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1960
UNFAIR LABOR PRACTICES UNDER THE LABOR-MANAGEMENT
RELATIONS ACT, 1947-57: A STUDY OF N.L.R.B.
CASES PERTAINING TO THE UNFAIR LABOR
PRACTICES OF UNIONS UNDER SECTION
8(b) OF THE ACT

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
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* * * * * *

The Ohio State University
1959

Approved by

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CHAPTER I

INTRODUCTION

The Labor Management Relations Act of 1947 is the most extensive and complicated piece of labor legislation ever adopted in the history of the United States. It creates completely new devices of administration. It regulates labor matters to an extent and in a manner heretofore untried by legislation. It amends and reenacts the National Labor Relations Act of 1935. Unlike the earlier Act, however, the new law is not restricted mainly to pre-bargaining relationships; its concern is with activities and relationships both before and after collective bargaining has been instituted.1

The foregoing statement about the Act of 1947 is indicative of the underlying basis of a number of developments on the labor-management relations scene in the United States over the past decade. It is particularly significant in that it is made by one who has been a member of the National Labor Relations Board's administrative staff for over twenty years and is a recognized expert in the administration of the Act.

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There has been an increase in public attention directed toward labor-management relations, and at the law which regulates these relations on the Federal level. Such increasing concern by the public has been generated by many factors including repeated congressional hearings, and press coverage of these hearings which rarely has been comprehensive and not always accurate. Of course, there is little doubt that at times the hearings, the reports and press releases of elected and appointed officials have tended to distort or be misleading about the nature and magnitude of the problems under consideration. The same is true even of supposedly neutral and objective studies by academicians as well as those of management, labor unions, and others. Such a situation has existed particularly with regard to the unfair practices of labor organizations.

Thus, the complexity of the Act, conditioned in part by the subject matter it attempts to regulate, has produced many conflicting statements as to the impact of the Act on unions, management, individual workers, and the public as well as the practice and procedure of collective bargaining. Statements in this regard appraising the Act's enforcement as a success or failure to achieve the purposes intended by its enactment may readily be contrasted with contrary counterparts.
It is difficult, therefore, if not impossible for the layman and even many of the legal profession to be informed on the nature and development of public policy and the law on the subject. Certainly mis-statements and over-simplification do not alleviate the situation. However, in addition to being complex and uncertain at times, public policy and the law develop in a manner frequently marked by rapid strides and abrupt changes. Perhaps all too often the "easy" way out is to avoid a careful study of the "facts" of the situation and to ignore the alternatives which a given course of action may impose, substituting therefore the declaration: "There ought to be a law against that." Such an approach tends to ignore the fact that there may already be a law against "that" but also, it overlooks conflicts in public policy goals in a social, economic, and political system such as ours which places an emphasis on the desirability of maximum freedom obtainable consistent with and limited by the public welfare.

The Labor Management Relations Act of 1947 sets forth in various provisions the public policies it is designed to promote. Thus, one statement of its purpose is:
...an Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes."

Under Section 1 of the "Short Title and Declaration of Policy," it is stated:

...It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Further statements relevant to the underlying policies of the Act are found under Title I, Section I entitled "Findings and Policies:"

...The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or
processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or with actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and to bargain collectively safeguards commerce from injury, impairment, or interruption and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.
"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

One of the important changes in the Wagner Act made by the Labor Management Relations Act of 1947 and designed to effectuate these policies was the enactment of Section 8(b). This Section imposed a list of unfair labor practices on labor organizations in addition to those imposed on employers under the Act of 1935 and continued under the Act of 1947. These unfair practices and the sanctions imposed under them are only a part of the Act's provisions designed to "equalize legal responsibilities" of unions and employers and to encourage the practice and procedure of collective bargaining. They are also only a part of the provisions designed to protect individual employees in their relations with labor organizations. However, they constitute an important part of the provisions designed to effectuate the above mentioned policies of the Act. They set forth in detail the practices to be eliminated as opposed to the more general references contained in these broader goals.
Section 8(b)(1) makes it an unfair labor practice to restrain or coerce employees in the exercise of their rights guaranteed in Section 7 or to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining. Section 7 of Title I reads:

Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Section 8(b)(2) makes it an unfair labor practice for a labor organization to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3) (which prohibits the employer from encouraging or discouraging membership in a labor organization) or for reasons other than failure to render dues and initiation fees uniformly required for acquiring or retaining membership. Section 8(b)(3) concerns refusal to bargain collectively with an employer by a labor organization.

Section 8(b)(4) contains four subsections and deals with secondary boycotts and jurisdictional disputes.
which are designated as unfair labor practices. This is the most intricate and involved subsection of Section 8(b). It attempts to proscribe organization and recognition weapons of unions as well as certain attempts to obtain jurisdiction over performance of services and representation where these attempts involve engaging in or inducing the employees of any employer to engage in "...a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services...."

Section 8(b)(5) makes it an unfair labor practice for a labor organization to require of employees covered by an authorized agreement the payment, as a condition precedent to becoming a member, of a fee which the Board finds excessive or discriminatory under "all circumstances."

Section 8(b)(6) is commonly referred to as the anti-featherbedding provision and makes it an unfair labor practice "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."
These unfair practices of labor organizations have been classified into three groups by the National Labor Relations Board. This grouping has resulted largely from the procedures imposed by the Act on the Board in the administration of Section 8(b). Thus, those practices prescribed by 8(b)(4) and the cases arising thereunder required immediate handling by the Board. Section 8(b)(4), paragraphs (A), (B), and (C) require the Board to give precedence to such cases and to seek a temporary injunction upon issuance of a complaint. Section 8(b)(4), paragraph (D) cases are also to receive precedence over all but those arising under 8(b)(4)(A), (B), and (C) and are to have a preliminary hearing to determine the existence of a dispute. Sections 8(b)(1), (2), (3), (5), and (6) are handled in the regular manner prescribed in Section 10.

The Board, therefore, attaches to Section 8(b) cases the designations of CB, CC, and CD. CB cases are those arising under Sections 8(b)(1), (2), (3), (5), and (6). CC cases are those alleging violations of 8(b)(4)(A), (B), and (C), whereas CD cases are those involving Section 8(b)(4)(D).

This study is concerned then with the nature and extent of development of public policies and the law under Sections 8(b)(1), (2), (3), (5), and (6) of the
Labor Management Relations Act of 1947. The period covered includes the years 1947-1957.

While the bulk of both charges filed and cases requiring Board decision have occurred in connection with Sections 8(b)(1), (2), (3), (5), and (6), as will be indicated in Chapter II, these cases have not received the degree of notoriety or study given to those arising under Section 8(b)(4). The study of 8(b)(4) cases and policy presents a logical subdivision which may be made from other 8(b) cases. It also represents, quantity-wise, a subject matter requiring an undue amount of additional research to be handled in conjunction with that of other 8(b) cases. For these reasons and since much work has been done and is being carried on at present in this area, it is not included in this study.²

An examination is made of all of the National Labor Relations Board's decisions rendered in contested cases which arise under these Sections. Stipulated decisions by the Board or cases settled before decision

by the Board are not included for they are not policy making in the sense that the Board is bound in other cases by settlements made in these cases.\(^3\) This is not to imply that the Board is not influenced by these decisions when considering other cases, but merely to indicate that as a matter of legal procedure the cases are not necessarily precedent in the legal sense.

Since many of the Board's decisions are appealed to the courts, court decisions relating to cases arising under the relevant Sections are examined. One case may, of course, have numerous court decisions including the Supreme Court as well as the lower courts. All of these are followed through to their conclusion. A complete list of the Board and court decisions used herein is included in Appendix I at the end of the text. This list is in addition to the general references to government documents and publications contained in the bibliography.

Chapter II briefly outlines the method of filing and reporting cases. It also analyzes the

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\(^3\)Per conversation with Louis G. Silverberg, Director for the National Labor Relations Board.
statistics of 8(b) cases for the relevant period so that the numerical origin of Board decisions examined here is apparent and contrasted with total cases filed.

In Chapter III, the qualitative limits of Board policies and procedure on the application of the selected subsections of 8(b) are described and analyzed. Chapters IV, V, and VI present and analyze the development of public policy and the law in Section 8(b)(1), 8(b)(2), and 8(b)(3), (5), and (6) cases respectively.
CHAPTER II

METHOD OF FILING AND STATISTICS OF BOARD CASES RECEIVED UNDER SECTION 8(b), 1947-1957

A. Introduction

Before turning to the analysis of contested Board decisions, such cases will be put in the broader context of all 8(b) cases filed during the period of the study. These data are presented in several ways to show the industrial and geographic origins of cases, by whom they were filed and the method by which they were closed. In addition, a brief comparison is made of cases received under Sections 8(a) and 8(b) for the period of the study.

A limitation exists on the use of the geographical and industrial data that should be borne in mind. It is not possible to relate directly the geographic origin of the cases with their industrial origin as these two sets of data are reported separately by the Board. Hence, industry concentrations of data by State, for example, may be obtained only by inference. As a preliminary to this analysis of the case statistics, the procedural aspects of an unfair labor practice charge are examined briefly.
B. Filing and Reporting of an Unfair Labor Practice

Under Section 8(b)

Under the law, any person may file a charge alleging an unfair labor practice of a labor organization or its agent under Section 8(b). This includes individuals, employers or another labor organization as well as an attorney on behalf of any of these parties.\(^1\)

The Board may exercise broad discretion in instituting proceedings in the face of a challenge to the rights of the filing party and may proceed or dismiss but is not compelled to do either one even when the charging party is acting in bad faith.\(^2\)

Once the charge is filed in the regional office within whose jurisdiction the alleged violation has occurred, the Board's processes are started in motion. Two general courses of action may result. The first is of an informal nature and immediately follows the filing of the charge. The second is formal action

\(^1\)For a more complete discussion of the technical aspects of the Act discussed in this section, see Silverberg, Louis G., op. cit., Chapters VIII and IX.

involving issuance of a complaint, a hearing, and possible Board and court decision.

Concerning the informal action, an investigation follows the filing of the charge. A complaint may issue or the charge may be disposed of through informal adjustment by the parties. It also may be withdrawn on advice of the Board's agent or it may be dismissed. A dismissal may be appealed to the General Counsel who may deny the appeal or grant it and issue a complaint. If the case is one involving Section 8(b)(4)(A), (B), (C), and possibly (D), an injunction under Section 10(1) must be sought following the investigation, if such inquiry indicates the existence or danger of such practices being committed. If a restraining order is sought under Section 10(j) it will follow issuance of the complaint.

The issuance of the complaint signifies the initiation of formal action, aside from the aforementioned prescribed requisite of injunctions in Section 8(b)(4) cases. The parties may agree to abide by a stipulation before or after the Board conducted hearing on the complaint. In either event, the case must go to the Board in Washington for its approval.

If attempts at settlement or formal stipulation are not achieved immediately after or concurrent with the
issuance of the complaint, a hearing must be held. Following the hearing, the trial examiner issues an intermediate report. Exceptions to the report may be filed with the Board by any of the parties involved. The decisions of the Board in cases involving such exceptions are the contested cases which appear in the printed volumes, Decisions and Orders of the National Labor Relations Board, and which provide the basic data for this study. In the absence of such exceptions, the Board may adopt the report including its recommendations for remedy. In either case, a Board order is issued.

In the event of a Board decision following exceptions to the intermediate report, any of the parties involved may appeal the Board's decision to the

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3Under the present administrational structure of the Board, the trial examiners are the only regional employees directly responsible to the Board in Washington, D.C., and they operate out of the Washington office. The other employees operating at the regional level are under the supervision of the General Counsel. The trial examiners serve as the Board's hearing officers for charges prosecuted by the General Counsel. They are empowered to conduct hearings, receive evidence, make findings and conclusions of fact and law, and to recommend remedy to the Board. In addition they serve as the Board's representatives in informal settlement of charges prior to issuance of a formal complaint by the General Counsel.
appropriate circuit court of appeals of the United States. Independent of such appeals, the Board may seek court review of its orders or, if necessary, enforcement of compliance with them by the parties. The final word may issue here or it may come from a Supreme Court decision following the granting of a request to review a lower court decision.

The time period during which the foregoing procedures take place prior to the formal closing of a case is a source of possible confusion and/or inaccuracy in interpreting the relation between case decisions herein used and the reported statistics of Board cases. The Board reports its activity on a fiscal year basis which runs from July 1st to June 30th. The Board's decision in a given case does not indicate that such a case is closed. A contested case in which a Board decision is rendered in December of 1958 may not appear in the statistics of closed cases until possibly 1960 or later. For, if the Board's decision goes to the courts, it may take several years for final decision, and especially if a Supreme Court decision is involved. Periods of time varying from case to case, are necessary even if there is no resort to the courts in order to put into effect and to ascertain compliance with the remedial portions of the
order. In addition, a period for compliance is required before the case is formally closed.

The same problem exists when the attempt is made to relate the statistics of cases received or charges filed to those of cases closed as well as contested decisions rendered. A charge which is filed with the Board and counted in a given fiscal year may not have a decision rendered nor be closed in the same fiscal year, or even the following year. Hence, only after a considerable period of time do the charges become identical with the cases closed.

Such problems place no great burden on the analysis of this study since it includes a relatively long period of time. Chronologically, it covers the period from the date the Labor Management Relations Act of 1947 became effective (August 22, 1947) to December 31, 1957. These differences do preclude one from directly cross-checking the number of Board decisions in contested cases with the number of cases closed in any given year. However, a check was made in the decisions rendered by obtaining from the Board's Director of Information a list of all cases decided by the Board, year by year, over the relevant period.

As noted in the introductory Chapter, the Board designates cases arising under Section 8(b) as CB, CC,
or CD cases. The tables which follow carry these captions although later analysis will be confined to CB cases. These are ones occurring under Sections 8(b)(1), (2), (3), (5), and (6). CC cases concerning Sections 8(b)(4)(A), (B), and (C) and CD cases concerning Section 8(b)(4)(D) are included to give the complete numerical context from which the cases analyzed in this study are taken.

C. Analysis of Section 8(b) Case Statistics

Table 1 reveals a number of important facts concerning unfair labor practices cases. By way of contrast, a comparison of the last two columns of the table indicates that unfair labor practice cases filed against employers under Section 8(a) outnumber those filed against labor organizations under Section 8(b) by more than 2 to 1. This is true both on a year to year basis and also for the entire period under study herein. The figure is in excess of three to one for the fiscal years 1948 through 1954. While these totals suggest the magnitude of the Board's case load, it must be remembered that the whole area of representation and certification has not been considered here. The latter cases are greater, numerically, than the unfair labor practices cases arising under Section 8.
<table>
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<td>3,192</td>
<td>6,068</td>
</tr>
<tr>
<td>Total for Period</td>
<td>12,322</td>
<td>3,350</td>
<td>1,066</td>
<td>16,738</td>
<td>36,038</td>
</tr>
</tbody>
</table>

aCB Cases are those filed under Section 8(b)(1), (2), (3), (5), and (6); CC Cases are those filed under Section 8(b)(4)(A), (B), and (C); CD Cases are those filed under Section 8(b)(4)(D).

bThe Act did not become effective until August 22, 1947; therefore, no cases under it were filed in the period from July 1 to August 22, 1947.

Source: Annual Reports of the National Labor Relations Board, Fiscal 1948-1958 inclusive.
21

Considering only the cases arising under Section 8(b), Table 1 illustrates the relative importance of the Board's three general types of cases thereunder. Sections 8(b)(1), (2), (3), (5), and (6) cases outnumber Section 8(b)(4) cases from five to one in 1951 to more than three to one in most of the other years. Section 8(b)(4)(A), (B), and (C) cases outnumber Section 8(b)(4)(D) cases by more than three to one during the relevant period.

Table 2 sets forth in greater detail the totals shown in Table 1. Thus, it becomes apparent concerning the CB cases that those occurring under Sections 8(b)(1)(A) and 8(b)(2) far outnumber those occurring under Sections 8(b)(3), (5), and (6). The relative importance of Section 8(b)(2) shows a change in trend beginning with fiscal 1953. Except for the period from August 22, 1947 to June 30, 1948, 8(b)(2) charges slightly outnumbered 8(b)(1)(A) charges; however, from fiscal 1953 to fiscal 1958, 8(b)(1)(A) charges were more numerous, except for 1955 when the figure is the same. The 8(b)(1)(A) charges exceeded the 8(b)(2) charges by a larger margin over the later period than was true of the 8(b)(2) charges when they outnumbered the 8(b)(1)(A) charges. Less than 25 per cent of the 8(b)(1) charges involved paragraph (B) of that subsection. When compared to total CB cases,
TABLE 2

TYPES OF UNFAIR LABOR PRACTICES ALLEGED, FISCAL YEARS 1948-1958

CHARGES FILED AGAINST UNIONS UNDER THE VARIOUS

SUB-SECTIONS OF SECTION 8(b)

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</thead>
<tbody>
<tr>
<td>Total 8(b) Cases</td>
<td>749</td>
<td>1160</td>
<td>1387</td>
<td>1097</td>
<td>1148</td>
<td>1060</td>
<td>1592</td>
<td>1809</td>
<td>1743</td>
<td>1851</td>
<td>3192</td>
</tr>
<tr>
<td>8(b)(1)*</td>
<td>412</td>
<td>666</td>
<td>722</td>
<td>625</td>
<td>668</td>
<td>632</td>
<td>989</td>
<td>1145</td>
<td>1072</td>
<td>1107</td>
<td>2214</td>
</tr>
<tr>
<td>8(b)(1)(A)</td>
<td>382</td>
<td>644</td>
<td>691</td>
<td>609</td>
<td>651</td>
<td>615</td>
<td>964</td>
<td>1129</td>
<td>1054</td>
<td>1095</td>
<td>2183</td>
</tr>
<tr>
<td>8(b)(1)(B)</td>
<td>51</td>
<td>29</td>
<td>55</td>
<td>25</td>
<td>25</td>
<td>26</td>
<td>34</td>
<td>19</td>
<td>22</td>
<td>15</td>
<td>42</td>
</tr>
<tr>
<td>8(b)(2)</td>
<td>332</td>
<td>675</td>
<td>778</td>
<td>669</td>
<td>675</td>
<td>604</td>
<td>954</td>
<td>1145</td>
<td>857</td>
<td>1003</td>
<td>1952</td>
</tr>
<tr>
<td>8(b)(3)</td>
<td>122</td>
<td>131</td>
<td>170</td>
<td>123</td>
<td>105</td>
<td>134</td>
<td>173</td>
<td>145</td>
<td>97</td>
<td>123</td>
<td>211</td>
</tr>
<tr>
<td>8(b)(4)</td>
<td>311</td>
<td>340</td>
<td>341</td>
<td>239</td>
<td>302</td>
<td>250</td>
<td>335</td>
<td>427</td>
<td>572</td>
<td>580</td>
<td>719</td>
</tr>
<tr>
<td>8(b)(4)(A)</td>
<td>224</td>
<td>247</td>
<td>238</td>
<td>143</td>
<td>189</td>
<td>160</td>
<td>234</td>
<td>303</td>
<td>397</td>
<td>414</td>
<td>494</td>
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<tr>
<td>8(b)(4)(B)</td>
<td>74</td>
<td>89</td>
<td>89</td>
<td>60</td>
<td>64</td>
<td>47</td>
<td>70</td>
<td>124</td>
<td>135</td>
<td>203</td>
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<td>8(b)(4)(C)</td>
<td>20</td>
<td>30</td>
<td>34</td>
<td>22</td>
<td>26</td>
<td>15</td>
<td>21</td>
<td>39</td>
<td>66</td>
<td>49</td>
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<tr>
<td>8(b)(4)(D)</td>
<td>71</td>
<td>77</td>
<td>67</td>
<td>72</td>
<td>89</td>
<td>71</td>
<td>85</td>
<td>82</td>
<td>151</td>
<td>113</td>
<td>192</td>
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<td>8(b)(5)</td>
<td>21</td>
<td>9</td>
<td>11</td>
<td>18</td>
<td>13</td>
<td>115</td>
<td>15</td>
<td>14</td>
<td>9</td>
<td>7</td>
<td>69</td>
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<tr>
<td>8(b)(6)</td>
<td>43</td>
<td>26</td>
<td>34</td>
<td>21</td>
<td>15</td>
<td>26</td>
<td>18</td>
<td>14</td>
<td>6</td>
<td>9</td>
<td>17</td>
</tr>
</tbody>
</table>

*Numbers do not add to total since many cases involve more than one section of the Act.

Source: Annual Reports of the National Labor Relations Board, Fiscal years 1948-1958 inclusive.
8(b)(1)(B) represents less than 5 per cent for most of the period.

Section 8(b)(3) charges were involved in less than 20 per cent of the CB cases for most of the period. Sections 8(b)(5) and (6) combined were charged in less than 10 per cent of the cases for most of the period. Section 8(b)(6) charges exceeded those under Section 8(b)(5) for the fiscal years 1948 through 1954 and again in 1957. Both figures were the same in 1955, but 8(b)(5) charges exceeded those of 8(b)(6) in 1956 and very markedly in 1958.

Section 8(b)(4) charges rank third in numerical importance, following those of 8(b)(1) and 8(b)(2) throughout the period. Of the 8(b)(4) charges, those occurring under the secondary boycott provisions of paragraphs (A), (B), and (C) have been most numerous in every year of the study. Those occurring under Section 8(b)(4)(D) have ranged from less than 20 per cent to about 30 per cent of the total of 8(b)(4) charges; however, this represents a range of only 5 to less than 10 per cent of the total of 8(b) charges in a given year.

Table 3 presents an arrangement of 8(b) case statistics to show the general identity of the parties filing the three broad classes (UB, CC, CD) of unfair labor practices against labor organizations or their agents.
<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>A.F. of L Affiliate</th>
<th>CIO Affiliate</th>
<th>Unaffiliated Unions</th>
<th>Individuals</th>
<th>Employers</th>
<th>APL-CIO Affiliates</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>CB</td>
<td>CC</td>
<td>CD</td>
<td>CB</td>
<td>CC</td>
<td>CD</td>
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<tr>
<td>1948</td>
<td>15</td>
<td>2</td>
<td>2</td>
<td>3</td>
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<tr>
<td>1949</td>
<td>29</td>
<td>2</td>
<td>7</td>
<td>15</td>
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<tr>
<td>1950</td>
<td>35</td>
<td>7</td>
<td>2</td>
<td>23</td>
<td>3</td>
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<tr>
<td>1951</td>
<td>42</td>
<td>4</td>
<td>2</td>
<td>30</td>
<td>0</td>
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<td>1952</td>
<td>54</td>
<td>2</td>
<td>5</td>
<td>38</td>
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<tr>
<td>1953</td>
<td>30</td>
<td>3</td>
<td>7</td>
<td>16</td>
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<td>1954</td>
<td>74</td>
<td>1</td>
<td>8</td>
<td>25</td>
<td>4</td>
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<td>1955</td>
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<td>1956</td>
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<td>1957</td>
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<td>1958</td>
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</table>

aIncludes cases filed prior to AFL-CIO merger of December 5, 1955.

bIncludes cases filed since AFL-CIO merger of December 5, 1955.

Source: Annual Reports of the National Labor Relations Board, Fiscal Years 1948-1958 inclusive.
One of the most obvious conclusions which these figures make evident is that the largest number of charges in CB cases have been filed by individuals. This conclusion takes on added significance in later analysis; however, even at this point it tends to dispel the notion that, at least in terms of numbers, individual workers are not protected by the Act in relationships between themselves and their union organizations.

Employers rank second in numerical importance as the filing party of charges in CB cases. Charges filed by labor organizations against other such organizations account for only a small portion of total charges. Prior to the merger of the A.F. of L. and C.I.O. in December of 1955, A.F. of L. affiliates had filed more charges under all three classes of cases than either C.I.O. affiliates or unaffiliated unions. The unaffiliated unions followed closely behind A.F. of L. unions in the number of charges filed.

Employers far outranked any other group in the number of charges filed in both CC and CD cases. Thus, most jurisdictional disputes charges as well as secondary boycott charges were initiated by the employer group rather than opposing unions. Prior to the 1955 merger of the two federations, individuals ranked a distant second in the filing of Section 8(b)(4) charges; however, since
that time, A.F.L. - C.I.O. affiliates have assumed that "distant second" position.

Table 4 and Table 5 present the rather "bulky" data necessary to show the industrial and geographic origins respectively of Section 8(b) cases received by the Board. Examination of Table 4 reveals a number of discernible trends. The manufacturing group accounts for a portion of total CB cases received which ranges from a little in excess of 30 per cent to almost 50 per cent over the period of the study. Construction ranks second in CB cases received by the Board with a range of from approximately 10 per cent to 25 per cent over the period in question. The transportation, communication and other public utilities group follows construction rather closely, ranging from approximately 12 per cent to a little in excess of 20 per cent over the same period.

It is somewhat misleading, however, to compare the entire manufacturing industries group with other single industries because of the broad scope of the manufacturing group as shown in the Table. A more detailed comparison produces a different ranking of "single" industries. Thus, the singular importance of the construction industry becomes apparent. It accounts for at least twice as many Section 8(b) unfair labor practices cases received by the Board as any other
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<tr>
<td>Total</td>
<td>238</td>
<td>245</td>
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<td>290</td>
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<td>Manufacturing</td>
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<td>Ordnance and armaments</td>
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<td>Food and kindred products</td>
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<td>Paint and allied products</td>
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<td>Apparel and other finished products made from fabrics and similar material</td>
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<td>Textile mill products</td>
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<td>Apparel and other finished products made from fabrics and similar material</td>
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<td>Printing, publishing, and allied industries</td>
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<td>Chemicals and allied products</td>
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<td>Products of petroleum and coal</td>
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<td>Rubber products</td>
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<td>Leather and leather products</td>
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<td>Stone, clay, and glass products</td>
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<td>Primary metal industries</td>
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<tr>
<td>Fabricated metal products (except machinery and transportation equipment)</td>
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<td>Machinery (except electrical)</td>
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<td>Electrical machinery, equipment, and supplies</td>
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<td>Aircraft and parts</td>
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<td>Ship and boat building and repairing</td>
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<td>Professional, scientific, and controlling instruments</td>
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Sources:
Annual Reports of the National Labor Surveys Board, Fiscal Years 1926-1936. Includes

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<td>Total</td>
<td>347</td>
<td>370</td>
<td>376</td>
<td>382</td>
<td>391</td>
<td>398</td>
<td>405</td>
<td>412</td>
<td>420</td>
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Note: The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce. Source: Annual Reports of the National Labor Relations Board, Fiscal Years 1944-1958.
single industry shown. Water transportation and highway freight transportation follow construction in order of importance in the number of CB cases before one reaches any single industry in the manufacturing group. Food and kindred products, of the latter group, are then next in order of importance. The retail and wholesale trades follow closely behind food and kindred products. Then begins a list of the manufacturing industries in the following order: fabricated metals, machinery (except electrical), electrical machinery, equipment and supplies, and apparel and other finished products made from fabric. Coal mining and more recently automotive and other transportation equipment are next. The remainder of CB cases is rather widely scattered over the other industries.

Concerning CC and CW cases arising under Section 8(b)(4), construction is the outstanding industry in both types. It accounted for from 15 to 50 per cent of the CC cases over the period of the study with the more recent trend being in the neighborhood of one-third of the total of CC cases. Food and kindred products run a rather remote second while highway freight transportation and the wholesale and retail trades follow food closely. Water transportation is also not far behind this latter group.
Construction is by far the most important industry in CD cases, accounting for from 45 to 65 per cent and more of these jurisdictional disputes cases. Food and kindred products and highway freight transportation are a sizeable second; however, most of the remainder of CD cases are broadly scattered over the other industries.

Information concerning the geographic distribution of Section 8(b) cases is presented in Table 5 and tends to complement the foregoing account of the industrial distribution of Section 8(b) cases. The bulk of cases received was concentrated in three areas, with a fourth appearing only in more recent years. The eastern States of New York, Pennsylvania, Massachusetts, and New Jersey constitute the first group. California and Washington of the far west are the next group while the mid-western States of Illinois, Ohio, Michigan, Indiana, and Missouri comprise the third such group. The more recently occurring fourth area which appears in 1954 includes the southern States of Texas, Georgia, Florida, Tennessee, Alabama, and Louisiana.

Over the period of this study, the first three areas which comprise slightly less than 25 per cent of the States account for from 65 to 75 per cent of the cases received. Adding the fourth group since 1954 gives
an approximate 35 per cent of the States accounting for more than 80 per cent of the cases. The outlying area of Puerto Rico presents a notable exception to this grouping with its maritime industry putting it in about the same rank of cases received as the State of Massachusetts.

Within these groups, the States of New York and California stand in marked contrast with the rest. New York accounts for a per cent of total which ranges from 10 to 20 per cent depending on the type of case, the larger percentage applying to CB cases. California follows rather closely in most of the years in the period although it exceeded New York in fiscal 1948 in the number of all three types of cases. Pennsylvania, Illinois, and Michigan follow in that order of case number importance with minor variations in rank between them occurring over the period. Prior to 1954 Ohio follows these three while Massachusetts and Missouri vie for the next spot below Ohio. New Jersey, Indiana, Washington and Puerto Rico follow roughly in that order. Since 1954, however, the southern States referred to above disturb this ranking and follow approximately behind the first five. Texas leads the group with Florida, Georgia, Tennessee, Louisiana and Alabama following approximately in that order for this more recent period.
Thus far, only the origins of Section 8(b) cases have been discussed. The statistics of the disposition of these cases are also important for the analysis which follows. Table 6 contains a summary account of the manner in which Section 8(b) cases closed in the period were settled. To repeat an earlier caution, it must be kept in mind that these statistics refer exclusively to cases closed. Thus, a case incurring both a Board and court decision in a given year may not appear under those headings in the Table if the case was not closed also in that year. It may appear instead under a later year.

The outstanding fact which Table 6 reveals is that an average of 90 per cent of all 8(b) cases were closed by the Board (actually its agents) informally and without the issuance of a complaint. This means the large bulk of the case load in the period was disposed of in the regional offices and did not require a decision of the Board in Washington, D.C. Of a total of 15,043 cases closed in the period, only 731 or approximately 4.9 per cent were contested cases involving a Board decision. Of this same total, 295 cases or approximately 1.9 per cent were contested cases requiring court decisions. These do not include consent decrees entered into by the parties. Only 35 contested cases required a Supreme Court decision and this number constitutes less than .25 per cent of
### Table 6

**Disposition of Section 8(b) Unfair Labor Practices Cases Closed:**

**Fiscal Years 1948-1958**

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<td><strong>Total number of cases closed</strong></td>
<td>430</td>
<td>947</td>
<td>1231</td>
<td>1198</td>
<td>1112</td>
<td>682</td>
<td>168</td>
<td>78</td>
<td>1052</td>
<td>202</td>
<td>72</td>
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<tr>
<td>Before issuance of complaint</td>
<td>432</td>
<td>947</td>
<td>1112</td>
<td>1058</td>
<td>984</td>
<td>677</td>
<td>142</td>
<td>78</td>
<td>904</td>
<td>183</td>
<td>71</td>
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<td>After issuance of complaint, before opening of hearing</td>
<td>7</td>
<td>28</td>
<td>52</td>
<td>27</td>
<td>30</td>
<td>10</td>
<td>70</td>
<td>19</td>
<td>43</td>
<td>27</td>
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<tr>
<td>After hearing opened, before issuance of intermediate report</td>
<td>2</td>
<td>11</td>
<td>6</td>
<td>14</td>
<td>5</td>
<td>17</td>
<td>19</td>
<td>8</td>
<td>18</td>
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<tr>
<td>After intermediate report, before issuance of Board decision</td>
<td>0</td>
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<td>1</td>
<td>10</td>
<td>15</td>
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<tr>
<td>After Board order adopting intermediate report in absence of exceptions</td>
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<td>0</td>
<td>26</td>
<td>6</td>
<td>7</td>
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<td>After Board decision, before court decree</td>
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*a* Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court.

*b* Includes either denial of writ of certiorari or granting of writ and issuance of opinion.

*c* Details of the three types of 8(b) cases for this table is not available for the fiscal years 1948-1952.

*d* Includes cases involving a Section 10(k) hearing wherein hearing and Board decision on determination of dispute occur before issuance of complaint. The number of cases for each year are as follows: 1948 = not available; 1949 = not available; 1950 = 17; 1951 = 15; 1952 = 14; 1953 = 24; 1954 = 25; 1955 = 26; 1956 = 26; 1957 = 23; 1958 = 26.

Sources: Annual Reports of the National Labor Relations Board, Fiscal years 1948-1958 inclusive.
the total cases closed.

The actual count of Board decisions rendered in contested cases for the same period taken from the printed volumes of Decisions and Orders of the National Labor Relations Board was 708. However, supplemental decisions were not counted separately even though they are shown separately in the volumes. For the purpose of this study, they were considered a part of the original decisions. Such an additional number of decisions (33 not counting those to issue on 1958 decisions) would raise the count of 708 above that of the contested cases closed figure, thus reconciling the difference so that more decisions were issued than cases closed. This would be the result expected and to be desired by such a reconciliation.

Of the above 708 cases, approximately 441 were CB cases, 169 were CC cases, and 98 were CD cases. As previously indicated, this study is directly concerned with only the CB cases. Of the CB cases, approximately 141 court decisions issued concerning them. This does not count separately consolidated cases nor those involving Section 10(j) injunctive proceedings; however, a listing of the decisions of both the Board and the courts in the CB cases which are examined in this study is made in Appendix I following the text.
CHAPTER III
BOARD POLICIES AND PROCEDURES AFFECTING THE
APPLICATION OF SECTION 8(b)

The sometimes overwhelming complexity and confusion of the Labor Management Relations Act of 1947 seems in many instances to grow rather than diminish with the application and development of its many interrelated features. Part of this may be unavoidably due to the very nature of the process of refinement which goes on for a time after a law is enacted. However, some of the uncertainty and confusion in this instance seems attributable also to the structure of the law itself as well as the lack of clarity reflected in legislative debates on the subject.

The preceding chapter set forth the quantitative context out of which subsequent analysis of Board case decisions will proceed. The present chapter is concerned with what may be referred to as the qualitative context in which the analysis that follows must be placed. The sections may be likened to the description of a battery of tests which an unfair labor practice case (under Section 8b) must pass before substantive considerations
are made. These tests are not confined to, nor has their precedent in many instances arisen primarily out of, such unfair labor practice cases. However, we are concerned here with the impact of these issues on such cases. The discussion arises from instances of their occurrence in unfair practice cases except where further reference is required to explain them.

The treatment of such matters is necessarily selective; however, the following procedures and policies are considered on the basis of the scope of their impact on Section 8(b) cases. The question of the Board's jurisdictional standards is perhaps the broadest of those considered. Filing requirements for labor organizations, the application of rules of agency and time limits on filing of charges constitute another group of limitations. The emphasis on legal procedures in 8(b) cases, definitional limitations, and the time lag involved in processing a case round out the discussion of the qualitative context of 8(b) cases.

A. Jurisdictional Standards

One of the most obvious and far reaching Board policies affecting the application of Section 8(b), and other sections of the Act as well, is the matter of the Board's exercise of jurisdiction under the commerce powers
granted it by Congress in the Act. This matter has a long and complex pattern of development some of which is not relevant to our purpose here; its basic outline is of primary concern in considering the extent of the application of any part of the Act. For example in the case of an unfair labor practice charge against a labor organization under Section 8(b), it is a prerequisite to the hearing of evidence on the charge itself and certainly to a finding of some violation, for the General Counsel to establish that the employer is "engaged in commerce within the meaning of the Act."¹

In Section 2 Title I of the Labor Management Relations Act, the terms "commerce" and "affecting commerce" are defined in paragraphs (6) and (7) respectively. This power is substantially the same granted in Section 10 of the National Labor Relations Act under which the Board was established in 1935. The courts have held "that the Board's authority over representation questions

¹In some cases where the trial examiner is not certain, he may rule on the charges and jurisdiction after which the Board dismisses the case. In other instances, the trial examiner may dismiss the case on jurisdictional grounds after the General Counsel issues the complaint and later have the case remanded to him by the Board for hearing. See 83 N.L.R.B. 564 for example on former. See 90 N.L.R.B. 417 and 94 N.L.R.B. 317 for example on the latter.
and unfair labor practices affecting interstate commerce (except on airlines and railroads and in agriculture) is as broad as the Federal power to regulate labor-management relations." However, the Board took the position that a more limited exercise of its jurisdiction would better effectuate the policies of the Act and therefore confined itself to "enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce." The Board thereby asserted what often has been referred to as "discretionary jurisdiction."  

The Board has always assumed it had the right to decline to exercise its authority over every case in which it might be empowered to act. While there is yet no final word in the courts on the Board's power to do so, it has none-the-less exercised this power of discretion.

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3Fifteenth Annual Report, supra p. 5.

The Courts have interfered only on a case by case basis where some abuse or discrimination may have been alleged. Nor has the Supreme Court ever passed on the validity of any of the standards or criteria announced by the Board as guiding its jurisdictional policy.

Until October of 1950, the meaning of "pronounced impact" was decided on an ad hoc basis. The obvious result of such a haphazard process was a great deal of confusion for the parties affected. The first N.L.R.B. General Counsel under the Act of 1947 insisted that the Board should exercise its jurisdiction to the fullest extent possible and instituted prosecutions which were destined to be dismissed when filed. However, this issue was disposed of by the courts in favor of the Board as the General Counsel's prerogative in this regard was deemed

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5 Ibid, pp. 283-290 for a detailed legal analysis.


to end once the charge was filed and the complaint issued. 8

After announcing that experience now warrants the establishment of certain standards to define and clarify, the Board in October of 1950 issued a series of unanimous decisions setting forth some nine general standards for determining its jurisdiction in the forty-eight states. 9 It announced it would take jurisdiction over cases involving enterprises in the following categories:

1. Instrumentalities and channels of commerce, interstate or foreign

2. Public utility and transit systems

3. Establishments operating as an integral part of a multistate enterprise

4. Enterprises producing or handling goods destined for out-of-state shipment, or performing services outside the state in which the firm is located, valued at $25,000. a year

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991 N.L.R.B. 630; 91 N.L.R.B. 623; 91 N.L.R.B. 628; 91 N.L.R.B. 618; 91 N.L.R.B. 635; 91 N.L.R.B. 638; 91 N.L.R.B. 632; 91 N.L.R.B. 625; 91 N.L.R.B. 902. These standards did not apply to the District of Columbia over which the Board exercises plenary jurisdiction.
5. Enterprises furnishing goods or services of $50,000 a year or more to concerns in categories in 1, 2, or 4.

6. Enterprises with a direct inflow of goods or materials from out-of-state valued at $500,000 a year.

7. Enterprises with an indirect inflow of goods or materials valued at $1,000,000 a year.

8. Enterprises having such a combination of inflow or outflow of goods or services, coming within categories 4, 5, 6, or 7, that the percentages of each of these categories, in which there is activity, taken together add up to 100.

9. Establishments substantially affecting the national defense.\(^{10}\)

These standards were adhered to until 1954 with only slight modification.

The inauguration of a new President in 1952, however, brought about changes in personnel on the Board. In line with the Administration's point of view concerning the role of the federal government, the new Board in the summer of 1954 announced in two press releases a revised policy on jurisdiction. The new standards were summarized in N.L.R.B. Press Release R-467.\(^{11}\) While they continued


to employ similar categories with a few additions, the number of enterprises excluded was significantly increased through appropriate changes in dollar-volume figures. In addition, the accumulative provisions of the 1950 standards were removed except that direct inflow amounts could be added to indirect inflow amounts in a given case to ascertain whether the indirect inflow standard was met. The 1954 standards remained, with only slight modification in 1957, until 1958. These changes involved the elimination of separate multistate standards for both retail and non-retail enterprises; adding the accumulative feature of indirect inflow to the indirect outflow standards; extended secondary boycott jurisdiction to secondary employers alone if primary employer was not sufficient. 12

On October 2, 1958, the Board announced a new set of standards. These modified its original proposals of July 1958 which were initiated after the Supreme Court rather pointedly criticized the large void emanating partly from the 1954 standards. In Press Release R-570 the Board said:

We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of Guss v. Utah Labor Relations Board. Therein the Supreme Court adverted to 'a vast no-man's land, subject to regulation by no agency or court; and declared: (1) 'Congress is free to change the situation'; and (2) 'The National Labor Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction.'

The Congress approved the Board's appropriation of $13,100,000, of which $1,500,000, was an allowance for the extension of the Board's jurisdiction into some of the open areas.

The 1958 standards announced by the Board make substantial reductions in the dollar-volumes in each category required for the Board to assert jurisdiction. The nonretail standard, for example, is now $50,000. direct or indirect outflow or inflow. It was previously $50,000, $100,000, $500,000, and $1,000,000, respectively. The national defense standard has no dollar-volume requirement but merely refers to the necessity for having substantial impact whereas formerly it was $100,000. The highest category volume now required is $500,000. Previously it ranged from three to ten million dollars in the case of multistate retail chains. The latter amount prevailed before this requirement was changed in 1957. Thus, the

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new standards widen considerably the area over which the Board will now assert its jurisdiction. In fact they compare favorably with the 1950 standards.

While the Board as a practical matter under budget and personnel limitations could not have asserted jurisdiction and still cannot assert it over every enterprise which might be deemed to affect commerce in some way, at least two significant problems have thereby been created. The first concerns the issue as to whether the rights granted individuals (particularly under Section 8 (b)) under the Act are private rights which are protected by law or whether they are public rights to which protection is afforded only if those individual rights are affected with the public welfare under the commerce powers. This question has been rather clearly decided in favor of the latter alternative. This means that an individual who may be seriously aggrieved is deprived of remedy unless he has access to another means of settlement.

14 Roche, R. H. and Hanslowe, K. L., op. cit. p. 283; see also Klaus, Ida, op. cit., p. 372. The issue of private versus public rights refers to the question of whether or not an aggrieved individual has a right to remedy under law irrespective of whether or not the industry in which he works affects the nation's commerce and hence the public welfare. If it is a public right, such an individual has a right to remedy only if it is a matter subject also to remedy because of its effect on the public welfare.
The next issue is a matter of whether or not some other agency may act in these areas in which the Board declines to act either on the basis of the cases being purely local in character or not substantially affecting commerce in terms of a quantitative standard. While there has been some doubt as to this issue in the past, the Supreme Court recently ruled in the Guss case that a state may not take jurisdiction over any matter entrusted to the National Labor Relations Board unless the Board has formally ceded jurisdiction to the state pursuant to Section 10(a) of the Taft-Hartley Act. This requires by the proviso to Section 10(a) that jurisdiction may be ceded only when the state law is consistent with the federal law and it appears few states meet such requisites. Thus is left the broad "no-man's land" in labor relations "subject to regulation by no agency or court" referred to by the Court in the Guss case.

What impact the new jurisdictional standards announced by the Board in 1958 will have is difficult to tell at this early date. Such an approach seems to be


the quickest and most feasible as opposed to the alternatives which have been suggested.

Congressional action enabling the States to act in these areas, would nullify the Guss decision without resolving the conflict between state and federal laws which is bound to arise. To wait for the States to enact legislation qualifying them for cession agreements pursuant to Section 10(a) is likely to be a long slow process if it were to take place at all.\(^\text{17}\)

However, if past experience is any guide at all, it is not likely that the Board as a Federal Agency can be expected to handle matters of individual rights, even with larger appropriations and staff, to the extent that ordinary law protects private individual rights in the courts. This is in no way an indictment of the Board or its policies but is pointed out only to illustrate that the "drawing of the line" cannot be eliminated. It may be so drawn as to narrow or widen the area subject to regulation, but this does not remove the necessity for considering where it is drawn at a given time. It is this uncertainty which is relevant to the partial assessment of the Act undertaken herein.

\(^{17}\text{Isaacson, William J., op. cit. p. 401.}\)
B. The Filing Requirements for Unions

Under Section (9)

Section 9(f) provides that the Board's processes shall be denied a labor organization as to the initiation of charges and/or representation questions provided for in the Act unless and until such labor organization shall have filed with the Secretary of Labor copies of its Constitution and bylaws and a detailed report of other information. This other information includes its name, address, officers, salaries, manner of elections, dues, initiation fees, qualifications required, assessments, expulsion terms, strike and contract ratification procedures, and a detailed financial report to both its members and the Secretary of Labor. Section 9(g) further requires that such information be kept current on an annual basis. Section 9(h) is the widely publicized requirement on the part of each union officer of filing a non-communist affidavit. Both of the latter paragraphs of Section 9 include the same denial of Board processes provided by paragraph (f).\(^\text{18}\)

These requirements on labor organizations would seem at first glance to be of little significance with

\(^{18}\) Public Law 189, 82nd Congress, 1st session, October 21, 1951, Title I, Section 9.
regard to Section 8(d). For at most, they appear to preclude a non-complying union from filing an unfair labor practice charge against another union. However, such is not the case as the filing requirements raise a number of significant questions affecting Section 8(b). Although this significance can easily be overemphasized, there is merit in its analysis.

While a non-complying union may not file charges itself, this does not exempt it from having charges filed against it. No such restrictions apply to individuals or companies who may file such charges against a labor organization. The Board has ruled that even though the behavior of a company was such that it induced the union unfair labor practice, and was such that if before the Board it would be deemed an unfair labor practice by the employer, these facts do not bar action against the union nor affect the validity of the charge. \(^{19}\) Of course, in such a case, the union is precluded from countering with an 8(a) charge against the employer.

In a similar vein, the Board has ruled an individual may not "front" for a non-complying union. \(^{20}\)

\(^{19}\) 1979 N.L.R.B. 1487; 81 N.L.R.B. 886; 84 N.L.R.B. 972.

\(^{20}\) 101 N.L.R.B. 445.
To what degree the connection must be established is not clear. In this case the individual formerly had been an employee of the United Mine Workers of America. He was not an employee at the time of the alleged unfair labor practice, but was subsequently laid off by the company and rehired by the Mine Workers. The Board ruled it an obvious case of "fronting" and dismissed the complaint against Local 895 of the United Brotherhood of Carpenters without even hearing the charges.

In other cases where "fronting" has been charged, the Board has ruled that an individual with a valid charge is not prevented from seeking advice from an agent of a non-complying organization. This has been significant in cases where employees were seeking to have the existing union decertified to obtain another union but found themselves the object of illegal practices by the existing union for such activity.

But perhaps the most important issue raised under the filing requirements concerns the matter of union security and the bar to an 8(b) charge which a valid union security clause offers under the Act. Under the proviso to Section 8(a)(3) an employer and a labor

\[21\] See for example: 117 N.L.R.B. 464.
organization may make an agreement requiring membership therein as a condition of employment on or after the thirtieth day following the beginning of employment. This is provided the labor organization meets a further proviso to Section 8(a)(3) which is compliance with Section 9(f), (g), and (h). It is further provided, however, that no discrimination in employment is permitted for failure to obtain such membership when the reasons are other than failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership. The Act does not preclude a non-complying union from representing employees and bargaining with employers for contracts. It only denies to them the privileges of the Act including Board Certification. But by so doing, a non-complying union may not legally request the discharge of an employee for non-payment of dues even under what would be a valid union security clause were that union in compliance with the requirements of the Act.\textsuperscript{22} In other words, the union may be charged under Section 8(b)(2) with causing illegal discrimination in employment if it asks and gets the

\textsuperscript{22}116 N.L.R.B. 267, 272, 273; See also: 118 N.L.R.B. 1240 where principle is affirmed but union ruled in compliance; 120 N.L.R.B. 104; Twenty-Third Annual Report of the N.L.R.B., pp. 86-87.
discharge of an employee pursuant to the terms of its contract with the employer which are in line with the requirements of law on union security per se. This means such a labor organization does not have the discharge remedy to enforce its union security provisions. The only relief thus far allowed occurred when the Board ruled in the United Auto Workers case cited below, that the compliance requirement under the 1951 amendment to the Section 8(a)(3) proviso referred to compliance at the time the agreement was signed and not that the union was required to be continuously in compliance.

Thus, when such a situation prevails, the use by the union of the most common effective remedy for union security protection in labor management relations may bring forth a contrary Board Order, enforceable in Court. The order may not only reinstate such an employee with protection against union and employer action, but may also bestow upon him, at the expense of the union and perhaps the employer, any pay loss he may have suffered.

The possible significance of this issue as to the union's bargaining strength in the face of a reluctant employer is obvious. Its contribution to industrial peace and collective bargaining is questionable as are its "equalizing" effects. That it protects some
individuals perhaps at the expense of many may be at times a dubious merit.

The preceding discussion is complicated further by the complex pattern of Board and Court interpretations of who must file under Section 9(b). Since it bears on the nature of the extensiveness of the issues previously discussed, it will be treated briefly here.23

The heart of the matter is contained in four cases.24 In the Highland Park case, the Board was reversed by the Supreme Court which ruled that the officers of the AFL and CIO as well as those of their affiliates must also take the oath for affiliates to enjoy the Board's processes. This, argued the Board, was contrary to the reality of the situation in contemporary unionism. It had ruled the federations were not

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technically unions and hence not labor organizations within the meaning of the Act. While Congress amended the Act in 1951 to add Section 18 to Title I, this remedied only past contracts made under the contrary assumption and left the Supreme Court's interpretation to stand in the future.

In the Coca-Cola Bottling Company case in 1956, the Supreme Court upheld the Board's interpretation of Section 9(b) as applying to actual officers of a union and not also its employees. The Board's right to determine that a regional director was only an employee and not an officer was affirmed.

Two decisions of the Supreme Court in 1957, however, removed some of the force of the impact from the entire application of Section 9(c). In the Mine, Mill, and Smelter's case and in the Amalgamated Meat Cutters case, the Board dismissed the cases on evidence that an officer who had taken the oath was still in fact a communist and hence the unions were not in compliance. The Court ruled that the unions were in compliance as far as the Board was to be concerned. The Act was interpreted to provide only criminal prosecution for perjury and not Board sanctions for false affidavits. While such a ruling relieves the Board of no small task in investigating such complaints, it also appears to
encourage perjury to obtain the privileges of the Board's processes. Thus, the requirement would seem to have a questionable function to perform.

C. Questions of Agency Concerning Labor Organizations

Another aspect of the impact of procedures on Section 8(b) cases concerns the breadth of application of the findings and remedies in the Board's decisions and orders. It has presented some rather novel issues when applied to labor unions and has been an important factor in 8(b)(1)(A) violence charges. The nature and extent to which individual members, stewards, business agents, locals, district organizations and international unions "enjoy" mutual agency may often determine the extent of a violation and the effectiveness of the remedy.

The Act itself provides in Section 2(15) that "in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Consistent with this directive, the Board in two cases clearly enunciated and affirmed, at an early date,
its policies on the matter. In the Sunset Line and Twine Company case it indicated that according to the legislative history of the Act, particularly statements of the late Senator Taft in floor debates, the Board was to apply "ordinary law of agency." ... We are to treat labor organizations as legal entities, like corporations, which act, and can only act, through their duly appointed agents, as distinguished from their individual members ... Hence the common law concept of an unincorporated labor organization as a group of individuals having no separate entity apart from its members is rejected. Of course this rejection in theory has not been subsequently so simple in practice, particularly under Section 301, as Supreme Court Justice, Frankfurter pointed out in a recent Court decision.

25 79 N.L.R.B. 1487, Supra; 80 N.L.R.B. 225.

26 79 N.L.R.B. 1487, Supra, p. 1507.

The Board set forth the three following principles to guide it:

1. The burden of proof is on the party asserting an agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority. .. ."

2. Agency is a contractual relationship, deriving from the mutual consent of principal and agent that the agent shall act for the principal. But the principal's consent, technically called authorization or ratification, may be manifested by conduct, sometimes even passive acquiescence as well as by words. Authority to act as agent in a given manner will be implied whenever the conduct of the principal is such as to show that he actually intended to confer that authority.

3. A principal may be responsible for the Act of his agent within the scope of the agent's general authority, or the 'scope of his employment' if the agent is a servant, even though the principal has not specifically forbidden the act in question. It is to represent him in the general area within which the agent acted. .. ."

That the common-law rules of agency shall apply to labor organizations was reaffirmed in the Perry Norvell case where the Board reversed the trial examiner to hold the international as well as the local union charged therein had violated the Act.

28 79 N.L.R.B. 1487, supra, p. 1508-1509.
As these policies have been applied to subsequent cases, an interesting and significant pattern has emerged. With few exceptions, the international unions and district organizations have been found to be agents for the local or the locals found to be agents for the district or international organizations in situations where some contract matter was involved. These situations have ranged from cases where a contract containing an illegal clause of some form was signed to the actual bargaining tactics used such as a strike or harassing activity. In some cases this has extended to organization and recognition activity.


On the other hand, most of the violative behavior involving acts of causing discrimination, restraint and coercion (violence) has involved the local organization and/or its agents. In these cases individual members, stewards, and business agents have been ruled agents of the locals but the locals' behavior was not deemed (though sometimes charged) to have been that of an agent acting for the district or international organization.32 There have been some doubtful cases in this area which concerned locals of building trades internationals, locals of the International Brotherhood of Teamsters and of the International Association of Longshoremen, Independent. However, in most of these cases proof of the international's sanction of authority to act or responsibility for the action was not clear enough or was too subtle to support an extended finding and remedy.33


The issues here involved are clearly illustrated in the remarks of the trial examiner in the McGraw Construction Company case.\textsuperscript{34} In the intermediate report he states that the Board should issue a broad cease and desist order to all Carpenter locals and to the International for the remedy to be effective. For, jobs are of only a short duration in most cases and therefore ended by the time the Board's order is issued to cover that job. Back pay orders become just a business expense in these cases, he contends; however, if all locals were covered as to all employers, they would be caught somewhere in contempt of court. The Board majority disagreed with the trial examiner; however, he has a point on the effectiveness of remedy. In addition, it could cut down on the sheer number of cases arising out of each job and each act of violative behavior.

In the cases cited above primarily involving questions of agency for a local union,\textsuperscript{35} the Board has rather closely held acts of violence to be the responsibility of the local whether or not such action was approved. The main qualification is whether the agent

\textsuperscript{34} 107 N.L.R.B. 1043, 1045.

\textsuperscript{35} See Footnote 32 for cases cited.
clearly went beyond his authority to act which in most cases he did not.

D. Section 10(b) Proviso as a "Statute of Limitations" on Unfair Labor Practices

A proviso to Section 10(b) of the amended act requires that the charge in an unfair labor practice case be filed within six (6) months of the occurrence of the conduct alleged to be an unfair labor practice. The proviso states in part: "... no complaint shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charges with the Board and the service of a copy thereof upon the person against whom such charge is made. ..."36

The precise interpretation to be given this proviso has been the object of numerous exceptions, Board rulings, and court decisions. One of the first questions raised on this issue concerned whether or not an amendment to the timely original charge was to be considered timely itself when it dated more than six (6) months from

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36 Public Law 101, 80th Congress, 1st session, August 22, 1947, Title I Section 10(b) as amended by Public Law 189, 82nd Congress, 1st session, October 21, 1951, Title I Section 10(b).
the alleged occurrence. This, in effect, questioned whether the proviso had changed the function of the charge in a Board proceeding. The term "charge" refers to the document filed by the private parties to initiate a Board unfair practice proceeding. The contention was made that the formal complaint issued by the General Counsel after his investigation of the charge could not include any allegation which was based on conduct not specifically set forth in the charge filed by the complaining party. The Board has ruled and the court has upheld that the purpose of the charge is to set in motion the Board's investigating machinery and that the amended charge, if any, is a bill of particulars making more definite the allegations in the original charge. It is to bar stale charges not become the purpose of a pleading.

37 86 N.L.R.B. 157, enforced 185 F. 2d 1021 (C.A.5), but subsequently vacated on other grounds in view of the intervening Supreme Court Session on the Highland Park case, supra; also 86 N.L.R.B. 1098.

38 Cathey Lumber Company, supra; Consumer's Power Co. v. N.L.R.B. 113 F. 2d 38 (C.A.6); Kansas City Milling Co. v. N.L.R.B., 185 F. 2d 413 (C.A. 10), modifying and remanding in other respects; also N.L.R.B. v. Indiana and Michigan Electric Company, 318 U.S. 9, 18.
Thus the Cathey Lumber Company case, the Board ruled the proviso is "a statute of limitations and no more," which governs the time for the filing of unfair practices charges.\(^39\) It does not operate as a rule of evidence and therefore does not preclude consideration of evidence dating back more than six months before the filing of the charge when such evidence is necessary for background purposes, to explain or clarify events occurring within the six months period.\(^40\) This has been an important point in cases where the unfair practice was one involving acts which have a continuing effect, such as the signing of a contract with an illegal union security clause, as opposed to acts of behavior which do not have this effect such as an assault or threat. In the latter case, the actual signing of the contract would not be a continuous act, but the continuation and enforcement of its provisions is "an act" of the former or continuous kind.

The Board has ruled on many occasions and with court approval that a union's act of signing a contract

\(^{39}\) For an excellent example of this application see: 117 N.L.R.B. 1032; also see: 93 N.L.R.B. 281 enforced as modified, 195 F. 2d 617 (C.A.2) for a curious twist on the request for reinstatement starting a new six months period.

\(^{40}\) 88 N.L.R.B. 155; N.L.R.B. v. Clausen, 188 F. 2d 439 (C.A. 3).
with an illegal union security clause was an unfair labor practice when it occurred within six months of the filing of the charge. It has also ruled that such a clause continued in effect and enforced within the statutory period is an unfair practice exclusive of its signing. Also, there have been cases in which the act of signing the contract occurred more than six months prior to the charge wherein the Board ruled such an act could not be the basis for a charge but that its continued existence and enforcement within the six months period could so be used.

There are other areas, however, in which the issues are not quite as well settled or certain. One such area concerns the Board's ruling on a seniority agreement in a contract and its application to an individual. The

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44 113 N.L.R.B. 731.
Board reversed the Trial Examiner's application of Section 10(b) and dismissed the case wherein he held that the act of discrimination occurred not when the agreement to reduce seniority was made but when the man suffered the loss of his job in the lay-off. The Board in accepting the union's contention ruled that the unfair practice occurred by the "one shot" act of reducing seniority which was more than six months prior to the charge and that the lay-off was a "valid economic reduction in force."\(^{45}\) Thus the continuing violation theory was not deemed applicable here.

As is stated in the dissenting opinion, "... it is hardly decisive of the issue posed in this case to find as does the majority ..."\(^{46}\) Prior to this case, numerous others on both sides of the continuing theory had occurred under both subsections of Section 8, however, no clear cut line of its applicability is set forth. The application of the notion of what is "continuing" is no doubt a tricky question. However, it would appear to have been handled somewhat inconsistently in this instance and to have been somewhat further imbued with an air of uncertainty.

\(^{45}\)Ibid, p. 732.

\(^{46}\)Ibid, p. 735.
The impact of the proviso in question has not been limited to the hearing and decision in unfair labor practices cases. Its application has also affected the remedy applied to restore or make whole the individual as opposed to that part of the remedy designed to eliminate present practices or remove future threats. This has been true particularly in cases involving back pay losses of one variety or another and where dues, fees, and other monies are ordered to be reimbursed.

Since no act, continuing or otherwise, occurring more than six months prior to the filing of the charge may be the basis for a finding of an unfair practice, it follows that a reimbursement remedy may not extend back through time for more than six months prior to the charge.

The Brown-Olds case and related decisions wherein the Board announced and applied its famous "Brown-Olds remedy," present excellent illustrations of the point. In the Brown-Olds case the Board found the union had forced bargaining position on the employer in violation of the rights of employees under Section 7. It ordered the employer to cease recognizing the union until a Board election had been conducted to certify the bargaining

\footnote{115 N.L.R.B. 594; see also: 118 N.L.R.B. 38.}
agent. But in addition, it ordered employees reimbursed for all dues, fees, and monies collected after six months prior to the date of the amended charge. Such collection of monies, however, had been going on prior to the six months in question.

Clearly, the remedy is not to be, nor is a continuing charge to be, extended backwards to its point of origin beyond the statutory limitation. Needless to say such a situation could present an interesting challenge to some enterprising group able to delay the filing of a charge for a year. For by so doing, only the "profits" of the last six months need be sacrificed. The terminal effect on remedy of the Section 10(b) proviso hardly seems warranted in consideration of so novel a device as the continuing violation theory.

E. The Inappropriate Emphasis Given to Legal Procedures

To most laymen, any matter which detracts from a decision on the substance of the charge in a complaint tends to be viewed as a "legal technicality." Thus, when a person is freed of the necessity for standing trial on a charge in which there is strong evidence against him, and when it is by some reason such as a "statute of limitations" then such a case is thought of as having been dismissed on a legal technicality.
The issues which have been discussed previously in this chapter are of the foregoing variety. However, they are issues aside from the substance of the charge in unfair labor practices cases that have been specifically provided for in various other sections of the Act. The matters which are to be discussed in this section are in the same category but of a different class. They are different because they grow out of the rules, procedures, and legal customs common to a hearing of charges in our legal system and not from the substance of a statute itself.

An obvious example appears in a recent case decided by the Board. The case was dismissed by the trial examiner and the dismissal upheld by the Board because the general counsel framed the charges too narrowly. It was insisted that the charge be confined solely to one matter of evidence concerning the lack of specificity in the union security clause in the contract. This was done to the exclusion of other evidence concerning the illegality of the clause and the requirement of other than dues payments thereunder. Both the trial examiner and the Board alluded to the propriety of the other evidence but the complaint was dismissed and the

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48 N.L.R.B. 1724.
aggrieved individual denied remedy thereby.

A similar kind of situation arises under two other Board policies. One of these is the practice of accepting the findings in the intermediate report, in absence of exception, even though the Board has serious doubts as to their validity. In the case cited below, the Board accepted and refused to rule on the trial examiner's failure to find an 8(b)(2) violation. This occurred because no specific exception to the finding was made. Even though the Board indicated its doubt on the finding, the individual in this case also was denied full remedy.

In the same vein, the Board has ruled and reaffirmed many times that it attaches great weight to the credibility findings of the trial examiner which are based on the demeanor and appearance of the witness. Since these factors are important in determining credibility and the Board members themselves do not see the witnesses, such a practice is understandable. Thus, the Board is

49 107 N.L.R.B. 593, See particularly the dissenting opinion of Member Murdock; Also specifically as to this rule see: 103 N.L.R.B. 1495 and 110 N.L.R.B. 1295, set aside on other grounds 230 F. 2d 64 (C.A.6), 37 L.R.R.M. 2543 (1956).

50 For a reaffirmation of this rule and an outline of the Board and Court precedent establishing it see: 98 N.L.R.B. 582.
very reluctant to reverse the trial examiner's findings and does so only when they are "obviously" incorrect; however, the record of decisions and orders is dotted with just such cases.\(^51\)

An aggrieved individual may discredit himself when he appears under the close scrutiny of the lawyers at the hearing to be slovenly, inarticulate, self-contradictory and sometimes even evasive. It does not, however, "effectuate the policies of the act" to discredit the individual and thereby deny to him the remedial processes because he is not a "good witness" from a lawyer's viewpoint. Such circumstances often require that the hearing officer have training and experience not only in law but also some background in the field of industrial relations. An examination and appreciation of the background and surrounding events may play an important role in resolving the problem whereas to treat the matter as a legal proposition may be to deny the existence of a very real aggrievement covered by the intent of the Act.

Another aspect of the lack of consideration of context in unfair labor practices cases arises in connection with substantive matters also. Here the breadth of evidence and a consideration of the background out of which it emerges in both the intermediate report and the Board's decision may have more far reaching consequences.

There is no consistent pattern in the manner in which the Board and its hearing officers have handled the problem in the cases here considered. Their decisions sometimes clearly reflect an awareness of it, while in others it is blandly ignored.\(^5\) There are, however, numerous instances where the weight of consideration was given to the legality of particular acts of behavior without due regard for the context out of which they arose. The maritime industry, the building and construction trades, and the printing trades present outstanding examples. The hiring hall practices in these

industries is a good case in point.  

In the maritime industry, as well as in the others, there is a long history of development of work customs and practices agreed upon by both labor and management. The inherently sporadic nature of the employment relationship in this industry has produced practices which serve a very practical need on the part of both parties. The union hiring hall is one of these.

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The employer is assured of having competent workers available without prohibitive expense while the worker is relieved of wide searching for jobs and achieves some of the benefits such as seniority consideration ordinarily accruing to competent workers of long service in an industry. The "hall," however, became the focal point of the union's security arrangement about which the Act has very definite permissive limits.

The Board for some time refused to consider the over all purpose of such a practice or arrangement and to indicate what would be a satisfactory alternative or modification.\(^{54}\) Rather it ruled almost on a case by case basis that this or that act or this or that clause was discriminatory and illegal without declaring the practice itself to be illegal. On the contrary, the Board has repeatedly ruled that the hiring hall \textit{per se} is not illegal, but if it is in any instance conducted illegally, a charge can still be filed.\(^{55}\)

Such "pecking away" at the practice has produced an air of uncertainty and numerous attempts on the part

\(^{54}\)117 N.L.R.B. 1863, enforced, 255 F. 2d 703 (C.A.3) (1958), 42 L.R.R.M. 2181. See particularly the dissenting opinion on the majority's reluctance to rule on hiring hall legality.

\(^{55}\)See footnote 53 on preceding page for case reference.
of the parties to circumvent the Board's potential objections. The Board ruled in a recent opinion that "unfettered union control over the hiring process" was inherently unlawful encouragement of union membership and that it would find an agreement to be nondiscriminatory on its face, only if the agreement explicitly provided certain objective criteria which the Board sets forth therein. While the Board disclaims that its decision is not to be taken as outlawing all hiring halls, it none-the-less in the next breath says that such arrangements that do not contain these "objective" safeguards warrant the inference, without specific evidence to this effect, that they are on their face unlawful. As the dissenting member points out, this appears to put the burden of proof on the union administering a hiring hall, at least until the objective criteria are demonstrated, rather than on the General Counsel. The statute places the burden of proof

56 N.L.R.B. 883.
squarely on the General Counsel to establish in every case that a respondent before the Board has engaged in an unfair labor practice.

The matter is summed up appropriately in the dissenting opinion:

While the majority states that its decision is not to be taken as outlawing all hiring arrangements, I must note that the requirement of objective criteria does not provide unions and employers with a precise test of a lawful contract. The majority holds that the standards for referral of applicants are matters primarily for the employer and union to negotiate and settle so long as they fall within the majority's notion of typical objective standards. But the majority is free in the very next case to hold that the union and the employer have incorporated insufficient objective criteria or that the criteria adopted by the parties is not, in the majority's opinion, typical. Thus, wholly apart from the adverse impact of this decision on contracts which have already been made in good faith in accord with pre-existing Board and court law, the majority's decision means, in effect, that the parties to future collective-bargaining agreements, faithfully following the majority's rule as to the type of provisions which they must include in their hiring-hall contract, may nevertheless be found to have violated this statute because they guessed wrong.59

It is undoubtedly true that exclusive hiring halls may have discriminatory features about them which are unlawful. The Board, under the Act, has a mandate to

eliminate these discriminatory features. However, the practice itself is not as undesirable as is often implied and certainly not so from the point of view of the vast majority of workers and management who have shared its perpetuation in one form or another. Consequently it hardly seems to effectuate the stated policies of the Act to disrupt the free flow of commerce by "chopping down the tree to pick the apple."

F. **Selected Definitional Limitations**

**On Application**

It is of particular significance to the issues taken up in this section to note again a qualification on the analysis made at the outset of the chapter. The definitional limitations both explicitly stated and implied in the language of the statute have a twelve year history of precedent. This precedent has evolved from court decisions as well as from those of the Board. It has come out of a wide variety of industrial relations situations other than those of unfair labor practices dealt with in Section 8(b). These situations have involved all of the employer unfair practices covered by Section 8(a) but even more importantly include the multitude of representation questions decided.

The significant purpose here is to indicate the nature and extent of the impact these various issues have
had on unfair labor practices arising under Section 8(b).
This means that the emphasis is on 8(b) cases in which the specific issues discussed have arisen. The account and analysis have been limited by this consideration while of course not wholly confined to it. Since it is, however, a very significant limitation, it merits noting the danger of unwarranted inferences introduced by simplification of emphasis.

Section 2 of the Act provides in part for the exclusion of certain individuals and employers from the Act's provisions. The application of these statutory definitions has placed a burden of consideration upon the Board. The term "employer" is defined to include

... any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.60

This has raised some novel issues in 8(b) cases.

60Public Law 189, supra, Section 2(2), Title 1.
The question would appear to be one of agency at first sight but in fact has not been ruled so by the Board. It has arisen where the Board had to determine whether and when a general contractor is not the employer of a subcontractor's employees and hence not chargeable. The Board has emphasized the degree of control which the general contractor has over the subcontractor's employees not over the subcontractor. In an 8(b)(2) charge the labor organization has to cause the employer to discriminate against an employee and if in fact it is not the individual's employer but his employer's employer who discriminates, then the unfair practice dissolves when filed against the real if not the nominal cause of the discrimination. The Board has ruled that for a general contractor to be the employer of a subcontractor's employees the general contractor must have direct control over them to the extent of a veto power at least. In another more recent case the Board affirmed this point and ruled further that the subcontractor was not "big" enough to warrant the assertion of jurisdiction. However, it was clear in the

intermediate report that the general contractor exercised pressure on the subcontractor for the discrimination which would have been difficult for the subcontractor to ignore and still remain in business. The finding of an unfair practice by the trial examiner was dismissed by the Board which found the employer who actually caused the discrimination was not really the employer of the individuals involved and that the "real" employer was beyond jurisdictional reach.

A similar variation of this situation occurred in two other cases not involving subcontractors in the usual building and construction context. In one, the terminal manager told loaders of trucks to leave the premises on pressure from a local Teamster's official. The Board, in reversing the trial examiner, found that the individual independent truckers were "technically" responsible for hiring the loaders and therefore the company on whose premises they worked was not the employer. Hence, the charges filed against the union and the company were not valid. The individual truckers, of course, would fall in the same jurisdictional category noted above.

For purposes of comparing interpretation, it is interesting to note the jurisdictional policy followed by the Board in secondary boycott cases wherein the volume of business of each of the secondary employers is added to that of the primary employer in the event that the volume of the primary employer is not enough for the Board to exercise jurisdiction.\textsuperscript{64} These charges are filed almost exclusively by employers. This procedure is not followed in determining jurisdiction in other 8(b) cases where individuals are the aggrieved parties.

It is precisely this sort of situation to which the dissenting member of the Board objected in the Painters Local 902 case\textsuperscript{65} and the Alpine Mill and Lumber case\textsuperscript{66} wherein the volume of business amounts were in excess of those over which the Board asserted jurisdiction on secondary boycott cases before it added the above noted rule on accumulating employers.

Section 2(3) of the Act excludes independent contractors as employees under the Act as well as

\textsuperscript{64}Twenty-second Annual Report of the N.L.R.B., op. cit. pp. 7-9.

\textsuperscript{65}107 N.L.R.B. 1254.

\textsuperscript{66}107 N.L.R.B. 915.
supervisors, agricultural laborers, domestic servants, and others. The exclusion of independent contractors would appear to be a simple matter of clarification as to a special type of employer. In many cases it is just that. However, when such an exclusion is placed on the context of those industries mentioned above (construction and truck transportation) where such contractors abound, it is a different matter. In the building trades for example, many individuals freely cross back and forth over the line between being simply an employee-union member and an independent contractor-union member. Carpenters, bricklayers, electricians, bulldozer and other machine operators all take a "fling" at being their own boss for a while. The Board ruled in such a case, involving a small grading machine operator, that he was an independent subcontractor and hence could not file a charge against the union which caused his employer to discriminate against him.\footnote{106 N.L.R.B. 611; Also, for discussion of criteria used in determining master-servant relation, see intermediate report therein.} One important deciding factor in the case was that the individual (he had no employees) received his pay in the form of a combined
fee for equipment rental and wages with no withholding tax deducted. Technically the man was an independent subcontractor, but in fact he was just another worker with little resources available to protect himself.

The same fuzzy line occurs in considering the truck driver who buys his own truck and goes to work for some trucking firm. Here the Board has ruled that the individual is not an independent contractor if he and his relief driver are paid wages while the truck is leased. But if the individual owner-operator is paid a fee, in spite of the control exercised by the company, (he must follow the company rules for drivers) the man is an independent contractor with no employee rights. It would appear that such limitations clearly ignore the realities of the situation.

The exclusion of supervisors has not been particularly burdensome nor significant in Section 8(b) unfair labor practices. While supervisors are precluded from receiving the protection afforded individual employees by the Act, the Board generally has ruled in

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68 112 N.L.R.B. 357; Local 148, 114 N.L.R.B. 1494.

69 116 N.L.R.B. 842, supra.
favor of the individual's receiving protection except in clear cut cases. To be classed as a supervisor, the Board has indicated such an individual must have some power to make independent decisions of a policy nature. To be merely a work leader or "lead man" with no authority to discipline does not exclude the possibility of being found a supervisor but alone usually has not been enough to deem such a person a supervisor in Section 8(b) cases studied. This definition has been more significant, of course in Section 8(a) cases and representation questions.

Only one labor organization unfair labor practice case involved the question of defining agricultural laborers as excluded from the Act. The Board and the courts have developed a long line of precedent to draw a line between the fringe areas such as truck drivers who are and who are not agricultural workers depending on the degree to which they handle the crop or travel on public highways. However, this precedent has developed in

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70 96 N.L.R.B. 581, 211 F. 2d 759 (C.A.9) adjudging unions in civil contempt (on rehearing) (certiorari denied 348 U.S. 839). 98 N.L.R.B. 582, supra; 99 N.L.R.B. 695, enforced as modified in other respects, 206 F. 2d 635 (C.A.6); 118 N.L.R.B. 1576.

71 114 N.L.R.B. 670, remanded for further Board consideration of its own precedent, 242 F. 2d 714, 39 L.R.R.M. 2560.
representation cases and the lack of unfair practices charges is a testimony to effectiveness at this stage.

Another line of definitional limitations grows out of the meaning of certain substantive terms appearing in the Act. Hence, the Board has had to rule many times on what are to be considered "periodic dues and fees" uniformly required as a condition for acquiring or retaining union membership. It is noteworthy that the rulings have been more enlightening on what are not such periodic payments rather than what are such payments. Fines for nonattendance are not periodic dues and fees,\textsuperscript{72} nor are back dues.\textsuperscript{73} Regular working assessments sometimes levied by building trades unions also have been excluded.\textsuperscript{74} A unique variation of the nonattendance fine occurred in one case where the Board, in attempting to get at intent, ruled that a local union was still levying such a fine even though it had changed its by-laws to make dues four dollars ($4.00) instead of three dollars ($3.00). This was to give regularly attending

\textsuperscript{72}92 N.L.R.B. 1073; enforced 196 F. 2d 500 (C.A.6) (certiorari denied 344 U.S. 823).

\textsuperscript{73}102 N.L.R.B. 466.

\textsuperscript{74}110 N.L.R.B. 1925.
members a one dollar ($1.00) or twenty-five per cent (25%) discount. The curious twist lies in the fact that regular dues for all were in fact four dollars ($4.00). The court concurred with the dissenting Board member for it set the Board's order aside. 75

The deceptive simplicity of terms appears again in considering what constitutes an individual's discharge. In addition to all of the clearly established means of discharge, the Board has ruled that an employee need not acquiesce in a condition of employment unlawfully requiring him to accept a union of his employer's selection, and that a refusal on his part to continue with his employment under such circumstances does not constitute a quitting of his employment, but rather, a "discriminatory constructive discharge." 76

The dimensions of definition limitations on 8(b) cases are further expanded by considering the interpretation of limitations placed on the terms "collective bargaining" by Section 8(d) and on so called "free speech" by Section 8(c).

75 115 N.L.R.B. 1542, supra, see especially the dissenting opinion with which the court's majority concurred.

76 103 N.L.R.B. 23, and cases cited therein; 90 N.L.R.B. 205, enforced 202 F. 2d 230 (C.A.9).
Section 8(d) provides in part that the duty to bargain shall also mean that no party to a contract in an industry covered by the Act shall terminate or modify such a contract unless the party desiring such termination or modification notifies the Federal Mediation and Conciliation Service, and any State or Territorial agency established to mediate or conciliate disputes, within thirty days after notice of the dispute to the other party. The Board has held that failure by a union to notify the Federal agency within the prescribed time limit constituted a technical 8(b)(3) violation and ordered the union to cease its strike which was in progress.\textsuperscript{77} The same ruling occurred wherein a union had failed to notify a State agency as well as the Federal service.\textsuperscript{78} In a recent decision, the same ruling and order was forthcoming for failure to file notice with either agencies sixty days prior to a contract strike even though bargaining continued.\textsuperscript{79} In these

\textsuperscript{77}109 N.L.R.B. 754.

\textsuperscript{78}117 N.L.R.B. 670.

\textsuperscript{79}118 N.L.R.B. 220. This decision is modified in respects not directly pertinent to above discussion in: Lion Oil Company v. N.L.R.B., 245 F. 2d 376 (C.A.8), June 5, 1957, modifying 109 N.L.R.B. 680 on reversal and remand of 221 F. 2d 231 (C.A.8) by the Supreme Court, 352 U.S. 282, January 22, 1957.
instances, it was the employer who filed the charges with the Board. While Section 8(d) does so limit the term in question, it is obvious that these limitations might also have been put in the preceding section concerning legal technicalities for they also contain an element of that kind of limitation.

A somewhat weightier legal issue arises in connection with the consideration of Section 8(c). The point of contention in Section 8(b) cases has been the status of peaceful picketing. Prior to the Supreme Court's decision in Giboney v. Empire Storage and Ice Company (April 4, 1949)\(^{80}\) and three cases decided in May 1950,\(^{81}\) the Board had relied on the rationale of The Thornhill Doctrine\(^{82}\) wherein peaceful picketing in a labor dispute was apparently equated to "free speech" for the purpose of the first and fourteenth amendments to the Constitution. However, the Supreme Court in the later cases clearly amended this rationale so that even

\(^{80}\)Joseph Giboney, et al., v. Empire Storage and Ice Company, 335 U.S. 49.


\(^{82}\)Thornhill v. Alabama, 310 U.S. 88.
peaceful picketing was deemed to have aspects which are more than speech, and that it may, therefore, be restricted.

The Board first took due note of this change in the Denver Building and Construction Trades Council case where it reversed the trial examiner's findings and its own policy to rule that the picketing in this case was an attempt to cause the employer to discriminate and not merely an exercise of free speech and peaceful persuasion protected under Section 8(c). Hence the picketing fell within the proscriptive scope of Section 8(b)(2). 83

More recently, the Board ruled in the Curtis Brothers case and several closely related decisions that recognition picketing, particularly where employees had rejected the union, acted as a restraint and coercive measure against employees in the exercise of their rights under Section 7 and hence was a violation of Section 8(b)(1)(A). 84 The Board therein ordered the union


to cease its picketing. This interpretation would have broad implications for future union activity, as pointed out in the dissenting opinion in the Curtis Brothers case as well as in the others. The court, however, remanded the Curtis case on the basis that to make a strike or picketing itself restraint or coercion rather than violence occurring therein would be to make Sections 8(b)(4)(c) and 13 redundant. The majority of the court accepted the reasoning of the dissenting Board member as well as that of the trial examiner and rejected the reasoning of the Board majority. It is at the moment before the courts for review. 85

In light of the earlier Denver Building and Construction Trades Council case and the cases subsequent to the Curtis Brothers case, it is clear that the issue is not a settled one. For in the Alloy Manufacturing Company case, the Board extended proscription to attempted customer boycotts and "we do not patronize lists" aside from the other cases wherein the yet uncertain Curtis Doctrine was applied. 86 It thus appears that the Board

85 Petition for review, March 1959, 119 N.L.R.B. 232, supra.

86 Cited at Footnote 24.
is more likely to be increasingly restrictive as opposed to returning toward the Thornhill doctrine and a theory already dead in the courts.

G. The Time Lag in Processing Cases

Unfair labor practices grow out of dynamic industrial relations situations where time itself, even a day, is often the essence of the case. The parties involved are not analogous to the litigants in a divorce proceeding where a temporary arrangement may be easily effected or where a cooling off period may be desirable until a final settlement award and decree are issued. Nor do the parties compare with those in a civil damage suit where life goes on and the parties await the monetary award of damages which may take several years or more. An individual who is discriminatorily discharged from his job, perhaps one with which he has a long standing attachment, cannot wait two years to be reinstated and awarded back pay. Nor can he wait that long to find he is not entitled to reinstatement. For making a living means receiving an income and this requires a job in our industrial society.

It is of little comfort to a weakened or disbanded local union or an employer who is no longer in business to find they were the object of illegal behavior. Perhaps
more realistically, it should be said that these two find breaking the law less distasteful and costly than being put out of business when waiting too long might do just that.

A sampling of cases heard by the Board between 1948 and 1957 shows the length of time between the filing of the charge and a decision and order by the Board in an unfair labor practice may range from approximately one year to a little more than two years without considering the added time for court enforcement, appeal, and rehearing. This means that in cases involving contested issues, which are precedent making, the parties involved are not likely to get speedy justice nor are similar cases pending or filed in the interim.

The Board itself is not, however, a court of justice but rather a court of law as the late Justice Holmes once said about the Supreme Court. For in the period from 1948 to and including 1957, approximately 13,546 cases were filed under Section 8(b) of the Act. Of these, approximately only were contested decisions in which formal decisions and orders issued with less than forty per cent being litigated in the courts. With

87 Annual Reports of the N.L.R.B., 14th through 23rd.
this function of the Board in mind, the very nature of its task becomes that of effectuating basic public policy under a due process legal system which in itself is designed to eliminate the errors of hasty justice.

It is obvious that most of the heavy case work, number wise at least, is carried on in the Board's Regional Offices where the time lags are not of such magnitude. However, this is not to minimize the significance of a serious problem nor to imply it cannot or should not be the object of attempts at improvement. For even at this level, there have been occasions where eight months have lapsed between the filing of the charge and the issuance of a complaint.\(^8\)

A more notable instance of the lag has occurred through a Board policy which requires the trial examiner to abide by Board precedent in face of contrary court opinion unless or until the Board itself notes such reversal and changes the policy in question.\(^9\) This rule

\(^8\) 113 N.L.R.B. 111.

prevails except for Supreme Court decisions and means that the recommendation of the trial examiner in the inter-
mediate report without doubt will be contested and require a decision on the part of the Board to change its 
policy, adding perhaps another six months to a year to the time required for settlement.

The whole problem of time consuming processes, however, must be put in a frame of reference which contrasts the cost to be incurred by any suggested remedy to reduce its magnitude with the advantages to be derived from it. Thus, one reason why changes have not been rapidly forthcoming is suggested. For speeding up the Board's processes may well weaken its ability to perform its functions of which careful consideration of issues is a part.

G. Summary

Not every unfair practice case arising under the various paragraphs of Section 8(b) will encounter to the same degree nor in like kind the preceding limitations. However, each case must meet the tests imposed by these requirements. This means that some industries, some unions will find a particular restraint more significant than others.
The volume and kind of business required of a firm in order that the Board would assert jurisdiction over cases arising therein have changed several times since the inception of the amended statute in 1947. What appeared to the Board to be reasonable in 1950 was markedly reduced in 1954. Since many industries are comprised in large part of small employers or firms, the reduction in coverage of 1954 created significantly large areas of industrial relations wherein unfair practices cases in particular were not eligible for the Act's processes. The growing seriousness of this situation coupled with the lack of alternative solutions brought forth different jurisdictional standards in 1958 designed to include some of the areas previously exempted. While the problem is not one which has an all inclusive solution, the extent of the enlarged coverage is, of course, yet to be seen.

In those industries having unions long noted for their self-reliant and independent leaders, the failure or refusal of such leaders to comply or allow compliance with the so-called filing requirements of the Act has created hampering circumstances for these unions. Thus they may not initiate use of the Board's processes but are not excluded from being charged. In addition they are not protected from an unfair labor charge in using
the union security form allowed by the Act for those complying with its conditions.

The loose knit control exercised by unions over their members becomes more than concern over lack of member responsibility when the common law of agency is applied to the union in an unfair practice charge. For when an individual commits an act as an agent of a labor organization, whether or not the act was approved by the organization, it becomes responsible for that act. Hence, the attitude implied in the phrase, "let Joe do it," may result in a situation where the union treasury is needlessly depleted and a rather restricted air of operations is imposed by Court and Board sanctions. Thus many Section 8(b) cases are found unfair practices due to the increased responsibility imposed on labor organizations for an act by its agent which the formal organization itself might not ratify.

Many citizens are not aware of their rights as such let alone their duties. An individual employee may not understand how to go about getting protection of such rights if he is aware of them. However, ignorance is no defense under the law. Under the statute of limitation on charges imposed by Section 10 of the Act, any violation of 8(b) "rights" must be charged within six months of its occurrence to be found an unfair
practice. Amendments to the original charge may be made after the six months and are without this limitation. Also background evidence of behavior occurring prior to the six months may be used to clarify the charge, but the violative behavior charged must fall within the six months limit. This applies to employers as well as employees.

While unfair practice cases are processed by an administrative agency, they are handled very much like any legal proceeding. Charges are filed, a complaint issued and a hearing is held at which matters of fact and of law are introduced. This is followed by conclusions of fact and of law rendering possible a decision and remedial order to enforce it. Sometimes the application of one system of jurisprudence to an area which has been characterized as one using a system of "industrial jurisprudence" has seemingly subverted at times the purposes of the Act. One example is the dismissal of a case without remedy to test the "prosecutor's" theory. Another is to accept an erroneous conclusion for lack of formal exception to it. Perhaps an even greater affront is to "dispose of the baby with the bath water" by ignoring the context out of which the behavior arises. For many "factual" matters take on a different meaning in their own frame of reference from
such behavior described in sterile isolation or restricted to less than the full sweep of the environmental brush. Such a consideration may be an impossible transition for hearing officials to make without some experience with such relations. In any event, such lack of consideration has lead in some cases to decisions hardly designed to unburden the free flow of commerce and lead to peaceful industrial relations and bargaining.

Still another consideration to be kept in mind is that the Act's protection or privileges are specifically denied or limited by provisions. Not everyone who "works for a living" is an employee under the Act. Supervisors, independent contractors, agricultural laborers and employees covered by the Railway Labor Act are not included. Nor are governmental units and non-profit corporations considered to be employers. These exclusions have required some rather fine lines to be drawn in certain industries such as building and construction and truck transportation. For in these industries independent contractors or subcontractors are often difficult to identify from employees who are covered by the intent of the Act. The same is true in considering agricultural laborers as opposed to nonagricultural laborers.

Limitations imposed in other regards are encountered in the meaning of certain terms such as
"bargaining in good faith" and "free speech" as covered in Sections 8(d) and 8(c) respectively. To bargain in good faith requires the filing of certain notices with appropriate Federal and State agencies when a dispute exists. The requirement has been applied literally and to the exclusion of other bargaining activities in finding unfair practices. Picketing even to the extent of peaceful picketing has been ruled not to be an exercise of "free speech" under Section 8(c) and hence the possible basis for an unfair practice finding. While the Board's ruling that peaceful picketing itself is a restraint has been set aside by the court, the general notion of more restriction on picketing seems to have the sanction of the Supreme Court. This body has withdrawn its support of the Thornhill doctrine of picketing as an exercise of "free speech" not subject to regulation.

A matter implicit in the discussion of the various limitations on unfair practice cases is that of the time consuming nature of these processes. Where an issue affects getting or keeping a job, or affects the firm's revenue or the union's existence, then time is of the essence. These are the conditions of livelihood which require some speed as well as the aid of remedy. This is not forthcoming in many cases where decision by the Board is required. However, the bulk of these cases
are not settled at this level and do not meet such limits. Hence one way in which the problems introduced by time lags are reduced is to eliminate where possible Board policies which require hearings and Board decisions in addition to those on the regional level before settlement of issue and the case is effected.
CHAPTER IV
SECTION 8(b)(1) - RESTRAINT OR COERCION
BY A LABOR ORGANIZATION

A. Introduction
Perhaps no other issue so immediately engages the attention of even the casual reader of the Board's decisions as does the lack of certainty as to the precise purposes and proscriptive meaning intended by the Congress in its Amendments to the National Labor Relations Act.¹ A former Solicitor of the Board in referring to the purpose of Congress in providing internal separations of the Board's dual functions of being both prosecutor and judge uncovers the essence of the problem in her appraisal. She states that after a decade of experience under these provisions of the Act, one may not answer

¹Not all observers agree that such uncertainty exists. Many in the ranks of organized labor felt and still feel that the intent of the law was quite clear and that it was designed to be punitive as well as restrictive of their methods and objectives. Some legal scholars have indicated that the intent of the legislators is quite clear and has been frustrated by the Board's interpretation of the legislative intent of Congress as well as of the Statute itself, however, the matter will be dealt with later in this chapter as it pertains to Section 8(b)(1)(A).
easily, if at all, the classic question concerning whether or not these provisions have achieved their purpose for "...the only answer offered by the record (as to the purpose) is: salvage and compromise." It is doubtful that any single legislative purpose lay behind this provision other than the compromise effected by Senate appeasement of the suspicion with which the House viewed the Board members and existing administrative procedures. Therefore, it is suggested that perhaps the question is not one of whether a purpose has been achieved, but rather is the present situation workable or intolerable.

While this confusion of purpose or intent is not precisely the same as in the case of unfair labor practices arising under Section 8(b), it is similar. In addition, the working difficulties raised by this confusion of intent in unfair labor practices cases have not been so susceptible to remedy as the so called "engineering defects," reflected in the Board's structure to which the above reference is made. For the difficulties may

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2Claus, Ida, op. cit., p. 388.

arise each time a case comes up and this is significant particularly under Section 8(b)(1)(A) which provides the basis for the analysis in this chapter along with Section 8(b)(1)(B).

The language of Section 8(b)(1) is disarmingly short and only superficially simple. It provides that it shall be an unfair labor practice for a labor organization or its agent:

... to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances; ... 

The words "restrain" and "coerce" are defined nowhere in the Act. Hence, the Board's interpretation and the development of public policy have rested in the main upon the continued re-examination of the legislative history of this section to determine the intent of the Congress. While certain portions of this history contain clear cut references to what was to be proscribed, it also contains the seeds of confusion which the broad words of the statutory language have nurtured. For the references as

4 Public Law 189, 82nd Congress, First Session, April 21, 1951, Title I, Section 8(b)(1).
to meaning, as will be developed in the analysis which follows, are such as to admit several interpretations and hence lend themselves to a broad or narrow interpretation depending in part on the makeup of the Board and the attitude of the courts.

B. The Development of Public Policy and the Law in Section 8(b)(1)(A) Cases

1. The "Narrow Construction of Terms" Doctrine

The Board first had occasion to rule on the proscriptive meaning of Section 8(b)(1) in the National Maritime Union case. Because this case acts as a focal point for subsequent developments, it is examined in some detail here.

Since the Act contains no definition of what constitutes "restraint" or "coercion," a careful and painstaking examination was made in this case of the legislative history of the Section. In particular, the remarks made in the course of the debate by the principal

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sponsors of the amendment were examined for examples of the types of conduct that the amendment was intended to reach.

From these remarks emerge two general kinds of violative behavior encompassed by Section 8(b)(1)(A). However, one of them is somewhat confusing and presents the source of difficulty which develops into the so-called "broad" interpretation analyzed in a subsequent section of this chapter. The other type of violative behavior is rather clear cut and along with part of the first constitutes what is herein called the "narrow construction" doctrine.

There is little doubt that one type of behavior, namely that involving violence or force against employees was meant to be outlawed by this Section. Union coercion of employees such as that brought about by threats of

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Section 8(b)(1) of the Act originated in the Senate and the Bill (S.1126), as originally reported to that body by the Senate Committee on Labor and Public Welfare, did not contain any such provisions as are in Section 8(b)(1)(A). Senators Taft, Ball, Donnell, Jenner, and Smith declared in a supplemental statement to the Committees Report that they would introduce an amendment to this effect. (Senate Report No. 105, 80th Congress, 1st Session).
reprisal against employees and their families in the course of organizing campaigns and also direct interference by mass picketing and other violence were cited as examples in the supplementary statement previously noted.  

Senators Taft and Ball acted as chief spokesmen for the group sponsoring this Section. Senator Taft explained in a colloquy with Senator Saltonstall that such things as beating an employee or his family to get him to join or restrain him from refusing to join a union and mass picketing which forcibly prevents a man from working were illustrative. Senator Ball referred to the purpose as being "to free them (employees) from the coercion of goon squads and other strong-arm organizing techniques which a few unions use today."  

Hence, the Board ruled that this part of the legislative history strongly suggests that Congress was interested in eliminating physical violence and intimidation by unions or their representatives. It so decided  

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7See supplementary statement cited at Footnote 5.  
8Congressional Record, May 2, 1947, pp. 4561-4562.  
1078 N.L.R.B. 971, supra, p. 985.
in this case even though none occurred therein. It held that normally the "touchstone of a strike" which is violative of the Act is the means by which it is accomplished. Having been peacefully conducted, as herein, it does not violate Section 8(b)(1)(A) even though its object be illegal, though it may not be protected activity under Section 7, and perhaps may even be violative of Section 8(b)(2) as well as others.\textsuperscript{11} This finding, however, in part, ignores the inconsistency in Senator Taft's remarks to be noted below in connection with a second type of violative behavior, and relies on only part of the testimony. It must be admitted, however, that the part relied upon appears to be categorical support for the Board's position. It does not detract, however, from the consensus reached on violative behavior involving violence.

The other general type of violative behavior which the legislators described concerns economic threats or actions of reprisal. It is the consideration of this behavior which raises confusion. This action on the part of unions was first likened to the kind of economic coercion stemming from employers and covered by Section

\textsuperscript{11}Ibid, p. 986.
8(A)(1). In the supplementary statement to the Senate Committee's report previously mentioned, reference was made to unions being subject to the same rules as employers as a reason for the inclusion of a Section 8(b)(1)(A) amendment. Senator Ball affirmed this notion on the floor of the Senate in explaining the amendment. Senator Taft again citing examples of what the statutory language meant referred to threats to raise initiation fees to an exorbitant amount if a man did not join and then requiring him to pay this amount to get in. He included also the threat that if a man did not join, the union would get a closed shop agreement (covered by other sections) and keep him from working at all.

However, in answer to Senator Morse's observation that the amendment would outlaw all strikes to further organization activities, Taft indicated he could see nothing which would in "some way" outlaw strikes. He

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12Cited at Footnote 5 on p. 4.

13Congressional Record, April 25, 1947, p. 4136.

said it would not outlaw anybody striking who wanted to strike nor prevent anyone using the strike in a legitimate way, conducting peaceful picketing, or employing persuasion. All it would do is outlaw such restraint and coercion as would prevent people from going to work if they wished to go to work. The emphasis which seems to be implied is on the direct means used to prevent people from going to work. Yet, in an interchange with Senator Pepper, Senator Taft clearly indicated in discussing a Board case involving organizational picketing, that "the main threat was 'unless you join our union, we will close down this plant, and you will not have a job.' That was the threat and that is coercion - something which they had no right to do. . . . clearly an improper course of action, and clearly a matter which should be restrained by the National Labor Relations Board." These two contrary views of what was to be included as violative behavior under Section 8(b)(1)(A) are not resolvable. The policy directions taken depend alternatively on the weight given to the different views.


The Board in the National Maritime Union case found that the use by unions of threats of economic action against specific individuals in an effort to compel them to join was the behavior meant to be covered. The union in this instance had insisted on a closed shop clause in its contract as a condition of further bargaining. The Board ruled with one member dissenting that while such a clause would undoubtedly cause 8(b)(1)(A) violations if it had been successfully effected, where, as in this case, the union merely attempted to cause an employer to discriminate within the meaning of Section 8(b)(2), "coercion" and "restraint" did not flow automatically from a union's violation of 8(b)(2) where efforts are not directed at a particular individual or group of individuals but at the employer and for the benefit of members.

Thus the Board excluded peaceful picketing and strikes legitimately conducted from the proscriptive meaning of Section 8(b)(1)(A) apparently both with and contrary to the sanction of the legislative intent. However, it did not rule that strikes for illegal objectives were protected activity under Section 7 even though they were not proscribed by Section 8(b)(1)(A). This, of course, left some room for interpretation as to
what might happen later. 17

It is also apparent that the confusion of Sections 8(b)(1) and 8(a)(1) by legislative proponents of the former Section as well as that concerning the internal affairs (membership fees) of unions and economic reprisals accounts for no small part of the proscriptive fog. In addition, the diametrically conflicting notions of the status of strikes and peaceful picketing as reflected in Senator Taft's remarks indicate the confused state of thinking of the legislators as to just what complexities of form economic pressure or reprisal may take. Particularly if a strike is anything more than mere physical exercise for even a few pickets, its effectiveness is reflected in economic restraint or coercion in some form. It is this line of policy

17 For a contrary opinion see: Petro, Sylvester, "How the N.E.R.B. Repealed Taft-Hartley," Labor Policy Association, Inc., Washington, D.C., 1958, pp. 11-33 and 125-127. Petro asserts, after an examination of the legislative debates, that the Congress clearly intended to proscribe organizational or "stranger" picketing under Section 8(b)(1)(A). He does so in spite of conflicts in statements resolvable only by the technique of mass mind reading of the legislators (pp. 26-31). He indicates also that the Board majority's decision in the Curtis Brothers case of 1957 (noted subsequently in this chapter) is a clear "vindication of the main thesis of this study." (p. 126). However, shortly after Petro's Study appeared, the courts flatly rejected the Board's reasoning in the Curtis case as making Section 8(b)(4) redundant and expunging Section (B) from the Act.
development which the Board later embraced and which will be analyzed under the heading of the "broad interpretation."

With this basic outline of policy limits in mind, it is appropriate first to trace briefly the development of the narrow construction in subsequent cases. This involves the refinement of the principle that the proscription of Section 8(b)(1)(A) is limited to situations involving actual or threatened economic reprisals and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activities. Following this will be the account of the broad interpretation introduced above.

The refinement of Board policy under the narrow construction doctrine may be summarized under two broad headings. Direct action against individuals or groups mostly involving violence or threats thereof but also some direct economic threats constitutes one of these. The other may be referred to as indirect action involving primarily economic threats or action accomplished through the employer but against specific individuals or groups. The latter type may be thought of also as "derivative" violations since they have arisen in cases also involving Section 8(b)(2) violations.
In the Matter of Sunset Line and Twine Company case, the Board reversed the trial examiner's findings on several counts to rule that acts of violence by agents of the union on the picket line of a contract strike were violative of Section 8(b)(1)(A). These acts included such things as threatening assault to those who entered, blocking egress by mass picketing and "laying hands" upon employees. The principle that the strike itself is not an unfair practice but that the violence sometimes accompanying it, such as threats to "beat up scabs" and shoving employees, is violative was reaffirmed in the Matter of Perry-Norvell Manufacturing Company case. Similar violence on an organization and recognition picket line, but additionally, threats by a union agent to non-joiners of bodily harm were deemed violative of Section 8(b)(1)(A) in the Matter of Smith Cabinet Company case. Direct threats to those who did not join that they would lose their jobs or "there are ways of handling you" were held coercive also in the Matter of Seamprufe Manufacturing Company, Inc. and upheld by the court.

1879 N.L.R.B. 1487.
2081 N.L.R.B. 886.
2182 N.L.R.B. 892, enforced.
A rather long line of cases followed these precedents in which violence on the picket line of both contract and recognition and organization strikes was reaffirmed as violative of Section 8(b)(1)(A) by both the Board and the Courts. The record is spotted with some variations in this line of development. For example, harassing department store clerks in front of customers was one of these. Physical assault of a member by an agent of the union for not having participated in a strike conducted at a plant elsewhere is another. Direct threats to individuals that they would lose their jobs for such things as dual union activity, working out of their own local union's geographic territory and without a work referral or

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23 100 N.L.R.B. 870.

24 112 N.L.R.B. 17.

25 112 N.L.R.B. 1315; 114 N.L.R.B. 1077.
approval of the business agent constitute another group. The Board ruled also that attempted bribery as well as assault and a job loss threat in order to get an individual to drop charges filed with the Board were violative of Section 8(b)(1)(A). And finally, a direct violation of Section 8(b)(1)(A) was found where a local union refused to sign a contract already agreed upon until eighty per cent of the employees joined the union and signed check-off cards, thereby denying wage increases and other benefits.

On this same issue of direct as opposed to indirect violations of Section 8(b)(1)(A) by a labor organization, the Board reaffirmed an earlier principle established first in the National Maritime Union previously cited. With repeated court approval, the Board has held that a union or its agent does not violate Section 8(b)(1)(A) by unlawfully refusing to bargain, or by

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26 114 N.L.R.B. 1563; 115 N.L.R.B. 1123; 116 N.L.R.B. 399.

27 116 N.L.R.B. 842.

28 119 N.L.R.B. 222.
attempting, through strike action, to obtain from an employer an unlawful "closed shop" agreement. For such action is on the employer and hence may be violative of Section 8(b)(2) and/or Section 8(b)(3), but is not violative of Section 8(b)(1)(A). 29

With respect to the violations of Section 8(b)(1)(A) which have been termed indirect in this analysis, there are several developmental lines in the interpretation of cases. The most frequently encountered type of violation of the indirect variety and that first ruled upon by the Board with court approval involves the causing of a discriminatory discharge of an individual or group of individuals. 30 The discharge, of course, may be caused by simple request of the union under an illegal union security arrangement or clause, 31 but also

29 81 N.L.R.B. 1052; 82 N.L.R.B. 1344; 82 N.L.R.B. 1365; 83 N.L.R.B. 916, enforced; 86 N.L.R.B. 1041, enforced; 87 N.L.R.B. 1215; 87 N.L.R.B. 1418, enforced; 90 N.L.R.B. 1021; 90 N.L.R.B. 1099.

30 85 N.L.R.B. 725, enforced.


Continued on following page.
It may be caused by threat of strike to the employer with no union security provision. It is the latter of these two types which occurred in this first case passed on by the Board. Additionally, there have been cases where both threat of strike or an actual strike and the illegal union security clause were used. The Board and the Courts have extended proscription of this type of violation to rule that the mere existence of an illegal closed shop contract provision or illegal union security arrangement acts as a restraint and coercion on

Footnote 31 continued


employees exercise of rights guaranteed in Section 7.\(^{34}\)

Furthermore, saving clauses designed to void provisions that are or may become illegal under the Act must be specific. A mere general reference to "anything contrary to law being void" is not enough to bar charges.\(^ {35}\)

The above violations stem from union caused employer violations of the proscriptions of Section 8(a)(3). Consistent with the provisions contained therein, it is an unfair practice also for a labor organization or its agent to cause an employer to refuse discriminatorily to hire or to discriminate in the terms and conditions of employment because of membership or non-membership in a union as well as to discharge for these reasons. Following these lines of development, the Board has ruled in a series of cases that discriminatory refusal to hire


\(^{35}\) 93 N.L.R.B. 127, enforced; 102 N.L.R.B. 1646; 103 N.L.R.B. 596, enforced; and 107 N.L.R.B. 617.
caused by a union through an illegal union security clause as well as by strike or threat thereof or both are all violations of Section 8(b)(1)(A).

Union caused discrimination in the terms or conditions of employment resulting from illegal clauses


38 98 N.L.R.B. 582; 108 N.L.R.B. 433, enforced; 111 N.L.R.B. 1025, enforced.
concerning security, seniority, and work rules or from strikes or threats thereof also have been ruled violative by the Board and Courts. Such discriminatory behavior has included a variety of specific acts. A listing of them is as follows: reduction in seniority,\(^3^9\) reduction in pay,\(^4^0\) transfers to other jobs or shifts,\(^4^1\) retroactive applications of valid union security clauses thereby exacting "extra dues,"\(^4^2\) removal of names from work assignment list,\(^4^3\) withholding of vacation pay,\(^4^4\)

\(^{3^9}\) 94 N.L.R.B. 1494 set aside then reversed to affirm by Supreme Court; 95 N.L.R.B. 391; 103 N.L.R.B. 1495; 107 N.L.R.B. 837, enforced as modified; 109 N.L.R.B. 727; 109 N.L.R.B. 1148, enforced as modified; 110 N.L.R.B. 96, enforced; 110 N.L.R.B. 850; 111 N.L.R.B. 22, enforced; 112 N.L.R.B. 357; 113 N.L.R.B. 643; 116 N.L.R.B. 755.


\(^{4^1}\) 101 N.L.R.B. 132, enforced; 111 N.L.R.B. 68; 119 N.L.R.B. 972.

\(^{4^2}\) 89 N.L.R.B. 1446; 95 N.L.R.B. 464; 101 N.L.R.B. 327; 104 N.L.R.B. 639; 108 N.L.R.B. 1214; 113 N.L.R.B. 524, enforced.

\(^{4^3}\) 98 N.L.R.B. 22, enforced.

\(^{4^4}\) 106 N.L.R.B. 870.
making attendance at union meetings or other union rules in effect, job conditions,\textsuperscript{45} denying the use of the grievance process,\textsuperscript{46} and denying welfare and pension plan benefits participation.\textsuperscript{47}

A variation of the previously noted violation concerning the "mere existence" of an illegal closed shop clause occurs when a union signs a contract with an employer containing what would otherwise be a valid union security clause but does so without having majority status or having been designated the representative of the employees therein. One such situation may involve the so-called practice of "sweethearting."\textsuperscript{48} On the other hand, they have involved also recognition and organizational picketing designed to compel signing of a contract with


\textsuperscript{46} 111 N.L.R.B. 853, enforced; 117 N.L.R.B. 648.

\textsuperscript{47} 100 N.L.R.B. 1390; 114 N.L.R.B. 1391; 117 N.L.R.B. 1417.

\textsuperscript{48} 103 N.L.R.B. 23; 118 N.L.R.B. 707; 118 N.L.R.B. 808.
such a clause without the necessary designation as representative. Since this latter type of case presents the background for the "broad interpretation" of Section 8(b)(1)(A), its detailed analysis and precedent will be taken up in the following section of this chapter rather than at this juncture.

2. The "Broad Interpretation" of Section 8(b)(1)(A)

The "broad interpretation" of Section 8(b)(1)(A) refers to the proscriptive extension made by the Board wherein certain cases of peaceful picketing constitute violative behavior which "restrains" and "coerces" employees in the free exercise of rights guaranteed in Section 7. The latent possibility that such a construction would be made of the statutory language of this section has existed since the inception of the Act. As previously indicated, both the language of the statute and its legislative history tend to this end. The situations out of which this policy grew were cases involving picketing for the purpose of compelling an employer to sign a contract with the union without an election and with the contract usually containing a union security clause in some form.
The Board held in one of the first of such cases, involving a Teamsters local, that such behavior had obtained illegal results in the face of a Board notice to the effect that a representation election was appropriate. While such picketing may be covered by the language of Section 8(b)(4)(A), (B), or (C), violation of that Section was not charged. Hence, the Board nullified the results obtained by the picketing but the picketing itself was not found to be a violation of Section 8(b)(1)(A). This line of reasoning was applied in a series of cases preceding the Curtis Brothers case in which the Board announced the broad interpretation. A few of these cases did not involve picketing but did involve illegal signings and the results were therefore similarly illegal. It is of interest and significance that of approximately ten case precedents before the adoption of the broad doctrine, seven of them involved local unions of the International Brotherhood of Teamsters in addition

\[49\] 100 N.L.R.B. 801, enforced.

to the precedent making Curtis Brothers case; however, more will be said of this in a later section.

The Board reversed the preceding line of reasoning in the Curtis Brothers case as well as a portion of that set forth in those cases which were analyzed as constituting the narrow construction doctrine. Although, as indicated in the preceding chapter, the decision was set aside by the Court of Appeals for the District of Columbia, the final outcome is pending review at this writing. However, in light of current national events on the labor relations scene including hearings on new legislation as well as professional opinions and legislative proposals advanced from the Administration and other quarters, the matter would appear not to be settled even if the Supreme Court affirms the lower court's opinion which reversed the Board's ruling.

The Board in the Curtis Brothers case sets up several lines of reasoning. It first establishes the

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importance of whether or not the union actually was picketing for recognition and a contract or as the union claimed "merely to win adherents." The Trial Examiner and a dissenting Board Member, following Board precedent established under the narrow construction doctrine, felt such a point to be immaterial since the peaceful picketing was not deemed by them to be proscribed.

In a representation case shortly before this unfair practice case and involving the Curtis company and the same union, however, the Board held that the union was picketing for recognition and, hence, directed an election in which the union was rejected by a 28 to 1 vote of employees. Therefore, the Board majority ruled in the Curtis Brothers case that the union's continued picketing while representing only a minority, was for the purpose of recognition.

The question was then raised, does such picketing restrain or coerce employees in their free exercise of rights guaranteed in Section 7. In this regard, the Board majority said, "... if minority union picketing has a restraining or coercive effect upon employees and if such coercion cuts into their privilege to choose or

52114 N.L.R.B. 116 and 117.
reject any particular union, the only two essential elements of the unfair labor practice spelled out in Section 8(b)(1)(A) have been established. This premise, of course, if accepted leads to the obvious conclusion that the peaceful picketing in the case was illegal. However, it does not establish, other than by mere assertion, much basis for concluding that Section 8(b)(1)(A) is the section of the law which prescribes such "illegal" behavior. On this score, the majority concludes after additional analysis that the question is not which section is involved, but has the Act been violated at all, the finding being, of course, affirmative.

In reaching this conclusion, the Board majority surveyed and rejected a number of strong contrary arguments as well as several inapposite ones. Concerning the latter, it undertook to reject two such arguments. The first involves the notion that peaceful picketing is a form of free speech constitutionally protected. Citing the various Supreme Court cases referred to in this analysis in the previous chapter, the majority concludes


54 See Chapter III, footnotes 80 and 81.
the protection is not unlimited. However, since those cases involved States' rights to regulate picketing, their relevance to the administration of the Act and particularly this Section is not established.

Picking up the line of development rejected by the Board in earlier cases discussed under the narrow doctrine, the majority clearly establishes the obvious fact and again ignores the importance of the legal question they are deciding concerning Section 8(b)(1)(A) by pointing out that picketing against the employer may hurt his business and hence the employment of his workers thus restraining and coercing them. Extending this line of reasoning, the majority indicated that even if such activity is aimed at the customers, it is coercive on the employees of such a business. Thus, the broad limits on such activity are established under which the Board majority found in the Alloy Manufacturing Company case that placing the company on a city-wide union "we do not patronize list" was also coercive. The illegal picketing principle was reaffirmed in several additional cases not yet tested in the Courts. One of these

55 N.L.R.B. 971, supra; 80 N.L.R.B. 225, supra.
56 119 N.L.R.B. 307, supra.
involved a novel twist of interpretation, again by the same majority but with the Chairman this time joining the dissenting Member, wherein the "continuing violation" theory was applied to a legal contract illegally signed by a union which enjoyed only limited exclusive majority representation rights.\footnote{119 N.L.R.B. 502, supra.}

Perhaps the most astonishing thing about the development of the broad interpretation by the Board majority is the short shift given to past Board precedent itself and the treatment therein of the legislative history. It is probably true that a number of contrary positions may be "proved" by reference to specific parts of the legislative history of congressional intent. Thus, the majority cites the previously noted exchange between Senators Taft and Pepper for its findings in the \textit{Curtis Brothers} case.\footnote{See p. 104, this Chapter.} But this rather blandly ignores the fact that in the earlier cases decided by the Board, an overall consideration of the context of the legislative remarks led it to reject this broader interpretation of Section 8(b)(1)(A) which these certain inconsistencies make possible. Further, the majority in the \textit{Curtis
Brothers case declared that these earlier cases were not in point for in them the Board found violations of some other Section but held only that the conduct therein did not also violate Section 8(b)(1)(A). It would seem that this is at most an unusual exercise in semantics.

In setting aside the Board's Order in the Curtis Brothers case, the Court's main reason was that such a construction of Section 8(b)(1)(A) to cover peaceful picketing would make section 8(b)(4) redundant and expunge Section (13) from the Act\(^{60}\) neither of which could be said to reflect Congressional intent. However, it is conceivable that the extension of this principle to cover "consumer boycotts" as well as other such activities may not necessarily be rejected even if striking and picketing \(\text{per se}\) are finally adjudged to be so excluded.

C. The Development of Public Policy and the Law in Section 8(b)(1)(B) Cases

Paragraph (B) of Section 8(b)(1) is marked by a very brief development of precedent. In fact, violative behavior covered by this portion was charged in only three contested cases decided by the Board.\(^{61}\) All three

\(^{60}\) 43 L.R.R.M. 2156-57.

\(^{61}\) 86 N.L.R.B. 951, \textit{supra}; 87 N.L.R.B. 1215; 87 N.L.R.B. 1263.
cases were a part of the series involving the International Typographical Union and/or its agents and locals which were decided in 1949. The A.N.P.A. case is actually the precedent setting case with the Graphic Arts League case merely following the line set down in that case. The third case involving an 8(b)(1)(B) complaint was dismissed on all counts by the Board.

While the I.T.U. presents a rather unique set of circumstances in its designs to preserve competency in the craft and assure proper member performance, it is not entirely without parallel in certain other crafts. However, its insistence on and success in achieving almost complete control over lower supervisory personnel, particularly composing room foremen, prior to the Act is perhaps without parallel. The reasons for this union policy and its acceptance by employers are not the concern of this analysis. The insistence or inclusion of this condition in the contract with the A.N.P.A. and its members, namely that these employers were required to continue to hire only union foremen and to delegate to these foremen certain managerial powers contained in I.T.U. "Laws" including the power of adjusting grievances, was ruled by the Board to be violative of Section 8(b)(1)(B)
of the Act. In so holding the Board stated:

That the statutory scheme extended the protection of Section 8(b)(1)(B) to the right of employers to select foremen having the type of duties above detailed, is indicated not only by the absence of any exemptive language in Section 8(b)(1)(B) but also by the legislative history of this provision. See e. g. Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., at p. 21; the remarks of Senator Ellender at 93 Cong. Rec., p. 4266; and the remarks of Senator Taft at 93 Cong. Rec., pp. 3953-3954.

The remarks of Senator Ellender occur in the course of his long explanation of S.1126 following Senator Ball's amendment (Section 8(b)(1)(A)) and in affirmation of the bill. Those of Senator Taft occur in connection also with a comprehensive statement of explanation and are appropriate in part. However, Senator Taft remarks in this reference that paragraph (B) prevents or makes it an unfair labor practice for "employees to say we do not

65 Ibid, pp. 1005-1014.
like Mr. X, we will not meet Mr. X. You have to send us Mr. Y."66 In another hypothetical illustration also he states the same paragraph would prevent employees from saying to their employer, "You have to fire Foreman Jones. We do not like Foreman Jones, and therefore you have to fire him, or we will not go to work."67 Senator Taft then more appropriately begins to speak of union selection of employer representatives. Yet the Board specifically ruled in the A.N.P.A. case that: "our decision is in no way to be interpreted to mean that we would hold on other facts that Section 8(b)(1)(B) prohibits employees from collective action designed to induce their employer to remove specific supervisory employees having power to adjust grievances . . . ."68 While "Mr. Jones" and "Mr. X" are not "specific" "real" people, it is difficult to reconcile this bit of support for the Board's ruling.

Although the Board's request for Court enforcement of its order in this case was delayed some fifteen months

67 Ibid.
68 86 N.L.R.B. 951, supra, p. 959, footnote 27.
and further the Supreme Court ruling affirming the 8(b)(6) portion of the decision did not occur until March 1953, the case now represents settled law. The Board's decision in the Graphic Arts League case was an affirmation of the A.N.P.A. case concerning Section 8(b)(1)(B). Its ruling on Section 8(b)(1)(B) was contrary to that of the Trial Examiner who felt that I.T.U. general policy backed up by a strike threat was not equated to the specific request on foremen being backed up by threats or warning, hence not violative. Such also was the position of the dissenting Member in the A.N.P.A. case to the effect that this practice was merely part of the whole scheme violative of Section 8(b)(2) and not, therefore, violative of Section 8(b)(1)(B). 69

D. Industries, Unions, and the Employment Relations Involved in Section 8(b)(1) Cases

1. Industries and Unions

A number of significant trends are reflected in an examination of the kinds of industries, the unions and the type of employment relationship existing wherein unfair labor practices have arisen under Section 8(b)(1).

No clear pattern emerges from the cases arising in connection with the so-called "direct" violations involving violence and discussed under the development of the narrow construction doctrine. However, several developments occurring in indirect violation cases considered under the narrow doctrine merit analysis. The same is true of the cases arising under the "broad interpretation" while further such analysis of Section 8(b)(1)(B) cases for developments along these lines is necessarily perfunctory since only one union and industry are involved.

It must be kept in mind that the consideration of numerical data here refers to precedent and policy development cases and not to overall statistics of enforcement in other than contested cases. Hence, the approximate total of 350 cases arising under Section 8(b)(1)(A) over the ten year period included in the study is not greatly significant as an absolute number. Approximate percentages of the total are more revealing for the purpose of this analysis.

Of the total of contested cases arising under Section 8(b)(1)(A) decided by the Board from August 22, 1947 to December 31, 1957, approximately fifteen per cent were ones involving direct action, usually violence, and analyzed herein under the heading of the narrow con-
struction doctrine applied in Section 8(b)(1)(A) charges. Approximately eighty-one per cent were of the variety referred to as indirect action, usually economic reprisals of some form, summarized under the narrow construction doctrine heading of Section 8(b)(1)(A) and covering also Section 8(b)(2) charges. Only an approximate four per cent arose in connection with violations constituting those called the broad interpretation under Section 8(b)(1)(A).

Considering the first category referred to above, the major portion (sixty per cent) of violations involving violence occurred on recognition and organizational picket lines. About half as many (thirty per cent) occurred on contract strike picket lines. The remainder (ten per cent) involved acts or threats of assault against specific individuals. In the majority of all these cases, the employer filed the charge with the Board.

The United Mine Workers of America and the International Brotherhood of Teamsters tie for first place in frequency of violations. The combined building trades unions (Carpenters, Operating Engineers, Painters, Bridge and Structural Ironworkers) follow closely with the maritime industry (I.L.A., Marine Cooks, N.M.U.) next in order. The remainder of these cases reflect a variety of manufacturing industries and unions, e.g.
I.A.M., I.L.G.W.U., U.A.W., Textile Workers Union, Retail Clerks, United Shoeworkers, Steelworkers, etc.

The nature of the inference to be drawn from these violations requires somewhat more evidence in the form of numbers to say that one union is more involved in recognition and organizational campaigns or that one is more prone to resort to violent tactics than another.

The clearest trend in Section 8(b)(1)(A) violation cases, however, occurs in those cases involving economic reprisal by the union against individual employees through the employer. In almost all of these cases individual employees filed the charges. In a few, another union or the employer filed them both on behalf of themselves (where other charges were involved) and on behalf of individual employees.

The building trades account for approximately forth per cent of these cases. The International Brotherhood of Carpenters and Joiners are by far the most frequent violators in this group with one-third of the violations. The Operating Engineers account for about half as many as the Carpenters and the remainder of the building trades group follow in this order: Hod Carriers, Boilermakers, Plumbers, Electrical Workers, Bridge and Structural Iron Workers, Plasterers, Painters, and the Heat and Frost Insulators.
The International Brotherhood of Teamsters and its locals account for more of this type of violation than any other single union including the Carpenters. The Carpenters have twelve per cent of the total while the Teamsters have fifteen per cent of these cases. This is almost as many as the printing and allied trades and the maritime industry unions combined, the latter having a little in excess of ten per cent and the former a little in excess of five per cent of the total cases involving economic reprisal against individual employees. The remainder (some twenty-nine per cent) of these cases reflect a variety of industries and unions in manufacturing, retailing, wholesaling, fruit packing, meat and other processing industries and chemicals.

Those cases arising in connection with the broad interpretation reflect with little doubt the dominance of one union in this area, namely, the Teamsters. The I.L.A. independent, Building Services Employees, United SheetWorkers, Operating Engineers and the I.A.M. were all involved at least once. But the Teamsters were involved in more than half the cases. It is noticeable also that in almost all of the Teamsters' cases, recognition or organizational picketing was the causal factor while some of the others involved "sweethearting" or just the signing of the contract.
One would expect the industry in these cases to be some form of transportation. However, only three involved drivers and these were local deliverymen for a newspaper, building materials firm and a local moving, storage and furniture company. With the exception of the maritime case involving stevedoring, the rest including the Teamsters' cases involved manufacturing of parts and equipment.

2. The Employment Relationship

As one might suspect from the preceding discussion, the control exercised by unions over the job situation plays an important part in determining which are the major industries and unions involved in the majority of unfair labor practices arising under Section 8(b)(1) and particularly paragraph (A). It is equally true that the nature of the industry itself helps fashion the character of the employment situation. Thus, in the building and construction industry, the lack of permanence of any one job gives rise to the need for an arrangement for employees which provides a means for obtaining stability in employment without continuous searching and at the same time serves the employer's need for competent employees for intermittent employment without all of the high costs of rapid turnover.
The bulk of Section 8(b)(1) cases have arisen in situations involving economic reprisals or union caused employment discrimination in some form. They have occurred where the employee is in large part dependent upon the union for getting and keeping his job. Thus, those industries and unions long operating under hiring hall and closed shop arrangements such as the building trades, the maritime industry and the printing trades account for the major portion of such cases. This is understandable as the Act prohibits a closed shop arrangement. The union hiring hall is still common in these industries in spite of the Act's provisions and it always borders on the danger line of being discriminatory with respect to the employment of non-union individuals. As previously indicated, until the Board embraces a more realistic appraisal of this work arrangement or the legislature changes the Act as it applies to these arrangements, these industries and the unions therein face rather disruptive forces in their every day work relations.

Such arrangements also usually involve a local union business agent. It is this additional factor which thus includes the Teamsters Union as well as others involved in these cases (the remaining twenty-nine per cent referred to in this connection).
The business agent is given the responsibility for handling what is in effect almost complete control over job referrals and "union" approval in the day to day operations of the union. In addition, often the calling of a strike or the direction of on-the-job stewards is to a large extent left to the business agent. This operates as a further possible restraint in that the demands of the business agent may be backed up by a threat to "pull the others off the job" or by threats of disciplinary action to others if they do not "straighten up and go along." It is for these reasons that so many of the foregoing cases involve the business agent himself as a defendant as well as the union.

Such a situation stands in marked contrast with both the employee-job relationship and the functioning of the local union in industrial plant types of employment. Here, employment is a continuing thing. For the most part referral and hiring previous to reporting on the job are largely up to the employer. The day to day operation of union business only on rare occasions involves the kind of pre-job control described above.

Union control over the job situation and the operation of a closed shop arrangement do not require a contract clause to this effect to make them work. While the Board has ruled such contracts illegal and further,
has repeatedly ruled violative the discrimination resulting even under a legal "nondiscriminatory arrange-
ment," it has been demonstrated that economic conditions cannot be legislated. If the power exists, a written "nondiscriminatory" clause does not remove it. Thus part of the reason for so much of the activity under this Section of the Act becomes obvious, for each act of discrimination is the basis for a new charge.

The preceding point will be taken up again but in more detail in the next chapter on Section 8(b)(2). The matter of remedy is also postponed to a later chapter since much of it arises in connection with Section 8(b)(2) violations which are also Section 8(b)(1)(A) violations.

E. Summary

The generality of the statutory language of Section 8(b)(1) lends itself to confusion. While the legislative history of the Section helps establish the meaning of the words "restrain" and "coerce," it contains a number of inconsistencies which have not been helpful in eliminating the confusion.

The Board first resolved these differences by developing and following a narrow construction of the terms in this portion of the Act. Thus in the National
Maritime Union case and affirming and extending in the Matter of Sunset Line and Twine Company, Matter of Perry-Norvell Manufacturing Company, Matter of Smith Cabinet Company, Matter of Seamprufe Manufacturing Company, Inc. cases, as well as in Matter of H. Milton Newman, the Board ruled that two general kinds of behavior were meant to be proscribed by paragraph (A) of this Section. Direct violence, force or threat thereof, to employees to join or not to join a union were deemed clearly to be "restraint" and "coercion." Such violence may often accompany a strike and occur on the picket line or through mass picketing itself but may also be directed at specific individuals in the form of assaults or threats in other than strike or picketing situations. In any event, the "touchstone of the strike" and peaceful picketing which were ruled usually violative are the means by which these are accomplished and not the strike or picketing itself, if properly conducted.

Under this same construction of terms, acts or threats of economic reprisals to specific individuals or groups of individuals were ruled violative. Such behavior may take the form of statements to individuals by agents of the labor organization that they would lose their jobs if they did not join. Usually, however, such acts or threats are indirect and accomplished through
the employer. These violations take a number of forms including union caused discriminatory discharges, discriminatory refusals to hire, and discrimination in the terms or conditions of employment. The manner by which employers are so caused to violate the Act may involve a threat to strike or an actual strike. It may result from illegal closed shop or discriminatory contract terms to which the employer is a party. And of course, such "causing" has resulted from combinations of the preceding means. Discrimination in terms or conditions of employment has reflected a wide variety of violations the most significant of which have involved seniority reductions, variations in pay, application of union rules as conditions of employment and denial of certain welfare benefits.

The Board's established precedent of the proscription of Section 8(b)(1)(A) as to strikes and peaceful picketing was overturned in the Curtis Brothers case. The decision was set aside by the Court of Appeals from the District of Columbia but is currently pending review. The doctrine expressed therein by the Board's majority is to the effect that peaceful picketing for recognition by a minority union may injure the economic position of the employer in such a case and hence act to coerce his employees in their rights to
refrain from joining a union guaranteed in Section 7. This principle was extended to cover customer boycotts attempted or induced by such minority union. The Court ruled, however, that such a construction of Section 8(b)(1)(A) would tend to expunge from the Act Section (13) which protects the right to strike. In addition, it would make redundant Section 8(b)(4) which specifically limits "kinds" of picketing. Since obviously neither of these accomplishments were the intent of Congress, the Court ruled that a construction of terms by the Board which achieved this effect was not valid. However, not all the possibilities under this principle are thereby negated if the Court is upheld. For customer boycotts may be proscribed and hence different from strikes or picketing in this respect.

Under Section 8(b)(1)(B), the Board has had only a few occasions to interpret restraint and coercion as applied to employers in the selection of their representatives for collective bargaining and settlement of grievances. The demand for a contract clause backed up by a strike to require the employer to hire only union foremen was ruled violative of paragraph (B). However, the Board specifically stated such a ruling should not be construed as prohibiting collective action of employees to induce an employer to get rid of
individual supervisors to whom objection is raised.

An examination of all contested cases arising under Section 8(b)(1) over the ten year period reveals a wide variety of industries and unions involved. However, the classification scheme used above in discussing the violations reflects on analysis a number of significant trends. Under the direct, violence cases, the United Mine Workers and the International Brotherhood of Teamsters are the most frequent violators. Additionally, such violence more often occurred on recognition and organizational picket lines than in contract strikes or through threats or assaults of specific individuals.

The majority of Section 8(b)(1) cases arose in connection with acts or threats of economic reprisal accomplished indirectly through the employer. Here, it becomes apparent that the employment relationship and degree of union control over the job are important factors. The less permanent the job situation and higher degree of control exercised by the union, particularly through a business agent, the more likely union unfair practices under Section 8(b)(1)(A) will occur in the industry. Hence the vast majority of this largest group of cases under Section 8(b)(1) involved the building trades unions, the Teamsters, the maritime
industry and the printing trades unions. The Carpenters led the building trades group, the I.L.A. independent stands out in the maritime industry and the I.T.U. similarly led the printing trades group. It is significant that all of these unions and the industries in which they function have been previously characterized by closed shop arrangements along with union hiring halls and union job referral systems.
CHAPTER V.

SECTION 8(b)(2) - EMPLOYMENT DISCRIMINATION CAUSED OR ATTEMPTED BY A LABOR ORGANIZATION OR ITS AGENTS

A. Introduction

In the preceding chapter, discrimination in employment in its various forms was discussed from the point of view that such economic reprisals acted as a restraint upon or coercion affecting the free exercise by employees of rights guaranteed in Section 7 of the Act. The concern of this chapter although closely related to the foregoing subject is confined to only one aspect of it. It rests in establishing the "permissive" limits which the Act places upon such discrimination. Hence, it centers on the degree of protection or security which the law allows a labor organization in its use or control of employment itself as a method of self preservation or perpetuation. Also, since the greater portion of 8(b)(1) restraint and coercion cases involved some form of employment discrimination, the analysis of the remedial part of the
Board's orders in these cases more appropriately follows the extended discussion of such discrimination set forth below.

The element of confusion which is one pervasive characteristic of preceding analysis is not lacking in Section 8(b)(2) issues. While the Board, with court approval, has settled these issues with somewhat more finality than those referred to in Chapter IV, not all experts agree that such policies represent a correct interpretation of the intent of the Act. This is true particularly concerning the question of legality in requiring union membership as a condition of employment.¹

This uncertainty arises in part from an inconsistency in the language of the Act itself; however, a comparison of the legislative history of intent with that inconsistency in language also reflects the uncertainty. The latter, however, will be examined subsequently in the case analyses.

The inconsistency in statutory language appears in considering the two Provisos to Section 8(a)(3) in conjunction with the Proviso to Section 8(b)(1)(A),

Section 8(b)(2), and the wording of Section 14(b).

Section 8(b)(5) appears to add little to clarifying the meaning of terms.

Section 8(b)(2) makes it an unfair labor practice for a labor organization or its agent:

to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;\(^2\)

Section 8(a)(3) of the amended Act provides it shall be an unfair labor practice for an employer:

(3) by discrimination in regard to hire or tenure employment or any term or condition of employment to encourage or discourage membership in any labor organization:
Provided, that nothing in this Act, or in any other statute of the United States shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit

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\(^2\)Public Law 189, 82nd Congress, 1st Session, October 21, 1951, Title I, Section 8, Subsection (b)(2).
covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such an election have voted to recind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;..." 

The Proviso to Section 8(b)(1)(A) reads:

Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

Section 14(b) refers to union membership as follows:

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.
Section 8(b)(5) also directly refers to conditions of membership as opposed to employment, and states that it is an unfair practice for a union:

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances...

Considering each of these portions of the Act, the first Proviso to Section 8(a)(3) clearly refers to an agreement between an employer and a labor organization which requires "...membership therein or or after the thirtieth day following the beginning of such employment..." as a condition of employment. Yet, the second Proviso to Section 8(a)(3) prohibits discrimination under such agreement, if the employer has reasonable grounds for believing membership was denied or terminated for reasons other than failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. In other words, the only condition of membership in a labor organization for which protected discrimination may occur appears to be nonpayment of periodic dues and uniformly required initiation fees and nothing else. Hence, the Proviso to Section 8(b)(1)(A) and
Section 8(b)(5) become redundant in this respect since neither can be a basis for protection of a labor organization under the Act, nor are they necessary to an unfair practices charge entirely covered by Section 8(b)(2). However, an exception may occur under Section 8(b)(5) when variation in fees is allowed if not excessive nor discriminatory. This exception may be eliminated in large part by strict construction of Section 8(b)(2) and/or 8(a)(3). Section 14(b) merely repeats the term membership but gives that term no additional meaning as it does not define conditions of membership. Membership is a disturbingly narrow term, however, when confined to only the one requisite referred to above.

B. Development of Public Policy and the Law in Section 8(b)(2) Cases

Discharge is the most common form of employment discrimination occurring in Section 8(b)(2) cases. Refusal to hire is next in importance and some form of discrimination in terms or conditions of employment or tenure follows.

A distinction may be made between attempting to cause an employer to violate Section 8(a)(3) and the
actual causing of discrimination thereunder by a labor organization or its agent. The Board held in a series of early cases wherein it first ruled on Section 8(b)(2) that insistence on the inclusion of an illegal (closed shop) union security clause in a contract was a violative attempt to cause an employer to so discriminate against his employees. The lead case in this series was the previously referred to National Maritime Union case.

In ruling on the proscriptive meaning of Section 8(b)(2) in the National Maritime Union case, the Board indicated that the "statutory language was quite clear" and, hence, there was little need to examine the legislative history of this Section for intent of Congress on this issue. However, the Board favorably regarded such an examination to emphasize clearly the broadly inclusive meaning Congress had attached to the Section regarding this issue. It thus concluded "all attempts to cause an employer to violate

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3 See cases cited at footnote 27, Chapter III.
4 78 N.L.R.B. 971, supra.
5 Ibid, p. 974.
Section 8(a)(3) were covered by Section 8(b)(2). Before examining these cases in detail, it is appropriate to further explain another general limit upon them as well as upon the "causing" cases.

The obvious next step in setting the limits of proscription is to define what constitutes the protected permissive limits of discrimination under Section 8(a)(3) which a labor organization or its agent may cause or attempt to cause. Once this is done, it may be seen clearly that both violative and protected acts of causing or attempting to cause will be those falling outside or within these limits respectively. The Board did precisely this in the Union Starch and Refining Company case, ruled upon in 1949 and upheld by the court in 1951. In this case, the Board majority, after a detailed examination of the legislative history, strictly construed the language of the Provisos to

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6 Ibid, footnotes 4, 5 and 6, p. 974.
Section 8(a)(3) and that of the latter portion of Section 8(b)(2). In so doing, they held it was the intent of Congress and, therefore, so ruled that the Act sanctioned only the requirement of payment of periodic dues or uniformly required initiation fees as a membership condition that could also be a condition of employment. Thus, they overruled the language inconsistency noted earlier in this Chapter and favored the "narrow" concept of membership.

The dissenting minority felt that such a construction of terms was an interference with the freedom of unions to prescribe conditions of membership intended by the legislature in the Proviso to Section 8(b)(1)(A). They felt also it was a misconstruing of the clear language of Proviso A of Section 8(a)(3) which refers to permitting the requirement of membership as a condition of employment and not merely bargaining unit support payments. The Majority, however, held that the Proviso to Section 8(a)(3) first protects an individual from non-membership discharge for some

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8Ibid, footnotes 9, 12, 13, pp. 783-84; and, footnotes 14-19, pp. 785-86.
9Ibid, pp. 790-94.
discriminatory reason not generally applicable and secondly protects employees who have tendered dues and been denied membership for any other reason even though it be nondiscriminatory.\textsuperscript{10} Thus, an individual discriminatorily excluded from membership is protected whether or not a tender is made. Such an employee may not be entitled to membership, but even so he may not be deprived of or is entitled to keep his job. Hence, held the Majority, there is no interference with the freedom of labor organizations to prescribe their own conditions of membership but only with the extent to which those conditions can also be made conditions of employment. The interpretation of the Majority now represents settled law. It should be noted that the Majority's references to legislative intent were comprehensive and convincing to the court. The Minority's argument rested primarily upon the logic of the statutory language.

With these broad limits established, subsequent cases occurring under Section 8(b)(2) may be examined under the general categories of protected and unprotected discrimination attempted or caused by a labor

\textsuperscript{10}Ibid, p. 783.
organization. Discharge, refusal to hire and discriminatory conditions provide a further convenient classification within these categories.

1. Protected Causing of Discrimination

Concerning protected discrimination, a number of variations have occurred. These, of course, fall within the limits of the non-payment reason except for a few early cases arising after the Act of 1947 but not yet covered by it.\(^{11}\) Non-discriminatory discharges, ruled as such by the Board, fall into two groups. The first involves discharges caused by a labor organization under valid union security clauses for non-payment of dues or fees.\(^{12}\) The Board held in these cases that chronic delinquency is cause for valid discharge and more lenient terms previously accorded such individuals by a union are no defense if not accorded again.\(^{13}\)

\(^{11}\) N.L.R.B. 866; 86 N.L.R.B. 1264.


\(^{13}\) 94 N.L.R.B. 508, supra; 97 N.L.R.B. 737, supra; 100 N.L.R.B. 1151, supra.
Also, professed ignorance or negligence of an individual in meeting the dues and fees requirements of the contract are not excuses provided the union has given adequate notice to employees.\(^{14}\) Nonpayment of initiation fees by former members without an honorable withdrawal or who are expelled were ruled as valid bases for discharge.\(^{15}\) A Board ruling that a dues discount for attending meetings and paying dues there was an invalid nonattendance fine was reversed by the courts. It is thus an allowable basis for discharge.\(^{16}\)

A second group of non-discriminatory discharges concerns what may be referred to as valid discharges by an employer for legitimate reasons not involving union dues. For example, incompetent workers or "trouble makers" have charged their unions with causing them to be discharged discriminatorily because of prejudice when in fact the employer was solely responsible.\(^{17}\)

\(^{14}\)103 N.L.R.B. 64, supra; 106 N.L.R.B. 545, supra; 116 N.L.R.B. 1398, supra.

\(^{15}\)99 N.L.R.B. 1430, supra; 106 N.L.R.B. 670, supra.

\(^{16}\)115 N.L.R.B. 1542, supra.

\(^{17}\)92 N.L.R.B. 42; 99 N.L.R.B. 849; 100 N.L.R.B. 989; 107 N.L.R.B. 332; 116 N.L.R.B. 1588.
Supervisors are not protected from union caused discriminatory discharge\(^{18}\) nor are a sub-contractor's employees so protected when discharges are caused by pressure of the union on the general contractor who is not the employer of the sub-contractor's employees.\(^{19}\) The same is true of the independent contractor himself as well as individuals fronting for a non-complying union.\(^{20}\) A number of these cases involved discharges, the causes of which were attributed to a union, but wherein the charge was dismissed for lack of evidence that it was so caused.\(^{21}\) An interesting variation of this occurred at a plant where a no work movement, independent of or not explicitly sanctioned by the union, was begun by individual workers against nineteen workers who were driving automobiles of another manufacturer. The Company claimed it had to discharge the

\(^{18}\) N.L.R.B. 1576.

\(^{19}\) 106 N.L.R.B. 611; 116 N.L.R.B. 119; 116 N.L.R.B. 943.

\(^{20}\) 101 N.L.R.B. 445, supra; 106 N.L.R.B. 611.

\(^{21}\) 100 N.L.R.B. 367, supra; 100 N.L.R.B. 989; 110 N.L.R.B. 638; 112 N.L.R.B. 1283; 114 N.L.R.B. 1077; 114 N.L.R.B. 1556.
nineteen to restore harmonious working relations. The discharges were ruled non-discriminatory and not union caused by the Board and the court.\textsuperscript{22}

Non-discriminatory refusals to hire or employ caused or attempted by a labor organization or its agent are somewhat less numerous than discharges. The refusal by a union to refer a member not next on its assignment list was deemed not discriminatory as no employment by an employer had been refused. The same principle was affirmed when lack of referral was based on failure to maintain good standing by paying a union assessed fine.\textsuperscript{23} As in the case of discharge, supervisors or ex-supervisors reapplying for supervisory work are not protected from union caused discriminatory refusal to hire.\textsuperscript{24} Several instances of a lack of evidence as to union causation have occurred regarding this issue as well as in discharges even though in both instances there have been subtle indications of the

\textsuperscript{22}110 N.L.R.B. 1307, enforced, \textit{supra}.  
\textsuperscript{23}93 N.L.R.B. 319; 119 N.L.R.B. 810.  
\textsuperscript{24}99 N.L.R.B. 695, enforced.
union's influence.\textsuperscript{25} In one case, the discriminatory refusal charge was barred by the six months statute of limitations of Section 10.\textsuperscript{26}

Conditions charged to be discriminatory though found by the Board to be non-discriminatory are considerably fewer than their discriminatory counterparts to be examined in the next section. The Board held that reduced seniority, lay-off and ultimately transfer resulting through bad standing in the union because of non-payment of dues under a valid union security clause was protected.\textsuperscript{27} In two such cases, the seniority practice was deemed unrelated to union membership although it provided differences in treatment of employees on the basis of temporary as opposed to permanent status, and location of work as opposed to date of hire.\textsuperscript{28} In another seniority case, the act of reduction of seniority, while discriminatory, was ruled not to be continuing and hence barred by the six months limitation statute.

\textsuperscript{25}94 N.L.R.B. 526; 95 N.L.R.B. 1480; 100 N.L.R.B. 556.
\textsuperscript{26}117 N.L.R.B. 1032.
\textsuperscript{27}93 N.L.R.B. 981.
\textsuperscript{28}101 N.L.R.B. 905; 108 N.L.R.B. 1008.
The Board in two cases made rather lenient rulings on union security clauses.\(^2^9\) In one, an illegal union security clause was ruled as not having been violative of Section 8(b)(2) because the parties did not enforce it and did not intend to enforce it. Therefore, the existence of the clause constituted only a simple violation of Section 8(b)(1)(A). In the other case, the Board was considerably influenced by a current court decision to the effect that collective bargaining agreements are not to be construed in a strictly technical legal way as they are not drawn up as such.\(^3^0\) In this case the Board reversed the Trial Examiner to hold that a strictly technical violation of the thirty day grace requirement actually was not intended by the parties, and should not be found to be violative of Section 8(b)(2). The dissenting Member felt the Board was departing from established precedent much the same as a different dissenting Member had in the preceding case. However, these two cases are not representative

\(^2^9\)N.L.R.B. 354; 109 N.L.R.B. 1125.

\(^3^0\)N.L.R.B. v. United Electrical, Radio and Machine Workers of America, Local 622, 203 F. 2d 673 (C.A.3).
of the Board's rulings on such clauses as will be demonstrated in the unprotected or violative instances of union caused or attempted discrimination which follow.

2. Unprotected Causing of Discrimination

Approximately sixty per cent of all Board decisions in CB\textsuperscript{31} cases involved Section 8(b)(2) violations of the so-called unprotected variety. That is, the vast majority of Section 8(b)(2) cases involved unprotected causing or attempts to cause an employer to violate Section 8(a)(3) with regard to discharge, refusal to hire or some condition of employment as opposed to the preceding protected instances. Since there is considerable variation within the previously outlined limits, it will facilitate clearer presentation to further classify under more detailed headings. This is done by labeling the sections with the chief causes of violation; however, a mutually exclusive classification scheme would virtually be impossible even with an unduly long list.

\textsuperscript{31}Cases arising under any or all of Sections 8(b)(1), (2), (3), (5), and (6).
a. **Illegal Forms of Union Security**

Perhaps the most obvious violative situation occurs where no union security clause was in effect and hence where no sanction protected by law could be invoked by a union for lack of support thereof or membership therein. For it is only under a valid union security clause that any sanctions may be applied and this validity is circumscribed by the permissive limits established by the Provisos to Section 8(a)(3).

As might be expected, these cases have been characterized by several necessary supporting conditions prevailing in addition to the "no-clause" situation. For a labor organization or its agent to cause an employer to discharge, refuse to hire, or discriminate otherwise requires more than a mere desire for such to be done. A strike or a threat to strike to back such a "request" has been common characteristic of these situations. The strikes themselves for such a discriminatory purpose have been ruled as violative of Section 8(b)(2) by the Board and upheld by the Court whereas mere
requests would not have been violative. In addition, the existence of effective closed shop conditions not written in a contract but such as characterize particularly the entire building trades are themselves in many cases a sufficient device for effectuating such discrimination. The lack of a union referral to a job may be a denial of the only means of getting one. Certainly where strong union loyalty and control exist, the jobs of others may hinge on not working with one


who has an infraction of union rules against him and is in bad standing, none of which requires a formal strike to effect the discrimination. The maintenance of such situations and the enforcement of such practices have, of course, been ruled as violative of the Act by the Board and the Courts in the cases cited.

Closely related to the preceding violative circumstances is the situation in which a written closed shop clause is the form of union security existing in the contract and enforced by the contracting parties. It was indicated in the previous chapter that the mere existence or execution of such a clause has been ruled by the Board to violate Section 8(b)(1) since it acts as an illegal restraint on employees in the free exercise of rights guaranteed them in Section 7(a). Its existence also has been ruled a form of discrimination the enforcement or application of which is likewise a violation of Section 8(b)(2). This is true for at least two separate reasons. It "causes" the employer by discrimination in regard to hire or tenure to encourage union membership. But additionally, such a clause denies the statutory requirement of a valid agreement which allows a grace period of thirty days after the date of employment. The cases arising
under this condition have generally contained instances of discharge and refusal to hire. The variety of discrimination in conditions of employment were described previously in Chapter IV and hence only the cases are cited. 34

Another variety of illegal union security clause which has at times bordered on what might be called a technical violation is that wherein the only illegal provision was for something less than the thirty days specified in the Act. 35 If these cases


were merely variations of the closed shop situation, they would require no comment. However, it is a curious situation and apparently without explanation, other than ignorance of the law, that in some cases the period allowed has been three days, thirty-six days, twenty-one days, thirty days for new but none for rehires, and interpretations of the contract allowing none even for new employees when such a contract did not provide a closed shop clause.

A distinction in illegal union security also may be made where the clause is of the valid form, but is invalid for other reasons. These cases reflect three discernible reasons. One concerns the previously noted practice largely attributed to the International Brotherhood of Teamsters. In this instance, the valid form of clause becomes an illegal attempt to cause the employer to discriminate because the contract containing

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36 97 N.L.R.B. 386, enforced, supra.
37 118 N.L.R.B. 775, supra.
38 108 N.L.R.B. 912, supra.
39 111 N.L.R.B. 1055, supra.
40 108 N.L.R.B. 1214, supra; 114 N.L.R.B. 241, enforced, supra.
it is signed by the union while it lacks majority status or Board certification. In several cases the contracting union not only lacked such authorization but executed such a contract in the face of a rejection by the employees in a Board conducted election shortly prior to the contract signing.

Further reason for such a valid form of union security being declared violative has rested in the non-compliance status (in some form) of the contracting union. This was particularly true prior to the 1951 amendments of the Act when a Board-conducted union shop authorization poll was a necessary condition as well as compliance with the filing requirements of Section (9) for execution of a valid union security clause.

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294 N.L.R.B. 1358, supra; 115 N.L.R.B. 251, supra; 118 N.L.R.B. 808, supra; 118 N.L.R.B. 1312, supra.

385 N.L.R.B. 725, enforced; 87 N.L.R.B. 703, set aside on other grounds; 91 N.L.R.B. 504; 92 N.L.R.B. 1642, enforced; 93 N.L.R.B. 680, enforced; 94 N.L.R.B. 440; 94 N.L.R.B. 1195, enforced; 94 N.L.R.B. 1494; 97 N.L.R.B. 517, enforced.
The relationship of Section 14(b) to even a valid union security clause required only one Board decision, enforced by the Court, to make clear its meaning. The case involved a discharge for dues delinquency under a union shop contract in the State of Tennessee. That State's right-to-work law, however, invalidated any form of union security. Hence, the Board ruled that under such circumstances, the union's behavior was unprotected activity.

b. **Violative Causes Aside From Forms of Union Security Occurring Under Both Valid and Illegal Forms**

There is a wide variety of reasons behind the actual or attempted causing of discrimination by unions arising in the cases to be discussed in this section. Some show evidence of a clear trend but a majority do not. The former include fines, dual or anti-unionism and retroactive application of union security provisions including "escape periods." The group constituting the remainder are arranged to emphasize both valid and invalid union security arrangements. In addition, they

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44 98 N.L.R.B. 824, enforced.
are arranged to illustrate discrimination based on non-membership, where membership was denied for other than nonpayment of dues, but exclusive of the three preceding reasons. There are a host of such reasons some few of which approach the importance of being trends.

The Board repeatedly has made it clear with court approval that fines may be imposed on members by their union for nonattendance of meetings, abusive language, rules infractions, not serving picket duty or the like; however, their payment may not likewise be made a condition of employment as may the payment of periodic dues and uniformly required initiation fees.45 This applies to fines of one dollar (\$1.00) as well as relatively exorbitant ones such as twenty-eight hundred fifty dollars (\$2850.).46 Uniformly applied and regularly required strike or other assessments are also outside the permissive limits of the Act in so far as


46 108 N.L.R.B. 117, supra; 117 N.L.R.B. 914, supra.
identification may be conditioned on them. A variation noted earlier which the Courts have approved contrary to the Board's ruling occurred where actual dues were raised by a union and a discount allowed for members attending the meeting and paying dues there. And where initiation fees are not uniform such as ex-member fees and higher initiation fees designed to punish those not joining before a certain date or supporting another union, such initiation fees have been ruled an invalid basis for discrimination under an otherwise valid union security arrangement. In several such cases the member was actually dues delinquent and therefore subject to sanctions. However, failure of the union to accept dues payments without payment first of the fine, or failure to notify clearly the employee that it would accept dues payments formerly rejected without conditioning them on fine payment, nullified the union's right to sanction. It also made further attempts of

47 110 N.L.R.B. 1925, supra; 111 N.L.R.B. 853, supra; 114 N.L.R.B. 350, supra.
48 115 N.L.R.B. 1542, set aside.
49 93 N.L.R.B. 1203, supra; 93 N.L.R.B. 1459, supra; 104 N.L.R.B. 639, supra.
employees to tender dues futile and hence not re-
quired.50 Discharges or other sanctions caused or
attempted therein were then, of course, violative of
Section 8(b)(2). This rationale was extended by the
Board in early 1955 to cover the circumstance where
even a belated tender of delinquent dues, made and
accepted after a valid discharge request but before the
actual discharge, forestalls such a discharge.51 Hence,
an individual may be protected not only up to the "last
minute" but a little beyond.

A considerable number of cases arose wherein
the labor organization attempted or caused discrimina-
tion for dual union activity and in a few instances for
anti-union activity.52 Two conditions were common in

50 92 N.L.R.B. 1073, supra; 110 N.L.R.B. 918, supra.

51 111 N.L.R.B. 411, enforced (supp. 112 N.L.R.B. 619,
    supra; 116 N.L.R.B. 645; 117 N.L.R.B. 405, denying
    summary enforcement and remanding on other grounds).
    Late exceptions filed.

52 89 N.L.R.B. 1490, enforced; 93 N.L.R.B. 1646; 96
    N.L.R.B. 522, enforced; 102 N.L.R.B. 347; 102 N.L.R.B.
    907, enforced; 104 N.L.R.B. 445, enforced; 106 N.L.R.B.
    1361; 108 N.L.R.B. 38; 108 N.L.R.B. 1406; 109 N.L.R.B.
    838, enforced; 110 N.L.R.B. 1151; 111 N.L.R.B. 460,
    enforced; 113 N.L.R.B. 668; 114 N.L.R.B. 415, enforced;
    114 N.L.R.B. 1300; 115 N.L.R.B. 1004; 116 N.L.R.B. 399,
    enforced; 116 N.L.R.B. 529; 116 N.L.R.B. 1652; 117
    N.L.R.B. 648; 118 N.L.R.B. 753; 102 N.L.R.B. 111; 116
    N.L.R.B. 842; 118 N.L.R.B. 380.
these circumstances. With few exceptions, the situation was one in which the union enjoyed a valid union security arrangement of the union shop variety and secondly had caused a discharge for non-membership. In these cases, the member had been expelled for promoting a rival union or for attempting to get rid of the existing one. In several instances the member was subject to valid discharge for dues delinquency. However, evidence that other delinquents were not so treated persuaded the Board that it was the illegal motive of rival or dissident activity and not dues which had been the controlling factor in expulsion and discharge.

The Board has been equally firm in its rulings on retroactive applications of valid union security provisions. In these cases, the member was put in bad standing but was not subject to discharge for nonpayment of dues since he was not legally required to pay them for protection under the Act. Two sets of circumstances generally may be identified here also. Under union shop clauses, attempts were made to exact dues from members

for a past period when the employee was not required by contract to be a member nor to pay dues. Also where maintenance-of-member types of union security clauses were in effect, resignation during the escape period has been refused and the collection of dues for this period attempted. Neither of these practices in the slightest variation have been permitted by the Board.

As noted earlier, a large group of cases reflect what may be called miscellaneous reasons for "causing" because of their general lack of similarity. However, these cases as a group do provide an insight into some of the difficulties in regulating such practices for they reflect a common goal of unions (but certainly not limited to labor organizations) to protect the continued existence of the organization, sometimes at the cost of the welfare of a few of its own members. It must be born in mind also, that from a

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54 89 N.L.R.B. 1446; 95 N.L.R.B. 464; 95 N.L.R.B. 969; 95 N.L.R.B. 1098; 101 N.L.R.B. 327; 102 N.L.R.B. 446; 113 N.L.R.B. 524, enforced.

55 89 N.L.R.B. 1446; 95 N.L.R.B. 464; 95 N.L.R.B. 969; 95 N.L.R.B. 1098; 101 N.L.R.B. 327; 102 N.L.R.B. 446; 113 N.L.R.B. 524, enforced.
strictly legal point of view these reasons do not differ
from an invalid union security arrangement such as the
closed shop or one lacking the required thirty days
grace period.

One recurring reason concerns the situation in
which a member gets into trouble with the local union's
business agent and is put in bad standing hence subject
to refusal to hire or discharge.56 The trouble may be
an infraction of union work rules or the like but was in
as many cases a personal difference or grudge.

Lack of referral by the union constitutes another
recurring reason.57 In this regard, the discharge or

56 N.L.R.B. 1381; 93 N.L.R.B. 28; 94 N.L.R.B. 1091,
enforced; 94 N.L.R.B. 1312, supra; 101 N.L.R.B. 123; 102
N.L.R.B. 1408, enforced; 102 N.L.R.B. 1542, enforced;
105 N.L.R.B. 669, enforced; 107 N.L.R.B. 617; 107 N.L.R.B.
1629; 108 N.L.R.B. 295, enforced; 108 N.L.R.B. 874,
enforced; 108 N.L.R.B. 1070, enforced; 108 N.L.R.B. 1337;
111 N.L.R.B. 22, enforced; 110 N.L.R.B. 468; 111 N.L.R.B.
952; 111 N.L.R.B. 1055; 112 N.L.R.B. 1289; 113 N.L.R.B.
111; 116 N.L.R.B. 1123, enforced; 117 N.L.R.B. 1542.

57 92 N.L.R.B. 1667; 93 N.L.R.B. 54; 93 N.L.R.B. 530,
enforced; 93 N.L.R.B. 1523; 92 N.L.R.B. 877; 92 N.L.R.B.
902, enforced; 94 N.L.R.B. 698, enforced; 94 N.L.R.B.
1260, enforced, 94 N.L.R.B. 1590; 97 N.L.R.B. 1407;
101 N.L.R.B. 589; 102 N.L.R.B. 153; 102 N.L.R.B. 881,
enforced; 104 N.L.R.B. 29, enforced; 107 N.L.R.B. 323;
107 N.L.R.B. 1043; 111 N.L.R.B. 206, enforced, supra;
111 N.L.R.B. 1126, enforced; 111 N.L.R.B. 1296; 112
N.L.R.B. 1059; 112 N.L.R.B. 1385, enforced; 111 N.L.R.B.
68; 114 N.L.R.B. 872, enforced; 116 N.L.R.B. 1267; 116
N.L.R.B. 1944; 119 N.L.R.B. 883.
refusal may have happened because the referral was not sought, but it is more likely to have been refused to a member for a host of other reasons. One such reason is the desire to control the local labor market in order to put local members to work first even if members of other locals have already obtained the job. The well known dispute over millwrights' work between The International Association of Machinists and the International Brotherhood of Carpenters also falls in this group of cases cited below.

A listing of additional reasons for expulsion or suspension of members and then discharge include: working on "unfair" materials, improper transfer of union card, not signing a check-off slip, waiting the full thirty days grace to join, inquiring into a local's finances, and not participating in a strike.

58 96 N.L.R.B. 118.
60 103 N.L.R.B. 1337, supra; 109 N.L.R.B. 326.
61 108 N.L.R.B. 1214, supra.
62 116 N.L.R.B. 1581, enforced.
63 93 N.L.R.B. 281, enforced; 118 N.L.R.B. 342.
Two additional interesting but rather unrepresentative examples involved the requirement of property ownership and twelve months residence for membership in the union in one case\(^4\) and refusal of membership in the other for not being willing to attend a local meeting to be formally initiated by its customary ceremonies.\(^5\)

C. Industries, Unions and the Employment Relationship Involved

In the preceding chapter, the industries, unions and employment relationships involved in those cases were examined in some detail. The so-called indirect violations of Section 8(b)(1)(A) accomplished through the employer and constituting restraint and coercion of employees in the free exercise of rights guaranteed in Section (7) were indicated to be the dominant group of violations under that Section. This was not meant, however, to diminish nor to exclude the importance of the other type of violations arising thereunder. However, it points up the significance of that analysis for Section 8(b)(2) cases. For in all of those cases, the complaints included Section 8(b)(2) as well as 8(b)(1)(A) charges.

\(^4\) 109 N.L.R.B. 874.

\(^5\) 95 N.L.R.B. 433; 115 N.L.R.B. 518.
In less than a dozen contested Board decisions were Section 8(b)(2) charges the exclusive basis of the complaints. These cases confirm without exception the conclusions set forth in the preceding analysis. Of the cases involved, the three not directly involving a building trades union were dismissed. Two were valid discharges and one involved lack of evidence of a discriminatory refusal to hire having been caused. All of the remainder of these cases involved building trades unions. This fact further confirms the earlier conclusions reached concerning the employment relationship involved.

D. Summary

The primary issue with regard to Section 8(b)(2) from the outset of the administration of the Act centered on the limits placed on union security by subsection (a)(3). Comparison of the various parts of the statute

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66 89 N.L.R.B. 276; 89 N.L.R.B. 418.

67 112 N.L.R.B. 1246, enforced.

68 The United Brotherhood of Carpenters and Joiners of America were involved in every case except one. This case involved the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.
which refer to trade union membership being made a condition of employment indicate some confusion, if not inconsistency, in the language of the Act (i.e., Section 8(a)(3), (b)(1)(A), (b)(2), (b)(5), and 14(b). The basic problem seemed to be whether the Act merely prevented "free-riders" in the bargaining unit or allowed membership itself, based on conditions other than dues and initiation fees, to be the "outside" limits on employment conditions, assuming the thirty day requirement to have been met.

In the National Maritime Union and Union Starch and Refining Co. cases the Board, with court approval, erased any previous doubts on the permissive limits of employment discrimination sanctioned and also outlawed by the Act. The Board majority interpreted the legislative history in this regard to mean that it was the intent of Congress to allow the conditioning of employment on union membership after thirty days only to the extent that such membership be conditioned on nothing but the payment of "periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership."

Thus, subsequent cases occurring under Section 8(b)(2) have reflected much less variation in protected
discrimination attempted or caused than have appeared in those involving what was ruled as unprotected under the Act. Nonpayment of periodic dues and/or fees under a valid union security clause barred violation of the Act by a union where it caused discharge for such reasons as chronic delinquency, refusal to afford lenient terms repeatedly and where nonpayment was based on ignorance or negligence of such contract requirements. Of course, employer discharges for "valid" cause and cases lacking adequate evidence of being union caused were likewise not violative. The same is true where supervisors, independent contractors and in some cases employees of sub-contractors were involved.

Behavior ruled as nondiscriminatory by the Board also included such things as refusal by a union to refer a member not next on its assignment list, not in good standing for failure to pay a fine and those of supervisory status. Discrimination allowed in conditions of employment involved seniority and job transfers some of which were unrelated to union membership. In addition, the Board has on occasion afforded less than a strict legal construal of vague union security clauses thereby barring violations based on the statutory grace period.
The vast majority of 8(b)(2) cases, however, involved violative or unprotected discrimination. Such unprotected activity has occurred under two somewhat distinct and general sets of circumstances. Illegal forms of union security constitutes one of these. Violative causes aside from union security and occurring under both valid and illegal forms of union security is the other; however this group also contains a large selection of miscellaneous causes akin to the closed shop arrangement in the first group, thus reflecting a degree of heterogeneity not susceptible to exclusive grouping and generality.

Within the illegal form of union security group, an important violative situation has been that where no clause was in effect but where a strike was used or an effective hiring-hall, closed shop arrangement existed to cause the discriminatory discharge, refusal to hire or employment conditions. Closely related to this situation are those cases arising under a written closed shop contract clause. Still another variety of illegal union security clause is that wherein the only illegal provision was one allowing something less than the statutory thirty day grace period. While a closed shop clause allows no grace period, these
clauses have ranged in grace periods from three to twenty-one days. Some were, however, variations of the simple closed shop provision. Further illegal union security clauses emerge from situations where the clause is of the legally permitted form but where the union by other provisions of the Act is not legally entitled to any security arrangement. These clauses were made invalid by reason of contracts signed without Board designated majority status, for non-compliance with the Act's filing requirements for unions and where a State right-to-work law barred union security protection under Section 14(b).

Many violations of Section 8(b)(2) have occurred for reasons other than the forms of illegal clauses described above. While those cases hinged on the grace period requirement and other limits of the Act placed on unions before they may make such agreements, the violations referred to here stem from the daily application of union security provisions. They involved most often some condition of membership other than the only requirement allowed by the Act; namely, the payment of periodic dues and initiation fees uniformly required for such membership. Discharge, refusal to hire, or discrimination in employment conditions were ruled
violative where caused by reason of nonmembership, when such exclusion was based on nonpayment of union imposed fines. Such cases have occurred under valid union security arrangements as well as illegal ones. The only exception to such fines being unprotected activity, as noted above, occurred where only refusal by the union to refer was involved and not where employment refusal itself was conditioned on a fine and subsequent "membership in bad standing." The Board has been equally firm in prohibiting retroactive applications of even valid union security clauses. This has included maintenance-of-member types where "escape clauses" provided opportunity for a member to resign and hence legally be required subsequently to pay no dues in that period. Conditioning present membership and employment on the payment of "back dues" covering a period when such payment was not legally required is violative of the Act. The same is true when membership and hence employment have been denied or terminated on grounds that the employee has engaged in "dual union" or anti-union activities. For as in the preceding cases, the union may condition "full" membership on whatever grounds it chooses, (i. e. the proviso to 8(b)(1)(A) but it may not make those conditions ones of employment if they exceed the limits
allowed by Section 8(a)(3). Falling within these
descriptive limits have been a host of such illegal
conditions under which membership in a particular labor
organization has been denied or terminated. These
reasons have included such things as "trouble" with
the local union's business agent, refusal of job re­
ferral to close the local labor market to "outsiders,"
working on "unfair" materials, improper transfer from
another "sister" local union, and not participating in
strike activity by serving picket duty.

Since the greater portion of Section 8(b)(1)
restraint and coercion cases involved some form of
employment discrimination, the analysis of industries,
unions and the employment relationship involved in
those cases is largely overlapping as to Section 8(b)(2)
violations. Less than a dozen contested cases involved
8(b)(2) charges as the exclusive basis for the complaint
and these confirmed the conclusions of the preceding
chapter in this regard.
CHAPTER VI.
SECTIONS 8(b)(3), (5), (6) - REFUSAL TO BARGAIN,
EXCESSIVE OR DISCRIMINATORY FEES
AND FEATHERBEDDING

A. Introduction

The three unfair labor practices which constitute the subject of this chapter have been the least applied, relatively speaking, of any of the Section 8(b) unfair labor practices. They have not, however, been lacking in terms of conflict and confusion over their interpretation and meaning. This is true particularly of Section 8(b)(3) and 8(b)(6). The proscriptive meaning of Section 8(b)(6) like it or not, and some do not, is now a matter of fairly well established law and public policy. The same is not true of the other two practices.

The National Labor Relations Act of 1935 or the Wagner Act, as it is commonly called, did not provide for any unfair practices of unions. Hence, there was no provision of law requiring unions to bargain in good faith. It has been asserted, therefore, that the presumption underlying it was that "the bargaining
overtures of unions were always made in good faith, simply because they were proposed by labor organizations!\(^1\) However, such a question of motive need not be raised at all for the particular circumstances with which the Wagner Act was designed to cope were such that whatever a union might demand in good or bad faith, the likelihood of getting more than a bare minimum in the existing power structure was quite slim. It is submitted that the law was designed to cope more with an economic and social power structure than with the question of motives at least insofar as it concerned application to the "under dog." Perhaps, much the same can be said of the Amended Act or Labor Management Relations Act of 1947. For motive seems to be significantly sought only when one has the power to act or do that which may be questionably motivated.

Section 8(b)(3) and its definitional partner 8(d) seem very much by their wording to be designed to regulate or restrict the use of pressure techniques which are economic power derivatives. An examination and analysis of the course of Board and court

\(^1\)Gregory, C. E., *op. cit.*, p. 415.
interpretation and application will shed light on the nature of some of these questions of meaning.

It has also been asserted in connection with Section 8(b)(6), that the Act was "...specifically designed to eliminate so-called featherbedding or make-work rules in collective bargaining, but it was completely unsuccessful in that regard." Further contention is made that "...Court rulings have made it unequivocally clear that the Act is no bar to such union practices." It may be pointed out at this juncture that what the Act was "specifically designed to do" and what some wanted it to be designed to do or think it was designed to do are differences which constitute the basis for much of the conflict and confusion that have arisen in connection with the Act's provisions. It may well be that final answers to what the Act was intended to do are not obtainable. At any rate, certainly the interpretation of the Board and the courts is significant for it represents what is the law and the public policy for all intents and purposes.


\[3\] Ibid.
B. The Development of Public Policy and the Law in Section 8(b)(3) Cases

One of the Board's first decisions under Section 8(b)(3) was that the demand for an illegal union security clause in a contract as a condition of further bargaining, and with strike action to support it, constituted a violation of the Act. The Board rejected the Trial Examiner's reasoning which concluded the violation rested on the union's adamant insistence on the clause and hence evidenced a closed state of mind with no sincere purpose to find a basis for agreement. The Board indicated that the union was quite sincere and had every intention of reaching an agreement based on the illegal clause. Therefore, its insistence on a practice which the Act forbids was the refusal to bargain and not a lack of good faith. The Court upheld the Board's reasoning and enforced its order. However, the Board itself was quick to agree that the legislative history indicated that it was the purpose of Congress to impose on labor organizations the same

478 N.L.R.B. 971, enforced, supra.
5Ibid, p. 982.
duty to bargain in good faith which had been imposed upon employers in Section 8(5) of the Wagner Act, and continued in Section 8(a)(5) of the amended Act. It cited the Congress' acceptance of previously developed Board tests of good faith as reflected in Section 8(d) to make its point.

The above ruling provided the basis for a whole series of subsequent cases all of which involved similar issues but some contained additional factors. The latter group contains the previously referred to International Typographical Union cases decided in 1949. In all but one of these cases, the union was found to have violated Section 8(b)(3) first by refusing to sign any contract and secondly by attempting to impose unilaterally an illegal closed shop arrangement. The first of these of course was evidence of legal "bad faith" bargaining since it implied a mind closed to reaching

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6 House Conference Report No. 205, 80th Cong., 1st Sess., p. 43.

7 82 N.L.R.B. 1344, supra; 82 N.L.R.B. 1365, supra; 95 N.L.R.B. 969, supra; 103 N.L.R.B. 1217, enforced, supra.

8 The exception was 87 N.L.R.B. 1263 and involved a situation wherein the local had tried to effect in good faith the previously existing contract hence did not violate Section 8(b)(3).
any bilateral agreement. The Amalgamated Meat Cutters case was also similar to these cases but the "bad faith" bargaining arose from the union's contention that it did not know the company was subject to the jurisdiction of the Board, a contention the Board felt it could not accept.

Two other cases along this line were dismissed as not meeting the conditions expressed above. In the International Longshoremen's case, the Board ruled that the employers had proposed and accepted such an arrangement and that the ensuing strike was for valid economic demands not the illegal hiring hall clause. As such, the hall arrangement constituted a violation of Section 8(b)(2) but was not a basis for an 8(b)(3) violation. In the Marine Cooks case, a similar charge was dismissed by the Trial Examiner and the Board since the clause in issue at the time of the contract strike action was not an illegal union security clause.

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9 86 N.L.R.B. 1041, enforced, supra; 87 N.L.R.B. 1215, supra; 87 N.L.R.B. 1418, enforced, supra.

10 81 N.L.R.B. 1052.

11 90 N.L.R.B. 1021.

12 90 N.L.R.B. 1099, supra.
A number of cases arising under Section 8(b)(3) involve dissimilar issues but contain the common ingredient of resting on what may be called technical grounds. The first of these concerned a situation wherein the non-complying United Mine Workers Union was found not to have violated Section 8(b)(3) by demanding an illegal union security clause backed up by strike action. The charge was much the same as in the previously cited National Maritime Union case. Since there was no appropriate unit designation by the Board under Section 9(a), and since only a labor organization representing employees in such unit is under duty by Section 8(d) to bargain in good faith, the Trial Examiner and the Board found that no Section 8(b)(3) violation could be ruled upon. Hence, only an 8(b)(2) attempt to cause discrimination was found. This occurred because of non-compliance with Section 9(e) (removed in 1951). Sections 9(f), (g), and (h) were not and are not a bar to an 8(b)(3) violation and Board order. Along this same line, the Board ruled in a recent case that a union's demand, with strike action, to bargain for more than or

1383 N.L.R.B. 916, enforced, supra.
other than employees in the Board determined appropriate unit was violative of the Act. The same is true of demands to bargain for supervisory personnel.

Perhaps more obviously technical violations occurred in connection with the requirement of notice provisions contained in Section 8(d), subsections (1), (3), and (4). In the first case involving subsection (3), the Trial Examiner ruled that simple failure by the

14118 N.L.R.B. 1481.

1596 N.L.R.B. 581, enforced, supra.

16The relevant portions of Section 8(d) provided in part: "...That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification: (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification; (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications; (3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes occurred, provided no agreement has been reached by that time and (4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:..."
union to notify the Federal Mediation Service within thirty days after notice to the employer was a violation of Section 8(b)(3). However, he said that since the ensuing strike occurred sixty days after notice to the employer, it was not illegal; for the conditions imposed by Section 8(d)(3) were in his judgement a "subordinate" or "ancillary" aspect of the Statute. The Board sharply reversed this part of the ruling. In doing so, it surveyed pertinent legislative history of Section 8(d) including the remarks of Senator Ives who was one of the chief supporters of the 8(d) amendment. The Board concluded that the Section was not "ancillary" nor "subordinate" and hence this violation of its terms by failure of complete proper notice as required by subsection (3) made the strike itself illegal. In a more recent case, the Board decided that mere failure to notify an appropriate State Agency, even though the Federal Service was properly notified, also constituted such a violation of the Act's requirements to bargain in

17109 N.L.R.B. 754.

18Senate Report No. 105 on S. 1126, 80th Congress, 1st Session, 24 (1947); See also 93 Cong. Rec. 5081 (1947).
good faith. Failure to notify either level of government agency sixty days prior to a contract strike constituted a violation even though the parties continued bargaining sessions. The question in this case also concerned whether Section 8(d) requirements apply only to the end of an old contract and attempts to get a new one when it expires or also to modifications of the old contract before it has expired. The Board has previously ruled that both situations were included within the proscriptive scope of Section 8(d).

In the earlier United Packinghouse Workers case concerning this same principle, the Board reversed the Trial Examiner and dismissed the complaint. The sole issue in this case was whether a union which calls a strike to secure modification of a contract before its termination, but more than sixty days after notice to reopen is given, has failed to comply with Section 8(d)

19117 N.L.R.B. 670.
20118 N.L.R.B. 220.
21109 N.L.R.B. 680, 693, set aside, 221 F. 2d 231 (C.A.8); 352 U.S. 282 (1957) reversing and remanding 221 F. 2d 231 (C.A.8); 245 F. 2d 376 (C.A.8) modifying 109 N.L.R.B. 680 in other respects.
2289 N.L.R.B. 310.
of the amended Act and thus Section 8(b)(3). The Board pointed out that the literal reading of Section 8(d)(4) made by the Trial Examiner would lead to a violative finding, for that subsection in relevant part requires no strike or lock-out for sixty days after notice or until expiration of the existing contract whichever occurs later. However, the Board majority felt such an interpretation renders the concept of contract modification a meaningless term, and this they could not accept as the intent of Congress. The detailed analysis of legislative history which followed produced the conclusion on the part of the Board that the primary reason for such sixty day notice was to eliminate "quickie strikes." The remarks of Senators Taft and Ball were particularly revealing on this point. The example used by Senator Taft illustrated a case where notice might be given thirty days prior to expiration and hence require no strike or lock-out for thirty days beyond expiration date. Thus, in the

23See footnote 16 of this Chapter for the full provisions of Section 8(d)(4).

Packinghouse Workers case, the strike was not illegal and the requirements of Section 8(d)(4) were ruled to have been met.

The concluding issue to be discussed in connection with Section 8(b)(3) cases concerns what might be called "limits" on union bargaining tactics. The Board began to impose these limits as early as 1954. However, final determination of them is still pending court decision at this writing, as will be explained subsequently.

In the Personal Products Corporation case involving the Textile Workers Union of America, the Trial Examiner and the Board ruled that such things as concerted slow-downs, refusal to work overtime, extended lunch and rest periods, and being late for work all occurring during the seasonal peak of business and while contract negotiations were going on constituted evidence of a refusal to bargain in good faith. Such harassment, asserted the Board, was perpetrated without the employer being informed of any specific demands which the tactics were designed to enforce nor what concessions

\[25\] 108 N.L.R.B. 743, enforced as modified (Section 8(b)(3) portion set aside).
could be made to avoid them.\textsuperscript{26} Again noting the legislative intent and particularly the purpose outlined in the policy statements in Sections 101 and 210, the Board concluded the union not only had bargained in legal bad faith but also had impaired the collective bargaining process by its acts.\textsuperscript{27} The Court majority in setting aside the Section 8(b)(3) portion of the order indicated that 
"...there is not the slightest inconsistency between genuine desire to come to an agreement and use of economic pressure to get the kind of agreement one wants...", a position which the Board took in the National Maritime Union case.\textsuperscript{28} The Court reasoned that if a strike is not here an evidence of bad faith and it is a total withholding of services, then a partial withholding of services at this time and for this purpose is not bad faith either. It further held that while such activity is not protected activity under Section 7(a) and the employer may discharge for it, it is not an unfair practice under Section 8(b)(3).

\textsuperscript{26}\textit{Ibid}, p. 746.
\textsuperscript{27}\textit{House Conf. Report No. 510}, 80th Cong., 1st Sess., pp. 43 and 34.
\textsuperscript{28}227 F. 2d 409 (97 app. D.C. 35), C.D. Vol. 9, p. 1379.
In the more recent Prudential Insurance Company case, the Trial Examiner held, in anticipation of Board approval, that the Court decision in the Personal Products Company case made such harassment during the course of continuing negotiations in this case not a violation of Section 8(b)(3). The Board, however, sharply reprimanded him for not following its precedent set in the Personal Products Company case. It said only the Board could reverse itself and would do so only after the Supreme Court had ruled on the question, as it disagreed with the majority of the Court in the Personal Products Company case. This occurred even in the face of the Supreme Court's order vacating the order which granted certiorari in that case. The Prudential Insurance Company case was set aside in October of 1958 and is currently pending request by the Board for certiorari.

In the interim between these two cases, the courts also refused enforcement in similar circumstances concerning two United Mine Workers Union cases. While

29 38 L.R.R.M. 2757.

8(d) notice requirements were violated in these cases, the Board ruled that violations stemmed from a strike in the face of a no strike clause in the contract in one case, and a strike against an arbitration award issued under the contract's provision for such settlement in the other. Thus after more than five years, the policy concerning these tactics is in a somewhat uncertain state.

C. The Development of Public Policy and the Law - Section 8(b)(5) Cases

Subsection (5) has received the least attention of any of the various aspects of Section 8(b). This is understandable for several reasons. As was indicated in Chapter II, the only protected form of employment discrimination under the Act is that provided for in Section 8(a)(3) and limited by provisos to that and other Sections of the Act, particularly 8(b)(2). As interpreted by the Board and the courts, such protected discrimination may require membership in a labor organization as a condition of employment only

\[\text{117 N.L.R.B. 1095, set aside.}\]

\[\text{117 N.L.R.B. 1072, set aside.}\]
after thirty days; but, membership may not be denied for any reason other than nonpayment of periodic dues and uniformly required initiation fees. Thus, if membership is denied and employment discrimination occurs for non-membership when the denial has been conditioned on refusal to pay any other than periodic dues and uniformly required initiation fees, the discrimination is subject to being declared not protected by law. Hence, any fee which is not of the class of "uniformly required" initiation fees or any dues not deemed "periodic dues" become subject to violation of Section 8(b)(2) provisions.

Section 8(b)(5) provides it shall be an unfair labor practice for a labor organization or its agent:

...to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;...

Now as one may observe, the only way that an excessive or discriminatory payment precedent to becoming a member could avoid at the outset the sanctions of Section 8(b)(2) is to be uniformly applied. With regard to
excessive, this would mean that all employees of a unit were required to make such payments assuming the Board found them to be excessive under all the circumstances. With respect to the payments being discriminatory, the situation would require the difference or discriminatory reason to arise outside the unit covered by the agreement such as one local being treated in a discriminatory way as compared to another local of the same international. For, if only an individual employee is charged an excessive or discriminatory amount, the condition of "uniformly required fees" in an appropriate unit is not met and the individual has been discriminated against in a manner prohibited by Section 8(b)(2).

Needless to say, the latter case is the most frequently encountered type of discrimination. In fact, all six of the contested cases in which the Board rendered decisions were of this variety. Only two lacked also an 8(b)(2) charge and one of these was dismissed largely because it did not meet 8(b)(2) violative conditions. Three of the six were dismissed and in the fourth the 8(b)(5) charge was not found but an 8(b)(2) violation was so found. Section 8(b)(2) thus is supplemented by 8(b)(5) but also overlaps in application to actual cases. There have been no court decisions in
any of the 8(b)(5) cases, however, there are a number of novel issues aside from 8(b)(2) matters.

In the Ferro Stamping and Manufacturing Company case, the first to come before the Board, the union was charged with requiring a higher initiation fee of "older"33 employees than "new" employees.34 It grew out of a situation wherein the United Automobile Workers won a representation election from the United Mine Workers, District 50. In trying to get such "older" employees to join, the majority threatened to and did raise initiation fees for them after the local acquired a valid union security clause. The Board upheld the Trial Examiner in ruling that the intent was clearly to punish the "older" employees who remained loyal to the other union and hence was discriminatory under all the relevant circumstances. It was pointed out by the Board that the mere fact that a union raises fees is not illegal and is permissable if not discriminatory, even to having a sliding scale for different classes of members; however, in this context such a scale was not the case. This

33Older in terms of length of service with the company.

3493 N.L.R.B. 1459.
principle was reaffirmed in the Bendix Aviation Corporation case where initiation fees were similarly predicated on length of service and designed to punish prior failure to join.35

In the Namms, Inc. case, the Board reaffirmed an 8(b)(2) principle that the requirement of back dues payments of former members is clearly more than periodic dues and hence violative of Sections 8(b)(2) and 8(b)(1). However, it ruled that "back dues" are not fees contemplated by the proscription of 8(b)(5) as indicated by the elimination of Section 8(c)(2) concerning dues from the Act as it was finally passed.36 The remainder of Section 8(b)(5) cases involved "ex-member" fees customarily imposed by many unions on individuals lacking proper or honorable withdrawals from such union and as a condition of becoming again a member in good standing. The Board held in all three cases that such fees were not discriminatory and dismissed the complaints. Only one such fee of $100. was charged to be excessive as

3599 N.L.R.B. 1419.

36The 8(c)(2) provision of H.R. 3020 was dropped in conference after that bill passed the House, (102 N.L.R.B. 466).
well as discriminatory and it was deemed not to be under these circumstances. It should be noted that a comparison of 8(b)(2) fee discrimination cases with those arising under 8(b)(5) disclose that the largest amounts of money involved have arisen in connection with 8(b)(2) and not 8(b)(5) complaints.37

D. The Development of Public Policy and the Law in Section 8(b)(6) Cases

The development of public policy and the law under Section 8(b)(6) of the Labor Management Relations Act of 1947 has a rather brief but controversial history. Only two Board decisions have been rendered under it, the first being the American Newspaper Publishers Association case decided in 1949,38 and the second the Gamble Enterprises, Inc. case decided in 1951.39 Both of these cases went the full round of court decisions including the Supreme Court.40

37See pp. 169, Chapter V, footnotes 45 and 46.
3886 N.L.R.B. 951, supra.
3992 N.L.R.B. 1528, supra.
While there is little disagreement in most quarters as to what the law in this regard now is, there appears to be some misconception as to where the responsibility for the limited proscription of 8(b)(6) rests and why. It will serve several purposes, therefore, to examine the nature of development of policy under Section 8(b)(6).

Section 8(b)(6) of the Act provides it shall be an unfair practice for a labor organization or its agent:

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

In the A.N.P.A. case the Board accepted the Trial Examiner's analysis and decision to the effect that the setting of "bogus type" by regular employees of the newspapers was not an exaction of money for "services not performed or not to be performed." Such was the limited type of featherbedding practices which the Board and Court believed the Congress had intended to regulate. It is at this point that the controversy begins for it is not the statutory language that is in question but

the intent that lay behind it. The most comprehensive survey and analysis of the legislative history of Section 8(b)(6) in all five of the court decisions or the two Board decisions and intermediate reports is to be found in the intermediate report in the A.N.P.A. case.\(^2\) A comparison of these decisions shows that all of them rest on selected portions of the original analysis and citations in that report.

The Board's decision, the appellate court decision and the majority decision of the Supreme Court in the A.N.P.A. case all excerpt from that report yet add basically nothing to its substance in their acceptance; therefore, the basic findings bear repeating here. It may be noted also at this juncture that the same may be said of the Gamble Enterprises, Inc. case including the contrary court of appeals decision. It was concluded from the debates and reports that the bill which finally was enacted specifically rejected attempts to regulate broadly "featherbedding" and make-work

\(^{42}\)86 N.L.R.B. 951, pp. 965-1040; these court decisions were rendered in the A.N.P.A. case, two court of appeals and one Supreme Court; only one appellate court decision and one Supreme Court were rendered in the Gamble Enterprises, Inc. case. See footnote 40.
practices. The intent set forth was to regulate only those practices resting on attempts to exact monies or other things of value for work not performed or not to be performed. Nowhere in the debates or reports were the printing industry practices mentioned in spite of their well known existence. However, the practices of the Musicians' Union in achieving such arrangements was specifically referred to by Senator Taft in the oft cited "10-6-4" example. It is that one remark more than anything else which accounts for the contrary opinion rendered by the appellate court in the Gamble Enterprises, Inc. case. Senator Taft stated:

"It is intended to make it an unfair labor practice for a man to say, 'you must have ten musicians, and if you insist that there is room for only six, you must pay for the other four anyway.' That is in the nature of an exaction from an employer for services which he does not want, does not need, and is not even willing to accept."

The inference is clear that four are to be paid for doing nothing.

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43Ibid, pp. 1029-1031.
4493rd Cong. Rec. 7001-2 (Senator Ball).
4586 N.L.R.B. 951, 960.
46See the concluding portion of that brief decision: C.D. Vol. 8, at p. 292.
4793rd Cong. Rec., 6603 (Senator Taft).
In the Gamble case, the Board accepted the Trial Examiner's conclusions but not his reasoning. The local union in that case had suggested various ways in which a local orchestra could earn pay for performing competent work and, upon those terms it offered to consent to the appearance of "traveling hands" controlled by the American Federation of Musicians. The employer declined to accept the appearance of "traveling hands" on the condition it employ in one of the suggested ways, the local orchestra. The Board held: "...In our opinion, Section 8(b)(6) was not intended to reach cases where a labor organization seeks actual employment for its members even in situations where the employer does not want, does not need, and is not willing to accept such services." Previous to the 1947 Act, the union had sought "stand-by" pay for no work performed or to be performed. As reflected in the change in the Union's policy, the Board felt the law had effected the change to a new policy now consistent with the Act's provisions.

As indicated earlier, the court of appeals set aside the Board's order on the grounds that the Board

482 N.L.R.B. 1528, supra, p. 1533.
had rejected the only valid inference to be drawn from the union's behavior; namely, that it was attempting to exact pay for no work, and also because Senator Taft's remarks (the 10-6-4 example) indicated to the court that this was precisely the kind of situation to which that analogy made Section 8(b)(6) applicable. The Supreme Court reversed this decision and in so doing held that the interpretation of Section 8(b)(6) made by it in the A.N.P.A. case was controlling in the Gamble Enterprises, Inc. case. Both of these decisions were rendered in 1953 and on the same day by the high Court. It accepted the Board's finding that the union was seeking actual employment for its members and not mere "stand-by" pay. In so doing it quoted approvingly the Board's edict:

> Whether it is desirable that such objective should be made the subject of an unfair labor practice is a matter for further congressional action, but we believe that such subject is not proscribed by the limited provision of Section 8(b)(6).

Thus ended the controversy over the law. The controversy over policy still goes on. The legal question was settled primarily on the basis of the

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testimony in the legislative history which appears on the balance to be favorable to the interpretation made by the Court.\textsuperscript{51} Such interpretation becomes our public policy toward "featherbedding" in all its connotations and denotations. Whether or not it is acceptable policy must be determined on other grounds than legislative intent.\textsuperscript{52}

E. Industries and Unions Involved in Section 8(b)(3), (5), and (6) Cases

The limited application of both Sections 8(b)(5) and (6) renders the notion of any trend in type of industry or union thereunder practically meaningless.

...featherbedding) commonly understood to include make-work devices engaged in by workers who already stand in a proximate employer-employee relationship, and who otherwise perform services in his interest - was not contemplated as falling within the cover of the statutory interdiction..."(p. 288).

This does not appear to be so of Section 8(b)(3) even though evidence is more limited than that of the Section 8(b)(1) and 8(b)(2) cases. Refusal to bargain charges based on illegal demands and backed up by strike action occurred most in three rather basic industries. The maritime unions, particularly the independent International Longshoremen's Association, the United Mine Workers of America and the International Typographical Union collectively account for about three-fifths of such instances.

Of course the I.T.U. cases represent somewhat of an exception in that they occurred mostly as a group early in the administration of the Act. Hence, they represent more of a "one-shot" type of occurrence rather than continued and repeated violations. The ILA and the United Miners cases on the other hand do represent repetition of violations over quite a long period.

The inferences to be drawn from this fact are not entirely clear; however, in both instances the industry is one which broadly affects the public welfare. Industry-wide strikes in these industries often quickly place a noticeable burden on many facets of commerce and in the end the consumer. Such strikes also tend to be the subject of public attention in greater degree and
much sooner than in industries whose immediate impact on the economy is limited in scope. At least two possibilities are not inconsistent with these circumstances. The bargaining parties in these industries have a greater economic power in the strike tactic since its effect is more quickly felt and it draws public attention. Hence, if either or both feel (as they both most often do) their cause the more justified in terms of broad public sympathy, a union may be quicker to use a strike or employers resist bargaining efforts much more strongly than in other industry circumstances. Both know that long strikes in such an industry are bound to produce outside pressures on each and this may be an important factor in the final settlement as well as for future bargaining. It may well be that out of such circumstances grows a more intense effort to find "legal ways" in which the "adversary" may be hampered or stopped in the use of his particular economic advantage. An unfair labor practice covered by the Labor Management Relations Act is, of course, only one such possible "way."

F. Summary

Unfair labor practices arising under Sections 8(b)(3), (5), and (6) have been less numerous than those occurring under Sections 8(b)(1) and 8(b)(2) and even
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8(b)(4). The same is true of Board and Court decisions rendered in these cases. This fact has not, however, precluded the necessity for a fair measure of interpretational difficulties in those cases. Particularly in connection with Section 8(b)(6) was the intent attributed to the legislators from an examination of their debates and reports an important factor in "the course which the law took."

Refusal to bargain within the meaning of the Act was ruled by the Board and the courts in the National Maritime Union case to include the conditioning of further bargaining on the demand for an illegal union security clause in the agreement where such demand also was supported by strike action. It was also contended that such adamant insistence on a condition to further bargaining was evidence of "bad faith" bargaining as it precluded any other basis for reaching an agreement. However, the Board's tests of "good faith" did not require an agreement to be reached but that there be a sincere purpose and intent to reach it, a circumstance obviously existing in this case.

A number of variations in behavior involving circumstances similar to those in the N.M.U. case were ruled on by the Board and the Courts which
indicated their belief that it was the intent of Congress to impose on labor organizations the same duty to bargain in good faith which had been imposed on employers in Section 8(5) of the Wagner Act, and continued in Section 8(a)(5) of the amended Act. In the *International Typographical Union* cases, the finding of refusal to bargain in good faith was based on refusal to sign any contract as a part of its bargaining policy. In another situation, the expected lack of Board jurisdiction was the basis of the "bad faith," while in still others the lack of an illegal clause or lack of such clause being the actual basis for the impasse caused dismissal of the complaints.

"Technical" grounds constituted the basis for numerous Board policy decisions. Non-compliance, no appropriate unit designation and hence no legal duty to bargain was ruled in one of these. Demands to bargain for employees other than those in the Board designated appropriate unit were ruled violative as were demands to bargain for supervisory personnel. Failure to give proper notice to either the Federal Mediation Service or appropriate State agencies as provided in Section 8(d) also were ruled refusals to bargain under Section 8(b)(3). In this line of rulings, 8(d) was
held to bar "quickie strikes" without notice, against employers under an existing contract, but was not deemed to outlaw contract modification strikes before expiration of the contract if proper notice was given.

Repeated attempts have been made by Board decisions to declare such things as concerted slowdowns and harassment activities in the bargaining context violative of the good faith requirement of 8(b)(3) and 8(d). However, thus far the courts have refused to enforce such orders when they occur in situations where strikes are not violative. The matter is still pending Supreme Court review at this writing. Meanwhile, the courts refused to enforce Board orders issued against unions which engaged in strikes contrary to "no strike" contract provisions and against an arbitration award where the contract provided such a settlement mechanism.

Section 8(b)(5) policy has been entirely a matter of Board decision, thus far. This is in part due, no doubt, to the overlapping nature of Section 8(b)(2) in such matters since the cases have involved mostly discrimination against individuals within a bargaining unit. Even so, attempts to punish "older" employees for not joining the union by charging them disparate initiation fees based on length of service
have been ruled violative of Section 8(b)(5) as well as 8(b)(2). "Back dues" are not fees as set forth in Section 8(b)(5), while employment conditioned on a membership requirement to pay them is violative of 8(b)(2). Unions may require different treatment, fee-wise, of ex-members without violating 8(b)(5) if such difference is not also excessive or discriminatory as determined by the Board.

Section 8(b)(6) has been held by the Board and the courts to prohibit only that limited form of "featherbedding" wherein a union attempts to cause or actually does cause an employer to pay for services not performed or not to be performed. The Supreme Court upheld the Board's decisions in the only two cases in which it decided such issues. In the American Newspaper Publishers Association case and the Gamble Enterprises, Inc. case the practices were deemed not violative of the Act since they involved payment for a service to be rendered aside from whether or not the employers needed or wanted it since they were "free" to refuse it. Such was held to be the intent of Congress in including Section 8(b)(6) in the Act.

Section 8(b)(5) and 8(b)(6) cases give little basis for generalization concerning industries and
unions involved. Section 8(b)(3) cases suggest the possibility that refusal to bargain unfair practices may tend to stem from unions in industries that have a greater economy-wide significance than those with a more limited scope of impact from work-stoppages. Since strikes in these industries have a more immediate impact and often draw quick public attention, it is possible that such pressures as come to bear are a calculated part of the bargaining strategy out of which the violative practices arise.
CHAPTER VII.

REMEDY AND REMEDIAL ORDERS OF THE BOARD IN
SECTION 8(b) CASES

A. Section 8(b)(1) and 8(b)(2) Cases

It is apparent from preceding analysis that a large portion of behavior violative of Section 8(b)(2) was also violative of Section 8(b)(1)(A). For this reason the remedial action ordered by the Board in a given case is more appropriately conceived of as a set of directives designed to correct and/or eliminate the condition or situation out of which the violative behavior arose in a given case. There is a possible exception in similarity of remedy implied in the preceding reference to the overlapping nature of the charges in Sections 8(b)(1)(A) and 8(b)(2) cases. This occurs in connection with what were called direct violations of Section 8(b)(1)(A). It may arise where violence accompanying a strike only has been charged and involves a temporary restraining order sought under Section 10(j) to end such behavior. However, more often, the strike and violence which the Board seeks
to eliminate is also violative of Section 8(b)(2) and in some cases 8(b)(3); therefore, the exception is not so significant as to warrant separate consideration.\footnote{1It has occurred in only two cases. See: Newport Industries, Inc. v. Lake Charles Metal Trades Council et al.: 89 F. Supp. 517 (D.C., La.), enjoining mass picketing, CD Volume 6; p. 314; Sheet Metal Workers' International Association AFL-CIO, et al.: John A. Hull, Jr. v.: (Burt Mfg. Co.) April 9, 1958 (D.C., N. Ohio), 41 L.R.R.M. 2812, J-2393-Inj., granting injunctive relief under Sections 10(j) and (1).}

It is also relevant to the discussion of remedy in union unfair labor practices which follows to point out the fact that in a large portion of the Section 8(b)(1) and 8(b)(2) cases an employer also was a respondent in the complaint. That is, the case was a combination CB\footnote{2A case involving any or all of Section 8(b) practices except those in Subsection (4).} and CA case.\footnote{3A case involving any or all of the practices in Section 8(a).} This is significant in reference to remedy in that where reinstatement of an employee or withdrawal of recognition of a union may be appropriate action, it is one to be directed at the employer rather than the union. It indicates, too, the close inter-relationship which exists between union and employer unfair labor practices when individual
employees are the object of the unfair practice as opposed to the employer or a union organization itself so being.

Another matter to which attention is drawn at the outset of a consideration of remedial orders concerns the issues of Board policy raised in Chapter III. The Board's jurisdictional standards constitute an important limit upon the scope of both the extensive and intensive margins of activity for which remedy is available and applicable. Interpretation of definitional exclusions of employers and behavior as well as the question of agency in given cases constitute limits of a different character from jurisdiction but none-the-less important in considering remedy. The six months limitation on charges and its variation concerning amendment of charges are another limit. And not the least of these limits as measured by criticism of the Board by interested parties is the matter of the time lag which occurs from the filing of the charge to the issuance of a remedial order. Any attempt to evaluate the effectiveness of remedy must include a consideration of the impact of these various limits. But even aside from an evaluation of effectiveness, these issues may in given cases exert an influence on the very nature
of the remedy itself and hence should be borne in mind in considering the discussion undertaken in this section. For convenience, remedy and remedial orders are discussed under three separate topical headings. The cease and desist portion of the orders, the affirmative action ordered, and temporary restraining orders are these major divisions. A note on court enforcement of Board orders is included at the end of the third topic.

1. Cease and Desist Orders

The importance of cease and desist directives which are issued by the N.L.R.B. in all cases not dismissed would seem on first consideration to be rather obvious. Assuming for the moment they are complied with, it is true they constitute the means by which present violations are to be stopped and possible future violations prevented. However, they are significant for a number of reasons perhaps not so obvious.

The Board's orders are not self executing. Not until the Court's judgement enforcing the order comes down must the party stop the practice involved. It is precisely this ultimate form of compliance enforcement which makes the character of the cease and desist portion of the order important. It may well serve as the basis
of possible contempt proceedings at a later time. Therefore, the scope of the directive is very important.

At least three important "scope" issues and their resolution by the Board are reflected in the cease and desist orders. The question of agency is significant in determining whether a directive is made toward a local union and its representative or an international union or both. Industries characterized by temporary employment have been significant in a large portion of the cases under discussion, hence, both the employers covered by the orders and the extent to which the violative practice per se is circumscribed become important matters of remedy.

Since previous discussion indicates the record is heavily laden with such instances, let us take the case of the building trades unions for example. If an order seeks to stop and prevent a local union from causing one employer at a given temporary job site to condition employment of specific individuals on union membership and job referral, it is obvious that it does not get at the crux of the issue. For the job may even be ended by the time the order is issued and thus the stage merely is set for recurrence at another time and place. However, if the order is directed at
the local as to any employer with which it deals and as
to the violative practice being caused in any manner,
the impact of the order is considerably broadened. If
such an order includes also the international, to the
extent the local is following international policy or
directions, the order further gets at causes rather
than symptoms.

There are limits, however, on the extent to
which Board orders may be so broadened. Some are the
broad limits set by the Courts. Others, particularly
concerning the relation of local and international
unions, are the result of Board policy development.
The Supreme Court has held that where an order is
issued to restrain violations other than those charged
in the instant case, it must appear that they are
similar or that the danger of commission in the future
is to be anticipated from the course of conduct in the
past.\footnote{\begin{small}
436-37. See also 110 N.L.R.B. 287 and cases cited
therein as well as a comprehensive discussion by the
Board of its court sanctioned powers.
\end{small}} This rule is especially applicable in cases
when the order geographically broadens the area beyond
the job site and one employer. Since there are so many
local building trades unions, the consideration of past performance in each as they are charged has given the Board in a significant number of cases no basis for a broad form of order whereas an overall consideration of the problem would have been more indicative of the need for such. As was previously indicated, one trial examiner felt that such an approach to viewing policies of each local of the same international really was tantamount to causing them to view the limited Board imposed remedy as "operating expenses."5

Concerning the extension of orders to cover international as well as local unions, two general circumstances seem to constitute the Board's policy limits in this respect. Both have one common factor. They involve written illegal union security clauses in the contract to which both local and international unions are parties and under which the violative discriminatory practices occurred. One instance involves the negotiation of such a clause by the international with the local union and employers accepting and enforcing it.6 The other involved contract provisions

5See Chapter III, footnote 34 (107 N.L.R.B. 1043, supra.)

made by the local which were in reality working rules stipulated by the international's constitution and used with its direction and approval. The provisions thus incorporated created a situation tantamount to a closed shop arrangement. The agency questions in these circumstances are clearly capable of written proof or through clear established policies. However, they constitute a minority of the relevant cases in this regard coming before the Board.

2. Affirmative Action Ordered

In some cases, positive measures ordered to be carried out by the respondent union are in the nature of supporting action to the cease and desist order. The requirement that the union post a notice in the customary places for its members and affected employees, stating its intent to comply specifically with each point of the cease and desist order is of this variety. In some cases the Board has ordered the notice to be published in a newspaper when adequate coverage was not felt to be forthcoming from posting. Notification of

8 Cf., 111 N.L.R.B. 1126.
the appropriate regional director within ten days of steps taken to comply with the order is another such action.

Some cases involve in addition to the above, restorative measures of considerably more significance. These restorative measures involve reimbursement of monies, withdrawal of recognition and withdrawal of objection to "instatement" or reinstatement in certain reimbursement cases. Two kinds of reimbursement orders may be identified. Illegally collected dues and fees or illegal charges of some sort is one of these. The other concerns money awards for losses in wages incurred by reason of the discriminatory practice.

The Board, with court approval, has exercised a rather wide latitude with regard to both types of reimbursement and it appears that such remedy acts as a significant deterrent as well as an economic protection to individuals who suffer from illegal employment discrimination in some form. Thus, the Board has held that the court sanctions full restoration of loss

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of pay including overtime not expected nor foreseeable by employer or employee. Had the unexpected loss of overtime pay not occurred, the transfer, at the request of the union, might not have been considered discriminatory. For it was ruled the purpose of back pay awards is to restore or make whole and foreseeability and expectability are irrelevant to this purpose.

Board policy concerning reimbursement of illegally collected dues and fees and illegal fees has evolved at present to a state attracting considerable attention in labor-management circles. The Board has ordered refunds of dues and fees in numerous instances both before and since the 1947 amendments. Acting under powers recognized by the Supreme Court as early as 1943, the Board ordered all dues and fees collected under a contract signed illegally in the face of a Board

10111 N.L.R.B. 68 and cases cited therein, particularly Phelps Dodge Corp., 313 U.S. 177, 194. See also: 113 N.L.R.B. 28 and cases cited therein; Gregory, C. E., op cit., pp. 365-66.

election\textsuperscript{12} to be refunded. In a similar circumstance it ordered that the employer and union be held jointly liable for the refund.\textsuperscript{13} However, in 1956 the Board issued a broad disgorgement order requiring refund of all dues and assessments which had been collected for the statutory six months prior to the amended charge in a case where the union had executed, maintained and enforced a closed shop contract and hiring hall arrangement.\textsuperscript{14} In 1957 this remedial action was extended to make both union and employer jointly liable for the refund where employer assistance as well as the illegal hiring arrangement was deemed to exist.\textsuperscript{15} The possibilities arising out of rigorous application of this remedy clearly may be destructive as well as protective of individual interests. It may cause also some knotty intra union problems.\textsuperscript{16}

\textsuperscript{12}100 N.L.R.B. 801, supra; also 103 N.L.R.B. 23, supra.
\textsuperscript{13}113 N.L.R.B. 28, supra.
\textsuperscript{14}115 N.L.R.B. 594.
\textsuperscript{15}118 N.L.R.B. 38.
In all of the cases where discriminatory discharge or refusal to hire occurred, the Board ordered the respondent union to withdraw its objection to the employment of the aggrieved individual(s). The notice must be given in writing to both the employer and the individual. Such notice, properly given, then terminates after five days any further union liability for pay reimbursement as it then becomes the employer's responsibility to offer reinstatement.

The Board has ordered employers to withdraw recognition of the union as exclusive bargaining agent of its employees in numerous cases. The most common type of case has involved a contract and recognition without the employees' consent including the practice of "sweethearting." However, such remedy has been applied also in cases where no formal contract existed, but where a closed shop, hiring hall arrangement was practiced by reason of an oral agreement reached through employer-union "informal" bargaining.

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17See cases cited at footnote 41.
18See cases cited at footnote 33.
3. **Temporary Restraining Orders and Court Enforcement**

In addition to the preceding remedial action which the Board is empowered to order, Section 10(j) provides that the Board shall have the power, upon issuance of a complaint as provided in subsection 10(b), to petition any district court of the United States for appropriate temporary relief or restraining order. This is, of course, in addition to the mandatory exercise of such power provided in Section 10(1) and applying to 8(b)(4)(A), (B), and (C) secondary boycotts cases, and if deemed necessary by the Board in 8(b)(4)(D) cases also. In effect, Section 10(j) empowers the Board at its discretion to ask for a temporary injunction in all unfair labor practices cases with the exception of cases arising under Section 8(b)(4). It is obvious that such a staying power could be a destructive weapon to free collective bargaining particularly in picketing and strike situations were it rigorously applied. However, its use by the Board has been rather limited to and reserved for strike situations clearly inimical to the public interest. While this is not the criterion on which the court explicitly bases its granting of relief, it is clear from consideration of the commerce
question in these cases that such a "public welfare" concern is very important. In addition, of course, the necessary conditions of irreparable damage and "danger" of the practice occurring must also be present. While 10(j) injunctive relief was granted in less than a dozen cases involving Section 8(b)(1) and 8(b)(2) complaints, it should be noted that the fact some occurred in important industrywide bargaining cases and were enforced by the courts gives them more than mere numerical significance. That is, the cases represent precedent to which more heed is taken in labor-management circles than those with less economywide significance and wherein litigation has not tested the Board's decisions.19

Only one instance of a request for temporary restraining order of an employer has occurred under Section 10(j).\(^{20}\) It involved employer imposed unilateral wage and employment conditions made without regard to a previous contract and while a representation question existed. The lower court denied the Board's request on the grounds that it could see no danger of irreparable damage; however, it was reversed on appeal.

Court enforcement is not technically a part of the remedy in unfair labor practices cases, but is more the final mechanism by which the remedy is applied. Since it is so important, however, a word about it is appropriate here. The Board is empowered under Section 10(e) to petition any appropriate circuit court of appeals of the United States, or district court if the circuit courts are in vacation, for enforcement of its orders. The Board has done so in approximately one-third of the contested unfair labor practices cases.

arising under Sections 8(b) but excluding subsection (4) concerning secondary boycotts and jurisdictional disputes. Of these cases, ninety per cent arose in connection with 8(b)(1)(A) and 8(b)(2) cases while the remainder arose under 8(b)(3) and 8(b)(6). The latter Section accounts for only two cases.

It should be repeated, however, that the Board itself is a policy making body. Hence, half or more of all these cases represent the testing of policy in the courts and do not represent a mass refusal on the part of respondent unions to accept the decisions made by the Board's agents. In some twenty per cent of these court decisions, the Board's orders have been set aside, reversed or remanded. Granted such proportions in themselves are not indicative of the character of such decisions, a factor more significant than mere numbers. However, placed against the background of the preceding chapters and the one to follow, a somewhat significant conclusion is at least implied. For it would appear that if the past record is any guide, a respondent union stands a chance of less than one in five of

\[21\text{See Chapter II, statistics of cases settled before Board decision, for affirmation of this point.}\]
overriding the Board's order by appealing it to the courts unless it is a very novel issue. Court enforcement of the Board's orders has therefore been a positive force as well as and rather than the mere exercise of a veto power.

B. Section 8(b)(3), (5) and (6) Cases

The discussion of remedy in connection with Section 8(b)(1) and 8(b)(2) orders is relevant in part for cases arising under Sections 8(b)(3), (5) and (6). No novel issues present themselves in either the cease and desist orders or the limited cases of reimbursement under Section 8(b)(5). Section 8(b)(3) cases have involved a strike more often than not and in violative circumstances such strikes have been ordered ceased by the Board. However, prior to such orders in a number of cases, the strike was temporarily enjoined under Section 10(j) powers after issuance of the complaint but before hearing. A number of these cases involved Section 8(b)(1) and 8(b)(2) matters, as previously indicated, and the injunction was granted on the likelihood of violations of those Sections rather than 8(b)(3). However, in one case injunctive relief was granted under Section 10(j) involving Section
8(b)(1), 8(b)(2), and 8(b)(6) charges.\textsuperscript{22} In two cases the injunctive relief was granted on Section 8(b)(3) grounds only where strikes were involved in the maritime industry.\textsuperscript{23} In several additional cases, however, Section 8(b)(3) charges were only part of the complaint on which relief was granted in strike situations. In one such case the strike and other behavior was enjoined under Title II of the Act.\textsuperscript{24} As indicated concerning Sections 8(b)(1) and 8(b)(2) cases and equally true of injunctive relief in 8(b)(3) cases, the use of this remedy has been limited by the Board. The situations have been those adjudged by the Board representatives and courts to be substantially affecting commerce and hence the public welfare.

\textsuperscript{22}International Typographical Union v. Evans (A.N.P.A.) 76 F. Supp. 881 (D.C., Ind.) granting injunctive relief under Section 10(j).


\textsuperscript{24}82 N.L.R.B. 1365, supra.
An interesting aspect of possible remedy in Section 8(b)(3) cases was ruled on by the Board at an early date. In the first National Maritime Union case, the Board made clear its lack of authority to apply a damage award as a remedy in an unfair practices case.\textsuperscript{25} The employers in that case had requested the Board to make such an award if the union was deemed in violation of the Act through its practices, particularly the strikes growing out of the bargaining impasse. The Board held that it had no such powers and that such remedy was a function of the courts under Title III, Section 301 of the Act.

\textsuperscript{25}78 N.L.R.B. 971, supra.
CHAPTER VIII.
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The late Senator Robert A. Taft said shortly after the enactment of the labor law which bears his name: "The Senate Committee felt that our job was one of correcting inequalities in existing law, and that unless there was clearly a serious abuse to be remedied we had better not go too far into experimental fields."\(^1\) These fields included, according to Senator Taft, labor monopoly, internal affairs of unions, mass picketing and violence as well as other "state functions," and featherbedding other than the extreme case of "paying men for doing nothing."\(^2\) Former Congressman Hartley, a co-sponsor of the Act, said that the long-run goal of Congress, American industry, and American labor should be "...a national labor policy that restraints and restricts the area of government interference to the vanishing point. A national labor policy that


\(^2\)Ibid, p. xiii.
envisages the total elimination of the Federal Government from the industrial relations picture. In referring to this goal subsequently, Mr. Hartley asserts: "...The Taft-Hartley Act is but a step toward that goal, but it is certainly the first definite step this nation has taken since the merry-go-round began in 1933."

The scope of this study does not warrant a broad appraisal of all the ramifications which have grown out of the application of the entire Act; however, even the limited examination undertaken strongly supports the conclusion that little more than a brief decade of experience under that law has demonstrated the near accomplishment of contrary results from the goals indicated in the above statements. It would be difficult indeed to deny the experimental nature of each of the five subsections of the Act which are included in this analysis. Much of the meaning of these Sections is still to be determined in practice and application if not inundated by the use of unrealistic language. Further, the case statistics set forth in Chapter II

3Ibid, p. 185.
extend over 16,000 cases arising only under Section 8(b) of the "new policy" to show that the Federal Government is not to be less but more involved in industrial relations. Two conclusions more general in nature are warranted by preceding analysis before turning to the more specific appraisal of the policy developments under each of the subsections of the Act studied, and to the significance of these developments for individual workers, unions, employers, and the practice and procedure of collective bargaining. To some degree all of the subsections are characterized in the course of their development by a complexity of meaning leading to confusion in interpretation. With a few exceptions, notably the finality attaching to permissible union security discrimination under Section 8(b)(2) and featherbedding under Section 8(b)(6), the complexity and confusion have contributed to a degree of uncertainty which permeates all of the cases herein studied. Where the statutory language is vague and without definitional clarification, the Board and the Courts have relied on an examination of the legislative debates and reports to obtain the intent of the Congress which lay behind its language. It is regrettable, but understandable that the legislators themselves often
had numerous contradictory intentions concerning a given provision. Thus, clarification often was not obtained easily at this source, it it was obtained at all.

This uncertainty has been emphasized further by the fact that the Board has not been entirely consistent (as perhaps few agencies are) in all of its rulings and policies on the same subject. The outstanding examples of this have occurred in connection with the status of peaceful organization and recognition picketing under Section 8(b)(1)(A) and the variation in jurisdictional standards followed by the Board; however, to a lesser extent it is evident also in connection with illegal union security clauses and the intent to enforce them, illegal fees, and general consideration of the industrial relations context out of which certain practices such as the hiring hall arrangement arise. Such circumstances are not conducive to informal settlement nor to settlement by the parties themselves, but tend to feed the process of further appeal and litigation.

Another factor which stands apart from substantive developments under Section 8(b) concerns limits on the application of the relevant subsections of the Act. These limits have an impact which also varies depending upon
the parties and issues involved. These variations are separately appraised subsequently in the consideration of the significance of policy developments on individual workers, unions, employers, and the practice and procedure of collective bargaining; however, the limits also constitute a general consideration to be made concerning the unfair labor practices of unions considered in this study.

One of the most important of these limits from an overall point of view is the jurisdictional authority asserted by the Board which shuts out from the Act's coverage rather large areas of the Nation's commerce. While the Board may cede authority to the States to act in areas where it does not, the complications involved have made such a solution an impractical one. Since at the present, the States by law may not act in these areas without cession agreement, the areas remain unregulated except to the extent that the Board broadens its jurisdictional standards at its own discretion.

There are a number of additional Board policies and procedures which have had the effect of narrowing or broadening in different ways, the coverage of the Act's Section 8(b) provisions. The filing requirements for unions, including the non-communist affidavit
required of officers, have tended to reduce the protection afforded unions in their use of union security clauses to cause employment discrimination. By allowing no legal protection to those unions not in compliance with these requirements, an unfair practice charge may then be filed against the union.

Treatment of labor organizations in accordance with the common law of agency has increased the responsibility of such organizations for acts which may be charged as unfair labor practices. On the other hand, the six months "statute of limitations" on the filing of a charge not only sets the time limit on the filing of the charge, but also reduces the application of remedial orders in that they apply only to this period even though the behavior and loss involved may have been incurred for longer periods. The treatment of certain acts of behavior such as reductions in seniority and the signing of illegal union security clause contracts as non-continuing has precluded these acts from being charged as unfair practices where they occurred more than six months prior to the charge. Other behavior such as the continued existence and enforcement of such a contract has provided the basis for a charge of an unfair labor practice.
Under the definitional exclusions of employers from the coverage of the Act, one group in particular has constituted a questionable area of exclusion in practice. This has been in the group of "independent contractors." In the construction and highway freight transportation industries, a significant number of individuals cross back and forth over the line between an individual worker and an individual sub-contractor. The Board's policies in this regard draw a rather fine line and hence tend more to exclude rather than include such cases.

From the analysis of the inappropriate emphasis given to legal procedures, several additional general limitations are evident. Thus, if the charges in a case are framed too narrowly by the General Counsel, the case may be dismissed by the hearing officer and/or the Board. The acceptance by the Board of both the credibility and other findings of the Trial Examiner in the Intermediate Report in absence of formal exception has also tended to diminish in those cases the consideration of the unfair practice involved and thus limit the remedial order. This has been more true of cases involving individuals as petitioners than in circumstances involving other petitioners.
Concerning this same group of limitations, the lack of consideration by the Board of the economic context out of which certain practices arise has resulted in continued filing of unfair practices cases. This situation has existed particularly with regard to the hiring hall arrangement in the maritime and construction industries. Only recently has the Board attempted to prescribe a workable compromise between an illegal arrangement and the permissive limits of the law which would not disruptively ignore the economic facts of these industries; however, even this effort appears to be marred by an element of uncertainty which may prove to be no more of a solution than existed previously.

The data examined in the preceding chapters, however, are relevant to and warrant conclusions on a different level of analysis. As indicated at the outset, the stated purposes with which the Act was to deal included: the protection of individual employees in their relations with labor organizations and exercise of rights guaranteed in Section 7; the elimination of certain practices by some labor organizations and hence the equalization of legal responsibilities of unions and employers; and, the encouragement of the practice and
procedure of collective bargaining as a policy of the United States. These headings provide a significant and convenient organization within which the conclusions that follow are stated.

A. Protection of Individual Employees

Individual employees and union members have gained important protection in the employment relationship under Section 8(b) provisions. This protection from union and employer action extends both to getting or keeping a job and to the conditions of employment by which an employee must abide. The most important such protection has been afforded under the provisions of Section 8(b)(1)(A) and 8(b)(2). No union membership conditions may be imposed prior to or within thirty days after getting a job as provided in Section 8(a)(3).

Under Section 8(b)(1)(A), unions are prohibited from exercising various kinds of restraints or coercion against employees or members to compel union membership or support of the labor organization. Physical violence against employees including that carried out on picket lines is one of these. Restraining employees from entering or leaving a place of employment by mass picketing is another. These unfair practices offer protection in addition to State criminal laws against such assault,
violence and picketing and include threats of physical violence or retaliation and even threats of economic retaliation such as job loss are prohibited. More recently the Board attempted to extend this protection by prohibiting labor organizations from coercing employees to join unions through pressure on their employers. This was accomplished by peaceful recognition and organizational picketing which damaged the employers business, and through attempts to induce consumers to boycott non-union businesses. The Board has always held that a contract obtained in such a manner was itself invalid and acted as a restraint upon employees rights as well as to coerce them into joining. Hence, such a contract provides no legal basis for employment discrimination by an employer at the request of a union. But the peaceful picketing involved in these situations was not heretofore declared an unfair practice. The lower courts have ruled against both such extensions of protection but the latter form may well become a further legal "protection" to individuals from unions as the Board has continued to apply it while awaiting higher court opinion.

Section 8(b)(2) has been of considerably more significance in protecting individual employees from
employment discrimination caused by labor organizations in furtherance of their purposes. The distinction must be made clear between discrimination in the conditions of union membership and the conditions of employment. It is only the latter with which Section 8(b)(2) deals. Interpretation of the proviso to Section 8(b)(1)(A) has made it clear as a matter of policy that unions may condition membership on any circumstances they choose. Hence, the internal affairs of unions and members' rights in the unions are not subject to regulation under the Act. However, the only one of these conditions which also may be made a requisite to keeping a job or enjoying equal employment benefits is that of payment of dues and initiation fees in the labor organization. And, this may be done only by unions which have valid union security clauses in their contracts and which have met the other conditions imposed by the Act; namely, that they be in compliance with the filing requirements of Section 9 and have been certified as the bargaining agent for an appropriate unit. The Board has extended such protection to the point where an individual may not be discharged legally for non-payment of dues under a valid arrangement if he pays the delinquent amounts, and they are accepted, before the actual discharge takes place but
after the request for such legal discharge has been made. Thus attempts by unions to condition the getting or keeping of a job on union referral or upon complying with union imposed rules other than payment of dues under the aforementioned conditions are contrary to law and public policy. The same is true in connection with the denial of such things as seniority rights, welfare and pension benefits whether union administered or not, overtime, transfers, and other conditions on the job. Most of the discrimination caused or attempted through union imposed fees such as envisaged under Section 8(b)(5), have been subject to the proscription of 8(b)(2) also. Hence, little additional protection has been offered in practice by that provision.

Perhaps one of the most outstanding features about the preceding matters of individual employee protection is the fact that these developments occurred in those industries where the employment relationship of employee and employer depends in large part for its stability on the existence of a relatively high degree of union control. Thus, these provisions have applied more in the maritime, building and construction, highway freight transportation, and printing industries than in other industries, and they have been effective in
protecting individuals therein whatever other effects they may have had on collective bargaining relationships. This does not imply that closed shop conditions do not exist; however, an individual employee in an industry and firm over which the Board asserts jurisdiction may not be forced to abide by such an arrangement legally if he does not choose to do so.

There are, however, a number of previously mentioned limitations which are particularly significant in the protection afforded individual employees under Section 8(b) of the Act. Certainly, the jurisdictional standards asserted by the Board comprise an important one. Many enterprises which are "too small" to affect the flow of interstate commerce are the source of discriminatory practices against employees by both unions and employers. These are excluded from the provisions of the Act. A similar condition prevails with respect to that heterogeneous group of small independent sub-contractors who are often merely "disguised" individual employees. They also are not covered by the Act's provisions.

Certain other such limits may be characterized as limitations on the effectiveness of the application of the selected Section 8(b) provisions. Among these
are the previously discussed emphases on legal procedures and the Section 10(b) statute of limitations. The time-consuming process which may be required in a case before a remedial order issues is also an important factor to the individual in addition to the substance of the remedy itself. In those industries in which these cases most commonly arise, the job situations most often are very temporary in nature. Hence, a cease and desist order which is limited in scope to the job situation, followed by a back pay order for time lost on that job is not always an effective deterrent to a union nor an impressive and helpful remedy to the individual. Both tend to be emphasized by the long delay between the behavior and the remedy; however, this shortcoming is offset to some degree by the fact that most cases do not require Board decision and are settled at the regional level with less time being required.

B. Regulation of Union Practices and Equalization of Legal Responsibilities

Much of the language of the subsections of the Act herein examined is in the nature of an attempt to make of those subsections matching counterparts to the unfair practices of employers set forth in Section 8(a).
In practice, however, the similarity has been confined mostly to one of language, for the two parties differ greatly in economic character and circumstance. Thus, restraint and/or coercion of employees in their selection of representatives for bargaining are accomplished in quite different ways by unions as opposed to employers. The union must rely on effecting its action through the employer or by use of the strike weapon against the employer. The former means comprise the subject matter regulated under Section 8(b)(2) and 8(a)(3). The latter means are regulated by Sections 3(b)(1)(A), 8(b)(4), and the Section 8(d) requirements for Section 8(b)(3) involving waiting periods.

The strike weapon is one of the strongest of those available to a union. While it does not always have a serious impact upon output and the public welfare, it quickly tends to draw public attention as much as and often more than other tactics. Thus, strike action involving a large number of workers or covering a considerable number of employers in an industry tends to bring out discussion of the necessity for the government to step in or for statutory regulation of such action. Thus far, settled public policy under Section 8(b)(1)(A) has prohibited primarily the use of violence and force
of numbers in the conduct of a strike, but has not extended to the strike itself and subsequent picketing peacefully conducted. However, the recent rulings of the Board which extend the prohibitions of Section 8(b)(1)(A) to cover recognition and organizational picketing could, if they become law, significantly impair such a tactical weapon of unions. It is true that prohibiting recognition picketing in situations such as those cases involving the Teamsters Union would not impair the functioning of most legitimate union campaigns. For in the Teamsters' cases, contracts were forced on employers and employees even in the face of rejection in Board conducted elections. Organizational drives present a different problem because there may be no opportunity to win adherents if such peaceful picketing is prohibited. Furthermore, such a restriction on the "means of communication" of the union are not offset by restrictions on the "free speech" of anti-union employers who may with increased effectiveness thwart legitimate organization efforts.

The extent to which unions may cause or attempt to cause employers to discriminate in employment because of membership or non-membership in a labor organization clearly has been established under the proscription of
Section 8(b)(2). The outside limits of protection to unions in their use of the employment relation to obtain union security is non-payment of uniformly applied dues and initiation fees under a valid union security arrangement. Such an arrangement is one made by a complying union in a Board designated unit by means of a contract clause allowing at least thirty days in which to join to employees who are not already members. The required condition for unions of complying with the filing requirement of Section 9 to receive protection under the Act have accomplished seemingly little in practice to commend them. The non-communist affidavit requirement of Section 9(e) has proven futile. The others contained in Section 9(f), (g), and (h) have been merely perfunctory. None of them can be said to have equalized the legal responsibilities of union with those of employers. On the contrary, it may be said that such requirements have tended to be a nuisance.

The limited form of union security referred to above and allowable only under the prescribed conditions is further qualified in practice by Section 14(b). Under the specific provision of that Section, no union security of any form is valid protection to a union which causes employment discrimination in States which
have passed so-called "right-to-work" laws prohibiting compulsory union membership. Such a restriction applying in addition to the already limited form of union security is hardly warranted as a matter of public policy to protect individual employees when they are already adequately protected under other provisions of the law. This is reasonably so when one considers that it is also a public policy to encourage, not destroy, the practice and procedure of collective bargaining as well as to protect individual rights.

Unions have been assessed for pay losses and refunds of dues and fees for illegal discrimination under both legal and illegal union security arrangements. In many cases, employers are assessed jointly with the union. More recently, the Board has developed and applied a remedy policy of considerable significance in cases where employees are required to pay dues and fees under an illegal closed shop union security arrangement. Under the "Brown-Olds" remedy, the Board has ordered refund of all dues and fees paid to the union within six months prior to the filing of the original charge. Where an employer has aided the union in obtaining such an arrangement, the employer is also assessed jointly with the union for such refunds. The
possible significance of such an order to a local union's finances indicates that the remedy is a strong deterrent to willful continuation of such practices.

Several policy and procedure developments closely related to the regulation of union security also have had a significant effect on unions. The rules of agency applied by the Board have had both an unfavorable and a favorable effect from the point of view of the labor organization itself. From the public policy point of view, however, the conditions which are favorable and unfavorable are the reverse of those viewed by the union. To the extent that labor organizations have been made increasingly responsible for the acts of their agents, and they have, such responsibility is cause for increased caution and concern on the part of the organization on both a local and international level. On the other hand, the Board has been significantly reluctant, particularly in cases of local discrimination, to extend agency to district and international levels. This has placed a limit on the effectiveness of remedy in these areas and notably so in regard to making the remedy a deterrent to future violations. The time lag involved in these cases has
undoubtedly served to strengthen a labor organization's resistance to such regulation particularly where individuals file the charge.

The Board's failure to find a satisfactory workable solution to the joint legal and economic problem of the closed shop hiring hall arrangement in the several industries where it is commonly practiced has placed an undue burden of regulation and uncertainty on the bargaining parties in these industries. As to the unions, such consideration has operated to put the matter of union security in a state of continual questioning. It is hardly conducive to the assumption of mature and responsible action to subject the matter of an organization's existence to this kind of uncertainty in attempts to eliminate its illegal features.

Section 8(b)(3) has produced a number of developments of concern to union functioning in the practice and procedure of collective bargaining. As a matter of established policy under this Section, unions may not impose unilaterally by strike or otherwise contract provisions on employers. Such action is an indication of "bad faith" bargaining under the same tests as those applied to employers. In a sense, this policy has been an "equalizing" device. The demand for an illegal
contract provision by a union such as a closed shop clause is also considered a refusal to bargain in good faith. Such a policy represents an extension of regulation into the substance of collective bargaining agreements.

The limits which the Board has attempted to place on bargaining tactics such as concerted slow downs at peak business periods, refusal to work overtime and other "harrassing" practices of unions in the process of bargaining are formidable restraints on a union's ability to gain advantage in bargaining. However, these limits have not been established yet as matters of settled policy and law.

The notification requirements of Section 8(d) applying to Section 8(b)(3) have accounted for two significant developments. The use of the strike is conditioned on two requisites. Sixty days notice must be given to the other party to the contract prior to the termination of the contract and the commencing of a strike. In addition, the Federal Mediation and Conciliation Service and any appropriate state agency are to be notified of the existence of a dispute within thirty days after such notice to the other contracting party.
The first of these policies eliminates the use of "quickie" strikes by unions against employers, a tactic which was often quite disruptive and effective for the union. The notification of mediating agencies has produced a source of "technical" violation of the duty to bargain in that failure to notify either State or Federal agencies has nullified contract strikes even though they did not occur until after the required sixty days waiting period. Such a technicality which produces injunctive restraint against the strike may be a costly defeat to a union for no real purpose. This is not to deny the desirability of such notice being given nor the service often performed by such agencies. It is to indicate that another form of penalty or remedy might be more in line with the violation and act more to encourage bargaining than ordering the strike action ceased. Such a consideration is suggested later in this chapter under recommendations for possible changes.

C. Effects on Employers

A number of advantages have accrued to employers under the application of those subsections of Section 8(b) examined in this study. Some, which apparently were expected by employers, have not materialized. This is true particularly of the anti-featherbedding provisions
of Section 8(b)(6). This section has covered only the limited form of featherbedding wherein a labor organization attempts to get or receives payment for doing nothing, but does not cover a host of "make-work" practices and other issues commonly associated with the term featherbedding.

The interpretation of Section 8(b)(1)(B) has in practice prohibited a labor organization from restraining or coercing an employer in the selection of his representatives for bargaining. It does not prevent concerted action on the part of employees to induce an employer to get rid of specific supervisory employees having the power to adjust grievances.

Section 8(b)(1)(A) has operated also to offer certain protection, indirectly, to employers. While peaceful organization and recognition picketing themselves are not prohibited, forced signing of a contract obtained by such means and without majority status has been held to be restraint and coercion of employees. Hence, such contracts have been nullified by the Board. In addition, violence on the picket line as well as mass picketing and blocking of entrances are prohibited by Section 8(b)(1)(A). Thus, an employer may continue, at the very least, to keep his plant open and have
employees obtain access to it under the sanction of this policy. While Section 10(j) permits the Board to seek a temporary restraining order in such circumstances, its use has been limited to rather outstanding cases and therefore not a common remedy in every strike situation.

While Section 8(b)(2) is of primary significance to individuals, the "added" protection of the provisions of Section 14(b) modify 8(b)(2) in "right-to-work" States so that it has no force. Certainly it permits an employer greater "union-busting" advantage than in States which have not taken advantage of the permission granted in 14(b). There appears to be little justification for affording such an advantage in an era when the institution of unionism and collective bargaining have become accepted parts of our public policy goals.

Section 8(b)(3) has offered at least one significant benefit to employers. As previously indicated, it has relieved employers of being the object of unexpected and disruptive "quickie" strikes by unions. This is not to say that "wild-cat" strikes or unannounced work stoppages have been eliminated. However, in circumstances involving responsible parties, such a
policy is a significant contribution to the elimination of such a tactic and is certainly of more benefit to the employer than to a union.

Another possible advantage to employers occurs in the situation described in the preceding section of this chapter where a strike by a union after the required sixty days is ordered ceased for lack of proper notice to Federal and possibly State mediation services. While such notice is required of either party desiring the modification or termination of a contract, it is the union which calls a strike and hence the one most likely to incur the detriment.

D. The Encouragement of Collective Bargaining

The Labor-Management Relations Act of 1947, as amended, is a regulatory bill. Section 8(b) imposes regulation on labor organization practices both before and after collective bargaining has been instituted. This aspect of the law thus stands in marked contrast to its predecessor, The National Labor Relations Act of 1935, which was restricted mainly to pre-bargaining relationships.

As indicated in the foregoing conclusions a number of developments are significant for both the general and specific impact they have had on the
practice and procedure of collective bargaining. While a few of these policies are positive contributions encouraging collective bargaining between employers and unions, on the balance, most have tended to be disruptive or if not discouraging to those practices and procedures involved in the bargaining process.

With regard only to the interpretation of the limited number of sections herein studied, confusion and uncertainty have surrounded such basic matters as union security, peaceful picketing, bargaining tactics, what constitutes refusal to bargain, and the areas of Board jurisdiction. Such confusion and uncertainty are not conducive to forming mature bargaining relationships nor to settlement of issues by the parties themselves, as opposed to reliance on the law. When a party to the bargaining relationship believes he has an advantage under the law, whether or not he has in fact, he tends to press matters to that stage of settlement.

Thus, the portions of Section 8(b) examined here have given unwarranted advantages to employers by restricting practices of unions in the bargaining process. The attempted extension of Section 8(b)(1)(A) to cover consumer boycotts as well as organizational and recognition picketing and the attempt to extend Section 8(b)(3)
to cover union bargaining tactics involving harrassment designed to enhance its position are not matched by any such regulation of employers. It may be questioned that such regulation is a reasonable restraint of union power and certainly may not benefit the public by more peaceful and rapid settlement of disputes. For such restraints have tended to produce attempts to evade legal regulation as well as reversion to other techniques all of which have often resulted in a prolongment of the dispute.

The so-called technical violation of Section 8(b)(3), wherein failure to notify State and Federal agencies in addition to the sixty days requirement occurs, is hardly characteristic of what is commonly referred to as refusal to bargain. Rather, it permits an employer to press a legal technicality for temporary advantage thereby invoking government aid for his bargaining position. Yet on the basis of a violation of this provision, strike action has been halted by Board order with Court approval with a resulting loss of position by the union, even though the other adequate notice requirements of Section 8(d) have been met. Such policies are not an encouragement to bargaining between the parties nor to the extension of collective bargaining
to new areas. On the contrary, the doubts cast on peaceful picketing and consumer boycott have weakened existing bargaining relations, and in some cases eliminated local unions when used in conjunction with the provisions of Section 9(c)(3) concerning economic strikers. For unions and their members in these cases were denied both the privilege of voting in "legally requested" representation elections and the right of invoking customer sympathy for such activities on the part of employers.

The foregoing remarks are not intended to be a denial that any positive policies have evolved. However, they are intended to minimize the importance of these developments. For the prohibition of violence on the picket line and of the force of mass picketing under Section 8(b)(1)(A), while conducive to the elimination of undesirable features of conflicts arising in the settlement of disputes, are not a forceful substitute nor a necessary supplement to the State and local law enforcement agents who presently provide adequate protection against such behavior. In addition, the other line of policy developed under Section 8(b)(1)(A) concerning economic coercion probably is more than adequately handled by the prohibition of union caused or
attempted discrimination on any terms other than those set forth in Section 8(a)(3) and supported by Section 8(b)(2).

It is probably true that the sixty days notification required to be given by the party desiring to terminate or modify a contract to the other party serves the purpose of eliminating unannounced walkouts or "quickie" strikes and that such a policy tends to reduce somewhat the conflict arising in disputes which obstruct the free flow of commerce. Also, the elimination of certain kinds of organization and recognition picketing by some unions which tend to impair freely instituted collective bargaining may be justifiably regulated.

A rather serious impairment of the collective bargaining process has occurred, however, in connection with the policies developed to protect individual employees in their jobs and in their relations with unions. Public policy aimed at protecting individual rights while encouraging collective bargaining presents an interesting contradiction to which at best only a compromise solution may be achieved. In practice, it has been an unhappy compromise accomplished at the expense of disruption of bargaining relationships in important segments of the nation's industry and
commerce. The regulation of union security which excludes the use of the closed shop requires a workable compromise between the law and the practice and it has not yet been obtained.

On the balance the public has benefited little from the selected policies analyzed. This is true at least in relation to advantages gained by employers and individuals. Also, these "advantages" gained by employers and individuals have been paid for by impairments to the bargaining process itself as well as by the restrictions imposed on unions which limit their effectiveness in the bargaining process.

E. Recommendations

Once government regulation of a given aspect or area of behavior is begun, it has tended most often to increase rather than diminish. The economic mechanism and social organization we call collective bargaining is no exception to this generalization. And, it is often less difficult to ascertain what may not be done in regulating such a complex area of behavior than to prescribe the nature and degree of control which may be exercised. Certainly in the case of the practices and procedures of collective bargaining, the parties may not be so limited as to destroy their bargaining position.
If this occurs, obviously the settlement of disputes through the bargaining process will be seriously impaired and perhaps necessitate the institution of means other than bargaining. Thus, there is always the danger that attempts to eliminate undesirable features of a given practice or procedure in order to promote the public welfare may eliminate the practice itself.

It must be recalled that when the Taft-Hartley Act was passed, repeal was thought in many quarters to be the only answer. Opposition to such proposals resulted in little or no change being made. Hence, for over a decade the Act has remained with few major changes. With the passing of time, experience has demonstrated that neither of those original positions is warranted in its entirety but that there is an element of truth in each. Changes in the economic and political climate as well as insights gathered from experience in the administration of the Act have brought forth proposals to modify the Act's provisions.

Recently, a broad attack on the Act has come in the form of a reform bill aimed both at changing the Taft-Hartley Act and adding legislation to regulate the internal affairs of unions. This is done in the interest of promoting the public policy goals of encouraging
collective bargaining, while protecting the individual. At the same time, protection of the public from the obstructions to the free flow of commerce which conflicts in these procedures have caused offers a *raison d'être* for such changes.

The conclusions of this study as to needed changes in the law are concerned with only a fragment of the total picture; however, they are related both to the public policy goals mentioned above and to means (under Section 8(b) for obtaining them. In addition, they bear on the amendments made by the new Labor-Management Reporting and Disclosure Act of 1959. This is true particularly of the changes concerning the filing requirements for unions under Section (9), organizational picketing under Section 8(b)(1)(A), union security in the building trades which use the hiring hall arrangement, and to a limited degree the provisions for State jurisdiction in areas in which the Board fails to apply the Federal law.

With respect to Section 8(b)(1)(A), there is little doubt that some abuse of union rights to picket an employer peacefully has occurred in connection with recognition and organizational campaigns of some unions. Certain small employers may be put out of business and
their employees' jobs thus ended by peaceful picketing which cuts off a main transportation source. It is much simpler to be forced into signing an agreement covering employees. For a union to exercise such a practice in the face of an election in which they are rejected by the employees or in a situation where a significant number of employees refuse even to sign election requests is an unfavorable influence on desirable practices and procedures. However, this matter could be handled by a simple amendment to Section 8(b)(4) which already regulates other types of peaceful picketing deemed to be violative of the public interest. Such picketing might be restrained by requiring at least a minimum showing of interest on the part of employees, of say, 30 per cent of those therein employed provided no Board election had been held recently. Such an amendment could raise a question, however, on all peaceful picketing for these purposes. Hence, to prevent wholesale outlawing of such picketing as was legitimate would require the Board or the legislators to establish criteria for organizational picketing to win adherents or accept its elimination as a cost of obtaining the other limits. This establishment of criteria is done in Title VII, Section 704(c) of the
new Act which establishes Section 8(b)(7). How serious such an additional limit on labor organizations will be is difficult to assess; however, it most certainly would be a significant disadvantage in unionizing unorganized areas or industries of which many remain.

Section 8(b)(1) could then be abolished for its vague language has led to interpretations which attempt to regulate practices that are not covered by its provisions. In addition, the other two major kinds of behavior covered by it are adequately covered by State and Local law and the provisions of Section 8(b)(2).

In the case of union security under Sections 8(a)(3) and 8(b)(2), the elimination of the closed shop and its abuses appears to be consistent in part with other goals of public policy; however, in the case of a number of industries such as the building trades and maritime industry as well as others, some consideration of extenuating circumstances of sporadic employment in the form of a "controlled" closed shop or a wider limit on permissibility of the hiring hall arrangement should be made. Section 8(a)(3) could be amended to allow a closed shop arrangement legally while Section 8(b)(2) would then prohibit the existence of a closed union by
allowing employment discrimination only for nonpayment of uniformly assessed fees and dues as a condition of membership.

The new Act of 1959 handles this problem only in part in Title VII, Section 705 by allowing a shortened period (from 30 days to only 7) of time between employment and required membership and also by permitting the prehire agreement to exist legally; however, this arrangement applies only to the building and construction industry and its trades, but not other major industries with the same problem.

Under Section 8(b)(3), the failure of a labor organization properly to notify State agencies as well as the Federal Mediation and Conciliation Service may result in a Board cease and desist order to end a strike even though proper sixty days notice has been given the other contracting party. Rather than placing the penalty for violation of such an additional but desirable requirement on the bargaining tactic itself, such penalty might better be made a separate matter, such as a fine. For it does not appear to be an encouragement to bargaining to destroy one party's position for not using a public service which may not have prevented such action anyhow, and particularly after the lapse of time required by the other provisions of the law.
Sections 8(b)(5) and (6) have not been the subject of wide application; however, this fact alone does not appear to be sufficient condition for recommending they be abolished. While the limited kind of featherbedding proscribed by Section 8(b)(6) is effectively covered, to recommend proscription of additional kinds of featherbedding would require much more information and intensive study than is presently available. It is doubtful that extensive regulation of these practices is even feasible. The function of reducing such inefficiency and increasing productivity (aside from criminal extortion which is not the problem here) is the responsibility of management and labor in private enterprise. This might be achieved better by encouraging the establishment of joint committees to continuously study and recommend work rule changes in which both parties as well as the public share in the benefits of improvement.

Since the excessive and discriminatory character of fees or dues prohibited by Section 8(b)(5) has been, in practice, a matter largely covered by Sections 8(a)(3) and 8(b)(2), Section 8(b)(5) might well be eliminated.

There are a number of other needed changes in the law which affect the application of Sections 8(b)(1),
(2), (3), (5), and (6) but which are not a substantive part of those Sections. Thus, Section 14(b) which permits States to apply different regulations banning any union security as opposed to that of the Federal Law should be eliminated.

The requisite that labor organizations be in "technical" compliance with certain filing requirements which seem to have little more purpose than to be of nuisance value places an unwarranted burden on such organizations. If internal affairs of union are to be a matter of public record, and they are not under these filing requirements, such a requirement may be made with penalties more appropriate and other than denial of the processes available under the Act. This matter has been handled in the new Act by abolishment of these filing requirements in Title II, Section 201(d).

Section 10(j), which permits discretionary injunctions on unfair labor practices other than those arising under Section 8(b)(4), has not been necessary. It has not served to maintain the status quo in disputes nor has it provided a quicker remedy. Rather such action has tended to impair the bargaining position of unions in instances wherein it has been used. Therefore, it might well be eliminated.
Another aspect of this same problem has been the effect of the time lag in the Board's processes from the filing of a charge to the order for remedy. While no "cure-all" can be recommended, a closer appraisal should be made of the extent to which responsibility and decisions can be delegated further to the regional level rather than handled by the Board in Washington.

Several other exclusions of coverage provided for in the law also should be changed. The six months statute of limitations provided in Section 10(b) has imposed unwarranted limitation on both the filing of a charge and remedy thereunder. It should be lengthened to at least one year, if not longer. In addition, the definitional exclusion of supervisors under Section 2(11) has made it an unfair labor practice for a union to attempt to bargain for these employees as well as disallowing them the protection of the Act's provisions. It would appear, at the very least, that the former of these two policies should be eliminated. Much the same is true of the breadth of coverage given to the term "independent contractor" by the Board. This policy has been particularly significant in highway transportation and the building trades and should be limited by the Board or by adding a qualifying proviso to Section 2(11).
Section 2(13) has subjected labor organizations to the common law of agency and it is difficult to recommend all inclusive changes concerning this matter. It is true that unions have been made responsible for acts of some overzealous members even though the acts may not have been ratified or approved; however, the selection and authorization of an agent to act for the organization may well be more carefully considered. Hence, the Section does serve to impose a concern for responsibility on the organization which is not entirely undesirable from the point of view of the public.

Much of the uncertainty and confusion which has arisen under the selected portions of Section 8(b) considered herein may not be alleviated by changes in the Statute itself. It is often a matter which improves or grows worse with changes in the climate of attitudes of the Board and the Courts as well as the environment in which it is applied. One additional change which might aid at least in the uniformity of application of public policy concerns the matter of jurisdiction of the Board and exclusions of coverage of the Act.

It appears that it would not be feasible, even with greatly increased appropriations, for the Board to handle all practices arising in enterprises which are
predominately local in character. Thus, the regulation of these areas might be permitted to the States, by law. This also has been done under the new Act in Title VII, Section 701(a). However, if a national policy of encouraging collective bargaining is to be followed and a Federal statute exists to contribute to it, State regulation should be in conformance with and superceded by Federal law. It does not aid such a policy, but rather disrupts it, to have States administering policy within their borders contrary to the policy followed on a National level and designed to promote the general public welfare. The Labor-Management Reporting and Disclosure Act of 1959 does not require such conformance. Here also, the extent of difficulties to be encountered is difficult to appraise; however, existing State laws vary widely and one may anticipate considerable confusion and friction in labor-management relations before the pattern of regulation thereunder takes on any great degree of clarity.
APPENDIX I

BOARD AND COURT DECISIONS PERTAINING TO SECTIONS 8(b)(1), (2), (3), (5) AND (6) OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

All citations to Board decisions in the text are by volume number and page only of Decisions and Orders of the National Labor Relations Board. Full citation of the name of the case may then be had by reference to the list of cases below. The Board cases are listed in chronological and volume number order. The Court decisions are listed in alphabetical order with the Board case number following. The abbreviation "C.D." refers to the nine volumes of Court Decisions pertaining to the National Labor Relations Act published by the Board and covering cases up to and including December 31, 1955. "L.R.R.Man." citations refer to volumes 1-17 of the Labor Relations Manual published by the Bureau of National Affairs, Washington, D. C. "L.R.R.M." citations refer to subsequent volumes of the same publication.
Board Decisions

National Maritime Union of America (CIO), (The Texas Company), 78 N.L.R.B. 971.

International Longshoremen's and Warehousemen's Union (CIO), Local 6, Sunset Line and Twine Company, 79 N.L.R.B. 1487.

United Shoe Workers of America (CIO) and its Agents, Perry Norvell Company, 80 N.L.R.B. 225.

United Furniture Workers of America (CIO), Local 309, Smith Cabinet Manufacturing Company, Inc., 81 N.L.R.B. 886.


Operative Plasterers and Cement Finishers International Association of the United States and Canada, Local 11, Walter J. Mentzer, Contractor (individual), 82 N.L.R.B. 389.


International Ladies' Garment Workers Union (AFL and an individual), Seamprufe, Inc., 82 N.L.R.B. 892.

American Radio Association (CIO), Committee for Companies and Agents, Atlantic and Gulf Coasts Radio Officers, 82 N.L.R.B. 1344.

National Maritime Union of America (CIO), Committee for Companies and Agents, Atlantic and Gulf Coasts, Unlicensed Personnel, 82 N.L.R.B. 1365.

Retail Clerks International Association, H. W. Smith, d/b/a A-I Photo Service, 83 N.L.R.B. 564.

United Mine Workers of America and John L. Lewis, Jones and Laughlin Steel Company, 83 N.L.R.B. 916.

United Furniture Workers (CIO), Local 472, Colonial Hardwood Flooring Company, 84 N.L.R.B. 565.

United Electrical, Radio and Machine Workers of America, Local 1150 (CIO), Cory Corporation, 84 N.L.R.B. 972.

Bartenders' Union, Local 52 (AFL), George W. Looby, 85 N.L.R.B. 412.


American Newspaper Publishers' Association, Company filed charge by their Association, 86 N.L.R.B. 951.


Hotel and Restaurant Workers International and Bartenders' International Union, Locals 139, 496, 207, 664, etc., Haleston Drug Stores, Inc., 86 N.L.R.B. 1166.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 656, (AFL), Floyd Lee Thompson, an Individual, 86 N.L.R.B. 1264.


Cannery Warehousemen, Food Processors, Drivers and Helpers (AFL), Local 679, Clara-val Packing Company(Nora E. Stiers, an Individual), 87 N.L.R.B. 703.

Grain Processors Independent Union, Local 153 (AFL), Union Starch and Refining Company, 87 N.L.R.B. 779.

Graphic Arts League, International Typographical Union, Local 12 (charge filed by an association of companies), 87 N.L.R.B. 1215.

International Typographical Union, Locals 16, 18, 40 and 7, Union Employers Section of Printing Industry of America, 87 N.L.R.B. 1418.

United Brotherhood of Carpenters and Joiners of America, Local 1052, Row Construction Company, 88 N.L.R.B. 588.

United Steel Workers Union, Local 1844, Press Steel Car Company, Inc. (Noah Weinstein, an individual), 89 N.L.R.B. 276.

United Packing House Workers of America (CIO), Locals 49, 86, 95, 97, 102, and 104, Wilson & Co., Inc., 89 N.L.R.B. 310.

International Brotherhood of Electrical Workers and Local B-1430 (AFL), Public Service Company of Colorado (Charles G. Smith, an individual), 89 N.L.R.B. 418.

Hotel and Restaurant Workers International (AFL), Local 425, Association of Restaurants in Washington (John Lee Mow, an individual), 89 N.L.R.B. 713.


Industrial Union of Marine and Ship Building Workers of America, Local 1 (CIO; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, (AFL), Local 801, New York Shipbuilding Corporation (William M. Jones, an individual), 89 N.L.R.B. 1446.

Progressive Mine Workers of America and Local 1, District 1, Randolph Corporation, 89 N.L.R.B. 1490.


United Auto Workers (CIO) Local 714; General American
Aero Coach, Motor C. Division; 90 N.L.R.B. 239.

International Hod Carriers' Local 210 (AFL); Skaer, Inc.;
90 N.L.R.B. 417.

United Mine Workers and Local 7425 and United Construction
Construction Workers, UMWA Local 474; Union Supply Co.,
90 N.L.R.B. 436.

Motion Picture Machine Operators, Local 307 (AFL); Keamco,
Inc.; 90 N.L.R.B. 652.

International Longshoremen's Union, Locals 34, 1-63, 40;
Waterfront Employers Association of Pacific Coast;
90 N.L.R.B. 1021.

National Union of Marine Cooks and Stewards (CIO); Pacific
American Shipowners Association; 90 N.L.R.B. 1099.

Denver Building and Construction Trades Council, Operating
Engineers Local 9 and Association of Bridge and
Structural Iron Workers Local 24; Henry Shore (an
Individual); 90 N.L.R.B. 1763.

Teamsters Local 174, et al.; Seattle Transfer Company
(J. K. Paterson, an Individual); 90 N.L.R.B. 1851.

Teamsters Local 640 and International; Yellow Cab Company
of California (Len P. Reagan, an Individual); 90
N.L.R.B. 1884.

International Molders and Foundry Workers and Local 68;
Hamilton Foundry and Machine Company; 91 N.L.R.B. 139.

Kingston Mutual Association (Independent Local); Kingston
Cake Company; 91 N.L.R.B. 447.

Amalgamated Meat Cutters and Butcher Workmen, Local 421;
Von's Grocery Company (Mrs. Edwin Selvin, an Individual);
91 N.L.R.B. 504.

Textile Workers Union and Local 169 (CIO); Acme Mattress
Company (Floyd Littleton, individual); 91 N.L.R.B.
1010.

Teamsters Local 641; Air Products, Inc. (Jos N. Cornellier,
Individual); 91 N.L.R.B. 1381.
International Hod Carriers' (AFL), Local 210; Rode Asphalt, Inc. and General Contractors Association of New York; 91 N.L.R.B. 1515.

International Fur and Leather Workers Union, Local 85; Queen's Premier, Williams Fur Dress Corp.; 92 N.L.R.B. 42.

International Hod Carriers' (AFL) Local 210; Merrill Construction Co., Inc.; 92 N.L.R.B. 95.

International Union of Mine, Mill and Smelter Workers, Local 580; Miami Copper Company; 92 N.L.R.B. 322.

Retail Clerks International Association, Local 1146; Carlyle Rubber Co., Inc.; 92 N.L.R.B. 385.

International Hod Carriers', Local 210; Allen Maclin, an individual contractor; 92 N.L.R.B. 520.

International Association of Heat and Frost Insulators and Asbestos Workers, Local 7; Seattle Construction Council; 92 N.L.R.B. 753.

National Union of Marine Cooks and Stewards; George C. Quinley, an individual; 92 N.L.R.B. 877.

United Brotherhood of Carpenters and Joiners of America, Venetian Blinds Local 565; Ambassador Venetian Blind Company; 92 N.L.R.B. 902.

United Mine Workers of America, District 23; four Kentucky Coal Companies; 92 N.L.R.B. 916.

United Mine Workers of America, District 31, Locals 4060, 4042, 4071, and 5650; Bittner Fuel Company; 92 N.L.R.B. 953.

United Auto Workers of America and Local 291; Wisconsin Axle Division, Timken Company; 92 N.L.R.B. 968.

United Auto Workers of America and Local 12 (CIO); Electric Autolite Company; 92 N.L.R.B. 1073.

International Union of Operating Engineers Local 101 (AFL); Hod Carriers' Local 862 (AFL); Peeries Quarries, Inc.; 92 N.L.R.B. 1194.
American Federation of Musicians, Local 24; Gamble Enterprises; 92 N.L.R.B. 1528.

Operating Engineers of America (AFL), Local 15-6; United Heisting Company; 92 N.L.R.B. 1642.

Teamsters Local 249; Squirt Distributing Company; 92 N.L.R.B. 1667.

United Brotherhood of Carpenters and Joiners and Local 63; Crosley Construction Company; 93 N.L.R.B. 28.

International Brotherhood of Boilermakers and Iron Ship Builders and Local 92 (AFL); American Pipe and Steel Corporation; 93 N.L.R.B. 54.

Teamsters Local 182 and New York Council; Red Star Express and New York State Employers Association, Inc.; 93 N.L.R.B. 127.


Hotel, Restaurant, and Bartender Workers International, (AFL), Local 42; Child's Company; 93 N.L.R.B. 231.

Operating Engineers of America (AFL), Local 474; Missouri Boiler and Sheet Iron Warehouse; 93 N.L.R.B. 319.

International Union of Operating Engineers and Local 101; Sub Grade Engineering Company; 93 N.L.R.B. 406.

Newspaper and Mail Deliverers' Union of New York and vicinity; New York Herald Tribune; 93 N.L.R.B. 419.

Louisville Building and Construction Trades Council, Carpenters, Falls Cities District Council (AFL); Ortel Brewing Company, et.al.; 93 N.L.R.B. 530.

Laundry Workers International Union, Local 197; Richland Laundry and Dry Cleaning Company; 93 N.L.R.B. 680.

Teamsters Local 41; Firestone Tire & Rubber Company, Warehouse in Kansas City; 93 N.L.R.B. 981.

Bridge, Structural and Ornamental Iron Workers Local 22; W. Hawley and Company; 93 N.L.R.B. 1126.
Retail Clerks Union, Local 77; Hollywood Ranch Market; 95 N.L.R.B. 1147.

United Brotherhood of Carpenters and Joiners, Local 720; Kaiser Aluminum and Chemical Corp.; 93 N.L.R.B. 1205.

United Auto Workers, Local 753 (CIO); Ferro Stamping & Manufacturing Company (Mary Miranda and Blanche Woodin, individuals); 93 N.L.R.B. 1459.

The Radio Officers' Union of the Commercial Telegraphers (AFL); A. H. Bull Steamship Co. (Willard Christian Fowler, an individual); 93 N.L.R.B. 1523.

Compressed Air Workers Local 147; Mason and Hanger Co.; James P. Kenny, individual; 93 N.L.R.B. 1646.

Carpet, Linoleum and Soft Tile Workers Local 1235; Sterling Furniture Company; 94 N.L.R.B. 32.

International Hod Carriers' Local 300; L. A. Building and Construction Trades Council; Paul W. Speer, Inc.; (Paul Esparza, an individual); 94 N.L.R.B. 317.

International Longshoremen's Association, Local 1291; Jarka Corporation of Philadelphia (William Walker and William Richardson, individuals); 94 N.L.R.B. 320.

Retail and Wholesale Employees Union, Local 830, independent (formerly CIO); Strauss Stores Corporation; Charges filed by Teamsters Local 804; 94 N.L.R.B. 440.

United Gas, Coke and Chemical Workers (CIO), Local 235; Chisholm-Ryder Co., Inc. (John Cavicchia, individual); 94 N.L.R.B. 508.

Carpenters Local 943 and the International; M. W. Kellogg Company (charges filed by the Machinists Lodge 790 of the International Association of Massachusetts); 94 N.L.R.B. 526.

International Hod Carriers' (AFL) Local 36; George W. Reed, masonary contractor; (Ernest S. Charlton, individual); 94 N.L.R.B. 698.

Newspaper and Mail Deliverers' Union of New York and vicinity; Rockaway News Supply Co.; 94 N.L.R.B. 1056.
International Longshoremen's & Warehousemen's Union, Local 10; Waterfront Employers Association of the Pacific Coast (Roosevelt Stafford and Jos. Sorce, individuals); 94 N.L.R.B. 1091.

Food, Tobacco, Agricultural and Allied Workers Union of America (CIO) and Local 76; Pappas & Company; (charges filed by United Fresh Fruit and Vegetable Workers Local Independent Union 78 (CIO); 94 N.L.R.B. 1195.

United Brotherhood of Carpenters and Joiners of America, Local 745; (General Electric Company); charges filed by International Association of Machinists union; 94 N.L.R.B. 1260.

Local 30 of International Fur and Leather Workers; Printz Leather Company, Inc. (Edward Fabiszewske, individual); 94 N.L.R.B. 1312.

United Cement, Lime and Gypsum Workers Local 291 (AFL); Monolith Portland Cement Company; (Local 550, International Union of Mine, Mill and Smelters (CIO) union filed the charges); 94 N.L.R.B. 1358.

Teamsters Local 41; Byers Transportation Company (Frank Boston, an individual filed charges); 94 N.L.R.B. 1494.

International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, Local 6 (AFL); Consolidated Western Steel Corp.; 94 N.L.R.B. 1590.

Drivers, Chauffeurs, Warehousemen and Helpers Local 639, (AFL); Baltimore Transfer Company of Baltimore City, Inc.; 94 N.L.R.B. 1680.

International Hod Carriers' (AFL), Local 264; Del E. Webb Construction Company; 95 N.L.R.B. 75.

Plumbers and Pipefitters Local 598; William G. O'Toole; 95 N.L.R.B. 176.

United Brotherhood of Carpenters and Joiners of America, Locals 1498 and 184; Utah Construction Company; 95 N.L.R.B. 196.

United Electrical Workers, Local 1412; Gardner Electric Manufacturing Company (Thomas Wood, individual); 95 N.L.R.B. 391.
International Union of Operating Engineers (AF), Local 101; Del E. Webb Construction Co. (William H. Pickard, individual); 95 N.L.R.B. 377.

Local 186 of the United Electrical Workers; Green Bay Drop Forge Company (Walter Lasecki, individual); 95 N.L.R.B. 399.

International Union of Operating Engineers (AFL) Locals 18, 18-A, B, and C; Hunkin-Conkey Construction Co.; (Stewart Leroy Lightfoot); 95 N.L.R.B. 433.

International Woodworkers of America, Local 2-101 (CIO); Eclipse Lumber Company (Charles E. Marsl, individual); 95 N.L.R.B. 464.

United Mine Workers, District 31 and Locals 4050, 4060, 4346, 1979, 6593, 2338, 4047, 4740 and 6327; Cleghorn and Gwenev Company; 95 N.L.R.B. 548.

Essex County Carpenters and Painters Council No. 10; Fairmount Construction Company; 95 N.L.R.B. 969.


Plumbers and Pipefitters Local 428 (AFL); N. Palladino Brothers; 95 N.L.R.B. 1480.

International Hod Carriers' Local 320 and Business Agent, Slater; Yonker and Pittyjohn, General Contractors (Fellows and Wilson, individuals); 95 N.L.R.B. 118.

International Association of Machinists, Local No. 504; Westinghouse Electric Company (Clyde W. Schenermann, individual); 95 N.L.R.B. 522.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 127; Armour and Company d/b/a/ Armour Creameries, Turlock California Plant (E. A. Wyatt, Jr., individual); 95 N.L.R.B. 570.

Retail Clerks International and Locals 648, 541, 373, 839, and 1532; Safeway Stores, Inc.; 95 N.L.R.B. 581.
International Association of Insulators and Asbestos Workers, Local 5 (AFL); Marine, Mundet, Thorpe, Spooner, Turner, Murray, Peterson, Cito, and Munoz (combined cases - individuals filed charges); 96 N.L.R.B. 1142.

United Mine Workers of America, District 2; Mercury Mining & Construction Corp., Ziros Company, R. H. Gaiser (partner in pine hill) and Pine Hill Coal Company; 96 N.L.R.B. 1389.

Communications Workers of America (CIO), Southwestern Division No. 20; Southwestern Bell Telephone Company, (Claude Julyan, individual); 97 N.L.R.B. 79.

International Brotherhood of Electrical Workers Local 501; Port Chester Electrical Construction Corporation (John Taylor, individual); 97 N.L.R.B. 354.

International Union of Operating Engineers Local 57; M. A. Gammino Construction Company (John Tamanta, individual); 97 N.L.R.B. 386.

International Chemical Workers Union, Local 16; Monsanto Chemical Company (George W. Draper, individual); 97 N.L.R.B. 517.

Local 77, Philadelphia Musical Society, American Federation of Musicians; Philadelphia Orchestra Association (Raymond Krewer, individual); 97 N.L.R.B. 548.

Painters District Council No. 6 and Local 725, United Furniture Workers of America; The Higbee Company; 97 N.L.R.B. 654.

United Brotherhood of Carpenters and Joiners of America, Millwrights, Local Union 102; G. W. Thomas Dragan & Rigging Co., Inc. (I.A.M. filed charge); 97 N.L.R.B. 703.

Fresh Fruit and Vegetable Workers Local 78; Growers-Shippers' Vegetable Association of Central California (Local industrial union 78-CIO); 97 N.L.R.B. 712.

Meat and Cannery Workers Union Local 56 (AFL); Standard Brands, Inc. (Michael Simone, individual); 97 N.L.R.B. 737.
International Hod Carriers' Local 6 general laborer's union 264; Schwerger Construction Company (E. M. Boals, Individual); 97 N.L.R.B. 1407.

American Radio Association (AFL-CIO); Alaska Steamship Company (Horace W. Underwood, individual); 98 N.L.R.B. 22.

International Hod Carriers' and Common Laborers' Union of America, Local 300 of Hod Carriers and Los Angeles Building and Construction Trades Council; Paul W. Speer, Inc., general contractor (Paul Esparza, individual); 98 N.L.R.B. 212.

International Longshoremen & Warehousemen and its Local 19; Waterfront Employers Association and Companies (Clarence Rurnell and Albert G. Crum, individuals); 98 N.L.R.B. 284.

International Hod Carriers' Local 300; White Oak Park Construction Company (William F. Merrich, individual); 98 N.L.R.B. 376.

International Union of Marine Cooks and Stewards (CIO); Pacific American Shipowners Association and companies (Franklin Barksdale, et al., individuals filed); 98 N.L.R.B. 582.

United Electrical Radio and Machine Workers of America (UE), Local 622; Stupalsoft Ceramic & Manufacturing Co. (George A. Gozdich, individual); 98 N.L.R.B. 664.

Theater Workers Local 495, Painters Local 211, Hod Carriers' Local 193, and Plumbers Local 399; Fox Midwest Amusement Corporation (Kenneth Caravaz, individual); 98 N.L.R.B. 699.

United Brotherhood of Carpenters and Joiners of America, Carpenters' Local 720; Kaiser Aluminum and Chemical Corporation (Charles J. Baker, individual for IAM); 98 N.L.R.B. 753.

Teamsters' Local 621; Sesco Contractors (Thomas K. Vowell, individual); 98 N.L.R.B. 824.

International Brotherhood of Electrical Workers, Local 268-B; Salt River Valley Water Users Association (Leo Sturdivant and A. E. Archer, individuals); 99 N.L.R.B. 849.

United Furniture Workers of America (CIO), et al.; H. N. Thayer Company; 99 N.L.R.B. 1122.


International Association of Machinists, Local Lodge 504, et al.; Food Machine and Chemical Corporation (Roy E. Bauer, individual); 99 N.L.R.B. 1430.

Retail Clerks' International Association (Calvin Guthrie, Business Agent); South Tacoma Motor Company for Teamsters' Local 567 (Teamsters filed charges); 100 N.L.R.B. 367.

United Mine Workers, Local 6281; Pittsburgh Consolidation Coal Company (Rufus M. Tackett and M. L. Mulles, individuals); 100 N.L.R.B. 392.

International Alliance of Theatrical and Stage Employees, Local 44; (Carpenter's Local 946 filed charges by Individual Jerry Fairbanks); 100 N.L.R.B. 556.

United Brotherhood of Carpenters and Joiners of America, Local 55; The Grauman Company; 100 N.L.R.B. 755.

Teamsters Local 404 (Brown Equipment and Manufacturing Co.) International Association of Machinists filed charges; 100 N.L.R.B. 801.

Distributive, Processing and Office Workers Local 2 of District 5; Ginkl Brothers, Inc., (Albert E. Longman filed charges as individual); 100 N.L.R.B. 870.

International Union of Operating Engineers, Locals 18, 18-A, 18-B, and 18-C; Hunkin-Conkey Construction Co., (S. L. Sightfoot, an individual); 100 N.L.R.B. 955.

Retail Clerks' International Association, Local 1048 of Auto Salesmen (Business Agent Guthrie); Mueller Harkins Motor Company (W. W. Meyers, individual); 100 N.L.R.B. 989.
United Brick and Clay Workers International and Local 448; North American Refractories Company (Arthur Nepeer, individual); 100 N.L.R.B. 1151.

Otter Trawlers Union Local 53; Otter Trawlers Union (Arthur B. Abelsen, individual); 100 N.L.R.B. 1187.

Amalgamated Clothing Workers of America, Local 268 (CIO); Boss Overall Cleaners, (Oddia Rogers, Individual); 100 N.L.R.B. 1210.

International Fur and Leather Workers Local 72; Jandeo Furs (Abe Weinstein, Individual); 100 N.L.R.B. 1390.

Teamsters' Local 470; McCarron Company (George Paytas, Individual); 100 N.L.R.B. 1537.

Operative Plasterers and Cement Finishers International Association; Morrison-Knudson Co., Inc. and Peter Krewit Sons Company (Hadley W. Stephens, Individual); 101 N.L.R.B. 123.

United Auto Workers Local 501; Bell Aircraft Corporation, (L. W. Carpenter and M. D. Fuich, Individuals); 101 N.L.R.B. 132.

Teamsters' Local 470; Cottman Builders Supply Co., Inc., (Joseph Keresty, Jr., Individual); 101 N.L.R.B. 327.

International Brotherhood of Carpenters and Joiners, Local 894; Wood Parts, Inc. (L. D. Vincent, Individual); 101 N.L.R.B. 445.


Union of United Brewery, Flour, Cereal, Soft Drinks and Distillery Workers, International Local 14 (CIO); Heffenreffer and Company (Thomas M. Brooks, an Individual); 101 N.L.R.B. 905.

International Hod Carriers' Local 300; Austin Company, (Louis C. Linker, Individual); 101 N.L.R.B. 1257.

National Association of Marine Cooks and Stewards; Matson Navigation Company (L. E. Boatwright and R. B. Stewart, Individuals); 101 N.L.R.B. 1268.
National Union of Marine Cooks and Stewards; American President Lines, Inc., (John Chung and James Randall, individuals); 101 N.L.R.B. 1417.

United Brotherhood of Carpenters and Joiners, Local 642; Thomas Rigging Company (International Association of Machinists charged); 102 N.L.R.B. 65.

United Auto Workers, Local 57; International Harvester Co.; (Louis R. Miller, individual); 102 N.L.R.B. 111.

International Association of Machinists, Local 68; Acme Equipment Company (Carpenters' Local 102 filed charge); 102 N.L.R.B. 155.

United Fresh Fruit and Vegetable Workers Local 78 (CIO); Holme and Seifert (Edna Cooney, individual); 102 N.L.R.B. 347.

Department Store Employees Union Local 1250, Independent; (now known as United Department Store Workers of New York, Locals 1250 and 1250-B; Namms, Inc., (Regina Freiberg and Sarah Goldes, individuals); 102 N.L.R.B. 466.

International Longshoremen's Union Local 1418; Southern Stevedoring Co., Inc., et al., (Ivy P. Boudreaux, individual); 102 N.L.R.B. 720.

Carpenters District Council of Jacksonville, Florida; George D. Anchter Company, et al., (International Association of Machinists charged); 102 N.L.R.B. 881.

International Longshoremen's and Workers Union Local 10; Pacific Maritime Association; (True Knowledge, individual Father Devine's follower charged); 102 N.L.R.B. 907.

Operative Plasterers and Cement Masons (AFL); Anderson-Westfall Company; (Lee Parker and Robert Holloway, individuals filed charges); 102 N.L.R.B. 1408.

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U. S. and Canada; Anderson & Rowe, Inc. (S. Fidone, individual); 102 N.L.R.B. 1423.
International Association of Heat and Frost Insulators and Asbestos Workers, Local 28; Construction Specialties Company (Donald Bourbeau, et al., individuals); 102 N.L.R.B. 1542.

Sheet Metal Workers Association and Local 28; Ferro-Co. Corporation and New York Association of Heating, Piping and Air Conditioning workers—International, (charges filed by company); 102 N.L.R.B. 1646.

International Brotherhood of Electrical Workers, Local 1049; John B. Shriver Company (George M. O'Sullivan, an individual); 103 N.L.R.B. 23.

Teamsters' Local 375; Air Reduction Company (John M. O'Neill, individual); 103 N.L.R.B. 64.

Teamsters' Local 802; Dottfried Baking Co., Inc. and R. K. Baking Corporation (Max Wingelberg, individual); 103 N.L.R.B. 227.

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, Local 13; Plufer Iron Works, Inc. (Theodore E. Fink, individual); 103 N.L.R.B. 596.


Amalgamated Clothing Workers of America (CIO); Boyly Manufacturing Company, (United Garment Workers of America, (AFL), filed charges; 103 N.L.R.B. 1537.

Textile Workers' Union of America (CIO), Local 1199; Anniston Yarn Mills, Inc. (Mrs. M. A. Bowen, individual filed charges); 103 N.L.R.B. 1495.

United Mine Workers, District 2, Local 113; M. F. Fetterolf Coal Company, et al.; 103 N.L.R.B. 1572.

International Brotherhood of Electrical Workers (AFL), Local 1264; Pope Broadcasting Company (John A. Thompson, an individual filed charges); 104 N.L.R.B. 29.
International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 14; Haffenreffer Company, Brewery (Fred Lester, an individual filed charges); 104 N.L.R.B. 206.

Bridge, Structural and Ornamental Iron Workers Local 471 (AFL); Wagner Iron Works (United Auto Workers (CIO) filed charges; 104 N.L.R.B. 445.

International Handbag, Luggage, Belt and Novelty Workers Union, Local 161 (AFL); Inection Molding Company, (Anabell Woolen, individual filed charges); 104 N.L.R.B. 639.

Operative Plasterers' and Cement Masons, Local 797; Haddock Engineers, Limited, et al. (William C. Tissue, individual filed charges); 104 N.L.R.B. 994.

United Brotherhood of Carpenters and Joiners of America, Local 2498; Weyerhaeuser Timber Company (Laurie Alex Ulvi, individual filed charges); 105 N.L.R.B. 50.

Operative Plasterers' and Cement Masons' International Local 797; Charles E. DeBoll, Jr., individual contractor (Clarence B. Sells, an individual filed charges); 105 N.L.R.B. 311.

Local 13 of Boilermakers and its Business Agent; The Babcock and Wilcox Company (company and individual, Frank H. Donlon, Jr. filed charges); 105 N.L.R.B. 339.

Amalgamated Meat Cutters and Butcher Workmen, Local 393; Shen-Valley Meat Packers, Inc., (Pearlie H. Baker, Doris Rodeffer, individuals filed charges); 105 N.L.R.B. 491.

Carpet and Linoleum Workers Local 1235 and Painters and Paperhangers International (AFL); Sterling Furniture Company (Charles O. Barnes, individual); 105 N.L.R.B. 653.

Painters and Paperhangers National Local 419 (AFL); Lauren Burt, Inc. (William F. Coopermuth, individual); 105 N.L.R.B. 669.

United Auto Workers Local 501 (CIO); Bell Aircraft Corp., (Howard E. Nieburgall, individual); 105 N.L.R.B. 755.
International Typographical Union and Local 915; Daily
Review Corporation; 106 N.L.R.B. 902.

United Brotherhood of Carpenters and Joiners of America,
Local 59; J. L. Wroan & Sons (E. Jacob and D. Smith,
Individuals); 106 N.L.R.B. 231.

Brotherhood of Painters, Decorators, and Paperhangers of
America (AFL) (Chemical Workers Basic Union Local 1744;
National Lead Company, Titanium Division (C. C. Wilson
and S. J. Carter, individuals); 106 N.L.R.B. 545.

Operating Engineers Local 12 and Teamsters' Local 36;
Peter T. Peters, individual contractor, (Claremont
Development Company); 106 N.L.R.B. 611.

Cannery Workers Local Union 23260; Kuner-Empson Company,
(Julia Schmidt, an individual); 106 N.L.R.B. 670.

Allied Independent Unions, CUA; Krambo Food Stores, Inc.;
(Retail Clerks' International (AFL) filed charges);
106 N.L.R.B. 870.

International Typographical Union Local 174; Wave

Communications Workers of America (CIO); New Jersey
Bell Telephone Company; 106 N.L.R.B. 1322.

General Teamsters' Local 137 (AFL); Victor Metal
Products Corporation of Delaware; 106 N.L.R.B. 1361.

United Electrical, Radio and Machine Workers Local 914;
American Rubber Products Corporation; 106 N.L.R.B.
1372.

Teamsters' Local 282, Building Materials Drivers; Sherry
and Gordon Co., Inc.; 107 N.L.R.B. 113.

Distributive, Processing and Office Workers of America,
Local 5 (Bloomingdale's Department Store in chain of
Federated Stores); 107 N.L.R.B. 191.

Brotherhood of Painters, Decorators and Paperhangers, Local
365 and Business Agent, Smith; Orange State Painters,
Inc.; 107 N.L.R.B. 323.

Amalgamated Meat Cutters and Butcher Workmen, Egg and
Poultry Workers Local 231; Northwest Poultry and Dairy
Products Co.; 107 N.L.R.B. 332.
Pacific Coast Marine Firemen, Oilers, Watertenders and 
Wipers' Association, Independent; James J. Petresen; 
107 N.L.R.B. 593.

Boilermakers International and its District Lodge 57 as 
well as Locals 579 and 302; Esasco Services, Inc.; 
107 N.L.R.B. 617.

Teamsters' Local 41; Pacific Intermountain Express Company; 
107 N.L.R.B. 631.

United Brotherhood of Carpenters and Joiners of America, 
Local 256; Alpine Mill and Lumber Co.; 107 N.L.R.B. 915.

United Brotherhood of Carpenters and Joiners of America, 
Local 1423; South Texas Chapter of Association of 
General Contractors of America, Inc.; 107 N.L.R.B. 965.

International Brotherhood of Boilermakers, Iron Ship 
Builders, Blacksmiths, Forgers and Helpers, Local 803; 
Harbor Ship Maintenance and Camden Boiler Cleaning 
and Maintenance Company; 107 N.L.R.B. 1011.

United Brotherhood of Carpenters and Joiners of America, 
Local 472 and its agent; McGraw Construction Company; 
107 N.L.R.B. 1043.

National Union of Maritime Cooks and Stewards; Permanente 
Steamship Corporation; 107 N.L.R.B. 1111.

Brotherhood of Painters, Decorators, and Paperhangers, Lo- 
cal 902; G. J. McDaniels and Earl Saylos (individual 
business firm doing work for Army at Fort Bliss, 
Texas; 107 N.L.R.B. 1254.

International Lady Garment Workers Union Local 155; Milo 
Textile Corporation; 107 N.L.R.B. 1529.

United Brotherhood of Carpenters and Joiners of America, 
Local 607; Seabright Construction Company; 108 
N.L.R.B. 8.

United Furniture Workers of America, Local 140; The England- 
er Company; 108 N.L.R.B. 96.

International Lady Garment Workers Union; Custom Under-
Teamsters' Local 135; Margis Truck Lines, Inc.; 108 N.L.R.B. 229.

Millwrights' Local Union 1102, United Brotherhood of Carpenters and Joiners of America; J. A. Utley Co.; 108 N.L.R.B. 295.

International Longshoremen's Association, Local 1585; (Bull Insular Lines and Waterman Dock Company); 108 N.L.R.B. 433.

Textile Workers Union of America and its Local 1172 and Agents; Personal Products Corporation; 108 N.L.R.B. 744.

Utility Company Workers' Association; Public Service Electric and Gas Company of New Jersey; 108 N.L.R.B. 849.

Teamsters' Local 823; Roadway Express, Inc.; 108 N.L.R.B. 874.

Lumber and Sawmill Workers Union Local 2758 of the United Brotherhood of Carpenters and Joiners of America; Tacoma Harbor and Lumber and Timber Company; 108 N.L.R.B. 912.

Teamsters' Local 710; East Texas Motor Freight Lines, Inc.; 108 N.L.R.B. 1003.

United Brotherhood of Carpenters and Joiners of America, International Carpenters District Council, Sabina Area and Locals 610, 753, and 2007; (Consolidated Weather Steel Corporation, et al); 108 N.L.R.B. 1041.

International Association of Bridge, Structural and Ornamental Iron Workers Local 595 and its Agent; Bechtel Corporation; 108 N.L.R.B. 1070.

Retail Clerks' International Association, Local 1499; Busch Kredit Jewelry Company; 108 N.L.R.B. 1214.

International Hod Carriers' Local 72; (C. A. Batson Company); 108 N.L.R.B. 1357.

United Mine Workers District 50, Local 12270; Wyandotte Chemicals Corporation; 108 N.L.R.B. 1405.
International Fur and Leather Workers, Joint Council of New York; Abe Meltzer, Inc.; 109 N.L.R.B. 1506.

International Association of Bridge, Structural and Ornamental Iron Workers, Local 595; R. Clinton Construction Company; 109 N.L.R.B. 73.

United Brotherhood of Carpenters and Joiners of America, Local 1483 and Suffolk District Council; Grove Shepherd Wilson & Knize, Inc.; 109 N.L.R.B. 209.

Motion Picture Projectionists Local 150; Southside Theatres, Inc. and Fauchon & Marco, Inc.; 109 N.L.R.B. 259.

Teamsters' Local 728; Huber and Huber Motor Express, Inc.; 109 N.L.R.B. 295.

United Furniture Workers of America, Local 140; Englander Company; 109 N.L.R.B. 329.

Carpenters Mohawk Valley District Council and Local 1261; Grow Construction Company; 109 N.L.R.B. 522.

Teamsters' Local 638; Minneapolis Star and Tribune Co.; 109 N.L.R.B. 727.

Retail Clerks' International Local 11/9 and Business Agent Esther Luther; California Association of Employers in behalf of J. C. Penny Company; 109 N.L.R.B. 754.

Painters' and Paperhangers' Local 257 and Business Agent; William Dorg & Sons; 109 N.L.R.B. 821.


United Brotherhood of Carpenters and Joiners of America, Local 874; J. C. Boespflug Company; 109 N.L.R.B. 874.

Biscuit and Cracker Workers, Local 405 (AFL); National Biscuit Company, New York Plant; 109 N.L.R.B. 985.

International Brotherhood of Pulp, Sulphate and Papermill Workers (AFL), Local 679; Mayte Manufacturing Co., Inc.; 109 N.L.R.B. 1125.

Teamsters' Local 745; North East Texas Motor Lines, Inc.; 109 N.L.R.B. 1148.
Milford, Massachusetts Association of Shoe Workers; Buckford Shoes, Inc.; 109 N.L.R.B. 1346.

Teamsters' Local 41; Pacific Intermountain Express Co.; 110 N.L.R.B. 96.

Operative Plasterers' and Cement Finishers Local 511; Operating Engineers Locals 17, 17-A and 17-B; Bridge and Structural Iron Workers, Local 5; Building and Construction Trades Council of Buffalo and vicinity; Carpenters District Council of Buffalo and vicinity; National Granite Corporation; 110 N.L.R.B. 279.

Teamsters' Local 179 and its Business Agent; DePrizio Construction Company; 110 N.L.R.B. 287.


Operative Plasterers' Local 555; Teller Construction Co.; 110 N.L.R.B. 483.

International Association of Heat and Frost Insulators and Asbestos Workers (AFL) Local 5; Plant Insulation Co. and Insulating Contractors Association of Southern California; 110 N.L.R.B. 638.

International Association of Machinists, District Lodge 67; Addressograph-Multigraph Corporation of Washington, D.C. 110 N.L.R.B. 727.

Teamsters' Local 170; Anchor Motor Freight; 110 N.L.R.B. 850.

Bakery and Confectionery Workers Local 12; Great Atlantic and Pacific Tea Company, Pittsburgh Bakery; 110 N.L.R.B. 918.

Retail Clerks' International Association Local 1116; Chun King Sales, Inc.; 110 N.L.R.B. 1151.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, District Lodge 57 and Local 679 (AFL); Elchleay Corporation; 110 N.L.R.B. 1295.
United Auto Workers, Local 5; Studebaker Corporation; 110 N.L.R.B. 1307.

International Union of Operating Engineers, Local 917; Turner Construction Company; 110 N.L.R.B. 1380.

Carpenters', Lumber and Sawmill Workers Local 3038; Anaconda Copper Company; 110 N.L.R.B. 1925.

Amalgamated Association of Streetcar, Electric Railway, and Motor Coach Employees of America, Local 272; Eastern Massachusetts Street Railway Company; 110 N.L.R.B. 1963.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, District 2; Babcock and Wilcox Company; 110 N.L.R.B. 2116.


Teamsters' Local 886; Chief Freight Lines Company; 111 N.L.R.B. 22.


International Brotherhood of Electrical Workers, Local 942; Hall Electric Company; 111 N.L.R.B. 63.

United Brotherhood of Carpenters and Joiners of America; Local 1423; The Columbus Show Case Company; 111 N.L.R.B. 206.

Painters and Paperhangers Local 902 (AFL); M. B. Morgan Painting Contractor; 111 N.L.R.B. 395.

Aluminum Workers International Union Local 135; The Metal Ware Corporation; 111 N.L.R.B. 411.

Teamsters' Local 169; Rheem Manufacturing Company; 111 N.L.R.B. 460.

International Association of Machinists, Tool and Die Local 113; Peerless Tool and Engraving Co.; 111 N.L.R.B. 855.
Teamsters' Local 182 of Utica, New York and vicinity; The Lane Construction Corporation; N.L.R.B. 932.

United Brotherhood of Carpenters and Joiners of America Local 1028; Denneby Construction Co.; N.L.R.B. 1025.

International Association of Machinists, Guided Missile Lodge 1254; Convair Division of General Dynamics; N.L.R.B. 1055.


Millwrights' Local Union 1102, United Brotherhood of Carpenters and Joiners of America; J. W. Rylends Co.; N.L.R.B. 1296.

Teamsters' Local 135 and Business Agent; Midwest Transfer Company; N.L.R.B. 17.

United Mine Workers' District 50, Local 12824; Eagle Manufacturing Corporation; N.L.R.B. 74.

Teamsters' Local 600; Consolidated Forwarding Co., Inc.; N.L.R.B. 357.

Painters' and Paperhangers' Local 437 and its Agent; Maxon Construction Company; N.L.R.B. 444.

International Association of Bridge, Structural Iron and Ornamental Iron Workers Local 25; O. W. Burke Co.; N.L.R.B. 592.

Local 976, International Longshoremen's Association; Jersey Contracting Corporation; N.L.R.B. 650.

United Brotherhood of Carpenters and Joiners Local 517; Gil Wyner Construction Company; N.L.R.B. 714.

United Steel Workers Local 2040 (CIO); Florence Pipe Foundry and Machine Company; N.L.R.B. 960.

The International Plumbers Union and its special agent, Local 625 and its agent; Daugherty Co., Inc.; N.L.R.B. 986.

Local 84 of Bridge and Structural Ironworkers; Buie Building Materials Co.; N.L.R.B. 1059.
International Longshoremen's Association, Local 26; Foreign Trade Export Packing Co., Inc., et al.; 112 N.L.R.B. 1246.

International Brotherhood of Longshoremen (AFL); Huron Stevedoring Corporation; 112 N.L.R.B. 1285.

Teamsters' Local 864 and its Business Agent; Koss Construction Company; 112 N.L.R.B. 1289.

Operating Engineers Locals 17, 17-A and 17-B (AFL); Rupp Equipment Company; 112 N.L.R.B. 1315.

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry Local 234 and its Business Agent; Carrier Corporation; 112 N.L.R.B. 1385.

International Hod Carriers' Local 264 (AFL) and Building and Construction Trades Council; Jones-Hettelsater Construction Company; 112 N.L.R.B. 1482.

Local 189 of Building Service Employees Union (AFL); Hibbard Dowel Company; 113 N.L.R.B. 28.

Local 302 of Operating Engineers; Max J. Kuniz Company; 113 N.L.R.B. 41.

Teamsters' Local 270; The Item Company; 113 N.L.R.B. 67.

Teamsters' Local 553; Allied Aviation Company; 113 N.L.R.B. 111.

Operating Engineers (AFL), Local 450 and its Business Agent; American Construction Company; 113 N.L.R.B. 213.

United Shoe Workers of America (CIO); Roffie Shoe Corp.; 113 N.L.R.B. 314.

Teamsters' Local 107; Murphy's Motor Freight, Inc.; 113 N.L.R.B. 524.

Teamsters' Local 604; Kenosha Auto Transport Corp.; 113 N.L.R.B. 643.

Operating Engineers Local 12 (AFL); Association of General Contractors (association of employers); 113 N.L.R.B. 655.

United Auto Workers and its Local 61; Bowen Products Corporation; 115 N.L.R.B. 751.

United Auto Workers Local 155; Multi-Hydromatic Welding and Manufacturing Company; 113 N.L.R.B. 755.

Local 140 of United Furniture Workers (CIO) and its Agent; Brooklyn Spring Corp. and Lorraine Fiber Mill, Inc.; 113 N.L.R.B. 815.

Local 1247 International Longshoremen, Independent; Imparato Stevedoring Corporation; 113 N.L.R.B. 883.

Allied Independent Union CUA; Krambo Food Stores, Inc.; 114 N.L.R.B. 241.

United Association of Journeymen and Apprentices of the Plumbing and Piping; Industries, Local 392; Central Pipe Fabricating and Supply Company; 114 N.L.R.B. 350.

Lumber and Sawmill Workers Union Local 2288 (AFL); W. E. Jones Lumber Co., Inc.; 114 N.L.R.B. 415.

United Brotherhood of Carpenters and Joiners of America, Local 2025 and Business Agent; Baker and Coombs, Inc.; 114 N.L.R.B. 503.

United Steelworkers of America (CIO); Metal Fabricators and Finishers, Inc.; 114 N.L.R.B. 532.

Millwright Local Union No. 2484 and Agent, Clum, United Brotherhood of Carpenters and Joiners of America; W. S. Bellows Construction Corporation; 114 N.L.R.B. 541.

United Auto Workers and its Local 197; Merwin Rockwell Corporation; 114 N.L.R.B. 553.

United Brotherhood of Carpenters and Joiners of America, Local 2484 and its Agent; The Lummus Co.; 114 N.L.R.B. 656.
International Longshoremen's & Warehousemen's Union, Local 142; Olea Sugar Company, Limited; 114 N.L.R.B. 679.


Newspaper and Mail Deliverers' Union of New York and vicinity - Independent; J. Brodsky & Son; 114 N.L.R.B. 619.

Local 36 of Bridge, Structural and Ornamental Iron Workers and their Business Agent; H. E. Stoudt & Son, Inc.; 114 N.L.R.B. 838.

International Hod Carriers' Local 369; Frommeyer & Co.; 114 N.L.R.B. 872.

Building Service Employees International Union (AFL), Local 139; Window Cleaning Contractors Association of Detroit, Inc.; 114 N.L.R.B. 906.


Amalgamated Clothing Workers of America (CIO) and its New Orleans Joint Board and Representatives; New Orleans Laundries, Inc.; 114 N.L.R.B. 1077.

Painters and Paperhangers' Association, Linoleum Laying Local 419 and its Business Agent; Spoon Tile Company; 114 N.L.R.B. 1171.

United Packing House Workers (CIO) Local 267; Pfaelzer Brothers, Inc.; 114 N.L.R.B. 1279.

United Electric, Radio and Machine Workers of America, Independent Local 1139; perfection Manufacturing Corporation; 114 N.L.R.B. 1300.

International Longshoremen's Association, Independent, Local 976; Seaboard Terminal and Refrigeration Co.; 114 N.L.R.B. 1391.

Teamsters' Local 148 (AFL-CIO); Donald M. Drake Company and Harry Huff, Inc Trucking Company; 114 N.L.R.B. 1494.
International Association of Heat and Frost Insulators and Asbestos Workers, Local 51 and Its Business Agent; Rhode Island Covering Company; 114 N.L.R.B. 1526.

Independent International Longshoremen's Association and Its Local 1261; New York Shipping Association, Inc. and Pittston Stevedoring Corporation; 114 N.L.R.B. 1556.

Local 1258 of International Longshoremen, Independent; International Terminal Operating Co.; 114 N.L.R.B. 1563.

Newspaper and Mail Deliverers' Union of New York and vicinity; Union County Newdealers Supply Company, Warehouse Distributors; 114 N.L.R.B. 1575.

United Brotherhood of Carpenters and Joiners of America, District Council of Los Angeles; Millwood Corp.; 115 N.L.R.B. 43.

Local 1400 United Brotherhood of Carpenters and Joiners of America and Local 1045; Pardee Construction Company and Building Contractors' Association; 115 N.L.R.B. 126.

Teamsters' Local 986 and the International as well as Joint Council 42 and West Conf. Organ Committee; Charles W. Carter Company; 115 N.L.R.B. 251.

United Association of Journeymen and Apprentices of the Plumbing and Piping Industry, Local 255; Sinclair Refining Company; 115 N.L.R.B. 380.

United Brotherhood of Carpenters and Joiners of America, Local 824; Brunswick-Balke-Collender Company; 115 N.L.R.B. 518.


International Chemical Workers Union and Its Local 467; American Safety Razor Corporation; 115 N.L.R.B. 772.

Moving Picture Machine Operators Local 159; Reinier Theatre Corporation; 115 N.L.R.B. 952.
International Longshoremen's Indp. Local 791; T. Hogan & Sons, Inc., Stevedoring; 115 N.L.R.B. 1004.

United Brotherhood of Carpenters and Joiners of America, Local 935 and Its Business Agent and District Council of Detroit; O. W. Burke Company; 115 N.L.R.B. 1123.

Newspaper and Mail Deliverers' Union of New York and vicinity; Passaic County News Co., Inc.; 115 N.L.R.B. 1360.

Teamsters' Local 688; Coca Cola Bottling Company of St. Louis; 115 N.L.R.B. 1506.


Local 683 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the U. S. and Canada; Technicolor Motion Picture Corporation; 115 N.L.R.B. 1607.

United Association of Journeymen and Apprentices of the Plumbing and Piping Fitting Industries, Local 420 (AFL-CIO); Frick Company; 116 N.L.R.B. 119.

Teamsters' Local 102 (Brewery Workers) and Local 2; Anheuser-Busch, Inc.; 116 N.L.R.B. 178.


Teamsters' Local 249; Lancaster Transportation Company; 116 N.L.R.B. 599.


International Association of Machinists and Local 1021; The New Britain Machine Company; 116 N.L.R.B. 645.

Glove Workers Union of Fulton County; Crescendoe Gloves, Inc.; 116 N.L.R.B. 651.
Teamsters' Local 119; Interstate Motor Freight System; 116 N.L.R.B. 725.

Teamsters' Local 294; Valletta Trucking Company; 116 N.L.R.B. 842.

Teamsters' Local 294; Great Atlantic and Pacific Tea Co.; 116 N.L.R.B. 943.


Teamsters' Local 470; McClaskey and Co., Inc.; 116 N.L.R.B. 1123.

Operating Engineers Locals 18, 18-A and 18-B; Hatcher Brothers; 116 N.L.R.B. 1145.

Teamsters' Local 804; W. & J. Sleone Furniture Retailers; 116 N.L.R.B. 1267.

Teamsters Local 107; Interstate Motor Freight System; 116 N.L.R.B. 1398.

Confederated Unions of America, United Auto Workers Amalgamated Local 5; Excel Merchandise Co., Inc.; 116 N.L.R.B. 1561.

Amalgamated Clothing Workers Local 316; Continental Overall Company; 116 N.L.R.B. 1563.


Hotel, Restaurant and Bartenders San Francisco Local, (AFL-CIO), Joint Executive Board; Gene Compton's Corp. and Golden Gate Restaurant Association; 116 N.L.R.B. 1944.
United Brotherhood of Carpenters and Joiners of America and its Local 269; The Marley Company; 117 N.L.R.B. 107.

International Woodworkers of America, Local 13-433 (CIO); Ralph L. Smith Lumber Co.; 117 N.L.R.B. 405.

Teamsters' Local 491; Atlantic Freight Lines, Inc. and Amsco, Inc.; 117 N.L.R.B. 464.

United Mine Workers District 50, Local 13366; Stubnitz Green Corporation; 117 N.L.R.B. 648.


Teamsters' Local 810; R. B. Wyatt Manufacturing Co.; 117 N.L.R.B. 700.

Teamsters' Local 282; Triboro Carting Corporation; 117 N.L.R.B. 715.


American Radio Association (Radio Officers); Pacific Maritime Association, Employer Bargaining Association; 117 N.L.R.B. 1032.

International United Mine Workers and District 17 and Local 9722; Westmoreland Coal Company and Kanawha Coal Operators Association; 117 N.L.R.B. 1072.

International United Mine Workers, District 17, Local 2935; Boone County Coal Corp. and Kanawha Coal Operators Association; 117 N.L.R.B. 1095.

International Hod Carriers' Local 276 (AFL-CIO); Mountain Pacific, Seattle and Tacoma chapters of American General Contractors Association; 117 N.L.R.B. 1319.
United Association of Journeymen and Apprentices of the Plumbing and Piping Industry, Local 528 of New York; Carty Meeting Corporation; 117 N.L.R.B. 1417.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 85; The Great Atlantic and Pacific Tea Co.; 117 N.L.R.B. 1542.


Operating Engineers Local 542; Koppers Co., Inc.; 117 N.L.R.B. 1800.

Teamsters’ Local 13; Broderick Wood Products Company; 118 N.L.R.B. 58.

Local 47 of Heat and Frost Insulators and the International Association; Alex Stafford Corporation and Master Insulators’ Association; 118 N.L.R.B. 79.

Operating Engineers Local 138; Hendrickson Brothers, Contractors; 118 N.L.R.B. 174.

United Miners District 50 and Local 12915; West Virginia Pulp and Paper Company; 118 N.L.R.B. 220.

Local 20% of International Longshoremen, Independent; Waterway Terminals Corporation; 118 N.L.R.B. 342.


Operating Engineers, Local 138; A. Lestone Company; 118 N.L.R.B. 689.

Teamsters’ Local 117; The Anglander Co., Inc.; 118 N.L.R.B. 707.

International Longshoremen’s Independent, its Local 1418 and Local 1419; J. P. Flario & Co., Inc.; 118 N.L.R.B. 753.

Magnet Wire Workers Union, Inc., Independent; Imperial Wire Company, Inc.; 118 N.L.R.B. 775.
Teamsters' Local 986; Max Factor & Co.; 118 N.L.R.B. 808.

United Brotherhood of Carpenters and Joiners of America, District Council of Madison County, Illinois, Local 573, Carpenters and Agents; The Holmes Construction Company; 118 N.L.R.B. 827.

United Brotherhood of Painters and Paperhangers, etc., Local 1744; National Lead Company, Titanium Division; 118 N.L.R.B. 1240.

Teamsters' Local 324; Morse Brothers, Harrisburg Sand and Gravel Company and Lebanon Sand and Gravel Co.; 118 N.L.R.B. 1312.

American Newspaper Guild, Local 26; Niagara Falls Gazette Publishing Corporation; 118 N.L.R.B. 1471.

International Longshoremen's Association, Independent and its President and Executive Vice President; Atlantic Coast District and New York Shipping Association, Inc.; 118 N.L.R.B. 1481.

Sailors' Union of the Pacific; Kaiser Gypsum Co., Inc.; 118 N.L.R.B. 1576.

Teamsters' Local 886; United Parts Company; 119 N.L.R.B. 222.

Teamsters' Local 639; Curtis Brothers, Inc.; 119 N.L.R.B. 232.

International Association of Machinists, Lodge 942; Alloy Manufacturing Company; 119 N.L.R.B. 307.

Operating Engineers Local 12; Shepherd Machine Company; 119 N.L.R.B. 320.

International Association of Machinists, Local Lodge 1424; Bryan Manufacturing Company; 119 N.L.R.B. 502.


Insurance Agents International Union (AFL-CIO); The Prudential Insurance Company of America; 119 N.L.R.B. 768.
Local 409 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada; Columbia Broadcasting Systems, Inc.; 119 N.L.R.B. 810.

International Hod Carriers' Local 242 and Washington District Council of Hod Carriers; Mountain Pacific Chapter of Association of General Contractors; 119 N.L.R.B. 883.

International Typographical Union, Mailers No. 7; Kansas City Star; 119 N.L.R.B. 972.

Operating Engineers, Local Union 3 of the International Union of Operating Engineers (AFL-CIO); St. Maurice Helmkamp, & Musser; 119 N.L.R.B. 1026.


Bricklayers' Local 1, Carpenters' Local 1685, Structural Ironworkers Local 402, Brevard County Building Trades Council, Painters' Local 1287 and 1010, Plumbers Local 295 and Sheetmetal Workers Local 130; J. Hilbert Sapp, Inc.; 119 N.L.R.B. 1456.

Marine Cooks and Stewards (AFL-CIO); Pacific Transport Lines, Inc.; 119 N.L.R.B. 1505.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 92 (AFL-CIO); Pittsburgh Des Moines Steel Co.; 119 N.L.R.B. 1605.

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industries, Local 761; Mark R. Kunkel Plumbing Company; 119 N.L.R.B. 1623.

International Brotherhood of Electrical Workers and its Local 59; Texlite, Inc.; 119 N.L.R.B. 1792.

B. Court Decisions

A-1 Photo Service (see H. W. Smith) v. NLRA: 187 F. 2d 418 (C.A.9), dismissing petition for review of Board order declining jurisdiction in 83 NLRB 564 (21-CB-34), Volume 7, P. 581.


Associated Musicians, Local 802, AFL; NLRB v. (Gotham Broadcasting Corp. (Station WINS): 226 F. 2d 900 (C.A.2), enforcing 110 NLRB 2166 (2-CB-294) (certiorari denied 351 U.S. 962), C.D. Vol. 9, p. 1392.


Biscuit and Cracker Workers Local Union No. 405, AFL; NLRB v. (National Biscuit Company), 222 F. 2d 573 (C.A.2) enforcing 109 NLRB 985 (2-CB-991), C.D. Vol. 9, p. 1218.


Carpenters Union, Local No. 642, United Brotherhood of Carpenters and Joiners of America (See Thomas Rigging Co.)

Carpenters Union, Local No. 642, United Brotherhood of Carpenters and Joiners of America (See Thomas Rigging Co.)


Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135; NLRB v. (Hoosier Petroleum Co.): 211 F. 2d 216 (U.A.7), enforcing 106 NLRB 629 (35-CB-22), C.D. Vol. 9, p. 434.


Construction Specialties Company (and International Association of Heat and Frost Insulators and Asbestos Workers Local No. 28, AFL); NLRB v.: 208 F. 2d 170 (10th Cir.), enforcing 102 NLRB 1542 (30-CB-223, 234, 30-CB-22, 23, 24, C.D. Vol. 8, p. 1371.

Conway's Express (See Henry V. Rabouin) v. NLRB.: 195 F. 2d 906 (2d Cir.), affirming 87 NLRB 972 (2-CC-14), C.D. Vol. 8, p. 158.

Daboll, Charles E., Jr. and Operative Plasterers' and Cement Masons' International Association, AFL, Local Union No. 797; NLRB v.: 216 F. 2d 143 (9th Cir.), enforcing 105 NLRB 311 (20-CB-244) (certiorari denied 348 U.S. 917), C.D. Vol. 9, p. 765.


Denver Building and Construction Trades Council, et al. (Gould and Preisner):
186 F. 2d 236 (8th Cir. 293) (v. NLRB), setting aside 82 NLRB 1195 (30-CB-2), C.D. Vol. 7, p. 443.

Denver Building and Construction Trades Council (Grauman Co.): 81 F. Supp. 490 (D. Colo.) (Slater v.), denying injunctive relief under Section 10(1), C.D. Vol. 6, p. 353.


345 U. S. 1ly (NLRB v.) (344 U.S. 872, denying union motion for leaving to intervene), reversing judgement as to Section 8(b)(6) aspect of 196 F. 2d 61, C.D. Vol. 8, p. 812.

202 F. 2d 954 (C.A. 6) enforcing 92 NLRB 1528.


Huber and Huber Motor Express, Inc.; NLRB v.: 223 F. 2d 748 (C.A. 9), setting aside 109 NLRB 295 (10-CA-1811, 10-CB-161), C.D. Vol. 9, p. 1249.


International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, etc. Local Union No. 41, AFL; NLRB v. (Byers Transportation Co.): 196 F. 2d 1 (C.A. 8), setting aside, 94 NLRB 1494 (17-CB-36), C. D. Vol. 8, p. 228. 347 U. S. 17, reversing 196 F. 2d 1, C. D. Vol. 9, p. 52.

International Brotherhood of Teamsters, Chauffeurs, and Helpers of America, Local 182, Utica, New York and vicinity, AFL; NLRB v. (The Lane Construction Co.): 228 F. 2d 83 (C.A. 2), enforcing, 111 NLRB 952 (3-CB-214), C. D. Vol. 9, p. 1136.


Jarka Corporation of Philadelphia (and Local 1291, International Longshoremen's Association); NLRB v.: 198 F. 2d 618 (C.A. 3), enforcing in part 94 NLRB 320 (4-CA-251, 4-CB-41, 44), C. D. Vol. 8, p. 461.


Local 3, Bloomingdale, District 65, Retail, Wholesale and Department Store Union, CIO; NLRB v. (Bloomingdale's): 216 F. 2d 265 (C.A. 2), setting aside 107 NLRB 191 (2-CA-2584, 2-CB-610), C. D. Vol. 9, p. 850.


Local 169, Industrial Division, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; NLRB v. (Rheem Manufacturing Co.): 228 F. 2d 425 (C.A. 3), enforcing 111 NLRB 460 (4-CB-199), C. D. Vol. 9, p. 1448.

Local 595, International Association of Bridge, Structural and Ornamental Iron Workers, AFL, and W. B. Sanders; NLRB v. (Bechtel Corp.): 218 F. 2d 958 (C.A. 6), enforcing 108 NLRB 1070 (14-CB-211).

Local 743, United Brotherhood of Carpenters and Joiners of America, AFL; NLRB v. (General Electric Co.): 202 F. 2d 516 (C.A. 9), enforcing as modified 94 NLRB 1260 (21-CA-634, 21-CB-259), C. D. Vol. 8, p. 746.


McCarron Co. (See George A. Vare and Edwin H. Vare, Jr.); NLRB v. : 206 F. 2d 543 (C.A. 3), setting aside 100 NLRB 1537 (4-CA-443, 4-CB-83), C. D. Vol. 8, p. 1177.


Millwrights' Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America v. NLRB (J. A. Utley Co.): 217 F. 2d 885 (C.A. 6), enforcing 108 NLRB 295 (7-CA-847, 7-CB-142), C. D. Vol. 9, p. 929.

Monsanto Chemical Company (and International Chemical Workers Union, Local No. 16, AFL); NLRB v.: 205 F. 2d 763 (C.A. 8), enforcing 97 NLRB 517 (14-CA-351, 14-CB-52), C. D. Vol. 8, p. 1155.


Oertel Brewing Company (and Falls Cities Carpenters District Council of the UBCJ, AFL); NLRB v.: 197 F. 2d 59 (C.A. 6), enforcing 93 NLRB 530 (9-CA-168, 9-CB-41, 42), C. D. Vol. 8, p. 334.

Pacific Intermountain Express Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-The-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 41 AFL; NLRB v.: 228 F. 2d 170 (C.A. 8), enforcing 110 NLRB 96 (17-CA-612, 17-CB-65) (certiorari denied 351 U. S. 952), C. D. Vol. 9, p. 1499.

Pape Broadcasting Company (Radio Station WALA) and Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL; NLRB v.: 217 F. 2d 197 (C.A. 5), enforcing as modified 104 NLRB 29 (15-CA-412, 15-CB-84), denying rehearing at 203, C. D. Vol. 9, p. 888.


Puerto Rico Steamship Association, etc.; NLRB v.: 211 F. 2d 274 (C.A. 1), enforcing 103 NLRB 1217 (24-CB-13), C. D. Vol. 9, p. 312.

Rabouin, Henry V., d/b/a Conway’s Express v. NLRB: 195 F. 2d 906 (C.A. 2), affirming 87 NLRB 972 (2-CC-14), C. D. Vol. 8, p. 158.


Reed, George W. (and International Hod Carriers, Building and Common Laborers Union, Local 36, AFL); NLRB v.: 206 F. 2d 184 (C.A. 9), as amended August 12, 1953, enforcing as modified 94 NLRB 698 (20-CB-86), C. D. Vol. 9, p. 1110.

Retail Clerks International Association, AFL and Retail Clerks' Union, Local 648; NLRB v. (Safeway Stores): 186 F. 2d 371 (C.A. 9), remanding upon petition for adjudication in civil contempt, for additional testimony and findings, C. D. Vol. 7, p. 535.


211 F. 2d 759 (C.A. 9), adjudging unions (upon rehearing in civil contempt (certiorari denied 348 U. S. 839), C. D. Vol. 9, p. 348.

Richland Laundry & Dry Cleaners (See Harvey Stroller), and Laundry & Dry Cleaners Union Local 197; NLRB v.: 207 F. 2d 305 (C.A. 9), enforcing 93 NLRB 680 (19-CA-302, 19-CB-103) (certiorari denied 347 U. S. 919; rehearing denied 347 U. S. 958), C. D. Vol. 8, p. 1312.


Stover Steel Service (See John A. Piezonki) v. NLRB.: 219 F. 2d 879 (C.A. 4), setting aside and remanding 108 NLRB 1575 (5-CC-29) (order on remand 112 NLRB 1044), C. D. Vol. 9, p. 1043.


United Brotherhood of Carpenters and Joiners of America, Local Union No. 55, AFL; NLRB v.: (The Grauman Company): 205 F. 2d 515 (C.A. 10), enforcing 100 NLRB 753 (30-CB-17), C. D. Vol. 8, p. 1107.


United Electrical, Radio and Machine Workers of America, Local 622 (UE); NLRB v. (Stupakoff Ceramic & Manufacturing Co.): 203 F. 2d 673 (C.A. 3), setting aside 98 NLRB 664 (6-CB-120), C. D. Vol. 8, p. 942.
United Hoisting Co., Inc.; NLRB v.: 198 F. 2d 465
(C.A. 3), enforcing 92 NLRB 1642 (2-CA-585, 2-CB-183)

United Mine Workers of America, District 2, et al.;
NLRB v. (Mercury Mining & Construction Corp): 202 F.
2d 177 (C.A. 3), enforcing 96 NLRB 1359 (6-CB-126, 129),

United Mine Workers of America, District 2; United Mine
Workers of America, Local 1113, etc.; NLRB v. (M. F.
Fetterolf Co.): 210 F. 2d 281 (C.A. 3), enforcing 103
NLRB 1572 (6-CB-137 et al.), C. D. Vol. 9, p. 139.

United Mine Workers of America, District 23, et al.;
NLRB v. (West Kentucky Coal Co.): 195 F. 2d 961
(C.A. 6), enforcing 92 NLRB 916 (9-CB-38, 39, 40, 43)

United Mine Workers of America, District 31 NLRB v.
(Bitner Fuel Co.): 190 F. 2d 251 (C.A. 4), enforcing

United Mine Workers of America, District 31, et al. NLRB
v. (L. E. Cleghorn): 196 F. 2d 389 (C.A. 4), enforcing
95 NLRB 546 (6-CB-87, 105) (certiorari denied 344 U. S.
924), C. D. Vol. 8, p. 416.

Utley, J. A. Company, v. NLRB: 217 F. 2d 885 (C.A. 6),
enforcing 108 NLRB 295 (7-CA-847, 7-CB-142), C. D.
Vol. 9, p. 929.

Vare, George A., and Edwin H. Vare, Jr., d/b/a McCarron
Co.; NLRB v: 206 F. 2d 543 (C.A. 3), setting aside 100
NLRB 1537 (4-CA-443, 4-CB-63), C. D. Vol. 8, p. 1177.

Venetian Blind Workers' Union Local 2565, etc. AFL;
NLRB v. (Ambassador Venetian Blind Company): 207 F.
2d 124 (C.A. 9), enforcing 92 NLRB 902 (20-CB-73),
C. D. Vol. 8, p. 1303.

Wagner Iron Works and Bridge, Structural & Ornamental
Iron Workers Shopmen's Local 471 (AFL); NLRB v:.
220 F. 2d 126 (C.A. 7), enforcing as modified 104 NLRB
445, 106 NLRB 675, and 106 NLRB 1236 (13-CA-849, 864,


Allied Independent Union, CUA; NLRB v.: (Krambo Food Stores) 238 F. 2d 120 (C.A. 7), November 5, 1956, 39 L.R.R.M. 2031, J-2242, enforcing 114 NLRB 241 (13-CB-284(a), 13-CB-284(b).


Amalgamated Union Local 5, United Automobile Workmen, Confederated Unions of America; NLRB v.: (Excel Merchandise Co.) 251 F. 2d 845 (C.A. 2), January 29, 1958, 41 L.R.R.M. 2465, J-2378, enforcing 116 NLRB 1581 (2-CA-4819; 2-CB-1708).

Bakery and Confectionery Workers; International Union of America, Local 12, AFL-CIO; NLRB v.: (National Biscuit Company) 245 F. 2d 211 (C.A. 3), June 7, 1957, 40 LRRM 2205, J-2322, setting aside 115 NLRB 1542 (6-CA-284).


Brotherhood of Painters, Decorators & Paperhangers of America, etc., and George Cooney, Bus. Agent; NLRB v.: (Spoon Tile Co.) 242 F. 2d 477 (C.A. 10), Feb. 26, 1957, 39 LRRM 2598, J-2286, enforcing as modified 114 NLRB 1171 (30-CB-46, 47, 48, 49).


Carpenters Local Union No. 1028, United Brotherhood of Carpenters, etc.; NLRB v.: (Denney Construction Company) 232 F. 2d 454 (C.A. 10), March 7, 1956, 37 L.R.R.M. 2712, J-2159, enforcing 111 NLRB 1025 (16-CB-65).


Dallas General Drivers, Warehousemen and Helpers, Local Union 745, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; NLRB v.: (North East Texas Motor Lines, Inc.) 228 F. 2d 702 (C.A. 5), January 17, 1956, 37 L.R.R.M. 2356, J-2134, enforcing as modified 109 NLRB 1147 (16-CA-714; etc., 16-CB-58, etc.).


357 U. S. 93, June 16, 1958, (NLRB v. Local 886, Teamsters, Local 850, IAM v. NLRB), 42 L.R.R.M. 2243, J-2415, affirming 247 F. 2d 71 as to Local 850 IAM, reversing and remanding as to Local 886, Teamsters.


356 U. S. 931, April 14, 1958, denying union petition for cert.


International Brotherhood of Boilermakers, etc. District No. 2; NLRB v.: (Babcock & Wilcox Co.) 232 F. 2d 393 (C.A. 2), April 25, 1956, 38 L.R.R.M. 2046, J-2180, enforcing 110 NLRB 2116 (2-CA-2921, 2-CB-946).


International Union, United Mine Workers of America et al. v. NLRB: (Boone County Coal Corp.) 257 F. 2d 211 (D.C., D.C.), June 12, 1958, 42 L.R.R.M. 2264, J-2417, setting aside 117 NLRB 1095 (9-CB-271).


Jones, W. B. Lumber Co., Inc. and Lumber and Sawmill Workers' Union Local 2288, AFL; NLRB v.: 245 F. 2d 368 (C.A. 9), March 29, 1957, 39 L.R.R.M. 2728, J-2298, enforcing 114 NLRB 415 (21-CA-2116; 21-CB-671).


Local 11, United Brotherhood of Carpenters & Joiners of America, et al. (General Millwork Corp.): NLRB v.: 242 F. 2d 932 (C.A. 6), April 10, 1957, 39 L.R.R.M. 2731, J-2303, enforcing 113 NLRB 1084 (8-CB-29).


Local 140, United Furniture Workers of America, CIO, Alex Sirota and Joaquin Alvares; NLRB v.: (Brooklyn Spring Corp.): NLRB v.: 233 F. 2d 539 (C.A. 2), May 9, 1956, 38 L.R.R.M. 2134, J-2188, enforcing 113 NLRB 815 (2-CB-1246).


Local 369, International Hod Carriers' Building and Common Laborers' Union of America, AFL; NLRB v.: (A.C. Frommeyer Co.) 240 F. 2d 539 (C.A. 3), December 3, 1956, 39 L.R.R.M. 2142, J-2246, enforcing as modified 114 NLRB 872 (4-CB-228) (denying rehearing 240 F. 2d 544).

Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL; NLRB v.: (J. J. White, Inc.) 239 F. 2d 327 (C.A. 3), December 11, 1956, 39 L.R.R.M. 2173, J-2249, enforcing 111 NLRB 1126 (4-CB-216).


Local 618, Automotive, Petroleum and Allied Industries Employees Union, AFL-CIO, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. NLRB: (Incorporated Oil Co.) 249 F. 2d 332 (C.A. 8), Nov. 18, 1957, 41 L.R.R.M. 2106, J-2354, setting aside 116 NLRB 1844 (14-CC-86).

Local 1423, United Brotherhood of Carpenters and Joiners of America, AFL; NLRB v.: (Columbus Show Case Co.) 236 F. 2d 832 (C.A. 5), December 21, 1956, 39 L.R.R.M. 2245, J-2253, enforcing 111 NLRB 206 (39-CB-46).

Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, and Los Angeles County District Council of Carpenters and Nathan Fleisher; (Sand Door & Plywood Co.) 241 F. 2d 147 (C.A. 9), Feb. 12, 1957 (NLRB v.)
357 U. S. 93, June 16, 1958 (v. NLRB), 42 L.R.R.M. 2243, J-2415, affirming 241 F. 2d 147.

Local Union No. 9735, United Mine Workers of America v. NLRB: (Westmoreland Coal Co.) 258 F. 2d 146 (C.A., D.C.), June 20, 1948, 42 L.R.R.M. 2320, J-2419, setting aside 117 NLRB 1072 (9-CB-305).


Murphy's Motor Freight, Inc. and Local 107, International Brotherhood of Teamsters, etc. AFL: NLRB v.: 231 F. 2d 654 (C.A. 3), April 10, 1956, 37 L.R.R.M. 2811, J-2171, enforcing 113 NLRB 524 (4-CA-1140; 4-CB-241).

National Organization Masters, Mates and Pilots of America, Inc., AFL-CIO; and National Marine Engineers Beneficial Association, AFL-CIO; and National Maritime Union of America, AFL-CIO; and Rivers Joint Organizing Committee and their agent Gordon C. Knapp; NLRB v.: (Banta Towing Co., Inc. and Plaquemine Towing Corp.) 258 F. 2d 66 (C.A. 7), March 4, 1958, 41 L.R.R.M. 2610, J-2384, setting aside 116 NLRB 1787 (14-CB-291).


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United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United
States and Canada, Local Union 234; NLRB v.: (Carrier
Corp.) 231 F. 2d 447 (C.A. 5), April 12, 1956, 37
L.R.R.M. 2837, J-2173, enforcing 112 NLRB 1385
(10-CB-224).

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States and Canada, Locals 420 and 428, AFL; NLRB v.: (Frank Hake) 242 F. 2d 722 (C.A. 3), March 27, 1957,
39 L.R.R.M. 2629, J-2292, setting aside 112 NLRB 1097
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2727, denying company motion to set aside 220 F.
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APPENDIX II
NATIONAL LABOR RELATIONS BOARD MEMBERS AND
GENERAL COUNSEL FOR THE
FISCAL YEARS 1948-58

1948
Paul M. Herzog, Chairman

John M. Houston
Abe Murdock

James J. Reynolds, Jr.
J. Copeland Gray

Robert N. Denham, General Counsel

1949
Paul M. Herzog, Chairman

John M. Houston
Abe Murdock

James J. Reynolds, Jr.
J. Copeland Gray

Robert N. Denham, General Counsel

1950
Paul M. Herzog, Chairman

John M. Houston
Abe Murdock

James J. Reynolds, Jr.
Paul Styles\[1\]

George J. Bott, General Counsel\[2\]

1\[1\]Appointed February 27, 1950 to succeed J. Copeland Gray.

2\[2\]Appointed September 29, 1950 to succeed Robert N. Denham and was succeeded by William O. Murdock October 11, 1950.
1951
Paul M. Herzog, Chairman

John M. Houston
Abe Murdock
Ivor H. Peterson
Paul Styles

William O. Murdock, General Counsel

1Appointed December 31, 1951 to complete term of James J. Reynolds who resigned December 31, 1951, term ending August 27, 1956.

1952
Paul M. Herzog, Chairman

John M. Houston
Abe Murdock
Ivor H. Peterson
Paul Styles

William O. Murdock, General Counsel

1953
Guy Farmer, Chairman1

Philip Ray Rogers2
Abe Murdock
Ivor H. Peterson
Paul Styles

William O. Murdock, General Counsel

1Appointed Spring, 1953 to replace Paul M. Herzog as Chairman.

2Appointed Spring, 1953 to replace John M. Houston.

1954
Guy Farmer, Chairman

Philip Ray Rogers
Abe Murdock
Ivor H. Peterson
Albert C. Beeson

William O. Murdock, General Counsel

1Appointed March 2, 1955 to replace Paul Styles.
1955
Guy Farmer, Chairman
Philip Ray Rogers, Acting Chairman

Philip Ray Rogers
Abe Murdock
Ivar A. Peterson
Boyd Leedom

Theophil C. Kamholz, General Counsel

1 Appointed August 27, 1955 to November 2, 1955.
2 Appointed Summer, 1955 to succeed Albert C. Beeson.
3 Succeeded William O. Murdock.

1956
Boyd H. Leedom, Chairman

Philip Ray Rogers
Abe Murdock
Stephen S. Bean
Joseph A. Jenkins

Jerome D. Fenton, General Counsel

1 Appointed November 2, 1955.
2 Appointed December 1, 1955 to succeed Guy Farmer.
3 Appointed to succeed Ivar Peterson whose term expired August 26, 1956.
4 Succeeded Theophil C. Kamholz on February 23, 1957.

1957
Boyd Leedom, Chairman

Stephen S. Bean
Philip Ray Rogers
Abe Murdock
Joseph A. Jenkins

Jerome D. Fenton, General Counsel
1958

Boyd Leedom, Chairman

Stephen J. Bean  Joseph A. Jenkins
Philip Ray Rogers  John H. Fanning

Jerome D. Fenton, General Counsel

\[\text{Succeeded Abe Murdock whose term expired.}\]
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In addition to the above cited articles, the multi-volume Labor Relations Reporter and Labor Relations Reference Manual services of both the Commerce Clearing House, Inc. and the Bureau of National Affairs are sources of valuable labor law information. Both services are also supplemented with separate volumes on labor law cases.
I, James Elmer Young, was born in DuBois, Pennsylvania, December 15, 1927. I received my secondary school education in the public schools of DuBois, and my undergraduate training at the University of Akron, which granted me the Bachelor of Arts degree in 1949. I received the Master of Arts degree from The Ohio State University in 1954. While in residence for this degree, I was research assistant to Professor Glenn W. Miller during the school year 1953-54. I was subsequently employed as an instructor of Economics at The Ohio State University and Wittenberg College in Springfield, Ohio. I was appointed an H. B. Earhart Fellow for the academic year 1958-59 while I completed the requirements for the degree Doctor of Philosophy.