The National Labor Relations Board and Its Operations

Charles Sandberg
William Naimark

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

Part of the Administrative Law Commons, and the Labor and Employment Law Commons

Recommended Citation

Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss2/2

This Leading Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
THE NATIONAL LABOR RELATIONS BOARD
AND ITS OPERATIONS*

CHARLES SANDBERG AND WILLIAM NAIMARK**

INTRODUCTION

"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 com-
merce ... by encouraging the practice and procedure of collective bar-
gaining and by protecting the exercise by workers of full freedom of
association, self-organization, and designation of representatives of their
own choosing . . . ."

By this declaration the breath of life was given to the National Labor Rela-
tions Act¹ as enacted on July 5, 1935. This statute, familiarly known as
the Wagner Act, was the inevitable outgrowth of previous attempts to protect
employees in organizing unions for their collective benefit. At the same time
a National Labor Relations Board was established thereunder as the agency
empowered to administer the Act.

Perhaps it remains for the academician to explore the origins of statutory
legislation. Nevertheless, we believe that a brief resume of some events leading
to the passage of this Act may be helpful in understanding it as well as its
successor, the Taft-Hartley Act.

The legislation which encouraged collective bargaining between manage-
ment and unions was the product of strife, and reflected attempts to rescue
the nation from the depths of an economic depression. One of the earlier
enactments, the Norris-LaGuardia Act of 1932, was a forerunner of later acts
favoring union organization. Essentially, it restricted the use of injunctions
against labor unions, and outlawed the 'yellow dog' contract.² To this extent
the statute was negative in character. Nevertheless, it spelled out a labor policy
favoring full freedom of association of workers as well as deploring interference
by employers with this right.

*This article is devoted to describing only the salient aspects of the Board's
methods of operation. It does not deal with substantive features of the National
Labor Relations Act, nor is it intended to be a critical analysis of either the status
or the Board's decisions and policies.

**The authors are members of the New York State Bar and presently engaged
in the practice of labor law in Buffalo, N. Y. They were formerly associated with
the National Labor Relations Board as attorneys on the staff of the General
Counsel.


2. An agreement signed between an employee and the employer by which
the employee promises not to join, or remain a member of, a union as a condition
of employment.

101
The cornerstone of the Wagner Act was laid in 1933 when the National Industrial Recovery Act was passed. Section 7(a) thereof, while borrowing much from the Norris-LaGuardia Act, expressed its policy unequivocally. This section provided that employees shall have the right to organize and bargain collectively through representatives of their own choosing. It reiterated congressional intent to preclude employers from interfering with that right. Various interpretations of Section 7(a) led to numerous problems dealing with union recognition, rights of employers to hire and discharge, and related issues. In order to settle the differences, the President created a National Labor Board on August 5, 1933. Its purpose was to adjust disputes and not to enforce organized labor's rights. Very soon, however, this Board became obsolete by virtue of the settlement of threatened strikes. Moreover, it was felt that a more inclusive law was needed.

Accordingly, on June 19, 1934, Joint Resolution No. 44 was passed, and the first National Labor Relations Board was created. The purpose of the resolution was to effectuate the policies of the NIRA. The new Board could conduct elections to determine bargaining representatives and issue orders in connection therewith. There were no unfair practices listed, but the Board acted as a voluntary board of arbitration. It also performed conciliation and mediation functions. As was true of its predecessor, this agency had no power to enforce its decisions. Enforcement took place through compliance machinery or the Department of Justice.

Invalidation of the NIRA in 1935 by the Supreme Court set the stage for a more comprehensive regulation of labor relations, which resulted in the passage of the Wagner Act. A new National Labor Relations Board was created, composed of three members. This legislation provided for the conduct of elections by the Board of employees to determine their bargaining representative, specified unfair labor practices of employers, and set up procedures for enforcement of its orders in the courts. The objective was clear: to afford workers the right to organize unions through governmental regulation. This had not been possible under a previously existing laissez-faire doctrine.

After the Second World War a wave of strikes occurred. Much public discontent ensued, and fingers were pointed at the unions by many people. Considerable pressure was applied to restrict freedom granted to unions and to regulate collective bargaining. Hence, on June 23, 1947, the Labor Manage-

ment Relations Act, 1947 (better known as the Taft-Hartley Act7) was enacted. Basically, the new law sought to affect some control over labor unions. It re-enacted certain provisions of the Wagner Act, deleted other clauses, and added new sections. Provision was made for continuation of the National Labor Relations Board, but the Act changed its composition, established a General Counsel to prosecute its unfair labor practices, continued employer unfair labor practices and enumerated certain conduct as union unfair labor practices, regulated collective bargaining, and established procedures for dealing with strikes imperilling national health or safety.

The Taft-Hartley law has drawn much fire from the unions, who seek its abolition. Employers likewise, desire to alter various provisions. Despite the apparent mutual dissatisfaction and perchance as a result of it, neither management nor labor has succeeded in accomplishing any substantial changes. It remains as the most sweeping and definitive regulation of labor relations by government. The objective of this article is to explore the operations of the National Labor Relations Board which administers the Act.8 No emphasis will be placed on the decisional law of either the Board or the courts unless it pertains to particular methods of operational procedure.

I. STRUCTURE AND FUNCTIONS OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Act, as amended, continued the Board which had been established under the Wagner Act. However, in addition to functional changes, it increased the membership of the Board from three to five members. They now serve for a term of five years, except where filling a vacancy. In that instance they serve for the unexpired term. Although properly deemed an administrative agency, the Board may also be described as a quasi-judicial body. Cast in this role, it handles representation cases wherein it must determine who is the representative of the employees, and rules on legal issues before certifying a union as the bargaining representative. Concomitant with this procedure, and wherever required, it conducts elections among employees to determine the wishes of the employees in this respect. The Board, likewise, assumes the character of a judiciary in regard to unfair labor practice cases. Here it must conclude whether violations of the Act have occurred and grant relief as delimited by the statute. These two functions are the principal ones devolving upon the Board. Besides these main tasks, it attempts settlement of jurisdictional disputes, and polls employees on whether they desire to accept

8. Usage of the terms “statute” or “Act” herein refers to the Taft-Hartley Act unless otherwise specified.
their employer's last offer in cases involving strikes threatening national health or safety. In respect to jurisdictional disputes, the Board assumes the role of an arbitrator to a considerable degree.

Under the Wagner Act the Board retained complete control as to issuance of complaints in unfair labor practice cases. This was changed by the Taft-Hartley Act, which created an independent office known as the General Counsel. This officer now decides whether to issue complaints in the first instance. He also acts as the prosecuting arm of the agency subsequent to the issuance of a complaint. Cases are tried by the General Counsel's trial attorneys at hearings conducted by trial examiners. By virtue of the statute, the General Counsel was also given supervision over all attorneys employed by the Board (other than trial examiners and Board member assistants) and employees in the regional offices. Following this mandate, the General Counsel supervises virtually all personnel except for the Board's staff.

The focal point of the agency is in Washington, D. C., where nearly half the total complement of employees are located. Each of the five Board members has a staff of assistants who are usually attorneys. They are assigned to read and analyze the transcripts of cases coming in from the field offices. In connection therewith, these attorneys engage in legal research, as well as aid further in drafting Board decisions and orders. The number of cases under the amended Act far exceeds those arising out of the original statute, and the decisional duties require much assistance. To help alleviate the backlog, Congress permitted the Board to delegate all of its powers to any three members, of which two shall constitute a quorum. Operating under this procedure except with respect to highly important cases, the Board has expedited its processing of cases.

Situated in the same building at Washington are the General Counsel and his staff of legal aides. The top echelon includes two Associate General Counsels. One is in charge of Operations and is responsible for the various field offices and their personnel. The other is head of the Law Division and deals with all legal problems at hand. Several Assistant General Counsels are responsible for specific legal procedures, including enforcement of Board orders and obtaining injunctions when appropriate. The General Counsel's staff is called upon to decide many questions emanating from the field offices. A novel policy problem may disturb the region, or there may be a conflict within the regional office as to disposition of a case. In these instances, advice may be sought from the General Counsel in Washington. Further, appeals from dis-

9. Section 3 (d) of the Act.
10. Section 3 (b) of the Act.
missions by the Regional Director of unfair labor practice charges will be reviewed by the General Counsel. Usually an agenda of various top level associates and assistants will meet to dispose of these inquiries and appeals.

Also making its quarters in the same building in Washington is the Trial Examiners Division. This is composed of a group of trial examiners who are supervised by a Chief Trial Examiner. The prime function of a trial examiner is to preside at unfair labor practice hearings throughout the country. Assignments of examiners are made by the Chief Examiner as he receives notification that cases are scheduled in the regional offices for hearing. Neither the trial attorney for General Counsel nor respondent is informed beforehand as to the identity of the trial examiner who will conduct a particular hearing. Trial examiners maintain an independent status, and any former close relationship between them and the Board was severed by the Act. This serves to make the Board function, in effect, as a court of appeals with respect to the trial examiner’s report and recommendations which he issues after the hearings.

The lifeblood of the agency is the twenty-two regional offices and seven sub-regional locations. Cases initiate in the field offices. Investigations are conducted there, and nearly all hearings take place in the region where the matter arises. Each field office has a director or officer in charge. He has considerable authority with respect to dismissing proceedings, conducting elections, issuing complaints and ruling on motions. Each office has a staff of examiners and attorneys, supervised by a Chief Field Examiner and Chief Law Officer respectively. The field examiner investigates cases initially to determine whether elections shall be held or hearings conducted in representation matters, and whether violations exist in unfair labor practice cases. His recommendations are reviewed by the Chief Field Examiner and Regional Director. The examiner also conducts hearings when issues arise in election matters. Attorneys devote most of their time to unfair labor practice cases. They prepare complaints for issuance, handle settlements, and serve as trial counsel at the hearing in this type of case. The Regional Director, Chief Field Examiner and Chief Law Officer will usually meet with the examiner and attorney assigned to an unfair labor practice case to determine its disposition. Each aspect of the case, in conjunction with the factual data obtained, is given careful scrutiny before a decision is reached. Periodic meetings are also held in the regions to consider new problems as well as correct procedures if necessary. Suggestions are usually made to improve case handling and relationships with the public.

In 1951 the Board issued its Rules and Regulations, Series 6. These rules

11. Pursuant to an arrangement between the Board and General Counsel, the field staff function under General Counsel in investigating representation cases. 20 Fed. Reg. 2175 (1955).
were amended in successive years and published in the Federal Register each year since original issuance. They govern procedures followed by the Board in respect to its various proceedings under the Act, and constitute ground rules of the agency. These Rules and Regulations are extremely important, since they were drafted within the framework of the statutory powers vested in the Board. Failure to abide by these rules may seriously jeopardize the interests of a party appearing before it.

II. REPRESENTATION CASES

INTRODUCTION

As heretofore mentioned, the Board's major activities deal with representation and unfair labor practice cases. This section of our article will be devoted to representation matters which, in essence, are investigative and non-adversary in nature.

Employees covered by the Act are guaranteed the right to organize and bargain collectively through representatives of their own choosing. The object of a representation case is to determine whether a majority of the employees desire to be represented by a particular union or individual. This is accomplished through a Board-conducted election and is known as a representation proceeding. Authority is vested in the Board under Section 9(a) et seq. of the Act to conduct elections for this purpose. Before the Board can make a determination as to the majority status of a bargaining representative, it must resolve certain issues. Reduced to its simplest form, these issues deal with the questions of whether the employer is engaged in business affecting interstate commerce, whether the unit of employees requested by the bargaining agent is appropriate, and if there is in existence a real question concerning representation.

A. INITIATION OF PROCEEDING

The initial step in obtaining a representation election is the filing of a

12. In the fiscal year ending June 30, 1955 there were 6,171 unfair labor practice charges and 7,165 representation petitions filed with the Board. (TWENTIETH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD).

13. Not all employees are covered by the Act. Section 2 (3) thereof excludes "... 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 parents or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act . . . .”


15. Implemented by Board Rules and Regulations, Sections 102.52 thru 102.64.
petition. It is a prerequisite, since otherwise the Board is without authority
to conduct an election or determine any issues. Petitions are filed in the
regional area where the employer's business or plant is situated. Certain
conditions must be fulfilled before an election will be granted, which will be
hereinafter developed.

Essentially, there are two types of representation petitions:

1. A petition\(^{16}\) to obtain an election among employees in order to
ascertain whether they desire a particular union to represent
them.

2. A petition\(^{17}\) to "decertify" or unseat the presently recognized,
or certified, bargaining representative of the employees.

There is another petition\(^{18}\) which may be filed under Section 9(e) (1) of the
Act. Although it is considered a representation proceeding, this does not
result in the certification or decertification of a union as the chosen representa-
tive of employees. In this proceeding employees seek to rescind the authority
of a union to execute a union security clause in any agreement with an em-
ployer. A valid union security clause under the Act requires employees to
join a union thirty days after employment, or the effective date of the agree-
ment, whichever is later. Thus, an election hereunder will enable employees
to decide whether they wish to revoke authority of the union to require, under
the agreement with an employer, that they become members of the union
pursuant to said clause. Very few petitions of this character are filed, how-
ever, and this aspect of the Board's work is negligible.

Nearly all representation petitions are filed
by unions desiring to be
certified by the Board as bargaining agent for employees. Such petitions may
also be filed by any individual employee or group of employees. However, it is
rare to find individuals acting as bargaining representatives of employees.
There are instances where a union claims it represents the employees, and
manifests this claim to the employer. At the same time, however, the union
can decide not to file a petition for election with the Board. When this
occurs the employer may, under Section 9(c) (1) (B), file a petition for an
election to determine whether the employees desire to have the union as
their bargaining agent. The effect of this election is the same as though a
petition were filed by the union.

---

\(^{16}\) A petition of this nature filed by unions or individuals is designated as
an "RC" petition, and sanctioned by Section 9 (c) (1) (A) of the Act; one which
is filed by an employer is designated as an "RM" petition and sanctioned by
Section 9 (c) (1) (B) of the Act.

\(^{17}\) Designated by the Board as an "RD" petition and sanctioned by Section
9 (c) (1) (A) of the Act.

\(^{18}\) Designated by the Board as a "UD" or deauthorization petition.
A petition to "decertify" a union is filed when there is doubt as to whether the union still represents a majority of employees. It may be filed by anyone except an employer or his agent. The petition must assert that a union which has been certified, or is currently being recognized, is no longer the bargaining representative. An election will then be held to determine whether these employees desire to "decertify" the union.

B. REQUIREMENTS FOR PROCESSING PETITIONS

1. Filing Requirements and Non-Communist Affidavit

The Wagner Act did not contain any restrictions on unions' organizational activities, or impose any duties or conditions upon labor organizations seeking to use the Board's administrative machinery. As amended by the Taft-Hartley Act in 1947, however, the statute now establishes conditions before unions may invoke the Board's jurisdiction. These conditions concern themselves with the necessity of filing certain information regarding the internal structure of the union, and non-Communist affidavits on the part of union officers.

Sections 9(f) and (g) et seq. of the Act require a union, or any of its national or international affiliates, to file with the Secretary of Labor copies of its constitution and by-laws, as well as certain information pertaining to its organizational structure and internal operations. In addition, the union must file annually with the Secretary of Labor a financial statement which will indicate its assets and liabilities. This statement must be furnished to the members of said union. The Board is prohibited by the Act from investigating and processing a representation petition filed by a union unless the above data is submitted. Thus, if a petitioning union is not in compliance with the above filing requirements, the Regional Director will dismiss the petition.

Congress, in amending the Wagner Act, took cognizance of infiltration by Communists in labor organizations by requiring labor unions to file non-Communist affidavits with the National Labor Relations Board. A union must now disavow any Communist affiliation before it may avail itself of any rights granted by the Act. A non-complying union cannot use the machinery of the Board in seeking an election to determine its bargaining status and receive certification. Nevertheless, this union may protect an existing contractual interest with an employer. It may, under these circumstances, intervene in a representation proceeding but will not be placed on the ballot if an election is ordered. Section 9(h) of the Act requires that affidavits allege the officers of a union are not members of the Communist party, and do not believe in, or support any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.
The National Labor Relations Board cannot inquire into the truth or falsity of a non-Communist affidavit since the burden of investigating the oath falls on the Department of Justice, nor can it withhold statutory benefits from a union merely because its officers have been found guilty by the courts of filing a false affidavit. The Supreme Court has held that the only sanction for filing a false affidavit is a criminal penalty against the individuals filing a false affidavit. To overcome this difficulty in dealing with Communist-dominated unions, Congress enacted the Communist Control Act of 1954. Under this Act a union found to be Communist-infiltrated becomes ineligible to represent employees or exercise any statutory rights or benefits of the National Labor Relations Act.

2. Showing of Interest

In order to file a petition for representation, the Board requires a union to present a “substantial” showing of interest. The purpose of this requirement is to make certain that elections are not conducted unless a representative does, in fact, represent a good percentage of employees. By adopting this rule, the Board eliminates waste of time and money otherwise spent in conducting elections wherein the union could never conceivably be selected as the bargaining agent.

A union is considered to have a substantial showing of interest if it presents to the Board evidence that it represents at least 30% of the employees in the appropriate bargaining unit. A petition which is not supported by this showing of interest will be dismissed. The evidence of representation interest need not take any specific form. It may consist of recently dated membership cards signed by employees authorizing the union to represent them, or other written evidence such as dues records and petitions signed by employees which indicate they have designated petitioner as their bargaining agent. The regional office of the Board will then check the signatures of employees against a payroll record, submitted by the employer, and will make an interest determination.

In many instances a union seeks to intervene, claiming to have an interest in the proceeding. The Board will permit such an intervention if the “intervenor” can present a current interest of authorized representation from the employees in the unit claimed by the petitioner, or has a current or recently expired contract with an employer covering employees in the bargaining unit.


20. When an employer files a petition, the union which claimed recognition is not required to present any showing of independent interest.
The Board has held that a determination as to compliance with Section 9(f), (g) and (h) of the Act, or the sufficiency of a showing of interest, is purely administrative in nature. Therefore, parties to the proceeding are not permitted to question or make any direct attack on these matters. This policy cannot be prejudicial since only the election can decide whether petitioner represents a majority of employees in the unit. A new policy has been adopted regarding evidence submitted to the Board indicating a showing of interest was procured by fraud, duress or any other illegal means. The Board may conduct an administrative investigation to determine whether this evidence of interest was so procured. In the event it is determined that a union obtained membership cards or signatures through fraudulent methods, a petition for an election filed by this union will be dismissed.

C. INVESTIGATION OF REPRESENTATION CASES

When a petition is filed with the regional office of the Board, it is assigned to a field examiner for investigation. Notices of filing are sent to all interested parties. If the field examiner is satisfied that petitioner has submitted a sufficient showing of interest, and has complied with the filing requirements of Section 9(f), (g) and (h) of the Act, he immediately begins his investigation to determine the issues involved in a representation proceeding.

1. Assertion of Jurisdiction by the Board

A field examiner must first determine whether the activities or business operations of the employer affect interstate commerce as defined in Section 2, subsections 6 and 7 of the Act. Unless the operations are of an interstate character, the Board has no authority to process a representation petition.

The Board has established certain yardsticks as a guide in determining whether or not to exercise jurisdiction over an employer. These jurisdictional yardsticks are based on the employer's dollar volume of either direct or indirect inflow of goods and services in interstate commerce.21 These have been changed on several occasions and the Board is now operating under certain standards promulgated in 1954. Under the 1954 regulations, an employer's dollar volume of goods or services passing directly or indirectly in interstate commerce must reach a certain minimum figure before the Board will assume jurisdiction of the case. In respect to instrumentalities or channels of commerce such as trucking firms, radio and television stations, and newspapers, engaged in intrastate commerce.

21 No useful purpose will be served here in detailing the jurisdictional yardsticks for every industry. These are contained in an excellent outline written by Bernard Samoff, Chief Field Examiner in the Philadelphia region of the National Labor Relations Board. (CCH LABOR LAW JOURNAL of November, 1956).
commerce, a dollar volume is still required. If the minimum figures are not met, the Board will dismiss the petition as having no substantial impact on interstate commerce. However, the Board is not bound to adhere to dollar test standards. It has discretion to exercise jurisdiction over an industry that does not meet the dollar tests, if it believes the issues involved in a representation matter will have a substantial effect on interstate commerce. On the other hand, it may refuse jurisdiction over an industry qualifying under its standards if it feels assertion of jurisdiction will not effectuate the purposes of the Act. The Board has, therefore, refused to assert jurisdiction over hotels, taxicab companies, and harness racing tracks, regardless of whether said industries meet the jurisdictional standards.

2. Question Concerning Representation

Having determined that the Board will exercise jurisdiction of the employer, the field examiner must ascertain whether a question concerning representation has arisen. Section 9(c) of the Act provides that a question concerning representation must exist before the Board may direct an election to determine whether its employees desire to have a union act as their representative. A question concerning representation exists when a union or individual makes a demand upon an employer to act as the exclusive bargaining representative of his employees and the employer declines such recognition. Where a petition is filed by an employer, a question concerning representation exists if the employer alleges that one or more unions, or individuals, seek to represent his employees. In many cases an employer has already granted recognition to a union, but the latter, nevertheless, files a petition to receive formal certification. It is not always necessary for the union to make a formal demand for recognition. The Board has held that mere filing of a petition for this purpose is often sufficient by itself to raise a question concerning representation. As hereinbefore mentioned, a petition may be filed alleging that a certified, or currently recognized, union no longer represents a majority of the employees. This likewise poses a question concerning representation, since the petition disputes the continued representative status of the union.

Not every petition results in a finding that a question of representation exists. Frequently, a union disclaims any interest on behalf of the employees at a hearing. This usually occurs when the employer files a petition, and a union may not feel it will succeed at an election. If the Board is assured that the disclaimer is bona fide, it will dismiss a petition on the theory that there is, in reality, no question concerning representation. Moreover, where the unit is not appropriate, a petition is dismissed as not posing any representation question.
3. Appropriate Units

Section 9(b) of the Act authorizes the Board to determine whether a unit in the petition is appropriate. Before the Board can order an election, the unit must be defined and meet with the Board's approval. Therefore, the field examiner must ascertain information leading to a determination as to whether the unit sought is appropriate. The Act has imposed upon the Board certain limitations in determining the appropriateness of a unit. Professional employees may not be included in a unit of non-professional employees, unless they vote for such inclusion. The Board cannot decide that a craft unit is inappropriate on the ground that a different unit was established previously unless a majority of the craft group vote against separate representation. Furthermore, plant guards are not placed in the same unit with other employees, and a union may not be certified as representative of the guards which admits to membership, or is affiliated with a labor organization which admits to membership employees other than guards. Supervisors are not employees for the purpose of bargaining under the Act, and must be excluded from the unit sought in the petition.22

One of the prime criteria for ascertaining whether a unit is appropriate is the existence of a mutuality of interest among the employees. The term "mutuality of interest" refers to similarity of wages, hours, and conditions of employment among the employees sought to be included in a unit. Such factors as duties and skills of employees, history of collective bargaining, extent of union organization among the employees and, in many instances, the desires of the workers are considered by the Board in determining whether such mutual interest exists. The Board attempts to group employees in a unit which will assure them fullest freedom in exercising their collective bargaining rights guaranteed under the Act.

As part of his task, a field examiner must inquire from the employer and union what they contend is the appropriate unit. In respect to the union, the petition will generally set forth a unit which it deems proper. However, disputes may arise concerning the inclusion of certain job classifications within the unit sought. In order to make a determination in this regard, the examiner obtains a list of job classifications from the employer. The decisive factor in arriving at an appropriate unit is the job title of workers and not the names of employees. In many instances the field examiner is able to obtain agreement between the parties as to the appropriateness of a unit. If employer and union stipulate thereto and the stipulation does not violate statutory limitations or Board policies, the Board will adopt the unit agreed upon. Whenever there is a dispute as to the proper nature of a unit, which cannot be resolved in-

22. Supra, note 13, and Section 14 (a) of the Act.
formally, a hearing will be held to allow the Board to pass upon this issue. At a hearing all facts with regard to conditions of employment skills of employees, their interchange with other workers, and related considerations, will be developed on the record. This procedure is, in reality, an extension of the investigation initiated by the examiner. It rests with the Board to decide after the hearing whether a unit is appropriate, and to indicate which classifications of employees are to be included or excluded from the proper unit.

D.Disposition Of The Petition

After the field examiner has completed his investigation of all facts and evidence pertaining to the issues involved in a representation case, he makes his recommendations to the Regional Director. Where the Board lacks jurisdiction of the case, or there is no question concerning representation by reason of inappropriateness of a unit or other factors, he will recommend dismissal of the petition. The petitioning party will be afforded an opportunity to withdraw if the examiner's recommendation is upheld.

Prior to the close of a hearing, the petition may be withdrawn at any time with permission by the Regional Director. After a hearing is closed, the sanction of the Board is needed for this withdrawal. Upon refusal of the petitioner to withdraw, the Regional Director will dismiss the petition. If this occurs, petitioner may appeal the dismissal of its petition to the Board in Washington, D. C., within ten days thereof.

If the field examiner's investigation discloses that a question concerning representation affecting commerce exists, he may call an informal conference of all interested parties. At said conference he attempts to resolve any issues in dispute, and requests that the parties agree to a consent election. There are two types of consent election agreements: a Regional Director's consent election, and a stipulation for certification upon consent election. There are substantial and procedural differences between these two types of agreements. In the former the Regional Director determines any objections to the election, or challenges to voting; and his ruling or decisions are final and binding.23 Further, petitioner waives any right to a formal hearing either as to eligibility of voters or objections to the election.24 There is no appeal to the Board unless the Regional Director's determinations are arbitrary and capricious, or not in conformity with the policies of the Act.

In a stipulation for certification upon consent election, the Board itself, rather than the Regional Director, makes a final determination as to eligibility

23. Board Rules and Regulations, Section 102.54.
of voters or objections to the conduct of an election. There is no waiver of a hearing. The Board may, if it sees fit, grant a hearing on objections to the conduct of an election or, with respect to eligibility of voters if substantial issues are raised on appeal.

E. Formal Hearing

When the informal conference does not result in disposing of the case and the parties refuse to sign a consent election agreement, the field examiner will recommend that a hearing be held. The objective of such a proceeding is to develop all facts and information pertaining to the issues so as to enable the Board to make a determination. As distinguished from an unfair labor practice hearing, the representation hearing is non-adversary and not governed by the rules of evidence prevailing in the courts. Considerable latitude is permitted parties to introduce evidence so a complete record will be made to enable the Board to resolve the issues.

Regardless of who files the petition for representation, both the employer and union are necessary parties to the proceeding, and will be served with a notice of hearing issued by the Regional Director. Another union may desire to intervene at the hearing, and it must make a proper motion to the hearing officer for this purpose. Where the intervenor has a colorable claim, such as a contract with the employer, or a number of union cards signed by employees, it will be permitted to intervene. Once intervention is granted, the said union may participate fully as any other party. The intervenor may contend no election should be conducted, or it might ask to be placed on the ballot should an election be conducted. Unless it has complied with Sections 9(f), (g) and (h), however, the Board will not place its name on the ballot.

Hearings are conducted by either a field examiner or an attorney in the regional office. It is his duty to develop a complete record through testimony of witnesses or stipulated facts. All parties may state their respective positions as to matters in dispute. They may also introduce evidence in regard thereto through examination and cross-examination of witnesses. Certain formal exhibits of the Board, including the petition and a notice of hearing, will be introduced in evidence by the hearing officer. Both the petitioner and other parties may introduce exhibits which are relevant to the proceeding. During the hearing an attempt will be made by the hearing officer to receive stipulations of fact from the parties. This is designed to narrow contested issues remaining for determination by the Board.

Part of the hearing officer's function is to rule on all motions made by the parties and also rule on the admissibility of evidence. With respect to a
motion to dismiss the petition, he is not permitted to rule thereon but is required
to refer it to the Board. A subpoena may be desired by a party during the hear-
ing, in which event written application must be made to the hearing officer.
The latter is required to issue it, but he may also revoke the issuance when
proper application is made by the party upon whom it is served. If it becomes
necessary to preserve order at the proceeding, a hearing officer may exclude
any person for misconduct. Furthermore, the Board agent has power to strike
previous testimony of a witness on related matters where the witness refuses
to answer a question ruled to be proper. In addition to these rulings on pro-
cedural matters, the hearing officer will interrogate witnesses and develop
factual data which is necessary for ultimate disposition of the case by the Board.

At the conclusion of the hearing the presiding officer will allow parties
to argue orally on the record. They are permitted a reasonable time for this
purpose. Subsequent to the close of a hearing, parties may file briefs with the
Board in Washington, D. C. The hearing officer prepares a report of the major
issues involved, including the contentions of all parties with regard thereto.
He does not, however, make any recommendations to the agency. This report,
together with the transcript of the hearing, is forwarded to the Board. After
examining the record, the hearing officer's report and briefs submitted by the
parties, the Board will issue its Decision and Order. If no question of repre-
sentation is found to exist, it will order a dismissal of the petition. Where
representation questions do exist, and it is appropriate, the Board will direct
an election to be conducted by the Regional Director within thirty days of the
decision. The Board's direction of an election specifies the union or unions
who will appear on the ballot, and the classification of employees who are
eligible to vote.

F. THE ELECTION

Elections are conducted by the Board to ascertain whether employees desire
to be represented by a designated union. In conducting an election the Board is
zealous to safeguard the rights of each eligible employee to vote freely. There
are various mechanistic rules adopted by the Board in holding elections among
employees. While these may appear technical, observance of these rules has
resulted in the agency becoming expertise in this field. Sufficient safeguards are
established so as to enable the Board to conduct thousands of elections each
year with a minimum of difficulty.

Subsequent to the Decision and Order of the Board which directs an election,
or the signing of a consent election agreement, it is incumbent upon the field
examiner to arrange all details for voting by employees. He will confer with all

25. Board Rules and Regulations, Section 102.58.
parties in order to discuss plans for the election. The employer is obliged to furnish a payroll list of employees eligible to vote in accordance with the unit found to be appropriate. A date must be set for the election, and the field examiner will explain the procedures to be followed.

Among the most significant factors in connection with a forthcoming election are the time and place thereof. It is common practice for the parties to agree to these arrangements, particularly where they consent to an election. The Regional Director must, however, approve their selection. Where an election is ordered by the Board, the parties may be consulted as to the location and time. Nevertheless, if they fail to agree in this regard, the Regional Director may arrange these details irrespective of the wishes of either an employer or union. Generally, an election is conducted on the employer's property. However, when this is not feasible, the Regional Director may direct the election to be held elsewhere.

Notices of election will be sent to the parties at least one week in advance, and the employer is required to post them on the bulletin boards in its various departments. This posting is necessary to publicize the details which have been arranged with regard to the forthcoming election, and thus assure that employees are fully informed thereof. A notice contains the date, time and place of election, name of unions which are to appear on the ballot, classification of eligible voters, and a sample ballot for examination.

At the time of an election, the field examiner is required to instruct both employer and union representatives that no electioneering is permitted at or near the polls. Although the employer and union, and their official representatives, may be present before an election commences, they may not remain during the voting nor are they allowed to loiter about the polling area. Each party is permitted to have an observer present during the election. Employer's observer may not be a supervisory nor a managerial employee; an observer for the union may not be an officer or business agent. Usually each party selects an employee within the unit to act as observer. These individuals assist the Board agent in identifying employees and checking the payroll list as voters appear at the polls. Employees whose names are listed on the eligibility payroll, agreed upon prior to the election, are entitled to vote. As a voter enters the polling area he gives his name to the observers and Board agent. Each observer checks off the name on the eligibility list, and the Board agent hands a ballot to the voting employee. The latter is directed to a closed booth where he marks the ballot in secrecy, and drops it in a ballot box. The employee's ballot will inquire whether he desires to be represented by the designated union as his bargaining representative. He may vote 'Yes' or 'No' by marking an 'X' in the proper place. Should there be more than one union on the ballot, he selects his choice of which union he de-
sires to represent him, or he may indicate 'Neither' by marking an ‘X’ in a space provided for this choice. Employees who are not listed on the payroll may sometimes appear at the polls in order to vote in the election. They may do so but will be challenged by the Board agent before casting their ballot. Observers frequently challenge voters on the ground that they are not eligible because of their particular status or are not properly included within the unit. The challenged voter is permitted to cast his ballot, but it is inserted into a special envelope which is sealed and placed in the ballot box.

After the polls close, interested parties may be present for counting ballots. This is undertaken by the Board agent who examines each ballot after the box is opened. Observers will tally the votes as the examiner counts them. If the ballot does not clearly express a voter’s intention regarding his selection, it will not be counted. Where a voter reveals his identity, the vote will be voided and not included in the count. Challenged ballots will be resolved and tabulated at the election by the field examiner, if agreeable to the parties. If he is unable to resolve these challenges, the ballots will be retained and resolved later if they affect the results of the election. Each party is given a tally of ballots indicating the number of votes cast for or against the union. Unless a union receives a majority of the votes cast, it will have "lost" the election.

G. POST-ELECTION PROCEDURES.

1. Challenges

The results of an election may, in certain instances, be affected by the number of challenged votes. When this occurs, it devolves upon the field examiner to investigate the challenged ballots to determine whether they should be counted. This investigation is normally limited to the reason for the challenge as indicated at the election. The examiner submits a report to the Regional Director, setting forth his findings and a recommendation with respect to the challenged ballots.

In a consent election the Regional Director determines challenges, and his rulings are embodied in a written report sent to all parties. There is no review from his decision in this regard. If he decides that the challenged ballots be counted, a conference will be scheduled so that the ballots may be opened in the presence of the parties. In elections ordered by the Board, or pursuant to a stipulation for certification, final determination of challenges is made by the Board. In such cases, the Regional Director issues a report on challenged ballots, which is served upon the parties and a copy is forwarded to the Board in Washington. This report contains recommendations as to the disposition of challenged ballots, but ultimate decision rests with the Board in respect thereto. Any party may file an exception to this report with the Board within ten days from the
date it is issued. Where exceptions raise substantial and material issues which cannot be decided on the basis of the Director's report, the Board may direct a hearing be held to resolve the dispute. An agent of the Board will conduct the hearing, and a complete record is made of the facts with respect to the eligibility of employees whose votes were challenged. A report is submitted by the hearing officer who makes findings of facts and recommendations as to the disposition of challenges. This report may be excepted to by any party within ten days from its issuance by filing exceptions with the Board. Final decision is made by the Board as to whether the challenges should be sustained, and the Regional Director will be ordered to either count the challenged ballots or retain them unopened. In the event that the ballots are counted, a revised tally of ballots is served upon the parties by the regional office.26

2. Objections to Elections

One of the Board's principal aims is to conduct elections in an atmosphere which permits employees to freely express their choice. Both prior to and during an election employees must be free from interference and coercion in respect to making their selection of representatives. An election may be set aside when this freedom is abridged under the standards imposed by the Board. Any party to the proceeding may file objections to the conduct of an election, or to conduct affecting the result of such election. Objections must be filed within five days of receipt of the tally of ballots and must specify the grounds therefor.27

Investigation of objections is undertaken by the field examiner to determine whether the conduct is sufficient to set aside an election. Whether employees were prevented from exercising a free choice of their collective bargaining representative is often difficult to determine. This determination is made by the Regional Director or Board in accordance with the same procedure followed in the case of challenges. In a consent election the Regional Director's findings on objections will be final. If the election was pursuant to a stipulation for certification, the Board will decide whether the conduct was so objectionable as to vitiate the election. Exceptions may be filed to the Regional Director's report and a hearing ordered by the Board in a similar manner as described above in regard to challenges.

There may be times when both challenges and objections are filed to an election. If it appears that the challenges are determinative of the results, a report on objections will be consolidated with the rulings on challenges. In the event that resolution of challenges may render objections immaterial, a consolidated

27. Supra, note 26.
3. Certification of Bargaining Representative

Where employees vote in favor of selecting a union as their representative, the Board issues a certification to this effect. This announces that a majority of employees has designated a particular labor organization as their bargaining agent. If the majority of employees do not vote in favor of the union, a certificate of results of the election will be issued. This merely sets forth the statistical result and the union will not be designated as the bargaining representative.

A certification is generally valid for a period of one year and the union is presumed to be the bargaining agent during this time. Absent unusual circumstances, no election will be held again within a year from the date of certification. If it becomes necessary to amend the certificate, application may be duly made to the Board upon notice to all interested parties. A change in name may occur, or other factors develop, which make it expedient to apply for an amended certificate. Further, upon application of a party, the Board may revoke a certification under certain circumstances. Thus, where it is manifest that a certified union is not representing all employees, the Board will issue a revocation of its certificate.

The Act does not provide for direct judicial review of the Board's certification. Moreover, a Board order in a representation proceeding is considered interlocutory and purely administrative in nature. Only final orders, requiring a party to bargain with a designated representative of the employer, are appealable to the court. Upon appeal from the order to bargain, the court will pass upon the issues raised in a representation proceeding, and thus review whether a certification was properly issued.

III. UNFAIR LABOR PRACTICE CASES

A. NATURE OF THE PROCEEDINGS

Both the original National Labor Relations Act and the Taft-Hartley Act

28. Such as (a) defunctness of the certified union, (b) a schism or transfer of affiliation from the certified union to a new local or international, (c) a radical fluctuation in the size of the bargaining unit.

29. Under Section 9 (c) (3) of the Act the Board is also prohibited from directing an election in a unit where a valid election was held within the preceding twelve month period.
made it clear that the basic policy was to protect employees in their exercise of certain rights. This policy found expression in Section 7 of both Acts. Employees are permitted thereunder to organize and join labor unions, bargain collectively through their chosen representatives, and engage in other concerted activities for mutual aid or protection. Further, the Taft-Hartley Act amended Section 7 to permit employees to refrain from these activities except as otherwise required under the statute.

In order to guarantee employees against infringement of these rights, the Wagner Act prohibited employers from engaging in certain conduct. It declared various activities of the employer to be unfair labor practices. Thus, he was not permitted to interfere with, restrain or coerce employees in exercising these rights. The employer could not dominate or interfere with the formation of a union, nor render assistance to it. He was prohibited from discriminating against employees to encourage or discourage membership in the union; and discrimination for filing charges or giving testimony under this statute was not allowed. Moreover, an employer was required to bargain with the majority representative of his employees.

Although the Taft-Hartley Act modified some of these unfair labor practices, they were continued by the amended statute. At the same time Congress prescribed certain practices on the part of unions. Accordingly, this Act outlawed restraint and coercion of employees by labor organizations, and prohibited the latter from causing employers to discriminate against employees in violation of the Act. It was declared an unfair practice for unions to refuse to bargain with employers when they represent a majority of the employees. A significant innovation was the prohibition of union activities which constituted, in effect, secondary boycotts or jurisdictional strikes. Strikes were outlawed which induced a self-employed person to join a union or an employer organization. The union was not permitted to impose excessive or discriminatory initiation fees on its members. Finally, it is an unfair labor practice to cause an employer to pay, as an exaction, for services not performed nor to be performed.

Having thus defined unfair labor practices, the statute vested the Board with authority to prevent their occurrence and remedy existing violations. It was felt that fundamentally the rights flowed to the public at large, and hence should be enforceable only by a public agency. Consequently, no private suits were contemplated in respect to redressing these practices. Redress was to be at the hands of the Board. To enable the agency to accomplish its function in this regard, the statute granted the Board additional powers. Accordingly, it may issue complaints, conduct hearings, and issue orders which will effectuate the policies of

30. Sections 8 (a) (1), (2), (3), (4), (5) of the Act.
31. Sections 8 (b) (1), (2), (3), (4), (5), (6) of the Act.
THE NATIONAL LABOR RELATIONS BOARD AND ITS OPERATION

the Act. These orders may be enforced in the federal courts in the event parties refuse to comply with them.

The machinery of the Board, therefore, is geared to handling both representation proceedings and unfair labor practice cases. In respect to the latter, they are adversary in nature and akin to civil litigation where rules of evidence and procedure come into play. How the cases are handled from the filing of the charge until ultimate review by the courts will be discussed in this portion of our article.

B. FILING OF THE CHARGE

A charge must be filed before any action is taken in regard to an unfair labor practice. The board does not act on its own motion, and will not undertake an investigation until a charge is docketed with it. The proper place to file charges is at the regional office having jurisdiction over the area where the alleged violation occurs. Any person may file a charge which should contain a clear and concise statement of the facts constituting alleged unfair labor practices. The charge itself is not a pleading. It merely sets in operation the Board's investigatory process. While there is no restriction as to who may file, the statute does place a limitation in respect to the time of filing. Under Section 10(b) of the Act the charge must be filed with the Board, and served upon the party charged, within six months after the unfair labor practice occurs. Otherwise, no complaint may be issued based on the conduct alleged to be violative of the statute.

Unions which file charges must comply with the requirements of Sections 9(f), (g) and (h) of the Act in like manner as when filing representation petitions. Although the charge may be docketed at a time when the union has not filed its non-Communist affidavits and financial data, no complaint will issue until the charging union "gets in compliance." When a charge is filed against a union, failure to comply will not inure to its benefit and a complaint will issue against it, whether or not the union has met these requirements.

In certain instances the union may be compelled to waive the filing of a charge. This may occur when it has filed a representation petition, and later discovers the employer has engaged in unlawful conduct under the Act. In this event the union must decide whether to pursue the representation case or file an unfair labor practice charge. By continuing to proceed with the representation matter after learning of the employer's illegal conduct, the union waives its right to file unfair labor practice charges. However, no waiver exists where the union learns of the employer's conduct after an election is held.

C. INVESTIGATION AND DISPOSITION OF THE CHARGE

It is the duty of the General Counsel to investigate and prosecute the charge
once it is filed. Chief responsibility for the investigation rests with the Regional Director of the region where the charge is filed, and he acts on behalf of the General Counsel in this respect. When the charge is given a case number and properly docketed, it is assigned to a field examiner for complete investigation. It rests with the charging party to furnish evidence in support of the alleged unfair labor practice. If he fails to supply data substantiating the charge, it may be dismissed at the outset. The field examiner must conduct a thorough inquiry of all facts relating to the alleged violations. Usual practice is for him to interview initially all witnesses on behalf of the charging party or those individuals referred to by these witnesses. The examiner obtains their affidavits and procures copies of documents such as contracts or letters. After completing this phase of the investigation, the examiner interrogates witnesses on behalf of the party against whom the charge is filed and obtains affidavits wherever possible. In conjunction with this inquiry he must obtain information regarding the business operations of the employer involved. The same standards for asserting jurisdiction apply, for the most part, in unfair labor cases as in respect to representation matters. If the employer fails to be engaged in a business affecting interstate commerce, the charge will be dismissed on this ground at the outset.

Upon completing his investigation, the field examiner evaluates the evidence and makes a recommendation to the Regional Director. The need to expedite processing of cases has resulted in eliminating the field examiner's written report setting forth in detail all facts uncovered during the investigation. However, if there is likelihood of an appeal from the region's dismissal of a charge, the Director may request a full written report. Thus, General Counsel in Washington would have a thorough record of factual data in the file, as well as the basis of the disposition made by the regional office. Further, a full report may be needed when the case involves a novel policy question and the file has to be submitted to Washington for advice. Final determination within the region as to whether a charge should be dismissed, or a complaint issued, is made by the Regional Director. Most regions follow a practice of calling a meeting (commonly known as an 'agenda') which is attended by the Regional Director, Chief Examiner, Chief Law Officer, and the field examiner and attorney assigned to the case. Thorough discussion of all facts, as well as legal issues, takes place, and recommendations are noted in the file as to disposition of the charge.

In the event that no violation is found to exist, the charging party will be notified that there is no merit to the charge. Opportunity is afforded him to withdraw, and if he refuses, the case will be dismissed. An appeal may be taken to the General Counsel in Washington by filing a request to review

32. Charges filed against an employer are designated as "CA" charge; those filed against a union, other than secondary boycotts and jurisdictional disputes, are known as "CB" charges; secondary boycott charges are labeled "C" whereas jurisdictional charges are marked as "CD."
THE NATIONAL LABOR RELATIONS BOARD AND ITS OPERATION

the Regional Director's action within ten days from the service of the latter's refusal to issue a complaint. Contrariwise, if the charge is found to be meritorious, a complaint will issue against the party charged unless a settlement is forthcoming. Every opportunity is given the party to dispose of the case informally before a complaint is issued.

D. Disposition of Jurisdictional Disputes

Certain conduct on the part of unions constitute jurisdictional strikes which are outlawed under the statute. This type of activity involves, for the most part, inducement of employees to strike with the aim of forcing an employer to assign work to employees of one union or a particular group, rather than employees of another union or class. A charge alleging such conduct is handled on a different basis from other charges, since the Act sets up a particular procedure to cope with this situation. Moreover, it is given priority over all other cases except those involving other secondary activities of the union.

Pursuant to Section 10(k) of the Act the parties are given ten days after notice that a charge is filed to adjust the dispute, or agree upon methods of adjustment. Should they fail to make such an adjustment, the Board is empowered to hear and determine the dispute. A hearing is conducted in conformance with the procedure established for representation matters, and not as an unfair labor practice hearing. Its primary purpose is to obtain, on the record, facts enabling the Board to determine and certify which union or class of employees should perform the assigned work. Once a certification to this effect is made the parties are expected to submit evidence to the Director indicating compliance therewith. Unless such evidence is submitted, a complaint will be issued alleging a violation of Section 8(b) (4) (D) of the Act. When this occurs an adversary hearing is scheduled, and held in the same manner as other unfair labor practice hearings.

E. Pre-Hearing Procedures

In regulating the prevention of unfair labor practices, the statute contemplated formal action when a charge has merit and no adjustment is made. Despite the administrative character of the Board, it was vested with power to issue complaints, conduct hearings, adduce testimony, and issue orders based thereon. Further, the Act specifies that this proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the District Courts of the

33. Board Rules and Regulations, Section 102.19.
34. Section 8 (b) (4) (D) of the Act.
United States under the rules of civil procedure for said courts.\textsuperscript{35} The Board's Rules and Regulations set forth procedures which serve to implement the Act in this respect. While they are comparable to procedures followed in private suits, there is less reliance upon them in the trial of an unfair labor practice case. In the experience of the writers, many cases proceed to hearing on the basis of a complaint and answer. It may be that the limitation on the applicability of the rules of evidence, i.e. "so far as practicable," discourages a technical approach procedurewise. Perhaps the mantle of protection thrown over Board files and records deters the use by respondent of pre-hearing procedures. Whatever the reason, there are few motions addressed to the pleadings (other than motions to dismiss) and little attempt to use these procedures. Although not used with much frequency, some of these pre-hearing procedures will be described, since they are an integral part of the Rules and Regulations and might well redound to advantage to the user.

1. \textit{Complaint}

Once it appears that an unfair labor practice has occurred, and there is no settlement, the Regional Director will issue a formal complaint on behalf of the General Counsel. The complaint must state the unfair labor practices and contain a notice of hearing to be held not less than ten days after service of the complaint before a trial examiner at a specified place.\textsuperscript{36} Complaint and notice of hearing must be served personally or by registered mail upon the party filing the charge and respondent. If the complaint attacks an existent contract, the employer or labor organization which is a party thereto with respondent is also served. Moreover, any union alleged to be dominated or assisted must receive a copy of the complaint and notice of hearing.

Prior to the hearing a complaint may be amended by the Director, or he may withdraw it upon his own motion.\textsuperscript{37} Preparation of the pleading is usually done by the field attorney in the regional office. It alleges facts which will enable parties to understand the offenses charged. The same particularity of an indictment is not required, since the proceeding is preventive or remedial rather than punitive. As a general rule, the complaint is not limited by the scope of the charge. Accordingly, it may contain allegations of unfair labor practices which are not spelled out in the charge. Board policy has been to include within the complaint whatever violations are uncovered during investigation of the charge, if not barred by the six months limitation rule.

\textsuperscript{35} Section 10 (b) of the Act.
\textsuperscript{36} Board Rules and Regulations, Section 102.15.
\textsuperscript{37} Board Rules and Regulations, Sections 102.17 and 102.18.
2. Answer

An answer to the complaint must be filed within ten days from the date it is served upon respondent. This contains respondent's defense and should set forth facts supporting same. Respondent is called upon to specifically admit, deny or explain the facts alleged in the complaint. If no answer is filed, the allegations in the complaint are deemed to be admitted. However, the usual procedure is to prove the allegations of a complaint at a hearing and not rely upon an unanswered complaint. By so doing, the field attorney avoids a risk that allegations of the complaint are not set forth with such specificity to support a Board order and court decree. It is customary for General Counsel to relax technical rules in respect to the pleadings, and consequently, the field attorney frequently accepts respondent's answer at the hearing if it has not been timely filed. Respondent must file an original and four copies of the answer with the Regional Director. It should be in writing with the original signed and sworn to by respondent or a duly authorized agent. Each of the other parties must be served with a copy thereof. Prior to the hearing the answer may be amended at will. During the hearing it may be amended in an instance in which the complaint is amended, or as allowed by the trial examiner irrespective of whether or not the complaint is amended.

3. Motions Addressed to the Pleadings

The Board provides a method whereby parties may seek relief via procedural motions. Under the Rules and Regulations all motions made prior to a hearing must be filed in writing with the Regional Director issuing a complaint. The moving party must file an original and four copies of same, and serve a copy on other parties immediately. At the hearing a motion may be made in writing to the trial examiner or stated orally on the record, and the trial examiner will rule on this motion before a case is transferred.

Very often respondent's attorney will move for a bill of particulars in respect to the General Counsel's complaint. A motion of this type, filed prior to the hearing, is referred by the Regional Director to the Chief Trial Examiner in Washington, who assigns it to a trial examiner for disposition. At the hearing a motion of this nature is made to the trial examiner who conducts the proceeding. Normally, the allegations of a complaint will be sufficient, since details usually permitted in civil litigation are not required. Respondent is entitled to such specificity as will enable him to be appraised of the issues and thus prepare his defense. In general, he is entitled to names of the agents or supervisors of

38. Board Rules and Regulations, Section 102.20.
39. Board Rules and Regulations, Section 102.23.
40. Board Rules and Regulations, Section 102.24.
respondent who committed the acts alleged in the complaint, and the approximate
dates of their commission. By the same token, the General Counsel's attorney may
seek particularization of an affirmative defense in respondent's answer. In most
instances, investigation by the field examiner beforehand reveals the details with
respect thereto, but the field attorney may move for a bill of particulars if these
facts are not available.

Though resorted to less frequently, a motion to strike insufficient defenses
from the answer may be made by the General Counsel. This is limited to situations
where the allegations are clearly insufficient, or the answer contains irrelevant
statements which may tend to defame the Board, its agents, or the charging party.

4. Subpenas and Depositions

(a) Pursuant to Section 11 of the Act, the Board is empowered to issue
subpenas for the purpose of all hearings and investigations. Under the statutory
language no discretion is vested in the Board, for it recites that a subpena "shall"
issue upon application of any party to the proceedings. Thus, either the field
attorney or respondent may see fit to request issuance of a subpena before the
hearing in preparing his case. It is customary for the Board attorney to subpena
corroborating witnesses. Not only does he want to assure their presence, but the
witnesses may be employed and request that they be subpenaed to justify being
absent from their jobs. Occasionally the field attorney contemplates calling
respondent as an adverse witness under Rule 43 B of the Federal Rules of Civil
Procedure, and will therefore subpena him prior to the hearing.

Applications for subpenas must be filed with the Regional Director if sought
prior to the hearing. Once the hearing commences, application should be filed
with the trial examiner. The Board issues two types of subpenas: ad testificandum,
and duc ex tecum. The former is used to obtain the presence of an individual to
testify at the hearing, while the latter calls for the production of books, records,
and documents at the hearing as specified. Subpenas are not issued to permit
'fishing expeditions' and should be limited to situations where the testimony or
document is necessary and material to support a violation or defense. Within five
days after it is served, a petition may be sought to revoke the subpena. This
petition must be granted if the evidence sought does not relate to the matter under
investigation, nor describe such evidence with sufficient particularity. In the
event that a person refuses to obey a subpena, provision is made for its enforcement.
Whether proceedings will be instituted to enforce the subpena will depend upon
how vital and necessary is the evidence sought to be adduced. The statute provides
for application to be made to any of the District Courts of the United States for

41. Section 11 of the Act; Board Rules and Regulations, Section 102.31 (b).
enforcement of the subpoena. Failure to obey a court order enforcing the subpoena constitutes civil contempt of court and is punishable accordingly.

(b) In a manner similar to the Federal Rules the Board has made provision for taking depositions of witnesses who will be unavailable at the hearing. Thus a party is enabled to use this deposition at a hearing if (1) the witness is dead; (2) he is unable to attend or testify due to age, illness or imprisonment; (3) he is beyond 100 miles from the place of the hearing, or out of the United States; (4) a party is unable to procure a witness through subpoena; (5) exceptional circumstances are present.

An application must be made in writing, and prior to the hearing it is directed to the Regional Director. It must be served upon the Director not less than seven days prior to the time when the deposition is to be taken. The application should set forth why it is requested, the matters to which a witness will testify, the time and place of taking the deposition, and the officer before whom it is to be taken. The witness may be examined and cross-examined. All objections to questions or evidence are deemed waived unless made at the examination. However, the Board's Rules give the officer no power to rule on objections, merely to note them on the deposition. It is the trial examiner who rules on the admissibility of the deposition, or any part thereof. If no motion be made to suppress the deposition, errors or irregularities are deemed waived.

F. Settlements

Where the investigation reveals the Act has been violated, efforts will be made to dispose of the charge by settlement. This is in conformity with the Administrative Procedure Act which requires a respondent party be given an opportunity to settle a case before formal proceedings be instituted. The field examiner confers with the parties and explains what is required to remedy the unfair labor practices. An adjustment must rectify whatever wrongful act was committed. Respondent may be obliged to reinstate employees who were illegally discharged and to reimburse them for any pay lost by reason of his wrongful act. No compromise is permitted in order to effect a settlement, and the Board will not 'trade' with respondent as is common in civil litigation. Since the Act is remedial, and designed to protect the public, the Board will insist upon respondent's full compliance with requirements to rectify the wrongdoing. However, in some instances, latitude will be exercised where the obligation of respondent is subject to dispute. Thus, it may be impossible to determine whether an employee would have been retained, or rehired for subsequent jobs.

43. Board Rules and Regulations, Section 102.30.
Since the amount of back pay is necessarily uncertain, a lesser sum may be accepted in settling the matter.

Settlements executed with the parties fall into two categories. The informal adjustment is usually negotiated prior to the issuance of a complaint. It is signed by the charging party as well as the party against whom a charge is brought, and must be approved by the Regional Director. Refusal of the charging party to sign does not prevent consummation of the settlement where the Director is satisfied it remedies the alleged violations. This agreement requires the adverse party to comply with the Act by taking appropriate remedial action. It also calls for the posting of a notice at the employer's place of business, or union's headquarters, depending on which is the party who has committed the violation. This notice recites to employees, or union members, that the particular party will not engage in the conduct found wrongful, and will perform affirmative acts which are necessary to comply with the statute. This notice must be posted for sixty days in a conspicuous place so that it comes to the attention of employees or union members as the case may be. When it becomes clear to the Regional Director that the terms of a settlement agreement have been complied with, he may approve withdrawal of the charge. Should the party charged fail to comply with the terms of a settlement, the Director may authorize issuance of a complaint. Unfair labor practices committed before the settlement was signed may still be alleged in the complaint, and the Board is permitted to go behind the agreement where there has not been compliance therewith.

A formal settlement is a stipulation entered into with the party against whom the complaint is issued, and this must be signed by the Regional Director and the Board. The custom is to require a formal adjustment after a complaint has issued, although the rule has been relaxed where General Counsel approves doing so in a particular case. This settlement differs primarily from the informal adjustment in that it provides for the entry of a Board order and court decree. Pursuant to the agreement, a decree may be entered in any appropriate United States Court of Appeals without notice of application. The purpose of a court decree is not only to enforce the settlement, but to serve as an effective deterrent to future violations of the Act. Non-compliance by respondent party with the court decree may result in contempt proceedings being brought against him. Provisions of the order to be entered by the Board are included in the settlement stipulation. These terms or provisions require respondent to cease and desist from activity found in violation of the statute and to perform acts which are provided for in the stipulation. The agreement provides for waiver by respondent of a formal hearing in respect to the merits of the case, or in regard to any further proceedings. Notices must be posted as in an informal settlement, and these also outline the actions to be taken by respondent to remedy the unfair labor practices.
G. Hearings

An unfair labor practice hearing is a formal proceeding conducted by a trial examiner who is assigned to the case by the Chief Trial Examiner. The objective of a hearing is to receive evidence based upon the complaint alleging violations of the Act. It is not sufficient that Board agents, on behalf of the General Counsel, determined an employer or union has committed unfair labor practices. The evidence itself must be adduced at a hearing, and testimony of witnesses recorded officially. A hearing is public, unless otherwise ordered, and usually conducted in the region where the charge was filed.

Chief responsibility for presenting the evidence in support of the complaint rests with the field attorney designated in the regional office. He has the burden of proving at the hearing that an unfair labor practice was committed. It is incumbent upon General Counsel to establish a violation or the complaint will be dismissed. Parties have the right to appear at the hearing in person, by counsel or their representatives, and they may examine or cross-examine witnesses, as well as introduce evidence in the record. Invariably, respondent will be represented by an attorney seeking to disprove the commission of an unfair labor practice. To this extent, his role is quite similar to counsel on behalf of a defendant in civil litigation. It is specified in Section 10(b) of the Act that rules of evidence shall apply as far as practicable, and hearings are conducted within the framework of this provision, as amplified by the Board's Rules and Regulations.

At the outset of the hearing the field attorney usually offers in evidence the formal papers on behalf of the General Counsel. The principal formal exhibits are the charges, complaint and notice of hearing, answer, motions addressed to the pleadings and orders thereon, all of which become part of the record. It is customary for the field attorney to make an opening statement whereby he sets forth the theory of the General Counsel's case. Respondent's counsel may, if he sees fit, reply on the record as to the nature of his defense to the complaint.

Normally, the field attorney will attempt to establish a violation by calling witnesses which have already been interviewed by the field examiner and upon whose evidence the violation is based. Occasionally, however, the field examiner will resort to the use of a very helpful tactic afforded by Rule 43(b) of the Federal Rules of Civil Procedure. This rule permits General Counsel's attorney to call as a witness an adverse party, or an officer, director or managing agent of an adverse party, and interrogate him by means of leading questions. In so doing, the witness may be contradicted and impeached through cross-examination as though he had been called by the adverse party himself, and General Counsel will not be bound by the answers of this witness. Where a trial examiner excludes evidence which an attorney deems necessary and material, the parties are permitted
to make an 'offer of proof.' This is done by indicating on the record what the witnesses would otherwise have testified to. In certain instances a ruling of the trial examiner may exclude a whole line of evidence, the proof of which would be extensive. An offer of proof as to this may be made in writing and marked as an exhibit. By making an offer of proof when evidence has been excluded, the Board's attention will be directed to the nature of the evidence sought to be adduced, and the ruling of the trial examiner may be properly examined upon review.

At the conclusion of General Counsel's case, respondent's attorney is afforded an opportunity to move for a dismissal of the complaint. This motion will be ruled upon by the trial examiner, and unless the General Counsel has failed to establish clearly a *prima facie* case, this motion will usually be denied or held in reserve. Respondent's attorney is then obliged to present his case, and he may call witnesses as well as introduce exhibits in the same manner as presented by the General Counsel.

Considerable authority is vested in the trial examiner who presides at the hearing. He may, *inter alia*, administer oaths, issue subpoenas and revoke them, rule upon motions as well as admissions or exclusion of evidence, and examine witnesses.⁴⁵ When a witness refuses to answer a question which is ruled proper, the trial examiner may strike all previous testimony of this witness on related matters.⁴⁶ He may also exclude or separate witnesses from the hearing when it is desirable.

At the close of the hearing, each party may request oral argument which the trial examiner will usually grant. A request may also be made to file briefs with the trial examiner, and he is allowed to give the parties twenty days from the close of the hearing for filing. If further extension of time is necessary, application must be made to the Chief Trial Examiner at least three days prior to the expiration period fixed by the trial examiner initially.

After the hearing is terminated, the trial examiner is obliged to prepare and serve upon all parties an intermediate report and recommended order. Included therein will be his findings of fact, conclusions and the reasons therefor, as well as recommended action to be taken by respondent in order to effectuate the policies of the Act. Subsequent to the issuance of this report and recommendation, the case is transferred to the Board by its own order, and the trial examiner's official connection with the matter is closed.⁴⁷

⁴⁵. Board Rules and Regulations, Section 102.35.
⁴⁶. Board Rules and Regulations, Section 102.44.
⁴⁷. Board Rules and Regulations, Section 102.45.
A method is provided by which the trial examiner's intermediate report is reviewable by the Board. This is accomplished by means of filing exceptions to this intermediate report and recommended order. Such exceptions must be filed within twenty days from the date the order transferring a case to the Board is served upon the parties. Briefs may be filed in support of, or in opposition to, the exceptions. If no exceptions are filed, the Board automatically adopts the trial examiner's findings and recommendations. When a party files exceptions, he may also request permission to argue orally before the Board. However, it is seldom permitted save when significant policy issues are presented or novel questions of law exist which are of great importance. In reviewing an intermediate report, the Board acts, to a great extent, like an appellate court. Board review of the unfair labor practice proceeding rests on the record before the trial examiner, his intermediate report, the exceptions and briefs which may be filed. The Board may deem evidence adduced to be insufficient, in which event it may reopen the record or remand the case for additional evidence. During its review of the case great weight will be given by the Board to findings by the trial examiner as to credibility of witnesses. Since the trial examiner has had an opportunity to observe those who testified, his conclusions in this regard will not be set aside unless clearly erroneous and contrary to the evidence.

After considering the whole record, the Board will make its own findings of fact and conclusions of law. It is authorized under the Act to issue a remedial order if it concludes that the preponderance of the testimony establishes an unfair labor practice. Pursuant to the statute, the Board's order may be both negative and affirmative in nature. A respondent may be ordered to cease and desist from unfair labor practice. He may also be ordered to take affirmative action as will effectuate the policies of the Act. Board orders are designed to undo the effect of unlawful conduct, and its orders are framed to correct the unfair practices committed, as well as prevent future violations. The most frequent unfair labor practice cases concern a discriminatory discharge or lay off of employees. A remedial order in these cases will require reinstatement of, and back pay for, these employees. While only an employer may be required to reinstate employees, the Board may order a union to withdraw objections to reinstatement and require the union to notify an employer and employees accordingly. Where an illegal union security clause in a contract is involved, the Board will usually order the respondent to cease giving effect to it. In instances where the contract is made with a dominated union, the entire agreement may be set aside. Should the Board

48. Although there are various remedial orders issued by the Board, this article will confine itself to those concerned with reinstatement and back pay. It is felt that these orders are issued most frequently and deserving of emphasis.
49. Board Rules and Regulations, Section 102.46.
find a union to be dominated, it will order its disestablishment. On the other hand, if it concludes that the organization merely received assistance and support, the employer will be ordered to cease recognizing it until the union is certified by the Board. Evidence that the employer coerced employees in agreeing to a check-off of dues will result in an order requiring the employer to refund these dues to employees. An important part of the Board's order is the provision calling for the posting of notices. The latter recites that a respondent will cease and desist from the conduct found to be illegal and will take the affirmative action ordered by the Board. This notice must be posted for sixty days continuously, in a place where notices to employees are customarily displayed. A union may be required to furnish the regional office with signed copies of its notice for posting at the employer's plant with the latter's consent. It is customary for a Board agent to visit respondent's premises at random intervals to check whether notices are posted in the proper manner.

1. Reinstatement

In respect to reinstatement, the Board's standard order provides that an employer offer discriminatees "immediate reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges." It is immaterial that an employee may have found employment elsewhere or that he was replaced. When the job is abolished and no longer in existence, the employee must be reinstated to a substantially equivalent position. In evaluating the equivalence of the new position with the former one, such factors as wages, hours and other working conditions or benefits are taken into consideration. The loss of any rights previously enjoyed by the employee would be indicative that he is not being offered substantially equivalent employment. If no jobs are available when reinstatement is directed, the Board will order an employer to place an employee on a preferential list to be recalled when work becomes available. An offer of reinstatement, in conformity with the Board's order, must be unconditional. It may not be for a limited period, nor require the employee to return as a new worker. The objective of a Board order directing reinstatement is to restore an employee to a status quo, or as closely thereto as possible.

When a union is the sole respondent and found to have committed an unfair labor practice, the Board does not order reinstatement, since the union could not comply with this requirement. However, the Board does direct a union to advise employer and employee that it has no objection to an employee being reinstated.

2. Back Pay

A back pay award is neither a penalty nor a private award. It is made in the
interests of the public, and may be given or withheld, depending on whether it will effectuate the Act’s policies. Back pay may be granted even though there is no reinstatement. Further, it may be awarded where an employee loses wages or benefits due to demotion or other treatment aside from discriminatory discharge or lay off. The Board’s purpose is to reimburse the employee for the loss suffered by him as a result of the discrimination and not to enrich him. In the event that a union is a respondent, it will also be responsible for back pay. Both unions and employers are liable, jointly and severally; when found to have engaged in unfair labor practices against employees. Liability for back pay is borne equally by respondent employers and respondent unions. Thus, if there are three respondent employers and one respondent union, fifty per cent of back pay is to be paid by the employers and fifty per cent by the union. Sometimes one of two respondents may be willing to pay the full back pay. The Board will accept payment from him if all efforts to obtain a proportionate share from the other respondent have failed. Also, the share owed by one respondent may be accepted where another respondent refuses to pay the balance. However, the Board makes it clear that the party paying its proportionate share may be obliged to pay the remaining sum if not collected from the other party.

When issuing a back pay order, the Board designates the period for which an award is ordered. Normally, this is from the date of discrimination until the date when the employer makes an unconditional offer of reinstatement. No amount of back pay is awarded in the order itself. The amount is determined after the issuance of the order. A Board agent investigates the amount of net back pay due an employee. Generally, this is arrived at by deducting sums earned elsewhere (known as interim earnings) during the discriminatory period, from the amount he would have earned if not discharged or otherwise unlawfully treated. Expenses incurred by an employee in seeking work elsewhere are deducted from interim earnings. Net back pay is figured separately for each quarterly period of a year, so that earnings at other jobs in one quarter are not offset against back pay due for different quarters. There are various factors to be considered in the computation of back pay, some of which may militate against the employee’s rights to receive back pay. Thus, an employee must seek employment after his lay off or discharge, else he will be accused of a “wilful loss.” In this event, he will be disqualified from receiving back pay the period of the wilful loss.

The Board has adopted a procedure for formal determination of back pay when respondents do not accept the calculations of the Board agents. A “back-pay specification” is issued by the Regional Director after the entry of a court decree enforcing an order awarding back pay, and served on all parties involved in the proceeding. The specification sets forth the net back pay and the method of computation. Respondent must file an answer to the specification within
fifteen days, setting forth its defense or its version of the amount due.50 Unless there is agreement to resolve the controversy, a hearing is held before a trial examiner who takes testimony and renders a report with recommendations.51 This hearing is governed by the same Board rules which are applicable at the regular formal hearing on the merits of the unfair labor practice.52

I. INJUNCTIVE RELIEF

The Act provides for injunctive relief by the Board to restrain unfair labor practices. Injunctions under the Act can only be obtained by the Board and are not available to unions or private parties. The Board has delegated its authority to seek unfair labor practice injunctions to its General Counsel and Regional Director. Restrictions imposed by the Norris-LaGuardia Act upon obtaining injunctions in labor disputes are not applicable to the Board when seeking an injunction to halt unfair labor practices. In some instances it is discretionary with the Board whether to seek an injunction, while in certain cases it is mandatory upon the Board to do so.

1. Discretionary Injunctions

Section 10(j) of the Act confers upon the Board authority to petition a federal district court, after the issuance of the complaint, for an injunction restraining the commission of an unfair labor practice. The purpose of this type of injunction is to maintain the status quo until the merits of the case have been decided in a Board hearing. This type of injunction is only temporary in nature so as to give the Board an opportunity to hold a hearing on the merits of the case. Permanent restraints of unfair labor practices are obtained in a Circuit Court of Appeals by enforcement of an order issued by the Board after establishing a violation of the Act. The Board’s petition to the court must allege filing of a charge, facts in support of a charge, and issuance of a complaint. It is necessary that the court have jurisdiction over the matter in controversy and the person or parties sought to be restrained. It is not necessary for the court to find an unfair labor practice has been committed in order to grant injunctive relief. All that is required is the conclusion that there is a reasonable probability that an unfair labor practice has been committed in order to grant injunctive relief. The Board, as a matter of policy, very seldom resorts to the 10(j) injunction. In the past it has sought this injunction primarily in restraining the union or employer from refusing to bargain, or where a matter of public interest is involved.

50. Board Rules and Regulations, Section 102.51 (a) thru (e).
51. Board Rules and Regulations, Section 102.51 (e).
52. Board Rules and Regulations, Section 102.51 (h).
2. Mandatory Injunctions

Congress, in amending the Wagner Act, was concerned about certain conduct of unions which amounted to secondary boycotts. Its apprehension resulted in the passage of a statutory provision outlawing such conduct and making it mandatory upon the Board to seek injunctions against this activity.

Section 10(1) of the Act requires that charges alleging secondary boycotts be given priority over all other unfair labor practice cases. If the Regional Director, after an investigation, is of the opinion that there is reasonable cause to believe that a secondary boycott charge has merit, and that a complaint should issue, the case is referred to the Board in Washington, D. C. An attorney in the injunction division of the Board is assigned to the matter and he will make an application for an injunction where it appears there is a violation. A petition will be filed with the District Court where the unfair labor practice occurred, or where the person charged resides or transacts business. In a case involving a secondary boycott, it is not necessary for the Board to issue a complaint before it can apply for an injunction as required under Section 10(j) of the Act. The petition to the Federal Court must allege filing of a charge, investigation of said charge by the Regional Director, and facts to substantiate the allegation that there is a reasonable cause to believe the charge has merit. Jurisdictional requirements over the controversy and party must be met. An injunction under Section 10(1) of the Act is effective until the Board makes a final decision in the case. Subsequent to the granting of an injunction by the court, a hearing will be held by the Board based upon a complaint which is issued. On the basis of a complete record, the Board will determine whether the union has committed an unfair labor practice. If a violation is found, the Board will proceed to enforce its order in a manner hereinafter described. In the event that a union or employer violate any injunction obtained by the Board, contempt proceedings may be instituted.

J. Enforcement and Review of Board Orders

Orders issued by the Board prescribe conduct which is found to be unlawful. There is no compulsion upon a respondent to comply with an order until it is enforced by the proper court. Under Section 10(e) of the Act, the Board is empowered to petition any circuit court of appeals of the United States for enforcement of its orders. The statute also provides under Section 10(f) that any party "aggrieved" by a Board order may petition a circuit court for review. This is generally limited to the employer or union against whom an order is directed. Employees denied reinstatement and back pay by the Board are not deemed "aggrieved" parties. Only final orders of the Board are subject to judicial review, and such orders are confined to those issued in unfair labor practice cases. No review is permitted of refusals to issue complaints or subpoenas, nor of represen-
tation issues, since these are not "final" orders. To be reviewable such questions must arise as a result of an order entered in an unfair labor practice case. Therefore, a question concerning representation will be reviewed only after the Board has found the respondent refused to bargain and issued an order to that effect. The representation proceeding will be examined only during the review of the unfair labor practice order.

In petitioning for enforcement, the Board certifies and files in court a transcript of the entire record of the proceeding. This includes the pleadings, testimony, findings, and order. The aggrieved party must make a written application to the court asking that the Board order be modified or set aside. He must obtain certification of the transcript from the Board, and file the same papers as required in the petition for review. When a party files an application for review, it is customary for the Board to file a cross petition for enforcement. There is no time limit for filing a petition to enforce the Board order. The doctrine of laches has no application to the Board because the agency is vindicating public rights, and orders have been enforced even after a delay of several years. Neither does the statute specify when a party must file an application for review of the Board's order. Where no monetary loss can accrue, the party found to have committed unfair labor practices may decide to wait until the Board petitions for enforcement. However, laches may run against private parties as distinguished from the Board.

The legislature did not intend the circuit court to substitute its judgment for the Board's in determining the issues of an unfair labor practice case. It manifested this intention by stating that "the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." Consequently the reviewing court does not act as a fact finding body, but is obligated to consider whether the Board's findings are supported by evidence which meets the statutory test. It matters not that the court would have reached an opposite conclusion ab initio. In 1951 the Supreme Court of the United States in Universal Camera Corp. v. NLRB, 340 U. S. 474, did rule, however, that the Taft-Hartley Act enlarged the scope of judicial review of the Board's findings of fact. By reason of the term "record as a whole," reviewing courts may delve further in determining whether there is substantial evidence to support these findings. The reviewing court may take into consideration the entire record, and not just evidence which reasonably supports the Board's conclusions. Therefore, findings and conclusions of the trial examiner must be considered in addition to all the evidence adduced at the hearing. A

53. Section 10 (e) of the Act.
general power exists to review questions of law, despite the fact that most
enforcement and review proceedings turn on whether or not evidence is substantial
to sustain the Board's findings. Pursuant to this power the court may decide
whether the respondent in an unfair labor practice proceeding received a fair
trial, and whether conduct complained of constituted a violation as a matter of law.

A reviewing court is not limited to granting or denying enforcement of the
Board's order. It may modify the order, or set it aside in whole or in part. In
conjunction with enforcing a Board order, the circuit court may also issue a
restraining order under Section 10(e) of the Act. A decree of the circuit court
may be reviewed by the Supreme Court of the United States upon a writ of
certiorari as provided in Sections 239 and 240 of the Judicial Code, as amended. Further, the court of appeals may remand the case to the Board for further
consideration, under its equity powers, in the event that it deems the remedy
improper or inappropriate. It is within the province of the circuit court to judge
whether the prescribed remedy will effectuate the policies of the Act.

CONCLUSION

We have observed that the Taft-Hartley Act guarantees employees the right
to organize for their mutual aid or protection, and bargain collectively through
representatives of their own choosing. The National Labor Relations Board, as an
administrative agency with quasi-judicial powers, provides the machinery for
selecting employees' representatives. This is accomplished by means of elections
conducted by the Board which ultimately certifies the designated representative
of employees in an appropriate unit. Where employees no longer desire to be
represented by their bargaining agent, the Act provides a method to "decertify"
the representative through the election process established by the Board.

Moreover, employees are protected in the exercise of rights guaranteed to
them under the Act. In affording this protection the statute proscribes certain
activities on the part of both employers and unions, and defines these to be unfair
labor practices. The commission of unfair labor practices, if not remedied volun-
tarily, will result in the issuance of a remedial order by the Board. In the absence
of compliance with the Board's order the agency may seek enforcement of its
order at the hands of the Federal courts. Whenever appropriate, injunctive relief
will also be sought in the court to restrain certain conduct which is outlawed.
Further, an opportunity is granted respondent employer or union to apply to the
court for review of the Board's order.

To implement statutory provisions the Board promulgated its own Rules and
Regulations which establish procedures to be followed in representation matters

and unfair labor practice cases. These rules govern the filing of petitions and charges, as well as subsequent procedures during the processing of cases before the Board.

As a result of the foregoing, an attempt has been made to eliminate industrial strife which legislators felt was furthered by the denial by employers of the right of employees to organize, and was affected by certain union practices. The National Labor Relations Board was designed to be instrumental in restoring the inequality of bargaining power between employees and employers. Although it is not within the province of this article to assay the extent to which this purpose was accomplished, the fact remains that the Board has performed its functions with a very high degree of expertness.