

*National labor relations act*

PROPERTY OF INSTITUTE  
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214 CALIFORNIA HALL

**A GUIDE TO THE**

# NLRA

**NATIONAL LABOR RELATIONS ACT**

*U.S. Division of labor standards*

**PROCEDURES AND PRACTICES**

U. S. DEPARTMENT OF LABOR  
DIVISION OF LABOR STANDARDS

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**A Guide**  
**TO THE NATIONAL LABOR**  
**RELATIONS ACT**



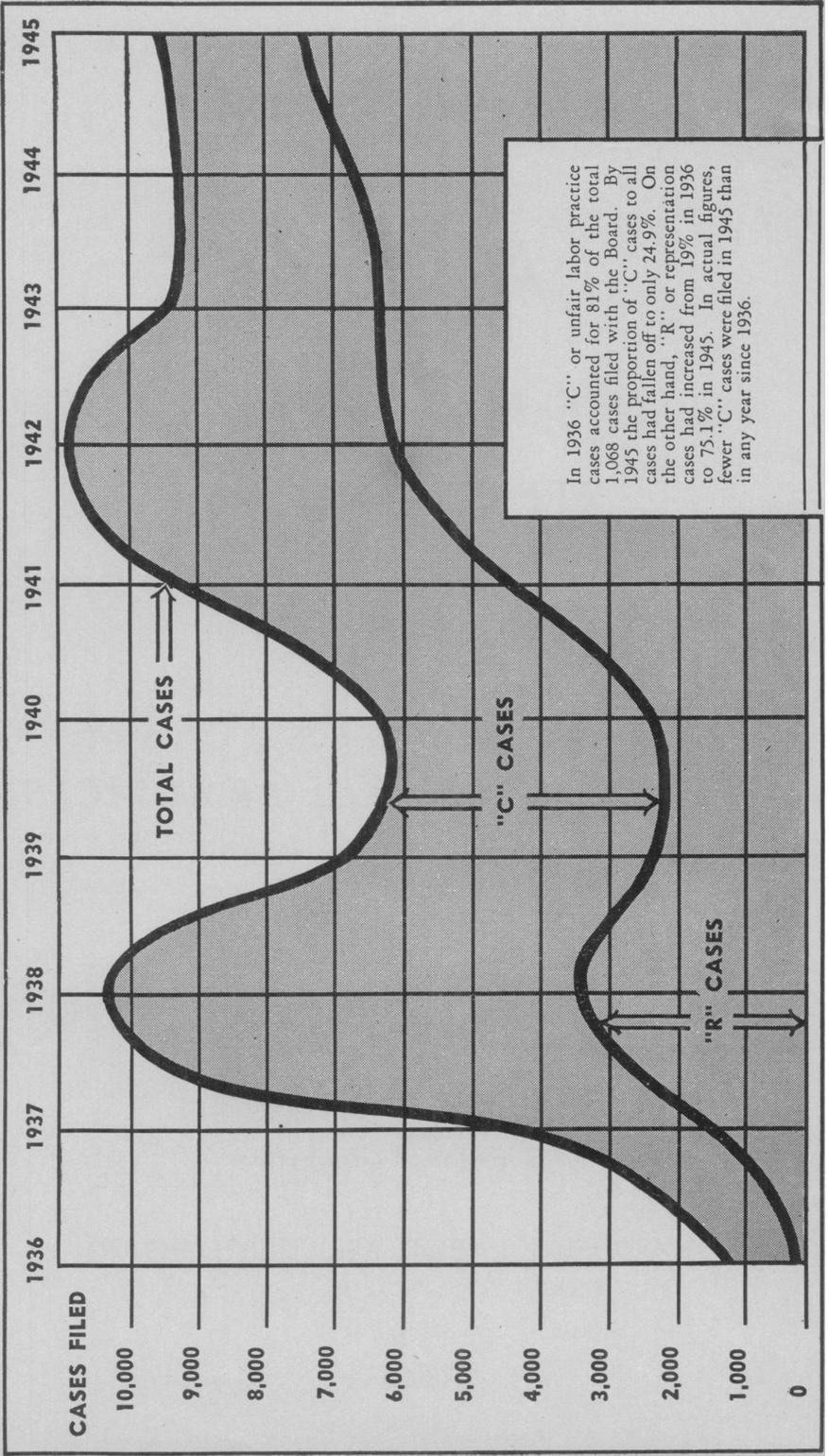
***PROCEDURES AND PRACTICES***

by **LOUIS G. SILVERBERG**  
*Director of Information*

**NATIONAL LABOR RELATIONS BOARD**

# Chart I. TOTAL CASES FILED WITH NLRB

Showing Annual Variations and Trend of "C" and "R" Cases as Proportion of Total Case Load, 1936-45



In 1936 "C" or unfair labor practice cases accounted for 81% of the total cases filed with the Board. By 1945 the proportion of "C" cases to all cases had fallen off to only 24.9%. On the other hand, "R" or representation cases had increased from 19% in 1936 to 75.1% in 1945. In actual figures, fewer "C" cases were filed in 1945 than in any year since 1936.

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# Preface

**S**INCE 1935 it has been the stated policy of the United States Government to protect the right of workers to organize into unions of their own choosing and to provide machinery to enforce that right. The realization of that right has involved millions of American men and women. During the war an average of 3,999 employees voted, every working day, on whether or not they wanted a union to represent them.

During these ten years the National Labor Relations Board, the agency responsible for carrying out the purpose of the Wagner Act, has fashioned procedures to meet this responsibility and has rendered thousands of decisions translating the intent of Congress into practical labor relations. Out of the wealth of this ten-year experience there has developed a body of precedents and procedural requirements virtually as important as the provisions of the Act itself.

The purpose of this Guide is to summarize these procedures and precedents so that those who are responsible for collective bargaining negotiations—whether as representatives of labor or of management—may find it easier to understand and to utilize the Act and to adjust their own policies in accordance with the developing body of labor relations laws. Such an understanding should lead to the avoidance of many plant grievances, unnecessary appeals to Government labor agencies, and much litigation. It should also help realize the earnest wish of the National Labor Relations Board that parties avail themselves of its many methods of informal procedures rather than prosecuting formal cases.

It should be emphasized, however, that this Guide is designed for informational purposes only. It is not a legal manual.

*In any case involving actual filing of charges or petitions under the National Labor Relations Board, the reader is urged to consult the nearest Regional Board office or his attorney or other designated official responsible for handling NLRB work.*

The Division of Labor Standards is publishing this bulletin as one of a series designed to help in the day-to-day practice of sound indus-

trial relations, and to provide basic teaching materials for use in labor education classes.

The Division wishes to express its thanks to the author, Mr. Louis G. Silverberg, Director of Information of the National Labor Relations Board, to the members of our Advisory Committee who have reviewed the bulletin, and to the other labor, management, and government officials who made helpful suggestions.

VERNE A. ZIMMER, *Director.*

WASHINGTON, D. C., *June 1946.*

# The National Labor Relations Act and the Labor Board

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THE National Labor Relations Act, passed in 1935, is a simple law with a limited purpose. Congress had found that industrial strife over union recognition was too costly and that certain employer practices contributed to this strife. Hence, it passed the NLRA, which restated the basic principle that workers have the right to unions of their own choosing and to bargain collectively, and set up, for the first time, an agency to enforce that right.

The newly created agency, the National Labor Relations Board, was entrusted by Congress with the job of remedying and preventing those employer practices which had proved so costly in the past. This was accomplished by means of a general statement of less than 300 words in the law which outlawed certain "unfair labor practices" by employers. Beyond this, the law said that the Board was to work out and make available machinery, such as elections, which would enable workers to establish the right of recognition by peaceful procedures.

## The Board

The law established a board of three public members appointed by the President. The Board has its national headquarters in Washington, where also are located its legal staff, hearing examiners, administrative personnel, and information office.

The Board maintains regional offices in 20 key cities, each of which services a particular area.<sup>1</sup> Outside of the continental United States, the Board has offices in Hawaii and Puerto Rico. Each regional office is under the supervision of a Regional Director, who has a staff of

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<sup>1</sup> For addresses of these offices and the areas they cover see Appendix, p. 47.

investigators and attorneys to assist him. Since all cases are filed in the regional offices, it is these officials whom unions and employers see most often. It is to these offices that persons seeking information as to their rights and proper procedures under NLRA should go or write for information.

The Board in Washington issues Rules and Regulations which set up the procedures to be followed in the handling of cases. The Board is also required by law to make an annual report to Congress describing its activities during the preceding year. This report usually contains a statement of the principles underlying the Board's decisions and is indispensable to anyone handling NLRB cases. Both the Rules and Regulations and the Annual Report are public documents and may be bought from the Government Printing Office. Other statements of Board policy issued from time to time, releases, and similar material may be obtained free of charge from the Board's Division of Information in Washington.

## Coverage of Act

The law applies to industries whose materials, products, or services move directly across State lines or affect the operations of other companies which are engaged in interstate activity. For example, a steel company which uses coal imported from another State and exports its products across State lines is engaged "in commerce," and hence is covered by NLRA. Another example would be that of a sizeable electric utility which produces electrical energy which in turn is used by other companies who are engaged "in commerce"; the electric utility would be covered by NLRA inasmuch as its operations are said to be "affecting commerce."

The Act does not cover employees of Federal, State, or municipal governments. Nor does it apply to agricultural labor, or to those employees who are covered by the Railway Labor Act. Thus, public school teachers, farmers, locomotive engineers, and airline pilots do not come under the protection of NLRA.

The Act does not cover employees of companies whose operations are neither in commerce nor affect commerce. Examples of such purely local enterprises would be a restaurant, a laundry, and similar service establishments.

## Jurisdiction of Board

Within the area covered by the Act the Board's jurisdiction is limited to two functions: (1) to prevent and remedy the unfair labor practices of employers which discourage or interfere with self-organization of employees or the practice of collective bargaining, and (2) to designate the bargaining representatives. The Board's authority does not go beyond this. It has no jurisdiction in any other type of labor-management controversies, such as disputes over wages.

Nor does the Board have anything to say about employer policies or actions other than those which interfere with the organization rights of employees and the right to bargain collectively. For example, management in some instances may discriminate against employees by playing favorites in promotions or transfers, disciplining unjustly and otherwise mistreating them without being guilty of an unfair labor practice under NLRA. Only when such acts are undertaken to influence employees' union activities are they considered illegal under NLRA.

The Board's jurisdiction is not limited to cases where a formal labor organization is in the picture. Nor is it limited to cases of union activity. The Board will act to prevent and remedy management unfair labor practices against informal groupings of employees who engage in concerted activity for their mutual aid and protection. For example, in an unorganized plant, a group of employees may get together to improve or change working conditions. If the employer should seek to disrupt or discourage this concerted activity, the employees can call upon the services of the NLRB.

## Prohibited Unfair Labor Practices

The heart of the NLRA lies in its Section 8. This section spells out the general courses of management activity which are forbidden. The prohibited practices are:

*(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7, which declares that 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 concerted activities for the purpose of collective bargaining or other mutual aid or protection.*

Following are examples of employer interference which have been forbidden:

- a. Threatening employees if they should join a union;
- b. Questioning employees as to their union activities or membership;
- c. Spying on union gatherings.

*(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.*

Following are examples of employer conduct which have been declared to be illegal:

- a. Taking an active part in the formation of a labor organization;
- b. Bringing pressure on workers to join a union;
- c. Contributing to the financial support of a union.

*(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, that nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees . . . in the appropriate collective bargaining unit covered by such agreement when made.*

Following are examples of employer discrimination which have been forbidden:

- a. Discharging or demoting an employee because of his union membership or activity;
- b. Refusing to reinstate a laid-off employee because of his unionism, or demanding that he give up union membership in order to be reinstated;
- c. Refusing to hire qualified applicants because of union membership or activity.

In weighing a worker's charge that he has been discriminated against because of his union activity, the NLRB will want to know:

What reason did the company give for taking the action against the employee?

Did the company take the same action against other workers for the same reason?

Was the employee given any warnings before the company acted?

Did the company know that the employee was active in union matters or a union member?

What does the employee's record show as to length of employment, efficiency ratings, wage increases, promotions, or words of praise from his supervisors?

What was the company's attitude toward unions and particularly the employee's union?

*(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.*

*(5) To refuse to bargain collectively with the representatives of his employees.*

Following are examples of employer behavior which have been cited as showing the employer's lack of good faith in bargaining:

- a. Refusing to meet or negotiate with representatives chosen by a majority of the employees in an appropriate bargaining unit;
- b. Refusing to meet or negotiate with duly authorized union representatives who are not in the employ of the company;
- c. Seeking to by-pass or undermine the union by changing working conditions during negotiations;

- d. Rejecting the union's proposals without submitting counter-proposals or attempting to reconcile the differences;
- e. Refusing to agree to reduce any agreement that may be reached into a written and signed contract;
- f. Failing to have representatives available for conferences with the union at reasonable times and places;
- g. Failing to appoint representatives with power to reach agreements with the union.

## Determination of Bargaining Representatives

The NLRA follows the principle of majority rule in determining collective bargaining representation. The choice of the majority of employees voting determines which organization shall have the exclusive right to bargain for the employees in the unit covered.

As regards the exclusive bargaining agency, the statute reads [section 9(a)]: *Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.*

The Board is given sole authority to determine the appropriate unit within which the majority may designate, either through election or by other means, the exclusive bargaining representative. In determining the unit, the Act says that the Board shall consider the grouping of employees most effective for the purposes of collective bargaining. In this connection the law states [section 9(b)]: *The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, the unit appropriate*

*for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.*

## Keynote to Board Thinking

Before proceeding to a description of the procedures involved in the handling of election and unfair labor practice cases, note should be taken of a basic philosophy which the Board applies to both of them. It is simply this: The Board endorses and stresses the use of informal procedures. This means settlement of cases by the parties which will obtain results consistent with the policies of NLRA without the necessity for formal hearings, filing of briefs, Board decisions, and possible court action.

The Board's belief in the value of informal procedures is based on the common-sense feeling that the employer and labor organization are more likely to get along in the plant if the basis for their relationship is established by mutual adjustments and understandings consistent with law rather than by directives issued by a third party. The Board has observed repeatedly during the last ten years that a particular plant is less likely to be charged with unfair labor practices if earlier charges are cleared away in an informal manner freely accepted by both union and employer and consistent with the policies of the Act.

Furthermore, informal procedures save both parties the expense and time of formal hearings. They give a speedy answer to questions of employee representation which may be blocking collective bargaining. They hasten the removal and correction of practices which are contrary to law and cause resentment and friction in the plant.

Under these informal procedures the parties themselves agree on the manner of disposition of cases, while fully meeting the requirements of the law, and utilize the Board's personnel and machinery to do so. During the past ten years nearly 85 percent of *all* cases handled by the Board were closed in this manner. See Chart II, page 8. Considering unfair labor practice cases only, nine out of every ten never got as far as formal hearings, while three-fourths of all election cases were disposed of at the regional line and never reached Washington.

## Chart II DISPOSITION OF TOTAL NLRB CASES 1935-45

Nearly 85% of all cases handled during the ten years were closed at the regional level; that is, without formal action. Over 90% of all unfair labor practice cases and over 75% of all representation cases were so handled. See Chart III.

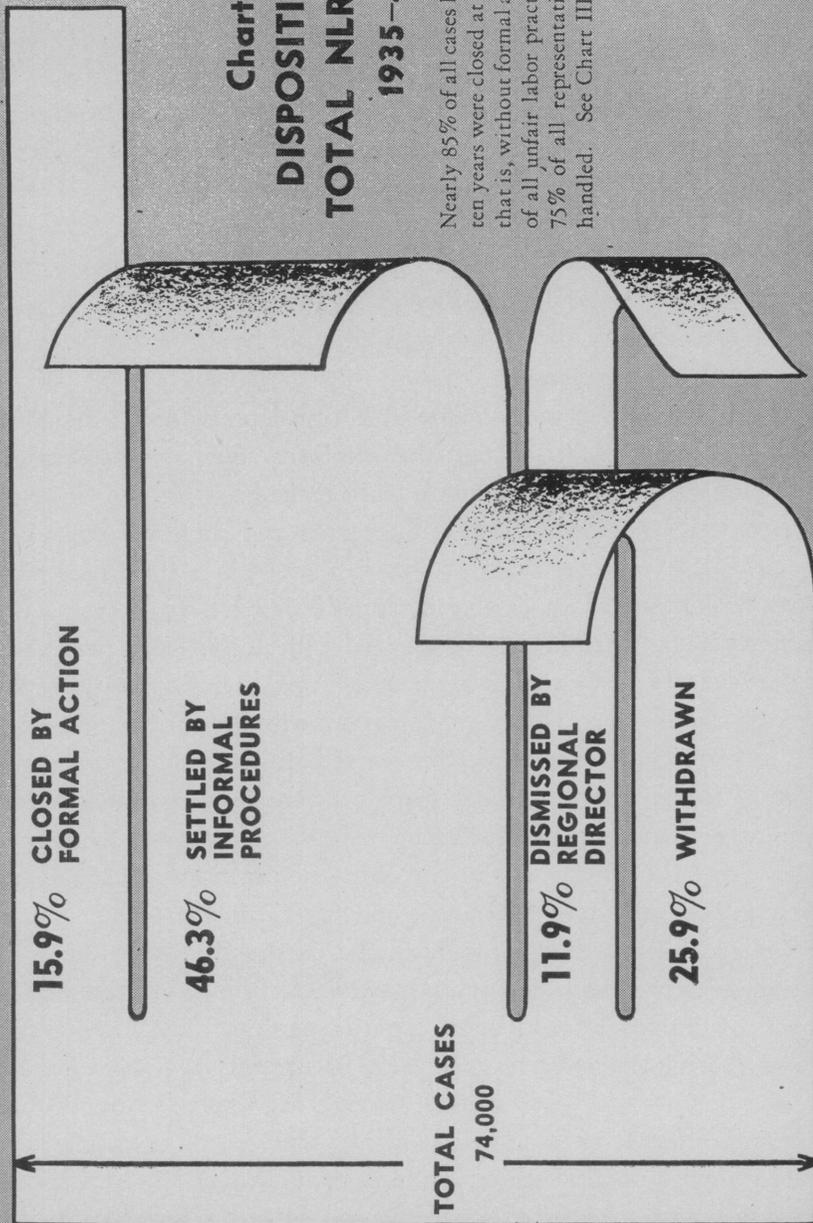
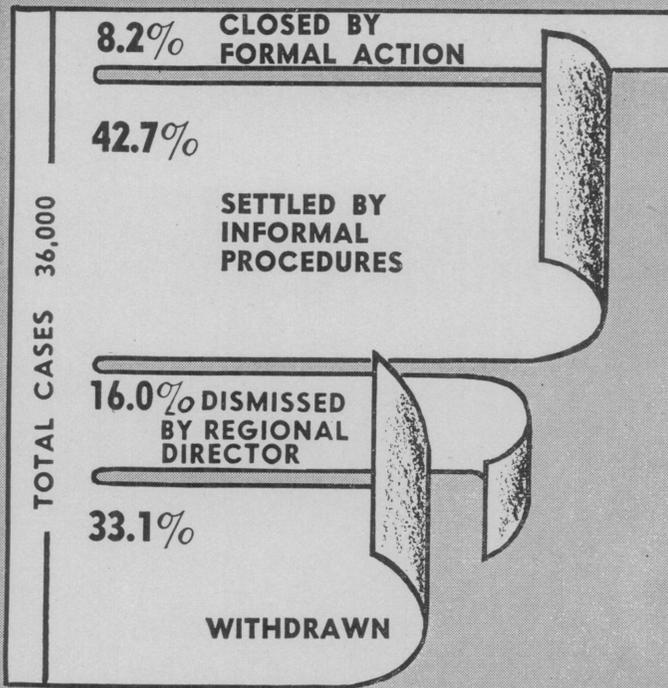
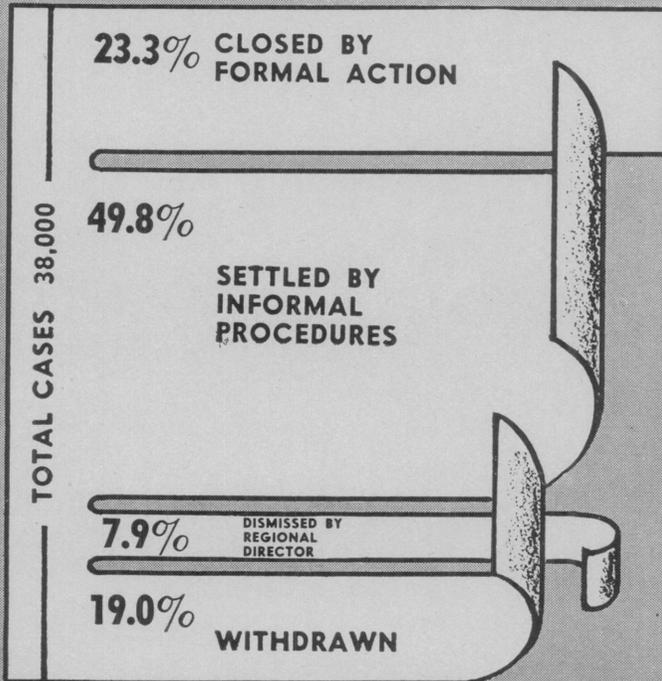


Chart III. Disposition of "C" and "R" Cases, 1935-45

"C" CASES



"R" CASES



# How to Obtain Exclusive Bargaining Rights

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**T**HE democratic principle of majority rule is embodied in the NLRA. This means that a labor organization chosen by a majority of employees in the unit will have the certified right to bargain for all employees in that unit.

To determine the right of an organization to certification, the Board must first establish certain basic facts:

- a. Has the claim of a labor organization to exclusive recognition been challenged or denied? That is, has a question concerning representation arisen?
- b. Does the grouping of employees who want to organize constitute a unit appropriate for collective bargaining?
- c. Does the interested labor organization have sufficient showing of support among the employees to warrant the holding of an election?

If the answer to all three questions is "Yes," the Board may set in motion its election machinery so that the employees may express their desires. All expenses are borne by the Board.

This entire line of inquiry is usually started by a petition filed by a labor organization. The employer, too, may file a petition if two or more unions each claim to represent a majority of his employees. The reason for this restriction on employer petitions is that otherwise an employer might try to have an election held before the labor organization has a chance to present its case to the employees.

In any event, the employer is within his legal rights to refuse to extend exclusive recognition if he has an honest doubt as to whether the union represents a majority of the employees in a proper bargaining unit. This is the most usual way that a question concerning representation arises and in which the union petitions for an investigation and certification of representatives.

The quickest way to handle such cases is for the parties to settle all questions themselves and arrange for elections without hearings and formal decisions. In most election cases, where the parties are willing, this can be done easily since the guideposts are now available in precedents which have been set and in Board policies which have crystallized out of thousands of decisions.

There are not many cases today where the parties can say in good faith that their claim is unique and not comparable to any of the many formal determinations already made and published by the NLRB. Field Examiners attached to the Board's regional offices may be called upon by the parties to furnish instances of Board decisions and other settlements involving facts and issues similar to their case.

Aside from the comparative speed with which the question of representation can be resolved, parties also should be mindful of the fact that the use of mutually agreed-upon and informal procedures means:

- a. Avoidance of employee resentment sometimes caused by what appears to be the employer's effort to delay or avoid the bargaining process;
- b. Saving management and employee time usually consumed by participation in a hearing;
- c. Psychological advantages flowing from the practice of resolving disputes (including representation issues) by negotiation and agreement.

## How Petition Is Handled

The petition is filed with the NLRB regional office in whose area the plant is located. It should be prepared on printed forms supplied by the Board, and witnessed by either a notary public or the Board's Field Examiner. (See Form A, p. 13.)

The petitioner may ask the assistance of the Field Examiner in the preparation of the petition. The petition form asks for the following information: (1) name and address of employer, (2) name of union, (3) industry in which employer is engaged, (4) description of bargaining unit, (5) number of employees in unit, (6) number of em-

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

PETITION FOR CERTIFICATION OF REPRESENTATIVES

Petitioner alleges that a question affecting commerce has arisen concerning the representation of employees of the employer named below, within the meaning of Section 9 (c) of the National Labor Relations Act, and requests the National Labor Relations Board to investigate such question and certify to the parties the name or names of the representatives that have been designated or selected.

1. Name of employer \_\_\_\_\_  
2. Address(es) of establishment(s) involved: \_\_\_\_\_

3. Industry \_\_\_\_\_  
4. Bargaining unit which petitioner alleges to be appropriate  
INCLUDES: \_\_\_\_\_

EXCEPT FOR \_\_\_\_\_

5. Number of employees in the alleged appropriate unit \_\_\_\_\_  
(State here normal employment if establishment is not now operating)

6. Are there any individuals or other labor organizations who claim to represent any employees in the alleged appropriate unit; or are there any collective bargaining contracts covering any such employees? \_\_\_\_\_ If so, state name and address of representative, affiliation, if any, and expiration date of any contracts: \_\_\_\_\_

7. Has the petitioner notified the employer of claim that a question concerning representation has arisen? \_\_\_\_\_ If not, explain failure to do so. \_\_\_\_\_

8. Petitioner \_\_\_\_\_  
(State full name and affiliation, if any)

DO NOT WRITE IN THIS SPACE  
Case No. \_\_\_\_\_ R \_\_\_\_\_  
Docketed \_\_\_\_\_

By \_\_\_\_\_  
(Signature and title of petitioner's representative)

\_\_\_\_\_  
(Address) (Telephone No.)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, as true to the best of deponent's knowledge, information, and belief.

\_\_\_\_\_  
Board Agent or Notary Public.

NOTE: Petitioner should submit with this petition, for examination by Board agents, membership cards, designation cards, or other proof of its designation as bargaining agent by any employees within the alleged appropriate unit.

(SUBMIT ORIGINAL AND THREE COPIES OF THIS PETITION)

ployees in unit which have designated petitioner as their bargaining representative, and (7) an indication as to whether any other labor organizations claim to represent employees in the unit.

One of the first things that the Field Examiner will ask about is proof of the union's substantial support among the employees of the unit. The union may supply this, either at the time the petition is filed or shortly thereafter, in the form of signed applications for membership, actual dues records or signed authorizations designating the union as the desired bargaining representative. A union is presumed to have "substantial interest"<sup>2</sup> in a proceeding under one or more of several circumstances; for example:

- a. Where the petitioner can show through sufficient evidence (such as current signed cards) that it represents approximately 30 percent or more of the employees in the unit;
- b. Where the labor organization has a current or recently expired contract covering all or part of the bargaining unit;
- c. Where the employer and all labor organizations claiming an interest enter into an agreement for an informal determination of the proceeding by such means as a consent election.

After the petition has been filed, the Board's regional office will send letters to all parties believed to have an interest in the proceeding. Frequently they will be asked to attend a joint conference at which they should be prepared to submit pertinent information. For example, labor organizations will be requested to bring all available proof of representation (in alphabetized form, if many employees are involved) and all correspondence with the employer bearing upon the question concerning recognition. The employer will be asked to appear with a current classified pay-roll list (either alphabetized or departmentalized), all correspondence having a bearing upon the question concerning representation, and information as to the nature of its operations which would indicate whether or not they fall within the coverage of the Act.

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<sup>2</sup> Inasmuch as the requirement of a "substantial interest" is merely an administrative device to enable the Board to determine for itself whether or not further proceedings are warranted, the proof of such interest is not subject to cross examination at the Board's hearing.

The conference, which is conducted by a Field Examiner, is informal and is intended to determine the respective positions of the parties and to secure information. If the joint conference or other investigation should reveal that a question concerning representation has not arisen, the Field Examiner will ask the petitioning union to withdraw its petition. The Field Examiner may indicate that no question of representation exists, perhaps for the reason that the unit sought is clearly not appropriate, or the petitioning union cannot prove sufficient representation among the employees to warrant an election, or a written contract held by another labor organization blocks further proceeding. If the petitioner refuses to withdraw, the Regional Director may then dismiss the petition. The petitioner can appeal from the dismissal by filing such request with the Board in Washington.

If the joint conference or other investigation establishes the fact that a question of representation does exist, the Field Examiner will attempt to arrange a settlement of the controversy. This settlement may take the form of any one of the following informal procedures which the Board has devised and makes available to the parties: Recognition agreement, consent cross-check, consent election, stipulated cross-check, stipulated election, and pre-hearing election.

## **Recognition Agreement**

The simplest type of adjustment of representation cases is the outright recognition agreement. This device is used most frequently where there is no really serious representation disagreement between the employer and the petitioning union, but where the employer is unwilling to deal with the union except after some Board procedure. Or, the employer may have been ignorant of his obligations under the law.

The recognition agreement is signed by both employer and the union. It describes the unit covered, states that both parties agree that the union represents a majority of the employees, and that no other labor organization claims representation in that unit. The employer

also undertakes to recognize and bargain with the union without further proceedings.

This agreement is subject to the approval of the Regional Director. Before approving the recognition agreement, the Director will post the complete text for a period of five days in the plant, together with a special notice. This notice states that during these five days any employee or interested party will have the opportunity to show cause why the agreement should not be approved by the Regional Director.

When approval is extended by the Director, the case is considered closed and the agreement serves to bar a new petition to the same extent as though the union had been certified as exclusive bargaining representative.

## Consent Cross-Check

The consent cross-check, like the recognition agreement, is a simple type of adjustment and can be used only in cases involving one union. The cross-check is used most frequently where the representation dispute arises out of a desire on the employer's part for some Board determination of the union's majority status. Thus, in the cross-check, the Board's agent participates in determination of majority status, whereas the recognition agreements depend upon the employer's admission of the union's majority.

Before a cross-check is conducted, both parties agree to have the NLRB check the union's evidence of membership against the company's pay roll. The employer also agrees to recognize and bargain with the union if it demonstrates majority support. Authorization cards are probably the most common form of union designations used in cross-checks. Applications for membership or dues records may also be used. In any event, whatever form of designation is chosen, both parties agree as to the period in which the dates of the union records must fall. The parties also agree on the date of the pay roll to be used. In short, the parties must agree on all aspects of the cross-check

HEAVEN  
11-1-60

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

AGREEMENT FOR CONSENT ELECTION

The undersigned Employer (herein called Employer) and the undersigned labor organization(s), subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director and the Board respectively), HEREBY AGREE AS FOLLOWS:

1. **SECRET BALLOT**—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

2. **ELIGIBLE VOTERS**—The eligible voters shall be those employees included within the Unit described below, who appear on the Employer's pay roll for the period indicated below, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the same forces of the United States who have not been rehired or reinstated prior to the date of the election. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. **NOTICES OF ELECTION**—The Regional Director shall prepare a Notice of Election and supply copies to the Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at convenient and usual posting places easily accessible to the eligible voters.

4. **OBSERVERS**—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonrepresentative employees of the Employer, at the polling place during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as the feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or expert. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

5. **OBJECTIONS, CHALLENGES, REPORTS THEREON**—Objections to the conduct of the ballot, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after the issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon.

6. **CONSENT DETERMINATION OF REPRESENTATIVES**—The Regional Director shall, if and when appropriate, issue a Consent Determination of Representatives to the parties, setting forth the name of the labor organization which has been designated and selected as the exclusive representative of all the employees in the Unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

7. **RUN-OFF PROCEDURE**—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall conduct a run-off election at a time and place to be determined by him. Said run-off election shall be in accordance with Article III, Section 11 (b) and (c) of the Board's Rules and Regulations.

When one labor organization is signatory to this agreement, the one named below and in the order enumerated below, reading from left to right, shall be the labor organization so designated.

STATE OF ELECTION—

11. THE APPROPRIATE COLLECTIVE BARGAINING UNIT—

By _____ (Name and title)	By _____ (Name and title)
Date executed _____	By _____ (Name and title)
Recommended: _____	By _____ (Name and title)
Date approved _____	By _____ (Name and title)

Field Examiner,  
National Labor Relations Board

Regional Director,  
National Labor Relations Board

Case No. \_\_\_\_\_ R \_\_\_\_\_

Form B

U.S. GOVERNMENT PRINTING OFFICE

before it is undertaken by the Board: the question of unit, eligibility of employees, date of pay roll and the nature of union records to be used.

Upon completion of the cross-check, if the union was not designated by a majority, the Regional Director immediately serves the parties with a report to this effect. However, if it appears that the union has been designated by at least a majority of the employees, the Regional Director will post in the plant copies of the cross-check agreement and a notice. If, at the end of the five days' posting, no valid cause to the contrary has been shown, he issues a report finding that the union has been selected as the exclusive bargaining representative. As in the case of the recognition agreement, the case is closed at this point and the Regional Director's report serves to bar a subsequent petition just as though the union had been certified as exclusive bargaining agent following election.

## Consent Election

The consent election is the most frequently used method of informal adjustment. It is similar to the consent cross-check except that election procedure is substituted for comparison of written records. It is used often by parties where one of the simpler procedures is inappropriate; for example, where a cross-check appears inadvisable because of a question as to the adequacy of union records. Also, unlike the consent cross-check, the consent election can be used in cases involving more than one union.

The terms of the agreement providing for a consent election are set forth on a special form. (See Form B, p. 17.) Under these terms the parties agree on all issues: the appropriate unit, the pay roll to be used as the basis of eligibility, and the place, date and hours of election. Furthermore, the employer agrees to recognize and bargain with the union selected by the majority of employees voting in the election.

A Field Examiner arranges the details incident to the mechanics and conduct of the election. The parties are usually invited by the Field Examiner to attend pre-election conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Prior to the election, official notices of the election are posted conspicuously in the plant. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

The actual polling is always conducted and supervised by Board agents. They may have an equal number of representatives chosen by each party to assist and to observe the election process. A ballot is given to each eligible voter by the Board's agent in the presence of the authorized observers who check the eligibility list and guard the ballot box. Ballots are marked in the secrecy of a voting booth. The authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

The Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots. Customarily, this is done immediately after the closing of the polls. A complete tally of the ballots is served upon the parties as soon as the results are tabulated.

If the number of challenged ballots is sufficient to affect the results of the count, the Regional Director conducts an investigation which may involve holding a hearing. Thereafter, he rules on the challenges.

Likewise, if objections to conduct of the election are filed within five days after the results are made known, the Regional Director conducts an investigation and rules upon their validity. If, after investigation, the objections are found to have merit, the Regional Director may void the election results and conduct a new election.

The agreement for a consent election provides that the rulings of the Regional Director on all election questions are final and binding. The agreement also provides automatically for a run-off election if two or more labor organizations appear on the ballot and no one choice receives a majority of the valid votes cast.<sup>3</sup>

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<sup>3</sup> The provisions covering run-off elections are discussed on p. 26.

## Stipulated Cross-Check

The stipulated cross-check differs from the consent cross-check only in that the parties agree that the Board in Washington shall finally dispose of the case. Thus, instead of the Regional Director issuing a report on the results, in the stipulated cross-check the NLRB issues a formal certification in the event the union was designated by a majority or a formal dismissal if the union was not successful.

## Stipulated Election

The stipulated election provides that the agreed-upon election shall be the basis of a formal decision by the Board instead of an informal report by the Regional Director. By the same token, the stipulated election procedure designates the Board rather than the Regional Director, as the authority to make final determinations of questions raised concerning the election.<sup>4</sup>

## Pre-Hearing Election

In many cases, the Board found, parties were blocked from using the informal procedures because they seemed to be in disagreement over a lesser issue; for example, they may have disagreed over the eligibility of "fringe" employees, such as a group of special technicians. Thus, even though they were in agreement over practically all election details, they frequently went to hearing and awaited a formal decision by the Board. To remedy this situation, the Board amended its Rules and Regulations in 1945 to authorize Regional Directors to conduct pre-hearing elections in simple cases.

<sup>4</sup> Post-election procedures as regards the handling of challenges and objections to the stipulated election are the same as those followed in cases of Board-ordered elections. These are discussed on p. 26.

Under the pre-hearing election device, an early election can be held without endangering the rights of the parties. The election is so conducted that the ballots which are placed in question by the unresolved issue are segregated and unopened. If, after the election, the parties wish a hearing and a Board determination of the unresolved issue, their wish will be granted. Or, they can abide by the results of the election and waive formal proceedings.

Informal procedures have accounted for more than 76 percent of the representation cases handled in the first ten years of the Board's operation. Of the 38,000 cases handled, approximately one-half were adjusted by informal procedures entirely agreed upon by the parties; 13,300, or 35 percent, by the consent election; 2,950, or 8 percent, by the consent cross-check; and 2,650, or 7 percent, by the recognition agreement. Another 27 percent were withdrawn by the petitioner or dismissed without formal action. (See Chart III, p. 9.)

If the parties cannot agree to any of the consent procedures, the Regional Director will issue a notice of hearing to the employer and all labor organizations claiming an interest in the case. This constitutes the first step of formal action. Labor organizations desiring to intervene in the case so that they can fully participate in the proceedings must file formal motions to that effect. They do not become parties to the case until the motion is granted either by the Regional Director, prior to the hearing, or by the Trial Examiner, during the hearing.

## The Hearing

The hearing is conducted by a Trial Examiner and is open to the public. It does not involve a complaint and represents merely the formal part of an investigation. The parties are given full opportunity to present their respective positions and to produce evidence in support of their contentions. The primary interest of the Board's agents is to make sure that the significant points get into the record and that the record is sufficiently developed so that the Board may make its decision.

In almost every hearing the parties enter into some sort of stipulation; that is, an agreement on a particular point which saves the time necessary to prove such a point by testimony or exhibits. Stipulations are usually asked for on the following basic points: jurisdiction of the Board; a statement that each union is a labor organization within the meaning of NLRA; the facts as to the union's demand for recognition and the employer's refusal; and the appropriate bargaining unit.

At the close of every hearing, the Trial Examiner announces that the parties may file briefs within seven days. They are also advised that within the same period they may request to be heard in person by the Board in Washington.

## **The Board Decision**

Upon conclusion of the hearing, the record of testimony and exhibits is forwarded to the Board. After review of the entire record the Board issues its decision. The case is decided in one of two ways: an election is directed; or the petition is dismissed, for the possible reason that the unit sought is not appropriate for collective bargaining.

In its decision directing that an election be held, the Board sets forth the bargaining unit to be voted, designates the unions whose names are to appear on the ballot, specifies the employees eligible to vote, and states that the election shall be conducted by the Regional Director within a fixed period (usually 30 days) after issuance of the decision.

## **The Election**

After the Board's direction of election is issued, the Regional Director in whose area the case originated arranges an informal conference of all parties. At this conference details of the election are worked out. While the Regional Director attempts to secure agreement among the parties concerning the time and place of the election, the Regional Director always has final authority to determine such questions. Such

United States of America  
National Labor Relations Board

# OFFICIAL SECRET BALLOT

FOR EMPLOYEES OF

(Name of Employer)

This ballot is to determine the collective bargaining representative, if any, for the unit in which you are employed.  
If you spoil this ballot, return it to the Board Agent for a new one.

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

Do you wish to be represented for purposes of collective bargaining by—

(Name of Labor Organization)

YES

NO

**DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.**

Form C

conferences also consider such matters as location of polls, eligibility of certain employees, posting of election notices, form of the ballot, and choice of observers.

Election polls are chosen with a view to their accessibility to the voters. The election is held on company property unless one of the parties objects. The day selected for the election is usually one on which substantially all eligible employees will be working. The voting hours are arranged so that employees on all shifts have adequate opportunity to vote.

Using the Board's statement of eligibility as the basis, the company is asked to prepare a pay-roll list. This should be alphabetized either on a plant-wide or departmental basis, depending upon the voting procedure adopted. At the conference all parties are given the opportunity to check the list so as to eliminate disputes over eligibility.

The unions usually designate their respective positions on the ballot. Unless they agree to definite positions, the place of each union's name on the ballot is determined by lot. Aside from this matter, the makeup of the ballot is fixed. Where only one union is concerned, the question on the ballot is whether the voters desire to be represented by that union; spaces are provided for voting Yes or No. (See Form C, p. 23.)

Where two unions are involved, the question is whether the voters desire to be represented by either of the unions named in the spaces; space is also provided for voting "Neither." Where three or more unions are involved, each is given a box in which preference can be expressed by an X; space is also provided for voting "No union." Except under certain circumstances in run-off elections, the Board always provides a place on the ballot for voting against representation.

Official election notices are normally posted in the plant by the employer several days before the election. Posting places include regular bulletin boards, time-card racks, and rest rooms. Unions are usually cautioned to report to the Field Examiner if enough notices are not posted.

The Field Examiner advises the parties that each may appoint an equal number of persons to act as his representatives at the polling place. The observers chosen by the labor organizations are generally employees of the company involved. Observers representing the em-

ployer must be non-supervisory. The duties of the observers are to:

- a. Act as checkers, watchers, and tellers;
- b. Identify and—if circumstances warrant—challenge voters;
- c. Assist the Board agent generally in the conduct of the election.

Before the polls are opened, the Board agent normally specifies an area around the polls in which electioneering is prohibited.

As for the mechanics of voting, the procedure is simple: The voter enters the polling place at a designated entrance. He appears before a table behind which the observers sit; they have before them the official voting register. The Board agent is at the end of the table, giving ballots to the voters after they have identified themselves and their names have been checked. Each voter marks his ballot in a booth. Only one voter is allowed in the booth at any one time. No one is permitted to go into the booth with him. After he marks the ballot, the voter folds it and drops it into the guarded ballot box.

Any observer or Board agent has the right to challenge a voter. For example, observers generally will base their challenges on the ground that the voter is ineligible to vote because he is not employed in the described unit. Board agents invariably will challenge prospective voters whose names do not appear on the voting register. When a voter is challenged, the Board agent will indicate on a large envelope the reasons for the challenge and the name and badge number of the voter. The challenged voter is then given a ballot and a small envelope. He is instructed to mark his ballot and seal it into that envelope before returning to the agent for his outer envelope. After doing so, the small envelope—which is unidentified and sealed—is placed in the larger envelope and dropped into the ballot box. If the challenged ballots are counted eventually, they will be extracted from their larger envelopes, shuffled before they are removed from the inner envelopes, and then tabulated. Thus, as in all other aspects of the vote, the secrecy of the ballot is preserved.

After the polls are closed, the Board agent requests each of the observers to sign a certificate testifying that the election was fairly and secretly conducted. In most elections the ballots are counted immediately after the closing of the polls. Here again, the observers assist the Board agents. At the end of the tabulation, the observers

are asked to sign a certificate to the effect that the count was fair and accurate. Finally, the representatives of the parties are served with an official tally of the ballots.

## **Post-Election Procedures**

Any of the parties, within five days of receipt of the tally, may file objections to the conduct of the election with the Regional Director. He thereupon investigates these objections. (The following procedure also applies to the handling of challenges in cases in which the number of challenged ballots is sufficient to affect the results of the election.)

After investigation, the Director submits a report and recommendations to the Board, copies of which are served upon all parties. Within five days of receipt of this report, any party may file exceptions to it with the Board in Washington. If it appears to the Board that the objections do not raise substantial issues, the Board will render a decision based upon the results of the election. If, however, the Board finds that the exceptions raise important issues, it may act on the basis of the record already before it. Or, it may direct that a hearing on the objections and exceptions be conducted before a Trial Examiner. Upon the basis of this hearing, the Board issues its decision, either dismissing the petition or certifying an exclusive bargaining representative or taking such other action as seems necessary.

If no objections to the conduct of the election are raised, the Regional Director submits a formal report to the Board. Thereupon, the Board certifies the union which received a majority of the votes cast, or, if no representative has been chosen, dismisses the petition.

## **Run-Off Election**

Within ten days of the election, if the poll failed to result in a majority for any one choice, any of the contestants entitled to participate in a run-off election may request the Regional Director to conduct

a run-off election. Without further order of the Board, the Director will conduct the run-off. Employees who were eligible in the original election and who are in an eligible classification at the time of the run-off may vote again.

The Board's policy with respect to run-off elections is set forth in its published Rules and Regulations. Briefly, the Board holds that a union is not eligible to request or participate in a run-off election unless it polled at least 20 percent of the total valid votes cast in the original election. The run-off ordinarily will give employees a choice between the two unions which polled the greatest number of votes in the original election, with no place on the ballot for voting for "No union." Under two conditions, however, the run-off will offer a choice between the union which polled the largest number of votes in the original election and "No union." These conditions are:

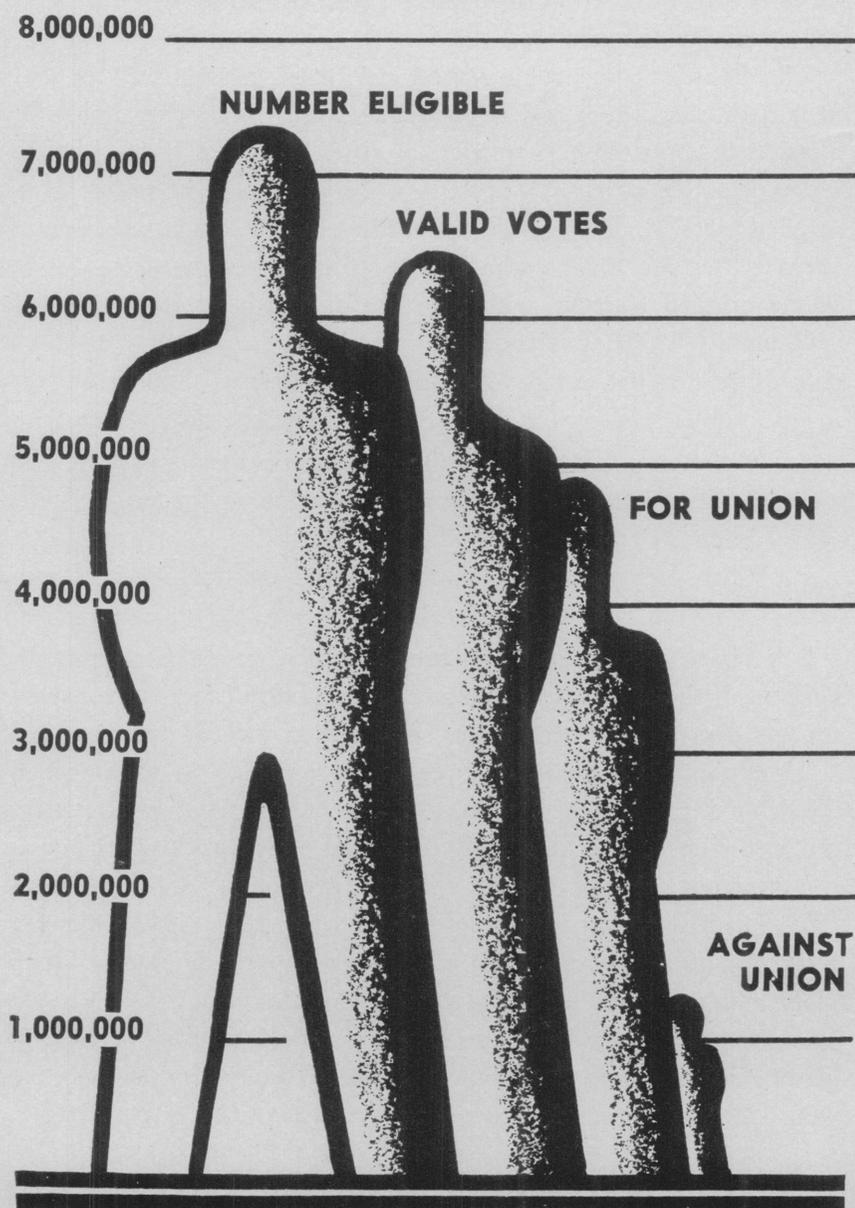
- a. When more employees (but less than a majority) voted for "No union" than for any single union in the original election;
- b. When only one union in the original election received more than 20 percent of the valid votes cast.

The Board's Rules and Regulations prohibit more than one run-off election. If the original election and the run-off fail to yield a majority for any one choice on the ballot, the petition will be dismissed.

More than 7,250,000 employees were involved in about 24,000 NLRB elections in the period 1935-45. Approximately 85 percent of those eligible to vote actually exercised their franchise. (Compare this evidence of great interest with the percentage of American citizens normally voting in presidential elections. In 1940 only 62.4 percent of those of voting age actually exercised their right.) Of the more than 6,100,000 men and women who cast valid votes, about 84 percent marked their ballots in favor of some form of collective bargaining representation. And in eight out of every ten elections they won collective bargaining representation. (See Chart IV, p. 28.)

699235-46-3

Chart IV. Results of NLRB Elections, 1935-45



*During the ten years, about 85% of all workers eligible to vote in NLRB elections took advantage of this right. Approximately 84% of all valid ballots were in favor of some union.*

# How to Remedy Unfair Labor Practices

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**T**HE basic principle, which gives meaning to all provisions of the NLRA, is the protection of employees in their right to self-organization and to collective bargaining. To install this principle in the nation's factories, the Board was given the function of investigating and adjudicating any charges of employer interference with those rights. The Board of its own motion cannot investigate such employer practices. It can act only when charges of unfair labor practices are filed with it by individuals or labor organizations.

The unfair labor practice charge is filed with the Regional Director in whose area the alleged practices have occurred. A blank form for the filing of such charge is supplied by the Board's regional office. (See Form D, p. 30.) It contains the name and address of the employer against whom the charge is made, and a statement of the facts constituting the alleged unfair labor practice. This charge must be notarized, or signed in the presence of the Board agent. The individual or union representative filing the charge may request the assistance of the Board agent in the preparation of the charge.

## Investigation of Charge

After the charge is filed with the regional office, it is assigned to a Field Examiner for investigation. The purpose of the investigation is to secure all the pertinent facts. The person filing the charge should be prepared to make a signed statement, preferably an affidavit, setting forth all his information concerning the alleged unfair labor practice. He will be asked to submit any available written evidence in support of the charge. He will also be requested to supply the names and addresses of witnesses who can furnish additional information.

The employer is given immediate written notification of the nature of the charge filed, together with a brief summary of the particular

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**CHARGE**

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges

that ..... (Name of employer)  
at ..... (Address of establishment)  
employing ..... (Number) workers in ..... (Industry)  
has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1)  
and ..... of said Act, in that

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

..... (Full name of labor organization or person filing charge)  
..... (If labor organization, local name, number, and affiliation)  
..... (Address) ..... (Telephone number)

DO NOT WRITE IN THIS SPACE  
Case No. .... C .....  
Docketed

By ..... (Signature of person filing charge)  
..... (Title, if any)

Subscribed and sworn to before me this ..... day of ..... at  
..... as true to the best of deponent's knowledge, information, and belief.

.....  
Board Agent or Notary Public.

(SUBMIT ORIGINAL AND THREE COPIES OF THIS CHARGE)  
U. S. GOVERNMENT PRINTING OFFICE 16-61861-1

allegations. Usually this letter extends an invitation for the employer's cooperation in the investigation and the request that he send to the regional office his version of all the facts and circumstances surrounding the allegations.

In the course of his investigation, the Field Examiner interviews representatives of all parties and all persons who have knowledge as to the charges. After full investigation the case may be disposed of through one of several informal methods. These methods are: withdrawal of the charge, dismissal, and settlement.

### **Withdrawal of Charge**

If investigation reveals that there has been no violation of the Act or that the Board lacks jurisdiction, the Regional Director recommends withdrawal of the charge by the person or labor organization which filed it. If the charge is withdrawn, the employer is notified immediately.

The charging party, on his own motion, may ask to withdraw the charge. Before recommending acceptance of the withdrawal, the Field Examiner usually will look into the reasons for the request. An adjustment by the parties that does not remedy indicated violations of the Act, will not necessarily be accepted as a basis for withdrawal. For example, private settlements, in which employers seek to release themselves from the charges by payment of money, are not recognized by the Board. The Board's policy in such circumstances stems from the obvious principle that violations of the NLRA are not a private matter. No settlement contrary to the public interest can be approved by the Board.

### **Dismissal**

If the charge is not withdrawn, the Regional Director may refuse to issue a formal complaint; in effect, he thus dismisses the charge. The Regional Director thereupon informs the parties of his action. At the same time, he tells the charging party that it has the right

of appeal, usually limited to 10 days, to the Board in Washington. If such appeal is taken, it should contain a complete statement setting forth the facts and reasons upon which the request is based. After a review of the case, the Board may sustain the dismissal or may direct the Regional Director to take further action.

## **Informal Settlement**

If investigation discloses merit in the charge, the Field Examiner attempts to secure an adjustment of the issues, thus disposing of the case without formal proceedings. The employer must be willing to take the action required to remedy the specific unfair labor practice. For example, reinstate workers, bargain collectively, post notices in the plant stating that employees will not be hindered in the exercise of their right to self-organization.

Throughout the entire investigation the Field Examiner continues his efforts at adjustment. In making these repeated efforts the Field Examiner reflects the Board's encouragement of voluntary agreements. The Board believes that a voluntary adjustment by the employer will be more beneficial to the workers and their organization than involuntary acceptance of a formal decision or court decree.

The regional office provides Board-prepared forms for such settlement agreements, as well as printed notices to be posted by the employer. These agreements, which are subject to the approval of the Regional Director, provide for the withdrawal of the charge by the complaining party as soon as the employer has complied with the terms of the agreement. The regional office will not close a case without proof of compliance. If the employer should fail to perform his obligations under the informal agreement, the Regional Director may proceed to issue a formal complaint.

The above informal procedures have accounted for more than 90 percent of all unfair labor practice cases handled. Of the 36,000 unfair labor practice cases closed, about 15,000 were settled by agreement of the parties with approval of Regional Directors. About 16 percent were dismissed. Another 12,000 were withdrawn by the parties that filed them. (See Chart III, p. 9.)

## Issuance of Complaint

If investigation proves that the charges have merit and if efforts to settle the case are unsuccessful, the Regional Director takes formal action for the first time in the proceeding. He does this by issuing a complaint and a notice of hearing. The complaint, served on all parties, is a formal statement of the charges against the employer. The company may file an answer to the complaint, within 10 days of receipt, setting forth its defense.

## Settlement After Issuance of Complaint

Even after formal proceedings have started, the parties have full opportunity, at every stage, to settle the case in compliance with the law. The settlement is usually signed by the parties and the Board representative. Under the terms of such a settlement stipulation, parties agree to waive the holding of a hearing. They further agree that the Board may issue an order requiring the employer to take such action as will remedy the unfair labor practices. Frequently the settlement stipulation contains an additional provision whereby the employer expressly consents to entry of a Circuit Court of Appeals decree embodying the terms of the Board order. By this device the Board's order, in effect, becomes the court's final and binding decree.

All settlement stipulations are subject to approval of the Board in Washington. Should the company fail to comply with any such stipulation, the Board may petition the Circuit Court of Appeals for enforcement. However, if the settlement stipulation provides for the entry of a court decree and the company refuses to comply, the Board may petition that court to rule the company in contempt of court.

## The Hearing

The hearing is usually conducted in the area where the charge originated and is open to the public. A Trial Examiner comes from

Washington to preside over the hearing. The Government's case is conducted by an attorney attached to the Board's regional office. He has the responsibility of presenting the evidence in support of the complaint. Occasionally the union has a representative present to assist the attorney in getting the facts.

Counsel for the Board, all parties to the proceeding and the Trial Examiner have the power to call, examine and cross-examine witnesses. The attendance and testimony of witnesses and the production of evidence may be compelled by a subpoena issued by the Trial Examiner in the name of the Board.

## Intermediate Report

After conclusion of the hearing the Trial Examiner prepares an "Intermediate Report." This Report contains findings of fact and recommendations as to the manner in which the case should be decided. If the Trial Examiner finds that a violation of the law has not been committed, he will recommend dismissal of the complaint. Or, if he finds support for the allegation of unfair labor practices, he will recommend to the employer that he take certain actions to undo the effects of those practices. Copies of the Report are served on all the parties, and filed with the Board in Washington. This Report has several functions:

- a. To offer the parties opportunity for immediate and voluntary compliance with its terms, so as to avoid the necessity of a formal Board decision;
- b. To inform the parties as to what the Board will probably order them to do;
- c. To define the issues to be argued before the Board in cases where the parties differ with the Trial Examiner's appraisal of the controversy;
- d. To provide the Board with the judgment of the person who conducted the hearing and observed the witnesses.

Whatever the Trial Examiner's recommendations may be, each side has an opportunity to argue for or against them. Either party

has a right to file exceptions to the Intermediate Report within 15 days after its receipt. Also, within the first 10 days of the 15-day period the parties may request permission to appear before the Board in Washington. The Board usually grants the request of any party for such oral argument.

## Board Decision and Order

The entire record of the case comes before the Board for decision if any party takes exception to the Intermediate Report or if the Trial Examiner has found a violation of law and the employer refuses to remedy it. The Board's Decision and Order takes one of two forms; it may contain a full statement of the case and an order, or it may confine itself to an order incorporating the Intermediate Report upon which it is based for a full statement of the issues and facts.

If the Board does not find a violation of the law, it dismisses the complaint. If it does find that the employer has engaged in unfair labor practices, the Board will issue an order in two parts. The first part is negative. It directs the employer to cease and desist from those particular acts which the Board has found to be in violation of the law. The second part of the order is affirmative; it directs the employer to remedy the effects of his illegal acts. The remedy in each case is specially designed to eradicate the effects of the particular illegal behavior. For example, in a discriminatory discharge case the employer may be directed to reinstate employees with back pay, or in a company union case, to disestablish the company-dominated organization. Every Board order carries a requirement that the employer post notices setting forth the terms of the order.

Shortly after the Board's Decision and Order is issued, the Regional Director in whose office the charge was filed communicates with the employer. Conferences may be held so that all parties may participate and arrange the terms of compliance.

If the employer indicates willingness to comply and takes the necessary steps, the Regional Director makes an informal investigation and submits to the Board a report to that effect. This report must

meet the approval of the Board before the proceeding can be closed. However, the Board's order directing the employer to cease and desist from engaging in the indicated unfair labor practices is a continuing order. Therefore, the closing of a case on compliance is conditioned upon the employer's continued observance of that order. Subsequent violation of the order may become the basis of further proceedings.

## Court Action

The Decision and Order of the Board is not self-enforceable; nor does the NLRA provide penalties, fines or jail sentences for non-observance of Board decisions.<sup>5</sup> If the employer chooses not to comply, it is necessary for the Board to petition the appropriate United States Circuit Court of Appeals for enforcement. The employer may also petition the Circuit Court of Appeals to review and set aside the Board's order. Following the Circuit Court's decree, either the Government or the employer may petition the Supreme Court for review.

When a Circuit Court enforces a Board order, it adopts it as its own. And then, for the first time, the employer faces compulsion. To ignore a court decree is to invite contempt proceedings, which mean possible fines or imprisonment.

When a Board order stands enforced by a court decree, the Board has the responsibility of obtaining compliance with that decree. The Board will make full investigation of the company's efforts to comply. Where the Board finds that a company has failed to observe the terms of a decree, the Board may petition the Court to hold the company in contempt. The Court may order investigation or compel immediate remedial action.

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<sup>5</sup> The Act does provide penalties against persons who intentionally interfere with an agent of the Board in the performance of his official duties. Punishment in such cases may be a fine of not more than \$5,000, imprisonment for not more than one year, or both.

# How the Board Has Ruled in Unfair Labor Practice Cases

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**A** PARTIAL and preliminary summary of Board rulings is given on pages 4 to 6, where a few examples of each of the five prohibited unfair labor practices are listed. In actual practice the situation is rarely so simple. Almost every day over a period of ten years charges have been filed with the Board alleging that this or that specific act constitutes an unfair labor practice. Out of thousands of decisions dealing with these charges, the Board has gradually clarified the meaning of the law in terms of real life situations and specifications by the representatives of labor and management.

This process of translating the intent of the law into real life is not yet complete. It will never be complete so long as we live in a democracy and new economic and social conditions bring about new forms of human behavior.

Nevertheless, definite guideposts have now been established. Some of the leading ones are listed below. They are not to be accepted as final statements of Board policy. It is impossible in so brief a space to include all qualifications and considerations with which the Board has ruled in specific cases.

With these reservations, however, the following important Board rulings will help make clear what it means by an unfair labor practice.

## When Unions Organize

Management has the right to make and enforce plant rules regarding union solicitation of members and other union activities if they are based on these principles:

- a. Working time is for work, and time outside working hours is an employee's time to be used without restraints imposed by the employer, even though worker is on company property.
- b. A rule prohibiting union solicitation during working hours will usually be considered valid unless adopted for a discriminatory purpose. For example, such a rule must be enforced impartially as between competing labor organizations.
- c. A rule prohibiting such solicitation on the employees' own time, although on company property, will be considered an unreasonable impediment to self-organization and illegal in the absence of evidence that special circumstances make the rule necessary to maintain production or discipline.

If employees live on plant property, the company may not discriminatorily bar union representatives from those areas.

A qualified job-seeker, denied employment because of his union membership or activity, is entitled to the job, with back pay from the date he was turned down to the day he is offered employment.

A newly hired employee may not be required, as a condition of employment, to give up his membership in a union.

The employer may not question workers with respect to their union affiliation or require them to disclose their union membership on application blanks.

Employer statements to workers which contain actual, implied, or veiled threats of economic punishment if they should join a union are illegal. Other employer expressions, which on the surface may not appear objectionable, may also be coercive and thus illegal when considered in the light of other unfair labor practices committed by the same employer.

The employer may not spy on the activities and movements of a union representative who is attempting to organize the employees, just as he is forbidden to spy on the union activities of his own employees.

A company may not call upon and use outside groups (e.g., citizens' committees or chambers of commerce) to engage in anti-union activities.

A company may not exert pressure on local landlords to prevent the hiring of meeting places by the union.

A worker may not be demoted or discharged for wearing a union button which he refuses to remove.

If the company does not take measures to protect the safety of workers from violence in the plant because of their union membership, and they resign because of fear for their safety, the men are entitled to reinstatement.

If the employer transfers a worker to a less desirable assignment because of his union activities, and the worker resigns, the resignation will be considered the same as a discriminatory discharge.

An employer may not transfer workers from a salaried to an hourly-rated status, thereby depriving them of certain benefits, because a majority of them voted in favor of union representation.

Where a company has extended certain privileges to employees, it may not withdraw them because a union has started organizing activities.

An employer may not give assistance or privileges to one union to the exclusion of another which is also seeking to organize his employees.

If a union's organizing campaign results in winning majority support, a formal certification by the Board is not necessary before it can act as the exclusive bargaining representative. If the union actually represents a majority of employees in an appropriate unit and is willing to offer reasonable proof to that effect, the employer is under an obligation to bargain with it.

## **If a Strike Is Called**

The NLRA defines the term "employee" so as to include individuals whose work has ceased as a consequence of a current labor dispute. Strikers do not lose their status as employees. They are entitled to protection from discrimination and from interference with their union activities just as if they were on the job. For example, an employer may not negotiate individually with his strikers, just as he may not make individual bargains when there is a majority-designated union in the plant.

In a strike situation caused or prolonged by unfair labor practices committed by the employer, the strikers are entitled to reinstatement to their old jobs, even if replacements have been hired in the meantime. If necessary, management must discharge the replacements to make room for the returning unfair labor practice strikers.

In an economic strike—that is, a strike which is not caused or prolonged by unfair labor practices—strikers are entitled to reinstatement on request to the extent that their positions in the meantime have not been filled by permanent replacements. That is, if his job has not been filled, an economic striker may not be denied employment because he struck.

Where striking employees have been rehired and are later fired for alleged inefficiency, they must have been given a reasonable test period in which to prove their ability or inability to perform the job. If the company applies stricter standards to them than to other employees, it is strong evidence that the returned strikers are receiving discriminatory treatment.

The employer may discharge workers who strike in violation of the terms of a collective bargaining contract.

The employer may discharge sit-down strikers who engage in seizure of his property.

The employer may discharge workers who cause serious damage to company property or engage in serious violence during a strike.

## Where a Certified Union Is in the Plant

When a labor organization has been designated as the exclusive bargaining agent for a unit of employees, the employer cannot bargain with individual workers or with any other group concerning the working conditions of the employees in that unit.

In negotiating with a majority-designated union, the employer, upon the union's request, must disclose to the union all information pertinent to the subject under negotiation. For example, when bargaining about wage rates, the union is entitled to receive from the

employer such information as job classification lists, job descriptions; and past and current wage rates.

A worker may insist that he be accompanied by a union representative to the front office if summoned there by management on a matter which has been the subject of discussion between the employer and the union. The employer may not fire the worker for refusing to appear alone.

Where the employer undertakes to perform certain obligations under a contract with a majority-designated union (e.g., a provision for mutual agreement on all changes in plant rules), the employer may not act contrary to those contractual obligations on his own motion and without consulting the union.

In the absence of a union-shop contract, the employer is within his rights in refusing a certified union's demand that certain workers be discharged because members of the union refuse to work with non-members. The employer may discharge an employee for refusing to join a union only if the contract requires membership as a condition of employment.

## When Grievances Are Involved

When a union is certified as the bargaining representative in a plant, that union has the exclusive right to handle the disposition of any grievance whether or not the employees involved are union members. Individuals or groups of employees have the right to *present* grievances to management; they may not negotiate their settlement. Union representatives are entitled to be present at that time, as well as at each successive stage of the procedure. *Settlement* of the grievances can be made only with the union representatives. (This question has been the subject of conflicting court decisions and has not yet been finally settled.)

In an unorganized plant, the employer may not discharge employees because they band together to take up grievances concerning their working conditions.

## Where Foremen Show Interest in Unionism

When foremen organize into a unit whose membership is restricted to foremen, regardless of national affiliation, they are entitled to the NLRA's protection of self-organization and bargaining rights.

Where a foreman belongs to the same union as the men who work under him and he uses his supervisory position to further that union's organizing campaign, the company does not violate the law when it orders him to stop his activities. The company may demote him to a non-supervisory job if he refuses to stop being active in the union's behalf.

A foreman may not be discharged for refusal to carry out a management order to discriminate against employees because of their union activity.

## If a Union-Shop Contract Is Signed

A union-shop contract<sup>6</sup> is legitimate under the NLRA only if it meets these conditions: It must not be made with a union which is company assisted or dominated. And, at the time it is made the union must represent at least a majority of the employees covered, in an appropriate unit.

If the contract does not meet both conditions it will be set aside. Any employees fired under an illegitimate union-shop contract are entitled to reinstatement.

An employer may not enter into a contract with one of two competing unions when he knows that the question of majority representation is pending before the NLRB.

Workers may not be discharged pursuant to the terms of a union-shop contract if they never have been informed of the contract's existence.

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<sup>6</sup> As used here the terms "union shop" and "closed shop" are synonymous.

Employees who are discharged pursuant to a union-shop contract are entitled to reinstatement if the employer entered into the contract with knowledge that these employees would not be admitted into the contracting union because of their activities in behalf of another union.

Employees may not be fired pursuant to a union-shop contract because they join or campaign for another union near the end of the contract's term, if the employer has knowledge of the reason why the discharge was requested by the contracting union.

However, an employee who is expelled from the contracting union for such actions while the union-shop contract still has a considerable period to run may be discharged, whether or not management knows why the employee lost his membership.

## Formulating the Remedy

Whenever the Board finds that an employer has committed unfair labor practices, it is empowered by the Act to issue an order requiring him to cease and desist from such practices and to take affirmative action. In determining what affirmative action should be performed by the employer, the Board tailors its remedies to each given situation. These affirmative remedies usually take the following forms:

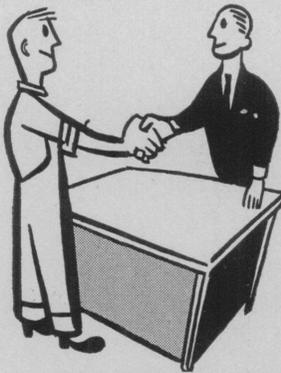
- a. In the case of a discriminatorily discharged or laid-off employee, a reinstatement order with reimbursement for loss of pay.
- b. In the case of a union found to have been employer-dominated and supported, a disestablishment order.
- c. In the case of a refusal to bargain, an order to bargain upon request of the union involved.
- d. In all cases, the requirement that the employer post notices advising the employees that he will not engage in the conduct from which he is ordered to cease and desist and that he will take the specific affirmative action set forth in the notice.

The Board varies and adds to these affirmative orders to meet the demands of a particular case. Following are some examples of specially fashioned remedies:

- a. Where the employer had entered into a closed-shop contract

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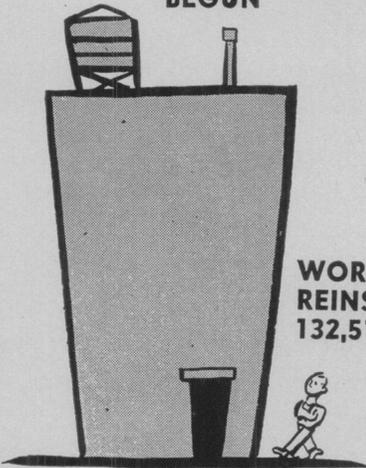
# Chart V. Remedy In Unfair Labor Practice Cases Closed 1940-45



**COLLECTIVE BARGAINING  
BEGUN** 3,666



**NOTICES  
POSTED**  
5,974



**WORKERS  
REINSTATED**  
132,517



**WORKERS  
RECEIVING  
BACK PAY**  
26,728  
(\$9,039,205.)



**COMPANY UNION  
DISESTABLISHED**  
1,365

with a dominated union: in addition to the usual disestablishment order, he may be directed to reimburse each worker for dues and assessments checked off from his wages.

- b. Where the employer has entered into a contract with an illegally assisted union: he may be directed to cease giving effect to the illegal contract unless and until the union is certified by the Board as the proper bargaining representative.
- c. Where the employer has moved his place of business to another locality in order to defeat the union: he may be directed to reinstate the employees, at either the old or new location, with payment to cover reasonable expenses of transportation and moving of employees' families.
- d. Where the employer has discriminatorily discharged employees: the Board may not always direct reinstatement. This remedy has been withheld.
- e. Where unfair labor practices have been accomplished in part by means of written notices or statements to individual employees and to employees in the armed services, the employer may be directed to write again to all such employees, stating that he will not engage in the conduct from which he has been ordered to cease and desist.

Through the above orders and the previously described procedures, during the past six years<sup>7</sup> the various unfair labor practices committed by employers were remedied in the following fashion:

- a. 133,000 workers were reinstated to jobs which they had lost because of employers' violations of the Wagner Act;
- b. More than \$9,000,000 in back pay was paid to 27,000 reinstated workers;
- c. Company-dominated unions were disestablished in 1,400 cases;
- d. Collective bargaining negotiations were ordered and begun in 4,000 cases;
- e. In 6,000 cases employees posted notices telling the workers that they were free to enjoy the right to self-organization. (See Chart V, page 44.)

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<sup>7</sup> Complete figures for 1936-39 are not available.

## APPENDIX A

### Locations and Territories of NLRB Regional Offices

**FIRST REGION**—Boston 8, Mass., Old South Building.

Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut, except for Fairfield County.

**SECOND REGION**—New York 5, N. Y., 120 Wall Street.

Fairfield County in Connecticut; Clinton, Essex, Warren, Washington, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Greene, Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties in New York State; Passaic, Bergen, Essex, Hudson, and Union Counties in New Jersey.

**THIRD REGION**—Buffalo 2, N. Y., West Genesee Street, Genesee Building.  
New York State, except for those counties included in the Second Region.

**FOURTH REGION**—Philadelphia 7, Pa., 1500 Bankers Securities Building.

New Jersey, except for Passaic, Bergen, Essex, Hudson, and Union Counties; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.

**FIFTH REGION**—Baltimore 2, Md., 601 American Building.

Branch Office: Room 902, Nissen Building, Fourth & Cherry Streets, Winston-Salem, N. C.

Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; Jefferson, Berkeley, Morgan, Mineral, Hampshire, Grant, Hardy, and Pendleton Counties in West Virginia.

**SIXTH REGION**—Pittsburgh 22, Pa., 2107 Clark Building.

All of Pennsylvania lying west of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties; Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Harrison, Taylor, Doddridge, Preston, Lewis, Barbour, Tucker, Upshur, Randolph, Webster, and Pocahontas Counties in West Virginia.

**SEVENTH REGION**—Detroit 26, Mich., 1332 National Bank Building.

Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.

**EIGHTH REGION**—Cleveland 13, Ohio, 713 Public Square Building.

Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.

**NINTH REGION**—Cincinnati 2, Ohio, Ingalls Building, Fourth and Vine Streets.

West Virginia, west of the western borders of Wetzel, Doddridge, Lewis, and Webster Counties, and southwest of the southern and western borders of Pocahontas County; Ohio, south of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties; Kentucky, east of the western borders of Hardin, Hart, Barren, and Monroe Counties.

**TENTH REGION**—Atlanta 3, Ga., 10 Forsyth Street Building.

South Carolina; Georgia; Florida, east of the eastern borders of Franklin, Liberty, and Jackson Counties; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties; Tennessee, east of the eastern borders of Hardin, Decatur, Benton, and Henry Counties.

**ELEVENTH REGION**—Indianapolis 4, Ind., 108 East Washington Street Building.

Indiana, except for Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Monroe Counties.

**THIRTEENTH REGION**—Chicago 3, Ill., Midland Building, Room 2200, 176 West Adams Street.

Branch Office: Federal Building, Room 702, 517 East Wisconsin Avenue, Milwaukee, Wis.

Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties in Indiana; Illinois, north of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Wisconsin, east of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.

**FOURTEENTH REGION**—St. Louis 1, Mo., International Building, Chestnut and Eighth Streets.

Illinois, south of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Missouri, east of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties.

**FIFTEENTH REGION**—New Orleans 12, La., 820 Richards Building.

Branch Office: Federal Building, Memphis 1, Tenn.

Louisiana; Arkansas; Mississippi; Tennessee, west of the eastern borders of Hardin, Decatur, Benton, and Henry Counties; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon and Russell Counties; Florida, west of the eastern borders of Franklin, Liberty, and Jackson Counties.

- SIXTEENTH REGION—Fort Worth 2, Tex., Federal Court Building.  
Branch Office: 306 Coles Bldg., El Paso, Texas.  
Texas; Oklahoma; New Mexico.
- SEVENTEENTH REGION—Kansas City 6, Mo., 903 Grand Avenue, Temple Building.  
Branch Office: Colorado Building, Denver, Colo.  
Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska; Colorado; Wyoming.
- EIGHTEENTH REGION—Minneapolis 4, Minn., Wesley Temple Building.  
Minnesota; North Dakota; South Dakota; Iowa; Wisconsin, west of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.
- NINETEENTH REGION—Seattle 1, Wash., 806 Vance Building.  
Washington; Oregon; Montana; Idaho; Territory of Alaska.
- TWENTIETH REGION—San Francisco 3, Calif., 1095 Market Street.  
Nevada; Utah; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.
- TWENTY-FIRST REGION—Los Angeles 14, Calif., 111 West Seventh Street.  
Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.
- TWENTY-THIRD REGION—Honolulu 2, T. H., 341 Federal Building.  
Territory of Hawaii.
- TWENTY-FOURTH REGION—San Juan 22, P. R., Post Office Box 4507.  
Puerto Rico.

## APPENDIX B

# National Labor Relations Act (49 Stat. 449)

### AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by 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 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 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.

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 pro-

pecting 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.

## DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, 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.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133<sup>1</sup> approved June 14, 1935.

#### NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of \$10,000

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<sup>1</sup> So in original.

a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board, under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

## RIGHTS OF EMPLOYEES

SEC. 7. 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 concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, 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 this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

## REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appro-

priate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

#### PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the

Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such

additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in section 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

#### INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered

mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

#### LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

**U. S. DEPARTMENT OF LABOR**

**DIVISION OF LABOR STANDARDS**