "electrical workers" in the six plants of a steel manufacturer, *held* inappropriate, when among other reasons self-organization of employees and collective bargaining within the company and steel industry as a whole had been on an industrial and multiple-plant basis consonant with the integrated nature of the industry, and a bargaining unit which conformed to the nature of the industrial operation involved, and which gave full recognition to the form of self-organization and practice of collective bargaining adopted by the employees engaged in such operation, would best insure to the employees the full benefit of their right to self-organization and collective bargaining as the Act commands. *Tennessee Coal, Iron & Railroad Co.*, 39 N. L. R. B. 617, 626. See also: *Hamilton Foundry & Machine Co.*, 41 N. L. R. B. 1001. (Unit confined to iron pourers found inappropriate.)

TEXTILE

Notwithstanding craft organizations' maintenance of formal separate identities, Board considered, in finding inappropriate crafts units of a textile manufacturer, the highly integrated nature of textile milling operations as well as the industrial form of organization and collective bargaining which had existed in the area for almost a half century. *Howard Arthur Mills*, 42 N. L. R. B. 518. See also: *Border City Mfg. Co.*, 36 N. L. R. B. 678. *Arkwright Corp.*, 36 N. L. R. B. 687.

TRANSPORTATION, COMMUNICATION, AND OTHER PUBLIC UTILITIES

Licensed marine engineers of a steamship company, *held* to constitute an appropriate unit where the national labor organization involved has entered into agreements with employers representing about 95 percent of the shipping industry within the relevant geographic area on behalf of such employees. *Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 282, 286.

Inter-Island Steam Navigation Co., Ltd., 34 N. L. R. B. 132. (In determining that separate department units comprising (1) unlicensed employees in the engine room and (2) employees in the stewards department of the company's ships, Board considered among other factors, the fact that the

petitioners requesting the above units had entered into contracts with other shipping companies recognizing them as exclusive bargaining representatives in such units.)

Merchants & Miners Transportation Co., 37 N. L. R. B. 1165. (Fact that it was customary in the shipping industry to treat licensed personnel on tugs as separate units from personnel on oceangoing vessels, considered in finding that deck officers on one of the company's tugs constituted an appropriate unit.)

Tide Water Associated Oil Co., 38 N. L. R. B. 582. (Fact that among steamship companies generally, the deck, engine, and radio officers had each been represented in a separate unit, considered in finding that they should not be combined in a single unit.)

Unit comprising all employees engaged in the operation and maintenance of a pipe line found appropriate when, among other considerations, organization of other pipe line systems had been on a system-wide or Nation-wide basis. *Houston Pipe Line Co.*, 28 N. L. R. B. 301.

Separate terminal units at 4 of the 12 terminals of a motor carrier rather than system-wide unit found appropriate when, among other considerations, contracts with other motor carriers had been upon a terminal basis. *Rutherford Freight Lines, Inc.*, 35 N. L. R. B. 1322.

Blue Ribbon Lines, 43 N. L. R. B. 381. (Fact that petitioner had a contract with a nearby competitor of the company engaged in motor transporation, which covered operators and maintenance men, indicated that a similar unit would be appropriate for company despite petitioner's request for the exclusion of maintenance men.) Cf. *Virginia Electric & Power Co.*, 45 N. L. R. B. 1313. (Unit confined to operators found appropriate.)

Collective bargaining on system-wide basis in other utility companies considered in determining that a system-wide unit of an electric utility and not three separate units constituted an appropriate unit. *Pennsylvania Edison Co.*, 36 N. L. R. B. 432.

5. *Eligibility of the employees for membership in union or unions involved, or in other unions.*

The rules of eligibility to membership in the unions which the employees form or join constitute one of the clearest manifestations of the manner in which they desire collective bargaining to take place. If such organizations are formed of the employees' free will, the qualifications for member-

ship therein reflect the judgment of the employees as to the appropriate unit for collective bargaining. However, it is clear that the Board cannot be bound in determining the appropriate unit by the rules established by the labor organizations in the field. Those rules constitute only one of the factors which the Board considers in making its decisions. *Third Annual Report*, p. 167.

Employees will not be excluded from a unit upon racial considerations absent a showing of differentiation in functions which would warrant their exclusion; accordingly, when no such differentiation was shown between the colored employees and remaining white employees they were included in the unit notwithstanding that the union, the sole labor organization involved, did not admit them to membership. *Interstate Granite Corp.*, 11 N. L. R. B. 249.

[*See* § 151 (as to proposed exclusions based solely on race or sex).]

Company engaged in manufacturing grain products desired the exclusion of certain "green card" employees from a production unit who had not been employed by the company for 6 months within any 12-month period and who did not receive under the company's personnel practices a guarantee of a minimum number of hours of work, wages, and benefits, and the sole union involved which did not admit such employees to membership desired their exclusion, *held* that neither the company's personnel practices nor the union's eligibility rule was determinative of the issue, since production employees may not be arbitrarily classified for purposes of the appropriate collective bargaining unit so as to exclude from the unit some employees doing the same kind of work as those included in the unit; accordingly, the Board included such employees in the unit since they performed work substantially the same as that of other production workers. *Quaker Oats Co.*, 24 N. L. R. B. 589.

Tovrea Packing Co., 12 N. L. R. B. 1063, 1083. (Eligibility of employees in nearly all departments of a meat packer to membership in charging union considered among other circumstances in finding inappropriate a unit confined to employees of specified departments.)

American Granite Finishing Co., 27 N. L. R. B. 1016. (Board found it unnecessary to decide whether the union's constitution provides for admission to membership of all disputed

categories of employees, when it had previously held that the appropriate unit might include employees whom the union did not accept as members.)

Powerhouse employees excluded from a production and maintenance unit of a paint manufacturer, when among other considerations they were eligible to membership in other labor organizations readily accessible to them. *Acme White Lead & Color Works*, 29 N. L. R. B. 1158.

Booth & Co., 10 N. L. R. B. 1491, 1497. (Teamsters excluded from a unit of employees of a fish cannery where they were ineligible for membership in the labor organization seeking their exclusion, but were eligible for membership in an affiliate of the labor organization which would include them, and a number of them were members of such affiliate.)

Western Union Telegraph Co., 36 N. L. R. B. 634. (Plant-department employees in one of the metropolitan offices of a telegraph company, excluded from an industrial unit notwithstanding desire of company for their inclusion, when they were excluded from membership in the petitioning union, and were being organized by a rival union.)

National Laundry, Inc., 36 N. L. R. B. 1204. (Eligibility of clerical employees in a labor organization other than petitioning union, considered among other factors in excluding them from a unit comprising all employees of a laundry and dry cleaning establishment.)

Savannah Electric & Power Co., 38 N. L. R. B. 47. (Fact that employees in the transportation department of an electric utility company were not eligible to membership in a union which sought to represent all the other operating departments and the fact that they were eligible to membership in another union which was presently engaged in organizational activities, considered in excluding employees in the transportation departments of a unit comprising all the other operating departments.)

Atwood Machine Co., 38 N. L. R. B. 1270. (Fact that several crafts were eligible to membership in craft union and not organized by sole industrial union involved considered in excluding them from unit industrial in scope.)

Bagley & Sewall Co., 39 N. L. R. B. 67. (Fact that employees in the foundry of a tool manufacturer were eligible to membership in an organization other than the petitioner which desired their exclusion, considered in excluding them from a unit comprising machine-shop employees.)

Columbian Bronze Corp., 39 N. L. R. B. 156. (Pattern makers excluded from a production and maintenance unit of a marine appliance manufacturer where petitioner desired their exclusion because they were eligible for membership in a craft union and were within the jurisdiction of another affiliate of the same parent organization.)

Seagrave Corp., 40 N. L. R. B. 76. (Employees in metal-polishing department of a fire equipment manufacturing company, excluded from production unit at request of only union involved when they were eligible for membership in another affiliate.)

Grower-Shipper Vegetable Assn. of Central Calif., 43 N. L. R. B. 1389. (Truck drivers excluded from a unit of employees of a vegetable packer when they were ineligible to membership in the labor organization seeking their exclusion, and were sought to be excluded from the unit by that organization because of their eligibility in another labor organization and its desire to avoid a jurisdictional controversy.)

Notwithstanding sole union's desire not to represent certain employees if they were in fact members of another union, *held* that mere membership in another union does not provide a proper basis for excluding from the appropriate unit employees who would otherwise come within it; accordingly, telephone operators and telegraph clerks were included in a unit comprising office, clerical, secretarial and accounting employees in the motion picture industry since they were clearly office workers. *Warner Bros. Pictures, Inc.*, 35 N. L. R. B. 739.

Hart & Cooley Mfg. Co., 30 N. L. R. B. 1119. (Employees eligible for membership in other union affiliated with parent organization of petitioning union included in unit over protest of sole union involved when unit proposed was a broad industrial one and other unions had not sought to organize employees in question.)

Swift & Co., 41 N. L. R. B. 1251. (Rival union's contention that since employees which petitioner and company desired to include in bargaining unit were eligible to membership in certain craft unions affiliated with its parent organization and were not eligible to membership in rival union, they should be excluded, *held* not persuasive, where no craft union had claimed the right to represent them and rival union did not wish to participate in the event an election was ordered in the proceeding.)

rs Roebuck & Co., 42 N. L. R. B. 1037. (Ineligibility of a roup of employees in petitioning union and their eligibility o membership in another organization affiliated with the ame parent organization found not to warrant separating hem from employees within the proposed unit, when they erformed similar duties and no other union sought to epresent them.)

Loew's Inc., 38 N. L. R. B. 602; *Columbia Pictures Corp.*, 8 N. L. R. B. 608. (Board *held* stipulation for exclusion f "persons eligible to membership in . . . labor organizaons other than the petitioning union," proper, subject to he interpretation that it referred to persons who were epresented in a separate unit under an exclusive recogniion contract between the companies and a labor union ther than the petitioner.)

hough employees in several of the excluded departments f an oil well equipment manufacturer were eligible to embership in the sole union involved, they were excluded ver company's objection when union had not attempted o organize them, employees in these departments had not equested union to represent them, and no other labor rganization sought to represent employees of the company n a broader basis. *Bethlehem Supply Co.*, 40 N. L. R. B. 37.

§ 4 (as to proposed unit constituting part of the employes of an employer in the absence of organization on a roader basis).]

tioner's contention that it did not desire, and by its ylaws was not permitted, to organize cafeteria employees utside District of Columbia, *held* not to preclude inclun of such employees in unit of employees within the istrict, when union's constitution provided that its embership should include workers in and around the istrict, and when the exclusion of such employees would ave them unrepresented. *Welfare Assn. of the U. S. ept. of Agriculture*, 45 N. L. R. B. 285.

Ballantine & Sons, 33 N. L. R. B. 374. (Unit comrising bottle beer salesmen in New York metropolitan rea exclusive of the New Jersey area found inappropriate, hen there existed a community of interest between the lesmen in both areas and contrary to the claim of the le labor organization involved charter of the union ontained no jurisdictional limitation to the area proposed.)

.5 6. *Agreements.*

The fact that all of the parties to a proceeding are agreed as to the extent of the unit has usually been treated by the Board as decisive. However, the mere absence of a contention does not require the Board to accept the unit assumed by the parties to be appropriate. *Third Annual Report*, p. 159.

General Motors Corp., 27 N. L. R. B. 1196. (Suggestion by the company that the words "hourly rated" be used in the description of all employees within a unit of production and maintenance employees upon the scope of which the parties were apparently in agreement not followed by the Board, where it appeared that the use of such words might prejudice the course of future bargaining between the company and the union.)

Sbicca, Inc., 30 N. L. R. B. 60. (Unit stipulated by rival labor organizations comprising production employees, exclusive of supervisory and clerical employees, clarified with respect to "working foremen" who were included in the unit when both organizations admitted them to membership.)

Hart & Cooley Mfg. Co., 30 N. L. R. B. 1119. (Substitute leaders who replaced leaders when absent because of illness or vacation included in unit despite stipulation that they should be excluded from unit if they were actually replacing leaders on eligibility date agreed upon by the parties.)

Yates-American Machine Co., 40 N. L. R. B. 519. (Stipulated unit which parties sought to exclude employees in the active military service or training, modified insofar as it deprived these persons of the right to vote, since Board has held that they should be eligible to vote, even though not working during the pay-roll period selected as determinative of eligibility, subject to their appearance in person at the polls.)

Lewittes & Sons, 40 N. L. R. B. 43. (Although the Board in the original decision had included certain employees in a production unit when parties stipulated that they should be included and the record failed to disclose their duties and relations to ordinary production employees, they were excluded following a further hearing, when the record disclosed that they were supervisory employees.)

Bendix Aviation Corp., 40 N. L. R. B. 376. (Stipulated unit accepted in all respects except that indentured apprentices

were included in the unit comprising essentially production employees.)

Past desires of employees evidenced by prior agreement of parties as to the appropriate unit in resolving previous representation disputes by a consent election or cross check, considered as a factor by the Board in its determination as to the appropriate unit:

Tennessee Coal, Iron & Railroad Co., 39 N. L. R. B. 402. (Production and maintenance employees at recently acquired plant of a steel manufacturer found appropriate notwithstanding contention of one of the labor organizations involved that all of the company's plants constituted an appropriate unit, when among other circumstances, pursuant to agreement of the parties, a consent election had previously been conducted within a similar unit.)

Lindsay Light & Chemical Co., 40 N. L. R. B. 847. (Production and maintenance employees in the chemical and mantle divisions of a chemical manufacturer found to constitute an appropriate unit notwithstanding company's contention that each of the divisions should constitute a separate unit when, among other circumstances, pursuant to agreement of the parties, a consent election had previously been conducted within a similar unit.)

Ellis-Klatscher & Co., 40 N. L. R. B. 1037. (In an 8 (5) proceeding all employees in the warehouse of a wholesale merchandiser, found appropriate notwithstanding company's contention that certain categories of employees were improperly included in the unit pursuant to a cross check when, among other circumstances, company had acquiesced in such unit determination as evidenced by its subsequent negotiations with the union.)

Standard Felt Co., 42 N. L. R. B. 237. (Production and maintenance employees of a felt manufacturer, found appropriate notwithstanding company's contention that maintenance employees should be excluded from the unit, when among other considerations, maintenance employees were included with the production employees in a prior consent election counducted by the Board.)

7. *Skill, wages, work, and working conditions.*

The establishment of units for specially skilled workers or their exclusion from the unit found to be appropriate for the balance of the company's employees lies in the fact that their organization along craft lines is an outgrowth of the identity of problems confronting those engated in a common

pursuit and the fact that generally the wages, hours, and working conditions of skilled craftsmen are different from those of other employees of the same employer, thus tending toward special treatment in collective bargaining. *Third Annual Report*, pp. 178, 179.

Edw. E. Cox, Printer, Inc., 1 N. L. R. B. 594, 597, 598. (Printing pressmen and assistants whose work, skill, hours, and conditions of employment differed greatly from those of the other employees of a printer and publisher constituted an appropriate unit separate and apart from such other employees.)

General Dry Batteries. Inc., 27 N. L. R. B. 1021. (Unit of machine-shop employees limited to skilled craftsmen and their apprentices appropriate since their work was of a substantially different character from that of other employees in the machine shop.)

Capital City Products Co., 28 N. L. R. B. 1249. (Powerhouse employees of a food products manufacturer, *held* to constitute a separate unit where among other considerations they were more skilled and received a higher rate of pay than other employees.)

Nevada Consolidated Copper Corp., 38 N. L. R. B. 1346. (Unit composed of electricians at the mining operations of a copper mining company held inappropriate, where among other considerations, there was no difference in their skill and that required of electricians at company's reduction plant, and where both groups were paid on the same wage scale.)

May Department Stores Co., 39 N. L. R. B. 471. (Fact that duties of shoe salesmen and remaining employees of a retail department store were substantially different and required different skills, considered in determining the appropriateness of a unit of shoe salesmen separate from remaining employees.)

Phelps Dodge Corp., 40 N. L. R. B. 180. (Two units, one composed of engineers, motormen, firemen, hostlers, and hostler helpers, and the other composed of brakemen, yardmen, switchmen, switchtender,s lookout men, and dispatchers, *held* appropriate despite contention of rival union that only a plant-wide unit was appropriate and despite the fact that there was some interchange of employees, when the skill required in the performance of the work of train-service employees differed in degree and kind from that required in other mine operations.)

Simpson Logging Co., 40 N. L. R. B. 1180. (The fact that the kind and degree of skill required of employees of the re-manufacturing plant of a lumbering industry, differed from that of employees in company's other operations, considered in determining that such employees constituted an appropriate unit.)

Allied Chemical & Dye Corp., 40 N. L. R. B. 1351. (Highly skilled nature of "welders" work and their differences in wages and supervision from remaining production employees considered in permitting them to determine whether they should constitute a separate unit or part of an industrial unit.) See also: *Patterson-Kelley Co., Inc.*, 38 N. L. R. B. 1229. *Truck Welding Co., Inc.*, 43 N. L. R. B. 206. *Walworth Co., Inc.*, 45 N. L. R. B. 926.

Strong, Hewatt & Co., Inc., 41 N. L. R. B. 1166. (The fact that special skill was required of weavers considered among other circumstances in permitting them to determine whether they should constitute a separate bargaining unit or be part of a plant-wide unit.)

General Electric Co., 42 N. L. R. B. 833. (Unit composed of draftsmen of an electrical equipment manufacturer, *held* appropriate where among other considerations they had to possess a certain degree of skill and experience to perform their duties efficiently.)

Philadelphia Terminals Auction Co., 44 N. L. R. B. 454. (Special skill, training, and apprenticeship of printing-department employees and the dissimilarity between their working conditions and those of other employees, considered among other circumstances in finding that such employees constituted a separate bargaining unit.)

Montgomery Ward & Co., Inc., 44 N. L. R. B. 694. (Skilled craftsmanship of engineers, fireman, and maintenance men at a mail order house, considered among other circumstances in finding appropriate a separate bargaining unit comprising such employees.)

Tennessee Coal, Iron & R. R. Co., 45 N. L. R. B. 423. (Pattern makers of a steel manufacturer, who constituted a clearly indentifiable skilled craft, permitted to determine whether they should constitute a separate bargaining unit or be included in a unit with remaining employees.) See also: *Oil Well Supply Co.*, 45 N. L. R. B. 607.

Permanente Metals Corp., 45 N. L. R. B. 931. (In determining that all laboratory employees of magnesium producer could properly constitute a separate appropriate

bargaining unit or be part of an industrial unit embraced by an existing contract with the rival union which purported to cover these employees but in fact did not and was held not to be a bar to the proceeding, the Board considered the fact that the laboratory was in a separate building and under control of supervisors having no supervision over the rest of the plant, laboratory employees were highly skilled and educated chemists and technicians using special scientific tools and equipment, spent about 25 percent of their working time in the plant in connection with chemical problems, were hired by laboratory supervisors and not through contracting union agencies as were employees covered by the contract, handled their own grievances, had working conditions and safety problems different from the rest of the plant, and had few transfers, which were permanent in nature.)

Cf. *Sheffield Steel Corp. of Texas*, 43 N. L. R. B. 956. (Evidence indicating that crane operators and boiler tenders of a steel manufacturer did not comprise a highly skilled craft having interests apart from those of other production employees considered, with past history of collective bargaining upon an industrial basis and the functional coherence of processes involved in the production of steel, in finding inappropriate a unit confined to such a group.)

Bridgeport Brass Ordnance Plant, 45 N. L. R. B. 84. (Fact that production and maintenance departments were closely related and interdependent and that maintenance employees did not possess any greater degree of skill than other employees and did not comprise a coherent bargaining group, considered among other circumstances in finding appropriate an industrial unit and finding inappropriate a separate unit of maintenance employees.)

Tennessee Coal, Iron & R. R. Co., 45 N. L. R. B. 423. (Proposed units of electrical workers and machinists found inappropriate and petitions filed by respective petitioners in behalf of such employees, dismissed, when among other considerations such employees did not constitute an identifiable craft group having special interests apart from other employees.)

The fact that various employees are paid at the same rate, and that their working conditions are much the same tends to indicate that they constitute a single unit; conversely, a substantial difference in wage rates, or in working conditions

generally, militates against a single unit. *Third Annual Report*, pp. 177, 178.

Harbor Boat Building Co., 1 N. L. R. B. 349, 352, 353. (Carpenter, caulkers, and joiners in the woodworking department of an employer engaged in repairing and building wooden boats constituted a unit appropriate for collective bargaining where, among other things, there was considerable divergence in the basic rate of pay and skill between the employees in question and other employees of the employer.)

Merchants & Miners Transportation Co., 37 N. L. R. B. 1165. (Fact that working conditions and rates of pay of licensed deck officers on tugs were different from those on ocean-going vessels considered in finding that deck officers on one of the company's tugs constituted an appropriate unit.)

Western Union Telegraph Co., 39 N. L. R. B. 287. (Fact that cable department employees of a company operating a national telegraph system were paid on a much higher wage scale than domestic employees and had a system of seniority apart from them, considered in determining that the cable department employees constituted a separate unit.)

Tennessee Coal, Iron & R. R. Co., 39 N. L. R. B. 402. (Fact that the labor used at a steel plant, recently acquired was native to the region; except for keymen, there was no other interchange of employment, and wage rates were lower than at company's other plants, considered in determining that the new plant constituted an appropriate unit separate from the company's other plants.)

Triangle Publications, Inc., 39 N. L. R. B. 547. (Fact that the full-time delivery drivers of a racing news publishing company performed duties which kept them almost entirely outside the plant, they had practically no contact with other employees and the method of computing their wages was peculiar to the special nature of their work, considered in determining that they constituted an appropriate unit.)

Company of Master Craftsmen, Inc., 39 N. L. R. B. 744. (Lack of evidence establishing similarity of wage scales or working conditions of employees at the two plants of a furniture manufacturer and evidence that the company had dealt with its employees in the two plants as a unit,

considered in determining the appropriateness of a unit of employees at one plant.)

Willys Overland Motors, Inc., 42 N. L. R. B. 428. (Differences between hours, wages, and working conditions of cafeteria employees and remaining employees considered in determining that cafeteria employees of an ordnance manufacturer constituted an appropriate unit.)

Superheater Co., 44 N. L. R. B. 947. (Fact that engineering department employees of a locomotive superheater manufacturer were paid on a monthly basis whereas production employees were hourly paid, the absence of sole labor organizations attempts to organize them and their working in a separate building, considered in excluding them from a production unit notwithstanding company's request for their inclusion.)

Sloss-Sheffield Steel & Iron Co., 32 N. L. R. B. 710. (Similarity of wages and work of office and clerical employees at various stores and plant offices of a pig iron manufacturer considered in determining that a single unit comprising such employees was appropriate.)

Sinclair Refining Co., 35 N. L. R. B. 1145. (Similarity of wages and hours of work of employees at five of the plants of an oil refiner considered in determining that a single unit comprising the five plants was appropriate and that separate units urged by one of the labor organizations was inappropriate.)

Hamilton Foundry & Machine Co., 41 N. L. R. B. 1001. (Fact that skill, duties, wages, and working conditions of iron pourers of an iron castings fabricating company were indistinguishable from those of a common labor group, considered in determining the inappropriateness of a separate unit of iron pourers.)

American Can Co., 43 N. L. R. B. 838. (Fact that employees of two departments of a can manufacturer were under common supervision, comprised a single seniority unit, had same hours, and received same pay for corresponding types of work considered, among other circumstances, in permitting their establishment as a separate bargaining unit.)

(The fact that employees performing the same type of work will have the same problems with regard to hours, wages, and other conditions of employment tends to indicate that they should be grouped together to enable them to bargain collectively as a single unit; conversely, the fact that the

type of work done by the two groups of employees is dissimilar militates against their inclusion in one unit although the difference in the nature of the work done by employees does not necessarily preclude a single appropriate unit.) *Third Annual Report*, pp. 175, 176.

Bauske, 38 N. L. R. B. 435. (Firemen and maintenance employees iin a commercial greenhouse, *held* to constitute an appropriate unit, where they performed different types of work from production employees and did not work under the same supervisors.)

Dravo Corp., 39 N. L. R. B. 846. (Fact that the duties of employees on company's two boats and those of employees on its dredges were different, considered in finding that the two groups of employees should not be combined in a single unit.)

American Rolbal Corp., 41 N. L. R. B. 907. (Neither length of service alone nor retention of employment, *held* a valid criterion for allocating into separate units employees newly hired due to war program and employees formerly engaged prior to company's engaging solely in war production work, when the record indicated that there was no apparent difference in the nature of the work performed by the old and the new employees.) See also: *Chrysler Corp.*, 39 N. L. R. B. 749. (Company's contention that it would be undesirable to include defense and non-defense employees in the same unit, *held* not to afford sufficient reason for separating these employees.)

[*See* INVESTIGATION AND CERTIFICATION §§ 61.9–69 (as to eligibility of employees in voting unit as affected by the nature and the tenure of their employment).]

Cambria Clay Products Co., 42 N. L. R. B. 980. (Occupational differences inherent in mining and manufacturing operations, which presented the respective groups of employees with dissimilar bargaining problems considered by the Board in excluding miners from a unit comprising employees in the manufacturing operations of a brick manufacturer.) See also: *Cambria Clay Products Co.*, 45 N. L. R. B. 1069.

(*International Harvester Co.*, 42 N. L. R. B. 1276; (In view of the considerable differences between the interests, viewpoints, bargaining problems, and duties of clerical and production employees, and Board's concern with effective representation of employees in positions they occupy, clerical employees excluded from unit of production em-

ployees despite established practice of permitting employees to progress from production to clerical positions.) See also: *Montgomery Ward & Co., Inc.*, 28 N. L. R. B. 942. (Office employees established as a separate unit and not merged in a store-wide unit since their interests differed from those of other employees.) *Prentice-Hall, Inc.*, 39 N. L. R. B. 92. (Substantial manual nature of shipping department employees' work which was clearly distinguishable from the work of other employees of a publishing concern who were engaged in editorial, clerical, and proofreading work, considered in determining that they constituted a separate unit.)

Pacific Gas & Electric Co., 44 N. L. R. B. 665. (Fact that employees in two operating departments of a utility shared no special work interests and differed widely in their skill and experience, indicated that they should not be grouped in one unit although they worked with each other at times as part of company's interrelated system.)

Virginia Electric & Power Co., 45 N. L. R. B. 1313. (Separate unit for streetcar and bus operators apart from remaining transportation department employees or from the rest of the system-wide employees of a utility, *held* appropriate, when among other considerations, there was no interchange of employees between the streetcar and bus operators and the remaining employees of the transportation department, company maintained separate seniority lists for operators and for its remaining employees, the work operators performed was dissimilar to that of the remaining employees of transportation department, company required different entrance standards for the two groups, and operators constituted a distinctly identifiable group.)

The factor of common community life has been considered by the Board as indicating a community of interest among the employees whose inclusion in a single unit is in issue. *Third Annual Report*, p. 175.

Tennessee Copper Co., 5 N. L. R. B. 768. (In finding appropriate a single unit comprising mining and milling employees in three towns constituting one judicial district of a county, Board considered the common recreational, educational, and judicial facilities afforded the residents of the three communities.)

American Brass Co., 6 N. L. R. B. 723. (Fact that all employees of a metal products manufacturer used the same recreation building, gates, roads and transportation

facilities, considered in finding appropriate a multiple plant unit.)

Fisher Body Corp., 7 N. L. R. B. 1083, 1089. (Fact that employees at two divisions of an automobile manufacturer were permitted to use the same parking lot and entrance, were furnished medical attention by the same doctor, and shared in a group-insurance plan, considered in finding that they might be combined in a single unit.)

Tennessee Coal, Iron & R. R. Co., 32 N. L. R. B. 375. (Social intercourse between employees of four mines considered in determining the appropriateness of a single unit comprising production and maintenance employees at four of the company's mines.)

Pennsylvania Edison Co., 36 N. L. R. B. 432. (Clerical and manual employees of an electric utility combined in a single unit, when among other considerations, the two classes of employees considered themselves as one group, attending picnics and all social functions together.)

Aluminum Co. of America, 44 N. L. R. B. 1111. (Fact that each of two plants of an aluminum manufacturer had its own seniority system, transportation systems, housing projects, and medical organizations, and that the plants were located in separate States and consequently their employees were drawn from different communities and were subject to different regulatory laws, considered in finding appropriate a unit confined to one plant.)

8. *Relationship between proposed unit and employers' organization, management, and operations.*

Indicative of the existence of a mutual interest in collective bargaining among employees in different units of an employer's business is the manner in which the employer operates the enterprise. Accordingly, the fact that an employer operates different departments or plants as a single business enterprise has been considered by the Board as a factor indicating that the employees in such departments or plants constitute a single unit; conversely, the fact that two geographically separated units of a company's operations have been conducted as separate enterprises tends to indicate that the employees in such units do not constitute one appropriate unit; similarly, the maintenance of a single employment office for different groups and the fact that the labor policy affecting different groups of employees is centrally determined indicates the existence

of a mutual interest in collective bargaining among such employees. *Third Annual Report*, pp. 174, 175.

A finding of the Board that employees in two plants constitute an appropriate unit is reasonable and is binding upon a court of review where, among other considerations: (1) one individual owns, controls, and manages one plant and, through ownership of all the stock by himself and his family, controls the other as president and manager; and (2) the business and operation of the two plants are similar, workers are transferred from one to the other; joint purchases of raw materials are received at one plant for both; products partially manufactured at one are finished at the other; each ordinarily, but not invariably, uses its own trademark; the production employees of both plants do the same kind of work, requiring the same degree of skill; no appreciable wage differential exists; all recognize the authority of the individual who owns both; the principal differences between the plants being that one makes higher-priced products than the other, sells to retailers, while the other sells to wholesalers, and manufactures some merchandise not produced at the other plant. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 818 (C. C. A. 8), remanding 6 N. L. R. B. 423.

Production and maintenance employees (i. e., all employees except supervisory, clerical and office employees) of a metal stamping manufacturer constitute an appropriate unit where along with other considerations, the interdependence and functional coherence of the various departments of the plant compel the view that the plant as a whole and not each or any of its individual departments is an appropriate unit, as contended by one of the labor organizations involved. *Acklin Stamping Co.*, 2 N. L. R. B. 872, 876–878.

Daily Mirror, Inc., 5 N. L. R. B. 362, 368. (The functional interdependence of various departments of a newspaper and the greater effectiveness of a larger unit makes the employer unit appropriate notwithstanding the previous bargaining by the labor organization involved with other newspaper companies upon the basis of editorial employees as a separate unit.)

Western Union Telegraph Co., 39 N. L. R. B. 287, 292; (Where a company engaged in national telegraph operations had divided its operations into divisions for operating purposes, and within these divisions the employees per-

formed closely related functions coordinated through divisional management, and matters of vital employees' interest such as seniority were handled on a divisional basis; and where none of the bargaining units urged by any of the labor organizations involved was strictly on a divisional basis and none followed the organizational set-up of the company, but on the contrary cut across divisional lines in favor of more closely knit geographical units, the Board in view of the community of interest existing among divisional employees in the essential subject matters of collective bargaining was of the opinion that collective bargaining would be both facilitated and more effective if the bargaining units followed the pattern of the employer's organizational and operational divisions and that the Act would best be effectuated by establishing bargaining units which would conform to the company's operational units.)

Montgomery Ward & Co., Inc., 44 N. L. R. B. 694. (Close relationship between retail store and mail order house of a general merchandising mail order company, demonstrated by the fact that the mail order house performed unloading services for the retail store and furnished about 7 percent of the goods the store sold and that the retail store made local deliveries for the mail order house, *held* to warrant merger of employees of the two in a single unit, notwithstanding separate management, organization, and operation of the plants, the absence of interchange of employees and difference in hours and rates of pay of employees.) See also: *Sears Roebuck & Co.*, 45 N. L. R. B. 526. (Where it appeared that one of the two warehouses of a general merchandising retail company was merely the overflow building of the other and the company had designated the two by one unit number, that employees were transferred between the two plants, were carried on the same pay roll, and represented by the same grievance committee, Board permitted employees of the two plants to comprise a single appropriate unit, although it found generally that separate units at each of the retail stores and warehouses of the company within a certain geographic area were appropriate.)

Sears Roebuck & Co., 45 N. L. R. B. 961. (Change in physical location of departments and operations of a retail and mail order merchandising company from one plant to two plants, which arose as a result of the Government's appro-

priating the original plant, *held* not to render inappropriate a single unit covering company's operations which Board had previously found appropriate; and accordingly the two plants were held to constitute a single appropriate unit when the essential functions and operations of the company's business remained unaffected and there had existed approximately a 9 months' history of collective bargaining relations between the company and the petitioning industrial organization previously certified for the single unit.)

See also: *Deere & Co.*, 44 N. L. R. B. 335. (Trend toward greater interdependence of company's plants as a result of their conversion to war production, *held* not sufficient to warrant finding inappropriate proposed single-plant units, where during peacetime operations, the plants had been operated as independent units, and where there was no history of collective bargaining or employee organization upon a company-wide basis.) *General Motors Corp.*, 45 N. L. R. B. 11. (Fact that as a result of the conversion to war production of two of the company's plants had become functionally interdependent and constituted a single integrated enterprise under one managerial system, *held* to warrant their establishment as a multiple-plant unit despite history of collective bargaining upon a single-plant basis.)

All employees in the operating department of a gas company, *held* to constitute an appropriate unit, despite the contention of one of the labor organizations involved that each of the four bureaus in the department should be a separate unit as was ordered in an election conducted by the old National Labor Relations Board. The two principal bureaus of the department not only had a similarly wide range in skill among their employees, but their employees also were interchangeable; the same standards of wages and working conditions for corresponding work prevailed throughout the department; and notwithstanding the distance of 7 miles between one of the principal bureaus and two of the others the objecting labor organization represented such bureau prior to the afore-mentioned election and it was not unusual for labor organizations in the industry to have members scattered over 50 miles. *Portland Gas & Coke Co.*, 2 N. L. R. B. 552, 556, 557.

Belmont Iron Works, 9 N. L. R. B. 1202, 1205, 1206. (Employees in one of three plants of a steel manufacturing

company *held* to constitute an appropriate unit notwithstanding the contention of one of the labor organizations involved that all three plants constitute one unit, nor the fact that the employer had centralized the management of the three plants, where the plant in question was 35 miles from the other two plants, whereas the other two plants were only 14 miles apart; past bargaining history in the plant indicated that the labor organization seeking the multiple plant unit had always limited its claim to exclusive recognition to each plant, and in an agreement covering the employees of the two plants, it specifically excluded the plant in question until such time as it was established as the sole bargaining agency in that plant; and the labor organization claiming the multiple plant unit had only a few members in the plant in question.)

[*See* §§ 73, 75, 77, 78 (for additional decisions in which the geographical separation of various subdivisions of an employer's operations was considred in determining the appropriate unit).]

Employees in three of four plants of a shipbuilding company, *held* to constitute an appropriate unit notwithstanding contention of one of the two labor organizations involved that each of the three plants should constitute a separate unit, where each labor organization claimed a substantial memberhsip among employees in all three plants; the evidence indicated at least some transfer of employees among the three plants; and the labor and personnel policies of the three plants were determined by a central management of the employer. *United Shipyards, Inc.*, 5 N. L. R. B. 742, 746, 747.

Shevlin-Hixon Co., 33 N. L. R. B. 368. (In determining that workers engaged in sawmill and logging operations of a lumber manufacturer constituted an appropriate unit as opposed to two separate units contended for by one of the organizations, Board considered the formulation of the labor policies of both plants at the company's headquarters.)

Nevada Consolidated Copper Corp., 38 N. L. R. B. 1346. (Unit composed of electricians at the mining operations of a copper mining company, *held* inappropriate, where among other considerations, the operations of the mining and reduction plant were functionally interdependent and the labor policies of both were determined by the company's general manager.)

Employees in the glove department of a company manufacturing gloves and garments, *held* not to constitute a unit separate from the employees in the garment department as one of the labor organizations contended, where although for some administrative purposes the employer had maintained distinction between the two departments in all other respects the different departments were operated as a single business enterprise. *Fried Ostermann Co.*, 7 N. L. R. B. 1075.

Studebaker Corp., 46 N. L. R. B. 1315. (So-called departmental unit of the automotive division of an automotive and aircraft part manufacturer, *held* inappropriate, when among other reasons, the department was a department in name only for pay-roll and accounting purposes.)

A unit composed of the employees in some but not all of the departments of a company engaged in the purchase, feeding, and slaughter of livestock, *held* not appropriate, when among other circumstances, all of the departments had functioned as an integrated unit and there was no showing in the record that the unit claimed by the labor organization had any functional or craft characteristics which would justify setting it apart as a separate unit. *Tovrea Packing Co.*, 12 N. L. R. B. 1063, 1083.

Wright Aeronautical Corp., 45 N. L. R. B. 1104. (Unit comprising all foundry workers of an aircraft manufacturer, *held* appropriate, when although foundries and workers therein were an integral part of the company's entire operations, nevertheless the foundry employees were a homogeneous and identifiable group engaged in work sufficiently distinguishable from that of other production employees to warrant establishing a separate unit, there was little interchange of employees between the foundries and other manufacturing departments since different skills were involved, and there was no history of bargaining on an industrial basis with a bona fide labor organization.)

Proposed unit consisting of production workers exclusive of so-called "green card" production workers who had not had sufficient employment to by eligible to certain benefits provided by the company or to membership in the union, modified to include the latter group, when Board was of the opinion that production employees should not be arbitrarily classified for purposes of the appropriate collective bargaining unit so as to exclude from the unit some employees who were doing the same kind of work as those included in

the unit, or that the company's personnel practice or the eligibility rules of the union in regard to membership should be determinative of the issue presented. *Quaker Oats Co.*, 24 N. L. R. B. 589, 592.

Hughes Tool Co., 33 N. L. R. B. 1089. (Despite request of several craft unions for separate units, industrial unit, *held* appropriate, when among other considerations, Board took cognizance of the fact that under company's "upgrade" system the interchange of employees among various departments was not impeded by the various crafts represented in the plant.)

International Harvester Co., 42 N. L. R. B. 1276. (In view of the considerable differences between the interests, viewpoints, bargaining problems, and duties between clerical and production employees, and Board's concern with effective representation of employees in positions they occupy, clerical employees excluded from unit of production employees despite company's established practice permitting employees to progress from production to clerical positions.)

14 9. *Other factors.*

10. *"Globe" doctrine.* [*See* § 41.]

II. INDUSTRIAL, CRAFT, OR DEPARTMENT UNIT IN A SINGLE PLANT.

15 A. IN GENERAL.

The Board must determine frequently whether the appropriate unit or units are industrial, including practically all the employees in the plant; semi-industrial, including a majority of the employees; multicraft, including skilled workers; craft, including one group of skilled workers; or some other unit, including part of the employees. *Sixth Annual Report*, p. 65.

B. IN ABSENCE OF DISPUTE BETWEEN TWO OR MORE BONA FIDE UNIONS.

1. *Proposed unit appropriate.*

15.9 a. In general.

16 b. Industrial unit.

Consumers' Research, Inc., 2 N. L. R. B. 57, 64, 65 (all employees of a consumers' information service). See also:

Daily Mirror, Inc., 5 N. L. R. B. 363, 368 (newspaper publishing).

Home Mfg. Co., 26 N. L. R. B. 916, 919 (garment manufacturing).

Mather Humane Stock Transportation Co., 27 N. L. R. B. 1188, 1191 (railroad car leasing).
Drummond Packing Co., 27 N. L. R. B. 8, 11 (meat packing).
Press Wireless, Inc., 28 N. L. R. B. 348, 352 (news collecting and distributing).
Cambridge Iron & Metal Co., 28 N. L. R. B. 709, 711 (scrap iron buying and selling).
Thunder Lake Lumber Co., 31 N. L. R. B. 928, 930 (lumber).
Vincent Steel Process Co., 32 N. L. R. B. 991, 994 (steel).
Kalamazoo Creamery Co., 101, 103 (dairy).
National Laundry, Inc., 36 N. L. R. B. 1204, 1206 (laundry).
Gordon Hill, 38 N. L. R. B. 1276, 1279 (lumber hauling).
Hueneme Wharf & Warehouse Co., 39 N. L. R. B. 636, 639; (warehousing).
Graham Mill & Elevator Co., 40 N. L. R. B. 1289, 1293 (flour milling and feed).

KMOX Broadcasting Station, 10 N. L. R. B. 479, 483–485 and *Star-Times Publishing Co.*, 25 N. L. R. B. 492, 496; (unit composed of enumerated classifications of employees employed by radio broadcasting station). See also:
American Lady Corset Co., 27 N. L. R. B. 1171, 1173 (foundation garment).
Intracoastal Towing & Transportation Co., 31 N. L. R. B. 538, 540 (towing).
Gregory, 31 N. L. R. B. 17, 83 (mail transportation).
Glidden Buick Corp., 32 N. L. R. B. 226, 231 (automobile selling and repairing).
Great Southern Trucking Co., 34 N. L. R. B. 1068, 1074 (freight trucking).
National Tea Co., 35 N. L. R. B. 340, 344 (retail grocery).

Sturtevant Co., 8 N. L. R. B. 835, 838 (production and maintenance employees in all departments of a manufacturer of heating and ventilating apparatus). See also:
General Motors Corp., 27 N. L. R. B. 272, 279 (processing and maintenance employees of an automobile manufacturer).
Mitchell Mfg. Co., 30 N. L. R. B. 1231, 1234 (production and equipment maintenance employees of an electrical appliance manufacturer).

Detroit Plating Industries, 39 N. L. R. B. 315, 319 (production and non-production employees in the electroplating and rust proofing industry).

Campbell, Wyant & Cannon Foundry Co., 32 N. L. R. B. 416, 419 (production and non-production employees in the castings industry).

Serrick Corp., 8 N. L. R. B. 621, 642 enforced 110 F. (2d) 29 (App. D. C.), (production employees in two divisions of plant, one division manufacturing nuts and bolts and the other fabricating automobile moldings, refrigerator parts, and stenotype machines). See also: *Muncie Elwood Lamp Co.*, 40 N. L. R. B. 1096, 1098 (production employees in the lamp manufacturing industry).

Morse Twist Drill & Machine Co., 36 N. L. R. B. 1096, 1098 (production and maintenance employees and those directly associated with production and maintenance in enumerated classifications in the drill, tool, and mechanical products manufacturing industry). See also: *Engelhorn & Sons*, 33 N. L. R. B. 1139, 1143 (production and shipping employees in the meat packing industry).

Phelps Dodge Copper Products Corp., 27 N. L. R. B. 729, 733 (hourly rated employees in the wire manufacturing industry). See also:

Westinghouse Electric & Mfg. Co., 27 N. L. R. B. 403, 405 (salaried employees below a supervisory capacity in the electrical products distribution industry).

Kelsey Hayes Wheel Co., 29 N. L. R. B. 735, 737 (hourly or piece-rated employees in the strand steel manufacturing industry).

Dow Chemical Co., 32 N. L. R. B. 660, 663 (hourly, piece-rate, and day-rate employees in the chemical products manufacturing industry).

Harvill Aircraft Die Casting Corp., 28 N. L. R. B. 417, 420 (non-supervisory employees in the die casting industry). [*See* § 86 (as to units confined to supervisory employees).]

17 c. Unit industrial in scope, but excluding members of a craft. *Daily Mirror, Inc.*, 5 N. L. R. B. 362, 365–370 (all employees of newspaper excluding persons belonging or eligible to existing craft unions). See also: *Celluloid Corp.*, 25 N. L. R. B. 711, 717. *West Virginia Pulp & Paper Co.*, 31 N. L. R. B. 236, 240.

Armour & Co., 8 N. L. R. B. 100, 119, 1120 (garage mechanics, helpers, and street cleaners in the meat packing industry).

Sturtevant Co., 8 N. L. R. B. 835, 838 (pattern makers in the heating apparatus industry). See also: *Atwood Machine Co.*, 38 N. L. R. B. 1270, 1273 (textile machinery manufacturing industry).

Inland Steel Co., 9 N. L. R. B. 783, 789, remanded for new hearing 109 F. (2d) 9 (C. C. A. 7) (truck drivers and bricklayers in the steel products manufacturing industry).

General Electric Co., 9 N. L. R. B. 1213, 1215–1217 (truck drivers in the electrical devices and equipment industry notwithstanding their request for inclusion).

Century Biscuit Co., 9 N. L. R. B. 1257, 1259, 1260 (truck drivers in the baking industry). See also: *Seymour Packing Co.*, 12 N. L. R. B. 1098, 1102 (poultry processing and distributing industry). *Wilson & Co.*, 14 N. L. R. B. 283, 287 (meat packing industry).

Illinois Knitting Co., 11 N. L. R. B. 48, 51 (machine fixers in the knitting industry).

Westchester Apartments, Inc., 17 N. L. R. B. 433, 437 (engineers, firemen, carpenters, painters, paper hangers, and plasterers in the apartment house operating industry).

Miller Cereal Mills, 22 N. L. R. B. 988, 991 (dockmen, dock loaders, flake loaders, shipping clerks, shipping-clerk helpers, warehouse employees, skilled maintenance employees, and firemen in the grain milling industry).

Columbian Bronze Corp., 39 N. L. R. B. 156, 159 (moulders, moulders' helpers, and pattern makers in the marine fittings industry).

Hutchinson Foundry & Steel Co., 43 N. L. R. B. 280, 283 (foundry department in the castings industry).

8 d. Craft unit.

International Filter Co., 1 N. L. R. B. 489, 494 (machine shop production workers in the machinery manufacturing industry).

Warfield Co., 6 N. L. R. B. 58, 64, 65 (separate units of engineers as a group and firemen and oilers as a group in the grocery distributing industry).

Citizen-News Co., 8 N. L. R. B. 997, 1005 (composing room employees in the newspaper publishing industry).

Hoffman Beverage Co., 8 N. L. R. B. 1367, 1371, 1372 (separate units of firemen and operating engineers in the soft drink and brewery industry).

Union Envelope Co., 10 N. L. R. B. 1147, 1150, 1151 (machinists and machine adjusters in the envelope and envelope containers manufacturing industry).

Merrill-Steven Dry Dock Co., 35 N. L. R. B. 587, 590-592 (separate units comprising: (1) machinists, machinists' helpers and apprentices, pipe fitters, and electrician and machinist; (2) carpenters, carpenters' helpers, caulkers, and riggers; (3) electricians and helpers; (4) welders, welders and helpers, welder and blacksmith, blacksmiths, and machinists' helpers working as welders' helpers, in the shipbuilding industry).

[*See* § 87 (as to units confined to professional and/or technical employees).]

19 e. Multiple craft unit.

Birge & Sons Co., 1 N. L. R. B. 731, 735 (color mixers, machine printers, and print cutters of manufacturer of wallpaper).

Cohen, 4 N. L. R. B. 720, 724 (operators, finishers, pressers, and cutters of manufacturer of women's apparel, employees belonging to different locals of same union and all the locals act as a unit through a "Joint Board" for collective bargaining purposes).

Hamilton Realty Corp., 10 N. L. R. B. 858, 862–865 (single unit of hotel service employees, food department employees, and bartenders).

Lilly Dache, Inc., 33 N. L. R. B. 121 (copyists, milliners, improvers, table runners, feather trimmers, blockers, block makers, stitchers of millinery manufacturer belonging to different locals of same union, and all the locals act as a unit through a "Joint Board" for collective bargaining purposes).

Commercial Solvents Corp., 41 N. L. R. B. 642 (powerhouse employees and engineers represented by joint council of craft unions of a chemical manufacturer).

20 f. Departmental unit.

Burton-Dixie Corp., 21 N. L. R. B. 289 (metal department of a bedding manufacturer).

Paraffine Companies, Inc., 25 N. L. R. B. 752 (box department of manufacturer of building materials, also separate unit of felt mill and roofing department).

Wilson-Jones & Co., 26 N. L. R. B. 835 (lithographic department of stationery manufacturer).

Grossman, Inc., 26 N. L. R. B. 1283 (automotive parts department of an automobile distributor).

Crane Co., 28 N. L. R. B. 756 (single department of a company engaged in manufacturing plumbing supplies).

Dodge Motors, New York, Inc., 99 N. L. R. B. 439 (all employees in service and repair departments of an employer engaged in selling and servicing automobiles).

Savannah Sugar Refining Corp., 29 N. L. R. B. 617 (mechanical department of a company engaged in sugar refining).

Westinghouse Electric & Mfg. Co., 36 N. L. R. B. 219 (research department of an electrical apparatus manufacturer).

Westinghouse Electric & Mfg. Co., 36 N. L. R. B. 219 (sales main office of an electrical apparatus manufacturer).

Electric Auto-Lite Co., 36 N. L. R. B. 1156 (printing department of an electrical equipment manufacturer).

Prentice-Hall, Inc., 39 N. L. R. B. 92 (shipping department employees of a publishing concern).

Caterpillar Tractor Co., 42 N. L. R. B. 1405 (all employees in the heating department of one of the plants of a machinery manufacturer).

Greenway Wood Heel Co., Inc., 43 N. L. R. B. 752 (wood heel turning department of a wood heel manufacturer).

Medo Photo Supply Corp., 43 N. L. R. B. 989 (shipping and receiving department of a photographic supply wholesaling and retailing company).

Pacific Gas & Electric Co., 44 N. L. R. B. 665 (separate bargaining units comprising, respectively, employees in General Construction Department, Central Supply Department, and Bureau of Tests and Inspection of an electric and gas utility).

g. Unit comprising several but not all departments of a plant.

Malden Electric Co., 33 N. L. R. B. 378 (employees in the meter reading, meter testing, bill delivery, and distribution departments exclusive of garage and construction departments of an electric utility company).

Rytex Co., 35 N. L. R. B. 792 (employees in all departments except composition department of a stationery manufacturer).

Bremner Bros., 39 N. L. R. B. 763 (employees in the production departments of a biscuit and cracker manufacturer, exclusive of employees in the delivery, garage, and sales departments).

Bethlehem Supply Co., 40 N. L. R. B. 487 (employees in machine shop, welding shop, assembly shop, and fabricating shop, exclusive of other departments, of an oil well equipment manufacturer).

2 h. Unit comprising residual group.

Detroit Incinerator Co., 45 N. L. R. B. 414. (Proposed unit comprising a few miscellaneous (janitor, handy-man, welder) employees of an incinerator manufacturer, *held* appropriate notwithstanding company's contention that the appropriate unit should embrace all production employees, when production employees other than those included in proposed group were covered by a working agreement with a coaffiliate of petitioner, and when no labor organization was seeking to represent all production employees; and, therefore, to refuse to permit the residual group to constitute a separate bargaining unit would deny them indefinitely the right of collective bargaining until such time as a labor organization should desire to represent them as part of a larger unit.)

Cf. *Marshall Field & Co.*, 36 N. L. R. B. 748. (Where in elections directed among several crafts in the engineering department, of a department store, for the purpose of determining whether they desire to constitute separate units or be represented by the industrial union in a larger unit comprising the engineering department as well as other building service employees, there remained a residual group of employees in the engineering department, the Board directed a separate election to be directed among this group for the purpose of determining whether or not they desired to be represented by the industrial union.)

[*See* § 30.1 (as to proposed inclusion of residual groups in existing units.)]

0 i. Other type of unit.

Kroger Grocery & Baking Co., 37 N. L. R. B. 450 (all grocery clerks at one of the stores of a food products canning, warehousing, manufacturing, and retail distributing industry).

Atlas Powder Co., 41 N. L. R. B. 127 (all yard conductors, brakemen, switch tenders, and block station attendants, engaged in switch tending of an ordnance manufacturer).

American Oil Co., 42 N. L. R. B. 963 (truck drivers and helpers, warehousemen, pump and tank mechanics, and pump and tank laborers at one of the plants of a petroleum refiner and distributor).

Fairchild Aviation Corp., 43 N. L. R. B. 763 (all elevator operators, porters, maintenance help, and foremen's clerks, of an aviation equipment manufacturer).

2. *Proposed unit rejected, or modified, or referred to election for determination.*

a. Industrial unit.

(1) In the absence of prior representation in subdivisions of the proposed unit.

Proposed plant unit including several deputized plant-protection employees modified and two separate units, one comprising the deputized plant-protection employees, the other comprising production and maintenance employees found appropriate in accordance with Board policy of excluding plant-protection employees from units of production employees, and including them in a bargaining unit restricted to employees of their class. *Peterson,* 46 N. L. R. B. 1049.

New York Stock Exchange, 43 N. L. R. B. 766. (Proposed unit comprising office and floor department employees of a stock exchange, *held* inappropriate but unit confined to floor department employees when the excluded group could constitute a separate unit, were not organized by the petitioner, and virtually all employees within that group had signed a petition indicating their desire not to be represented by the petitioner.)

(2) In the presence of prior representation in subdivisions of the proposed unit.

Where union sought to establish a unit comprising production and maintenance employees, as previously found appropriate by the Board and in addition thereto the employees of the copper, electrical, and motive power departments, but desired an election to be confined to the latter groups to determine whether or not the employees of those departments desired to be included with the production and maintenance group, the Board found that such addition was proper if the employees so desired and in absence of a question concerning representation among the employees in the previously determined unit, directed elections among the latter groups wherein a question concerning representation had arisen. *Armour & Co.*, 40 N. L. R. B. 1333, 1336.

Northern Fisheries, Inc., 33 N. L. R. B. 919, 921. (Where the only dispute with respect to a proposed unit consisting of all warehouse employees of a fish canning company concerned filet wrappers, the company having recognized and entered into an exclusive contract covering these employees, the Board under the circumstances involved,

directed a "Globe" election among the filet wrappers to determine whether or not they desired to be represented by the union as part of the warehouse employees.)

United Aircraft Products, Inc., 41 N. L. R. B. 501. (Timekeepers employed by an airplane parts manufacturer, *held* to constitute a separate bargaining unit despite sole union's contention that an existing production and maintenance unit for which it had previously been certified should be enlarged to include these employees.)

Union Carbide & Carbon Corp., 46 N. L. R. B. 1107. (Unit sought by sole union comprising all production and maintenance employees, guards, storeroom clerks, assistant storekeeper, production clerks, timekeepers, and gatemen, modified and unit confined to the timekeepers, production clerks, and gatemen when they were found to constitute a cohesive group whose work was distinguishable from that of the remaining employees in the proposed unit, and no dispute existed as to the union's status as exclusive representative for the remaining employees.)

[*See* § 71 (as to consolidation of partial-system units into a system-wide unit).]

31 b. Departmental unit.

A separate unit for the employees in each of five departments of an employer engaged in the generation and distribution of electricity, *held* inappropriate, where the wages, hours of work, and other conditions of employment in one department did not vary in material degree from those in the other departments; there was no marked difference in the type of work performed by the employees in any of the departments; and where, moreover, the labor organization contending for the separate unit had previously bargained and obtained contracts covering all the departments as one unit. *El Paso Electric Co.*, 13 N. L. R. B. 213, 240, 241.

Jacobs Bros., Inc., 38 N. L. R. B. 424. (Unit restricted to pressers at a plant engaged in pressing, folding, cleaning, repairing, and shipping garments, *held* inappropriate where the operations of each class of employees at the plant were coordinated with and dependent upon the operations of each other class, and where the history of organization in the industry indicated that pressers were not usually organized separately.)

Hamilton Foundry & Machine Co., 41 N. L. R. B. 1001 (Unit restricted to iron pourers of an iron castings fabricating company, *held* inappropriate when, there was an

absence of bargaining as a separate group, bargaining in industry was on a plant-wide basis, and the skill, duties, wages, and working conditions of employees within the proposed group were indistinguishable from the common labor group.)

In determining the appropriateness of a proposed unit combining editorial employees and commercial department employees of a newspaper publisher, the Board directed that a separate election should be conducted among the commercial department employees so that they may indicate whether or not they desire to be included with the editorial employees, when a substantial number of these employees had affirmatively indicated opposition to representation by the petitioner, the petitioner had for 5 years represented editorial employees only, and no rival union contended for a separate unit of commercial employees. *Cleveland Co.*, 19 N. L. R. B. 435, 441.

Shell Development Co., Inc., 38 N. L. R. B. 192. (Determination of whether professional and non-professional employees should constitute a single or separate unit, *held* dependent upon desires of the employees as expressed in separate elections although petitioner, the sole labor organization involved requested a single unit combining both groups.)

Although it is within the authority of the board pursuant to Section 9 (b) of the Act to find that a subdivision of an employer, craft, or plant unit, constitutes an appropriate unit, and although the Board has entertained petitions for separate departmental representation of employees being organized on a plant-wide or industrial basis on the principle that organization of the employees has not yet been extended beyond such department, the Board will not set apart as an appropriate unit any subdivision or group of employees the nature of whose work is indistinguishable from that of other employees or whose work is not functionally coherent or distinct; accordingly a unit confined to the radio program checkers in the editorial department of a magazine publisher, *held* inappropriate when they constituted an integral and indistinguishable part of the entire editorial department. *Triangle Publications, Inc.*, 40 N. L. R. B. 1330, 1332. See also:

Philadelphia Inquirer Co., 14 N. L. R. B. 795. (Unit of inserters, excluding mailers of a newspaper publisher, *held* inappropriate.)

National Sanitary Co., 31 N. L. R. B. 824. (Separate unit for employees in the enameling department of a plumbing fixtures manufacturer, *held* inappropriate.)

New York Times Co., 32 N. L. R. B. 928. (So-called professional staff members in editorial department of newspaper publisher, *held* inappropriate.)

Reynolds Tobacco Co., 33 N. L. R. B. 674. (Employees in various listed categories of a cigarette manufacturer, *held* inappropriate.)

Carnegie-Illinois Steel Corp., 34 N. L. R. B. 40. (Separate units for (1) maintenance and repair electricians and (2) machine shop employees of a steel manufacturer, *held* inappropriate.)

Wood Mfg. Co., 35 N. L. R. B. 191. (Toolroom and machine-repair department employees of a service-station equipment manufacturer, *held* inappropriate.)

Gar Wood Industries, Inc., 41 N. L. R. B. 1156. (Time-study men, checkers, and foremen's clerks at four plants of a machinery manufacturer, *held* inappropriate.)

Lane Bryant, Inc., 42 N. L. R. B. 218. (Certain categories of employees of a department store, *held* inappropriate.)

Loose-Wiles Biscuit Co., 44 N. L. R. B. 865. (Maintenance employees of a bakery, *held* inappropriate.)

A so-called departmental unit of the automotive division of an automotive and aircraft parts manufacturer sought by petitioner, and same departmental employees but excluding therefrom supervisory employees sought by intervenor, either of which units were contended by company to be inappropriate, *held* inappropriate when such departmental unit intermingled supervisory and non-supervisory employees and supervisory employees at different levels and department was a department in name only for pay roll and accounting purposes and employees had few interests in common or opportunity for contact during working hours. *Studebaker Corp.*, 46 N. L. R. B. 1315.

c. Industrial unit comprising some but not all departments.

A unit composed of the employees in some but not all of the departments of a company engaged in the purchase, feeding, and slaughter of livestock, *held* inappropriate where all of the departments have functioned as an integrated unit; the labor organization which alleged a refusal to bargain has jurisdiction over, and admitted to its membership, em-

ployees in all of the departments, and there was no showing in the record that the unit claimed by the labor organization had any functional or craft characteristics which would justify setting it apart as a separate unit. *Tovrea Packing Co.*, 42 N. L. R. B. 1063, 1083. See also: *Albina Engine & Machine Works, Inc.*, 30 N. L. R. B. 491. *Prentice-Hall, Inc.*, 39 N. L. R. B. 92.

Proposed unit consisting of production workers exclusive of so-called "green card" production workers who had not had sufficient employment to be eligible to certain benefits provided by the company or to membership in the union, modified to include the latter group when Board was of the opinion that production employees should not be arbitrarily classified for purposes of the appropriate collective bargaining unit so as to exclude from the unit some employees who were doing the same kind of work as those included in the unit, or that the company's personnel practice or the eligibility rules of the union in regard to membership should be determinative of the issue presented. *Quaker Oats Co.*, 24 N. L. R. B. 589, 592.

Tennessee Corp., 30 N. L. R. B. 500. (Where a union having jurisdiction over semi-skilled machine operators employed in four divisions of a phosphoric products manufacturer's plant sought a unit limited to certain machine operators at two of the divisions, *held* inappropriate since the machine operators should not be classified for purposes of collective bargaining so as to exclude other machine operators who were doing the same kind of work.)

Proposed partial industrial unit modified to include employees whom petitioner sought to exclude, when some of these employees did work similar to that of employees included in the proposed unit, others were eligible for membership in the petitioning organization, and employees whom petitioner claimed were within the jurisdiction of labor organizations affiliated with the same parent, were not in the process of being organized by such organizations and such organizations were not shown to be otherwise available to these employees had they desired membership. *Hart & Cooley Mfg. Co.*, 30 N. L. R. B. 1119, 1123.

Proposed partial industrial unit limited to employees which the only organization involved had organized and excluding employees which it had not organized, although they were eligible to membership in it, *held* inappropriate for the purposes of collective bargaining, when the union's organi-

zational policies were to organize all production and maintenance employees and when the unit proposed excluded certain employees whose work was substantially the same as that of other employees within the proposed unit. *National Lead Co.*, 32 N. L. R. B. 697.

Arlington Mills, 31 N. L. R. B. 21. (Units sought by two competing unions, one comprising the top mill employees and the other the wool room employees of a textile manufacturer, *held* inappropriate when among other considerations unions were engaged in extensive organizational campaigns covering all employees, represent a substantial number of employees not included in the unit, and admit that the entire plant constituted an appropriate unit.)

Lengsfield Bros., Inc., 38 N. L. R. B. 951. (So-called departments of a paper box manufacturer, *held* inappropriate, when among other considerations, functions of all employees within plant were closely interrelated and union, when first organized, did not confine its membership to employees in the departments alleged to be appropriate.)

Proposed partial industrial unit of an envelope manufacturer which included the maintenance and repair departments but excluded the machine construction department, modified to include the machine construction department, when the employees in this department performed the same kind of work as, and supplemented the work of employees in the maintenance and repair departments, and when a similar department in other divisions of the company had been included in a contract which covered essentially all production and maintenance employees. *United States Envelope Co.*, 38 N. L. R. B. 1105, 1108.

d. Proposed heterogeneous or unconventional craft groupings.

3 (1) Craft unit limited to craftsmen in several but not all departments.

A proposed unit composed of tool and die makers of an automotive parts manufacturer in several, but not all departments of the company, rejected when the petitioner, the sole union involved, admittedly had jurisdiction over all these employees, there had been no history of collective bargaining at the plant which would justify such a division of a recognized craft, and Board was of the opinion that a recognized craft should not be arbitrarily divided. *Stewart Warner Corp.*, 37 N. L. R. B. 242, 245. See also: *Tennessee Corp.*, 30 N. L. R. B. 500, 503 (machine operators in two of four departments of a phosphoric

products manufacturer). *Inland Steel Co.*, 34 N. L. R. B. 1294, 1298 (portion of machinists of a steel manufacturer). *Cincinnati Gas & Electric Co.*, 35 N. L. R. B. 1188 (fitters and meter repairmen in certain divisions of an electric utility company).

(2) Fragment of a traditional craft grouping.

Welders employed by a company engaged in the manufacture and sale of steel tanks did not alone constitute an appropriate unit as contended by the sole labor organization involved, where the welders frequently participated in work of the plant other than welding, receive approximately the same pay as other employees, and worked in close proximity with them, and in most industries welding and burning were operations performed by skilled workmen in connection with their work in a broader field, as for example, the craft of boiler making, and were in most cases, necessarily merged into the craft with which their work was associated. *Novelty Steam Boiler Works*, 7 N. L. R. B. 969, 971, 972. Cf.

Ryan Aeronautical Co., 15 N. L. R. B. 812, 814, 815.
Douglas Aircraft Co., 16 N. L. R. B. 93.
Allied Chemical and Dye Corp., 40 N. L. R. B. 1351.
Curtiss-Wright Corp., 41 N. L. R. B. 1367.
Walworth Co., Inc., 45 N. L. R. B. 926.
Houston Shipbuilding Corp., 46 N. L. R. B. 161.

Polishers and buffers excluding platers and helpers in a company manufacturing portable lamps and shades, *held* not to constitute an appropriate unit as contended by the sole labor organization involved, where the polishers, buffers, platers, and helpers all worked on one floor under a common foreman, during the same hours, and for approximately the same wages; the petitioning labor organization was traditionally composed of polishers, buffers, platers, and helpers and by function and association they belonged together; in past bargaining, the labor organization concluded a contract with the employer which covered one plater and one helper in addition to the polishers and buffers; and the labor organization itself recognized the appropriateness of the larger unit by averring that it intended to organize the platers and helpers, and to include them when organized. *Rembrandt Lamp Corp.*, 13 N. L. R. B. 945, 946–948. See also: *Climax Machinery Corp.*, 14 N. L. R. B. 252, 255.

Although the union seeking an industrial unit stipulated with the union seeking a unit composed of the trucking and shipping employees that in any event the craft union could represent the trucking employees, the Board refused to permit the craft union to obtain a unit composed only of the trucking employees for a union should not be entitled to sever from the unit which it claimed appropriate, if it was unable to establish a majority therein, a unit of those employees whom it represented. *Karpen & Bros.*, 14 N. L. R. B. 465, 469.

(3) Others.

A unit proposed in a company engaged principally in wooden shipbuilding by a craft organization comprising "the operating carpenters," "all those doing woodwork on that type of boat," and employees who also work in other crafts but who spend 65 percent or more of their time on carpenters' work, *held* inappropriate, when employees of the company were classified on a non-craft basis with wage rates depending on their occupational classification rather than upon the type of work they do and frequently apply the skills of several crafts, crossing craft lines, in order to complete an assigned operation, and the unit as proposed would establish a group neither craft nor functional, nor otherwise sufficiently definite to permit practical ascertainment thereof among the employees of the company. *Dooley's Basin & Dry Dock, Inc.*, 43 N. L. R. B. 745, 747.

e. Other subdivisional unit.

C. WHERE TWO OR MORE BONA FIDE UNIONS DISAGREE AS TO SCOPE OF UNIT, ONE OR MORE REQUESTING AN INDUSTRIAL UNIT, AND ONE OR MORE A CRAFT UNIT OR UNITS.

1. *Where other factors evenly balanced, wishes of members of craft group normally determinative (the Globe doctrine).*

Where the considerations supporting the appropriateness of one or more craft units are evenly balanced with those supporting the appropriateness of an industrial unit which would embrace the crafts, the determining factor is the desires of the employees, themselves; and where those desires are not established by the record they are to be ascertained by elections held, respectively, among the employees in each craft group and in the residual industrial group. Such of the voting groups as choose the labor organization favoring the inclusive industrial unit will together constitute a single appropriate unit, and such as

do not will constitute separate appropriate units. *Globe Machine & Stamping Co.*, 3 N. L. R. B. 294, 299, 300. See also:

City Auto Stamping Co., 3 N. L. R. B. 306, 310.

Pennsylvania Greyhound Lines, 3 N. L. R. B. 622, 634–635.

General Steel Castings Corp., 3 N. L. R. B. 779, 787, 788.

Allis-Chalmers Mfg. Co., 4 N. L. R. B. 159, 169, 170, 173, 175, 177.

Shell Chemical Co., 4 N. L. R. B. 259, 262–264.

Where upon application of the Globe doctrine an election is directed to be held separately among the employees in a craft group and among the remaining employees; (1) if a majority of craft group elect labor organization "A" alleging to represent that group, it will constitute a separate craft unit; (2) if a majority of the craft group elect labor organization "B", or "C", claiming the industrial unit, they will become part of a single industrial unit with the other employees, but if the union elected by the craft group is different from the union elected by the majority of the remaining group, it will then be necessary to determine whether either of the two unions has received a majority of the votes cast, treating both groups as a single unit and if neither has received a majority of total votes cast in both groups, another election will be conducted among the two groups, as a single unit, to determine which of the unions, seeking the industrial unit, shall represent the employees in the unit; and (3) if neither "A", "B", or "C" receive a majority of the votes cast by the craft group in the initial Direction of Elections, but the votes cast for "B" and "C", who claim the larger unit, constitute a majority, the craft group will be treated as part of a single unit together with the other employees. *Pacific Gas & Electric Co.*, 3 N. L. R. B. 835, 849, 850. Cf. *Cudahy Packing Co.*, 32 N. L. R. B. 72, 74; (Where residual group alone, *held* to constitute an appropriate unit when neither the craft nor industrial organization received a majority of the votes cast by the craft group.)

Where the factors are evenly balanced as to whether each of three craft groups among employees of a manufacturer of electric razors constitutes a separate unit or whether any or all of them constitute part of a plant-wide unit together with other employees, separate election *directed* for each

craft group, notwithstanding claim of one of the competing labor organizations to represent all three groups together on a semi-industrial basis, and notwithstanding fact that the name of that organization will appear on the ballot in each of the craft elections. *Shick Dry Shaver Co.*, 4 N. L. R. B. 246, 251.

[*See* INVESTIGATION AND CERTIFICATION §§ 83, 88 (as to provisions for joint designation on the ballot).]

Where upon application of the Globe doctrine an election is directed to be held among the employees in a craft to determine whether they wish to be represented by a labor organization alleging the craft group as appropriate or by one alleging an industrial unit as appropriate, if they choose the former, the craft alone will constitute an appropriate unit and if they choose the latter, they will have expressed their preference for a single larger unit consisting of all employees; but in the absence of any evidence which would warrant a finding that a question concerning representation has arisen among the employees other than those in the craft and in the absence of a petition requesting a certification of representatives of all the employees in the industrial unit, it is not necessary to determine the appropriateness of such unit or whether the organization contending for it has been designated by a majority of the employees in that unit. *Pacific Greyhound Lines*, 4 N. L. R. B. 520, 536. *Lockwood Co.*, 16 N. L. R. B. 65, 68. (Accordingly where an election is directed to be held among certain craft employees to determine whether they wished to be represented by the petitioning craft organization or by an industrial organization or neither, but no petition has been filed regarding the remaining employees, if a majority of the craft group cast their votes for the craft organization, they will constitute a separate unit and the craft organization will be certified as the exclusive representative thereof, but if a majority of these employees casts their votes for the industrial organization or for neither, or if the votes cast for the industrial organization and for neither together constitute a majority it will be concluded that such employees do not constitute a separate unit and the petition of the craft organization will be dismissed.) See also: *General Petroleum Corp. of Calif.*, 39 N. L. R. B. 1180, 1184.

In applying the Globe doctrine as to whether three craft groups in a whiskey producing company constitute separate

craft units or whether some or all of them, together with the remaining employees, constitute an industrial unit, elections need be held only as to the employees in the craft groups and no election is necessary among such remaining employees where there is no dispute that the labor organization urging the industrial unit represents a majority of all the employees and that such majority would remain unaffected even should the three craft groups express their desire for separate representation. *Joseph S. Finch & Co., Inc.*, 7 N. L. R. B. 1, 7.

International Harvester Co., 32 N. L. R. B. 16, 25, 33, 40, 49, 58; (Where the factors are such that employees in the craft group may constitute an appropriate unit or be part of the industrial unit, the Board determined without an election that the craft unit was appropriate although it ordinarily would direct an election among employees in the craft before establishing them as a separate appropriate unit, where only the craft organization desired to appear on the ballot in the election.) See also: *Chicago Malleable Castings Co.*, 16 N. L. R. B. 15, 20; (Where evidence introduced during the hearing enabled the Board to ascertain the desires of the craft employees, the Board did not order an election but immediately found a craft unit, in accordance with the desires of the employees, to be an appropriate one.)

[*See* INVESTIGATION AND CERTIFICATION § 139 (as to certification of industrial group following election when resolution of the appropriateness of craft group is pending).]

"Globe" elections directed among employees within a craft and among remaining employees in an industrial unit both alleged to be appropriate. In second amended petition, the labor organization contending for the industrial unit agrees that the employees within the craft could alone constitute an appropriate unit. *Held*: since by its amendments, the organization contending for the industrial unit acknowledges that the employees in the craft can constitute an appropriate unit, if it should fail to secure a majority in an election among the employees in the residual group, a majority vote in its favor in the election among the employees in the craft may be deemed to determine such craft unit as appropriate, and this organization may be certified for the employees in the craft alone. *Pacific Greyhound Lines*, 10 N. L. R. B. 659, 661–664.

Where an election has been ordered in a craft group in a case involving application of the Globe doctrine and at the time of the election there is only one employee in such group, although there was more than one employee in the group at the time of the hearing, the employee in question is to be included in the larger unit comprising the remaining employees since a single employee cannot be considered as a separate bargaining unit, nor are his desires to be included or excluded of determining force. *Joseph S. Finch & Co., Inc.*, 10 N. L. R. B. 896, 899, 900.

[*See* § 3 (as to the inappropriateness of a unit comprising single employee), and INVESTIGATION AND CERTIFICATION § 131 (as to the certification of a representative when only one person is within the unit at the time of the election or only one of several eligible employees votes).]

Where in elections directed among several crafts in the engineering department, of a department store, for the purposes of determining whether they desire to constitute separate units or be represented by the industrial union in a larger unit comprising the engineering department, as well as other building service employees, there remained a residual group of employees in the engineering department, the Board directed that a separate election to be directed among this group for the purpose of determining whether or not they desired to be represented by the industrial union. *Marshall Field & Co.*, 36 N. L. R. B. 748.

[*See* §§ 30.9, 31, 53, 76.1, 78.1, 82.1, 83, 120 (as to situations other than craft-industrial disputes which are referred to an election for determination).]

2. *Where factors are not evenly balanced.*

41.1 a. Where factors favor appropriateness of craft unit, craft unit found appropriate notwithstanding contention of union urging industrial unit.

Marcus Loew Booking Agency, 3 N. L. R. B. 380, 385 (radio broadcast engineers of radio broadcasting company).

Great Lakes Engineering Works, 3 N. L. R. B. 825, 828–830 (machinists, plumbers, electricians, in shipbuilding plant).

Neuer Glass Co., 4 N. L. R. B. 65, 68–69 (glaziers of manufacturer and processor of glass products).

Allis-Chalmers Mfg. Co., 4 N. L. R. B. 159, 170–172 (engineers and draftsmen of machinery manufacturer).

Ryan Aeronautical Co., 15 N. L. R. B. 812, 814, 815. See also: *Douglas Aircraft Co.*, 16 N. L. R. B. 93; (welders in aircraft manufacturing plant). Cf. *Novelty Steam*

Boiler Works, 7 N. L. R. B. 969. *Consolidated Aircraft Corp.*, 7 N. L. R. B. 1061.

Bethlehem Steel Co., Sparrows Point Division, 32 N. L. R. B. 1131; (pattern makers of a steel manufacturer).

Willys Overland Motors, Inc., 35 N. L. R. B. 549 (die sinkers of an automobile manufacturer).

Long-Bell Lumber Co., 36 N. L. R. B. 664. (Units comprising, respectively, (1) locomotive engineers, firemen, hostlers, and hostler helpers; and (2) conductors and brakemen; employed by a company engaged in logging operations and manufacturing lumber, *held* appropriate.)

Dain Mfg. Co., 38 N. L. R. B. 528 (tool and die makers, specialists, helpers, apprentices, and tool-crib attendants of an agricultural implement manufacturing company).

Nevada Consolidated Copper Corp., 38 N. L. R. B. 1346 (all employees engaged in machinists' work at the mines, mill, and smelter of a copper mining company).

American Medical Assn., 39 N. L. R. B. 385 (bookbinders of a medical publishing company).

Phelps Dodge Corp., 40 N. L. R. B. 180 (two units, one composed of engineers, motormen, firemen, hostlers, and hostler helpers, and the other composed of brakemen, yardmen, switchmen, switchtenders, lookout men, and dispatchers of the train-service employees of a copper mining company).

United States Cartridge Co., 42 N. L. R. B. 191 (firemen and electricians of a cartridge manufacturer).

Vilter Mfg. Co., 44 N. L. R. B. 232 (foundry employees of an ordnance equipment manufacturer).

Philadelphia Terminals Auction Co., 44 N. L. R. B. 454 (printing-department employees of an auction company).

1.2 b. Where factors favor appropriateness of industrial unit, craft unit claims rejected.

Southport Petroleum Co., 8 N. L. R. B. 792, 796–798 (boilermakers, welders, caulkers, helpers, and apprentices in oil refining industry included in production and maintenance unit). Cf. *Gulf Oil Corp.*, 4 N. L. R. B. 133, 137–138.

Paper Calmenson & Co., 10 N. L. R. B. 228, 231 (skilled workers included with others in unit of employees of steel fabricating concern).

Bendix Products Corp., 15 N. L. R. B. 965, 969 (pattern makers of automobile and aircraft parts manufacturer denied separate unit).

Weyerhaeuser Timber Co., 29 N. L. R. B. 571. (Mill and wood employees, respectively, of a company engaged in logging and manufacturing lumber, *held* to constitute separate appropriate units notwithstanding requests of several craft unions for separate craft units and of one of the industrial unions for a single unit combining both the mill and wood employees.)

Long-Bell Lumber Co., 29 N. L. R. B. 586 (electricians, machinists, and electrical crane, monorail and transfer car operators included within plant-wide unit at the sawmill in the lumber industry).

Polson Logging Co., 31 N. L. R. B. 328 (engineers and trainmen in lumber industry denied separate unit).

Staley Mfg. Co., 31 N. L. R. B. 946 (separate craft units of a corn and soy bean products manufacturer included in plant unit).

Jacobs, Inc., 32 N. L. R. B. 646 (carpenters and joiners in shipbuilding industry included in production and maintenance unit).

Robins Dry Dock & Repair Co., 33 N. L. R. B. 15 (various crafts engaged in ship repairing included in production and maintenance unit).

Inland Steel Co., 34 N. L. R. B. 1294 (truck drivers in steel industry included in production and maintenance unit).

Pan American Refining Corp., 35 N. L. R. B. 725. (Employees sought respectively to be represented by "Machinists," "Hod Carriers," and "Boilermakers" in separate units included with other employees in a unit comprising production and maintenance employees of an oil refiner.)

National Lead Co., 35 N. L. R. B. 1075. (Persons sought to be segregaged by several craft unions included in industrial unit in pigment manufacturing industry.

Arkwright Corp., 36 N. L. R. B. 687 (plant-wide unit comprising loom fixers and loom changers; slasher tenders, excluding helpers; knot-tiers and helpers, in the textile manufacturing industry, although crafts sought to segregate groups in three separate units).

Philadelphia Dairy Products Co., Inc., 36 N. L. R. B. 737. (Teamsters of ice cream manufacturer included in industrial unit).

Boston Store of Chicago, Inc., 37 N. L. R. B. 1140. (Window-washers included in a unit with porters and maids in a department store.)

Tennessee Coal, Iron & Railroad Co., 39 N. L. R. B. 626. (Engineers, firemen, and hostlers on an intradepartmental railway in open-hearth department of a steel manufacturer denied a separate unit.)

Gibbs Gas Engine Co., 42 N. L. R. B. 272. (Several crafts in shipbuilding industry included with remaining employees in a single unit.)

American Propeller Corp., 43 N. L. R. B. 518. (Metal polishers in airplane propeller manufacturing industry included in a production unit.)

Sheffield Steel Corp. of Texas, 43 N. L. R. B. 956 (production and maintenance employees of a steel manufacturer including crane operators and boiler tenders).

3. *Special considerations.*

2 a. Where craft union shows no substantial membership among craft employees.

No elections for the purpose of ascertaining the desires as to the unit of employees within certain craft groups, which are alleged, on the one hand to be separate appropriate units, and on the other hand to be but a part of an appropriate plant-wide unit, will be directed where the respective proponent craft organizations fail to show substantial adherence among the employees in the proposed craft groups. *Allis-Chalmers Mfg. Co.*, 4 N. L. R. B. 159, 169. See also:

Texas Co., 4 N. L. R. B. 182, 185, 186.
Pure Oil Co., 8 N. L. R. B. 207, 216–218.
Times Publishing Co., 8 N. L. R. B. 1170.
Indianapolis Times Publishing Co., 8 N. L. R. B. 1256.
Shell Petroleum Corp., 9 N. L. R. B. 831.
New York Evening Journal Inc., 10 N. L. R. B. 197.
American Petroleum Co., 12 N. L. R. B. 688.
Wilson Jones Co., 12 N. L. R. B. 1351.
Westinghouse Electric & Mfg. Co., 18 N. L. R. B. 115.
Federal Shipbuilding & Dry Dock, 19 N. L. R. B. 313.
Pacific Telephone & Telegraph Co., 23 N. L. R. B. 280.
Swift & Co., 36 N. L. R. B. 446.

3 b. Where the industrial union shows no substantial membership in the proposed industrial unit.

Objection by one of the labor organizations involved to a separate unit of welders employed by an aircraft manufacturer, and its claim that welders should be included in one unit with other employees rejected, where the organization seeking the broader unit failed to show a substantial

membership in the unit proposed by it. *North American Aviation, Inc.*, 13 N. L. R. B. 1134, 1138, 1139. See also: *General Motors Corp.*, 19 N. L. R. B. 957, 960; (metal finishers).

c. Where proposed craft unit has never been historically considered as a separate craft and does not constitute a functional group.

Proposed unit of machinists which was not set up along legitimate craft lines and comprised only a portion of a well-established group in that it excluded machinists doing comparable work, *held* not to constitute a unit appropriate for collective bargaining; accordingly, where an industrial union had bargained in behalf of such employees both prior to and after craft organization, Board included the machinists with production and maintenance employees. *Inland Steel Co.*, 34 N. L. R. B. 1294.

Proposed unit of electrical workers employed by a steel manufacturer rejected when it did not comprehend a clearly defined craft group or even a segregable or functional group of employees and marked a departure from the broad unit basis for bargaining first sought by the petitioning organization and other unions affiliated with the same parent, and when a bargaining unit conforming to the nature of the industrial operations involved and giving full recognition to the form of self-organization and practice of collective bargaining adopted by the employees engaged in such operations would best insure to the employees the full benefits of their rights to self-organization and collective bargaining as the Act commands. *Tennessee Coal, Iron & Railroad Co.*, 39 N. L. R. B. 617. See also: *Fourth Annual Report*, p. 88, and cases cited in footnote 62.

National Lead Co., 35 N. L. R. B. 1075. (Separate proposed units comprising (1) machinists, millwrights, millwright helpers, and apprentices; (2) electricians and maintenance electricians and helpers, in the pigment manufacturing industry.)

Border City Mfg. Co., 36 N. L. R. B. 678 (loom fixers and loom changers, slasher tenders, and knot-tiers, drawing-in machine operators, and warp twisters in the textile manufacturing industry).

Texas Co., 37 N. L. R. B. 932 (employees in the operating division of an oil refinery, excluding laborers, but including laboratory employees, loading rack employees, and hoisting employees).

Ohio Ferro-Alloys Corp., 41 N. L. R. B. 103 (several proposed units in the alloy manufacturing industry where the employees did not constitute separate and distinct crafts but were regular production and maintenance employees).

American Propeller Corp., 43 N. L. R. B. 518 (metal polishers in the aircraft industry).

Interests of all employees of a shipbuilder, including welders and their helpers, would best be served by establishing an industrial unit, notwithstanding contentions of union desiring to represent welders and their helpers that a separate unit for these employees is appropriate and that a "Globe" election should be directed among them when unlike other cases in which Board had established such a unit or had conditioned its finding upon the results of a "Globe" election, when: (a) welders were found to constitute a clearly identifiable group because they were physically segregated from other employees, or (b) were under separate centralized supervision, or (c) because they were engaged solely in specialized operations which because of their skill and training they alone were competent to perform, in the instant proceeding the company had never recognized them as a separate class of employees, they were not an identifiable, homogeneous group, their pay was the same as other crafts, they performed work in addition to that of their own particular craft, were not under a centralized supervision, their helpers who of necessity would be included in such a unit could not be identified, and from a managerial and functional standpoint were merged with other employees. *Port Houston Iron Works*, 46 N. L. R. B. 155.

Cf. *Ryan Aeronautical Co.*, 15 N. L. R. B. 812.
Douglas Aircraft Co., 16 N. L. R. B. 93.
Allied Chemical & Dye Corp., 40 N. L. R. B. 1351.
Curtiss-Wright Corp., 41 N. L. R. B. 1367.
Walworth Company, Inc., 45 N. L. R. B. 926.
Houston Shipbuilding Corp., 46 N. L. R. B. 161.

Consolidated Aircraft Corp., 7 N. L. R. B. 1061, 1065, 1066. (Welders employed by aircraft manufacturer included in unit composed of production employees notwithstanding the contention of the labor organization seeking to represent them as a separate craft that they constitute a separate appropriate unit where, although they are claimed to be highly skilled craftsmen, they number only approximately 1 percent of the production employees and are

employed in several of the production departments, and historically, welders and burners have never been considered as a separate craft but are merged into crafts with which their work is associated.)

Climax Machinery Co., 14 N. L. R. B. 252; (Unit of polishers and buffers, *held* inappropriate in view of fact that the union traditionally organized polishers, buffers, platers, and helpers.)

Celanese Corp. of America, 18 N. L. R. B. 965. (Separate unit of machinists, *held* inappropriate when among other reasons they did not constitute a complete craft since helpers and machine workers were not included.)

d. Where industrial union and employer have entered into sole bargaining contract covering an industrial unit which includes the proposed craft.

Oilers, fireman, and engineers as a group and electricians employed by a manufacturer of containers do not, respectively, constitute separate units as contended by petitioning craft labor organizations where about 13 months prior to the filing of the petitions in question, an industrial labor organization and the employer entered into a 1-year exclusive bargaining contract covering all factory employees including the aforementioned craft employees; about 1 month prior to the filing of the petitions, the contract was renewed for another year; and it was not until a few days prior to the renewal of the contract that the petitioning craft organizations attempted to bargain on behalf of their respective members. *American Can Co.*, 13 N. L. R. B. 1252, 1255–1257. See also:

West Coast Wood Preserving Co., 15 N. L. R. B. 1 (boommen and rafters in the wood preserving industry).

Milton Bradley Co., 15 N. L. R. B. 938; (pressmen in the toy and novelty manufacturing industry).

Roberts & Manders Stove Co., 16 N. L. R. B. 943; (foundry employees in the stove and foundry industry).

Celanese Corp. of America, 18 N. L. R. B. 965; (engineering employees in the textile industry).

Todd-Johnson Dry Docks Inc., 18 N. L. R. B. 973; (several craft groups in the shipbuilding and repairing industry).

Pacific Telephone & Telegraph Co., 23 N. L. R. B. 280 (toll maintenance employees in the communications industry).

White Motor Co., 23 N. L. R. B. 924 (woodworkers in the automotive industry).

Poe Co., Inc., 27 N. L. R. B. 66 (firemen in the mineral wool manufacturing industry).

Ampco Metal, Inc., 28 N. L. R. B. 1227 (several craft groups in the tool manufacturing industry).

Racing Publications, Inc., 29 N. L. R. B. 633 (pressmen in the publishing industry).

Revere Copper & Brass, Inc., 30 N. L. R. B. 964 (die sinkers and trimmer die makers in the alloy products manufacturing industry).

Long-Bell Lumber Co., 31 N. L. R. B. 322 (engineers and trainmen in the lumber industry).

Brewster Aeronautical Corp., 31 N. L. R. B. 776 (chauffeurs in the aircraft industry).

Great Lakes Engineering Works, 32 N. L. R. B. 809 (crane operators in the shipbuilding industry).

American Thermometer Co., 34 N. L. R. B. 222 (tool and die makers in the temperature devices manufacturing industry).

Wilson-Jones Co., 38 N. L. R. B. 735 (printing pressmen in the office supplies manufacturing industry).

Michigan Alkali Co., 40 N. L. R. B. 480 (bricklayers of a chemical manufacturer).

Phoenix Mfg. Co., 44 N. L. R. B. 1388 (die sinkers in the drop-forge manufacturing industry).

Although the voting unit in consent election included pattern makers as well as other employees, and subsequent contract between employer and industrial union purported to cover this voting unit, such contract was not accorded binding effect so as to preclude election among pattern makers to determine whether they desired to constitute a separate unit, where pattern makers craft organization at the plant antedated industrial union and the pattern makers had no opportunity to vote for craft union in the consent election; and where there was a positive showing in the consent election, evidenced by 28 ballots with the name of the craft union written in, that a substantial number of persons desired to be represented by the craft union. *General Electric Co.*, 29 N. L. R. B. 162. See also: *Mullins Mfg. Corp.*, 31 N. L. R. B. 532. *Sullivan Machinery Co.*, 31 N. L. R. B. 749.

Lakey Foundry & Machine Co., 34 N. L. R. B. 677. (Pattern makers in the casting manufacturing industry permitted to

determine whether or not they shall constitute a separate unit, when it was not shown that they had acquiesced in the plant-wide unit established in the contract with an industrial organization.)

National Erie Corp., 38 N. L. R. B. 638. (Pattern makers of a steel castings manufacturer permitted to determine whether or not they desired to constitute a separate unit or be part of an industrial unit when the contract granting exclusive recognition to an industrial union for an industrial unit did not specifically mention the craft but in the alternative contained a provision which permitted the company to bargain with another union in behalf of these employees until the Board should determine its right to represent these employees.)

Bendix Aviation Corp., 39 N. L. R. B. 81. (Prior certification of industrial union for an industrial unit including craft employees, and existence of exclusive bargaining contract covering employees in the certified unit, *held* not controlling and craft permitted to determine whether or not they desired separate representation when industrial unit was established without the acquiescence of the craft employees and without notice to the craft union, and the craft union continued after the industrial union's certification to maintain and extend its membership despite lack of formal recognition, and the craft employees had resisted strong pressure to abandon the craft union and join the industrial unit.) See also: *Aluminum Co. of America*, 42 N. L. R. B. 772.

Indianapolis Drop Forging Co., 40 N. L. R. B. 1294. (Die shop employees of a forging manufacturer permitted to determine whether or not they desired to constitute a separate unit or be part of an industrial unit, when the industrial union and the company agreed to suspend negotiations for modification of plant-wide contract and abide by the Board's decision in the present proceeding.)

Tampa Florida Brewery, Inc., 42 N. L. R. B. 642. (Despite long history of collective bargaining on an industrial basis and existence of closed-shop contracts covering an industrial unit as well as craft employees, latter group permitted to determine whether or not they desired to constitute a separate unit or be part of the industrial unit, when the question of separate representation for this group had not previously arisen, company was agreeable to deal with either the craft or the industrial union, and a substantial

number of employees within the latter group desired the craft union to represent them. See also: *Southern Brewing Co.*, 42 N. L. R. B. 649.

6 e. Where industrial union and employer have entered into sole bargaining contract covering an industrial unit which excludes the proposed craft.

Although the recognition clauses in contracts executed between the industrial organization and the company would appear to include the pattern makers within the unit for which the company recognized the industrial organization, a unit confined to pattern makers in the automotive manufacturing industry, *held* appropriate despite the industrial union's objection, when among other reasons the contract did not specifically mention the pattern makers whereas other classifications of the company's production employees were mentioned, the contracting parties had orally agreed prior to the execution of the contract to exclude the pattern makers from any contract which they might make, the company prior to the execution of the contract and thereafter had hired pattern makers through the craft organization, all of the pattern makers at the time of the hearing were currently members of the craft union, and since the execution of the contract the craft union and the company had bargained and reached oral agreements concerning the wages, hours, and conditions of employment of the pattern makers. *Quality Aluminum Casting Co.*, 26 N. L. R. B. 516, 520.

B. F. Goodrich Co., 16 N. L. R. B. 165. (Pattern makers in the rubber products manufacturing industry permitted to determine whether or not they desired to constitute a separate unit or be part of an industrial unit, when among other reasons the unit fixed in the contract between the industrial organization and company was not determinative, there having existed a "tacit understanding" between the craft and the industrial union that the craft employees should be given separate representation.)

Great Lakes Terminal Warehouse Co., 21 N. L. R. B. 580. (Engineers in the warehousing industry permitted to determine whether or not they shall constitute a separate unit, when it appeared that the engineers were not covered by the terms of the contract between the industrial organization and the company.)

Dain Mfg. Co., 38 N. L. R. B. 528. (Tool and die makers, machinists, specialists, helpers, apprentices, and tool crib

attendants in the agricultural implement manufacturing industry, *held* to constitute a separate unit when among other reasons they were expressly excluded from the exclusive contracts entered into between the company and the industrial union.)

Ampco Metal, Inc., 42 N. L. R. B. 584. (Pattern makers in the castings manufacturing industry, *held* to constitute a separate appropriate unit when among other reasons the industrial organization recognized their separateness by exempting them from the closed-shop provision of the contract between the company and itself.)

f. Where craft unions have individually or jointly organized and bargained on an industrial basis.

A craft union cannot be heard to maintain that a craft unit of toolroom employees is appropriate, where it carried on organizational activities among production employees at the same time it sought to organize the toolroom employees separately, for such methods of organization must be regarded as an attempt to enroll all the production employees in direct competition with another labor organization which was organizing on an industrial basis. *Serrick Corp.*, 8 N. L. R. B. 621, 642, 643, enforced 110 F. (2d) 29 (App. D. C.). Cf. *Paper Calmenson & Co.*, 10 N. L. R. B. 228, 231.

Proposed industrial unit comprising production and maintenance employees in the pipe manufacturing industry, *held* appropriate and intervening union's request for the establishment of a separate unit for moulders and moulders' helpers rejected, when among other reasons the intervenor had consistently organized and bargained for the company's employees on the basis of a plant-wide unit having commenced its organizing activity upon a plant-wide basis, entered into a contract with the company in which it was accorded recognition as the bargaining agency "for all employees engaged in the production of castings," and although since that time it had separately negotiated in behalf of the moulders, it was not shown to have relinquished its claim under the contract to represent all the employees covered therein, and its claim to have recently restricted its membership lacked merit since record disclosed that employees classified as "laborers" were suspended solely for non-payment of union dues. *Buffalo Pipe & Foundry Corp.*, 26 N. L. R. B. 848, 851.

Proposed industrial unit comprising production and maintenance employees in the cast-iron enameled-ware manufacturing industry, *held* appropriate and contention of parent of several craft unions that a craft form of organization at the plant should be preserved and that five separate units coextensive with the jurisdiction of its five affiliated locals who are signatories to a contract with the company should be established rejected, when the history of collective bargaining had not developed upon a craft basis since the contract referred to the several signatory unions collectively as "acting as the collective bargaining unit for the employees, hereinafter called the union," the contract contained uniform provisions regulating wages and working conditions throughout for all the employees at the plant, and when there was considerable interchange of employees among the several departments. *American Radiator & Standard Sanitary Corp.*, 35 N. L. R. B. 172, 176.

§ 50 g. Others.

D. OTHER DISPUTES BETWEEN BONA FIDE UNIONS AS TO SCOPE OF PLANT UNIT OR SMALLER UNIT.

§ 51 1. *In general.*

§ 52 2. *Proposed department-wide units.*

All of the employees except clerical and supervisory employees of a shoe manufacturer constitute an appropriate unit notwithstanding the claim of one of the two labor organizations involved that each of the eight production departments should be found to be appropriate units where; (1) collective bargaining has always been carried on with the employer and throughout the industry on a plant-wide basis; (2) the two labor organizations involved admit all production employees to membership and maintain no division within their ranks based on trade classification or occupation; (3) the eight production departments are functionally coherent, contain approximately the same proportion of skilled workers and observe approximately the same wage differentials and rates. *Huth & James Shoe Mfg. Co.*, 3 N. L. R. B. 220, 222-224.

Cf. *Montgomery Ward & Co., Inc.*, 28 N. L. R. B. 942. (In a retail establishment, where one union wanted a store unit, composed of sales, office, and other employees, and another union wanted a separate unit of the office employees, the Board established separate units for the office employees and for the remaining employees since the office

employees had distinct interests from other employees, as a group had refused to be merged in a store-wide unit and had attempted to bargain, through their representative, as a separate group.)

Fried, Ostermann Co., 7 N. L. R. B. 1075, 1077–1081. (Employees in the glove department of a company manufacturing gloves and garments do not constitute a unit separate from the employees in the garment department as one of the labor organizations involved contends where, although for some administrative purposes the employer has maintained distinction between the two departments, each department is located on a number of floors in each of the company's two buildings; one of the labor organizations involved contends that the plant as a whole constitutes a single business unit; and previous bargaining between the employer and the labor organization claiming the plant-wide unit indicates that both departments have been regarded as one unit for purposes of collective bargaining.) See also: *United Aircraft Products, Inc.*, 36 N. L. R. B. 1198.

Seattle Post Intelligencer, 9 N. L. R. B. 1262, 1278. (Employees in the advertising department of a newspaper company included in unit composed of all employees notwithstanding contention of one of the labor organizations involved that such employees constituted a separate unit, where they form no group distinct in employee interest; the work of all does not fall within a well-defined craft, but is diverse; there is no history of collective bargaining either as to the newspaper in question or as to the newspaper industry, which would extend such advertising workers an independent position; and in previous cases involving newspaper companies, the Board has considered employees in the advertising department a constituent part of a larger unit.) See also: *New York Evening Journal, Inc.*, 10 N. L. R. B. 197, 206, 207.

Westinghouse Electric & Mfg. Co., 10 N. L. R. B. 794, 798–800. (Production, maintenance, and service employees at the service shop of an employer engaged in the manufacture of electrical appliances and machinery constitute an appropriate unit, notwithstanding a contention of one of the labor organizations involved that employees in departments housed in the basement constitute a distinct unit, where self-organization and past bargaining have been on a plant-wide basis, differences in wages and skill

are relatively minor, and hours and working conditions are substantially uniform.)

Kingston Products Corp., 25 N. L. R. B. 1158. (Employees in the radio assembly department of an electrical parts manufacturer, *held* not to constitute an appropriate unit when they were intermingled with other production employees and had a common bargaining history.)

Killefer Mfg. Corp., 31 N. L. R. B. 406. (Employees in the blacksmith department of a company manufacturing agricultural implements and road machinery do not constitute a unit separate from the other production and maintenance employees where their work was similar to other production work; similarity of wages, hours, and working conditions existed throughout the plant; in the trade they were not sidoncered separately from the production and maintenance workers; and although they were housed in a separate building, they were transferred, at times for periods of 2 or 3 months, to work in other departments.)

United States Finishing Co., 35 N. L. R. B. 951. (Employees in the warehouse department of a textile processor were not permitted to split off from an industrial unit when they were not required to have special skill and were interchanged with employees in other departments where unskilled labor was employed, and when contract between employer and labor organization contending such a unit to be inappropriate and other contracts in the industry covered an industrial unit including employees in the proposed unit.)

Westinghouse Elec. & Mfg. Co., 44 N. L. R. B. 1182. (Dispatchers employed by an ordnance manufacturer included in a unit of office and clerical employees notwithstanding contention of one of the labor organizations involved that such employees constituted a separate unit when it was not shown that they comprised a highly skilled craft having interests apart from those of other clerical employees and when their work was essentially clerical in nature and was similar in function to that of production clerks within the unit.)

Welders, burners, and their apprentices and helpers, comprising the welding department of an employer engaged in the manufacture and repair of ships constitute an appropriate unit. Although ordinarily such employees do not constitute a distinct craft, the shipbuilding industry is an exception to this rule in that in such industry these

employees engage in large scale operations not associated with other work. The employees involved have been segregated into one department for a period of 20 years. Although one labor organization involved seeks to exclude burners from the unit, the burners and welders have similar and connected tasks, and are used interchangeably. While it takes longer to become an expert welder than to become a burner and the pay rate for welders is somewhat higher, burners as well as welders are admitted to membership in both unions, apprentices learn burning as a preliminary step in becoming expert at welding, and the organization now seeking their exclusion previously asserted the propriety of a unit including both groups, and did not request their exclusion until the hearing. *Great Lakes Engineering Works*, 5 N. L. R. B. 788, 791, 792.

Where, upon application of the Globe doctrine to employees of a newspaper publisher, separate elections have been directed among the employees in the editorial department and among the remaining employees, if a majority of the employees in the editorial department select the labor organization claiming a unit composed of such employees, they will constitute a separate bargaining unit; if the labor organization claiming the industrial unit is accorded a majority by the employees in the editorial department and also by a majority of the other employees, the employees in the editorial department, together with such other employees will constitute a single unit; and if the labor organization claiming the industrial unit is accorded a majority by the employees in the editorial department but not by the other employees, the employees in the editorial department shall constitute a separate unit. *Boston Daily Record*, 8 N. L. R. B. 694, 702.

Truscon Steel Co., 33 N. L. R. B. 61. (Where separate elections were directed among production employees and among machine-shop employees of a steel-fabricating manufacturer and three organizations were involved, two of which were affiliated with the same parent organization and desired the groups to constitute separate units and the other an industrial unit combining the two groups, *held* that if a majority of the employees voting in the two elections select the same representative, they will constitute a single appropriate unit, and if they choose different repre-

sentatives, they will constitute two separate and distinct appropriate units.)

Allis Chalmers Mfg. Co., 47 N. L. R. B. No. 15. (Where upon application of the Globe doctrine to employees of an industrial machinery manufacturer, separate elections have been directed among powerhouse employees in (a) powerhouse forge and electrical control plant and (b) powerhouse maintenance employees; (1) if a majority of the employees in both groups select organization (A) claiming both groups to constitute a separate unit, they will constitute a separate unit; (2) if a majority of both groups select organization (b) contending that (b) should be excluded from the unit and that group (a) should be merged with the larger production unit which it represented, group (a) will constitute a separate unit and group (b) will be included in the larger production unit; (3) if a majority of group (a) select either (A) or (b) they will constitute a separate unit; and (4) in the event a majority of group (b) select (A) that group will constitute a separate appropriate unit.)

Where one organization desired a departmental unit, comprising the pressroom employees of a newspaper publishing company, and the other, having organized them on that basis, wished to allocate its members to two separate units, *held* single departmental unit proper but second organization not precluded from allocating employees to subordinate locals or from bargaining through joint representatives in the event it won the election. *Abell Co.*, 27 N. L. R. B. 776.

Employees in the powerhouse of a rayon manufacturer, *held* to constitute an appropriate unit notwithstanding the claim of one of the labor organizations involved that such a unit was inappropriate and that the proper unit should either consist of employees of the company's three plants on an industrial basis or a single plant unit including the proposed unit, when the powerhouse was segregated from the rest of the plant, remainder of plant was represented, the only labor organizations presenting evidence of membership among the employees at the plant in question were agreed upon the propriety of the unit requested by the petitioners, and the organization disclaiming the propriety of the proposed unit declined to present evidence of membership in either the proposed unit or any other portion of the plant and did not desire an election among the em-

ployees in the plant in question or among the employees at the company's three plants. *Industrial Rayon Corp.*, 33 N. L. R. B. 680, 684.

Angelica Jacket Co., 29 N. L. R. B. 824. (Proposed unit claimed by petitioner comprising truck drivers and the non-supervisory employees in the stock and shipping department of a garment manufacturer, *held* appropriate notwithstanding claim of one of the two labor organizations involved that a plant-wide unit was appropriate where union claiming plant-wide unit had bargained on a plant-wide basis exclusive of the employees in the proposed unit and had not sought to organize these employees until after the petitioner began its organizational efforts, and when the work of the employees within the proposed unit was functionally different and was chiefly performed physically apart from the remaining employees.)

Consolidated Laundries Corp., 34 N. L. R. B. 476. (Unit proposed by petitioner comprising employees in the manufacturing department of a company engaged in the manufacture and laundering of linens, *held* to constitute an appropriate unit notwithstanding the claim of one of the two organizations involved that the appropriate unit should consist of these employees plus the employees in the laundering department, when the functions in the manufacturing and laundering departments were dissimilar, petitioner had organized only employees in this department and rival union had recognized its separateness by executing contracts for each of the respective groups.)

Schieffelin & Co., 35 N. L. R. B. 290. (Warehouse employees separate from remaining employees of a manufacturer and wholesaler of drugs as requested by petitioning union, *held* appropriate despite contention of a rival union that all the employees constitute an appropriate unit where among other reasons bargaining history on an industrial basis was not considered determinative.)

Yale & Towne Mfg. Co., 36 N. L. R. B. 1072 (The employees. of the mechanical equipment department of a company engaged in manufacturing hardware and locks constitute an appropriate unit notwithstanding contentions of rival union and company for a plant-wide unit, when such department was not a part of the company's production process, most of the work in the department was highly skilled, there was no temporary interchange of employees from other departments, and history of collective bargain-

ing on an industrial basis was not under the circumstances considered determinative.)

Notwithstanding claim of one of two organizations involved that a plant-wide unit of a yarn manufacturer was appropriate, since that organization failed to show substantial membership in such unit, and since the other union had limited its organization to a department of the plant consisting of wool sorters, the Board in order to render collective bargaining an immediate possibility, and in view of the present state of organization at the company's plant, and without prejudice to a later determination of the appropriate unit, found that the departmental unit constituted an appropriate unit. *New Jersey Worsted Mills*, 35 N. L. R. B. 1303.

Shaw Lumber Co., 28 N. L. R. B. 818. (Mill operations separate from logging operations of a lumber company found to constitute an appropriate unit, notwithstanding claim of one of the two labor organizations involved that truck drivers who are engaged in the logging operations should be included in the unit when, self-organization had not extended beyond the limits of such a unit.)

Unit proposed by petitioning organization consisting of the credit employees of an electric utility constituted an appropriate unit notwithstanding contentions of a rival organization that they were part of the commercial department and were covered by a contract which it had with the company, when the contract did not preclude a determination that these employees constituted a separate appropriate unit, since it was entered into after notice of petitioner's claim and was contingent upon the outcome of this proceeding, employees within the unit formed a compact homogeneous group, and the company's past collective bargaining history recognized as an appropriate unit any small homogeneous group who desired to bargain collectively. *Malden Electric Co.*, 39 N. L. R. B. 1077.

3 3. *Disputes as to scope of plant-wide units.* [*See* §§ 101–151 (as to the exclusion or inclusion of special classes of employees).]

Employees in the textile and rubber mill of a rubber products manufacturer, *held* to constitute an appropriate unit notwithstanding contention of one of the labor organizations involved that the employees at the textile mill constituted a separate unit, where the two mills were within the same enclosure and employees entered at the same gate, the

product of the textile mill was used only for the manufacture of tires, and although there were some differences in the nature of the work of the two plants and there was a higher percentage of women employees at the textile mill, where the employees were largely machine tenders, there was no reason to believe that these differences raised any problems in collective bargaining peculiar to one mill or the other; for all of the employees were production workers and had only the usual problems raised in their production work, none of them having any peculiar skill, and the fact that a prior employee representation plan had maintained separate conferences for the textile and rubber mills threw no light on the present controversy since there had never been any collective bargaining by that organization, some of the textile workers had felt that their problems were the same as those of the rubber workers, and none of them had ever attempted to secure separate representations. *Goodyear Tire and Rubber Co. of California,* 3 N. L. R. B. 431, 437, 438.

Terminal Flour Mills Co., 8 N. L. R. B. 381, 384–387. (Employees of a mill and a warehouse of an employer engaged in the milling and distribution of flour, *held* to constitute a single appropriate unit notwithstanding contention of one labor organization involved that there was a definite line of demarcation between the work of the warehousemen and the mill employees and that it was proper to separate them into two groups for collective bargaining since, in addition, the buildings were physically separated and the warehousemen were less experienced workers with different working hours and less pay. The rival labor organization contending for a single unit of mill and warehouse employees had undertaken to represent all production employees in other milling companies within the same area on the basis of a single unit, and originally both groups of employees involved had been represented in a single unit. Subsequent to a disagreement they had bargained under separate units and secured written contracts with the employer but this history of bargaining was not controlling since it appeared that the warehousemen did not constitute a distinct skilled craft, no fundamental difference existed between the types of work done by the two groups, and their interests, in fact, were closely allied.)

Godchaux Sugars, Inc., 26 N. L. R. B. 33. (Employees in the byproduct plant of a sugar refiner included in a unit

comprising production and maintenance employees notwithstanding contention of one of the organizations involved that they should be excluded, for although they were housed in a separate building, they were an integral part of the company's operations, their wages and working conditions were similar to other employees in the unit, and there was absent any history of collective bargaining by these employees as a separate unit.)

Medford Corp., 30 N. L. R. B. 256. (Main line railroad employees included in a unit comprising the production and maintenance employees at the logging operations of a lumber company notwithstanding contentions of one of the labor organizations involved that they should be excluded, when their functions and bargaining history were in general closely related to employees within the unit.)

Westinghouse Electric & Mfg. Co., 41 N. L. R. B. 1265. (Where petitioning labor organization contended that all the employees in the manufacturing and repair section of an electric products manufacturer constituted an appropriate unit and an opposing labor organization contended that one of the two departments comprising this section, viz: the switchboard and panelboard-assembly department constituted a separate unit, Board directed separate elections to be conducted among employees in this department and the other department (motor department) when it was shown that the departments could either constitute separate units or a single unit, and held that in the event a majority of the employees in each department selected the same representative they shall constitute a single appropriate unit and if each of the departments selected different representative each will constitute a separate unit.)

Cf. *McAndres & Forbes Co.*, 39 N. L. R. B. 699. (Where Board denied the request of one of the labor organizations involved for a "Globe" election among the maintenance employees of a licorice extract manufacturer to determine whether or not the employees desire to be included or excluded from a unit of production employees when among other reasons there was no history of collective bargaining in the plant, company's operations were unitary in character, and both production and maintenance employees were eligible to membership in the union requesting such election.)

[*See* §§ 74–78.1 (as to disagreement between bona fide unions as to the scope of multiple plant units among employees of a single employer).]

All employees of a steamship company who were engaged in the repair and maintenance of ships or piers, *held* to constitute an appropriate unit notwithstanding the contention of one of the labor organizations involved that employees doing pier work should be excluded from the unit, where the pier maintenance crew was made up of persons temporarily transferred from ship work and did not remain constant or perform pier work exclusively, and both pier and ship workers were governed by the same rules and regulations as to hours of work, overtime, and holidays, and the same scale of wages prevailed for all classifications whether engaged in ship work or pier work. *United Fruit Co.*, 9 N. L. R. B. 591, 594, 595.

All employees in a radio and telegraph communications system (excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge), *held* to constitute an appropriate unit, notwithstanding contention of one of the labor organizations involved that "point-to-point personnel" constituted a separate unit. Although the Board had previously determined that "live traffic" employees, comprising most of the categories referred to as "point-to-point personnel" in the New York Metropolitan area alone constituted an appropriate unit [2 N. L. R. B. 1109], such determination was made in the absence of proof of a desire of such employees to be bracketed in a single unit with all other employees of the system and was predicated upon the principle that such employees should not be denied the benefits of the Act until the remaining employees of the system became organized. The two labor organizations involved have now organized employees throughout the whole system and both organizations seek system-wide bargaining units. *R. C. A. Communications, Inc.*, 9 N. L. R. B. 915, 919–921. Cf. *Delaware-New Jersey Ferry Co.*, 30 N. L. R. B. 820; (Pilots, engineers, and unlicensed personnel of a ferry company, *held* to constitute an appropriate unit notwithstanding company's contention that the three groups constituted separate units, for although the Board in a prior proceeding found the engineers alone constituted an appropriate unit, since the groups were sufficiently distinct and engineers had been at that time

the only organized group among the employees, the union—the only labor organization involved— has now organized all the groups, and to find separate units would place an unwarranted and unnecessary obstacle in the path of collective bargaining.)

[*See* § 1 (as to conclusiveness of a prior unit determination by the Board).]

Teamsters excluded from a unit of employees of a fish cannery where they were ineligible for membership in the labor organization seeking their exclusion, but are eligible for membership in an affiliate of the labor organizations which would include them and a number of them were members of such affiliate, for teamsters constituted a separate and well-defined craft for which a labor organization was available through which they might exercise their rights under the Act. *F. E. Booth & Co.*, 10 N. L. R. B. 1491, 1497.

Capitol Milling Co., 28 N. L. R. B. 1221. (Separate election directed among truck drivers so that they might determine whether or not they desire to constitute a separate unit or be merged into an industrial unit, when they were ineligible to membership in the organization requesting their exclusion and were not covered by a previous exclusive bargaining contract existing between that organization and the company, and when the organization requesting their inclusion admitted them to membership and specifically included them in the exclusive bargaining contract which it had entered into upon the expiration of former union's contract.)

Acme White Lead & Color Works, 29 N. L. R. B. 1158. (Powerhouse employees excluded from a production and maintenance unit of a paint manufacturer, when they were eligible to membership in other labor organizations readily accessible to them.)

Cincinnati Concrete Pipe Co., 37 N. L. R. B. 360. (Truck drivers included in a unit of production employees of a concrete products manufacturer although one of the organizations desired their exclusion and notwithstanding the fact that truck drivers have often separated themselves from production and maintenance employees for the purpose of collective bargaining, when the organization which represented them and a coaffiliated organization jointly requested their inclusion in the unit and there had been no separate history of collective bargaining for truck drivers at the plant.)

Overmeyer, 41 N. L. R. B. 979. (Truck drivers included in an industrial unit of a warehouse company, when they had a substantial interest in common with the remaining employees and no real conflict existed between the unions with respect to their inclusion.)

Grower-Shipper Vegetable Ass'n of Central Calif., 43 N. L. R. B. 1389. (Truck drivers excluded from an industrial unit of a vegetable packer, when they were ineligible to membership in the labor organization seeking their exclusion, and were sought to be excluded from the unit by that organization because of their eligibility in another labor organization and its desire to avoid a jurisdictional controversy.)

Where the Board in previous decisions involving the porcelain division of an electrical equipment manufacturer, found respectively, that (1) production and maintenance employees and (2) remaining clerical and technical employees constituted appropriate units and certified the two labor organizations involved for these units, since hourly paid shop clerks were not included in either of these units and since both of the organizations desired their inclusion in the respective units which they represented, the Board directed that an election be conducted among these employees to determine whether or not they desired to be represented by either of the labor organizations involved and in the event one of the organizations obtained a majority they were then to be considered a part of the unit which that organization represented. *Westinghouse Electric & Mfg. Co.*, 33 N. L. R. B. 789.

Over the objection of one of two labor organizations involved, who claimed that working foremen should be excluded from a unit of production employees of a drug wholesaler, since it did not appear from the record whether the positions held by such employees were covered by the contract between the company and the organization desiring their inclusion, Board found that they should be included in the unit if their positions were covered by the contract, but that they should be excluded if such positions were not covered by the contract. *McKesson & Robbins, Inc.*, 42 N. L. R. B. 1297. See also: *American Foundry and Machine Co.*, 43 N. L. R. B. 1354. *Craddock-Terry Shoe Corp.*, 44 N. L. R. B. 738.

Indentured apprentices, employed under contracts subject to approval of State Industrial Commission, included in a unit of foundry employees of an ordnance equipment

manufacturer notwithstanding contentions of the company and one of the two labor organizations involved that they were in effect wards of the State and not proper subjects for collective bargaining, when Board was of the opinion that the contracts of indenture and the laws of the State would not interfere with the process of collective bargaining and that in any event, they were employees who may designate collective bargaining representatives within the meaning of Sections 2 (3) and 9 (a) of the Act. *Vilter Mfg. Co.*, 44 N. L. R. B. 232.

III. MULTIPLE PLANT AND SYSTEM UNITS AMONG EMPLOYEES OF A SINGLE EMPLOYER.

A. IN ABSENCE OF DISPUTE BETWEEN TWO OR MORE BONA FIDE UNIONS.

1. *Proposed unit appropriate.*

1 a. Unit comprising all plants of an employer or of a division of its business.

A finding of the Board that employees in two plants constitute an appropriate unit is reasonable and is binding upon a court of review where: (1) one individual owns, controls, and manages one plant and, through ownership of all the stock by himself and his family, controls the other as president and manager; (2) the business and operation of the two plants are similar, workers are transferred from one to the other; joint purchases of raw materials are received at one plant for both; products partially manufactured at one are finished at the other; each ordinarily, but not invariably, uses its own trademark; the production employees of both plants do the same kind of work, requiring the same degree of skill; no appreciable wage differential exists; all recognize the authority of the individual who owns both; the principal differences between the plants being that one makes higher-priced products than the other, sells to retailers, while the other sells to wholesalers, and makes some merchandise not made at the other plant; (3) the owner refused to bargain with representatives of a labor organization when they attempted to negotiate a contract covering both plants but did not base such a decision on the ground that the unit was not appropriate until the hearing, when he testified that he was at all times willing to treat with the plants separately and that an organization found to be company-dominated was recognized by him and represented a majority of the

employees at one plant; and (4) if the employer could deal with the employees of the two plants as separate units he would be able to force competition between them to their detriment. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 818, (C. C. A. 8), remanding 6 N. L. R. B. 423.

Two plants of a velvet manufacturer, *held* appropriate. *Rossie Velvet Co.*, 3 N. L. R. B. 804.

Somerset Shoe Co., 5 N. L. R. B. 486 (shoe manufacturing).

American Oil Co., 7 N. L. R. B. 210 (oil distributing).

Sorg Paper Co., 8 N. L. R. B. 657 (paper and bag manufacturing). See also: *Sorg Paper Co.*, 25 N. L. R. B. 946.

Inland Steel Co., 9 N. L. R. B. 783 (metal products manufacturing). See also: *Inland Steel Co.*, 34 N. L. R. B. 1294. *Ace Foundry, Ltd.*, 38 N. L. R. B. 392. *Superior Steel & Malleable Castings Co.*, 38 N. L. R. B. 1099.

Providence Coal Mining Co., 27 N. L. R. B. 1245 (mining).

Cohen & Co., Inc., 30 N. L. R. B. 31 (scrap metal sorting).

Roebling's Sons Co., 31 N. L. R. B. 160 (wire manufacturing).

Atkin Company, 35 N. L. R. B. 697 (furniture manufacturing). See also: *National Metal-Art Mfg. Co., Inc.*, 37 N. L. R. B. 561.

Automatic Products Co., 40 N. L. R. B. 941 (automatic control equipment manufacturing).

Neptune Boat & Davit Co., Inc., 41 N. L. R. B. 1139 (shipbuilding).

Dickson, 41 N. L. R. B. 1230 (cafeteria).

Chicago Screw Co., 44 N. L. R. B. 1365 (screw machine products manufacturing).

Three plants of a chemical products manufacturer, *held* appropriate. *Shell Chemical Co.*, 4 N. L. R. B. 259.

Lenox Shoe Co., Inc., 4 N. L. R. B. 372 (shoe manufacturing). See also: *Craddock-Terry Shoe Corp.*, 44 N. L. R. B. 738.

Highland Park Mfg. Co., 12 N. L. R. B. 1238 (textile manufacturing).

Kuhner Packing Co., 30 N. L. R. B. 937 (food products).

Spach Wagon Works, Inc., 31 N. L. R. B. 149 (furniture manufacturing) See also: *Tucker Duck & Rubber Co., Inc.*, 36 N. L. R. B. 132.

Four plants of a metal products manufacturer, *held* appropriate. *American Hardware Corp.*, 4 N. L. R. B. 412. *Sunbeam Electric Mfg. Co.*, 42 N. L. R. B. 825; (ordnance manufacturing).

Five plants of an aluminum manufacturer, *held* appropriate. *Aluminum Co. of America*, 6 N. L. R. B. 444. *Alpena*

Garment Company, Inc., 13 N. L. R. B. 720; (garment manufacturing).

Six plants of a textile manufacturer, *held* appropriate. *Powdrell & Alexander, Inc.*, 43 N. L. R. B. 1271. *Houston Pipe Line Co.*, 28 N. L. R. B. 301; (system-wide unit of a pipeline industry). *Salt River Valley Water Users Ass'n*, 32 N. L. R. B. 460; (system-wide unit of a land reclamation company).

One division of an oil producer and distributor, *held* appropriate. *Gulf Oil Corp.*, 19 N. L. R. B. 334. See also: *Continental Oil Co.*, 37 N. L. R. B. 234. *Standard Oil Co.*, 40 N. L. R. B. 1233.

United Steel and Wire Co., 28 N. L. R. B. 761 (wire products manufacturing).

Rockland Light & Power Co., 35 N. L. R. B. 542 (electric utility). See also: *Ohio Public Service Co.*, 36 N. L. R. B. 1269. *Twin State Gas and Electric Co.*, 38 N. L. R. B. 760. *Southern California Gas Co.*, 41 N. L. R. B. 668.

Richmond Greyhound Lines, Inc., 37 N. L. R. B. 818 (motor transportation).

McKesson & Robbins, Inc., 42 N. L. R. B. 1297 (drug and liquor wholesaling).

A State-wide unit of an oil producer and refiner, *held* appropriate. *Shell Oil Co. of Calif.*, 2 N. L. R. B. 835. *Colonial Life Insurance Co. of America*, 42 N. L. R. B. 1177 (insurance industry). See also: *Metroplitan Life Insurance Co.*, 43 N. L. R. B. 962. *Associated Press*, 42 N. L. R. B. 1334; (news collecting).

A malt plant and mill of a grain processor and miller, *held* appropriate. *Kansas Milling Co.*, 15 N. L. R. B. 71. *Kesterson Lumber Corp.*, 30 N. L. R. B. 87 (milling and logging operations in the lumber industry). See also:

Row River Lumber Co., 30 N. L. R. B. 232.
Hobbs, Wall & Co., 30 N. L. R. B. 1027.
Carlisle Lumber Co., 31 N. L. R. B. 180.
Fischer Lumber Co., Inc., 31 N. L. R. B. 828.
Buzard-Burkhart Pine Co., 35 N. L. R. B. 203.
Henry Lumber Co., 36 N. L. R. B. 452.
Agnew, 44 N. L. R. B. 1253.

Chicago Macaroni Co., 30 N. L. R. B. 288 (macaroni and grocery divisions in the grocery wholesaling and macaroni manufacturing industry).

Shenandoah-Dives Mining Co., 35 N. L. R. B. 1153 (mining and milling operations in the metalliferous ore industry).

Harbison-Walker Refractories Co., 37 N. L. R. B. 785 (clay mine and brick works in the brick manufacturing industry).

Swift & Co., 40 N. L. R. B. 931 (phosphate mine and fertilizer plant in the fertilizer manufacturing industry).

Globe Mills, Inc., 41 N. L. R. B. 94 (flour mill and ice plant in the flour and ice manufacturing industry).

Although in the Board's original decision (13 N. L. R. B. 1326) twelve separate plant units of an automobile manufacturer were established when the past history of bargaining had not established a pattern upon a single unit basis and there was no indication in the record as to the relative strength of the organizations involved in the various plants of the company, since the results of the elections directed among these employees showed that the employees at each of the plants had chosen the same organization (A) to represent them in collective bargaining, and in view of the fact that problems of wages, hours, and working conditions arising at each of the plants were similar, the Board upon motion of organization (A) consolidated these plants in a single bargaining unit (17 N. L. R. B. 749). In subsequent cases (28 N. L. R. B. 1038; 37 N. L. R. B. 877) two other separate plant units were established. Organization (A's) request that these units be included in a unit with the previously established 12-plant unit in the event that it were selected as the representative in each of these plants, was rejected. Such request was found premature in that no representative had been certified for these plants and no request had been made upon the company to bargain upon the basis of the unit thus expanded. However, following elections directed among those employees and upon motion of organization (A) which had been certified as the representative of the employees in the latter plants (29 N. L. R. B. 1164; 38 N. L. R. B. 974), the Board consolidated these two units with the previously established 12-plant unit and found that it was appropriate for the company to recognize organization (A) as the representative of all employees within such a 14-plant unit, since the same representative was selected in all of these plants, and separate contracts for the latter two plants embodied similar terms and conditions of employment as obtained for the 12-plant unit (42 N. L. R. B. 1145). *Chrysler Corp.*

Woodward Iron Co., 46 N. L. R. B. 1345. (Where Board previously certified a local union for employees at one mine shaft of a mining company and local entered into contract

with employer covering such unit, and in present proceeding a sister-local petitioned for and sought a unit of employees at employer's other mine shaft, Board found such latter unit to be appropriate, and in the event that petitioning local was certified as the bargaining representative, in accordance with the wishes of the employees, adjudged that it would not be inappropriate for the parties to treat the two operations as a single unit for the purposes of collective bargaining.)

2 b. Unit comprising one or more, but not all the plants of an employer or of a division of its business.

One of the refineries of an oil refiner, *held* appropriate. *Atlantic Refining Co.*, 1 N. L. R. B. 359. See also: *Texas Company*, 43 N. L. R. B. 250.

United Dredging Co., 30 N. L. R. B. 739 (one of the dredges in the dredging industry).

Delaware-New Jerey Ferry Co., 30 N. L. R. B. 820 (one of the lines of a water carrier).

Carolina Scenic Coach Lines, 33 N. L. R. B. 528 (one of the lines of a motor carrier).

One of the plants of a steel manufacturer, *held* appropriate. *Crucible Steel Co. of America*, 2 N. L. R. B. 298.

Hoffman Beverage Co., 3 N. L. R. B. 584 (brewery and soft drink manufacturing).

Forest City Manufacturing Co., 27 N. L. R. B. 1100 (garment manufacturing). See also: *Fuld and Hatch Knitting Co.*, 30 N. L. R. B. 1133.

Allied Kid Co., 28 N. L. R. B. 687 (tanning). See also: *Greenebaum Tanning Co., J.*, 42 N. L. R. B. 626.

Youngstown Steel Door Co., 31 N. L. R. B. 555 (metal products manufacturing). See also:

San Equip, Inc., 35 N. L. R. B. 1116.
Grede Foundries, Inc., 40 N. L. R. B. 1008.
Western Foundry Co., 41 N. L. R. B. 301.
Unitcast Corp., 42 N. L. R. B. 409.
Borg-Warner Corp., 43 N. L. R. B. 301.

Westinghouse Electric & Mfg. Co., 31 N. L. R. B. 574 (electrical equipment manufacturing). See also: *Arcrods Corp.* 40 N. L. R. B. 1304.

Sun Tent-Luebbert Co., 37 N. L. R. B. 899 (canvas goods manufacturing). See also: *Burlington Mills, Inc.*, 43 N. L. R. B. 426.

Tennessee Products Corp., 37 N. L. R. B. 971 (ferro-manganese manufacturing).

Westinghouse Electric & Mfg. Co., 38 N. L. R. B. 404; 38 N. L. R. B. 412 (ordnance manufacturing). See also: *Stewart-Warner Corp.*, 43 N. L. R. B. 1233.

Pollack & Co., Inc., 38 N. L. R. B. 966 (thread manufacturing).

Interlake Iron Corp., 38 N. L. R. B. 139 (coal byproducts manufacturing).

King Machine Tool Co., 39 N. L. R. B. 1 (tool manufacturing.)

New Process Metals Corp., 39 N. L. R. B. 631 (flint manufacturing).

Oliver Machinery Co., 39 N. L. R. B. 722 (machinery manufacturing). See also: *Bucyrus-Erie Co.*, 41 N. L. R. B. 939. *Steiner*, 43 N. L. R. B. 1384.

Company of Master Craftsmen, Inc., 39 N. L. R. B. 744 furniture manufacturing).

Remington-Rand, Inc., 40 N. L. R. B. 1100 (Office equipment manufacturing).

Crowley's Milk Co., Inc., 40 N. L. R. B. 1280 (dairy products). See also: *Beatrice Creamery Co.*, 41 N. L. R. B. 1197. *Fairmont Creamery Co.*, 42 N. L. R. B. 1041. *Sheffield Farms Co., Inc.*, 42 N. L. R. B. 1256.

Electric Auto-Lite Co., 40 N. L. R. B. 1345 (automobile equipment manufacturing).

Pressed Steel Car Co., Inc., 41 N. L. R. B. 6 (railway car manufacturing).

Chapman & Dewey Lumber Co., 41 N. L. R. B. 29 (hardwood manufacturing).

Ladoga Canning Co., 41 N. L. R. B. 51 (canning).

White Pigment Corp., 41 N. L. R. B. 379 (pigment manufacturing).

Bonafide Mills, Inc., 41 N. L. R. B. 491 (linoleum manufacturing).

Allis Chalmers Mfg. Co., 41 N. L. R. B. 747 (farm equipment manufacturing).

Kayser & Co., 41 N. L. R. B. 751 (textile manufacturing). See also: *Monarch Mills*, 41 N. L. R. B. 1248. *Henrietta Mills*, 44 N. L. R. B. 690.

Phelps Dodge Refining Corp., 41 N. L. R. B. 1016 (copper refining).

General Electric X-Ray Corp., 41 N. L. R. B. 1026 (x-ray equipment manufacturing).

Rudolph Wurlitzer Co., 41 N. L. R. B. 1074 (musical instrument manufacturing).

Davis-Noland-Merrill Grain Co., 42 N. L. R. B. 406 (grain wholesaling).
Armour & Co., 42 N. L. R. B. 578 (poultry products).
Wilson & Co., Inc., 42 N. L. R. B. 665 (shortening manufacturing).
Flintkote Co., 42 N. L. R. B. 929 (building material manufacturing).
Allis-Chalmers Mfg. Co., 43 N. L. R. B. 255 (motor manufacturing).
U. S. Shoe Corp., 43 N. L. R. B. 637 (shoe manufacturing). See also: *L. V. Marks & Sons Co.*, 44 N. L. R. B. 719.
Nashville Gas and Heating Co., 43 N. L. R. B. 783 (gas manufacturing).
American Cyanamid and Chemical Corp., 43 N. L. R. B. 919 (chemical manufacturing).
Harbison-Walker Refractories Co., 43 N. L. R. B. 936 (refractory material manufacturing). See also:
Walsh Refractories Corp., 43 N. L. R. B. 846.
Harbison-Walker Refractories Co., 43 N. L. R. B. 1349.
Harbison-Walker Refractories Co., 44 N. L. R. B. 343.
Swank's, 44 N. L. R. B. 1270
Harbison-Walker Refractories Co., 44 N. L. R. B. 1280.
Pullman-Standard Car Manufacturing Co., 43 N. L. R. B. 971 (tank manufacturing).
Worthington Pump & Machinery Corp., 44 N. L. R. B. 779 (steam turbine manufacturing).
Gardner-Denver Co., 44 N. L. R. B. 1192 (pump manufacturing).
North American Aviation, Inc. of Kansas, 44 N. L. R. B. 1372 (airplane manufacturing).
Two of the plants of an automobile manufacturer, *held* appropriate. *Chrysler Corp.*, 13 N. L. R. B. 1303.
West Kentucky Coal Co., 10 N. L. R. B. 88 (mining industry). See also: *Pickands, Mather & Co.*, 43 N. L. R. B. 684.
Goodall Worsted Co., 35 N. L. R. B. 318 (textile manufacturing).
Railways Ice Co., 37 N. L. R. B. 883 (ice manufacturing).
Sears Roebuck & Co., 41 N. L. R. B. 1147 (general merchandise mail order industry).
Simmonds Aerocessories, Inc., 42 N. L. R. B. 179 (aeronautical engineering equipment manufacturing).
Armour & Co., 42 N. L. R. B. 623 (poultry products).

Moore Drop Forgings Co., 43 N. L. R. B. 673 (forgings manufacturing).

Three of the offices of a news gathering association, *held* appropriate. *Associated Press*, 5 N. L. R. B. 43.

Five of the plants of an airplane engine manufacturer, *held* appropriate. *Wright Aeronautical Corp.*, 40 N. L. R. B. 1164.

Six of the plants of an office equipment manufacturer, *held* appropriate. *Remington Rand, Inc.*, 2 N. L. R. B. 626.

District office of an insurance company, *held* appropriate. *John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024. See also: *Life Insurance Co. of Virginia*, 29 N. L. R. B. 246; 31 N. L. R. B. 47; 38 N. L. R. B. 20. Cf. *Supreme Liberty Life Insurance Co.*, 32 N. L. R. B. 94.

Remington-Rand Company, Inc., 38 N. L. R. B. 450 (district sales office of an office equipment manufacturing industry).

District or city-wide unit of a national telegraph company, *held* appropriate. *Western Union Telegraph Co.*, 30 N. L. R. B. 679. See also: *Western Union Telegraph Co.*, 30 N. L. R. B. 720; 30 N. L. R. B. 1127; 30 N. L. R. B. 1138; 30 N. L. R. B. 1181; 32 N. L. R. B. 210; 32 N. L. R. B. 428; 34 N. L. R. B. 300; 34 N. L. R. B. 336; 36 N. L. R. B. 210; 36 N. L. R. B. 634; 36 N. L. R. B. 812; 36 N. L. R. B. 881; 36 N. L. R. B. 1009; 36 N. L. R. B. 1014; 36 N. L. R. B. 1019; 36 N. L. R. B. 1024; 36 N. L. R. B. 1046; 36 N. L. R. B. 1051; 36 N. L. R. B. 1056; 36 N. L. R. B. 1061; 36 N. L. R. B. 1066; 36 N. L. R. B. 1165; 36 N. L. R. B. 1209; 37 N. L. R. B. 166; 37 N. L. R. B. 192; 37 N. L. R. B. 200; 38 N. L. R. B. 83.

Intradivisional unit of a gas utility, *held* appropriate. *Southern California Gas Co.*, 31 N. L. R. B. 461. See also: *Appalachian Electric Power Co.*, 38 N. L. R. B. 630. *Southern California Gas Co.*, 40 N. L. R. B. 256.

Partial-system unit comprising employees in the marble quarrying and lime manufacturing industry at specified locations within a State, *held* appropriate. *Vermont Marble Co.*, 42 N. L. R. B. 185.

Milling operations separate from logging operations of a lumber company, *held* appropriate. *Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679. See also: *Johnson Lumber Corp.*, 37 N. L. R. B. 251. *Weyerhaeuser Timber Co.*, 42 N. L. R. B. 499. *Pelican Bay Lumber Co.*, 23 N. L. R. B. 650; (logg-

ing operations separate from milling operations in the lumber industry). See also:

Medford Corp., 30 N. L. R. B. 256.
Diamond Match Co., 35 N. L. R. B. 1317.
Johnson Lumber Corp., C. D., 37 N. L. R. B. 251.
Weyerhaeuser Timber Co., 39 N. L. R. B. 48.
Long-Bell Lumber Co., 41 N. L. R. B. 389.
Bay de Noquet Co., 44 N. L. R. B. 1220.
Ewauna Box Co., 44 N. L. R. B. 1369.

Marshall Field & Co., 35 N. L. R. B. 1200 (warehouse employees separate from store employees of a retail department store).

Montgomery Ward & Co., Inc., 38 N. L. R. B. 297 (separate units for mail order house and retail store of a general merchandise mail order company). See also: *Montgomery Ward & Co., Inc.*, 38 N. L. R. B. 340.

Brandon Corp., 44 N. L. R. B. 331 (cotton-print mill separate from cotton-duck mill in the textile manufacturing industry).

Startex Mills, 44 N. L. R. B. 486 (production mill separate from finishing plant in the textile manufacturing industry).

2. *Proposed unit modified or rejected.*

3 a. Unit comprising all plants of an employer or of a division of its business.

Employees in the Chicago office excluded from a unit consisting of the New York employees of an employer engaged in buying, selling, and jobbing novelties used principally for ladies' wear, notwithstanding that the sole labor organization involved sought to include the employees in both cities within one unit, where, due to geographical considerations, their interests differed from those of the other employees in the unit. *Lidz Brothers, Inc.*, 5 N. L. R. B. 757, 760.

Colorado Builders' Supply Co., 18 N. L. R. B. 29, 31 (Unit proposed by sole labor organization involved comprising the two plants of a building supply manufacturer rejected, when plants were situated 125 miles apart, there was no bargaining history to support the union's contention that both plants constituted a single unit, and the union did not appear to have a substantial membership in one of the plants.)

b. Unit comprising one or more but not all the plants of an employer or of a division of its business.

Although a Nation-wide unit composed of all the employees of a company operating a Nation-wide telegraph system would be the most appropriate unit, the Board had permitted, on the basis of self-organization, units composed of single offices of the company which for the most part comprised the company's functional offices located in large metropolitan areas. When organization extended beyond the metropolitan areas to small non-functional offices throughout geographical districts, the Board, although permitting the continuance of functional offices in large metropolitan areas to be established as separate appropriate units, found that the purposes of the Act would best be effectuated in establishing district-wide units rather than separate non-functional office units in districts where self-organization extended to a substantial number of non-functional offices, and in determining whether non-functional offices should be found to constitute separate appropriate units, considered among other factors, the effectiveness of each such office as a separate bargaining unit, the number of employees in each such office, and the extent of organization of employees in other offices throughout the district in which the office in question was located. Accordingly, proposed unit which involved a single non-functional office employing approximately seven persons was rejected when employees within this office were under the direct supervision of a district superintendent and employees in other non-functional offices within the same district had organized themselves for collective bargaining. *Western Union Telegraph Co.*, 36 N. L. R. B. 907.

All clerical employees of two plants of an aircraft and auto parts manufacturer with specified exclusion, *held* appropriate, notwithstanding sole union's contention that these employees in each plant constituted separate units, where main plant established labor relations policy for both, grievances were referred to company's officials at main plant, work performed by employees at both plants was virtually identical, there were occasional transfers of employees between the plants, most salaried employees were hired at the main plant, and collective bargaining

contract had for many years past covered production and maintenance employees of both plants of the company as a single appropriate unit. *Murray Corp. of America*, 45 N. L. R. B. 854.

Ballantine & Sons, 33 N. L. R. B. 374 (A unit comprising bottle beer salesmen excluding draught beer salesmen in the New York Metroplitan area and excluding both bottle and draught beer salesmen in the New Jersey area of a company engaged in the manufacture and sale of beer and ale as proposed by the sole labor organization involved rejected, when the policies relating to the sale of beer and ale in both areas were determined and controlled by a general manager and sales manager at the company's main office, there was a community of interest between both groups of salesmen, and the activities of both groups were interrelated and interdependent.) See also: *Trommer, Inc.*, 33 N. L. R. B. 381. *Liebmann Breweries, Inc.*, 33 N. L. R. B. 387. Cf. *Christian Feigenspan Brewing Co.*, 29 N. L. R. B. 1136.

Sears, Roebuck & Co., 35 N. L. R. B. 1036. (A separate unit consisting of employees at one of three buildings located in the same city of a company engaged in the mail order business as requested by the sole union involved, rejected, when the operations and functions at each of the buildings were similar, personnel and management were interdependent, and when the employees at the three buildings were eligible to membership in the union and the union had commenced its organizational efforts at the other two buildings.)

National Vulcanized Fibre Co., 36 N. L. R. B. 46. (Despite desire of sole labor organization involved for a unit comprising fibre mill employees of a vulcanized fibre manufacturer who operated a fibre and paper mill, both mills, *held* to constitute an appropriate unit in view of the functional coherence, interdependence, and integrated character of the operations of the paper and fibre mills, the similarity of the work and working conditions of the two mills, their joint supervision and joint plant facilities, the company's uniform labor policy and interchange of personnel, and the union's attempts to organize the employees of both mills.) See also: *Cambria Clay Products Co.*, 42 N. L. R. B. 980.

B. WHERE TWO OR MORE BONA FIDE UNIONS DISAGREE AS TO SCOPE.

1. *In systems of communications, transportation, and public utilities.*

a. System unit appropriate.

All employees in the operating department of a gas company constitute an appropriate unit despite the contention of one of the labor organizations involved that each of the four bureaus in the department should be a separate unit as was ordered in an election conducted by the old National Labor Relations Board. The two principal bureaus of the department not only have a similarly wide range in skill among their employees, but their employees also are interchangeable; the same standards of wages and working conditions for corresponding work prevails throughout the department; and, notwithstanding the distance of 7 miles between one of the principal bureaus and two of the others, the objecting labor organization represented such bureau prior to the afore-mentioned election and it is not unusual for labor organizations in the industry to have members scattered over 50 miles. *Portland Gas & Coke Co.*, 2 N. L. R. B. 552, 556, 557. See also: *Missouri Utilities Co.*, 43 N. L. R. B. 908; (Proposed unit comprising employees at one city of a geographic division of utility, *held* inappropriate in view of the integration and functional coherence of operations throughout the division.)

Technicians and engineers in the New York Metropolitan area of an employer engaged in radio broadcasting do not constitute a unit appropriate for collective bargaining where, although the petitioning labor organization requests such a unit, the employer had habitually bargained with its employees on a Nation-wide basis under written contracts with a rival labor organization which is a party to the proceeding; perfect coordination of its work requires functional coherence throughout its entire system; the technicians, wherever located, work together in a closely coordinated unit; and wages and working conditions are substantially the same at all stations. *Columbia Broadcasting System, Inc.*, 6 N. L. R. B. 166, 169.

Wisconsin Power & Light Co., 6 N. L. R. B. 320, 323. (Employees in a single district of a public utility corporation do not constitute an appropriate unit where: (1) the corporation has divided its territory into 14 districts in order to be

in closer contact with its consumers and to take better care of their needs; (2) the petitioning labor organization claims that the employees in such district constitute an appropriate unit, but 2 other labor organizations, whose claims together cover substantially the same classifications of employees as are covered by the claims of the petitioning organization with respect to the single district, contend that the unit should be composed of employees in all 14 districts; (3) each of these two organizations has entered into an exclusive bargaining contract covering the employees in all 14 districts; and (4) the functions and interests of all employees are similar and closely related.)

Postal Telegraph-Cable Corp. of New York, 9 N. L. R. B. 1060, 1068–1070. (All employees of the land lines of a national and international communication system constitute an appropriate unit notwithstanding the contention of one of the labor organizations involved that the employees in each of 45 cities throughout the system constitute separate bargaining units, where the employees throughout the system are closely interrelated, subject to the same general policies, engage in the same type of work, under the same classifications, and in general, have the same problems concerning wages, hours, and working conditions; the labor organization seeking 45 separate units admits that prior to the of its petition it demanded recognition as a collective bargaining agent on a Nation-wide basis; and general agreements which the employer entered into with the 2 labor organizations involved covering employees in widely separated localities throughout the country indicate the feasibility of inclusion in a single unit of employees throughout the system.)

A unit comprising over-the-road drivers, pick-up delivery men, city warehousemen, and checkmen throughout the entire system of an employer engaged in transporting freight as contended for by the petitioner which has organized all but a few of the small terminals of the entire system constitutes an appropriate unit notwithstanding contentions of the intervenor that a unit limited to five of the terminals should constitute an appropriate unit where the employees throughout the system were in close association with one another; wages and working conditions were uniform throughout the entire system; and the system was operated as a closely knit unit. However, if the election showed that employees did not desire to be

represented in a system-wide unit, the Board indicated that it would consider further the appropriateness of the smaller unit on the basis of the claim of the intervening union. *ET & WNC Motor Transportation Co.*, 30 N. L. R. B. 505. See also: *Iowa Southern Utilities Co.*, 15 N. L. R. B. 580; and *Gulf Oil Corp.*, 19 N. L. R. B. 334; (where tentative system-wide units were set up pending results of election).

Where, in a system of public utilities, the employer's organization, management, and operation of its business as a single closely integrated enterprise resulted in an intimate inter-relation and interdependence in the work and interests of the employees, *held* that a system-wide unit was appropriate when there was a labor organization in a position to represent employees throughout the system and proposed unit confined to one of the plants of the company, *held* inappropriate. *Northern States Power Co. of Wisconsin*, 37 N. L. R. B. 991.

Tennessee Electric Power Co., 7 N. L. R. B. 24, 32. (Employees throughout the system of an employer engaged in the production, transmission, and distribution of electrical energy in two States constitute an appropriate unit where, although one labor organization contends that employees at only two plants should constitute a separate appropriate unit, employees throughout the system are intimately associated, despite geographic separation of work situs; there is an interdependency in the different functions performed throughout the system; employee-employer relations have been substantially on a system-wide basis; since the main office determines the labor policy for all employees, any labor organization would have to deal with it irrespective of what employees the system represents; there is mutuality of interest among all the employees concerning working conditions and one of the labor organizations involved claims that it has organized a majority of these employees and been designated their representative.)

Gulf States Utilities Co., 31 N. L. R. B. 740. (A partial-system unit comprising employees in one of the States of a public utility corporation engaged in the production, transmission, and distribution of electrical energy in two States, *held* inappropriate for purposes of collective bargaining where the entire system was functionally coherent

and the organization opposing a partial-system unit had organized the employees on a system-wide basis.)

Pennsylvania Edison Co., 36 N. L. R. B. 432. (A system-wide unit of an electric utility, *held* to constitute an appropriate unit despite desire of one of the labor organizations involved for three separate units which when combined covered the same employees, when among other reasons the organization requesting the system-wide unit had organized a substantial number of the employees, whereas the opposing organization failed to indicate that a substantial number or employees throughout the system had indicated a desire to bargain in three separate units.)

Florida Power & Light Co., 42 N. L. R. B. 742. (A system-wide unit comprising electrical employees of an electric and gas utility, *held* appropriate, when one of the petitioners had organized employees upon a system-wide basis as contrasted with the limited organization by another petitioner in one geographic area, the partial unit proposed constituted an arbitrary grouping, and there existed an interdependence of function between the various geographic areas.)

6 b. Partial-system unit appropriate.

Drivers, drivers' helpers, dockmen, and dockmen's helpers employed at the principal place of business of a trucking company employing other of such employees elsewhere in the State, *held* to constitute an appropriate unit notwithstanding the contention of one of the labor organizations involved that the two groups should be included within one unit, where it appeared that for years drivers and dockmen in the industry generally, and in the locality involved, have followed the procedure of bargaining in individual units covering employees in local communities only, and the employees at the principal place of business did not desire the larger unit. *Motor Transport Co.*, 2 N. L. R. B. 492, 496–498.

Employees in one of several divisions of a natural gas utility company, *held* to constitute an appropriate unit where: (1) one labor organization desired that they be held to constitute a separate unit, the employer and intervening labor organizations claimed that the employees in the entire system of the company constituted an appropriate unit; (2) the division in question, being roughly coterminous with the metropolitan area of the city wherein the employer's principal place of business was located, constituted

a distinct geographic and administrative unit whose employees worked out of the same office with the resulting common contacts and problems and formed a homogeneous group; (3) although the labor organization claiming that the division constituted a separate unit originally attempted to organize all the workers throughout the system, differences in conditions among the various divisions and the organizational activities of a rival labor organization within some of them convinced it that such a unit was not feasible; and (4) the opposing organizations had not organized generally throughout the system, but were also confined to specific geographical areas for where the spheres of organization of all the labor organizations were so distinctly separated geographically, a test of strength at a period when organization had been confined to different and distinct geographical areas would hinder the processes of collective bargaining. *Southern California Gas Co.*, 10 N. L. R. B. 1123, 1135–1138. Cf. *Great Lakes Engineering Works*, 3 N. L. R. B. 825, 828–830. *Tennessee Electric Power Co.*, 7 N. L. R. B. 24, 30–35.

Traffic department employees in each of 4 of 99 exchanges of a State-wide communication system, *held* to constitute a separate appropriate unit notwithstanding the contention of the employer and one of the labor organizations that the history of organization of the traffic department employees and the collective bargaining that proceeded under such organization supported the determination of a State-wide unit for the reason that for many years, both under a plan found to be company-dominated and under a bona fide independent organization, these employees had been organized on a State-wide basis. The long history of collective bargaining activities through the medium of the employer-controlled plan habituated the employees to a system-wide form of organization and consequently the independent organization, which was formed by important officers under the plan and which adopted the structural and administrative features of the plan, endeavored to organize along such lines. Under such circumstances the determination of system-wide unit would thus tend to perpetuate a pattern of organization which owed its form and origin to the employer rather than to the freely exercised choice of the employees. *Wisconsin Telephone Co.*, 12 N. L. R. B. 375, 394–396.

Following the enforcement of unfair labor practice proceeding, in which company was required to cease and desist its unfair labor practices and to disestablish a dominated organization and upon amended petition, employees of one of 13 geographical divisions into which an electric utility was divided, *held* to constitute an appropriate unit notwithstanding claim of one of the 2 organizations involved that the appropriate unit was the system-wide unit which the Board in the original proceeding had determined to be appropriate, when the division could function effectively as a separate unit and when substantial self-organization among the employees was limited to this division principally because of the unfair labor practices of the company which contributed to the collapse of the petitioner as a system-wide employee organization and the failure of the organization requesting the system-wide unit to make substantial gains among employees throughout the system. *Pacific Gas & Electric Co.*, 40 N. L. R. B. 591, 595–603.

All employees at the compressor stations separate from the pipe-line department of a company engaged in pipe-line operations, *held* to constitute an appropriate unit notwithstanding claim of one of two labor organizations involved that all of the company's employees constituted an appropriate unit, when the unit was coterminous with the scope of the organizational activities of the only labor organization which had sought and was prepared to bargain with the company for any of its employees, and although the two departments were operated substantially as an integrated system, and a system-wide unit might therefore be appropriate, to hold that these employees were not an appropriate unit would deny the benefits of the Act to these employees until they and all other employees of the company in some larger unit had been organized. However, such finding was not to preclude future reconsideration of the appropriateness of a larger unit, should organization of the Company's employees be extended. *Cities Service Gas Co.*, 41 N. L. R. B. 648, 652. See also:

Texas Empire Pipe Line Co., 19 N. L. R. B. 631. (Northern division of a company engaged in pipe-line operations, *held* to constitute an appropriate unit notwithstanding claim of one of the organizations involved that the company's northern and southern division should constitute an appropriate unit.)

Western Union Telegraph Co., 27 N. L. R. B. 150. (Cafeteria and restaurant employees of a company engaged in telegraph operations, *held* to constitute an appropriate unit.)

Western Union Telegraph Co., 30 N. L. R. B. 1169. 31 N. L. R. B. 560. (City-wide unit of a company engaged in telegraph operations, *held* to constitute an appropriate unit notwithstanding claims of one of the organizations involved for a division-wide unit.)

Central Maine Power Co., 45 N. L. R. B. 328. (One division of a gas, water, and electric utility, *held* to constitute an appropriate unit notwithstanding claim of one of the organizations involved for a system-wide unit.)

Proposed unit comprising operating engineers and firemen at one plant of an electric utility, *held* appropriate despite request of the company and a competing organization for a system-wide unit, when it appeared that petitioner's jurisdiction was limited to that group of employees, they were confined to one plant and transfers did not occur as a general rule, and there was no history of collective bargaining on a system-wide basis prior to the contract which the organization requesting a broader unit negotiated after petitioner's claim of representation had been made. *Dayton Power & Light Co.*, 43 N. L. R. B. 775.

Savannah Electric and Power Co., 38 N. L. R. B. 47. (Unit proposed by the petitioner comprising employees of the power plant, and the installation, line, mechanical, and track departments of an electric utility exclusive of the transportation and non-operating departments, *held* appropriate notwithstanding claims of one of the organizations that the appropriate unit should include all of the company's employees when in addition to the functional separability between the included and excluded departments, the petitioner did not have jurisdiction over the excluded departments, they being reserved to a coaffiliate of the petitioner, and there was no history of collective bargaining at the plant.)

76.1 c. Determination of scope of unit dependent upon results of "Globe" elections.

Proposed unit of all plant-department employees in the Pacific division of a national telegraph company covering nine States rejected where, among other things, employees

within certain of the metropolitan areas were included in contracts with another organization, petitioning union had made no showing of designation by employees in various metropolitan areas, and employees in various metropolitan areas had indicated their desire to be represented together with employees in other departments. However, "Globe" elections directed among certain groups of plant-department employees, namely, line-gang employees and employees individually assigned to so-called "miscellaneous locations," and plant-department employees in metropolitan areas, who had shown a desire for representation apart from employees in other departments in a metropolitan area and who were not included in contracts covering other employees of the company, when they could appropriately be combined into a single unit. Further, "Globe" elections directed among certain of said groups of plant-department employees within a metropolitan area in which organization had been conducted among all employees when they could appropriately be included within a unit of employees in all departments of such metropolitan area. *Western Union Telegraph Co.*, 34 N. L. R. B. 579.

Western Union Telegraph Co., 34 N. L. R. B. 569. (Plant-department employees in a certain city of a company engaged in national telegraph operations permitted to determine whether or not they desired to be included in a unit comprising other departments at that city or in a unit of certain other plant departments in the company's geographic division including that city.)

2. *In manufacturing industries.*

7 a. System unit appropriate.

Decisions in which a system-wide unit was found appropriate when the intimate interrelationship and interdependence in the work and interests of the employees resulted from the employer's organization, management, and operations of his business as a single closely integrated enterprise, from other circumstances, amd when organization had been on a system-wide basis:

Tennessee Copper Co., 5 N. L. R. B. 768, 771–773. (Three plants of a mining and milling concern, found appropriate notwithstanding contentions of one of the labor organizations that each plant should be a separate unit where all collective bargaining agreements although executed on a plant basis had been jointly negotiated.)

Naumkeag Steam Cotton Co., 13 N. L. R. B. 513. (Mill and bleachery of a textile manufacturer, found appropriate notwithstanding contentions of one of the labor organizations involved for a unit confined to employees of the bleachery for although labor organizations limiting their membership to employees at the mill or the bleachery had at times handled grieviences on behalf of their members, there had been a substantial history of collective bargaining for both groups as one unit.)

General Motors Corp., 25 N. L. R. B. 698. (Division of an automobile manufacturer exclusive of a craft, found appropriate notwithstanding request of one of the labor organizations for separate plant units when prior to a "schism" in a labor organization, company and that organization entered into members-only written contracts on a division-wide basis and continued to so recognize the organizations arising fron the "schism.")

Curtiss-Wright Corp., 33 N. L. R. B. 490. (Two plants of an aircraft parts manufacturer situated 11 miles apart, found appropriate notwithstanding contention of one of the labor organizations involved that one of the plants constituted an appropriate unit, when bargaining had been conducted for employees of both plants, company-wide bargaining existed in other divisions of the company, and the organization desiring the broader unit had substantial membership in both plants.)

Magnet Mills, Inc., 42 N. L. R. B. 574. (Unit proposed by petitioner comprising two plants of a hosiery manufacturer, found appropriate notwithstanding contention of intervening organization that one of the departments thereof constituted an appropriate unit because of claim that it had lost the consent election conducted among employees in the broader unit as a result of company's unfair labor practices and therefore could no longer prove that it represented a majority of all the employees, when Boards ustained Regional Director's refusal to issue a complaint on charges which that organization filed, petitioner had organized subsequent to the election and had shown substantial representation in the unit it proposed, and no circumstances had arisen which would warrant modification of the proposed unit agreed between the parties to be appropriate at the time of the consent election.)

Decisions in which a system-wide unit was found appropriate when the intimate interrelationship and interdependence in

the work and interests of the employees resulted from the employer's organization, management, and operations of his business as a single closely integrated enterprise and organization had been on a system-wide basis:

American Woolen Co., 5 N. L. R. B. 144, 146. (Unit confined to one of three mills of a textile manufacturer rejected when mills were closely related and the three mills should have been included within the bargaining unit.)

Kennedy Valve Mfg. Co., 30 N. L. R. B. 653. (Several craft groups which in combination covered all production and maintenance employees of the two plants of a plumbing supply manufacturer, found appropriate notwithstanding contention of one of the unions involved that the employees at one of the plants should constitute an appropriate unit, when the plants were treated as a single operation.)

Sykes Bros., Inc., 35 N. L. R. B. 595. (Two plants of a textile manufacturer, found appropriate notwithstanding contention of one of the labor organizations involved that one of the plants constituted an appropriate unit, when both organizations had sought to organize and had gained members at both plants.) See also: *Luzerne County Gas & Electric Company*, 47 N. L. R. B., No. 41.

8 b. Partial-system unit appropriate.

Employees in three of four plants of a shipbuilding company, found appropriate notwithstanding contention of one of the two labor organizations involved that each of the three plants should constitute a separate unit, where each labor organization claimed a substantial membership among employees in all three plants; the evidence indicated at least some transfer of employees among the three plants; and the labor and personnel policies of the three plants were determined by a central management of the employer. *United Shipyards, Inc.*, 5 N. L. R. B. 742, 746, 747. See also: *Sinclair Refining Co.*, 35 N. L. R. B. 1145. (Employees in four of five plants of an oil refiner, found appropriate notwithstanding contention of one of the organizations involved that each of the five plants constitutes an appropriate unit.)

Employees in one of three plants of a steel manufacturing company, found appropriate notwithstanding the contention of one of the labor organizations involved that all three plants constituted one unit, nor the fact that the employer had centralized the management of the three

plants, where the plant in question was 35 miles from the other two plants, whereas the other two plants were only 14 miles apart; past bargaining history in the plant indicated that the labor organization seeking the multiple plant unit had always limited its claim to exclusive recognition to each plant, and in an agreement covering the employees of two plants, it specifically excluded the plant in question until such time as it was established as the sole bargaining agency in that plant; and the labor organi zation claiming the multiple-plant unit had only a few members in the plant in question. Belmont Iron Works, 9 N. L. R. B. 1202, 1205, 1206.

Klauber Wangenheim Co., 25 N. L. R. B. 245. (One of two plants of a grocery retailer, *held* appropriate in view of distance between two plants, their operations as separate entities, and the absence of history of joint collective bargaining on a single-plant basis.)

American Dredging Co., 28 N. L. R. B. 714. (Employees on dredges, the customary operations of which were confined to a certain vicinity, *held* to constitute an appropriate unit notwithstanding contention of one of the labor organizations involved that employees on dredge operating approximately 225 miles from that vicinity should be included, when geographic considerations and fact that employees on the excluded dredge, with minor exceptions, were hired locally, warranted their exclusion.)

Atlas Underwear Co., 30 N. L. R. B. 420. (Production employees in one of two plants of a company engaged in the manufacture of garments, *held* to constitute separate appropriate units, notwithstanding the contention of one of the labor organizations involved that the employees at both plants constituted one unit, where past bargaining practice had recognized the individual status of the separate plants; and while working conditions, hours, rates of pay, and degree of skill at both plants were about the same, the operations of the plants were not interrelated to any extent, and the plants were operated as separate units.)

Tennessee Coal, Iron & Railroad Co., 39 N. L. R. B. 402. (Employees of a blast furnace, recently acquired by a steel manufacturer, *held* to constitute an appropriate unit separate from company's other plants, when it was situated 55 miles from company's other steel plants, was probably a temporary operation; and when union contending that blast furnace was an inappropriate unit, had previously

entered into consent-election agreement confined to these employees.)

Columbia River Packers Assn., Inc., 40 N. L. R. B. 246. (Separate unit for each of two plants of a fish-canning company, *held* appropriate notwithstanding claim of rival union for a unit comprising all plants of several companies along the river, where a contract which rival union had with the several companies, including company in question, was applicable only to plants in which it had a majority, as so determined by Board, did not cover plants here sought as separate units unless and until that union demonstrated its majority in a Board election, and where each plant was under local supervision.)

Simpson Logging Co., 40 N. L. R. B. 1180. (Employees of the remanufacturing plant of a lumbering company, separate from company's mill and logging operations, *held* to constitute an appropriate unit, where the plant was distinguishable from the other operations of the company both as to kind and degree of skill required of employees and to the nature of its product, where the skilled and semi-skilled employees in the plant could not be transferred to other phases of the company's work without retraining, and where the union now seeking a single unit comprising all employees of the company had in the past bargained separately for the various operations of the company.)

Guistina Brothers Lumber Co., 41 N. L. R. B. 1243. (Employees of company's logging operations, *held* to constitute an appropriate bargaining unit separate from company's milling employees despite history of collective bargaining on a company-wide basis, where logging site and mills were separated by 40 miles, location of logging operations and sawmill had recently been moved, logging crew personnel had substantially changed as result of the move, logging operations had own seniority arrangement, and there was no interchange of employees between logging and the mills.)

Eicor, Inc., 43 N. L. R. B. 313. (Unit confined to one of two plants of a motor manufacturer, *held* appropriate despite contention of one of labor organizations involved that a multi-plant unit was appropriate, where plants were under separate management, there was a substantial difference in their work, there was almost no interchange of employees, and plant to which unit was confined was to a considerable degree self-sustaining.)

Aluminum Co. of America, 44 N. L. R. B. 1111. (Unit confined to production and maintenace employees and equipment mechanics at one of the plants of an aluminum manufacturer, *held* appropriate notwithstanding contention of one of the unions involved that the employees at two of the company's plants constituted a single unit, when record indicated that each plant was set up as a separate and distinct business organization under a separate management, plants were located in separate States, their employees were drawn from different communities, and were subject to different State regulatory laws.)

Sawmill workers and logging employees each found to constitute separate appropriate units, notwithstanding the contention of one of the rival labor organizations involved that the sawmill workers and logging employees together comprised an appropriate unit, where the mill operations were entirely different from logging operations and the employees in the mill and logging camps were engaged in different types of work; there was no interchange of employees between the mill and the logging camp; the mill was geographically separated from the camp and was under separate management; and it appeared that a majority of the employees of the logging camp and a majority of the employees of the mill had chosen rival labor organizations as their respective representatives for the purposes of collective bargaining. *Buckley Hemlock Mills, Inc.*, 15 N. L. R. B. 498, 502, (departing from) *Donovan Lumber Co.*, 10 N. L. R. B. 634, 640.

Chrysler Corp., 13 N. L. R. B. 1303, 1314. (Production and maintenance employees in each of a number of plants of a company engaged in the manufacture of automobiles, found to constitute separate appropriate units, notwithstanding the contention of one of the labor organizations involved that the employees at all the plants together constituted one unit when, among other reasons, both of the labor organizations involved claimed to have locals at each plant but there was no evidence indicating the present membership of either group at any of the plants; and for all that appeared, one labor organization may have an overwhelming majority in several of the plants and the other a similar large majority in several other plants.) Cf. *Briggs Mfg. Co.*, 13 N. L. R. B. 1326, 1330, 1331.

Libbey-Owens-Ford Glass Co., 31 N. L. R. B. 243, (departing from) *Libbey-Owens-Ford Glass Co.*, 10 N. L. R. B. 1470, 1473–1478. (Employees in one of the plants of a manufacturer of glass, found to constitute an appropriate unit when, among other reasons, the union which was certified as the representative of all plants of the company, including the plant in question, had no members in this plant at the time of the certification, gained none in the period of approximately 2 years which had elapsed since the prior proceeding, and almost all the employees thereof had designated the petitioner as their representative.) Cf. *Shipowners Ass'n of the Pacific Coast*, 32 N. L. R. B. 668.

Cluett Peabody & Co., 31 N. L. R. B. 505, 510–512. (Unit proposed by petitioner comprising employees in one of the plants of a garment manufacturer situated 500 miles from company's remaining three plants, found to constitute an appropriate unit, notwithstanding claim of one of the organizations involved that all of the company's plants constituted an appropriate unit when, among other reasons, the union requesting the broader unit although claiming to represent a majority at all of the plants, refused upon request to offer any proof of such claim except as to the plant in question, and when petitioner had not extended its membership beyond that plant.)

American Woolen Co., 32 N. L. R. B. 1, 3. (Production and maintenance employees at one of 25 mills of a textile manufacturer, found to constitute an appropriate unit, notwithstanding the contention of one of the labor organizations involved that production and maintenance employees throughout the system constituted an appropriate unit when, among other reasons, the organization proposing the single-plant unit had confined its organizational activities to that plant and the organization proposing the system-wide unit although having exclusive bargaining contracts in 8 of the 25 mills comprising 20,000 of the 30,000 workers throughout the system, had acquired the right to represent the workers in the 8 plants by virtue of elections held in each plant in which not all workers indicated their desire to be represented by that organization so that it could not be said that it represented a majority in all 25 plants, and when it was not shown to have extended its organizational activities to the remaining plants of the chain.)

Meadow Valley Lumber Co., 32 N. L. R. B. 115. (Unit proposed by petitioner comprising the sawmill employees excluding the employees of the yard and planing mill of a lumber manufacturer, found to constitute an appropriate unit, notwithstanding claim of one of the labor organizations that all the employees of the company constituted an appropriate unit when, among other reasons, organization proposing broader unit did not claim to represent a majority of the sawmill employees and petitioner had confined its organizational activity to these employees.)

Unit proposed by petitioning organization comprising one of six plants of a structural steel manufacturer, found appropriate notwithstanding contentions of rival labor organizations that a company-wide unit was appropriate, for although the nature of work was similar in each plant, and general labor policy relating to the conditions of employment and bargaining recognition were centrally controlled, there was little interchange of employees between the plants, the plant in question had its own paymaster and made its own job evaluations, no company-wide system of collective bargaining had developed, and none of the unions had organized or had members in all plants of the company. *American Bridge Co.*, 34 N. L. R. B. 839.

American Brass Co., 6 N. L. R. B. 723, 727, 728. (Employees in four of five plants operated by brass manufacturing company, found to constitute an appropriate unit notwithstanding contention of one of the labor organizations involved that the employees in only one of the plants constituted an appropriate unit, and by the employer that the employees in all five plants constituted the proper unit, where, although the considerations indicated the appropriateness of a unit composed of employees at all five plants, because all five plants were geographically close to one another, hiring was done under a single supervisor, there was uniformity in the wage scale, hours of work, and other conditions of employment, and there existed a large amount of interrelationship and interdependence among the five plants, neither of the labor organizations involved had been successful in their efforts to organize the plant excluded from the unit and both organizations desired such exclusion.)

American Tobacco Co., Inc., 9 N. L. R. B. 579, 582, 583. (Employees in one of six plants of a tobacco company, found to constitute an appropriate unit where, although one

unit composed of the employees of the six plants might reasonably be considered appropriate, neither of the labor organizations involved had extended their organizational activity to two of the plants and no labor organization was in a position to assert a majority in all the plants, and although a unit composed of all the employees in four of the plants might also reasonably be considered appropriate, the labor organization which had extended its organizational activities to such plants did not seek certification as exclusive representative for all the employees therein.)

Remington Rand, Inc., 31 N. L. R. B. 490. (Two plants of an employer engaged in manufacturing office equipment, found to constitute an appropriate unit when, among other reasons, the organizations requesting such a unit showed substantial membership therein and the organizations desiring a unit composed of employees at one of the plants only, made no showing of any substantial representation in that plant.)

American Steel & Wire Co. of N. J., 31 N. L. R. B. 682. (Clerical employees excluding confidential and supervisory employees at one of the 21 plants of a wire manufacturer, found to constitute an appropriate unit, notwithstanding industrial union's claim that these employees belonged with the production and maintenance employees in an employer-wide unit and company's contention that two multi-plant clerical units including, respectively, the monthly salaried employees, and the employees paid on a turn salary or hourly basis should be established where: (1) none of the employees whom petitioner would include were paid on other than a salary or hourly basis; (2) distinct interests which clerical employees generally had from manual workers were not outweighed by interests which on the present record they may have in common with other workers; and (3) where the petitioner had limited its organization to the employees in question and had not extended its organization throughout the company's many plants and clerical employees had not attempted to bargain as an appropriate unit in plants other than the plant in question.)

8.1 c. Determination of scope of unit dependent upon results of "Globe" elections.

Where upon application of the Globe doctrine an election was directed to be held separately among employees in three mines of a mining company, one of the organizations

"A" alleging that the groups constituted separate units, and the organization "B" alleging that the groups constituted a single unit: (1) if one union should win in all three elections, employees at the three mines will be combined in a single unit; (2) if one of the unions should win the election at two of the mines and lose at the third, employees at the two mines will be combined in a single unit; (3) if one of the unions should win in the election at one of the mines and lose at the other two mines, employees at the one mine will constitute a unit. *Pickands Mather & Co.*, 25 N. L. R. B. 1100.

Where upon application of the Globe doctrine an election was directed to be held separately among (1) employees in two States and (2) remaining State of a division of a grocery company, and the petitioning organization alleged that all the employees within the division constituted a single appropriate unit whereas an opposing organization alleged that group (2) constituted an appropriate unit; employees in group (1) were permitted to determine whether or not they desired to be represented by the petitioner and employees in group (2) permitted to determine whether or not they desired to be represented by either the petitioner or the opposing labor organization, Board will certify the union if any selected by a majority of the employees within each election; however, if the petitioner received a majority in one, but not in both, of the two groups, the group so voting for the petitioner will constitute a separate appropriate unit and Board will certify the petitioner unless it should notify the Regional Director within ten (10) days from the date of the Decision and Direction of Elections that it did not desire to be certified as the representative of such unit, in which case the petition will be dismissed. *First National Stores*, 26 N. L. R. B. 1275.

Where an election was directed to be held among employees in one of the plants of a wire manufacturer to determine whether or not that plant should constitute a separate unit or remain part of a single unit including the employees at another of the company's plants, the organization denying the appropriateness of a separate unit confined to these employees, contended the broader unit to be appropriate and urged the dismissal of the petition; if a majority of the employees cast their votes for the organization desiring the separate unit they will constitute a separate appropriate unit and if not, the petition will be dismissed. Since

employees within this plant have been covered by a contract executed by the company and the organization contending the broader unit to be appropriate, no certification will be necessary in the event the employees select that representative. *Hatfield Wire & Cable Co.*, 33 N. L. R. B. 533.

Where upon application of the Globe doctrine an election was directed to be held separately among three plants of a shoe manufacturer and union A had organized Plant 1, union B had organized Plants 2 and 3, and union C had organized Plants 1, 2, and 3, if: (1) union A received a majority of votes cast among employees at Plant 1, the Board will find that such employees constitute a separate bargaining unit; if (2) union C received a majority of votes at each of the three plants, the Board will find that such employees constitute a single bargaining unit; if (3) union B or union C received a majority of votes cast at Plant 2 and the same union received a majority of votes cast at Plant 3, the Board will find that employees at Plants 2 and 3 constitute a single bargaining unit; and if (4) union B or union C received a majority of votes among employees at Plant 2 or a majority of votes among employees at Plant 3, but the same union did not receive a majority of votes at both such elections, the Board will find that employees at each such plant constitute a separate bargaining unit. *International Shoe Co.*, 36 N. L. R. B. 1173.

Where upon application of the Globe doctrine an election was directed to be held separately among employees in two plants of a fabricating company and parties stipulated that the plants could constitute separate units but in the event one of the organizations should win the elections in both plants, the two plants should constitute a single appropriate unit: (1) if a majority of the employees in the plants elect different representatives they shall constitute separate appropriate units; (2) if a majority in each plant select the representative which desired both plants to constitute a single unit, the two plants together will constitute one appropriate unit. *Scoville Mfg. Co.*, 42 N. L. R. B. 892. See also:

Allied Laboratories, Inc., 23 N. L. R. B. 184 (single or separate units comprising two plants of a pharmaceutical manufacturer, when one of the petitioning organizations desired one of the plants to constitute an appropriate unit and the opposing petitioning

organization desired the two plants to constitute a single unit).

Algoma Lumber Co., 30 N. L. R. B. 860 (single or separate units comprising woods and mills operations of a logging and lumber company, when one of the petitioning organizations desired the mills operations to constitute a separate appropriate unit and the opposing petitioning organization desired both the woods and mills operations to constitute a single unit).

Lewis Lumber Co., 31 N. L. R. B. 688 (single or separate units comprising (1) planing mill, and (2) sawmill and logging camp of a logging and lumber company, when petitioning organizations desired both groups to constitute a single unit and the opposing organization desired each of the groups to constitute a separate unit).

Birdsboro Steel Foundry & Machine Co., 32 N. L. R. B. 107 (single or separate units comprising two plants of a castings manufacturer, when petitioning organization desired a unit confined to one of the plants and the opposing organization desired both plants to constitute a single appropriate unit).

Westinghouse Electric & Mfg. Co., 33 N. L. R. B. 97 (single or separate units comprising two plants of an electrical equipment manufacturer, when petitioning organization desired the unit to be confined to one of the plants and the opposing organization desired that plant to be merged with another plant which Board in a prior proceeding determined to constitute a separate unit and for which it was certified; election directed in plant petitioned for since neither the petitioner nor company contested claim of the opposing organization to represent employees in the latter plant.)

Vernor Co., 37 N. L. R. B. 388 (single or separate units comprising two branches of a soft drink manufacturer, when petitioning organization desired both branches to constitute a single unit and the opposing organization desired the unit to be confined to one of the branches).

Redfern Lace Works, Inc., 38 N. L. R. B. 739 (single or separate units comprising (1) finishing operations at one of the plants of a lace manufacturer, and (2)

production and maintenance employees at company's other plant, when one of the petitioning organizations desired the unit to be confined to group (1) and the opposing petitioning organization desired both groups to constitute a single unit).

IV. MULTIPLE EMPLOYER UNIT.

A. IN GENERAL.

8.9

The Board may go beyond an individual company in deciding upon an appropriate unit of employees where that company has joined with other companies in an association formed for the purpose of handling all its labor relations and, accordingly, can be said to exercise very few of the functions which are the essential attributes of the employer-employee relationship. *Shipowners' Assn. of the Pacific Coast,* 7 N. L. R. B. 1002, 1024, 1025, review denied, *sub nom., American Federation of Labor* v. *N. L. R. B.,* 308 U. S. 401, affirming 103 F. (2d) 933 (App. D. C.).

The Board may establish a bargaining unit broader than the individual employer, despite a contention that it has no jurisdiction to establish such a unit, for it is expressly authorized to decide that the "employer" unit is the most appropriate, the Act includes "any person acting in the interest of the employer, directly or indirectly," within the term "employer," and "person" is defined as "one or more . . . associations." *Mobile Steamship Assn.,* 8 N. L. R. B. 1297, 1311, 1312.

In determing whether or not the employees of two or more companies should be joined in one unit, the Board distinguishes between companies interrelated through common ownership and management, and competing companies. In the former category the same principles are applied as if the question arose in connection with the joining of one or plants of a single employer. *Sixth Annual Report,* p. 67.

Where the proposed unit includes employees of independent and competing companies, the Board finds such a unit appropriate only if in addition to the existence of otherwise appropriate circumstances, there exists an association of employers or other employers' agent with authority to bargain collectively and enter into collective bargaining agreements. *Sixth Annual Report,* p. 68.

[*See* DEFINITIONS §§ 34–40.3 (as to an "employer" within the meaning of the Act when composed of more than one individual or corporation).]

B. IN CASES OF TWO OR MORE EMPLOYERS INTERRELATED THROUGH STOCK OWNERSHIP AND COMMONLY CONTROLLED AND OPERATED.

1. *In absence of dispute between two or more bona fide unions.*

9 a. Multiple employer unit appropriate.

A finding of the Board as to the appropriateness of a unit for collective bargaining is binding on a Court of Review unless it is clearly arbitrary, and a finding that the employees in two plants constitute such a unit is reasonable where a unity of interest exists both in the management and among the employees and where one individual owns, controls and manages one plant and controls and manages the other as well, through the ownership of all the stock by himself and his family, for the Board has a broad power of discretion, though not one that may be exercised arbitrarily, in designating an appropriate bargaining unit, and it makes no difference in such determination whether there be two employers of one group of employees or one employer of two groups of employees for, either situation having been established, the question of appropriateness depends upon other factors such as unity of interest, common control, dependent operations, sameness in character of work, and unity of labor relations. *N. L. R. B.* v. *Lund*, 103 F. (2d) 815, 819 (C. C. A. 8) remanding 6 N. L. R. B. 423.

Editorial employees in a subsidiary news distributing company included in a unit composed of editorial employees of the parent company, where although the subsidiary company was supervised and directed by a person who controlled one-fifth of its stock and originally formed the company, its total expenses were limited and defined by the parent company and its director was subject to the will of the board of directors elected by the parent company, so that it was difficult to conceive of the subsidiary company maintaining an independent policy of collective bargaining. *United Press Associations*, 3 N. L. R. B. 344, 347.

Factory and production employees (excluding clerical and supervisory employees) of two employers, one of whom was engaged in the manufacture of crayons, chalk and kindred products, and the other in the manufacture of artists' materials, together constitute a unit appropriate for the purposes of collective bargaining despite the fact that they were separately incorporated, had different general mana-

gers, maintained separate pay rolls, filed separate tax reports, and paid separate workmen's compensation insurance, where they were closely connected physically in that they occupied space on the same floor of the same building, and their operations were closely related through substantially identical stock ownership and interlocking directorates and there was some interchange of employees, and where one individual handled labor controversies arising with respect to employees of both companies, and the relationship was such that ultimate control over the labor policies of both rested in the same hands. *Art Crayon Co., Inc.*, 7 N. L. R. B. 102, 116.

A unit confined to employees of one of two companies did not constitute an appropriate unit for the purposes of collective bargaining, when the stockholders of one owned a stock interest in the other, and officers of both companies were almost identical, the employees of each were under the same superintendent, were treated as a single group of employees, frequently assisted each other, and were paid by checks of one of the companies, and in the past employees of both companies had been represented jointly for the purposes of collective bargaining. *Farmers Feed Co. of N. Y.*, 36 N. L. R. B. 650.

New and used car salesmen of a parent-holding company and one of its subsidiaries, found to constitute an appropriate unit although employees involved were employed solely by the subsidiary, when the parent was found to be an employer of the employees involved within the meaning of Section 2 (2) of the Act since it owned all the stock of the subsidiary and exercised substantial control over its business and labor policies. *Chrysler Corp.*, 38 N. L. R. B. 313. *Todd Shipyards Corp.*, 5 N. L. R. B. 20; (two plants of two wholly owned subsidiary companies engaged in repairing vessels). *Crucible Steel Co. of America*, 45 N. L. R. B. 812; (all licensed engineers found employees of both wholly owned subsidiary and parent company; employees were engaged on the river boats of the subsidiary).

Unit comprising production and maintenance employees of two corporations, one the wholly owned subsidiary of the other, *held* appropriate despite petitioner's request that the two groups of employees constituted a single unit only if they selected the same representative at separate elections, where both corporations had the same officers, directors, and general manager, and where the two plants

were physically connected by a bridge, were engaged in the same type of work and were dependent upon each other to some extent, had certain maintenance and clerical departments in common, and constantly interchanged employees. *Ken-Rad Tube & Lamp Corp.*, 42 N. L. R. B. 1235.

Single unit comprising production and maintenance employees of two shipbuilding companies which were undergoing corporate reorganizations and were to become a single entity, *held* appropriate when at time of hearing they were closely interrelated through corporate officers, were operated under a common management, and employees of both companies performed substantially the same work. *Todd-Bath Iron Shipbuilding Corp.*, 45 N. L. R. B. 1367. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 645, 646 (three bus companies under control of parent company).

International Mercantile Marine Co., 3 N. L. R. B. 751, 756, 757 (employees of two companies performing maintenance and repair work on vessels, one company being a wholly owned subsidiary of the other).

Mackay Radio Corp. of Delaware, Inc., 5 N. L. R. B. 657, 660, 661 (live traffic employees of two radio and telegraph companies under interlocking directorates).

Triplett Electrical Instrument Co., 5 N. L. R. B. 835, 853, 854 (all employees of two companies manufacturing electrical measuring instruments and radio testing equipment under an interlocking directorate).

Royal Warehouse Corp., 8 N. L. R. B. 1218, 1221 (employees of two companies, one purchasing and selling glass, and the other storing and trucking the materials of the former, both companies being related through substantially identical stock ownership and directors).

Kling Factories, 8 N. L. R. B. 1228, 1233, 1234 (employees of four concerns manufacturing furniture and controlled and operated through a single management group).

Standard Cap & Seal Co., 10 N. L. R. B. 466, 469, 470 (employees of two companies manufacturing milk bottle caps, one a wholly owned subsidiary of the other).

Middle West Corp., 10 N. L. R. B. 618, 622, 623 (employees in all but one of a number of companies comprising a public utility system.)

Calco Chemical Co., 13 N. L. R. B. 34 (employees of two chemical companies commonly controlled and operated).

New York Post, Inc., 14 N. L. R. B. 1008 (employees in commercial and editorial departments of parent and wholly owned subsidiary operating on the same premises by one so-called promotion director, whose salary was paid by both companies).

Shenango Penn Mold Co., 19 N. L. R. B. 328 (employees of a mold and furnace company, functionally interrelated, having an identical wage policy and owned and operated by the same persons).

American Bemberg Corp., 23 N. L. R. B. 623 (employees to two adjoining companies closely related physically in management and ownership).

Dixie Motor Coach Corp., 25 N. L. R. B. 869 (motorbus drivers of two companies jointly operated, managed and to some extent commonly owned).

Gettysburg Furniture Co., 25 N. L. R. B. 1109 (plants of three companies under common control having unitary labor policy).

Watkins Co. of Delaware, 28 N. L. R. B. 145 (production, maintenance, and shipping room employees employed by either or both cosmetic and food products manufacturing companies having a close functional relationship between their operations, a single management over such operations, and who jointly used the same premises).

Standard Magazines, Inc., 31 N. L. R. B. 285 (employees of two magazine publishing companies who use the same offices, have the same officers and directors, employ the same employees, and maintain a single pay roll for such employees).

Union Electric Co. of Missouri, 33 N. L. R. B. 1 (sales, clerical, and office employees of several electric utility companies).

White Horse Pike Bus Co., Inc., 34 N. L. R. B. 178 (employees including bus drivers, mechanics, washers and checkers, employed by two bus companies closely related in ownership and operation).

Hardy Metal Specialties, Inc., 34 N. L. R. B. 491 (production employees of two companies having interlocking directorates and whose outstanding stock was held by one individual).

Alexander Film Co., 36 N. L. R. B. 57 (production and maintenance employees of two motion picture companies to some extend commonly owned and operated).

Fradkin, 36 N. L. R. B. 565 (production and maintenance employees of two companies engaged respectively in laundry and linen service closely related in ownership, management, and operations).

Loew's Inc., 38 N. L. R. B. 602 (all office, clerical, secretarial, and accounting employees at the home offices of a parent and its subsidiary company who were engaged in production and distribution of motion pictures).

Twentieth Centry Fox Film Corp., 39 N. L. R. B. 579 (office, clerical, secretarial, and accounting employees in offices in an eastern city of a motion picture company and its wholly owned subsidiary).

John Deere Tractor Co., 40 N. L. R. B. 904 (production and maintenance employees of two subsidiaries engaged respectively in tank manufacturing and tank transmission manufacturing which were operated under common management).

Crucible Steel Co. of America, 43 N. L. R. B. 730 (production and maintenance employees in all plants of a steel manufacturer and its subsidiary).

Lehigh Portland Cement Co., 43 N. L. R. B. 842 (production, maintenance, and service employees of two companies, one of which owned the controlling interest in the other and which were operated under the same management).

North Carolina Finishing Co., 44 N. L. R. B. 681 (production and maintenance employees of two corporations operating within the same enclosure and having some common officers).

80 b. Multiple employer unit rejected.

Boilerhouse employees excluded from a unit composed of production employees of an employer engaged in the manufacture of chemical products where they were employed by a wholly owned corporate subsidiary of the employer which was operated as a business entity separate from its parent, and although its entire plant was located on the property of the employer and the employer obtained its requirements of steam power from it and paid for the amount used, most of the steam power generated was transformed into electricity and sold by the subsidiary to other customers and the subsidiary must be regarded as a separate employer from its parent. *Pennsylvania Salt Mfg. Co.*, 3 N. L. R. B. 741, 745.

Bagley & Sewall Co., 39 N. L. R. B. 67. (Employees of two companies one of which was owned individually by the president and majority stockholder of the other, *held* not to jointly constitute an appropriate unit, when there was no showing whether the labor relations of both companies were administered jointly or separately, or the extent to which, if any, the individually owned company was controlled by the other company.)

RKO Radio Pictures, Inc., 40 N. L. R. B. 1185. (Unit requested by companies (as producer and distributor subsidiary and a service subsidiary which petitioned to intervene) for a multiple employer unit comprising office, clerical, secretarial, and accounting employees in both of the subsidiaries *held* inappropriate, when companies were separate enterprises.)

All employees (except supervisory, clerical, and salaried employees) of a parent company and of a wholly owned subsidiary, *held* to constitute separate units appropriate for collective bargaining, where although one unit composed of the employees of both companies was requested by the labor organization seeking representation, and broad questions of administrative and operating policy, including labor policies, were centrally determined, a unit in each plant was most feasible since: (1) the plants were several hundred miles apart in different sections of the country; (2) wages were lower in one than the other, even for the same type of work; (3) operations were not the same in both plants; (4) negotiations between workers and management had been conducted locally in each plant for some years; (5) interchange of workers between plants was highly impractical if not impossible; (6) an attempt of the contending labor organization to deal with the two plants as one unit is too recent to indicate feasibility in comparison with previous separate negotiations. *Industrial Rayon Corp.*, 7 N. L. R. B. 878, 899.

Connor Lumber & Land Co., 27 N. L. R. B. 306. (Employees of a subsidiary railway company owned and controlled by a company engaged in manufacturing lumber products excluded from the appropriate unit of production and maintenance employees of the company, although the company desired their inclusion and the Board included them in the unit found to be appropriate in a prior case, when they were not eligible to membership in the sole labor organization involved, were subject to the Railroad Retirement Act, and

unlike the company's employees were exempt from the provisions of the Wages and Hours Law.)

WGAL, Inc., 27 N. L. R. B. 398. (Transmitter operators of each of four of seven interlocking corporations operating radio stations, found appropriate notwithstanding contention that all the transmitter operators employed by the seven corporations.)

Natural Gas Pipe Line Co. of America, 40 N. L. R. B. 1193. (Separate local units of each of two gas and pipe line companies having a common ownership and interlocking and centralized management, respectively contended for by rival petitioning organization, found to constitute appropriate units notwithstanding companies' contention that a single system-wide unit made up of the employees in all departments of both companies was appropriate.)

American Zinc, Lead & Smelting Co., 44 N. L. R. B. 443. (Although multiple employer unit comprising employees of two mining companies interrelated through stock ownership, common officers, and integration of operations, might be appropriate, as companies contended, unit confined to employees of one company, *held* appropriate in conformity with extent of union organization in order to render collective bargaining an immediate possibility.)

Haven-Busch Co., 45 N. L. R. B. 1302. (Separate units, *held* appropriate for all employees, with specified exclusions, of an iron and steel products manufacturer and a garage servicing trucks engaged in interstate commerce, despite union's contention that one unit for both groups only was appropriate, when although the two enterprises were jointly owned, occupied adjoining property, and employees of garage occasionally performed common labor for the iron and steel plant, nevertheless the two businesses were in all other respects entirely separate, as each had different superintendents and wage scales, performed different operations for different sets of customers, met different types of competition, and kept different sets of books and pay rolls.)

2. *Where two or more bona fide unions disagree.*

a. Multiple employer unit appropriate.

A parent and two subsidiary bus transportation companies, *held* to constitute one employer unit, where although it was contended by the companies that each company constituted a seaparate unit, by one labor organization that all three companies constitute together one unit, and by another labor organization that one of the subsidiaries

constituted a separate unit, bus drivers were transferred from one company to another; the labor organization alleging that one of the subsidiaries should be considered as a separate unit admitted to its membership employees from all three companies and sought membership among the employees of the three companies; and the application of the parent company filed with the Interstate Commerce Commission disclosed that it controlled, directed, and operated its subsidiaries through common directors, officers, and agents appointed and supervised by it. *Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622, 656–659.

Employees of a company engaged in the manufacture of fir plywood and of a wholly owned subsidiary thereof engaged in the remanufacture of rough lumber included in a single bargaining unit, although two of the three labor organizations involved contended that there should be a separate unit for the employees of each company, where although the two companies maintained separate pay rolls and office forces, a separate manager, and due to the difference in the nature of the operations, there was no interchange of employees, ultimate control of the policies of both companies rested in the hands of the president of the parent company, and although he had rarely interfered with the management of the second company, he could make the final decisions concerning the labor policies of both companies; the two companies occupied the same property and shared a common yard and common office space; one telephone exchange served both companies; and the powerhouse of the parent company supplied steam to both companies, and its maintenance crew also serviced both companies. *Elliott Bay Lumber Co.*, 8 N. L. R. B. 753, 757.

Radio telegraphers of two companies, *held* to constitute a single appropriate unit, despite the objection of one of the labor organizations involved to the participation of one of those companies in this proceeding, and consequently to the inclusion of the radio telegraphers of that company in the unit, where the business of the two companies was carried on to some degree as a single integrated enterprise and the objecting organization had clearly recognized the propriety of a single unit by consenting to a poll of the employees of both companies as such. *Waterman S. S. Corp.*, 10 N. L. R. B. 1079, 1082.

In determining the appropriateness of the bargaining unit or units of employees of three companies which operated a number of retail food stores in three States, the units were based on the employees of all three companies rather than on the basis of employees in particular stores or in particular geographical areas, as contended by some of the labor organizations involved, where one company owned the entire stock of the other two companies; all three companies had their principal place of business at the same location; the officers and directors of the three companies were substantially identical; the companies were operated as an integrated business enterprise under one central management which directed their policies; and all hiring and discharging of employees was made by, or subject to review by, the central office. *Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270, 278, 279.

82 b. Multiple employer unit rejected.

Licensed marine engineers of two wholly owned subsidiaries of a steamship corporation each constituted a separate appropriate unit, although the subsidiaries and the labor organizations petitioning for certification had requested that they be included within one unit since the subsidiaries had the same executive offices, and engineers were sometimes exchanged between them, where the two other labor organizations involved opposed their inclusion within one unit, the subsidiaries were operated as independent companies, their primary agents for collective bargaining with the engineers differed, on a prior occasion they had acted separately in executing contracts with another labor organization, and by reason in the difference of the routes of the vessels of the two subsidiaries, labor conditions and incentives for organization may differ on their vessels. *Grace Line, Inc.*, 2 N. L. R. B. 369, 375, 376.

Five separate units comprising production and maintenance employees at various generating plants of several electric utility companies having common officers and directors, *held* appropriate notwithstanding claim of one of the labor organizations involved that all employees of the companies constituted a single appropriate unit, for although the companies had a unified management, and attempted to fill vacancies through transfer or promotion from other parts of the system, wages and working conditions in the various sections serviced by the companies varied because of differ-

ences in the prevailing wages and living costs in the several communities, the organization proposing the separate units represented a substantial number of employees in each of these units, and there was no bargaining history on the basis of any of the units urged by either of the labor organizations involved. *Union Electric Co. of Missouri*, 33 N. L. R. B. 1, 6.

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2.1 c. Determination of scope of unit dependent upon results of "Globe" elections.

Where the considerations supporting the appropriateness of separate units confined to employees of each of two jointly owned companies, respectively, were evenly balanced with those supporting the appropriateness of a single unit composed of employees of both companies, the determining factor held to be the desires of the employees, themselves; and where those desires were not established by the record, an election was directed among the two groups, respectively: (1) if either of the organizations, contending for separate units, should receive a majority of votes cast in one of the two elections, or if the organization requesting the single unit should receive a majority of votes cast in only one of the two elections, the employees of each of the companies will constitute separate appropriate units; and (2) if the organization requesting the single unit should receive a majority of the votes cast in each of the companies, the employees of both companies will constitute a single appropriate unit, and (3) if the organizations desiring separate units receive a majority of the votes cast in each respective election, the employees of each of the companies will constitute separate appropriate units, or provided the Board is informed in writing by those organizations within 5 days after the election report, a single unit at the option of those organizations. *Baby Line Furniture Co.*, 25 N. L. R. B. 809.

C. INDEPENDENT AND COMPETING EMPLOYERS.

1. *Where employers are represented by agent exercising employer functions with authority to bargain, and history of collective bargaining has been on multiple employer basis.*

Longshore workers, employed by practically all the companies which use longshore labor in the ports of the Pacific Coast, *held* to constitute an appropriate unit, notwithstanding the contention of the companies that the appropriate unit must be restricted to workers in the employ of a particular company at a particular port, where the individual companies employing such workers were organized in regional associations, and a shipowners' association functioning through a coastwide association as an integrated unit formulated and conducted the labor relations of the individual companies including the negotiation, execution, and operation of collective bargaining agreements; and where as a consequence of this situation the wages, hours, and working conditions of these workers were substantially uniform, and successful collective bargaining on their behalf had obtained only when conducted on a coastwide basis. *Shipowners' Assn. of the Pacific Coast*, 7 N. L. R. B. 1002, 1014, 1015, 1021–1025, review denied, *sub nom., American Federation of Labor* v. *N.L.R.B.* 308 U. S. 401, affirming 103 F. (2d) 933 (App. D. C.). See also: *Mobile Steamship Assn.*, 8 N. L. R. B. 1297, 1310–1312.

Shipowners Assn. of the Pacific Coast, 32 N. L. R. B. 668; (Longshore workers at three "exception" ports permitted to determine whether they shall function as separate bargaining units or as part of the coastwide unit found appropriate in a prior proceeding, (7 N. L. R. B. 1002, *supra.*) although parties were in agreement that comparatively similar standards of longshoremen should prevail all along the Pacific Coast where; the organization certified as representative of the coastwide unit had no members at time of the certification and has gained none in the 3 years following the certification; the rival union requesting the exclusion of these ports had been designated by all or almost all of the longshoremen of these ports and had separately represented these employees at the time the coastwide unit was formed and for 3 years since that time; the certified union, employers, and arbitrators had considered these ports apart from the rest of the coastwide unit; and the employees at these ports had at no time

been given an opportunity to choose for themselves whether they desired to be represented in the larger coastwide unit.)

[*See* § 78, (as to establishment of partial system units when among other considerations the organization claiming the system unit to be appropriate failed to make a representative showing in the proposed partial-system unit).]

Two separate units consisting of employees in two companies manufacturing dolls and doll parts, as proposed by the petitioning labor organization and the employer, *held* not appropriate when: (1) another labor organization representing all the employees of the employer-members (including the employers in question) of an employer's association had bargained with such association during past years; (2) the manufacturers who were members of the association employed approximately 90 percent of the workers engaged in the doll industry and manufactured approximately 80 percent of the dolls and doll parts made in the local area; and (3) from the inception of such bargaining with the association there had been an orderly functioning of the processes of collective bargaining and the settlements of disputes in sharp contrast to the chaotic conditions prevailing in the industry prior thereto. *Admiar Rubber Co.*, 9 N. L. R. B. 407, 415, 416.

Alston Coal Co., 13 N. L. R. B. 683. (Petition for separate employer unit dismissed, when employer since its formation was a member of a mine operators' association which for 36 years had negotiated contracts with a labor organization in behalf of all members.)

Federated Fishing Boats of New England, 15 N. L. R. B. 1080. (Petition for separate employer unit dismissed, when employer was a member of an association of fishing operators formed for the purpose of exercising the essential employer functions with respect to employees.)

Stevens Coal Co., 19 N. L. R. B. 98. (Petition for separate employer unit dismissed, when employer with various other anthracite operators for a long period of time had functioned through conventions, committees, and a board of conciliation in their collective bargaining relations with a labor organization.)

Kausel Foundry Co., 28 N. L. R. B. 906. (Petition for separate employer unit dismissed, when company had been represented by a Foundrymen's Committee, which had bargained for this company and others, and in their behalf

had entered into successive collective bargaining agreements establishing a single unit composed of the employees of the several companies.)

Alaska Salmon Industry, Inc., 33 N. L. R. B. 727. (Petition limiting scope of the unit to employer's within two of eight fishing districts in Alaska, *held* inappropriate when employers within all of the districts were members of a fish packing association which had in the past bargained for all of its members and when the employees of one of the largest canneries in the districts desired were not included within the unit requested.)

Washington Metal Trades, Inc., 43 N. L. R. B. 158. (Partial association-wide unit comprising welders, burners, helpers, and leadmen, employed by named members of an association and non-members authorizing the association to execute collective bargaining agreements on their behalf, *held* inappropriate, when proposed separate unit had not been established by collective bargaining or actual working practice, and additional member and non-member companies employing similar employees were not included in the petitions.)

Employees of 14 companies engaged in the quarrying of limestone, *held* to constitute an appropriate unit, where they all belonged to an association of operators organized for the purposes of collective bargaining, and constituted its entire membership engaged in quarrying operations; collective bargaining on such a basis had been carried on effectively for many years and the employers acted as a single employer for such purposes and customarily obligated themselves so to act; both labor organizations involved admitted such employees to membership; and employees in the industry were constantly shifting from one employer to another. *Monon Stone Co.*, 10 N. L. R. B. 64, 72.

Monterey Sardine Industries, Inc., 26 N. L. R. B. 731. (All crew members working on vessels owned or operated by members of an employer association, *held* appropriate.)

National Dress Manufacturers' Assn., Inc., 28 N. L. R. B. 386. (Pattern makers of dress manufacturers who are members of employer associations, *held* appropriate.)

Northern Electrotype Co., 36 N. L. R. B. 832. (Employees of two electrotyping companies represented by an employer's association, *held* appropriate.)

Grower-Shipper Vegetable Assn. of Central Calif., 43 N. L. R. B. 1389. (Packing-shed employees of vegetable packers represented by employer association, *held* appropriate.)
See also: *Abinante & Nola Packing Co.*, 26 N. L. R. B. 1288.

4 2. *Where employers are not represented by agent exercising employer functions with authority to bargain.*

Employees of a number of employers engaged in the production, distribution, and exhibition of motion pictures who were members of an employers' association did not constitute an appropriate unit, as contended for by a petitioning labor organization, where although in certain instances the association had negotiated on behalf of various companies as regards the employment conditions of certain occupational groups in the industry, it did not appear: (1) whether in negotiating particular agreements in represented companies other than those constituting its membership or represented its entire membership, (2) what the extent or character of its participation had been, or (3) that it was authorized generally to control labor policies or handle employment problems among its members; so that it could not be concluded that the association was no employer within the meaning of the Act or that employees of member companies should be included within a single bargaining unit. *Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 692–695.

Aluminum Line, 8 N. L. R. B. 1325, 1339, 1342. (Longshoremen employed by each of several companies at a port, *held* to constitute separate appropriate units, notwithstanding the contention of the labor organizations involved that they should be included in one port-wide multiple employer unit because by reason of the peculiar character of longshore employment, any and all longshoremen were potential employees of each and every employer in the port and the history of collective bargaining in the port established that wages, hours, and working conditions of longshoremen had been fixed on a port-wide basis by the port-wide association of employers, where it appeared that both the bargaining labor organizations and substantial segments of employers of longshore labor of the port had never negotiated or contracted on other than an individual employer basis, even those companies which negotiated through an association ultimately made their own contracts with the labor organizations by individually signing the contract, and the formal relationship among the individual employers was such that

the individual employers of longshore labor in the port performed and exercised the direct control over the essential employer functions.)

Monon Stone Co., 10 N. L. R. B. 64, 72. (Employees of four companies engaged in quarrying limestone which were not members of an association of other companies in the same industry organized for the purposes of collective bargaining, *held* to constitute separate appropriate units, although they usually signed contracts which were identical with those signed by the members of the association, since they were not bound by any contracts negotiated by the association and were not obligated to sign any such contract, and may act independently of the association and of each other.)

Booth & Co., 10 N. L. R. B. 1491, 1496, 1497. (Employees of each of a number of companies engaged in operating fish cannery and reduction plants, *held* to constitute separate appropriate units, despite the contention of a labor organization that together they constituted a single appropriate unit because of the characteristics of employment and the history of collective bargaining with the companies, where: (1) the constant shift of employees in the industry from one company to another was not effectuated through any common agency of the companies; and (2) although both rival labor organizations had negotiated jointly with the companies and secured identical agreements from each, there was no evidence that the committee representing all the companies in such negotiations had authority to bind any or all of the companies.)

Trawler Maris Stella, Inc., 12 N. L. R. B. 415, 425. (Separate units consisting of radio operators of each of several employers found to be appropriate, when labor committee of employer association had not been delegated power to bind any or all of the individual employers comprising the association and the individual employers retained the privilege of either accepting or rejecting the fruits of negotiations, and each individual employer exercised direct control over essential employer functions.) Cf. *Trawler Maris Stella, Inc.*, 15 N. L. R. B. 1079, 1080. (Where after a supplementary hearing in which further evidence had been introduced a multiple employer unit was found appropriate when it was shown that members of the association had decided to combine for the purpose of exercising essential employee functions.)

Tracy Inc., 12 N. L. R. B. 936. (Barge captains of an employer who was a member of an association of boat operators, *held* to constitute an appropriate unit, when association was without legal power to contract for its members.)

Sebastian Stuart Fish Co., 17 N. L. R. B. 352. (Separate employer units, found appropriate, when employers who were members of an association of fish canning operators retained direct control over the essential employer function.)

Gulf Refining Co., 21 N. L. R. B. 1033. (Bulk sales department employees of an oil refiner, *held* to constitute an appropriate unit notwithstanding claim of one of the organizations involved that bulk sales department employees of five oil refining companies which functioned through an employers' labor committee and with which it had negotiated a contract should constitute an appropriate unit, when each of the five companies retained the power to withdraw from negotiations at will or to reject a proposed final agreement as unsuited to its peculiar needs, so that the committee which had bargained for the companies had no authority to bind any of them and each company exercised direct control over the essential employer functions.)

Lehigh Portland Cement Co., 38 N. L. R. B. 167. (Unit proposed by petitioning labor organization comprising employees of a cement manufacturing company and employees of a company which bags and ships the cement produced by the former and who worked in the former's plant, rejected and unit confined to employees of the cement manufacturer found appropriate when the companies were wholly separate enterprises and each exercised exclusive control over their employees; petition insofar as it related to the latter company dismissed when there was no showing that the petitioner or any other labor organization represented or sought recognition for any of these employee as such.)

Marcus Loew Booking Agency, 38 N. L. R. B. 1015. (Proposed unit of salaried artists employed by motion picture distributing companies and an independent sign painting company, *held* inappropriate, when it did not appear, nor was it claimed, that there was any corporate relationship between the several companies; neither of the companies had, or exercised, any control over the operations of the

other; each of the companies exercised separate and exclusive control over the essential employer functions of their respective employees; and there was no previous history of collective bargaining by the three companies on the basis of a single unit.)

Sagamore Mfg. Co., 39 N. L. R. B. 909. (City-wide craft units of 10 competing and independent textile companies, *held* inappropriate when among other reasons the companies, although in one phase of its relations with their employees had been represented by an "association," had not delegated to the association authority to make binding collective agreements.)

Drewrys Limited U. S. A., Inc., 44 N. L. R. B. 1119. (Multiple employer unit covering employees of three brewery companies, *held* inappropriate and unit confined to one company, found appropriate notwithstanding collective bargaining history upon a multiple employer basis, when companies were independently owned and operated, and each company although negotiating a joint contract had been represented separately and had acted as an independent contracting party.)

Cf. *Brenizer Truck Co.*, 44 N. L. R. B. 810. (Single unit comprising all employees of nine independent paving companies, *held* appropriate when companies in past had jointly executed a contract with an organization representing their employees and the companies and labor organizations involved stipulated that such a unit was appropriate.)

3. *Effect of absence of history of bargaining on multiple employer basis.*

Unit confined to supervisory employees of a single-employer, *held* to constitute an appropriate unit notwithstanding company's contention that the unit should include similar supervisory employees employed by members of an association of which it was a member, when multi-employer bargaining by the association was confined to production employees and the few instances of bargaining in behalf of supervisory employees had been conducted on a single-employer basis. *Union Collieries Coal Co.*, 41 N. L. R. B. 961, 967, 968.

Alaska Packers Assn., 7 N. L. R. B. 141, 148. (Employees of three salmon canneries, *held* to constitute three separate appropriate units, despite the contention of a labor organization that they should be included in a single appropriate unit on the grounds that these three were the only canner

ies which hired employees involved in the proceedings, that they had customarily executed identical contracts, and that they constituted an economic aggregate, where the three companies were separate and distinct business organizations, collective bargaining negotiations had always proceeded separately with each company, and had culminated, in the past 2 years, in separate agreements.)

Mobile Steamship Assn., 8 N. L. R. B. 1297, 1316, 1317. (Warehousemen employed by each company involved in the proceedings, *held* to constitute separate appropriate units, notwithstanding the contention of the labor organiztion petitioning for investigation and certification that they should be included in one port-wide multiple employer unit, where there had been no history of joint collective bargaining with the employers of warehousemen.)

Pacific American Fisheries, Inc., 28 N. L. R. B. 244, 247. (Clerical employees of a fish canning company which was a member of an employers' association, *held* to constitute an appropriate unit notwithstanding contention of one of the the organizations involved that the industry and not a single company properly defined the scope of the appropriate unit, when among other reasons, the record disclosed no bargaining contracts between the labor organizations and companies for clerical employees or any history of collective bargaining upon the basis of any unit comprising the clerical employees of all the companies in the industry.)

V. PROPOSED UNITS CONFINED TO SPECIAL CLASSES OF EMPLOYEES: SUPERVISORY, PROFESSIONAL OR TECHNICAL, PLANT-PROTECTION, CLERICAL, AND OTHERS.

[*See* §§ 101–129 (as to inclusion or exclusion of these employees from other units).]

A. SUPERVISORY EMPLOYEES.

86 1. *Proposed unit appropriate.*

That supervisory employees are "employees" within the meaning of the Section 2 (3) and are protected by the Act in the exercise of their right to bargain collectively is self-evident from the definition of "employee." The definition, embodied in Section 2 (3) of the Act although broad in scope "was not fortuitous phrasing" for the specific exclusion of three kinds of employees from the provision of the Act confirms what the language makes clear, that Congress intended to cover all other employees,

including supervisory personnel. Consistent with the purposes disclosed by Congress in declaring the policy which underlines the Act "to eliminate the causes of certain substantial obstructions to the free flow of commerce" which was to be accomplished "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of action," Congress excluded from the Act employees as to whom "there would be no need for collective bargaining and conditions leading to strikes would not obtain." Nor does the fact that supervisory employees as representatives of an employing enterprise in their dealings with subordinates may bind the enterprise warrant withholding the protection afforded by the Act for the imputation of responsibility to the employing enterprise for violation of the Act stems from the fact that the supervisors in relation to their subordinates constitute the management, a fact equally true when acts of non-supervisory employees bind the employer where employees would have just cause to believe that they were acting in behalf of the management. However, the conclusion that supervisory personnel are within the protection of the Act does not mean that an appropriate unit for collective bargaining may include both supervisors and their subordinates. The statute Section 9 (b) expressly delegates to the Board the discretion to decide "in each case" the unit appropriate for collective bargaining. *Union Collieries Coal Co.*, 44 N. L. R. B. 165, 167, 168.

[*See* § 111.1 (as to exclusion of confidential employees from appropriate units), DEFINITIONS §§ 24–24.6 (as to employees allied with management who are employees within the meaning of Section 2 (3) of the Act), UNFAIR LABOR PRACTICES §§ 11–20 (as to employer's responsibility for activities of supervisory and non-supervisory employees), and § 412 (as to protection afforded to supervisory employees under Section 8 (3) of the Act).]

Supervisory or quasi supervisory employees of a coal mining company in capacity of assistant mine foreman, weigh boss, fire boss, and coal inspectors, exclusive of employees who supervise their work, found to constitute an appropriate unit. *Union Collieries Coal Co.*, 41 N. L. R. B. 961.

International Mercantile Marine, 1 N. L. R. B. 384 (licensed masters and mates or licensed engineers who exercise supervisory authority over seamen aboard ship).

Bull Steamship Co., 36 N. L. R. B. 99 (separate units comprising all licensed deck officers, including masters and mates, and all licensed engineers).

General Motors Corp., 36 N. L. R. B. 439 (shift operating engineers of an automobile manufacturer with supervisory authority and responsiblity for safe operation of powerhouse equipment).

Harmony Short Line Motor Transportation Co., 42 N. L. R. B. 757. (Dispatchers and ticket agents of a bus transportation industry, found to be supervisory employees.)

Godchaux Sugars, Inc., 44 N. L. R. B. 874. (Foreman and non-working foremen of a sugar refiner, who occupied the same supervisory level, *held* to constitute an appropriate unit.)

Swift & Co., 45 N. L. R. B. 209. (Dock checkers of a meat packer, not clearly indicated by record to be supervisory employees but found to constitute a homogeneous group, *held* entitled to right of collective bargaining.)

Southwestern Bell Telephone Co., 45 N. L. R. B. 1078 (first line supervisors of one division of telephone and telegraph utility industry).

86.5 2. *Proposed unit rejected, modified, or referred to election.*

Proposed unit comprising foremen and bench chemists of a sugar refiner, *held* inappropriate, and unit confined to foremen, found appropriate when the skilled, technical, and non-supervisory nature of the chemists' work caused their interests to differ from those of the foremen. *Godchaux Sugars, Inc.*, 44 N. L. R. B. 874.

Stanley Co. of America, 45 N. L. R. B. 625. (Unit composed of managers, assistant managers, utilitarians, and treasurers of a theater operating company as proposed by union, *held* inappropriate when employees occupied various levels of supervisory function.)

Boeing Aircraft Co., 45 N. L. R. B. 630. (Unit composed of general foremen, foremen, and assistant foremen in the aircraft manufacturing industry, *held* inappropriate. when these employees occupied various levels of supervisory function.)

B. PROFESSIONAL OR TECHNICAL EMPLOYEES.

1. *Proposed unit appropriate.*

Enterprise Engine & Foundry Co., 38 N. L. R. B. 1202. (A unit of draftsmen and allied trades of a diesel engine manufacturer, *held* appropriate.) See also:

Art Metal Construction Co., 40 N. L. R. B. 842 (metal equipment manufacturer).

Pennsylvania Shipyards, Inc., 40 N. L. R. B. 1300 (shipbuilding and repairing).

Hope's Windows, Inc., 41 N. L. R. B. 430 (steel window).

General Electric Co., 42 N. L. R. B. 833 (electrical equipment).

Union Diesel Engine Co., 44 N. L. R. B. 1297 (diesel engine).

Out West Broadcasting Co., 40 N. L. R. B. 1367. (A unit of technicians of a radio station, *held* appropriate,)

See also: *New Jersey Broadcasting Corp.*, 31 N. L. R. B. 1221.

Johnson, 41 N. L. R. B. 263; (artificial denture manufacturer). See also: *Bull Dog Electric Products Co.*, 22 N. L. R. B. 1043 (electrical equipment).

Bendix Aviation Corp., 43 N. L. R. B. 912. (A unit of laboratory employees of an aircraft manufacturer, *held* appropriate.)

Westinghouse Electric & Mfg. Co., 44 N. L. R. B. 1071. (A unit of inspectors and tool designers of an ordance manufacturer, *held* appropriate.)

Hudson Motor Car Co., 45 N. L. R. B. 55. (A unit of nurses employed at four plants of a war material manufacturer, *held* appropriate.)

Consolidated Aircraft Corp., 45 N. L. R. B. 1155. (A unit of employees at one of the plants of an aircraft manufacturer who were engaged in the instruction of enlisted army and navy personnel or in work incidental to such instruction, *held* appropriate.)

.5 2. *Proposed unit rejected, modified, or referred to election.*

Proposed unit comprising draftsmen, mechanical designers, and junior draftsmen, of an electrical equipment manufacturer, *held* inappropriate, when record did not disclose the functional coherence of the group nor the distinction between their duties and those of other technical employees whom the union desired to exclude. *General Electric Co.*, 43 N. L. R. B. 453.

ed Chemical & Dye Corp., 41 N. L. R. B. 1191. (Proosed unit of laboratory employees, excluding clerical mployees and department heads, *held* inappropriate, hen the so-called "department heads" performed duties imilar to those of laboratory employees, and their inclusion would practically double the size of the unit.
oratory employees in the magnesium producing industry ermitted to determine by "Globe" election whether they ould be a separate bargaining unit or part of existing ndustrial unit embraced by an existing exclusive baraining contract which purported to cover laboratory mployees but in fact did not, notwithstanding company nd contracting union's contention for plant-wide indusrial unit including such employees, when it was found hey could function as a separate appropriate unit where he laboratory was in a separate building and under con- ol of supervisors having no supervision over the rest of he plant, the laboratory employees were highly skilled nd educated chemists and technicians using special cientific tools and equipment, spent about 25 percent of heir working time in the plant in connection with chemical roblems, were hired by laboratory supervisors and not hrough contracting union's agencies as were the employees overed by the contract, handled their own grievances, ad working conditions and safety problems different from he rest of the plant employees, and had few transfers hich were permanent in nature. *Permanente Metals Corp.*, 45 N. L. R. B. 931.

ell Development Co., Inc., 38 N. L. R. B. 192. (Separate lections directed among professional and non-professional mployees of an oil research company to determine whether hey should constitute single or separate units.)

PLANT-PROTECTION EMPLOYEES.

Proposed unit appropriate.

pany's contention that because of the nature of the duties and responsiblities of plant-protection employees and because of their relation to the company they were part of management rather than employees within the meaning of the Act, *held* without merit, and such employees found to constitute an appropriate unit, when their relationship to the company was clearly that of employer and employee; they neither made recommendations nor advised management as to the disposition of grievances; and there was nothing in their duties to warrant depriving them of

the rights to self-organization and collective bargaining guaranteed employees under the Act. *General Motors Corp.*, 39 N. L. R. B. 1108. See also: *American Brass Co.*, 41 N. L. R. B. 783. *Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973. *Bohn Aluminum & Brass Corp.*, 41 N. L. R. B. 1012.

Todd-Johnson Dry Docks, Inc., 42 N. L. R. B. 489.
Armour & Co., 42 N. L. R. B. 495.
Westinghouse Airbrake Co., 42 N. L. R. B. 525.
Sherwin-Williams Defense Corp., 45 N. L. R. B. 46.
Ford Motor Co., 45 N. L. R. B. 70.
Bethlehem Steel Co., 45 N. L. R. B. 92.

Plant-protection employees of a metal products manufacturer, *held* to constitute an appropriate unit notwithstanding company's contention that they should not be represented by petitioning organization which also represented production and maintenance employees because of an asserted conflict between the two groups, since although in appropriate circumstances the differences in function and interest of the two groups had been found sufficient to exclude plant-protection employees from a production unit, the plant-protection force as employees are entitled to freedom of self-organization and the right to designate a representative of "their own choosing." *Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973. See also:

Chrysler Corp., 44 N. L. R. B. 881.
Maytag Co., 44 N. L. R. B. 1265.
International Harvester Co., 44 N. L. R. B. 1332.
Campbell Soup Co., 45 N. L. R. B. 6.
Johns-Manville Products Corp., 45 N. L. R. B. 33.
Ford Motor Co., 45 N. L. R. B. 70.
Westinghouse Electric & Mfg. Co., 45 N. L. R. B. 51.
Bethlehem Steel Co., 45 N. L. R. B. 92.
Curtiss-Wright Corp., 45 N. L. R. B. 1268.

Company's contention that directive order of the War Department making plant-protection employees at plants producing war materials civilian auxiliaries of the military police, changed their employment status so that they were no longer "employees" within the meaning of the Act, found without merit, and such employees were found to constitute an appropriate bargaining unit, since the order specifically preserved the essential employment relationship; and hiring, compensation, and general working conditions remained matters to be adjusted between the

loyer and employees through the usual employment
ract. *Chrysler Corp.*, 44 N. L. R. B. 881. See also:
ampbell Soup Co., 45 N. L. R. B. 6.
ohns-Manville Products Corp., 45 N. L. R. B. 33.
herwin-Williams Defense Corp., 45 N. L. R. B. 46.
ord Motor Co., 45 N. L. R. B. 70.
oyal Typewriter Co., Inc., 45 N. L. R. B. 291.
nited States Cartridge Co., 35 N. L. R. B. 359.
tis Elevator Co., 45 N. L. R. B. 419.
urtiss-Wright Corp., 45 N. L. R. B. 592.
estinghouse Electric & Mfg. Co., 45 N. L. R. B. 776.
urtiss-Wright Corp., 45 N. L. R. B. 1268.
sed plant unit requested by sole labor organization
olved including several deputized plant-protection
loyees modified and two separate units, one comprising
deputized plant-protection employees, the other com-
ing production and maintenance employees, found ap-
priate in accordance with Board policy of excluding
nt-protection employees from units of production
loyees, and including them in a bargaining unit restrict-
to employees of their class. *Peterson*, 46 N. L. R. B.
9.
pposed unit rejected, modified, or referred to election.
LERICAL EMPLOYEES.
pposed unit appropriate.
al employees excluding confidential and supervisory
loyees at one of the 21 plants of a wire manufacturing,
to constitute an appropriate unit, notwithstanding
ustrial union's claim that these employees belong with
production and maintenance employees in an em-
yer-wide unit, and company's contention that 2 multi-
nt clerical units including respectively, the monthly
aried employees, and the employees paid on a turn
ary or hourly basis should be established where: (1)
ne of the employees whom petitioner would include
re paid on other than a salary or hourly basis; (2) dis-
ct interests which clerical employees generally had from
nual workers were not outweighed by interests which
the present record they may have in common with
er workers; and (3) where the petitioner had limited
organization to the employees in question and had not
nded its organization throughout the company's many
nts, and clerical employees had not attempted to

bargain as an appropriate unit in plants other than the plant in question. *American Steel & Wire Co. of N. J.*, 31 N. L. R. B. 682.

Notwithstanding company's contention that because of "interrelationship" with "top supervisory employees" office employees constitute a "managerial" and not a "bargaining" unit and that the petition should be dismissed, they were found to constitute an appropriate unit, since none of them possessed confidential information concerning labor relations and as they were employees within the meaning of the Act, there was no reason to deprive them of their right to self-organization and collective bargaining. *Yellow Truck & Coach Mfg. Co.*, 36 N. L. R. B. 876.

Columbia Pictures, 27 N. L. R. B. 708 (office and clerical employees in the motion picture industry). See also:

RKO Pictures, Inc., 40 N. L. R. B. 1185.
Monogram Pictures Corp., 41 N. L. R. B. 307.
Vitagraph, Inc., 41 N. L. R. B. 310.
Paramount Film Distributing Corp., 41 N. L. R. B. 358.
Producers Releasing Corp. of St. Louis, 41 N. L. R. B. 362.
RKO Radio Pictures, Inc., 41 N. L. R. B. 365.
Columbia Pictures Corp., 41 N. L. R. B. 369.
United Artists Corp., 41 N. L. R. B. 385.
Republic Pictures Corp., 41 N. L. R. B. 436.
National Screen Service Corp., 41 N. L. R. B. 1009.
Columbia Pictures Corp., 44 N. L. R. B. 1292.
Paramount Pictures, Inc., 45 N. L. R. B. 116.
Republic Pictures Corp., 45 N. L. R. B. 923.

Lowenstein & Sons, 32 N. L. R. B. 218 (office and clerical employees in the textile manufacturing industry).

Armour & Co., 33 N. L. R. B. 784 (office and clerical employees in the food products industry). See also: *Cudahy Packing Co.*, 40 N. L. R. B. 168.

American Smelting & Refining Co., 33 N. L. R. B. 987 (office and clerical employees in the lead refining industry).

Creamery Package Mfg. Co., 34 N. L. R. B. 108 (office and clerical employees in the machinery manufacturing industry).

Burke, Ltd., 36 N. L. R. B. 64 (office and clerical employees in the beverage distributing industry).

Chrysler Corp., 36 N. L. R. B. 157 (office and clerical employe in the motor vehicle manufacturing industry). See als *Yellow Truck & Coach Mfg. Co.*, 36 N. L. R. B. 870. *Chr sler Corp.*, 39 N. L. R. B. 532.

United States Pipe & Foundry Co., 37 N. L. R. B. 1150 (offi and clerical employees in the metal products manufa turing industry).

Superior Sleep-Rite Corp., 39 N. L. R. B. 606 (office and cle cal employees in the furniture manufacturing industry).

Frank Bros., 40 N. L. R. B. 1143 (office and clerical employe in the plumbing supply parts manufacturing industry).

Fairchild Aviation Corp., 40 N. L. R. B. 1222 (office and cle cal employees in the aviation equipment manufacturi industry).

Goldblatt Bros., Inc., 41 N. L. R. B. 741 (office and cleric employees of a department store).

Sears Roebuck & Co., 42 N. L. R. B. 1037 (office and cleric employees of a general merchandise mail order company See also: *Sears Roebuck & Co.*, 44 N. L. R. B. 507.

Polish National Alliance of the United States of North Americ 42 N. L. R. B. 1375 (office and clerical employees of an i surance company).

Consolidated Film Industries, Inc., 43 N. L. R. B. 1230 (offi and clerical employees in the film manufacturing industry

Westinghouse Electric & Mfg. Co., 44 N. L. R. B. 11 (office and clerical employees in the ordnance manufactu ing industry).

Whiting-Mead Co., 45 N. L. R. B. 987 (office and cleric employees in the building materials manufacturi industry).

§ 89.5 2. *Proposed unit rejected, modified, or referred to election.*

Unit confined to time-study men, checkers, and foremen clerks, employed at the four plants of a machinery manu facturer, *held* inappropriate, when the exclusion of variou clerical employees performing similar work created a arbitrary unit justified neither by plant organization n by bargaining history, and when the supervisory functio of time-study men over checkers made questionable th propriety of their inclusion in the same unit with thes employees. *Gar Wood Industries, Inc.*, 41 N. L. R. I 1156.

E. OTHER EMPLOYEES.

1. *Proposed unit appropriate.*

Westinghouse Electric & Mfg. Co., 31 N. L. R. B. 605. (A unit of clerical and technical employees of an electrical equipment manufacturer, *held* appropriate.) See also:

Sonneborn Sons, Inc., 30 N. L. R. B. 1164 (chemical products).

Libbey-Owens-Ford Glass Co., 31 N. L. R. B. 569 (glass).

Dutton & Co., Inc., 33 N. L. R. B. 761 (book publisher).

Aluminum Ore Co., 39 N. L. R. B. 1286 (aluminum producing).

Kennecott Copper Corp., 40 N. L. R. B. 986.

2. *Proposed unit rejected, modified, or referred to election.*

Office and clerical employees and guards at two plants and metropolitan offices of an aeronautical equipment manufacturer permitted to determine by "Globe" elections whether they should constitute a separate unit or be part of a unit comprising production, maintenance, drafting, and designing employees, at the two plants of the company, when the employees in both groups were frequently interchanged among the offices and plants, one of the organizations desiring the inclusion of both groups in a single unit had organized on such a basis, and the organization desiring a unit confined to the production group had limited its organization to such employees. *Simonds Aerocessories, Inc.*, 42 N. L. R. B. 179.

VI. EXCLUSION OR INCLUSION OF SPECIAL CLASSES OF EMPLOYEES.

A. EMPLOYEES ALLIED WITH MANAGEMENT.

[*See* DEFINITIONS §§24–24.6 (as to the employee status of persons allied with management).]

1. *Supervisory employees.*

a. Excluded.

Certain employees whom the labor organizations would classify as non-supervisory employees and include in the unit, excluded, when among other reasons, there existed various indicia of supervisory control, viz: their functions were comparable to strawbosses; they had 6 to 12 men under their direction; they recommended promotion and discharge, such recommendations were customarily followed by the management; and they allotted and inspected the work when finished. *Mueller Brass Co.*, 39 N. L. R. B. 167, 171.

on Mfg. Co., Inc., 27 N. L. R. B. 735 (working superors excluded when among other reasons less than one-f of working time was spent in performing non-supervory functions). See also:

Virginia Bridge Co., 29 N. L. R. B. 241 (at least 50 percent of working time spent in actual supervisory functions).

Western Union Telegraph Co., 30 N. L. R. B. 1169, and 31 N. L. R. B. 560 (sub-department heads having power to recommend discipline, to assign work to employees under them, and to supervise their operations).

Holgate Bros. Co., 31 N. L. R. B. 485 (25 percent of working time devoted to manual work).

National Fireworks, Inc., 33 N. L. R. B. 1115 (90 percent of working time spent in actual supervisory functions).

Swift & Co., 35 N. L. R. B. 184 (75 percent of working time spent in actual supervisory functions).

Silver Falls Timber Co., 35 N. L. R. B. 1092 (at least 50 percent of working time spent in actual supervisory functions).

Viking Refrigerators, Inc., 36 N. L. R. B. 313 (80 percent of working time spent in actual supervisory functions).

Woodbridge Vineyard Assn., 37 N. L. R. B. 454 (75 percent of working time spent in actual supervisory functions).

Superior Tanning Co., 43 N. L. R. B. 734 (subforemen although performing some manual labor, had supervisory duties as indicated by the classifications given given them by company).

Chase Brass & Copper Co., Inc., 43 N. L. R. B. 862 (assistant foremen who although on occasion engaged in manual labor, spent a considerable amount of their time in performing supervisory functions).

rn Union Telegraph Co., 43 N. L. R. B. 895 (at least percent of working time spent in performing supervisory ctions).

te & Koerting Co., 44 N. L. R. B. 528 (although the ater portion of time was spent performing same duties other pattern makers, employee distributed work, tructed in regard to some details, inspected and checked rk, and had authority to recommend hire, discharge, reases, and promotions).

Frazer, 45 N. L. R. B. 318 (employee although performing physical work, was the most experienced employee, and was regarded by other employees as their foreman).

Belanger, 32 N. L. R. B. 1276. (Employees excluded from unit at request of sole union involved notwithstanding fact that they did not have the power to hire and discharge, when they were in charge of certain departments, had men under their supervision, and received a higher rate of compensation than other employees.) See also:

Holgate Bros. Co., 31 N. L. R. B. 485. (Although not having authority to hire, and despite request of one of the unions for their exclusion, employees excluded had authority to discharge or lay off, had complete charge of employees, and were responsible for quantity and quality of work.)

Columbus & Southern Ohio Electric Co., 36 N. L. R. B. 386. (Although not having authority to hire or discharge, operating foremen excluded, when they could recommend the discharge of employees under their supervision.)

Shawnee Milling Co., 44 N. L. R. B. 73. (Although not having authority to hire or discharge and at times worked with production workers excluded, when they had some supervisory powers, their rate of pay was different, and they were not subject to same working regulations as that of ordinary production workers.)

Rockwood Alabama Stone Co., 40 N. L. R. B. 790, 793. (Although at date of the hearing the organization of the supervisory staff of an ordnance manufacturer was incomplete and the scope of the authority of the working foremen as well as the proportion of their time which was to be spent in performing duties of a supervisory character had not been determined, working foremen who have authority to hire or discharge employees or who spend a major portion of their time in the performance of supervisory duties excluded since they were more closely allied with the interests of the management than with the employees included in the production and maintenance unit.) See also: *Ward-Stilson Co.*, 25 N L. R. B. 1075, 1080. (Employees whose suprvisory status was in dispute, included in the unit, when they appeared to be production employees and there was absent any substantial evidence as to their supervisory functions.)

atic Transportation Co., 39 N. L. R. B. 898, 901.
rking foremen excluded although the record did not
al the percentage of their time spent in performing
ervisory duties and how their rate of compensation,
ch was on an hourly basis, compared with that of other
, because of the apparently extensive character of their
iority with respect to hiring and discharge.)
ant foremen, found to have engaged in unfair labor prac-
s, excluded from production and maintenance unit, not-
nstanding request of sole bona fide union for their in-
ion. *Ford Motor Co.*, 23 N. L. R. B. 342. See also:
Consumers Power Co., 10 N. L. R. B. 780.
Jones Lumber Co., 12 N. L. R. B. 209.
Swift & Co., 30 N. L. R. B. 550.
Pacific Gas & Electric Co., 40 N. L. R. B. 607.
Out West Broadcasting Co., 40 N. L. R. B. 1367, 1371.
Cf. *Consumers Power Co.*, 25 N. L. R. B. 280, 284.
(Former supervisory employees demoted to eligible classifications included in unit, when unfair labor practices of the group of supervisory employees of which they had been members was held not to have so affected the whole group that they presumptively continued to act as representatives of the company in furtherance of hostility to the union.)
oyees who performed major supervisory duties excluded
the absence of expression of preference by the parties
lved. *Salt River Valley Water Users Assn.*, 32 N. L.
B. 460. See also:
Lincoln Engineering Co., 25 N. L. R. B. 1083.
Standard Oil Co., 25 N. L. R. B. 1190, 1290.
Home Mfg. Co., 26 N. L. R. B. 916
General Dry Batteries, Inc., 27 N. L. R. B. 1021.
United States Cartridge Co., 45 N. L. R. B. 1043.
oyees on certain night shifts of a steel wire manufac-
er excluded from a unit comprising production employ-
notwithstanding the desire of one of the unions
olved for their inclusion when, they were charged with
ponsibility for carrying out orders of the day foremen,
eir wages were slightly higher than those of their fellow
ployees, and although they had no authority to hire or
charge, their directions were followed by the other

workers. *American Steel & Wire Co.*, 32 N. L. R. B. 1137. See also:

Bisbee Linseed Co., 34 N. L. R. B. 272. (Employee who acted as substitute foreman 1 day each week excluded.)

May Department Stores Co., 39 N. L. R. B. 471. (Assistant buyers of a department store excluded when in the absence of the buyer they were in charge of employees immediately under the supervision of the buyer.)

Val Vita Food Products, Inc., 45 N. L. R. B. 23. (Employees assigned to act as assistant foremen during the peak season of a food products manufacturer and who had authority to hire and discharge and in fact exercised such authority excluded.)

Employees who in a prior determination of the Board were included in the unit when parties stipulated that they should be included and record failed to disclose their duties and relations to ordinary production employees, excluded upon further hearing, when record disclosed that they were regarded by the employees to be supervisory employees whose work they directed and criticized and that they recommended employees for increase in wages and discharge. *Lewittes & Sons*, 40 N. L. R. B. 43. See also: *Consumers Power Co.*, 10 N. L. R. B. 780 and 25 N. L. R. B. 280. (Supervisory employees who in a prior determination were included in the unit, upon reconsideration excluded.) *International Nickel Co., Inc.*, 7 N. L. R. B. 46. (Inspectors previously included in an industrial unit, excluded.)

[*See* § 1 (as to conclusivesness of prior determination by the Board).]

7 b. Included.

There being no inflexible or universal rule, applicable to all industries and all situations within an industry, which points to a determination of the appropriate unit in all cases, the Board although generally excluding supervisory personnel from a unit which comprises subordinate employees, nevertheless does not disregard the fact that in certain industries there exists a standing practice for both groups to deal with the employer through common spokesmen, and when such a practice exists, the Board will include supervisory personnel along with subordinate workers; similarly, subordinate employees who are frequently delegated managerial functions as "part-time supervisors" or as "working supervisors" are included in

e same unit with fellow employees who perform no pervisory tasks. *Godchaux Sugars, Inc.*, 44 N. L. R. B. 1.

in Powder Co., 29 N. L. R. B. 229. (Employees who voted a majority of their time to work similar to that ordinary workers and generally did not perform major pervisory functions included in a unit consisting of oduction and maintenance employees.) See also:

Smith & Co., 28 N. L. R. B. 1233. (Employees who spend 80 percent of their time maintaining motors, and the remaining 20 percent supervising the loading of cars, and who were paid on an hourly basis as other production and maintenance employees, included in a unit of production and maintenance employees, despite union's request for their exclusion.)

Hart & Cooley Mfg. Co., 30 N. L. R. B. 1119. (Leaders devoting less than half their time to supervisory functions, included in the unit.)

Remington Rand, Inc., 31 N. L. R. B. 490. (Minor supervisory employees who did not have the power to recommend the hiring or discharging of employees and who spent 80 percent of their time doing the same work as that of employees under their supervision, included in the unit.)

Phelps Dodge Corp., 34 N. L. R. B. 569. (Working supervisors included over objection of one of the labor organizations involved when 75 percent of their time was spent performing duties similar to those of other working supervisors whom the same union would include.)

Taylor Bedding Mfg. Co., 38 N. L. R. B. 755. (Working subforemen included notwithstanding desire of the company for their exclusion, when they spent 50 percent or more of their time in the performance of manual labor.)

Belz, 38 N. L. R. B. 1326. (Working foremen included, notwithstanding desire of one of the unions involved for their exclusion, when they spent 95 percent of their time doing manual labor, were paid on an hourly basis, and did not have power to hire or discharge.)

stern Union Telegraph Co., 38 N. L. R. B. 1236. (Managers included in a unit comprising all employees within a district of a national telegraph company, notwithstanding

company's objection, when their authority was limited to settling minor grievances, were under the same supervision as other employees, and were represented in the past by the organization desiring their inclusion.)

Staley Mfg. Co., 31 N. L. R. B. 946, *Robins Dry Dock & Repair Co.*, 33 N. L. R. B. 15. (Minor supervisory employees included in the unit when, among other reasons, their rate of pay was similar to production workers and dissimilar from supervisory employees.) See also:

Delta-Star Electric Co., 37 N. L. R. B. 459. (Timekeepers and plant clerks included notwithstanding desire of company for their exclusion, when they were on the shop pay roll, did no job rating, and did not receive the bonus given other supervisory employees.)

Allied Chemical & Dye Corp., 40 N. L. R. B. 1351. (Labor pushers included, when they worked with the regular employees, and were hourly paid.)

Johnson Service Co., 37 N. L. R. B. 976. (Certain employee included in a unit of stockroom employees, notwithstanding contention of the company that he held a supervisory position, when he had no power to hire or discharge and his recommendations concerning dismissal of his assistant were subject to independent investigation.) See also:

Reliance Regulator Corp., 32 N. L. R. B. 157. (Working foremen included, when they worked alongside employees under their supervision and their recommendations as to hiring and discharging were subject to ratification by the foremen.)

Lehon Co., 34 N. L. R. B. 313. (Inspectors characterized by company as "strawbosses" not regarded as possessing supervisory functions and included in production unit, for although they inspected finished products, they had no power to hire or discharge or give efficiency ratings.)

Columbus & Southern Ohio Electric Co., 36 N. L. R. B. 386. (Working foremen who spent 90 to 95 percent of their time working alongside employees whom they supervised and whose recommendations as to the discharge, demotion, or promotion of employees working under them were not often followed by the company, included in the unit.)

Substitute leaders who replaced leaders when absent because of illness or vacation but otherwise performed the work of

ordinary employees, included in a unit comprising production employees. *Hart & Cooley Mfg. Co.*, 30 N. L. R. B. 1119. See also: *Olean Tile Co.*, 32 N. L. R. B. 288. (Employees who acted as foremen but once or twice a year, included in a unit comprising production and maintenance employees.) *Armour & Co.*, 33 N. L. R. B. 784. (Assistant manager included in a unit comprising office employees, when the major portion of his duties was clerical notwithstanding that in the absence of the office manager he exercised the full duties of the office manager.)

Masters included in a unit of all licensed deck officers, notwithstanding the desire of one of the unions involved for their exclusion on the ground that they were representatives of the owner, when the unit was composed entirely of supervisory employees with comparable skills, qualifications, duties, authority, and responsibilities, and masters were eligible for membership in both of the unions seeking to represent the employees in the unit. *Tide Water Associated Oil Co.*, 38 N. L. R. B. 582. See also:

Seas Shipping Co., 8 N. L. R. B. 422.

Standard Oil Co., 8 N. L. R. B. 936.

New York & Cuba Mail Steamship Co., 9 N. L. R. B. 51.

Tidewater Associated Oil Co., 9 N. L. R. B. 823.

Jones & Laughlin Steel Corp., 37 N. L. R. B. 366.

Cf. *United States Lines Co.*, 28 N. L. R. B. 896. (Masters excluded from a unit consisting of licensed deck officers notwithstanding the contentions of one of the organizations involved that they should be included, when the licensed deck officers, as well as all other employees on the company's ships were hired and are subject to supervision and discipline by the masters and there was no showing that master had, in the past, been included in a single bargaining unit with the licensed deck officers employed by the company.)

Higman Towing Co., 32 N. L. R. B. 102. (Captains excluded from unit composed of all other members of crews of the towboats operated by the company over objection of sole union involved, upon a finding that captains had complete supervisory powers over such crews.)

Foremen included in a unit of production employees of an envelope manufacturer in view of the traditions of the printing trade of including them in collective bargaining

contracts. *Berkowitz Envelope Co.*, 38 N. L. R. B. 914. See also: *Western Tablet & Stationery Co.*, 31 N. L. R. B. 597. *Lloyd Hollister, Inc.*, 33 N. L. R. B. 982.

[*See* WRITTEN TRADE AGREEMENTS IN COLLECTIVE BARGAINING, National Labor Relations Board Division of Economic Research, Bulletin No. 4, Nov. 1939, pp. 271–275.]

In a unit confined to supervisory employees, employees whose supervisory functions were not of a higher level than those within the unit, included. *Godchaux Sugars Inc.*, 44 N. L. R. B. 981. Cf. *Union Collieries Coal Co.*, 41 N. L. R. B. 961. (Where supervisory employees of higher level than those within the unit were excluded.)

Notwithstanding union's desire to limit the exclusion of supervisory employees to those having the right to hire and discharge at the date of the petition, Board agreed with company's contention that the company should be free to confer that authority when it deemed such action necessary in the interest of management, and that in the event such action was taken the group affected should be excluded from the unit. *Westinghouse Electric & Mfg. Co.*, 45 N. L. R. B. 826.

La Plant-Choate Mfg. Co., 13 N. L. R. B. 1228. (Employee who was demoted from a supervisory position to an ordinary production worker included in a unit comprising production, maintenance, and service employees.) See also: *American Oil Co.*, 14 N. L. R. B. 990. (Employee who had been at one time chief clerk in charge of the company's clerical staff but who had not served in that capacity for approximately a year prior to the issuance of the decision, included in a unit comprising clerical, production, and maintenance employees.)

Edison, Inc., 45 N. L. R. B. 1215. (Minor supervisory employees who were hourly paid and devoted more than 50 percent of their time doing manual labor included in a production unit subject to being excluded in the event they became foremen.) See also: *La Plant-Choate Mfg. Co.*, 13 N. L. R. B. 1228. (Employee who had previously been a supervisory employee, but at time of hearing was doing manual work because of a reduction of force included in a production unit subject to being excluded when there was a possiblity of his being promoted to a foreman's position.)

[*See* INVESTIGATION AND CERTIFICATION § 127.2 (as to effect of change in employee status to or from supervisory position subsequent to issuance of Decision and Direction of Election).]

2. *Employees intimately related to employer or officers thereof.*

110 a. Excluded.

Son and daughter of the president and vice president of the company excluded from a unit comprising, with certain exceptions, all of the company's employees, when the sole labor organization desired their exclusion, and by virtue of their relationship with officers of the company, their interests were sufficiently distinguished from those of the other employees. *Louis Weinberg Assn.*, 13 N. L. R. B. 66, 69. See also: *Standard Magazines, Inc.*, 31 N. L. R. B. 285. (Brother of publisher, excluded.) *Belanger*, 32 N. L. R. B. 1276. (Brother of one of the partners, excluded.) *Rappaport*, 36 N. L. R. B. 484. (Son and brother of one of the partners, excluded.)

110.1 b. Included.

Brother of the president of the company and owner of one share of stock in the company, included in a unit comprising production and maintenance employees, notwithstanding contentions of one of the labor organizations involved that he exercised supervisory functions and should be excluded, when he was employed as a maintenance man and part-time punch operator, and had no authority to hire or discharge employees or make such recommendations. *Steel Storage File Co.*, 27 N. L. R. B. 210.

Atlas Tool & Mfg. Co., 27 N. L. R. B. 182. (Son of the company's president, included when he devoted a majority of his time to machine work, and the fact that he was employed during school vacations was found not to warrant his exclusion from unit composed primarily of year-round employees.)

Press Wireless, Inc., 28 N. L. R. B. 348. (Father-in-law of the manager who was engaged in manual work, included.)

3. *Confidential employees.*

110.2 a. Excluded.

An employee who was listed as a stenographer, made reports of a confidential nature to the general office, and had taken dictation concerning labor problems in the plant, excluded from a unit comprising office employees, since the information which she might receive in this manner would appear to be confidential and directly related to

the problem of labor relations. *Creamery Package Mfg. Co.*, 34 N. L. R. B. 108, 110. Cf. *Brooklyn Daily Eagel*, 13 N. L. R. B. 974. *Dutton & Co.*, 33 N. L. R. B. 761.

Chrysler Corp., 36 N. L. R. B. 157. (Teletype operators included in the voting unit when it did not appear that in the course of their duties they obtained information of a sufficiently confidential character relating to company's labor policy as to warrant their exclusion.) See also:

Montgomery Ward & Co., 36 N. L. R. B. 69 (personnel director).

Chrysler Corp., 36 N. L. R. B. 157 (secretaries).

Chrysler Corp., 36 N. L. R. B. 593 (confidential clerks).

Walgreen Co., 37 N. L. R. B. 764 (employees in the personnel department).

Chrysler Corp., 37 N. L. R. B. 877 (confidential salaried employees).

Chrysler Detroit Co., 38 N. L. R. B. 313 (private secretaries to executives and department heads).

Montgomery Ward & Co., 38 N. L. R. B. 340 (manager's private secretary).

Western Union Telegraph Co., 38 N. L. R. B. 492 (authoriztion clerk).

Western Union Telegraph Co., 38 N. L. R. B. 535 (confidential clerk).

Western Union Telegraph Co., 38 N. L. R. B. 766 (statistical clerk).

Western Union Telegraph Co., 39 N. L. R. B. 787 (confidential clerk).

Western Union Telegraph Co., 39 N. L. R. B. 1068 (secretary).

Aluminum Ore Co., 39 N. L. R. B. 1286 (secretaries to executives and department heads, cost department employees).

Telegram Publishing Co., 44 N. L. R. B. 461 (secretaries).

North American Aviation, Inc., 44 N. L. R. B. 1372 (industrial relations department employees).

Paramount Pictures, Inc., 45 N. L. R. B. 116 (payroll auditors, secretaries).

10.3 b. Included.

Employees in the legal, trust, and tax departments of a motion picture producer and distributor included in a unit comprising office, clerical, accounting, and secretarial employees notwithstanding fact that employees in such departments undoubtedly have access to certain information which may

be considered "confidential" since as enunciated by the Board in the *Creamery Package* case, 34 N. L. R. B. 108, § 110.2, *supra*: employees must have access to confidential information which relates directly to the problem of labor relations if they are to be excluded from the voting unit; the possession of important information is of itself not sufficient to justify deprivation of the right to collective bargaining. *Warner Bros. Pictures, Inc.*, 35 N. L. R. B. 739, 744. See also:

Chrysler Corp., 36 N. L. R. B. 157 (telephone operators).

Pennsylvania Edison Co., 36 N. L. R. B. 432.

Chrysler Detroit Co., 38 N. L. R. B. 313 (telephone switchboard operators).

Cincinnati Times-Star Co., 39 N. L. R. B. 39 (secretaries, telephone operators).

Mueller Brass Co., 39 N. L. R. B. 167 (checkers, timekeepers).

Fairmont Creamery Co., 44 N. L. R. B. 941 (order clerk, switchboard operator, record clerk, storage entry clerk).

4. *Stockholders.*

110.4 a. Excluded.

110.5 b. Included.

An employee-stockholder, included in a unit comprising all employees exclusive of sales, clerical, and supervisory employees of a can manufacturer, notwithstanding contention of one of the labor organizations involved that he should be excluded because he had an interest in the company, when he held only $500 worth of the company's stock, was listed on the company's pay roll as a "production-imprint" employee, was paid by the hour, and did not occupy a supervisory position. *Cordiano Can Co., Inc.*, 38 N. L. R. B. 905.

5. *Plant-protection employees.*

110.6 a. Excluded.

110.7 b. Included.

Employees classified on company pay rolls as janitors, watchmen, and boilermen, included in industrial unit at request of sole labor organization involved and over employer's objection, where their interests and duties were no different from those of other maintenance employees as to whom the parties had agreed were to be included, and there was no evidence that their duties as watchmen placed them in a confidential and fiduciary

relationship to the employer or that their inclusion in the unit would cause relaxation of such duties. *Illinois Tool Works*, 21 N. L. R. B. 292.

10.9 6. *Others.*

B. OFFICE AND CLERICAL EMPLOYEES IN INDUSTRIAL PLANTS.

12 1. *Excluded.*

Decisions in which office and clerical employees were excluded from production units when their status and functions differed essentially from those who did manual labor:

Kelly Co., 34 N. L. R. B. 325.

Ohio Public Service Co., 36 N. L. R. B. 1269.

American Bridge Co., 38 N. L. R. B. 624.

Natural Gas Pipe Line Co. of America, 40 N. L. R. B. 1193.

Superior Tanning Co., 43 N. L. R. B. 734.

Steiner, 43 N. L. R. B. 1384.

Office and clerical employees who engaged in clerical work and manual labor excluded from production unit when a greater portion of their time was devoted to clerical work:

Lihue Plantation Co., 19 N. L. R. B. 130. (Employees who engaged in clerical and manual work and who devoted more than one-half of their time to clerical work, excluded.)

Salisbury Cotton Mills, 39 N. L. R. B. 210. (Employees who engaged in production or maintenance work but devoted 50 percent or more of their time performing clerical duties, excluded.)

Chic Pottery Co., 40 N. L. R. B. 83. (Employee who performed all the clerical work for the company, but in addition spent part of working time wrapping pottery for shipment, excluded since clerical work had prior claim and if it were to increase sufficiently, employee would be required to devote all her time thereto.)

Fairbanks, Morse & Co., 40 N. L. R. B. 455. (Employees who devoted 60 to 65 percent of their time to clerical work and the balance of their time to manual work excluded.)

Departure from general practice of excluding office and clerical employees from production units, found not warranted when past history of collective bargaining did not stabilize or define their inclusion within the unit.

Texas Co., 33 N. L. R. B. 1214. See also: *Union Switch*

& Signal Co., 30 N. L. R. B. 922. *Philadelphia Dairy Products Co.*, 36 N. L. R. B. 737.

17 2. *Included.*

Factory clerks (engaged in collecting, checking, and tabulating production data) included in a production unit when they worked in close contact with manual workers and their interests did not differ greatly from these employees:

Electric Auto-Lite Co., 9 N. L. R. B. 147.
Willys Overland Motors Co., 9 N. L. R. B. 929.
Armour & Co., 15 N. L. R. B. 268.
Chrysler Corp., 33 N. L. R. B. 927.
Hughes Tool Co., 33 N. L. R. B. 1089.
Delta-Star Electric Co., 37 N. L. R. B. 459.
Colonial Sugars Co., 39 N. L. R. B. 417.
Ohio Ferro-Alloys Corp., 41 N. L. R. B. 103.
Sheffield Steel Corp. of Texas, 43 N. L. R. B. 956.
Cf. *Armour & Co.*, 43 N. L. R. B. 307 (plant and storeroom clerks of a meat packer who kept records of inventory on hand and of the various departments throughout the plant, excluded from unit notwithstanding desires of sole labor organization involved for their inclusion when they were considered as a part of the company's accounting set-up and were eligible for positions in the office).
See also: *Frederick H. Levy Co.*, 31 N. L. R. B. 292.

Employees who engaged in clerical work and manual labor included in production unit when greater portion of their time was devoted to manual work:

James Vernor Co., 37 N. L. R. B. 388.
Salisbury Cotton Mills, 39 N. L. R. B. 210.
Colonial Sugars Co., 39 N. L. R. B. 417.
Union Parts Mfg. Co., 41 N. L. R. B. 1173.

Clerical employees included in production unit when, among other circumstances, they had been included in previous bargaining contracts covering a similar unit:

American Radiator & Standard Sanitary Corp., 35 N. L. R. B. 172.
Link-Belt Speeder Co., 37 N. L. R. B. 889.
Phoenix Iron Co., 38 N. L. R. B. 1320.
General Steel Castings Corp., 41 N. L. R. B. 350.
Flintkote Co., 42 N. L. R. B. 929.
Cf. *Western Cartridge Co.*, 31 N. L. R. B. 888. (Office employees excluded from production unit although

they had been included in a collective bargaining agreement covering such a unit, when the contracting union waived its claim to represent the employees in the unit and their interests and functions differed.)

Cf. *Texas Co.*, 33 N. L. R. B. 1214. (Although Board customarily excludes salaried clerical employees from a unit of production and maintenance employees, and although under certain circumstances, regards bargaining history as a controlling factor in determining the appropriate unit, establishment of a "working rule" which included clerical employees in plant in question found not to establish a history of collective bargaining warranting the inclusion of clerical employees in the production unit when at other plants of the company the "working rules" expressly excluded clerical employees from a similar unit.)

Clerical employees included in the bargaining unit with other of the employees of a millinery supply company at request of sole labor organization involved, when the nature of the business involved was such that there was no sharp differentiation in function and interests between office and other employees as exists in other types of business enterprises. *Louis Weinberg Associates, Inc.*, 13 N. L. R. B. 66, 69.

Commercial Solvents Corp., 35 N. L. R. B. 489. (Clerical employees, excluded notwithstanding company's contention that their work and interests were intimately connected with that of other employees when the sole labor organization involved desired their exclusion since it had not organized them or exercised jurisdiction over them because previous attempts had "proved unsatisfactory.")

§ 120 3. *Question of inclusion or exclusion referred to election among the clerical employees involved.*

Electric Auto-Lite Co., 9 N. L. R. B. 147.

Willys Overland Motors, Inc., 9 N. L. R. B. 924.

Westinghouse Electric & Mfg. Co., 21 N. L. R. B. 1150.

C. OTHER EMPLOYEES ON THE FRINGE OF THE UNIT.[1]

D. PART-TIME, TEMPORARY, IRREGULAR, EXTRA, SEASONAL, AND PROBATIONARY EMPLOYEES. [*See* INVESTIGATION AND CERTIFICATION §§ 61.9–65 (as to the eligibility of intermittent employees).]

[1] Decisions in this section have not been digested.

51 E. PROPOSED EXCLUSIONS BASED SOLELY ON RACE OR SEX.

Employees will not be excluded from a unit upon racial considerations, absent a showing of differentiation in functions which would warrant their exclusion; accordingly, when no such differentiation was shown between the colored employees and the remaining white employees, and the colored employees were eligible to membership in the sole labor organization involved, they were included in the unit over the company's objection. *Aetna Iron & Steel Co.*, 35 N. L. R. B. 136, 138. See also:

American Tobacco Co., Inc., 9 N. L. R. B. 579.
Fridell, 11 N. L. R. B. 249.
Interstate Granite Corp., 11 N. L. R. B. 1046.
Brashear Freight Lines, Inc., 13 N. L. R. B. 191.
Utah Copper Co., 35 N. L. R. B. 1295.

Union Envelope Co., 10 N. L. R. B. 1147. (Separate units for white and colored employees found appropriate.)

Sloss Sheffield Steel & Iron Co., 14 N. L. R. B. 186. (Colored employee included in unit when union, although not admitting colored employees to membership, averred that it would bargain for this employee.)

Georgia Power Co., 32 N. L. R. B. 692. (Unit confined to colored employees found inappropriate, when, among other reasons, claim that they were denied and refused membership in the labor organization representing employees in an exclusive contract covering these employees was found without merit.)

As in the case of exclusions from a unit upon racial considerations, attempted distinctions on the basis of sex were disallowed and unit confined to male employees found inappropriate when there was absent a showing of differentiation in functions between the male and female employees. *General Electric Co.*, 43 N. L. R. B. 453; *Swift & Co.*, 11 N. L. R. B. 950.

McCall Corp., 8 N. L. R. B. 1087. (Separate bargaining units for male and female employees found inappropriate, when the interests and work of both sexes were identical.)

California Walnut Growers Assn., 18 N. L. R. B. 493. (Male employees included within production unit notwithstanding request of sole labor organization involved for their exclusion, when they were found to be production workers.)

Unit comprising women bookbinders, *held* appropriate although a rival organization desired a unit composed of both

men and women bindery workers when, among other circumstances, there was a showing of an established custom in the bookbinding industry for men and women to be organized into separate unions and to act independently of each other. *Little & Ives Co.*, 6 N. L. R. B. 411.

De Soto Creamery & Produce Co., 39 N. L. R. B. 601. (Unit confined to female employees in the egg-breaking and poultry departments of a poultry company, *held* appropriate when the male employees in these departments and other departments were organized by another labor organization which had contracts with the company covering them.)

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