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An Analysis of the Objections Filed to Representation Elections Under the Labor Management Relations Act - August 22, 1947 to August 21, 1957

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AN ANALYSIS OF THE OBJECTIONS FILED TO REPRESENTATION ELECTIONS UNDER THE LABOR MANAGEMENT RELATIONS ACT-
AUGUST 22, 1947 TO AUGUST 21, 1957

by

Bernadette Curry Lowum

A Thesis Submitted to the Faculty of the Institute of Social
And Industrial Relations of Loyola University in Partial
Fulfillment of the Requirements for the
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LIFE

Bernadette Curry Lowum was born in Chicago, Illinois, January 5, 1932.

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td></td>
</tr>
<tr>
<td>A. Statement of the Problem</td>
<td>1</td>
</tr>
<tr>
<td>1. Authority granted by the Labor Management Relations Act to the National Labor Relations Board</td>
<td>2</td>
</tr>
<tr>
<td>2. Board Procedure, Rules and Regulations</td>
<td>4</td>
</tr>
<tr>
<td>B. Method and Procedure</td>
<td>5</td>
</tr>
<tr>
<td>II. OBJECTIONS FILED AGAINST THE ACTIVITIES OF THE NATIONAL LABOR RELATIONS BOARD AND ITS AGENTS</td>
<td>6</td>
</tr>
<tr>
<td>A. Activities of the Board and the Regional Director</td>
<td></td>
</tr>
<tr>
<td>1. Compliance issues</td>
<td>6</td>
</tr>
<tr>
<td>2. Identity of the participating parties</td>
<td>8</td>
</tr>
<tr>
<td>3. Unit determination</td>
<td>11</td>
</tr>
<tr>
<td>4. Eligibility issues</td>
<td>12</td>
</tr>
<tr>
<td>5. Contract as a bar</td>
<td>16</td>
</tr>
<tr>
<td>6. Pendency of unfair labor practice charges</td>
<td>17</td>
</tr>
<tr>
<td>7. Inadequate showing of interest</td>
<td>19</td>
</tr>
<tr>
<td>8. Defects in the Decision and Direction of Election</td>
<td>19</td>
</tr>
<tr>
<td>9. Defective Notice of Election</td>
<td>20</td>
</tr>
<tr>
<td>10. Determination of the winning party</td>
<td>23</td>
</tr>
<tr>
<td>11. Mechanics of the Election</td>
<td>25</td>
</tr>
<tr>
<td>B. Activities of the Board Agents during the election</td>
<td></td>
</tr>
<tr>
<td>1. Observers</td>
<td>26</td>
</tr>
<tr>
<td>2. Challenges</td>
<td>28</td>
</tr>
<tr>
<td>3. Disenfranchisement</td>
<td>33</td>
</tr>
<tr>
<td>4. Eligibility issues</td>
<td>36</td>
</tr>
<tr>
<td>5. Violation of the secrecy of the ballot</td>
<td>40</td>
</tr>
<tr>
<td>6. Impropriety, inadequacy and bias</td>
<td>43</td>
</tr>
<tr>
<td>C. Activities of the Board Agents in the distribution and counting of ballots</td>
<td>46</td>
</tr>
<tr>
<td>D. Activities of the Board Agents concerning ballot boxes</td>
<td>47</td>
</tr>
</tbody>
</table>

iv
III. OBJECTIONS FILED AGAINST THE ACTIVITIES OF EMPLOYERS

A. Conduct preceding an election
   1. Interference and coercion
   2. Promises of benefit and threats of reprisal
   3. Granting of concessions and withholding of benefits
   4. False propaganda
   5. Captive audience and no-solicitation rules
   6. Interrogation, interviews and surveillance
   7. Preferential treatment where more than one union is involved

B. Conduct during an election
   1. Failure to furnish a correct eligibility list
   2. Interference with voting

IV. OBJECTIONS FILED AGAINST THE ACTIVITIES OF UNIONS

A. Conduct preceding an election
   1. Promises of benefit
   2. Threats, violence and threats of violence
   3. Campaign trickery, falsity and inaccuracy
   4. False and inaccurate propaganda
   5. Distribution of marked sample ballots
   6. Freeloading and solicitation

B. Conduct during an election
   1. Interference with voting
   2. Electioneering at or near the polls

V. SUMMARY AND CONCLUSIONS

SOURCE MATERIAL

APPENDIX I

APPENDIX II

APPENDIX III
CHAPTER I

INTRODUCTION

A. Statement of the Problem

The purpose of this thesis is to study the objections that have been filed by both employers and unions to representation elections during the ten year period following the passage of the Labor Management Relations Act of 1947. Each case involving objections to such an election, as reported in the Decisions and Orders of the National Labor Relations Board, was carefully studied, the objections noted, the report of the Regional Director and any exceptions to such report investigated, and the ultimate decision of the Board recorded.

As may be expected, the types of objections and the frequency with which the specific types of objections were filed yield somewhat of a pattern which is reflected in the decisions and orders of the Board. Since it is the purpose of the Board to interpret the policies of the National Labor Relations Act, as amended, its decisions in these cases represent its attempt to effectuate the purposes of this labor legislation. During the ten years chosen as the period of
this study, the Board has had occasion to reexamine its previous rulings and in many cases has found them inadequate. The earlier policies have been replaced by those which the Board deems more in keeping with the intention of the Act.

It is the study of these revisions in rulings and policies of the Board, together with some of the factors which have prompted such revisions that is the ultimate purpose of this thesis. The factors to be considered are the types of actions which have occurred during representation elections which have caused the Board to authorize revisions, and revoke and modify previous rulings in order to safeguard the purposes of the Act in its administration. It is the attempt of the writer to define and illustrate the various trends in the decisions of the Board in the pages and chapters that follow.

1. The Labor Management Relations Act—On June 23, 1947, both houses of Congress, over presidential veto, passed the controversial Labor Management Relations Act, the Taft-Hartley Act. The purpose of this legislation was to amend the National Labor Relations Act; and in amending, effect some substantial changes.

The first of these changes was an increase in the complement of the Board itself, important here, in that it enabled
the Board to execute more swiftly the tremendous number of cases brought to its attention annually and the increased number which would result from the amended provisions of the Act; e.g., the abolition of the pre-hearing election which effected a substantial increase in the number of representation hearings.

The section of the revised Act most pertinent to this study is Section 9 with its subsections and provisions which will be found in Appendix I. As can be comprehended from this section, the Act provides that the Board direct a secret ballot election when it finds that a duly filed petition raises a question of representation. All election details such as the determination of voting eligibility, timing, the mechanics of the election and the standards to insure a free election are left to the Board's administrative discretion.

Consequently, within a few days after the enactment of the Labor Management Relations Act, the Board assigned various officers and employees to the task of analyzing the new law in the light of its legislative history for the purposes of determining what changes in organization and procedures would be necessitated. The entire months of July and August were devoted to preparation for executing the revised and increased functions of the Board. By its effective date, August 22, 1947, the Board's Statements of Procedure, Rules and Regulations had
incorporated the necessary additions and revisions.

2. Procedure--As proper background to this study, it is necessary to become familiar with the rules and regulations of the Board in order that the objections to elections and the Board's procedure with respect to these objections may be evaluated. Appendix II is the most recent statement of the Board's governing regulations which will be sufficient for the purpose of this study, revised by the National Labor Relations Board and made effective May 14, 1958, as last amended.

These regulations provide that objections to representation elections, together with a short statement of the reasons therefor, be filed with the Regional Director within five days following the tally of ballots. Following an investigation of the objections, a report containing recommendations is furnished by the Regional Director to which the parties are privileged to file exception. Upon receipt of copy of the exception disposition is made by the Board. Simply, this action may take the form of certification of the results of the balloting; a setting aside of the election and direction of a new election; or a remanding of the entire case to hearing for the purpose of resolving factual issues. Following such a hearing, a report is filed by the Hearing Officer, upon which the Board renders its ultimate decision in the case.
B. Method and Procedure

In order to obtain information for this study, it was necessary to record carefully the pertinent information for each of the representation elections to which objections had been filed. After this data had been compiled, the first task before the writer was that of omitting from further consideration those cases which furnished no information valuable to this research. Comments on this group of cases will be found in Appendix III. The remaining cases were then classified according to the type of objection: activities of the Board and its Agents, employers and unions.

A further refinement was then made within each of the three major categories. When all of the cases had been sorted according to the type of objection and placed in proper groupings, the sole task remaining was that of relating the specific types of objections to the decisions of the Board in order to determine the trends which have taken place during the period studied as a result of the Board's attempt to preserve and effectuate the policies of the Act.
CHAPTER II

OBJECTIONS FILED AGAINST THE ACTIVITIES OF THE NATIONAL LABOR RELATIONS BOARD AND ITS AGENTS

Of the representation cases to which objections have been filed, a substantial number involved activities of the National Labor Relations Board and the Agents who represent it. The types of objections filed fall into two major categories: (1) those concerning the actions of the Board and the Regional Director in the Decision and Direction of Election and the questions of time, place, eligibility and type of balloting; (2) those relating to the conduct of the Board Agent in conducting the election, in the counting and distributing of ballots, and conduct concerning the ballot boxes.

A. Activities of the Board and the Regional Director

1. Compliance Issues--Between 1947 and 1957, twelve cases involving objections to representation elections were concerned with the compliance provisions of the Act and challenged the action of the Board in that matter. In six of those cases, the objections were filed by the employer, alleging that the petitioning union had not complied with the filing requirement of
the Act, and two of them further alleging that the petitioning union had attempted to meet the technical requirements through a paper change in the constitution or through perjury.

In each of these cases, the Board ruled that the determination of compliance is an administrative matter and as such is not subject to attack or litigation by the parties to the proceeding.

In five cases, the allegations made by one of the unions seeking representation concerning another union that succeeded in acquiring the necessary majority vote for representation were overruled on similar grounds. In the remaining case in this category, objections were filed by a Local Union of the parent organization which appeared on the ballot, on the ground that the Regional Director erred in excluding them from the

1 General Plywood Corporation, 83 NLRB No. 26; Metropolitan Life Insurance Company, 86 NLRB No. 57; Sunbeam Corporation, 89 NLRB No. 81; Metropolitan Life Insurance Company, 90 NLRB No. 129; Reynolds and Hanley Lumber Company, 90 NLRB No. 289; U. S. Gypsum Company, 100 NLRB No. 165.

2 Metropolitan Life Insurance Company, 86 NLRB No. 57.

3 Sunbeam Corporation, 89 NLRB No. 81.

4 Allis-Chalmers Manufacturing Company (La Porte Works), 111 NLRB No. 67; Pacific Maritime Association and Its Member Companies, 112 NLRB No. 150; Weber Electric Company, 114 NLRB No. 114; Nudor Manufacturing Company, 114 NLRB No. 144; Yoker Corporation, 117 NLRB No. 74.
proceeding by arbitrarily denying their motions to intervene for the purpose of having their names placed on the ballot without first according them a hearing. The report of the Regional Director pointed out that the Local was a non-complying union which had been prevented from intervening and therefore had no status to file objections. The report was upheld by the Board.

2. Identification of the Parties—The next major segment of cases studied involved objections relating to the proper identity of the parties to the election. Of the nine cases in this category, five were concerned with objections filed by the employer against the Board’s designation of the union’s name on the ballot. Two such cases alleged that the number of the Local Union was incorrect, but in neither case was the election set aside: in the first case the change was directed by the parent organization with the knowledge of the employer; and the other change resulted from a typographical error.

In another such case, the employer contended that it was improper to designate the name of the parent organization on the ballot rather than the local unit which was alleged not to

5Oppenheim, Collins and Company, 79 NLRB No. 59.
6Franklin County Sugar Company, 97 NLRB No. 129.
7Dixie Dairies Division of the Borden Company, 104 NLRB No. 119.
be a labor organization, within the meaning of the Act. The decision rendered by the Board pointed out that the parent organization had been designated in the Direction of Election, thus eliminating any question of confusion in the minds of the voters as to the identity of the union and the parent organization was to be certified.

Two cases involved allegations that the petitioning union was no longer the same union as that involved in the representation process. In one of these cases, the change of identity was alleged to have resulted from the dissolution of the petitioning union in the formation of another union which was not the union appearing on the ballot. The other case involved a charge that the expulsion of the union from the parent organization created substantial doubt that the petitioner was the same organization that initiated the proceeding. In each of the cases, the Board ruled that the character of the union continued to exist and maintain its identity with no change in structure, function or basic membership; and as such was entitled to certification.

8Sunbeam Corporation, 39 NLRB No. 81.
10Reynolds and Manley Lumber Company, 90 NLRB No. 289.
One case involved an objection filed by one of the participating labor organizations to the effect that a certain number of ballots used in the election misstated the affiliation of the union receiving the majority of votes. The Board refused to set aside the election because the number of incorrect ballots was negligible and the correct status of the union could have been verified.

In a further case, it was alleged that the petitioning union was not the real party in interest but merely acting for non-complying locals and hence was not entitled to certification. The objection was overruled by the Board on the basis that the allegation raised no material or substantial issues. A similar case was also overruled by the Board on the ground that the union, charged as a front for another union, was not affiliated and therefore not bound to disclose any assistance received.

Only one case, filed by an employer, concerned a change in his own identity which was claimed to have been caused by the death of a co-partner between the issuance of the Direction of

11Boeing Airplane Company, 88 NLRB No. 72.
12Minneapolis Knitting Works, 84 NLRB No. 92.
13Mason Can Company, 115 NLRB No. 224.
Election and the election itself, maintaining that the old partnership had been dissolved and no certification should issue in the name of the new partnership which had not been a party to the initial proceeding. 14 The Board upheld the report of the Regional Director that no substantial issues were involved, inasmuch as the new partnership operated the same plant, made the same products, and employed the same staff.

3. Unit Determination—Another group of cases involved objections to the Board’s unit determination. In eleven of these, employers questioned the appropriateness of the unit determined by the Board in its Decision and Direction of Election. 15 The decision of the Board in each of these cases, one of which alleged a unit composed exclusively of supervisors, 16 certified the results of the election, holding that the unit determination had been fully litigated and was not subject to exception.

14 American Valve Manufacturing Company, 93 NLRB No. 27.

15 Stonewall Cotton Mills, 78 NLRB No. 7; Wm. R. Whitaker Company, Ltd., 94 NLRB No. 171; White Construction and Engineering Company, Inc., 94 NLRB No. 202; Dixie Dairies Division of Borden Company, 104 NLRB No. 119; Stokely-Van Camp, Inc., 107 NLRB No. 239; Kleinhaus Company, 115 NLRB No. 96; Southern Bleachery and Print Works, Inc., 115 NLRB No. 247; Burress Mills, Inc., 116 NLRB No. 173; Elm City Broadcasting Corporation, 116 NLRB No. 250; Winter Seal Corporation, 117 NLRB No. 99; Beechnut Foods Division, Beechnut Life Savers Company, 118 NLRB No. 106.

16 Southern Bleachery and Print Works, Inc., loc. cit.
In another case, the employer's objection was overruled by the Board, but the unit description was amended prior to certification of the union securing the majority of the valid ballots cast.\textsuperscript{17}

Objections filed by unions in three cases were overruled by the Board on the basis of its prior ruling.\textsuperscript{18} In one of these, the Board pointed out that although the Board was alleged to have violated a state law which permitted an employer with separate plants to have separate plant units, the Board is not subject to varied and conflicting state statutes.\textsuperscript{19}

4. Eligibility Issues—Two cases filed by employers challenged the action of the Board and the Regional Director in the establishment of the eligibility date for the election.\textsuperscript{20} In both cases, the Board overruled the objections because the issue had been previously decided by the Board.

Five more cases containing employer objections alleged

\textsuperscript{17}Cape Arago Lumber Company, 85 NLRB No. 160.
\textsuperscript{18}Laclede Gas, Light Company, 80 NLRB No. 133; Pacific Gas and Electric Company, 89 NLRB No. 118; Atlas Imperial Diesel Engine Company and Hunt Foods, Inc., 93 NLRB No. 38.
\textsuperscript{19}Laclede Gas, Light Company, id. cit.
that certain eligible employees were disenfranchised by the Board's prior ruling. In each of these cases, the Board ruled that the objections were without merit inasmuch as the ineligibility of the employees in question had been previously determined and would not be subject to amendment.

In two cases, employers argued that ineligible employees had been permitted to vote. In the first of these cases, the Board overruled the objection because the employees involved were laid off with no expectancy of recall. The other case involved temporary employees who voted under challenge: the Board refused to entertain the objection on the basis that the ballots cast under challenge were not prejudicial to any party to the election.

In four cases it was alleged that supervisors were included in the unit and permitted to vote. The Board held in each of these cases that the employees in question were not supervisors.

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22Glenn L. Martin Company, 76 NLRB No. 107.

23The De Vilbiss Company, 102 NLRB No. 90.

24Sealright Pacific Ltd., 82 NLRB No. 64, filed by union; Northrop Aircraft, Inc., 105 NLRB No. 4, filed by employer; Capital Transit Company, 114 NLRB No. 102, filed by employer; Sears, Roebuck and Company, 114 NLRB No. 121, filed by union.
within the meaning of the Act and hence were eligible to vote.

Another objection, filed by a union, contended that persons employed as guards were included in the unit and permitted to vote by the Board without challenge.\(^{25}\) The Board pointed out that the employees also spent time in production and maintenance work and although the percentage of time spent in such endeavors was not known, their number was insufficient to affect the results of the election and hence did not warrant setting the election aside.

Another union case alleged, inter alia, that employees not included in the proceeding were included on the eligibility list.\(^{26}\) Due to the merit of its other objections the election was set aside without a ruling on the above objection.\(^{27}\)

Of the four cases involving objections by the union to the disenfranchising of eligible employees, two concerned run-off elections where the lists of employees eligible to vote were restricted to those employees eligible to vote in the original election which prevented a substantial number of employ-

\(^{25}\) *Laclede Gas, Light Company*, 80 NLRB No. 133.

\(^{26}\) *New York Shipping Association and Its Members*, 108 NLRB No. 32.

\(^{27}\) See page 60.
ees (hired between the two elections) from voting.\textsuperscript{28} In both cases the Board overruled the objections and certified the re-
sults of the election.

Another case in this category involved a charge that forty eligible employees were not allowed to vote on the ba-
sis of an agreement among the parties that temporary workers
would be excluded.\textsuperscript{29} The report of the Regional Director held
that the Petitioner and the Intervenor had abandoned their or-
original contention that these employees be excluded. The de-
cision of the Board upheld this report and it refused to enter-
tain an objection in the nature of a post-election challenge
despite the exception by the Petitioner that some employees so
classified by the employer were regular employees entitled to
vote.

In one rather unique case, an employer filed objections to
an election on the basis that the service assistants whom the
Board in its unit determination found to be supervisors, organ-
ized and were in fact leaders of the petitioning union.\textsuperscript{30} A
hearing on the case was directed by the Board to redetermine

\textsuperscript{28} \textit{Standard Coil Products Company, Inc.}, 101 NLRB No. 84;
\textit{Fraser and Johnston Manufacturing Company}, 106 NLRB No. 132.

\textsuperscript{29} \textit{Halliburton Portland Cement Company}, 92 NLRB No. 237.

\textsuperscript{30} \textit{Elyria Telephone Company}, 100 NLRB No. 81.
the status of the employees in question, the nature and extent of their activities on behalf of the union, and the conduct of the employer with regard to condonation of these activities. The Hearing Officer held that the employer, by failing to take timely action to dissipate the activities of these employees, waived all right to file objections for the purpose of setting aside the election. The determination of the non-supervisory status of these employees by the Hearing Officer prompted the Board to overrule the objection.

An allegation by a petitioning union that it had had insufficient time to check the eligibility list, with the result that ineligible voters had cast unchallenged ballots, was overruled by the Board on the ground that two days should have been sufficient time for an efficient checking of the eligibility list and no post-election challenges would be entertained.31

5. Contract Bar--Three representation cases (two filed by the Intervenor; one, by the employer) involved allegations that the Board erred in authorizing an election, ignoring a contract in force; a bar to a valid election. In one, the existence of the contract was not made known to the Board at the representation hearing preceding the election and the Board declined

31 *Oakland Scavenger Company*, 100 NLRB No. 49.
after the election to find the contract constituted a bar. In the other two cases, the Board overruled the objections, stating in one that the automatic renewal of the contract under consideration was forestalled by a notice to reopen it.

6. Pendency of Unfair Labor Practice Charges--Further objections to the Board's decision and direction of election include thirteen proceedings in which the allegations claim that the election was held during the pendency of unfair labor practice charges. In seven of these cases, the objections were immediately overruled as the charges had already been disposed of by the Regional Director and it is a policy of the Board not to hold an election in abeyance when the unfair labor practice charges have been dismissed by the Regional Director, even during an appeal to the General Counsel.

In three similar cases, the objections were overruled by

32 Winter Seal Corporation, 117 NLRB No. 99.
33 Foundry Manufacturers Negotiating Committee, 104 NLRB No. 141; South Bend White Swan Laundry, Inc., 106 NLRB No. 217.
34 Foundry Manufacturers Negotiating Committee, loc. cit.
35 Westchester Broadcasting Corporation, 95 NLRB No. 139; Dumont Electric Corporation, 97 NLRB No. 25; Guneo Press of Indiana, 114 NLRB No. 115; Le Roi Division, Westinghouse Airbrake Company, 114 NLRB No. 139; Coffey's Transfer Company, 115 NLRB No. 138; Autovaya Division, Ekco Products Company, 116 NLRB No. 11; Bob Saunders Company, 118 NLRB No. 51.
the Board in view of the fact that the filing party had signed a waiver after which it is customary to proceed with the election. 36

However, in a case where a waiver had been signed by the filing party, the Board held the election invalid on the ground that the charge filed was not subject to waiver. 37

In a subsequent case, even though the unfair labor practice charges had not been disposed of nor a waiver signed by the filing party, the Regional Director refused to postpone the election due to the very late filing of charges in the case. 38 The Board upheld his action, stating that the policies of the Act could be best effectuated by an immediate election.

The remaining case in this category was concerned with an objection to a Direction of Election before the sixty day period for the posting of notice in an unfair labor practice case had expired. 39 The objection was overruled by the Board on the

36 General Plywood Corporation, 83 NLRB No. 26; Southwestern Michigan Broadcasting Company, 94 NLRB No. 17; York Dress Shops, 111 NLRB No. 134.


38 West-Gate Sun Harbor Company, 93 NLRB No. 133.

basis that although the election was ordered before the expiration of this period, it did not take place until nine days after the sixty day period had elapsed.

7. Showing of Interest--In each of three cases alleging inadequate showing of interest by the Petitioner, the objections were overruled because the determination of an adequate showing of interest is an administrative matter decided by the Board, thus not subject to litigation by the parties.

8. Defects in the Decision and Direction of Election--Objections were filed in eleven cases challenging the legality of the Decision and Direction of Election. In two, the charge was based upon a contention that the original election was valid and the second election void. Five of the remaining cases alleged impropriety in the Direction of Election,

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41 Stonewall Cotton Mills, 78 NLRB No. 7; White Construction and Engineering Company, loc. cit.; Arnold Stone Company of New York, Inc., 102 NLRB No. 96; Fruehauf Trailer Company, 106 NLRB No. 33; U. S. Gypsum Company, 107 NLRB No. 39; Simplot Fertilizer Company, 107 NLRB No. 254; Superior Cable Corporation, 114 NLRB No. 21; Le Roi Division, Westinghouse Airbrake Company, loc. cit.; Nudor Manufacturing Corporation, 114 NLRB No. 144; Layne & Bowler, Inc., 117 NLRB No. 179; Furniture City Upholstery Company, 115 NLRB No. 234.

42 Stonewall Cotton Mills, loc. cit.; Furniture City Upholstery Company, loc. cit.
because of (1) arbitrary action on the part of the Examiner in not conducting a longer investigation prior to the notice of election;\(^{43}\) (2) a violation of tribal law;\(^{44}\) (3) the employer's intention to abolish the voting unit;\(^{45}\) (4) the filing of the petition within six months of a previous petition (which was held by the Board to have been improperly filed);\(^{46}\) and (5) the fact that the union had made no request for recognition before filing the petition.\(^{47}\) All eleven of these objections were overruled and the results certified.

In a case involving a voting unit of two employees, objections were filed to the election by the employer alleging that the Direction of Election was improper on the basis that the voting unit was to be reduced to one and as such constituted an inappropriate unit.\(^{48}\) The Board in its decision sustained the objection and dismissed the petition.

9. Defective Notice of Election--In a further case, the

\(^{43}\)Arnold Stone Company of New York, Inc., 102 NLRB No. 98.

\(^{44}\)Simplot Fertilizer Company, 107 NLRB No. 254.

\(^{45}\)Layne & Bowler, Inc., 117 NLRB No. 179.

\(^{46}\)Le Roi Division, Westinghouse Airbrake Company, 114 NLRB No. 139.

\(^{47}\)Superior Cable Corporation, 114 NLRB No. 21.

\(^{48}\)Cutter Laboratories, 116 NLRB No. 35.
Notice of Election was alleged improper inasmuch as two voting periods had been directed. This objection was overruled on the basis that the representative of the objecting party had concurred with the other parties in setting the time for the election.

Of the cases alleging that the posted Notice of Election was improper and defective, five employers charged that they were given inadequate notice of the election. All of these objections were overruled by the Board, because all evidence (turnout, etc.,) failed to support their contention that the notice had been inadequate.

Of the five cases alleging that the Notice of Election was prejudicial, all objections were overruled by the Board, since the notice was a standard form and could not be interpreted as a reflection on the relative merits of the parties involved; nor was there any confusion resultant therefrom.

\[49\] Grinnell Brothers, 99 NLRB No. 143.

\[50\] Stonewall Cotton Mills, 78 NLRB No. 7; Cities Service Oil Company of Pennsylvania, (Marine Division), 87 NLRB No. 60; General Plywood Corporation, 83 NLRB No. 26; Atlas Imperial Diesel Engine Company and Hunt Foods, Inc., 93 NLRB No. 32; Fruehauf Trailer Company, 106 NLRB No. 33.

\[51\] Hoague-Sprague Corporation, 80 NLRB No. 252; Peter Paul, Inc., 99 NLRB No. 64; Fruehauf Trailer Company, loc. cit.; The Item Company, 110 NLRB No. 173; Eastern Metal Products Corporation, 116 NLRB No. 149.
Four of the cases charged the Notice of Election to be erroneous. One of these cases citing procedure defects, was overruled by the Board on the basis that the Notice of Election conformed with the Board's decision and its traditional manner of conducting elections.\textsuperscript{52} Another of the cases involved a claim that the Notice of Election failed to give the eligibility payroll period and misstated the voting unit.\textsuperscript{53} The Board refused to consider this objection as a basis for setting aside the election inasmuch as stickers, amending the Notice had been affixed.

A further case contained the objection that the Notice of Election erred in its unit description thus creating uncertainty.\textsuperscript{54} The Board pointed out, in overruling the objection, that a clarification had been posted by the employer alongside the original Notice.

A subsequent case charged the Regional Director with failing to change the name of the parent organization of the petitioning union on the Notice of Election which also stated the incorrect address of the site of the balloting. The objection was overruled on the grounds that (a) the Regional Director did

\begin{footnotesize}
\begin{enumerate}
\item \textit{West Texas Utilities Company}, 100 NLRB No. 157.
\item \textit{Boeing Airplane Company}, 88 NLRB No. 72.
\item \textit{Y. S. Gypsum Company}, 107 NLRB No. 39.
\end{enumerate}
\end{footnotesize}
not have authority to effect such changes since no request was made by the petitioner and (b) the employer was given authorization to correct the address five days before the election and a 94 per cent turnout indicated that the employees were adequately apprised of the location of the balloting.55

The remaining case alleged that although the Notices of Election were posted, some employees might not have seen them because of irregular working hours. The Board overruled this on the ground that the number of these employees was too insignificant to affect the results.56

10. Determination of the Winning Party--The manner in which the winning union is determined by the Board was the subject of objections in five cases between 1947 and 1957. In four of these, the intervening unions claimed that the petitioning union did not receive a majority of all votes cast, pointing out the substantial number of void ballots in each of the cases.57 The Board called attention to its policy: the necessary majority for the winning of an election is a majority of all valid bal-

55 Bridgeport Moulded Products, Inc., 115 NLRB No. 277.

56 The Jacksonville Journal Company, 117 NLRB No. 247.

57 Woodmark Industry, Inc., 80 NLRB No. 171; Sprague Electric Company, 99 NLRB No. 106; Vulcan Furniture Manufacturing Corporation, 97 NLRB No. 177; Albion Malleable Iron Company, 104 NLRB No. 31.
lots cast.

In the second of these four elections, exception was also taken to the Globe election procedure\textsuperscript{58} which was adopted in this case.\textsuperscript{59} The Board ruled that the procedure had been published in its \textit{Decision and Direction of Election} and the employees were properly informed of the effect of their selection on the scope of the unit.

In one case involving two voting units, objections were filed to the action of the Regional Director in pooling the votes of one voting unit with the votes of the second unit.\textsuperscript{60} One of the contending unions alleged that such action was improper and the Board's regulations required a runoff election in this unit. In its decision, the Board cited its ruling in the \textit{American Potash} case\textsuperscript{61} in which it held that:

The group of employees for whom severance was sought would be found to constitute an appropriate unit only if a majority of those employees vote for the union

\textsuperscript{58}\textit{Globe Machine and Stamping Company}, 3 NLRB p. 294. The Globe Doctrine is a Board policy which permits employees to determine for themselves whether they wish to be organized in a craft unit or a more comprehensive unit.

\textsuperscript{59}\textit{Sprague Electric Company}, 99 NLRB No. 106.

\textsuperscript{60}\textit{Sutherland Paper Company}, 114 NLRB No. 47.

\textsuperscript{61}107 NLRB No. 290.
seeking such severance...If the majority...do not vote for the union seeking to represent them in a separate unit, that group will appropriately be included in the more comprehensive group and their votes pooled with those of the latter group to ascertain the representation status of the combined group.

11. Mechanics of the Election--In two cases, employers alleged that the time and place of the election were arbitrarily established. The Board ruled that the establishment of the time and place of election in these two cases was not prejudicial and constituted no substantial or material issues.

A challenge of the Regional Director's selection for the site of the election was filed in three cases all of which were overruled by the Board because such selection is at the discretion of the Regional Director, and there was no evidence that the site interfered with free choice.

Of the objections filed to the standards of election conduct, thirteen alleged that the established date prevented a truly representative election. In three of these cases, employers in seasonal industries objected to the date of the election.

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62 Westchester Broadcasting Corporation, 95 NLRB No. 139; The De Vitters Company, 102 NLRB No. 90.

63 General Plywood, 83 NLRB No. 26; Milham Products Company, Inc., 114 NLRB No. 243; Coffey's Transfer Company, 115 NLRB No. 138.
election as being outside of their peak season. The objections in all three were overruled since the employment was sufficiently substantial and representative.

In seven cases, the objections filed alleged the election date could not insure a representative election because of the high rate of turnover; the unpredictability of employment made the vote at the time of election unrepresentative; the refusal of the Regional Director to hold the election on pay day when a maximum number of employees would be present; and the scheduling of the election during the vacation time when all employees were not able to be present. The Board overruled all of the above objections as raising no material or substantial issues.

The three remaining cases merely charged the Regional Director with having arbitrarily established the date of the elec-

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64 "Wade and Paxton, 90 NLRB No. 184; Atlas Imperial Diesel Engine Company and Hunt Foods, Inc., 93 NLRB No. 38; Stokely-Van Camp, Inc., 107 NLRB No. 239.

65 Franklin County Sugar Company, 97 NLRB No. 129; Cone Brothers Contracting Company, 109 NLRB No. 15.

66 John H. Maclin Peanut Company, Inc., 83 NLRB No. 25; Independent Motion Picture Producers Association, 88 NLRB No. 190; Guidry's Auto Service, 103 NLRB No. 25.

67 Glenn L. Martin Company, 76 NLRB No. 107.

68 Mallinckrodt Chemical Works, 86 NLRB No. 95.
tion, without giving substantial evidence to support the claim. The objections were overruled.

Five of the cases studied contained objections to the type of election, alleging that the use of a mail ballot was an improper election. All five were overruled, on the basis that the direction of a mail ballot election is within the jurisdiction of the Regional Director and there was no evidence that he had abused his discretion nor that eligible employees had been disenfranchised.

In one case, an objection was filed by the union on the ground that no pre-election conference had been held. The Board overruled the objection on the basis that such a conference is not required by the Act, nor was it requested by the parties to the election.

69 *Smokey Mountain Stages, Inc.*, 81 NLRB No. 78; *University Metal Products Company, Inc.*, 98 NLRB No. 178; *Comfort Slipper Corporation*, 112 NLRB No. 23.

70 *Southwestern Michigan Broadcasting Company*, 94 NLRB No. 17; *Seattle Makers' Bureau*, 104 NLRB No. 32; *Continental Bus System, Inc.*, 104 NLRB No. 78; *Johnson Transport Company*, 106 NLRB No. 175; *The Jacksonville Journal Company*, 117 NLRB No. 247.

71 *Interboro Chevrolet Company, Inc.*, 113 NLRB No. 16.
B. Activities of the Board Agents During an Election

1. Observers—A large number of the cases studied raised objections in connection with the naming and duties of the observers. Three of these cases, filed by the union, urged that the election be set aside on the ground that there was no observer present. The Board overruled the objection in each of these cases on the basis that the presence of an observer is not required by the Act.

However, in a case filed by an employer, the objection alleged that the Board Agent either erroneously told him that he could not have a member of the bargaining unit act as his observer, or acquiesced in such a statement made to the employer by the petitioning union's representative. When the employer requested a delay to bring an office employee to the polls to act as his observer, his request was refused and he was thereby denied the right to have an observer present. The Board sustained this objection on the ground that the election conducted was a consent election based on contract and the presence of the observer was a material term of the consent election agreement.

729 P Wholesalers, Inc., 87 NLRB No. 129; Interboro Chevrolet Company, Inc., 113 NLRB No. 16; Eisman Grocery Company, 116 NLRB No. 103.

73 M. W. Broman Steel Supply Company, 115 NLRB No. 38.
In five cases in which employers objected to the election on the basis that they were prevented from being represented, at the polls by an observer of their own choosing, the Board overruled them, basing its decision on the fact that the individuals designated by the employers were managerial or otherwise disqualified employees.\textsuperscript{74}

In ten of the cases where it was alleged that the observer for the employer was a supervisor, the objections were overruled by the Board on the evidence that the observers in question were not supervisors within the meaning of the Act,\textsuperscript{75} or on the basis that no influence of the employees' free choice resulted therefrom.\textsuperscript{76} In four cases in which similar objections were filed, the Board sustained the objections and set aside the elections on the basis that the naming of such observers was a deviation from the Board's usual procedure and

\textsuperscript{74}Hoague–Sprague Corporation, 80 NLRB No. 252; Burrows and Sanborn, Inc., 84 NLRB No. 35; The Ann Arbor Press, 83 NLRB No. 15; Wiley Manufacturing, Inc., 93 NLRB No. 267; Watkins Brick Company, 107 NLRB No. 110.

\textsuperscript{75}Westinghouse Electric, 91 NLRB No. 150; Silver Knit Hosiery Mill, Inc., 99 NLRB No. 65; Northrop Aircraft, Inc., 106 NLRB No. 4; A. Warner & Sons, Inc., 106 NLRB No. 98; Earl Fruit Company, 107 NLRB No. 1; Milwaukee Cheese Company, 112 NLRB No. 179; Zeller Corporation, 115 NLRB No. 111; Price Pfister Brass Manufacturing Company, 115 NLRB No. 137; Vita Food Products, Inc., of Maryland, 116 NLRB No. 161.

\textsuperscript{76}Owens–Parks Lumber Company, 107 NLRB No. 44.
a violation of its policy. In two cases involving like objections, the Board withheld its ruling and reopened the case in consolidation with other matters subsequently brought to its attention.

In ten of the cases filed, objections were raised to the selection of a union member, organizer or officer as the observer for the union. The Board overruled all of these objections on the basis that those chosen were qualified to act as observers.

Three cases challenged the qualifications of the petitioning union's observer. The first of these involved former employees who acted as observers and whom the Board held to be qualified. In the second, the employer alleged that the

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77 Parkway Lincoln-Mercury Sales, Inc., 84 NLRB No. 57; Peabody Engineering Company, 95 NLRB No. 95; International Stamping Company, Inc., 101 NLRB No. 101; Herbert Men's Shop Corporation, 100 NLRB No. 110.

78 North Food Markets, 103 NLRB No. 21; Sherman Lumber Company, 117 NLRB No. 240.

79 U. S. Gypsum Company, 80 NLRB No. 182; U. S. Gypsum Company, 81 NLRB No. 29; Stokely Foods, Inc., 81 NLRB No. 79; U. S. Gypsum Company, 81 NLRB No. 170; Goodyear Tire and Rubber Company, 85 NLRB No. 22; Pacific Gas and Electric Company, 89 NLRB No. 118; Huntsville Manufacturing, 96 NLRB No. 127; Soerena Motor Company, 106 NLRB No. 242; Dallas City Packing Company, 110 NLRB No. 4; Shoreline Enterprises of America and Shoreline Packing Corporation, 114 NLRB No. 120.

80 Stonewall Cotton Mills, 78 NLRB No. 7.
petitioner's observer had been discharged as an employee. 81 His eligibility as an observer was upheld by the Board, because the discharge had been made the subject of an unfair labor practice and as such, the discharged individual was entitled to be considered an employee during the pendency of such charges. The last case involved the charge that the petitioner's observer had been permanently laid-off. 82 The Board considered him a valid observer since his eligibility as a voter at the time of the election had been indeterminate.

With regard to the duties of the observers, the petitioning union complained in one case that because of the speed required by the observer in checking off the eligibility list, a supervisor was allowed to vote without challenge. 83 The Board overruled this objection on the ground that it was the role of the observer to call the attention of the Board Agent to the fact that due to the manner in which the election was conducted, he could not properly discharge his duties.

Right of the cases studied involved objections alleging improper action by the observers. The conduct mentioned included:

81 Soarina Motor Company, 106 NLRB No. 242.
82 Thomas Electronics, Inc., 109 NLRB No. 165.
83 Cornell Dubilier Electric Corporation, 117 NLRB No. 48.
1. Calling union headquarters to have members brought in to vote and the shouting of commands causing confusion among the voters.\(^{84}\)

   The Board overruled this because calling headquarters took place without the knowledge and sanction of the Board Agent, and no confusion resulted from the shouts of the observer.

2. Electioneering.\(^{85}\)

   The Board held that no such activity had taken place and even if it had, could not have exerted much influence.

3. Making improper remarks to the voters.\(^{86}\)

   The action was immediately reprimanded by the Board Agent and was thus considered by the Board to have been nullified.

4. Conversing with voters in a foreign language.\(^{87}\)

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\(^{84}\) Craddock Terry Shoe Corporation, 80 NLRB No. 185.

\(^{85}\) Western Electric Company, 87 NLRB No. 26; U. S. Gypsum Company, 92 NLRB No. 253; General Electric Company, 114 NLRB No. 3; R. H. Osbrink Manufacturing Company, 114 NLRB No. 147; General Electric Company, 115 NLRB No. 42; Burson Plant of Kendall Company, 115 NLRB No. 222.


\(^{87}\) Delco, Inc., 116 NLRB No. 102.
The Board overruled this protest because the conversation was merely a translation of the Board Agent's instructions to an employee who did not understand English.

2. Challenges--A large number of cases contained objections based on challenges. In two of these cases charges were made that the challenge was not permitted by the Board Agent conducting the election, after the ballots had been marked. In both cases, the Board overruled the objections because the customary procedure followed in Board elections requires that the challenge to the ballot be made before the ballot is marked.

In one representation election, the union sought to have the election set aside on the basis that the Board Agent had failed to inform the union observer of his right to challenge. This likewise was overruled by the Board when investigation revealed that instructions had been given.

In four cases, allegations were made that the objecting party was denied its right to challenge. In the first of these cases, the Board held that the denial of the right to

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88Burrows & Sanborn, 84 NLRB No. 35; Bear Creek Orchards, 91 NLRB No. 134.

89Milwaukee Cheese Company, 112 NLRB No. 179.
challenge was improper but the challenges would have been overruled, as was the objection.90 Another of the objections was overruled on the ground that there was not sufficient evidence that a union observer was denied the right to challenge because of "insufficient reasons."91

The Board, in a third case overruled an objection by the employer that the Board Agent refused to permit his observer to challenge each voter as a supervisor, because the status of each employee had already been determined in its prior unit determination.92 In the last case, the allegation that the Board Agent conducting the election rejected the employer's challenge to one ballot, was not upheld by the Board since the challenge was not based on doubt of eligibility of the employee.93

In seven cases, objections were filed by employers to abuse of the Board Agent's right to challenge. In the first of these, the Board Agent had challenged the ballots of one entire section of employees.94 The Board sustained the action

90 Stokely Foods, Inc., 81 NLRB No. 79.
91 Pull Insular Line, Inc., et al., 103 NLRB No. 126.
92 Southern Bleachery and Print Works, Inc., 115 NLRB No. 247.
93 Fuchsau Trailer Company, 106 NLRB No. 33.
94 West Texas Utilities Company, 100 NLRB No. 157.
of the Agent as reasonable and proper, ruling that the eligibil-
ity status of the voters in question was uncertain. In a sim-
ilar case, the employer contended that the Board Agent erred
in challenging two ballots on the ground of ineligibility.95
Again the action of the Agent was upheld by the Board because
the names of the voters in question did not appear on the el-
igibility list. The third case involved an objection by an
employer to the Board Agent's refusal to challenge the ballots
of three voters; the Board sustained the action of the Agent
on the basis that the three voters had been ruled eligible to
vote by the Board's prior unit determination.96 Two other
objections of employers to the challenging of eligible voters
by the Board Agent were overruled because the casting of the
challenged ballot could not have exerted undue influence over
the other employees.97 In a further case, the Board declined
to set aside an election on the basis that the Board Agent
permitted three ineligible employees to vote under challenge
since such action was insufficient to warrant a new election.98
In the remaining case, the challenge by the Board Agent of a
voter as a supervisor was alleged to be prejudicial, according

95Gulf States Asphalt Company, 115 NLRB No. 23.
96Atlantic Furniture Products Company, Inc., 102 NLRB No. 123.
97Craadock Terrry Shoo Corporation, 80 NLRB No. 185; Watkins
Brick Company, 107 NLRB No. 110
98Animal Trap Company of America, 107 NLRB No. 256.
to the employer. The objection was overruled by the Board on the basis that the employee's name was omitted from the eligibility list through error and the employee was later allowed to cast an unchallenged ballot when the error was corrected.

3. Disenfranchisement—Of the cases studied, many alleged that certain activities of the Board Agent effectively denied eligible employees the right to cast a ballot. Five of these cases were overruled by the Board, because the employees in question had been excluded from the unit in its previous rulings. All such objections were overruled by the

99 Gray Drug Stores, Inc., 95 NLRB No. 28.

100 Cities Service Oil Company of Pennsylvania, (Marine Division), 77 NLRB No. 143; Franklin County Sugar Company, 97 NLRB No. 129; Pull Insular Line, Inc., et al., 103 NLRB No. 126; Rheem Manufacturing Company, 114 NLRB No. 74; Shoreline Enterprises of America and Shoreline Packing Corporation, 114 NLRB No. 120.

101 Ann Arbor Press, 88 NLRB No. 15; Hagen Manufacturing Company, 100 NLRB No. 222; Fort Houston Iron Works, Inc., 103 NLRB No. 132; Kress-Jewelry, Inc., 112 NLRB No. 112; Red Owl Stores, Inc., 114 NLRB No. 43; Furniture City Upholstery Company, 115 NLRB No. 234; Franklin's Stores Corporation of Daly City, 117 NLRB No. 121.
Board: employees must be present in order to vote in manually conducted elections and no timely provisions for mail balloting had been made.

In another eight cases, the Board Agent was accused of preventing eligible employees from casting a vote through the late opening or premature closing of the polls. In six of these cases, the objections were overruled, because no voters were disenfranchised as a result, or the investigation revealed the polling hours to be timely. In the two remaining cases, the Board set aside the election because in one, an eligible employee was disenfranchised; and in the other the premature closing of the polls, protested by one of the parties involved, who claimed that eligible employees had not yet voted, even though all employees listed on the eligibility list had cast ballots.

Four cases charged that employees were deprived of their

102 Stonewall Cotton Mills, 78 NLRA No. 7; Ann Arbor Press, 88 NLRA No. 15; Lloyd A. Fry Roofing Company, 108 NLRA No. 175; Dornback Furnace and Foundry Company, 115 NLRA No. 56; Esmer Grocery Company, 116 NLRA No. 103.

103 Wilkening Manufacturing Company, 96 NLRA No. 4.
104 Reppal Brass Manufacturing Company, 109 NLRA No. 10.
105 Bonita Ribbon Mills, 87 NLRA No. 147.
right to vote because of the Board Agent's error in failing to make a pre-election determination of eligible employees in the unit; his misconstruing the unit and denying five employees the right to cast a ballot; and because of an inadvertent omission from the eligibility list which disenfranchised eligible employees. In the first case the Board overruled the objection on the ground that the employer had refused to furnish the eligibility list and at a conference between the parties at which a list was drawn up, he refused to submit additional names of eligible employees which thus prevented him from objecting to the validity of the election at this point. In the second case, the election was set aside on the ground that all eligible employees did not receive an opportunity to vote. The Board declined to set one election aside because the employee disenfranchised did not appear at the polls and attempt to cast a ballot and was not consequently deprived of a vote; while in the remaining case, the election was set aside and a new one ordered.

106 Plainfield Courier News Company, 97 NLRB No. 46.
107 Angelus Chevrolet Company, 90 NLRB No. 170.
108 Westinghouse Electric Corporation, 78 NLRB No. 38; Red Owl Stores, Inc., 114 NLRB No. 43.
109 Westinghouse Electric Corporation, loc. cit.
Of the remaining cases in this category, five containing allegations that the Board Agent refused to allow eligible voters to vote were overruled on the grounds that the employees in question did not present themselves at the polls;\textsuperscript{110} and that those employees whose right to vote was questioned were permitted to vote under challenge;\textsuperscript{111} or that they had already cast their vote in another unit.\textsuperscript{112}

The charge in one case, that an employee had not been given sufficient time to vote was overruled by the Board when an investigation revealed that ample time had been afforded.\textsuperscript{113} In a further case the action of the Board Agent in refusing to contact one eligible voter who had not been seen to vote was made the subject of an objection. \textsuperscript{114} The posted notices and loudspeaker announcements had been deemed sufficient appraisal of the voters by the Board and the objection was overruled.

One case involved an allegation to the effect that employ-

\begin{footnotes}
\textsuperscript{110} \textit{Gray Drug Stores, Inc.}, 95 NLRB No. 28; \textit{Vita Food Products, Inc.}, of Maryland, 116 NLRB No. 161.

\textsuperscript{111} \textit{Bauer Schweitzer Hop & Malt Company}, et al., 78 NLRB No. 42; \textit{The Jacksonville Journal Company}, 117 NLRB No. 247.

\textsuperscript{112} \textit{Stokely Foods, Inc.}, 81 NLRB No. 79.

\textsuperscript{113} \textit{P Wholesalers, Inc.}, 87 NLRB No. 129.

\textsuperscript{114} \textit{Holmes and Barnes, Ltd.}, 114 NLRB No. 100.
\end{footnotes}
The objections was overruled by the Board inasmuch as no mention of a third shift had been made at a pre-election conference. However, in a similar case where the objection alleged that eligible voters were deprived of their right to vote because their duties took them from the plant before the polls opened and they returned after the polls had closed, the election was set aside by the Board even though the objecting party had waived its right to object knowing that some employees would be away from the plant during polling hours on the ground that the matter was the Board's responsibility and not subject to waiver by the parties.

4. Eligibility Issues—Fourteen cases contained allegations that ineligible employees were permitted to vote in the election. Ten of these were overruled by the Board in that they constituted post-election challenges, were insufficient to affect the results, or the ballots were cast under challenge.

115 Thomas Electronics, Inc., 109 NLRB No. 165.
116 Alternan-Big Apple, Inc. 116 NLRB No. 130.
117 F. W. Woolworth Company, 86 NLRB No. 9; Bear Creek Orchards, 91 NLRB No. 134; Waterbury Companies, Inc., 93 NLRB No. 180; Kennecott Copper Corporation, (Chino Mines Division), 102 NLRB No. 141; Emerson Electric Manufacturing Company, 105 NLRB No. 42; Oppenheim Collins and Company, 108 NLRB No. 187; General Steel Tank Company, Inc., 111 NLRB No. 30; Dornback Furnace and Foundry Company, 115 NLRB No. 56.
118 Cornell Dubilier Electric Corporation, 117 NLRB No. 48.
One further such objection was overruled on the basis that of the six ballots in question, three had been cast by discharged employees who had been reinstated, two were cast by employees who had been laid-off with the expectancy of recall; and one had been cast under challenge. A similar allegation was overruled on the ground that the ballots had been cast by voters who were employed as of the eligibility date. Another, contending that an unchallenged ballot had been cast by a working foreman resulted in the election being set aside in order to effectuate the policies of the Act. In a case where the objection alleged that the Board Agent permitted two ineligible employees to vote due to his mistaking the eligibility date, the Board ruled the election set aside.

In four cases it was alleged that the Board Agent permitted employees to vote without first executing affidavits to eligibility. These objections were overruled by the Board

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119 Huntville Manufacturing Company, 96 NLRB No. 127.
120 Ann Arbor Press, 88 NLRB No. 15.
121 Knox Metal Products, Inc., 75 NLRB No. 36.
122 National Truck Rental Company, Inc., 108 NLRB No. 191
123 Yarbrough Motor Company, 85 NLRB No. 212.
124 Stonewall Cotton Mills, 78 NLRB No. 7; Consolidated Vultee Aircraft Corporation, 79 NLRB No. 78; Pacific Gas and Electric, 89 NLRB No. 118; Westinghouse Electric Corporation, 91 NLRB No. 150.
on the grounds that all voters were requested to submit identification and all parties were represented by observers who had the right to challenge any voters whom they deemed ineligible.

With regard to the eligibility lists, objections were filed by the petitioning union in four cases. In the first, the union alleged that the Board Agent had failed to use the previously prepared list certified by the parties to the election and had used an unsigned list furnished by a union. 125 The objection was overruled by the Board on the basis that the certified list was not furnished the Agent by the employer and the Agent found it necessary to use a duplicate list furnished by the union which was admitted to be authentic by the employer's personnel director. In another case the election was set aside by the Board on the basis of the petitioning union's allegation that a list of employees for the observers was denied them which effectively prevented them from entering challenges. 126 In a similar case, the alleged failure of the Board Agent to permit the observer to keep a list of employees whom he wanted to challenge, was overruled on the basis that the use of duplicate eligibility lists is not permitted. 127

125 *Hoagie-Sprague Corporation*, 80 NLRB No. 252.
126 *Bear Creek Orchards*, 90 NLRB No. 44.
127 *Milwaukee Cheese Company*, 112 NLRB No. 179.
In the remaining case, the election was set aside because the union had received no eligibility list and the Board Agent had received an incorrect one. 128

In one case, the objection alleged that the affidavits required by the Board Agent to establish the eligibility of strikers entitled to reinstatement interfered with free choice. 129 The Board overruled the objection on the basis that it did not constitute a material or substantial issue.

5. Secrecy of the Ballot—Several of the objections studied alleged a violation of the secrecy of the ballot. In three such cases, it was maintained that such violation occurred through the use of different colored ballots during the election. In each of these cases, the objection was overruled by the Board on the grounds that the identity of the voter was not disclosed; 130 and even in the event that the secrecy of the ballot was impaired, the number of votes involved was insufficient to affect the results. 131

128 *Wm. R. Whittaker Company, Ltd.*, 94 NLRB No. 171
129 *Association of Motion Picture Producers, Inc., et al.*, 88 NLRB No. 190.
130 *Consolidated Vultee Aircraft Corporation*, 79 NLRB No. 78; *Dixie Dairies Division of Borden Company*, 104 NLRB No. 119.
In three cases, the objecting party sought to have the election set aside because at times more than one person occupied the polling place, thus violating the secrecy of the ballot.\textsuperscript{132} The Board overruled all objections on the grounds that the number of ballots so violated could not have affected the results of the elections.

Four cases involved objections to elections charging the secrecy of the ballot was impaired due to the polling place itself. In three of these, it was necessary to hold the balloting in a place other than the site previously determined. Two of these elections were set aside on the basis that the makeshift polling place made impossible a secret election;\textsuperscript{133} while the results of the third election were certified on the basis that no one could have seen how the ballots were marked.\textsuperscript{134} In one case the Board ruled that the holding of an election out-of-doors does not automatically impair the secrecy of the election.\textsuperscript{135}

\textsuperscript{132}Craddock-Terry Shoe Corporation, 80 NLRB No. 185; Pacific Maritime Association and Its Member Companies, 112 NLRB No. 160; Machinery Overhaul Company, 115 NLRB No. 272.

\textsuperscript{133}Gary Enterprises, Inc., 86 NLRB No. 58; Imperial Reed & Ratten Furniture Company, 118 NLRB No. 111.

\textsuperscript{134}Standard-Tooch Chemicals, Inc., 104 NLRB No. 152.

\textsuperscript{135}Hoague-Sprague Corporation, 80 NLRB No. 252.
In two cases, employers sought to have elections set aside on the ground that non-voters approached the polling area, which was out-of-doors. In the first, the Board sustained the objection on the basis that the non-voters could have observed the voters from the positions they occupied.  

In the latter case, the results of the election were certified inasmuch as the Board Agent conducting the election intercepted the non-voter as he approached the polls and requested him to leave the vicinity.  

A petitioning union charged the secrecy of the election to have been violated in that the election was conducted under the surveillance of the officials of the employers.  

The Board overruled the objection when investigation revealed the officials to have been seventy-five feet from the polls during balloting.  

In the remaining case, an employer contended that in a mail election the ballots were in the hands of the voters long enough to permit exertion of influence and the ballots were marked in the same manner with the same instrument.  

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136 Royal Lumber Company, 118 NLRB No. 133.  
137 Fruehauf Trailer Company, 106 NLRB No. 33.  
138 Q P Wholesalers, Inc., 87 NLRB No. 129.  
139 Continental Bus System, Inc., 104 NLRB No. 78.
Board refused to set aside the election on the bases that no evidence was offered to prove that the secrecy of the ballot had been impaired and the average lapse of time the ballots remained in the voters' hands was not unduly long.

6. **Bias of the Board Agent**—Of the twenty-five cases containing allegations of impropriety, inadequacy and bias on the part of the Agent conducting the election, twenty-four were overruled on the bases that substantiating evidence was lacking, or the charge was insufficient to warrant setting aside the election.\(^\text{140}\) In one case, the irregularities considered to be sufficient to warrant the direction of a new election consisted of extraction from the ballot box of the top ballot which had been challenged by the petitioning union.

\(^{140}\) Glenn L. Martin Company, 76 NLRB No. 107; Cities Service Oil Company of Pennsylvania, (Marine Division), 77 NLRB No. 143; Stonefalk Cotton Mills, 78 NLRB No. 7; Consolidated Vultee Aircraft Corporation, 79 NLRB No. 78; Craddock-Terry Shoe Corporation, 80 NLRB No. 185; Stokely Foods, Inc., 81 NLRB No. 79; Cities Service Oil Company of Pennsylvania, (Marine Division), 87 NLRB No. 60; Fehr Baking Company, 90 NLRB No. 205; Radio Corporation of America (Victor Division), 90 NLRB No. 291; Westinghouse Electric Corporation, 91 NLRB No. No. 150; West Gate Sun Harbor Company, 93 NLRB No. 133; Du- mont Electric Corporation, 97 NLRB No. 25; Gastonia Weaving, 97 NLRB No. 97; Vulcan Furniture Manufacturing Corp., 97 NLRB No. 177; West Texas Utilities Company, 100 NLRB No. 157; Arnold Stone Company of New York, Inc., 102 NLRB No. 96; Albion Malleable Iron Company, 104 NLRB No. 31; Watling Brick Com- pany, 107 NLRB No. 110; Bull Insular Line Inc., et al., 108 NLRB No. 126; East Texas Pulp & Paper Company, 114 NLRB No. No. 135; McCarthy Holman Company, 114 NLRB No. 242; Dalco, Inc., 116 NLRB No. 102; Palm Container Corporation, 117 NLRB No. 59; Atlantic Furniture Products Company, Inc., 102 NLRB No. 128.
but deposited without a challenge envelope. In sustaining the objection, the Board ruled that through such action the desires of the employees could not be adequately determined.

C. Distribution and Counting of Ballots

In addition to those objections filed to the conduct of the Board Agent during the election, a large number of cases contained objections to the conduct of the Agent in the distribution and counting of the ballots.

One objection contained the allegation that nine erroneous ballots were distributed during the balloting which were held to have influenced the voting. The Board withheld its ruling on this objection until the supplemental tally containing the challenged ballots could be prepared at which time it would set aside the election only if the erroneous ballots were determinative of the results of the election.

One election was set aside when an investigation revealed that due to a printing error, employees voted upon the issue of whether or not they desired the union to enter into an agree-

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141 See M. Jolin Company, 79 NLRB No. 134.
142 Western Electric Company, Inc., 96 NLRB No. 55.
ment with the employer requiring membership in said union as a condition of employment.\textsuperscript{143}

An intervening union, excepting to the manner in which the ballots in a mail election were distributed, charged that the ballots had been delivered in bulk to the employer instead of being sent to the employees' homes.\textsuperscript{144} The ballots were subsequently delivered to the employees by representatives of the petitioning union or supervisors of the employer who required the employees to mark the ballots in their presence and return them for mailing to the Board. The Intervenor further contended that these ballots were placed inside open mail bins where they were accessible to and received by persons other than those to whom they were addressed and the Board did not check the ballots for authenticity of signatures. The Board declined to set aside the election on the ground that the conduct of a mail election and delivery of ballots was within the discretion of the Regional Director and there was no evidence that his discretion had been abused; that the ballots were received or marked by anyone other than the eligible voters; or that any influence had been exerted. In addition, the Board

\textsuperscript{143}\textit{Southern Bleachery and Print Works, Inc.}, 79 \textit{NLRB} No. 85.

\textsuperscript{144}\textit{Pacific Gas and Electric Company}, 89 \textit{NLRB} No. 118.
held that representatives of all parties had checked the signatures and failed to submit evidence that unauthorized persons had voted.

A further case alleged that an employee had been given a ballot with an "x" in the "yes" box. The objection was overruled when the investigation revealed that the number of ballots cast coincided with the number of names checked off the eligible list and the ballot mentioned was not the ballot counted as void.

In regard to the counting of the ballots, sixteen cases contained objections filed by employers to the ruling as void of ballots which should have been counted as valid votes against the union seeking representation. Fifteen of the objections were overruled by the Board and one sustained, the

145 Kreage-Newark, Inc., 112 NLRB No. 112.

146 Cities Service Oil Company of Pennsylvania, (Marine Division), 77 NLRB No. 143; Fairmont Foods Company, 77 NLRB No. 200; Southern Bleachery and Print Works, Inc., 79 NLRB No. 85; Leona Malleable Iron Company, 95 NLRB No. 20; Toccoa Manufacturing Company, 96 NLRB No. 184; Fraser and Johnston Manufacturing Company, 105 NLRB No. 46; Lunts Iron & Steel Company, 97 NLRB No. 11; General Motors Corporation, 107 NLRB No. 232; National Truck Rental Company, Inc., 110 NLRB No. 120; Gerber Plastic Company, 110 NLRB No. 32; Rockwell Valves, Inc., 111 NLRB No. 40; Jeffries Banknote Company, 116 NLRB No. 31; The Gemex Corporation, 117 NLRB No. 100; Eagle Iron Works, 117 NLRB No. 150; Crucible Steel Company of America, 117 NLRB No. 207.
Two additional cases contained allegations by employers that a valid vote for the union should be ruled void because of identifying marks. Both objections were overruled. In a similar case, the Board sustained the objection and set the election aside, not because the secrecy of the ballot had been invaded, but because of its ambiguous markings.

A further charge by an employer that a disputed ballot counted for the union should be ruled void was overruled by the Board on the basis that it was the obvious intention of the voter to vote for the petitioner.

Six cases presented objections by unions that the Board Agent had ruled void, ballots which should have been counted as valid votes for the union. All of these objections were

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[148] Security Enterprises, Division of Indianapolis Wire Bound Box Company, 108 NLRB No. 97; National Truck Rental Company, Inc., 110 NLRB No. 120.
[150] Denver and Ephrata Telephone and Telegraph Company, 106 NLRB No. 152.
[151] F Wholesalers, Inc., 87 NLRB No. 129; Lunta Iron & Steel Company, 97 NLRB No. 11; Western Electric Company, Inc., 97 NLRB No. 141; Ben Tool & Die Company, 115 NLRB No. 18; Dornback Furnace and Foundry Company, 115 NLRB No. 56; Old King Cole Display, Inc., 116 NLRB No. 169.
overruled by the Board. In one of these cases, however, the
union further alleged that the Agent erred in ruling valid a
ballot marked in red which was identified by the employer's
observer as having been cast by him.\footnote{\textit{Luntz Iron \\& Steel Company}, 97 NLRB No.11.} Originally sustained
by the Board, the decision was reversed and the ballot declared
valid in a later ruling. A further union allegation claiming
that the Board erred in ruling valid a ballot which contained
excess markings was overruled.\footnote{\textit{Old King Cole Display, Inc.}, 116 NLRB No.169.}

In another case, it was alleged that ballots marked in
placed other than the officially designated polling places
should be declared void, even though the secrecy of the bal-
lots was not impaired.\footnote{\textit{G. Z. Lasater}, 118 NLRB No. 69.} The Board declined to declare the
ballots void and the election invalid.

Of cases challenging the correctness of the tally pre-
sented by the Board Agent, three charged that a discrepancy
between the number of names checked off the eligibility list
and the number of ballots counted was sufficient to set aside
the election. In two of these instances, the objections were
overruled as the number in discrepancy could not be determina-

\footnote{\textit{Luntz Iron \\& Steel Company}, 97 NLRB No.11.}
\footnote{\textit{Old King Cole Display, Inc.}, 116 NLRB No.169.}
\footnote{\textit{G. Z. Lasater}, 118 NLRB No. 69.}
tive of the results of the election. In the remaining case the missing ballots were located, but the election set aside by the Board due to the failure of the parties involved to agree as to the disposition of the ballots.

One case involving an objection by the petitioning union that an uncast ballot marked in its favor should be included in the tally was overruled on the basis that an uncast ballot in analogous to a void ballot. A similar objection alleging that a challenged ballot, not found until after the tally, should not be counted was also overruled on the basis that the ballot had been in possession of the Agent under seal.

Another objection charged an improper counting of all ballots cast (190) when only fifty-three voting employees were employed at the time of the election. The objection was overruled by the Board in its determination that all ballots cast by employees as of the eligibility date were to be counted.

155 G. S. Gypsum Company, 92 NLRB No. 253; Lockwood-Dutchess, Inc., 106 NLRB No. 166.
157 E. J. Stokes Corporation, 117 NLRB No. 131.
158 N. A. Woodworth Company, 115 NLRB No. 197.
159 Cities Service Oil Company of Pennsylvania, (Marine Division), 77 NLRB No. 143.
In a further case, the petitioning union charged that a recount of the ballots was improperly conducted inasmuch as the ballot boxes were opened in the absence of representatives. The Board declined to void the election on the basis that the number of voters checked off the voting list and the number of votes counted prompted the Board Agent to open the ballot box in the absence of the representatives of the parties; and subsequent to a recount held in the presence of representatives, all parties agreed to the correctness of the first tally.

Objections in three cases alleged the possibility of chain voting as a basis for setting aside the election. In support of the allegation, the objecting parties cited the presence of a campaign leaflet in the ballot box, and the number of votes in excess of the number of voters checked off the eligibility list. All of these objections were overruled, the latter two upon the sworn statement of two employees who voted but whose names were not crossed off the eligibility list.

D. Ballot Box

Of objections alleging the improper handling of the ballot

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160 Republic Aviation Corporation, 81 NLRB No. 221.
161 Swift and Company, 88 NLRB No. 164.
162 Holmes and Barnes, Ltd., 114 NLRB No. 100; Farrell Check Company, 115 NLRB No. 131.
box, two alleged that the Board Agent conducting the election left blank ballots, as well as the ballot box, unattended during periods when voting was scheduled. In the first of these cases, the Board overruled the objection on the basis that no material or substantial issues had been raised. However, in the latter case, the Board set aside the election on the ground that on occasion a covered but unsealed package of blank ballots was out of the control of the Board Agent which constituted a serious irregularity even in the absence of evidence of impropriety.

In four cases, the action of the Board Agent in retaining the box in his custody between voting periods was challenged as having afforded the Agent the opportunity to tamper with the ballots in such manner with the result that they would not reflect the true intent of the voters. Three of these objections were overruled inasmuch as the Board Agent was absent from the polls for a period of five minutes during which time he had the ballot box and the unused ballots in his possession and was accompanied by the employer's observer; the employer twice refused to submit prima facie evidence of any impropriety.

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163 Clark Shoe Company, 83 NLRB No. 119.
164 General Electric Company (Clock and Time Department), 118 NLRB No. 95.
165 Filtral Corporation, 91 NLRB No. 16.
when requested; and the ballot box was sealed in the presence of the parties and remained in the custody of the Board Agent which was not held to be prejudicial to any of the parties concerned. The remaining contested election was set aside by the Board in order to preserve the integrity of the election, even though the ballot box was retained in the custody of the Agent and there was no evidence of tampering.

An objection filed by one of the contending unions charged that certain ballot boxes arrived at the Regional Office with the seals broken and containing a lesser number of ballots than should have been present. The Board refused to set the election aside on the basis that a representative of the objecting union examined the boxes before they were opened and agreed that the ballots should be counted, alleging that any tampering would have been difficult if not impossible.

Two further cases alleged that the ballot boxes were not secured against tampering. In one case, the Board ruled that

166 Huntsville Manufacturing Company, 96 NLRB No. 127;
167 Continental Smelting and Refining Company, 117 NLRB No. 187.
168 Tidelands Marine Services, Inc., 116 NLRB No. 162.
169 Pacific Gas and Electric Company, 89 NLRB No. 118.
substantial and material issues had been raised and the election was set aside. 170 In the other, the charge that an observer, in testing the security of the ballot bag, jerked it free from the holder, was overruled on the basis that the bag was resealed and it was impossible to open the bag without breaking the seal. 171

The charge that the Regional Director erred in impounding ballots, which action offered an opportunity for tampering, was overruled by the Board in view of the fact that it refused to interfere with the discretion of the Regional Director in the conduct of elections, and the impounding of the ballots was deemed necessary in the instant case. 172

In the final case, it was alleged that the use of boxes bearing the employer's name as ballot boxes interfered with the employees free choice. 173 The objection was overruled since National Labor Relations Board stickers had been affixed to the box so as to eliminate any question of doubt or confusion.

170  Socony-Vacuum Oil Company, Inc., 81 NLRB No. 212.
171  West Texas Utilities Company, 100 NLRB No. 157.
172  Independent Rice Mill, Inc., 111 NLRB No. 81. Election conducted over a two day period.
173  Westinghouse Electric Corporation, 91 NLRB No. 150.
CHAPTER III

OBSERVATIONS FILED AGAINST THE ACTIVITIES OF EMPLOYERS

Of the representation elections to which objections have been filed, the largest number of cases involved objections to the conduct of employers. The types of objections filed may be resolved into two categories: (1) objections to the activities of employers preceding the election; (2) objections to the conduct of employers during an election.

A. Conduct Preceding an Election

1. Interference and Coercion—Of the cases alleging impropriety on the part of the employer during the period preceding the election, thirteen cases contained the general allegation that the employer, through his actions, statements and communications engaged in activity which so interfered with the free choice of employees as to warrant setting aside the election. In three of these cases, the Board ordered a hearing on the objection to determine the credibility of the issues alleged.\(^{174}\) Objections in eight cases were overruled on the

\(^{174}\) *Tyre Brothers Glass and Paint Company, 88 NLRB No. 46; Lunts Iron and Steel Company, 97 NLRB No. 11; O. K. Szekely and Associates, Inc., 117 NLRB No. 9.*
bases that the objection was without merit; 175 that in view of 
the union's past acquiescence, the election cannot be set a-
side; 176 that the objectionable activity did not occur during 
the sensitive period; 177 and that the incidents were too iso-
lated to affect the results; 178 as well as the fact that the 
objection failed to meet the filing requirements for specific-
ity. 179 The elections were set aside in the two remaining 
cases on the ground that the activity of the employer was such 
as to prevent the holding of a free election. 180

A form of interference alleged in six cases was that the 
employer had formed, sponsored, aided and abetted anti-union 
groups and committees among his employees. In four of these 
cases the objections were overruled on the grounds that the 
employer was unaware of such activities and took steps to

175 Radio Corporation of America (RCA Victor Division), 
102 NLRB No. 17; Fulton Bag and Cotton Mills, 106 NLRB No. 59; 
Zeller Corporation, 115 NLRB No. 111.

176 The Goodyear Tire and Rubber Company (Special Products) 
Plant "C", 85 NLRB No. 22.

177 Bridgeport Moulded Products, Inc., 115 NLRB No. 77.

178 S & S Corrugated Paper Machinery Company, Inc., 89 
NLRB No. 178; Goodyear Clearwater Mill No. 2, 109 NLRB No. 146.

179 Don Allen Midtown Chevrolet, Inc., 113 NLRB No. 102.

180 Wickham Packing Company, 81 NLRB No. 12; Herbert's 
Men's Shop Corporation, 100 NLRB No. 110.
prevent their recurrence upon his learning of them; that the activity had occurred prior to the sensitive period; and that the objection was unaccompanied by substantiating evidence.

The two remaining objections were sustained and the elections set aside on the grounds that the employer had thereby attempted to effect a change in the working conditions of the employees during the pendency of an election; and that improper assistance had been granted to one of the groups involved in the election beyond the permissible area of influence resulting from protected expressions.

Relative to the above form of interference is an objection alleging the censorship of an anti-union petition circulated by the employees. The objection was sustained and the election set aside.

Objections were filed in eight cases in which the activities of the employer were alleged to be coercive. The Board or-

181 Northrop Aircraft, Inc., 106 NLRB No. 4.
182 Garner Aviation Service Corporation, 114 NLRB No. 57.
183 Group Hospital Service, Inc., 115 NLRB No. 239; Vita Food Products, Inc., of Maryland, 116 NLRB No. 161.
184 Union Twist Drill Company, 88 NLRB No. 265.
185 Timken Detroit Axle Company, 93 NLRB No. 120.
186 Linn Mills Company, 116 NLRB No. 20.
dered one election set aside on the ground that the activities of the employer caused the election to be conducted in an atmosphere of organized fear, violence and intimidation which rendered impossible the free and untrammeled choice of the employees. 187 The objections to the remaining seven cases were overruled; 188 even though the allegations embraced such charges as the coercing of the owners of buildings rented by the union for campaign meetings to withdraw their permission to use such places (which the Board declined to consider because of no supporting evidence); 189 the contracting out of work previously performed by employees, in order to intimidate them, which was rejected inasmuch as the activity had been the subject of an unfair labor practice charge which had been dismissed; 190 the bribing of an employee (dismissed for lack of evidence) and the publication of an anti-union editorial endorsed by the employer which was printed and distributed ahead of schedule but which

187 New York Shipping Association and Its Members, 103 NLRB No. 32.

188 Magnesium Casting Company, 77 NLRB No. 181; Radio Corporation of America (Victor Division), 90 NLRB No. 291; Westinghouse Electric Corporation, 91 NLRB No. 150; Vulcan Tin Can Company and Vulcan Stamping and Manufacturing Company, 97 NLRB No. 32; Herpolzheimer Company, 103 NLRB No. 19; National Trucking Company, 110 NLRB No. 137; Vita Food Products of Maryland, 116 NLRB No. 161.

189 Westinghouse Electric Corporation, loc. cit.

190 National Trucking Company, loc. cit.
the Board considered privileged speech as the press was not acting as an agent of the employer;\textsuperscript{191} the relegation of certain employees to part-time status at reduced wages;\textsuperscript{192} and the discharge of certain employees (which was not proved to be discriminatory).\textsuperscript{193}

2. \textbf{Promises of Benefit and Threats of Reprisal}—Perhaps the most common campaign weapon of employers is the promise to employees of financial benefits or the threat of some type of economic reprisal. Of the cases studied, nineteen involved the general allegations that employers had promised benefits and made threats to their employees. Thirteen of these objections were overruled by the Board on the bases that the employer did not exceed the bounds of permissible expression;\textsuperscript{194} that the objections raised no material issues\textsuperscript{195} or were unsubstantiated

\begin{itemize}
\item \textsuperscript{191} \textit{Vita Food Products, Inc., of Maryland}, 116 NLRB No. 161.
\item \textsuperscript{192} \textit{Herpolsheimer Company}, 103 NLRB No. 19.
\item \textsuperscript{193} \textit{Vulcan Tin Can Company and Vulcan Stamping Company, Inc.}, 97 NLRB No. 32.
\item \textsuperscript{194} \textit{The Kinman Transit Company}, 78 NLRB No. 13; \textit{Sealright Pacific Ltd.}, 82 NLRB No. 64; \textit{Nash-Finch Company}, 117 NLRB No. 116.
\item \textsuperscript{195} \textit{Monsanto Chemical Company}, 83 NLRB No. 42; \textit{Armstrong Cork Company}, 84 NLRB No. 37; \textit{Malone and Hyde, Inc.}, 115 NLRB No. 79; \textit{Erie Dry Goods Company}, 117 NLRB No. 123.
\end{itemize}
by evidence that the objections concerned activity which was anti-union in character but contained no threats or promises; or that the threats and promises, if made, were too isolated to warrant setting aside an election.

In two similar cases, hearings were ordered by the Board to determine whether or not the objections raised issues sufficient to have the election set aside.

In the remaining four cases, the results of the election were set aside in view of the fact that the employer, through his threats and promises had created an atmosphere in which a free election was impossible, and there was substantial doubt as to whether the results reflected the free choice of the employees.

Several cases alleged propriety on the part of the em-

196 Lunder Shoe Corporation, 79 NLRB No. 185.
197 Cherry & Webb Company, 94 NLRB No. 105; Miller and Miller, Inc., 106 NLRB No. 197; General Steel Tank Company, Inc., 111 NLRB No. 30.
198 Jewel Paint and Varnish Company, 104 NLRB No. 112; Western Table Company and Wespico, 110 NLRB No. 6.
200 Metropolitan Life Insurance Company, 90 NLRB No. 129; Mokena Manufacturing Company, 106 NLRB No. 204; Southeastern Motor Truck Lines, Inc., 112 NLRB No. 78; The Humko Company, Inc., 117 NLRB No. 122.
ployer through his promises of benefit which were not coupled with threats of reprisal. The objections were overruled in eleven of these cases on the grounds that no issues had been raised;\textsuperscript{201} that no proof was offered that promises had been made;\textsuperscript{202} and that the activity was a privileged expression.\textsuperscript{203}

In two cases, hearings were directed by the Board to resolve credibility issues;\textsuperscript{204} and to obtain sufficient information.\textsuperscript{205}

The Board ruled the elections set aside in four cases in view of the fact that the free choice of the employees had been impaired,\textsuperscript{206} as the promised benefit was contingent upon the defeat of the union in the election.

The promise of benefit by employers frequently took the

\begin{itemize}
\item \textsuperscript{201} Maine Fisheries Corporation, 102 NLRB No. 9; National Petro-Chemicals Corporation, 107 NLRB No. 330; Lux Clock Manufacturing Company, 113 NLRB No. 117; Bata Shoe Corporation, 116 NLRB No. 165.
\item \textsuperscript{202} Standard-Totch Chemicals, Inc., 104 NLRB No. 152; F. W. Woolworth Company, 111 NLRB No. 126; Zeller Corporation, 115 NLRB No. 111 Group Hospital Service, Inc., 115 NLRB No. 239.
\item \textsuperscript{203} General Electric Company, 92 NLRB No. 160; Vita Food Products of Maryland, 110 NLRB No. 161; Crown Food Products, Inc., 118 NLRB No. 145.
\item \textsuperscript{204} Pegwill Packing Company, 115 NLRB No. 174.
\item \textsuperscript{205} Montgomery Ward and Company, 118 NLRB No. 35.
\item \textsuperscript{206} Lane Drug Stores, Inc., 88 NLRB No. 113; Maine Fisheries Corporation, 99 NLRB No. 98; Union Sulphur and Oil Corporation, 100 NLRB No. 75; Kent Plastic Corporation, 107 NLRB No. 51.
\end{itemize}
form of a promise of increased wages. Of the sixteen cases in this group, eight were overruled because the promised increase was not contingent upon the outcome of the election; the objections were not accompanied by substantiating proof; the promised increase was in accordance with the employer's established wage policy; the promise was not made during the sensitive period; or the "promise" was merely an expression of opinion. Only one case was remanded to hearing.

The objections in the seven remaining cases were sustained in that the timing of the promise of a wage increase did not conform with the employer's established policy and was deemed more than temporal coincidence with the timing of the election; the granting of the increase was conditioned upon the petition-

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207 General Motors Corporation, 107 NLRB No. 232.
208 Lunder Shoe Corporation, 79 NLRB No. 185; Onondaga Pottery Company, 94 NLRB No. 25.
209 Gray Drug Stores, 79 NLRB No. 154; Robberson Steel Company, 114 NLRB No. 85.
211 Fall River Foundry Company, 112 NLRB No. 170.
212 Cook Truck Lines, 109 NLRB No. 181.
213 Direct Laboratories, Inc., 94 NLRB No. 75.
er's defeat in the election; or that the promise of a wage increase was calculated to deter the employees from expressing their free choice.

Other promises of benefit included the promise of a pension plan or increased pension benefits. Two of the elections involving such allegations were set aside on the basis that the promises were made to prevent the exercise of free choice by the employees. Two cases in which similar objections were filed resulted in the objections being overruled in that the pension plan in question had been under consideration for many years and its institution was not made contingent upon the results of the election; and the objectionable activity did not constitute a promise but was merely sanctioned campaigning.

The promising of extra vacation benefits and paid holidays

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214 American Tool Works of Hartford, Inc., 102 NLRB No. 95; Lakefield Manufacturing Company, 105 NLRB No. 139; Gardner Machine Company, 106 NLRB No. 32.


216 Schwarzenbach, Huber Company, 85 NLRB No. 229; Lake Superior District Power Company, 88 NLRB No. 237.

217 Texas Prudential Insurance Company, 111 NLRB No. 131.

218 Hudson Hosiery Company, 98 NLRB No. 7.
was also made the subject of objections in two cases in which the Board set the elections aside, ruling that the promises made were intended to interfere with the election. However, in a subsequent case, the Board refused to set an election aside on the ground that no promises were actually made or conditioned upon a vote against the union.

In one case an election was set aside because the employer's promise to call back laid off employees, conditioned upon the defeat of the union, was proscribed activity. Another election was set aside on the basis that it was the employer's intent to influence the vote when the objectionable activity consisted of a promise to create a labor relations committee and institute a new grievance procedure. In a case involving a similar objection, the Board refused to set aside the election in that the promise to initiate a grievance committee was not for the purpose of defeating the union.

219 *Marshalltown Trowel Company*, 81 NLRB No. 163; *F. B. Rogers Silver Company*, 94 NLRB No. 49.
220 *American Laundry Machinery Company*, 107 NLRB No. 114.
221 *Paterson Fire Brick Company*, 93 NLRB No. 203.
222 *Precision Sheet Metal, Inc.*, 115 NLRB No. 144.
223 *L. H. Butcher Company*, 81 NLRB No. 183.
One election was set aside on the ground that the employer promised to reimburse an employee for any money paid the union if she would persuade other employees to abandon the union. 224

The largest group of objections studied were those relating to intimidation and threats of the employer in his activities and speeches. In twenty-five such cases, the objections were overruled by the Board on the bases that the objections filed had no merit; 225 that the speech was merely a protected expression of opinion; 226 that the objections were not substantiated by evidence; 227 that the objectionable activity was performed not by a managerial employee but by a professional employee, 228 or a rank-and-file employee, 229 or was not charge-

224 F. W. Woolworth, 90 NLRB No. 41.

225 Sam's Motor Sales, Inc., 83 NLRB No. 97; Telechron, Inc., 92 NLRB No. 113; Shamprop, Inc., 96 NLRB No. 92; Fulton Bag and Cotton Mills, 106 NLRB No. 59.

226 F Wholesalers, Inc., 87 NLRB No. 129; Westinghouse Electric Corporation, 91 NLRB No. 150; Tri Pak Machinery Service, Inc., 92 NLRB No. 66; Lockwood Dutchess, Inc., 106 NLRB No. 106; Oppenheim Collins and Company, 105 NLRB No. 187; Westinghouse Electric Corporation, 110 NLRB No. 50; Stanley Aviation Corporation, 112 NLRB No. 61; L. G. Everist, Inc., 112 NLRB No. 103.

227 Independent Motion Picture Producers Association, 88 NLRB No. 190; Southern Wood Preserving Company, 89 NLRB No. 128; Wesco Manufacturing Company, 97 NLRB No. 134; Wallace and Tierman, Inc., 112 NLRB No. 163.

228 Westinghouse Electric Corporation, (Meter Plant), 118 NLRB No. 42.

229 Sears, Roebuck and Company, 114 NLRB No. 121.
able to the employer, the incident was too remote in time, or instance; or the objecting party, having previous knowledge of the activity took no steps to have it stopped and thus acquiesced in its perpetration.

In two cases involving allegations of threats and intimidation on the part of the employer, the Board ordered a hearing for the purpose of resolving credibility issues.

The ten remaining elections in this category were set aside by the Board on the basis of such activity rendering a fair election impossible.

230 Terry Coach Manufacturing, Inc., 103 NLRB No. 81.
232 Wilson and Company, Inc., 95 NLRB No. 103; Peter Paul, Inc., 99 NLRB No. 64.
233 Talladega Cotton Factory, Inc., 91 NLRB No. 81.
234 F. W. Woolworth Company, 86 NLRB No. 9; Toccoa Manufacturing Company, 96 NLRB No. 184.
235 Spiegel Fashion Shops, 89 NLRB No. 204; F. W. Woolworth Company, 90 NLRB No. 41; Kessin Poultry Company, 97 NLRB No. 70; Gastonia Weaving Company, 97 NLRB No. 97; Sparkletta Drinking Water Corporation, 100 NLRB No. 210; Lakefield Manufacturing Company, 105 NLRB No. 139; Precision Sheet Metal, Inc., 115 NLRB No. 144; Radiant Lamp Corporation, 116 NLRB No. 5; Linn Mills Company, 116 NLRB No. 20; Aeronte Manufacturing Corporation, 118 NLRB No. 57.
Relative to those objections concerning threats and intimidation in activities and speeches are the allegations of threats in letters to the employees. Of these fourteen cases, five elections were set aside in that the "laboratory conditions which the Board deems necessary for the conduct of a free election" were violated.\textsuperscript{236} The objections were overruled in the nine remaining cases on the bases that the activity alleged as improper was actually protected;\textsuperscript{237} or that the objection was without merit.\textsuperscript{238}

Among the threats to employees calculated to interfere with a free election, three cases involved the threat to move the plant if the union won the election. All of these objections were overruled on the bases that the objecting party failed to furnish substantiating evidence,\textsuperscript{239} or that the statement was privileged inasmuch as it was nothing more than a pre-

\textsuperscript{236} Lafayette National Bank of Brooklyn, New York, 77 NLRB No. 195; Smith-Rice Mill, Inc., 88 NLRB No. 184; Telechron, Inc., 92 NLRB No. 113; Capital Transit Company, 100 NLRB No. 183; Rempel Manufacturing Inc., 116 NLRB No. 164.


\textsuperscript{238} Herpolsheimer Company, 103 NLRB No. 19; Terry Coach Manufacturing Inc., 103 NLRB No. 51; Knickerbocker Manufacturing Company, 107 NLRB No. 111; Tuttle and Kift, Inc., 118 NLRB No. 6.

\textsuperscript{239} Lunder Shoe Corporation, 79 NLRB No. 185.
dictation and prophecy, which the Board will not consider, where there is no threat that the employer will use economic power to make the prophecy come true. 240

Similar allegations involved the threat to close the plant in the event the union secured the necessary majority vote. In eight such cases, the Board overruled the objections on the grounds of inconsistency in testimony and lack of evidence; 241 that such activities were protected expressions of opinion, and prophecies; 242 and that such a statement did not interfere with free choice at the polls. 243

Of the fourteen cases in which such allegations resulted in the setting aside of the election in question, the Board ruled that such a threat interfered with the free choice of

240 Chippewa Manufacturing Corporation, 107 NLRB No. 31; Stratford Furniture Corporation and Auxiliary Manufacturing Company, 116 NLRB No. 253.

241 Bauer-Schweitzer Hop & Malt Company, et al., 78 NLRB No. 42; National Furniture Manufacturing Company, 106 NLRB No. 228; American Greetings Corporation, 116 NLRB No. 234; Mid-South Manufacturing Company, Inc., 117 NLRB No. 239.

242 Onondaga Pottery Company, 94 NLRB No. 25; Lux Clock Manufacturing Company, Inc., 113 NLRB No. 117; Supplee-Biddle-Staitz Company, 116 NLRB No. 58.

243 Fulton Bag and Cotton Mills; 89 NLRB No. 138.
Correlative to the threat to close the plant in the event of a union victory is the threat of loss of employment, either through the replacement of workers by a machine, the dissolution of shift, or operation, etc. Of the twenty-one cases involving such allegations, twelve were overruled by the Board inasmuch as no supporting evidence was offered; no material issues were raised; the objectionable activity was an isolated incident which could not have had much effect on the voters; the allegation was not completely true; was merely an expression of opinion or a prediction of possible conse-

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244 Hinde-Dauch Paper Company, 76 NLRB No. 60; Schwarzenbach Huber Company, 85 NLRB No. 229; New York Laundry, 86 NLRB No. 87; F. W. Woolworth Company, 90 NLRB No. 41; Paterson Fire Brick Company, 93 NLRB No. 203; Keeshin Poultry Company, 97 NLRB No. 70; American Tool Works of Hartford, Inc., 102 NLRB No. 95; Perry County Plywood Corporation, 105 NLRB No. 102; The Palfmouth Company, 114 NLRB No. 138; Radiant Lamp Corporation, 116 NLRB No. 5; Linn Mills Company, 116 NLRB No. 20; Lloyd A. Fry Roofing Company, Inc., 116 NLRB No. 183; Peoria Plastic Company, 117 NLRB No. 77; Audubon Cabinet Company, Inc., 117 NLRB No. 123.

245 Enid Cooperative Creamery Association, 84 NLRB No. 42; Seamount, Inc., 96 NLRB No. 92; F. Burkhardt Manufacturing Company, 96 NLRB No. 158.

246 United Screw and Bolt Corporation, 91 NLRB No. 156.

247 Crown Drug Company, 110 NLRB No. 139; Barber Coleman Company, 116 NLRB No. 4; Graphic Arts Finishers, Inc., 118 NLRB No. 102.

248 F. W. Woolworth Company, 111 NLRB No. 126; American Greetings Corporation, 116 NLRB No. 234.
or the objection was actually a violation of Section 8 (a) (2) of the Act which prohibits employer domination or interference with the formation and administration of a labor organization and the contribution of financial support to it and which the Board will not determine in representation proceedings. 250

In two such cases, a hearing was demanded by the Board in order to resolve the credibility issues involved. 251

In the seven remaining cases, the Board ruled the election set aside on the ground that the employer thereby restrained the employees from entering their fee choice at the polls. 252

An objection appearing with some frequency was the threat of discontinuation of existing benefits in the event of a union victory. These benefits included free transportation, trust funds, bonuses, vacations, contractual benefits, etc. Of the

249 Sprague Electric Company of Wisconsin, Inc., 112 NLRB No. 32; Fall River Foundry Company, 112 NLRB No. 170.

250 garner Aviation Service Corporation, 114 NLRB No. 57.

251 Mid-South Packers, Inc., 114 NLRB No. 230; Pegwill Packing Company, 115 NLRB No. 174.

252 Lane Drug Stores, Inc., 88 NLRB No. 113; F. W. Woolworth Company, 90 NLRB No. 41; Onondaga Pottery Company, 94 NLRB No. 85; Goodyear Clearwater Mill No. 2, 102 NLRB No. 127; Linn Mills Company, 116 NLRB No. 20; Paramount Cap Manufacturing Company, 116 NLRB No. 118; Union Aluminum Company, Inc., 116 NLRB No. 184.
sixteen cases in this category, eleven elections were set aside by the Board on the ground that a free election was rendered impossible by such activity. 253 A hearing was ordered in one case following the report of the Regional Director. 254

In the four remaining cases, the objections were overruled in that the alleged threat of loss of overtime was merely a recitation of possible consequences; the statement that the employer would not have to pay vacation benefits and holidays provided in its current contract if another union secured representation was merely a solicited opinion; 255 and the objections were not substantiated by evidence. 256

Included at this point is the objection charging the em-

253 Southeastern Industries, Inc., 82 NLRB No. 25; F. W. Woolworth Company, 90 NLRB No. 41; Standard Feed Milling Company, 94 NLRB No. 191; Opondega Pottery Company, 100 NLRB No. 188; Scripto, Inc., (Ordnance Division), 103 NLRB No. 80; Gardner Machine Company, 106 NLRB No. 32; Boston Mutual Life Insurance Company, 110 NLRB No. 36; Rein Company, 111 NLRB No. 89; Hampel Manufacturing Inc., 116 NLRB No. 104; Tyler Pipe and Foundry Company, 116 NLRB No. 171; Norris-Thermador Corporation, 117 NLRB No. 173.

254 L. Niemann Company, 108 NLRB No. 137;

255 Cleveland Plastics, Inc., 85 NLRB No. 87.


ployer with having stated his refusal to bargain or sign a contract with the union in the event of its election and subsequent certification by the Board. In the eight cases involving this objection, three resulted in the election being set aside;\(^258\) two of these elections were ruled invalid by the Board based on concomitant objections, with the Board reserving its ruling on the objection in question.\(^259\) In the remaining five cases, the objections were overruled on the ground that the statement made was merely an expression of the employer's legal position and as such was protected speech.\(^260\)

3. Granting of Concessions and Withholding of Benefits—Many of the objections studied contained allegations that certain concessions were granted and certain benefits, either promised or existent, were withheld by the employer.

Of the types of concessions granted, thirty-five cases alleged the granting of economic benefits, principally an in-

\(^{258}\) Z. W. Woolworth Company, 90 NLRB No. 41; Lloyd A. Fry Roofing Company, 116 NLRB No. 133; Peoria Plastic Company, 117 NLRB No. 77.


crease in wages. The objections were overruled in twenty-nine of these instances due to the fact that the timing of the increase was due to an effort to maintain equality of wage rates between more than one plant, or between more than one employer; it was granted at a time normally expected and its proximity to the election was merely temporal coincidence; the objecting party had knowledge of the activity prior to the election but did not protest the holding of the election and was therefore estopped from objecting following the balloting; the objectionable activity did not occur during the sensitive period; and it was not the intention of the employer to in-

261 United Screw and Bolt Corporation, 91 NLRB No. 156; Detroit Aluminum and Brass Corporation, 107 NLRB No. 285.

262 Wilson and Company, Inc., 95 NLRB No. 103.

263 Kaiser Industrial Corporation, 95 NLRB No. 273; Colgate Palmolive-Peet Company, 102 NLRB No. 143; Baird Ward Printing Company, Inc., 108 NLRB No. 114; Sprague Electric Company of Wisconsin, Inc., 112 NLRB No. 32; Stanley Aviation Corporation, 112 NLRB No. 61; Barber Coleman Company, 116 NLRB No. 4; Avon Products, Inc., 116 NLRB No. 252; Engine Shirt Company, 117 NLRB No. 217; Westinghouse Electric Corporation (Meter Plant), 118 NLRB No. 42.


terfere with the conduct of the election, as well as the allegation was not accompanied by substantiating evidence, and the increase resulted from negotiations with the incumbent union, which activity is not suspended by the raising of a question of representation.

One case was remanded by the Board to a hearing, and five resulted in the election being set aside on the ground that the increases did not follow any predetermined plan and were calculated to interfere with the employees' free choice.

Another type of economic concession which was alleged to be an objectionable activity was an improved vacation plan. This allegation appeared in four cases, three of the elections...

266 Marshalltown Trowel Company, 81 NLRB No. 163; Cleveland Plastics, Inc., 85 NLRB No. 87; Universal Butane Company, Inc., 106 NLRB No. 173; A. Herman & Sons, Inc., 106 NLRB No. 198; Fall River Foundry Company, 112 NLRB No. 170.


268 Mallinckrodt Chemical Works, 79 NLRB No. 184; The Coolidge Corporation, 108 NLRB No. 1.


270 Spengler Loomis Manufacturing Company, 95 NLRB No. 39; Le Roi Company, 101 NLRB No. 7; Beaver Machine and Tool Company, 101 NLRB No. 242; Radio Corporation of America (RCA Victor Division), 102 NLRB No. 17; Le Roi Company, 105 NLRB No. 41.
being set aside on the ground that the announcement was so
timed as to interfere with the election, 271 while the remaining
objection was overruled as not disturbing the laboratory con-
ditions necessary for a free election. 272

The granting of additional holidays was the subject of ob-
jections in two cases where it was ruled that the relationship
between the bestowing of the holiday and the timing of the elec-
tion was more than temporal coincidence and resulted in the
elections being declared invalid. 273

In two cases, objections charging the granting of increased
insurance benefits were overruled on the grounds that such ac-
tivities were merely attempts to maintain equality between more
than one plant, 274 and more than one employer. 275

Miscellaneous economic concessions made the subject of ob-
jections included the institution of an incentive system, 276

271 Spengler Loomis Manufacturing Company, 95 NLRB No. 39;
Knickerbocker Manufacturing Company, Inc., 107 NLRB No. 111;
Bata Shoe Company, Inc., 116 NLRB No. 165.


273 Reeves Instrument Corporation, 104 NLRB No. 99; Knick-

274 United Screw and Bolt Corporation, 91 NLRB No. 56.

275 Detroit Aluminum and Brass Corporation, 107 NLRB No. 235.

276 Fall River Foundry Company, 112 NLRB No. 170.
the announcement of employee bonus and suggestion awards,\textsuperscript{277} and the payment to a profit-sharing trust fund,\textsuperscript{278} all of which were overruled as not interfering with the election, not occurring during the sensitive period, and merely fulfilling a contractual obligation, respectively. However, the granting of a 10 per cent discount to employees during the pre-election campaign was considered to create an atmosphere incompatible with a free expression of choice.\textsuperscript{279}

With regard to concessions \textit{non-economic} in nature, one objection alleged interference due to the posting of a sketch of a new employees' lounge and rest room immediately prior to the election.\textsuperscript{280} The objection was overruled in that the new lounge was part of a modernization program and the sketch was posted without comment or explanation.

Another non-economic concession was the distribution of payroll checks on the day of the election. Two such cases were overruled by the Board on the bases that no substantial or

\begin{itemize}
\item \textsuperscript{277} \textit{Gerner Aviation Service Corporation}, 114 NLRB No. 57.
\item \textsuperscript{278} \textit{Good-All Electric Manufacturing Company}, 117 NLRB No. 21.
\item \textsuperscript{279} \textit{F. W. Woolworth Company}, 90 NLRB No. 41.
\item \textsuperscript{280} \textit{Cherry and Webb Company}, 94 NLRB No. 105.
\end{itemize}
material issues had been raised, and that the payday had been changed six months prior to the election. An allegation of similar content was sustained by the Board and the election set aside when it was found that the employer deliberately accelerated the distribution of payroll checks by two days with the new distribution date falling on the day before rather than the day after the election in order to interfere with and restrain the employees in their choice of a bargaining representative.

With regard to the withholding of benefits from employees for the purpose of influencing them in their choice of a representative, one case contained an allegation that the employer circulated a letter among his employees advising them that a wage increase was possible but was being withheld because of the election, confident that the employees would vote against the union. The report of the Regional Director recommended that the objection be overruled on the ground that the objecting party had knowledge of the letter prior to the election and did not protest such activity or file charges until after the election. A new precedent was established by the Board in

281 Marshalltown Trowel Company, 81 NLRB No. 163.
282 Malone and Hyde, Inc., 115 NLRB No. 79.
283 Craddock-Terry Shoe Corporation, 82 NLRB No. 13.
its decision in which it overruled the report and sustained the objection on the basis that the rule of estoppel as formerly honored did not effectuate the policies of the Act. In its decision the Board stated that:

Under present Board Practice, any party may, by engaging in conduct which interferes with an election, and by its timing of that conduct, substantially control the course of the Board's election processes. In the event of such interference the other party and the employees are confronted with the choice of either (a) requesting a postponement of the election with the substantial delay that involves in ascertaining the employees' desires until the effects of the interference have been dissipated, or (b) accepting the equally difficult choice of proceeding with the election in the face of such interference knowing that a second election cannot be held for at least another twelve months, should the interference have its intended effect and the election therefor not reflect the employees' true desires. In either event the free expression of the employees' desires is inhibited, the selection of a bargaining representative and the ordinary progress of collective bargaining, should that be the employees' desire, may be substantially delayed and a wrongdoer stands to profit from his own wrong.

In order to remedy this situation, the Board announced that any substantial interference which occurs during the crucial period before an election may constitute a basis for setting aside the election:

...whether or not charges have been filed, the Board has decided to consider on the merits any alleged interference which occurs or has occurred after either (1) the execution by the parties of a consent-election agreement or a stipulation for certification upon consent election or (2) the date of issuance by the Regional Director of a notice of hearing as the case may be; no waivers will be required with respect to charges based thereon. The Board will not, however, consider election objections based upon interference which may occur prior to these dates.
It was in this decision that the *sensitive period* first became defined.

In a similar case, the Board set aside an election on the objection that the employer had distributed a letter advising employees that benefits were being withheld because of union activity, which benefits would be forthcoming if the union activity ceased.\(^{285}\)

An objection alleging that the employer would further defer wage increases in the event of a union victory was ruled sufficient to warrant the setting aside of an election.\(^{286}\) However, in a subsequent case, an objection alleging the employer to have stated that should the union win, the employees would experience long delays in receiving increases was overruled by the Board in view of the fact that the statement did not contain a threat that the employer would deliberately delay the increases.\(^{287}\)

Another case involved the allegation that the employer, prior to the election had departed from the correction of weekly wage inaccuracies.\(^{288}\) The Board declined to set the election.

\(^{285}\) *Telechron, Inc.*, 92 NLRB No. 113.
\(^{286}\) *Bonwit Teller*, 96 NLRB No. 73.
\(^{287}\) *Gardner Machine Company*, 106 NLRB No. 32.
\(^{288}\) *Stratford Furniture Corporation and Putorian Manufacturing Company*, 116 NLRB No. 253.
aside on the ground that the employer's action did not represent a withholding of benefits, but merely a discontinuation of a policy which was neither established nor inflexible.

4. False Propaganda—Of the cases studied, nine objections alleged that the pre-election speeches, as well as handbills and notices of the employer contained such misleading, false and slanderous statements as to render the election void. In eight of these cases, the objections were overruled by the Board on the grounds that the objectionable activity was merely pre-election propaganda which the union was privileged to answer if it desire; \(^{289}\) that evidence of the employer's participation in such propaganda was lacking; \(^{290}\) that the propaganda was within the bounds of legitimate campaigning and contained permissible expressions of opinion; \(^{291}\) and that the misrepresentations contained therein could not have interfered with free choice. \(^{292}\) The remaining case in this group resulted in the election being set aside on the ground that the activities of the employer had

\(^{289}\) Unity Manufacturing, 107 NLRB No. 10; Verso Manufacturing Company, 114 NLRB No. 196.

\(^{290}\) Goodyear Clearwater Mill No. 2, 109 NLRB No. 146.

\(^{291}\) L. G. Everett, Inc., 112 NLRB No. 108; Zeller Corporation, 115 NLRB No. 111; Barber Coleman Company, 116 NLRB No. 4; Nash-Finch Company, 117 NLRB No. 116.

\(^{292}\) Avon Products, Inc., 116 NLRB No. 252.
lowered the campaign to a point where the uninhibited desires of the employees could not be ascertained in an election.293

Seven of the cases studied contained objections to the action of employers in posting or distributing a sample ballot marked in their favor, thereby interfering with the exercise of free choice in the election. Five of these objections were sustained and the elections set aside on the basis of the Allied Electric Products Rule294 despite the fact that the ballot in question did not contain the name of the Regional Director, was accompanied by an explanatory letter, or was merely an attempt to neutralize the effect of the same activity on the part of opposing union.295 Two objections were overruled on the basis that the sample ballot so defaced did not contain the name and title of the Regional Director,296 and that it did not purport to be a copy of the official ballot.297

293 Data Shoe Company, Inc., 116 NLRB No. 165.
294 See page 140.

295 Bachmann Uxbridge Worsted Corporation, 110 NLRB No. 194; The Wilmington Casting Company, 110 NLRB No. 266; Superior Knitting Corporation, et al., 112 NLRB No. 217; Poro Wood Products Company, Inc., 113 NLRB No. 56; Data Shoe Company, Inc., loc.cit.

296 Silver Knit Hosiery Mills, Inc., 99 NLRB No. 65.

Related to the above objection is the allegation that the employer had defaced the official sample ballots posted on the bulletin boards in connection with the notices of election. Two of the objections were sustained and the elections were set aside; 298 while two were overruled on the ground that the employer had neither caused nor had had knowledge of the defacement. 299

5. The Captive Audience Technique and No-Solicitation Rules—Early in the history of the Act, the Board had occasion to rule that the holding of meetings by the employer for the purpose of expressing his views, on company time and property, where attendance was required was not in violation of the Act as long as the speeches contained no threats of reprisal or promises of benefit and were protected under the Act. 300 Following this decision, three similar cases appeared before the Board containing allegations that the employers had made captive audience speeches which the objecting party deemed should

298 Belknap Hardware and Manufacturing Company, 98 NLRB No. 88; Bata Shoe Company, Inc., 116 NLRB No. 165.

299 Robberson Steel Company, 114 NLRB No. 65; Rheem Manufacturing Company, 114 NLRB No. 74.

300 Babcock and Wilcox, 77 NLRB No. 96.
be ground for setting aside the election. All of these cases were overruled by the Board on the basis that there had been no violation of the Act.

A further refinement of the Captive Audience Doctrine was contained in the famed Bonwit Teller case in which the Board ruled that the employer, in denying the union an opportunity to address employees under conditions similar to those under which the employer's speech was made was in violation of the Act, as the net result of this activity was to apply the no-solicitation rule discriminatorily. In its decision the Board stated:

(1) Where it is enforced against union solicitation although other forms of solicitation are permitted or (2) where it is enforced against solicitation by one union although another union is permitted to solicit...an employer who chooses to use his premises to assemble his employees and speak against a union may not deny that union's reasonable request for the same opportunity to present its case where the circumstances are such that only by granting such a request will the employees have a reasonable opportunity to hear both sides.

Flowing from this decision, are two types of activity to which objections could be filed: (1) the utilization of the Captive Audience technique without the granting of equal time


302 96 NLRB No. 73.
and opportunity to the union or unions involved; and (2) the application of a valid no-solicitation rule against unions indiscriminately.

In reference to those cases in which the objections filed contained allegations that the employer had violated the new Captive Audience concept by not granting the union an opportunity to reply, fourteen such objections were sustained and the elections set aside on the basis of the Bonwit Teller Doctrine. 303 Five additional cases containing identical allegations were sustained by the Board even in the absence of a no-solicitation rule or a request for equal opportunity by the union on the ground that the employer preempted the last opportunity to address employees before the election and in so doing his action was tantamount to a denial of the request to reply. 304

303 Biltmore Manufacturing Company, 97 NLRB No. 128; Bernardin Bottle Cap Company, Inc., 97 NLRB No. 243; Metropolitan Auto Parts, Inc., 99 NLRB No. 73; Higgins, Inc., 100 NLRB No. 134; Onondaga Pottery Company, 100 NLRB No. 188; Wilson and Company, Inc., 100 NLRB No. 242; John Irving Stores of Chicago, Inc., et al., 101 NLRB No. 21; The Mutet Company, 101 NLRB No. 69; Cornell Dubilier Electric Corporation, 101 NLRB No. 209; National Screw and Manufacturing Company of California, 101 NLRB No. 218; Gruen Watch Company, 103 NLRB No. 27; Gastonia Weaving Company, 103 NLRB No. 114; Williamson-Dickie Manufacturing Company, 104 NLRB No. 29; M. H. Baisaner Manufacturing Company, Inc., 104 NLRB No. 85.

304 Balkman Hardware and Manufacturing Company, 98 NLRB No. 88; The Hills Brothers Company, 100 NLRB No. 141; Forsman and Clark, Inc., 101 NLRB No. 12; Shirlington Supermarkets, Inc., and Its Subsidiary, 102 NLRB No. 36; Crown Cork and Seal Company, Inc., 105 NLRB No. 112.
However, in five cases alleging such a violation by the employer, the Board declined to set aside the elections and overruled the objections on the bases that the union had distributed handbills and made no request for reply;\textsuperscript{305} that the request for reply referred to the employer's future speeches, not the one already made;\textsuperscript{306} that the employer's speech was directed against both unions equally;\textsuperscript{307} and that the employer offered the union an opportunity to address the employees, which offer was not accepted;\textsuperscript{308} and that the speech was made on the employees own time and attendance was voluntary.\textsuperscript{309}

In four cases, the Board extended its interpretation of the Bonwit-Teller Doctrine to the distribution of literature and posting of bulletins by the employer coupled with a refusal to permit the same activity to the union.\textsuperscript{310} However, in two cases, the allegations were overruled because of the failure to prove the existence of a no-solicitation rule;\textsuperscript{311} and failure to impute such activity to the employer.\textsuperscript{312}

\textsuperscript{305}Snively Groves, Inc., 102 NLRB No. 162.
\textsuperscript{306}The Nutcr Company, 104 NLRB No. 144.
\textsuperscript{307}Showell Poultry Company, 105 NLRB No. 70.
\textsuperscript{308}E. W. Woolworth Company, 105 NLRB No. 20.
\textsuperscript{309}Fisher Grocery Company, 107 NLRB No. 255.
\textsuperscript{310}J. J. Newberry Company, 100 NLRB No. 189; Johnston Lawnmower Corporation, 107 NLRB No. 217; Riegel Paper Corporation, 107 NLRB No. 270; Zeller Corporation, 115 NLRB No. 113.
\textsuperscript{311}Riegel Paper Corporation, \textit{loc. cit.}
\textsuperscript{312}Zeller Corporation, \textit{loc. cit.}
The Board's decision in the Livingston Shirt case further clarified the Captive Audience Doctrine in that it permitted the employer to make speeches on company time and property without granting equal time and opportunity to the union, provided there is no prohibition of the union's solicitation during non-working hours. In one case, the Board attached merit to an objection alleging the refusal of the employer to permit solicitation on company property during non-working hours.

Of those cases alleging the disparate application of the no-solicitation rule, two elections were set aside on the basis that the employer, while refusing permission to the union to solicit employees due to the existence of a valid no-solicitation rule permitted anti-union groups to solicit employees on company time and property. However, similar objections were overruled in three cases on the bases that it was an isolated incident and the no-solicitation rule had been rigorously enforced; sufficient evidence was lacking, and proof of the

313 NLRB No. 109.
314 Path Packing Company, 113 NLRB No. 44.
315 The Great Atlantic and Pacific Tea Company, 97 NLRB No. 29; Armstrong Cork Company, 109 NLRB No. 190.
316 The Liberal Market, Inc., 108 NLRB No. 220.
317 Group Hospital Service, Inc., 115 NLRB No. 239.
employer's knowledge of such solicitation was lacking. 318

The case of Peerless Plywood Company 319 caused the Board to reconsider its former rulings with regard to pre-election speeches, no-solicitation rules, and request for equal time. The allegation in this case charged the employer with having assembled his employees on company time and property to listen to an anti-union speech, and although requested to do so, denied the union similar facilities. In its decision, the Board ruled that:

Under the Board's broad Bowart Teller Doctrina, this election would have been set aside because the employer made a speech to employees prior to the election and denied the union an opportunity to use his premises to make a speech in reply. This would have been done regardless of the timing of the employer's speech so long as it was pre-election and regardless of whether or not the employer had made a broad no-solicitation rule... it is our considered view, based on experience with conducting representation elections, that last-minute speeches by either employers or unions, delivered to massed assemblies of employees on company time have an unwholesome and unsettling effect and tend to interfere with the sober and thoughtful choice which a free election is designed to reflect. We believe that the real vice is in the last-minute character of the speech coupled with the fact that it is made on company time, whether delivered by the employer, or the union, or both. Such a speech, because of its timing, tends to create a mass psychology which overrides arguments made through other campaign media and gives unfair advantage to the party, whether employer or union, who in this manner obtains the last most telling word.

318 Sears, Roebuck and Company, 115 NLRB No. 47.
319 107 NLRB No. 106.
Accordingly we now establish an election rule which will be applied in all election cases. This rule shall be that employers and unions alike will be prohibited from making election speeches on company time within twenty-four hours before the scheduled time for conducting an election. Violation of this rule will cause the election to be set aside whenever valid objections are filed... implicit in our rule is our judgement that noncoercive speeches made prior to the proscribed period will not interfere with a free election inasmuch as our rule will allow time for their effect to be neutralized by the impact of other media of employee persuasion.

As can be seen from the decision cited, the Board felt that the evil inherent in such speeches could not be effectively counteracted by the Bonwit Teller Rule which failed to establish pre-election equality, and gave an advantage to the party which had the last opportunity to address the employees.

In examining the Peerless Plywood Doctrine, it can be seen that the rule does not sanction coercive speeches prior to the twenty-four period; does not prohibit the employer from making noncoercive campaign speeches prior to the proscribed period without granting the union an opportunity to reply; does not prohibit an employer or a union from making campaign speeches on or off the employer’s premises during the proscribed period if attendance by the employees is voluntary and on their own time; and does not prohibit the use of other campaign media during the proscribed period.

Following this decision, a great number of cases appeared before the Board in which the objections involved violations of
the "Twenty-Four Hour Rule." Twenty of the objections were sustained by the Board and the elections set aside on the basis of the new ruling, even though the election, in some cases antedated the ruling on the Fearless Plywood Case. However, in sixteen similar cases, one was overruled on the basis that no meeting was planned and the talk which occurred was informal; six were overruled on the basis that the speech was completed before the prescribed period (counting calendar days, not working days); one, on the basis that the objecting party was estopped from filing objections on the basis of his own speech

320 Spotswood Specialty Company, 107 NLRB No. 222; Banner Die Fixture Company, 107 NLRB No. 267; The Gross Company, 107 NLRB No. 276; American Thermos Bottle Company, 107 NLRB No. 317; Hamilton Watch Company, 107 NLRB No. 321; Milton Oil Company, 107 NLRB No. 320; General Motors Corporation, (Buick Motor Division), Parts Warehouse, 108 NLRB No. 165; Texas City Chemicals, Inc., 109 NLRB No. 13; Ottenheim Brothers Manufacturing Company, Inc., 109 NLRB No. 29; Mid-South Packers, Inc., 110 NLRB No. 90; The Great Atlantic and Pacific Tea Company, 111 NLRB No. 166; Riblet Welding and Manufacturing Corporation, 112 NLRB No. 94; Fuller Ford, Inc., 113 NLRB No. 14; Comus Manufacturing Company, Inc., 113 NLRB No. 33; Shirks Motor Express Corporation, 113 NLRB No. 76; Rock Hill Printing and Finishing Company, 114 NLRB No. 131; H. & E. Mining Company, 114 NLRB No. 228; The Great Atlantic and Pacific Tea Company, 115 NLRB No. 200; Robbins Packing Corporation, 115 NLRB No. 231; Mid-South Manufacturing Company, Inc., 117 NLRB No. 239.


322 Sylvania Electric Products, Inc., 108 NLRB No. 182; Jewett and Sherman Company, 111 NLRB No. 80; Sprague Electric Corporation of Wisconsin; 112 NLRB No. 32; Rath Packing Company, 115 NLRB No. 48; Vita Food Products, Inc., of Maryland, 116 NLRB No. 161; Encino Shirt Company, 117 NLRB No. 217.
and that of the union which he permitted;\(^{323}\) three, on the
ground that the objection involved the distribution of litera-
ture which is not proscribed during the twenty-four hour peri-
od;\(^{324}\) two, in that the speech consisted merely of a non-partisan
announcement urging employees to vote;\(^{325}\) and an informal meet-
ing for the same purpose;\(^{326}\) three, on the ground that the speech
was made on the employees own time and attendance was voluntar-
y;\(^{327}\) that the speech was privileged;\(^{328}\) and that the allegation
lacked sufficient evidence.\(^{329}\)

6. Interrogation, Interviews and Surveillance—Activities
of employers alleged to be of sufficient import to warrant the
setting aside of an election included the interrogation, interview
and surveillance of employees by the employer or his agents. For
the purpose of this thesis, the charge of interrogation shall

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\(^{323}\) Camp Milling Company, Inc., 109 NLRB No. 73.
\(^{324}\) Crown Drug Company, 110 NLRB No. 139; Roberson Steel
Company, 114 NLRB No. 65; Radiant Lamp Corporation, 116 NLRB No.5.
\(^{325}\) John W. Thomas, 111 NLRB No. 37.
\(^{326}\) Malone and Hyde, Inc., 115 NLRB No. 79.
\(^{327}\) The Falmouth Company, 115 NLRB No. 250.
\(^{328}\) Harry Davies Molding Company, 117 NLRB No. 22.
\(^{329}\) Stratford Furniture Corporation and Putorian Manufacturing
Company, 116 NLRB No. 253.
include all questioning of employees, regarding the election, their voting intentions and sympathies, whether individually or in groups whether or not such questioning was accompanied by threats of reprisal. The allegation of improper interviewing of employees shall include all activity in which employees were addressed, either singly or in groups concerning the employer's position in the election and his request to have them vote against the union, which activity is unaccompanied by questioning or threats. Surveillance shall include all endeavors of employers to ascertain the activities and sympathies of the employees by spying and investigation.

With regard to the interrogation of employees, eighteen cases were overruled by the Board because the questioning of the employees as to voting intentions was performed by an agent of, but not authorized by the employer; the conduct was not so extreme as to impair the registration of free choice at the polls; the incident occurred too remote in time to have influenced the election; or occurred prior to the sensitive


331 Mallinckrodt Chemical Works, 79 NLRB No. 184; Mall Tool Company, 112 NLRB No. 171; (employer spoke to only half of the employees in a brief conversation); Barber Coleman Company, 116 NLRB No. 4.

332 Enid Cooperative Creamery Association, 84 NLRB No. 42; Tanning Company, 97 NLRB No. 100.
period; or the interrogation was conducted at meetings at which attendance was voluntary; the incidents of interrogation were too isolated to have affected the results of the election; sufficient evidence was lacking; or the interrogation was not conducted by an agent of the employer.

In seventeen cases alleging a similar objection, the Board set the election aside as the activity was deemed to have interfered with the free and untrammeled choice of the voters and ex-


335. *The Liberal Market, Inc.*, 108 NLRB No. 220; *The Babcock and Wilson Company*, 118 NLRB No. 120.


337. *Westinghouse Electric Corporation, (Meter Plant)*, 118 NLRB No. 42.
ceeded the bounds of free speech. However, an identical objection was overruled by the Board even though the objectionable activity consisted of one instance of interrogation of one employee, the Board ruling that it was impossible to measure the results of this interference.

Two of the cases in which the objections alleged unlawful interrogation were remanded by the Board to a hearing for the purpose of resolving factual issues.

Charges of illegal interviewing by employers were alleged in sixteen of the cases. In four, the objections were overruled on the grounds that only a minor portion of the employees were

**338 The Hinde-Dauch Paper Company, 76 NLRB No. 60; Craddock-Terry Shoe Corporation, 82 NLRB No. 13; Southeastern Industries, Inc., 82 NLRB No. 25; J. I. Case Company, 86 NLRB No. 3; Wilson and Company, 88 NLRB No. 25; Lane Drug Stores, Inc., 88 NLRB No. 113; F. W. Woolworth, 90 NLRB No. 41; Clippard Instrument Laboratory, Inc., 94 NLRB No. 4; F. B. Rogers Silver Company, 94 NLRB No. 49; Standard Feed Milling Company, 94 NLRB No. 191; Keeshin Poultry Company, 97 NLRB No. 70; American Tool Works of Hartford, Inc., 102 NLRB No. 95; Goodyear Clearwater Mill No. 2, 102 NLRB No. 127; Lakesfield Manufacturing Company, 105 NLRB No. 139; Oregon Frozen Foods Company and Ore-Ide Potato Products, Inc., 113 NLRB No. 90; Linn Mills Company, 116 NLRB No. 20; San Diego Glass and Paint Company, 117 NLRB No. 14.**

**339 U. S. Rubber (Scottsville Plant), 86 NLRB No. 2.**

**340 Mid-South Packers, Inc., 114 NLRB No. 230; "M" System, Mobile Home Division, Mid-States Corporation, 116 NLRB No. 254.**
addressed and no election issues were discussed;\textsuperscript{341} and the statements made did not exceed the bounds of free speech;\textsuperscript{342} as well as the fact that the activity occurred prior to the sensitive period.\textsuperscript{343} In the remaining twelve cases, it was ruled that the conduct of the employer interfered with a free election as the meetings were conducted in a coercive manner regardless of the issues discussed.\textsuperscript{344}

Eleven objections involved the allegation of surveillance of the employees' activities in regard to the union and union meetings. Four of these objections were overruled on the basis that the surveillance did not occur during the sensitive period;\textsuperscript{345} that there was no attempt to single out an employee by means of photographing as charged;\textsuperscript{346} and lack of evidence in

\textsuperscript{341}American Envelope Company, 97 NLRB No. 239; Nash-Finch Company, 117 NLRB No. 116.

\textsuperscript{343}Sprague Electric Company, 112 NLRB No. 32.

\textsuperscript{342}Bryant Electric Company, 118 NLRB No. 27.

\textsuperscript{344}General Shoe Corporation, 77 NLRB No. 18; General Shoe Corporation, Marmon Bag Plant, 97 NLRB No. 71; Lakeshore Motor Inc., 101 NLRB No. 22; Economic Machinery, 111 NLRB No. 154; N.A. Baird's Bakeries, Inc., 114 NLRB No. 83; Richard's Container Corporation, 114 NLRB No. 220; Qualiton, 115 NLRB No. 16; Supreme Trailer Company, 115 NLRB No. 149; Red River Broadcasting Company, Inc., 115 NLRB No. 189; Gallagher Drug Company, 115 NLRB No. 213; Radiant Lamp Corporation, 116 NLRB No. 5; General Cable Corporation, 117 NLRB No. 88.

\textsuperscript{345}Group Hospital Service, Inc., 115 NLRB No. 239.

\textsuperscript{346}American Greetings Corporation, 116 NLRB No. 234.
support of the charge. 347

The objections in five cases were sustained and the elections set aside on the ground that such surveillance prevented the exercise of free choice at the polls. 348 In a further case, the election was set aside in that the employer intimidated employees and thereby affected their free choice by conspicuously photographing a union organizer distributing campaign literature. 349

In the remaining case, the allegation that the employer had a list of the names of employees who joined one of the participating unions was overruled on the basis that the knowledge had not been improperly attained or used. 350

7. Preferential Treatment Where More Than One Union is Involved—Many cases contained objections alleging preferential treatment on the part of the employer accorded to one of the

347 *Vita Food Products Inc., of Maryland*, 116 NLRB No. 161; *Avon Products, Inc.*, 116 NLRB No. 252.

348 *F. W. Woolworth Company*, 90 NLRB No. 41; *Keeshin Poultry Company*, 97 NLRB No. 70; *Gallagher Drugs Company*, 115 NLRB No. 213; *Linn Mills Company*, 116 NLRB No. 20; *Shovel Supply Company*, 118 NLRB No. 41.

349 *Calmes Engineering Company*, 90 NLRB No. 120.

350 *Peter Paul, Inc.*, 99 NLRB No. 64.
unions competing for representation, to the distinct disadvantage of the other. Of the types of activity alleged as improper, thirteen cases involved the permission of the employer to one of the unions of access to his premises for the purpose of solicitation while denying similar privileges to the objecting union. In six of these cases, the objections were overruled on the grounds that the incumbent union was properly permitted access for the purpose of administering the agreement in force and no evidence of solicitation occurring at this time was offered.\textsuperscript{351} In two cases the objections were overruled on the bases that both unions were in violation of the no-electioneering rule and the employer took steps to end all activity immediately upon his notice, without discrimination regarding union affiliation;\textsuperscript{352} and that the same activities were permitted to the objecting union.\textsuperscript{353} In the remaining cases in this group, the objections were overruled on the grounds that the employer had neither condoned, encouraged, nor witnessed the

\textsuperscript{351}Bauer-Schweitzer Hop and Malt Company, et al., 78 NLRB No. 42; Seaboard Terminal and Refrigeration Company, 114 NLRB No. 127; Nicholson Transit Company, 89 NLRB No. 155; Lewitte and Sons, Inc., 101 NLRB No. 190; Emerson Electric Company, 106 NLRB No. 28; Superior Sleaprite Corporation, 117 NLRB No. 65.

\textsuperscript{352}Western Electric Company, 87 NLRB No. 26.

\textsuperscript{353}The Electric Auto-Lite Company, 89 NLRB No. 176.
activity, had not applied the no-solicitation rule discriminatorily; or the objection was not substantiated by evidence.

In six cases, the objections charged the employer with having expressed a favoritism for one union over another. All of these objections were overruled in that they were merely privileged expressions of preference for one union over the other and constituted no interference as long as the reasons were not coercively set forth.

Objections in eight of the cases related to the activity of the employer in negotiating and signing a contract with another union while the petition of the union seeking representation was pending. The elections in three of these cases were set aside on the basis that the employer violated his obligation to maintain neutrality before the election and his signing of a contract with one of the competing organizations was a potent

354 Rheem Manufacturing Company, 114 NLRB No. 74.
355 Westinghouse Electric Corporation, 91 NLRB No. 150; Seamprufe, Inc., 96 NLRB No. 92.
356 Bull Insular Line Inc., et al., 108 NLRB No. 126; Chas. T. Brandt, Inc., 118 NLRB No. 123.
357 Stewart Warner Corporation, 102 NLRB No. 130; Sylvania Electric Products, Inc., 106 NLRB No. 196; Heintz Manufacturing Company, 103 NLRB No. 99; Wright Manufacturing Company, 106 NLRB No. 210; Repsol Brass Manufacturing Company, 110 NLRB No. 24; Rheem Manufacturing Company, 114 NLRB No. 74.
form of assistance to that union. However, in two cases, the objections were overruled in that the petitioning union's knowledge and acquiescence during the hearing and up to the time of the election estopped that organization from objecting after the election. In one case, the Board declined to set aside the election in view of the fact that at the time the contract in question was executed, the only thing pending before the Board was a motion for reconsideration of the Board's decision dismissing the original petition. In the two remaining cases in this group, the Board overruled the objections on the basis that the signing of a contract with one of the competing unions during the pendency of a representation question had been made the subject of an unfair labor practice charge and had been settled in a settlement agreement; and that the issues raised by the filing of the objection would not be determined in a representation proceeding.

358 General Steel Products Corporation, 77 NLRB No. 137; International Shoe Company, 97 NLRB No. 110; Johnson Transport Company, 106 NLRB No. 175.

359 E. I. DuPont de Nemours and Company, 81 NLRB No. 39; Greater New York Broadcasting Company, Radio Station WNEW, 85 NLRB No. 75.

360 General Electric Company, (Miles Glass Works, Lamp Division), 103 NLRB No. 82.

361 Laclede Gas Light Company, 80 NLRB No. 133.

362 Nuder Manufacturing Corporation, 114 NLRB No. 144.
Other objections alleging discriminatory treatment were the
promise of continued honoring of the contract in force in the
event of the defeat of the objecting union which was overruled
due to lack of evidence that the statement had been made;\textsuperscript{363} the
promise of an improved contract if the objecting party lost the
election, which was sustained as having interfered with the em-
ployees' freedom of choice; \textsuperscript{364} and the threats to move the
plant, \textsuperscript{365} of refusal to bargain, \textsuperscript{366} and of economic reprisal; \textsuperscript{367}
all of which were sustained as having interfered with a free
election. The allegation of a threat of loss of employment in
the event of the victory of the objecting party was overruled by
the Board in that such statements were merely predictions of
possible consequences; \textsuperscript{368} or lacked substantiating evidence. \textsuperscript{369}
The objection that the employer's pre-election speeches contained
promises of benefit and threats of reprisal contingent upon the

\begin{itemize}
\item \textsuperscript{363} \textbf{Western Electric Company}, 87 NLRB No. 26.
\item \textsuperscript{364} \textbf{Hudson Sharp Machine Company}, 107 NLRB No. 29.
\item \textsuperscript{365} \textbf{Timken Detroit Axle Company}, (\textit{Ohio Axle & Gear Division})
\item \textsuperscript{366} 102 NLRB No. 59.
\item \textsuperscript{367} \textbf{Legion Utensils Company}, 103 NLRB No. 39.
\item \textsuperscript{368} \textbf{New York Shipping Association and Its Members}, 108 NLRB
\item \textsuperscript{369} \textbf{No. 32}.
\item \textsuperscript{368} \textbf{Sylvania Electric Products, Inc.}, 106 NLRB No. 196; \textbf{Merga-
gantown Full Fashioned Hosiery Company, et al.}, 107 NLRB No. 312.
\item \textsuperscript{369} \textbf{Chas. T. Brandt, Inc.}, 118 NLRB No. 123.
\end{itemize}
the results of the election was overruled due to lack of evi-
dence; as was the allegation that supervisors had coerced em-
ployees by threats. The charge that supervisors had coerced employees to sign application cards for membership in the rival union was overruled on the basis of the objecting union's prior knowledge of the activity.

Other forms of preferential treatment which were alleged to be sufficient to warrant the election be set aside included:

(1) Three instances of hiring only members of the rival union, which were overruled in two cases due to lack of evidence, and the fact that the alleged violation constituted an unfair labor practice charge which the Board will not consider in a representation proceeding; and sustained in the other as unlawful preferential treatment.

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370 *La Pointe Machine Tool Company*, 113 NLRB No. 19.
371 *Independent Motion Picture Producers Association*, 83 NLRB No. 190.
373 *Independent Motion Picture Producers Association*, loc. cit.
374 *Shipowners' Association of the Pacific Coast and Its Member Companies*, 110 NLRB No. 63.
375 *Atlas Imperial Diesel Engine Company*, 91 NLRB No. 85.
(2) The granting of permission by the employer to one union to make an election speech to the employees, while denying the privilege to the objecting union and the discriminate furnishing of a mailing list, both of which were overruled inasmuch as the objecting party had made no request for a similar privilege.

(3) The discriminatory assigning of overtime work to the adherents of one union, the discriminatory discharge of four employees known to be adherents of the objecting union, the abandonment of neutrality by the employer, and the inference of company domination of the objecting union, all of which were overruled as raising no material or substantial issues.

(4) The campaigning of supervisors for the rival union which was overruled as not having occurred during the sensitive period.

376La Pointe Machine Tool Company, 113 NLRB No. 19.
377Morgantown Full Fashioned Hosiery Company, et al., 107 NLRB No. 312.
378International Harvester Company, McCormick Works, 100 NLRB No. 198.
379California Cedar Products Company, 99 NLRB No. 56.
380Consolidated Vultee Aircraft Corporation, 79 NLRB No. 78.
381Standard Oil of California, 90 NLRB No. 197.
382Rheem Manufacturing Company, 114 NDRB No. 74.
Activities of the rival union for which the employer was allegedly responsible were overruled in three cases in which the objection concerned the employer's ratification of statements made by the union;\textsuperscript{383} the employer's enclosing a notice of a union meeting in his letters to his employees;\textsuperscript{384} and collaboration of the employer with the participating union.\textsuperscript{385} All were overruled due to the absence of any proof of the employer's responsibility or agency in the matter.

Further allegations include the charge that the employer colluded with a non-participating union in an effort to secure a "no" vote in the election which was overruled because of lack of evidence;\textsuperscript{386} the objection that the employer had restricted the intervenor's access to the plant for the purpose of carrying on its organizational activities;\textsuperscript{387} and that the employer had aided and abetted a participating union;\textsuperscript{388} all of which

\textsuperscript{383} 
Morgantown Full Fashioned Hosiery Company, et al., 107 NLRB No. 312.

\textsuperscript{384} 
General Electric Company, 115 NLRB No. 42.

\textsuperscript{385} 

\textsuperscript{386} 
Stokely Foods, Inc., 101 NLRB No. 20.

\textsuperscript{387} 
Parker Brothers, Company, 110 NLRB No. 15.

\textsuperscript{388} 
Capital Records, Inc., 118 NLRB No. 66.
were overruled on the basis that the Board will not consider as objections to an election, actions made the subject of unfair labor practice charges which have been dismissed.

B. Conduct During an Election

1. Failure to Furnish a Correct Eligibility List—Of the objections to the activities of employers in regard to the eligibility lists, three major categories are obvious: refusal to furnish a payroll list or list of eligible voters to the Board or the participating unions; failure to furnish the eligibility list in sufficient time to afford checking by the other parties to the election; and the furnishing of an incorrect list, disenfranchising eligible voters and including ineligible employees.

Two of the cases presented an objection to the refusal of the employer to furnish the eligibility list. One was overruled on the absence of any evidence that eligible voters were denied their voting rights as a result.\(^{389}\) However, in the second case where the employer's failure to produce the list was through inadvertance, the election was set aside on other grounds.\(^{390}\)

Six cases alleged untimely furnishing of the list with the

\(^{389}\) *Vulcan Tin Can Company*, 97 NLRB No. 32.

\(^{390}\) *F. H. Vahlsing, Inc.*, 114 NLRB No. 222.
result that the other parties were precluded from checking the list for accuracy. All of these objections were overruled on the grounds that the eligibility list was furnished in sufficient time to permit checking; the objecting party had not requested an opportunity to check the eligibility list nor was any such opportunity denied it; and that the objecting party should have challenged all voters whose eligibility was deemed questionable, and objections filed subsequent to the elections are treated as post-election challenges which the Board will not entertain.

Objections alleging the disenfranchising of eligible employees due to an incorrect eligibility list were presented in four cases. All of these objections were overruled on the bases that the employees omitted from the list could not have been discouraged from voting in view of the fact that the election had been adequately published and it is incumbent on each employee to assert his right to vote; the employees thus omitted were in


392 Gerber Products Company, 95 NLRB No. 112; Wesco Manufacturing Company, 97 NLRB No. 134.

393 C. C. Anderson Stores Company, 104 NLRB No. 21; Bonded Freightways, Inc., 105 NLRB No. 27; Vita Food Products, Inc., of Maryland, 116 NLRB No. 161.

394 Association of Motion Picture Producers, Inc., et al., 88 NLRB No. 240.
fact not eligible; 395 and the objecting party at no time made a request to have the employees thus disenfranchised, vote under challenge. 396 In a further case the investigation of the Regional Director revealed that two names had been omitted from the payroll list: one inadvertently and one deliberately, the employee voting under challenge. Since no prejudice resulted from the action (the challenge to the ballot was subsequently overruled) the Board refused to set aside the election. 397

Six of the cases charged the employer with having included the names of ineligible employees on the eligibility list. All of these objections were overruled on the grounds that the objecting party was informed of its right to challenge at the time of the election and no post-election challenges would be entertained; 398 and that the employees charged as ineligible were actually eligible voters. 399

395 C. C. Anderson Stores Company, 104 NLRB No. 21; Special Machine and Engineering Company, 85 NLRB No. 220.
396 Calcor Corporation, 106 NLRB No. 92.
397 Bridgeport Moulded Products, Inc., 115 NLRB No. 277.
398 Association of Motion Picture Producers, Inc., et al., 88 NLRB No. 240; Harpolsheimer Company, 103 NLRB No. 19; Calcor Corporation, loc. cit.; Phillips Petroleum Company, 108 NLRB No. 172; Earl Fruit Company, 107 NLRB No. 1.
399 Troy Engine and Machine Company, 115 NLRB No. 133.
A further case alleging the general objection that the furnished list was incorrect was overruled as a post-election challenge. 400

The charge that the employer had padded the payroll and furnished a list of employees, some of whom were not eligible, was overruled on the basis that the votes of the employees believed to be ineligible had been challenged. 401

2. Interference With Voting—Varied actions of employers have been made the subject of objections to an election on the ground that through such actions, the employers interfered with the process of voting. Two such cases, both involving marine transit lines, alleged that the employer refused to permit the election to take place on the date specified in the Direction of Election. Both objections were overruled on the basis that the balloting did not take place on the date scheduled, but was accomplished on the first available date that the steamship in question arrived at the site of the balloting. 402

Five of the cases involved allegations that the employer,

400 *Gerber Plastics Company*, 95 NLRB No. 112.
401 *Bob Saunders Company*, 118 NLRB No. 51.
402 *Kinsman Transit Company*, 78 NLRB No. 13; *Nicholson Trans* _sit Company*, 89 NLRB No. 155.
through his actions effectively prevented employees from voting. Three of these elections were set aside because immediately prior to the election the employer changed the hours of his shifts so that neither shift would be available during the scheduled voting hours;\textsuperscript{403} the employer, without notice to the Board, advanced the quitting time to forty-five minutes ahead of the hour scheduled for the election;\textsuperscript{404} when the name of an eligible employee was found to have been omitted from the eligibility list, a message to this effect was sent the employee which was intercepted by the employer with the result that the employee did not cast a ballot, which would have determined the outcome of the election.\textsuperscript{405} In two cases, similar objections were overruled on the ground that no eligible employees were disenfranchised by the action of the employer which included the refusal to give time off to vote, but the ultimate release of the employees;\textsuperscript{406} and the refusal to close the plant so that all employees could vote at one time.\textsuperscript{407}

\textsuperscript{403}Haskett Tool and Manufacturing Company, 77 NLRB No. 94.
\textsuperscript{404}Special Machine and Engineering Company, 85 NLRB No. 220.
\textsuperscript{405}Lykens Hosiery Mills, Inc., 88 NLRB No. 50.
\textsuperscript{406}Charrion Manufacturing Company, 88 NLRB No. 11.
\textsuperscript{407}Miami Paper Board Mills, Inc., 115 NLRB No. 230.
Other acts of interference with voting included allegations that the employer, subsequent to the Direction of Election, increased the number of employees through the adding of a new shift which was terminated prior to the election but certain of the new employees were retained, which activity was ruled sufficient to set aside the election. The Board also maintained that the sending of known supervisors to the polls to vote as a test case interfered with the exercise of free choice by the employees and the election was set aside.

In four cases, the objections that the employer had refused to permit viewing of the voting facilities prior to the election; the employer gave a list of laid-off employees to one of the participating unions; that two anti-union employers were present in the plant immediately prior to voting; and that the employer's attorney entered the polling area, protested the presence of an employee who had been discharged, stating that he was a trespasser and must leave, removed the eligibility list and returned it after some delay following

408 Smith-Rice Mill, Inc., 88 NLRB No. 104.
410 Telechron, Inc., 92 NLRB No. 113.
411 Buckeye Oil Company, Chemical Pulp Division, 102 NLRB No. 112.
412 Ancino Shirt Company, 117 NLRB No. 217.
the advice of the Board Agent that the employee would be permitted to vote under challenge;\(^4\) were overruled by the Board as not constituting interference with the election.

A subsequent case included the allegation that three of the voters were imbued with alcohol and made coercive remarks at the polls.\(^5\) The objection was overruled on the grounds that the employer was not responsible and did not encourage or condone the use of alcohol; nor would vehement advocacy on the part of rank-and-file employees warrant setting aside an election in the absence of violence.

Charges of surveillance of the voters by the employer or his representatives were alleged to have a coercive effect on the voters in eight cases. In three, the allegation that the employer was present at or near the polling place during the election was overruled inasmuch as there was no evidence to support the fact that they were in the polling place during balloting.\(^6\) Objections in three cases to the presence of patrolmen in the polling area were overruled on the ground of absence

\(^4\) *Harry Davies Molding Company*, 117 NLRB No. 223.

\(^5\) *A. Werman and Sons, Inc.*, 106 NLRB No. 198.

\(^6\) *Safety Motor Transit Corporation, Roanoke Railway and Electric Company*, 83 NLRB No. 57; *Nicholson Transit Company*, 89 NLRB No. 155; *Encino Shirt Company*, 117 NLRB No. 217.
of any evidence of electioneering. The Board ruled the elections set aside in two cases where there were instances of checking off the names of employees as they left to vote by the president of the company, and by a rank-and-file employee. Despite the lack of any proof of interference thereby, the actions were in distinct violation of Board policy which prohibits the keeping of a list of persons who have voted.

Objections in six cases charged the employer with having failed or refused to post the notices of election, thereby not properly notifying eligible voters of the election. In two of these, the failure to post the notices was due to the fact that they had not been received by the employer. In the first of these cases, the notices and sample ballot from a previous election (union authorization proceeding) were posted, but the election was set aside on the ground that the employees were not properly apprised of the election in question. However, in the latter case, the objection was overruled in view of the fact that the employer had called a meeting of employees three

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416 Eagle Overall Supply Company, Inc., et al., 31 NLRB No. 61; Pacific Maritime Association and its Member Companies; 112 NLRB No. 160; Vita Food Products, Inc., of Maryland, 116 NLRB No. 161.

417 International Stamping Company, 97 NLRB No. 101.

418 Belk's Department Store of Savannah, Georgia, Inc., 98 NLRB No. 46.

days prior to the date of the balloting, giving full particulars of the election, and posting a notice prepared by his attorney publicizing the election.420

Two similar allegations were overruled by the Board on the basis that the employees were properly advised of the coming election by notices posted somewhere in the plant and by those distributed by the Board Agent, as evidenced by the percentage of employees who cast ballots.421

Two remaining objections were sustained on the ground that the election was deemed to have been inadequately published.422

In two cases objections were filed which alleged the posting of notices for an inadequate period of time,423 both of which were overruled on the basis that the Board has no fixed rule regarding the length of time the notice is to be posted.

In the remaining case in this category, the objection

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421 Robberson Steel Company, 114 NLRB No. 65; The Paphs MIouth Company, 115 NLRB No. 250.
charged the employer with having failed to notify twenty-one temporarily laid-off employees in time to enable them to vote. The objection was overruled by the Board on the evidence that night-letters had been sent to the employees the day before the election, properly advising them of their right to vote.

Several objections filed against the activities of employers involved **electioneering at the polls**, either prior to or during balloting. Of the cases alleging electioneering by the employer or his representatives at the polls during the voting periods, five of the objections were overruled due to lack of merit;\(^{425}\) or lack of evidence;\(^{426}\) or on the ground that the alleged misbehavior did not constitute electioneering,\(^ {427}\) but was merely a wave,\(^ {428}\) or a greeting.\(^ {429}\) A similar allegation was overruled on the ground that although electioneering by supervisory employees did take place in the polling area during balloting, such conduct did not take place in the presence of

\(^{424}\) *Wesco Manufacturing Company*, 97 NLRB No. 134.

\(^{425}\) *Safety Motor Transit Corporation*, *Roanoke Railway and Electric Company*, 83 NLRB No. 57.

\(^{426}\) *Avon Products, Inc.*, 116 NLRB No. 252.

\(^{427}\) *The Pemouth Company*, 115 NLRB No. 250.

\(^{428}\) *Consolidated Cigar Corporation*, 115 NLRB No. 69.

\(^{429}\) *Miami Paper Board Mills, Inc.*, 115 NLRB No. 230.
a substantial number of voters.\footnote{\textit{\textit{Reno Oil Company}, 101 NLRB No. 57.}} \footnote{\textit{\textit{Spartan Aircraft Company}, 111 NLRB No. 210.}} \footnote{\textit{\textit{Bull Insular Line, Inc., et al.}, 108 NLRB No. 126.}}

An objection alleging that a supervisor displayed a poster advocating a vote against the union while standing in the line of voters was sustained by the Board and the election set aside because such action interfered with the exercise of free choice.

Objections to the conduct of the employer during balloting were also filed in a case involving a mail election. The objectionable activity consisted of the employer directing a letter to the eligible employees during the period of mail balloting, asserting the opposition of the NLRB to the petitioning union.\footnote{\textit{\textit{Bull Insular Line, Inc., et al.}, 108 NLRB No. 126.}} The objection was overruled by the Board in its decision that the letter could not have conveyed the impression that the Board was prejudiced against the union; nor was the timing of the communication such as to constitute interference.

Three of the cases alleged electioneering by the employer or his agents outside of the polls but during the balloting. In all of these cases, the objections were overruled on the bases that the employer was removed from the entrance to the
polls;\textsuperscript{433} that the voters passed the supervisors on their way to the polls which in no way suggests impropriety;\textsuperscript{434} and that the electioneering by company officers throughout the plant during balloting did not constitute interference.\textsuperscript{435}

The charge of electioneering within the restricted area was overruled in two cases in which the objectionable activity took place prior to the opening of the polls.\textsuperscript{436}

Two of the cases alleging impropriety during the balloting were remanded to a hearing for the purpose of resolving material issues.\textsuperscript{437}

In nine of the cases, the alleged electioneering consisted of the transportation of the eligible voters to the polls by the employer. All of these objections were overruled by the Board on the grounds that although the activity did take place, the employer in no way indicated that voting was compulsory;\textsuperscript{438}

\textsuperscript{433}Nicholson Transit Company, 89 NLRB No. 155.
\textsuperscript{434}Dumont Electric Corporation, 97 NLRB No. 25.
\textsuperscript{435}Radiant Lamp Corporation, 116 NLRB No. 5.
\textsuperscript{436}General Steel Tank Company, Inc., 111 NLRB No. 30; Personal Products Corporation, 116 NLRB No. 47.
\textsuperscript{438}Gray Drug Stores, Inc., 79 NLRB No. 154.
the transportation was supplied without discrimination; it was the only transportation available; and the objection lacked merit and evidence of electioneering.

439 John S. Barnes, 90 NLRB No. 177.

440 Knights Manufacturing Company, 103 NLRB No. 99.

441 Safety Motor Transit Corporation, Roanoke Railway and Electric Company, 83 NLRB No. 57; Charron Manufacturing Company, 83 NLRB No. 11; United Screw and Bolt Corporation, 91 NLRB No. 156; Vulcan Tin Can Company and Vulcan Stamping and Manufacturing 97 NLRB No. 32; Earl Fruit Company, 107 NLRB No. 1; Garver Aviation Service Corporation, 114 NLRB No. 57.
CHAPTER IV

OBJECTIONS FILED AGAINST THE ACTIVITIES OF UNIONS

The objections to representation elections which have been filed against the activities of the unions seeking representation, like those pertaining to the activities of the employer, fall into two major categories: (1) conduct preceding the election; and (2) conduct during the balloting.

A. Conduct Preceding the Election

1. Promises of Benefit—With regard to the conduct of the union and its representative prior to the election, a common objection of employers was the promise of future benefits to the employees in an effort to gain their representation in the ensuing election. In two cases, the general allegation of "false and illegal promises" was filed, with both objections being overruled in that the promises constituted legitimate campaign propaganda and were within the bounds of the permissible area of electioneering.442

In six cases, the promises took the form of promises of

442 Albion Malleable Iron Company, 104 NLRB No. 31; Higgins Inc., 106 NLRB No. 145.
increased wages and insurance benefits. All of these objections were overruled in that the activity was merely legitimate and customary campaign propaganda.

Other promises of benefit, the objections to which were overruled by the Board on the same basis, included the promise of free membership in the union; the promise of a "victory party" if the union secured the required majority; and the promise to force the employer to permanently hire temporary employees if they voted for the union.

Related to the objections to promises of benefit are the allegations that the unions in question offered bribes and gratuities to the employees in an effort to obtain their votes. In two cases, the objections contended that the union purchased the votes which enabled it to win the election.

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443 Trinity Steel Company, 97 NLRB No. 235; Blue Banner Laundry and Cleaners, 100 NLRB No. 10; Southern Fruit Distributors, Inc., 104 NLRB No. 39; Shirlington Supermarket, Inc., et al., 106 NLRB No. 139; Omitec Manufacturing Company, 111 NLRB No. 148; Burson Plant of Kendall Company, 115 NLRB No. 222.

444 The De Vilbiss Company, 102 NLRB No. 90; Lobue Brothers, 109 NLRB No. 173.

445 R. H. Oehlrich Manufacturing Company, 114 NLRB No. 147.

446 The De Vilbiss Company, loc. cit.

447 Chicopee Manufacturing Corporation, 116 NLRB No. 21; Eastern Metal Products Corporation, 116 NLRB No. 149.
these cases the objections were overruled due to the fact that the employer failed to support the allegation. In three of the elections, the objections included the charges that the union had purchased meals and refreshments for the voters; \(^{448}\) granted financial benefits to certain employees to induce them to work on behalf of the union; \(^{449}\) and reimbursed several employees for expenses incurred in union activity without requiring an accounting. \(^{450}\) All of these objections were overruled.

2. Threats, Violence, and Threats of Violence—One of the frequently mentioned tactics of unions seeking representation consisted of threats made to the eligible employees of the consequences that will result upon their refusal to join and/or vote for the union. One of the most common of these threats is that of loss of employment. Of the objections alleging such a threat, seven were overruled on the basis of lack of substantial evidence that the threat had, in fact, been made, as

\(^{448}\) The De Vilbiss Company, 102 NLRB No. 90; Southern Fruit Distributors, Inc., 104 NLRB No. 39.

\(^{449}\) Southern Fruit Distributors, Inc., 104 NLRB No. 39.

451 charged; while three were overruled because the threat consisted merely of legitimate campaign propaganda; e.g., the employees should vote for the union in order to get a closed shop so that employees who would not join the union "would be out;" the employer would lay-off all colored employees if the union was not elected to safeguard their jobs; or that the threat (employees would be out of work for six months if the intervenor and not the petitioner was elected) was merely a prediction of possible consequences and not a proscribed threat. 454

One objection was overruled because the threat of loss of employment had been made by a rank-and-file employee who was not an agent of the petitioning union and hence the threat could not be imputed to the union. 455 In a further case, the objection to a threat of loss of employment was overruled in that it was not a statement of reprisal within the power of

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451 Hincher Manufacturing Company, 106 NLRB No. 231; Lobue Brothers, 109 NLRB No. 173; Consolidated Cigar Corporation, 115 NLRB No. 69; Chicopee Manufacturing Corporation, 116 NLRB No. 21; Southern Waste Material Company, Inc., 117 NLRB No. 213; G. F. Lesater, 118 NLRB No. 69; Chas. T. Brandt, Inc., 118 NLRB No. 123.

452 Lincoln Plastics Corporation, 112 NLRB No. 43.

453 Kreage-Newark, Inc., 112 NLRB No. 122.

454 West Gate Sun-Harbor Company, 93 NLRB No. 133.

455 W. A. Ransom Lumber Company, 114 NLRB No. 219.
the union to take. 456

In two cases, objections alleging the threat of loss of employment were sustained and the elections set aside, the Board ruling that such a threat made impossible the holding of a free election. 457 In the latter case, such a decision was rendered by the Board even over the exceptions of the intervening union that the petitioning union, which filed the objection was guilty of the same behavior. The Board stated that the "unlawful conduct by the petitioner neither extinguishes nor justifies the intervenor's infringement of that right."

In two cases, the alleged threat took the form of threats to close the plant in the event the union was not selected as the bargaining representative. In both cases the Board refused to set aside the election on the bases that the threat had been sufficiently vitiated by statements of the employer; 458 and that the threats were campaign propaganda which the Board will not police in absence of coercion. 459

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456 Otis Elevator, 114 NLRB No. 234.
457 Stern Brothers, 87 NLRB No. 10; Caroline Poultry Farms, Inc., 104 NLRB No. 37.
458 Bender Playground Equipment, Inc., 97 NLRB No. 241.
459 Radio Corporation of America, (RCA Victor Division), 106 NLRB No. 251.
The threat of a 15 per cent wage cut and the loss of vacation pay by the union was alleged in one case. The Board declined to sustain the objection due to the fact that it deemed the effect of the threat duly dissipated by a notice of denial posted by the employer. 460

In two cases, objections were filed by employers to the union's threat to impose penalties on those employees who did not join and vote for the union, which penalties were to take the form of a larger initiation fee following the election. Both cases were overruled on the grounds that such activity was a correct statement of the union's by-laws; 461 and that reduced initiation fees during the pre-election campaign was a permissible activity. 462

Objections to the activities of the intervening union were filed in one election by a petitioning union, to the effect that the intervenor had coerced employees by threats of boycott and refusal to honor a picket line if the petitioner won the election. 463 In declining to set aside the election, the Board

460 The Fairbanks Company, 81 NLRB No. 132.
461 J. J. Newberry Company, 100 NLRB No. 21.
462 The Gruen Watch Company, the Gruen National Watch Case Company, 103 NLRB No. 104.
463 Muntz Television, Inc., 94 NLRB No. 176.
ruled that the intervenor would, in any event, be privileged to refrain from this type of economic activity.

Regarding instances of coercion, the objections filed by employers in four cases, alleged generally that by unlawful acts of restraint and coercion, the employees were prevented from exercising their free choice. Three of these objections were overruled in that they raised no material or substantial issues; while one was overruled due to lack of substantiating evidence. 465 In two similar cases, the coercive statements were contained in preselection circulars distributed by the union and its agents. The objections were overruled in that the statements fell within the category of preselection propaganda; and that there was no evidence to support the fact that the literature was coercive. 467

Five of the cases contained the allegation that the members of the union had perpetrated assaults and acts of violence against eligible employees. Two of these elections were set

464 Smokey Mountain Stages, Inc., 81 NLRB No. 78; Minneapolis Knitting Works, 84 NLRB No. 92; Mallinckrodt Chemical Works, 86 NLRB No. 95.

465 Lunts Iron & Steel Company, 97 NLRB No. 11.


467 Wm. R. Whittaker Company, Ltd., 94 NLRB No. 171.
aside on the ground that such action had prevented the election from reflecting the true intent of the employees; 468 while three objections were overruled on the bases of lack of merit, 469 evidence, 470 or relationship to the election in question as the violence had occurred in connection with a strike at another plant. 471

The charge of threats of violence made by the union or its agents was filed in thirty-five cases. In twelve of these, the objections were overruled by the Board on the basis of lack of evidence that the threats had been made by the union or by persons acting in behalf of the union. 472 The Board also overruled the objections in seven of the cases on the basis that the

468 Bloomingdale Brothers, Inc., 97 NLRB No. 144; Stern Brothers, 87 NLRB No. 10.
469 Newrufc, Inc., 96 NLRB No. 92.
470 Bender Playground Equipment, Inc., 97 NLRB No. 241.
471 Southdown Sugars, Inc., 108 NLRB No. 11.
472 Cities Service Oil Company of Pennsylvania (Marine Division), 77 NLRB No. 143; Continental Can Company, 60 NLRB No. 124; Sunbeam Corporation, 89 NLRB No. 81; Radio Corporation of America (Victor Division), 90 NLRB No. 291; Marmon Bag Company, Inc., 103 NLRB No. 59; Shirlington Supermarket, Inc., et al., 106 NLRB No. 109; Underwood Corporation, 108 NLRB No. 199; Thomas Electronics, Inc., 109 NLRB No. 165; J. Spevak and Company, 110 NLRB No. 156; N. E. Liebman and Company, Inc., 112 NLRB No. 14; W. A. Ransom Lumber Company, 114 NLRB No. 219; Furniture City Upholstery Company, 115 NLRB No. 234.
threats of violence had been made, but merely by rank-and-file employees who had no authority to act as agents for the petitioning union,\textsuperscript{473} the Board ruling in one case that "agency responsibility cannot be predicated upon the degree of favor appearing in rank-and-file employees' electioneering activities."\textsuperscript{474}

Of the remaining cases alleging similar threats, three were overruled on the ground that the statements and activities in question did not constitute threats;\textsuperscript{475} two, on the basis that


\textsuperscript{474}J. J. Newberry Company, loc. cit.

\textsuperscript{475}Cities Service Oil Company of Pennsylvania, (Marine Division), 87 NLRB No. 60; Vulcan Furniture Manufacturing Corporation, 97 NLRB No. 177; McCarty Holman Company, 114 NLRB No. 242.
objectionable activity was legitimate campaign propaganda;\textsuperscript{476} three, in that the threats were not made during the sensitive period;\textsuperscript{477} three, on the ground that the incident was too isolated and too remote to warrant the election being set aside;\textsuperscript{478} one, on the basis that the objection lacked merit;\textsuperscript{479} and one because the activity had been made the subject of an unfair labor practice charge which the Board refused to entertain.\textsuperscript{480}

In the three remaining cases containing allegations of threats of violence, the objections were sustained by the Board and the elections set aside on the basis that such conduct interfered with the free and untrammelled choice of the employees.

3. Campaign Trickery, Falsity and Inaccuracy—Of the elections to which objections have been filed, the allegation that

\textsuperscript{476} Wade and Paxton, 90 NLRB No. 184; Machinery Overhaul Company, Inc., 115 NLRB No. 272.

\textsuperscript{477} Sarasota Herald Tribune, 112 NLRB No. 149; Shoreline Enterprises of America and Shoreline Packing Corporation, 114 NLRB No. 120; M. A. Woodworth Company, 115 NLRB No. 197.

\textsuperscript{478} Gastonia Combed Yarn Corporation, 109 NLRB No. 87; Bridgeport Casting Company, 109 NLRB No. 110; White’s Uvalde Mines, 110 NLRB No. 35.

\textsuperscript{479} Clauson’s Garage Company, 107 NLRB No. 303.

\textsuperscript{480} Westchester Broadcasting Corporation, 95 NLRB No. 139.

\textsuperscript{481} G. H. Hess, Inc., 82 NLRB No. 52; Stern Brothers, 87 NLRB No. 10; Poinsett Lumber and Manufacturing Company, 116 NLRB No. 251.
the union had interfered with the freedom of choice of the employees involved, by means of campaign trickery, appeared in many cases. The objectionable activity consisted of the persuading of former employees who were union members to seek re-employment in the plant to persuade and coerce other employees to join the union, which was overruled as raising no material or substantial issues;\textsuperscript{482} the surveillance of an employer's meeting off company premises and after working hours by union agents who, after being refused admittance, distributed union literature to the attending employees, which was likewise overruled in that the act did no prevent free choice at the election;\textsuperscript{483} the obtaining from employees of signed authorization cards which contained a pledge to vote for the union from which the employees were not released prior to the election, which the Board would not sustain on the grounds that the solicitation of pledges was a permissible campaign tactic in the absence of coercion, and the invalidity of the contention that the signatories were irrevocably committed to vote for the union.\textsuperscript{484}

The interruption of an employer's speech by a fire siren which prevented the conclusion of the speech and the presenta-

\textsuperscript{482} Southern Fruit Distributors, Inc., 104 NLRB No. 39
\textsuperscript{483} Southern Car and Manufacturing Company, 107 NLRB No. 66.
\textsuperscript{484} Frank Smith and Sons, 112 NLRB No. 29.
tion of the employer's position to its employees, (due to the
*Peerless Plywood Rule*), was overruled on the bases that respon-
sibility for the act could not be attributed to the union and
the Board policy does not guarantee sufficient time for the
last-minute expression of views. 485 In an additional case, the
employer charged the union with having deliberately invited
the arrest of its organizers for unlawful conduct and then vil-
lifying the employer in false press releases and paid advertise-
ments to inflame the employees against the employer. 486 The ob-
jection was overruled on the grounds that the union did not
deliberately seek arrest and the employer had had ample oppor-
tunity to reply.

Objections were also filed by an employer to the activity
of a union in perpetrating a strike to further its advantage in
the election. 487 The Board set the election aside ruling that:

Promises of benefit made to employees and acts accord-
ing prestige to unions made after a question of repre-
sentation has been found to exist by the Board and prior
to the resolution of this question by an election, tends
to interfere with the employees' freedom in choosing
representatives (which) must be preserved even if col-
lective bargaining is disrupted for a limited period...
the agreement between the employer and the (union)
made and publicized during the crucial period after
the *Direction of Election* and prior to the conduct of
the election, interferes with the conduct of the election.

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486 *E. I. Du Pont De Nemours Company*, 105 NLRB No. 104.
487 *Electric Auto-Lite Company*, 116 NLRB No. 100.
In four further cases it was asserted that the election should be set aside because of the confusion which resulted in the minds of the voters concerning the election due to the conduct of the participating unions. In the first of these cases, it was alleged that the union confused the employees as to the collective bargaining status of the company by using a similar name of another company in making certain representations to the employees. The objection was overruled due to lack of supporting evidence. In another case the employer charged the union with having filed unfair labor practice charges against him leading the employees to believe that he had done something illegal and they needed the protection of the union, and then using the attendant publicity to breed confusion in the minds of the voters. The Board declined to set aside the election. In a further case, the employer claimed that the employees in the unit became confused over the solicitation of both participating unions (joint petitioners) and in voting for both were confused as to which would be the bargaining representative. The Board refused to set aside the election in that the names had appeared together on the Notice and ballot and the Decision

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488 Darling Retail Shops Corporation, 102 NLRB No. 42.
489 Sears, Roebuck and Company, 117 NLRB No. 73.
490 W. A. Hanson Lumber Company, 114 NLRB No. 219.
and Direction of Election provided that the employer could insist they bargain jointly, if elected. In the remaining case in this group, the employer alleged that a representative of the petitioning union had presented himself to the assistant manager as a Board Agent. The objection was overruled on the basis that no misrepresentation was made to any eligible voter and there was no interference with a free election thereby.

In eight of the cases studied, allegations of campaign trickery by a union were filed by another union on the ground that its position was thereby prejudiced. In two of these cases, the charges were filed against a union, not appearing on the ballot, but which had represented the employees at the time of the election, alleging that the union had campaigned for a "no" vote. Both objections were overruled by the Board inasmuch as the employer had made every attempt to stop such activity; and there was no proof that such activity had occurred. In a similar case, the charges were filed against a union which was on the ballot in the original election but did not qualify for the run-off. The objecting party charged the union with having campaigned against it. The objection

492 E. I. Dupont De Nemours and Company, 81 NLRB No. 39.
was overruled by the Board by virtue of a leaflet, published by
the union prior to the run-off, repudiating such statements. Of the remaining cases, one involved an allegation that adherents
of one union had been prevented from attending union meetings by
agents of the opposing union who had also made threats and en-
gaged in coercive activity. The objection was overruled on
the basis that any effects which may have resulted were dissi-
pated by the lapse of time. Another, contained a charge that
the intervening union had coerced employees in their choice of
a bargaining representative, which was overruled by the Board
on the ground that the "coercion consisted merely of campaign
arguments." A further objection consisted of an allegation
that the position of the intervening union was prejudiced by
the fact that its leaders had been forced to leave town by
adherents of the petitioning union. The objection was over-
rulled on the basis that the incident occurred six months prior
to the election and could not have resulted in prejudice against
the intervener at the time of the election. In the two remain-
ing cases, it was charged that a union had negotiated and pro-

494 International Smelting and Refining Company, 107 NLRB No. 16.
495 Leclerc Gas Light Company, 80 NLRB No. 133.
496 Westinghouse Electric Corporation, 91 NLRB No. 150.
497 Radio Corporation of America (Victor Division), 90 NLRB
No. 228.
ceeded to execute a contract by means of picketing and secondary boycott action. In both cases the objections were overruled because the activity did not constitute interference; and the allegations had been made the charges in an unfair labor practice case which was pending at the time of the election.

Another allegation of campaign trickery appeared in six cases in which it was alleged that the supervisors had campaigned for the union seeking representation thereby inferring the employer's support of the union. In the first of the cases, the objection was overruled by the Board in that the employee so acting was not a supervisor within the meaning of the Act. A further objection, the Board overruled on the ground that the incidents involved a single foreman who merely expressed his views in answer to employees' questions. Two cases resulted in the Board ruling that the campaigning of the supervisors had been brought to the attention of the employer who had had ample time to disabuse its employees of the effects of the conduct, and that the activity had been sufficiently

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498 *West Gate-Sun Harbor Company*, 93 NLRB No. 133.

499 *Alaska Salmon Industry, Inc.*, 94 NLRB No. 15.

500 *Farm Tools, Inc.*, 93 NLRB No. 228.


disavowed by the employer. 503 Another of the objections was also overruled in that the campaigning did not take place during the sensitive period. 504 The remaining case contained the charge that the union had sent telegrams to the employees which were addressed in care of the supervisor and delivered by him, thus having the effect of the foreman directing the employees to vote for the union. 505 Such an allegation was deemed by the Board to have been insufficient influence to warrant the setting aside of the election.

In four cases objections were filed to the campaigning and soliciting of the union and its agents on company time and property. In the first of these, the Board overruled the objection as lacking in merit in that the activity consisted merely of a union organizer stepping two feet inside company property while distributing campaign leaflets. 506 In another, the objection was overruled since no evidence was found to support the charge of campaigning and soliciting on company time and property. 507 The allegation that the union's local presi-

503 Clauson's Garage Company, 107 NLRB No. 303.
504 Lincoln Plastics Corporation, 112 NLRB No. 43.
505 International Harvester Company, McCormick Works, 100 NLRB No. 198.
506 Arnold Stone Company of New York, Inc., 102 NLRB No. 98.
507 Underwood Corporation, 108 NLRB No. 199.
dent, an employee, circulated throughout the plant for three
days prior to the election during which time he campaigned
for the union, was likewise overruled on the basis that the
interviews lasted three to five minutes and were not restrain-
ing or coercive in nature. The charge of violation of a
no-solicitation rule was overruled due to the fact that although
the union did solicit on company time and property, the employer
did not request the agent to leave and thereby waived the no-
solicitation rule. The Board ruled that although the viola-
tion of such a rule might disrupt the employer's business, it
did not prevent the holding of a free election.

4. False and Inaccurate Campaign Propaganda--The allegation
that the union seeking representation had distributed circulars
to the employees in question which the objecting party charged
to be false, scandalous, misleading and inflammatory was made
the subject of objections to eighteen representation elections.

508 Eastern Metal Products Corporation, 114 NLRB No. 56.
510 Phil. Lager Beer Brewers' Association, 79 NLRB No. 47;
Craddock-Ferry Shoe Corporation, 80 NLRB No. 185; Gate City Ta-
ble Company, Inc., 87 NLRB No. 146; Red Wing Potteries, Inc., 88
NLRB No. 247; Wiley Manufacturing, Inc., 93 NLRB No. 267; Gray
Drug Stores, Inc., 95 NLRB No. 28; Western Electric Company, Inc.,
96 NLRB No. 55; Merck and Company, Inc., 104 NLRB No. 124; E. I.
Dupont De Nemours and Company, Inc., 105 NLRB No. 104; Galco
Corporation, 106 NLRB No. 92; Higgin, Inc., 106 NLRB No. 145;
Thomas Electronics, Inc., 109 NLRB No. 165; Comfort Slipper Cor-
poration, 112 NLRB No. 25; Dornback Furnace and Foundry Company
113 NLRB No. 56; Chicopee Manufacturing Corporation, 116 NLRB No.
The objections in each of these cases were overruled by the Board in that the activity constituted legitimate preélection propaganda. The policy of the Board in regard to preélection propaganda may best be summarized by its decision in the 

_Merck and Company case_ in which it ruled:

Absent threats or other elements of intimidation we will not undertake to censor or police union campaigns or consider the truth or falsity of official union utterances, unless the ability of employees to evaluate such utterances has been so impaired by the use of forged campaign material or other campaign trickery that the uncoerced desires of the employees cannot be determined in an election.

The Board also overruled the objections to false and misleading statements circulated by the union at meetings and elsewhere, which were filed in eight cases, on the basis that the employees involved should be able to evaluate such propaganda. In a case containing a similar objection, the Board declined to set aside the election in view of the fact that the activity alleged as interfering could not be attributed to the union or

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510.21; Allis-Chalmers Manufacturing Company, 117 NLRB No. 105; Bum and Smith Shoe Company, 117 NLRB No. 229; Wheelerweld Division, C. H. Wheeler Manufacturing Company, 118 NLRB No. 82.

511.104 NLRB No. 124.

512. Kearney and Trecker Corporation, 96 NLRB No. 135; Blue Banner Laundry and Cleaners, 100 NLRB No. 10; Comfort Slipper Corporation, 112 NLRB No. 28; N. N. Hills Brass Company, 114 NLRB No. 35; Gong Bell Manufacturing Company, 114 NLRB No. 68; B. H. Osbrink Manufacturing Company, 114 NLRB No. 147; Mason Can Company, 115 NLRB No. 224; The Elm City Broadcasting Corporation, 115 NLRB No. 250.
its agents. 513

An objection alleging the publication of a telegram sent by the intervening union to itself, falsely signed by the petitioning union, in which the petitioner apologized for the smear campaign it had conducted against the intervenor was sustained by the Board and the election set aside on the basis that such an act had lowered the campaign to a level which impaired free and untrammeled expression of choice by the employees. 514

A similar decision was rendered by the Board in a case containing an allegation that the petitioning union had distributed a circular in which it misrepresented the wage rates for several classifications in three other companies with whom it had contracts. When such propaganda was refuted by the employer, the union's circular contended the employer's information was based on the old contracts which was false in that new contracts were now in effect. The Board set the election aside on the ground that the union's conduct, in falsely presenting the inaccurate wage-rates in contracts which had not been negotiated or signed were not in force, exceeded the limits of legitimate

513 *Benton's Cloak and Suit Company*, 97 NLRB No. 200.

514 *United Aircraft Corporation, Pratt and Whitney Aircraft Division*, 103 NLRB No. 15.
propaganda and lowered the standards of campaigning to a level which impaired free expression at the election. However, identical objections filed by employers in two subsequent cases were overruled by the Board because the union's handbill, although containing some exaggerations, could have been true for a number of employees and the union did not reaffirm its statements after refutation by the employer as in the previous case.

In two subsequent cases, the Gummed Products Rule was invoked by the Board in setting aside elections in which the union falsely represented the rates and conditions obtained in its other contracts and denied the employer the opportunity to reply by the timing of its leaflet too close to the election; and in which the union distributed a circular immediately prior to the election in which it listed rates in effect provided by its contracts with other plants which rates and contracts were under negotiation at the time of the distribution and did not become effective until some time later. In setting aside the latter election the Board ruled that:

When one of the parties deliberately misstates material material...

515 The Gummed Products Company, 112 NLRB No. 141.
516 Horder's Inc., 114 NLRB No. 125; Otis Elevator Company, 114 NLRB No. 234.
518 The Calidyne Company, 117 NLRB No. 145.
facts which are within its special knowledge under such circumstances that the other party cannot learn about them in time and point out the errors to employees and the latter do not have independent knowledge which will enable them properly to evaluate the misstatements, the Board will set aside the election upon the ground that it does not reflect the free desires of the employees.

5. Distribution of Marked Sample Ballots--A time-honored tactic of unions seeking representation has been the circulation of sample ballots marked in its favor among the employees whose representation is sought. Among the early cases, the Board sustained only the objections in which the sample ballots bore the name and title of the Regional Director ruling that such a designation gave the erroneous impression that the Regional Director and Board were in support of the participating party.519 However, similar objections were overruled by the Board since such activity constituted legitimate campaign propaganda because the ballots circulated did not contain any names or titles and were clearly marked "sample."520 In a further case, the Board set aside an election on the ground that the petitioning union had distributed a handbill which purported to be a sample

519 The Am-O-Krome Company, 92 NLRB No. 159; Pennington Brothers, Inc., 93 NLRB No. 141.

520 Gate City Table Company, Inc., 87 NLRB No. 146; Gray Drug Stores, Inc., 95 NLRB No. 20; L. Gordon and Son, Inc., 100 NLRB No. 71; Bridgeport Castings Company, 109 NLRB No. 110.
copy of the Board's official ballot which had been marked and
the wording changed to promote the union's propaganda; so that
the handbill created the impression that the Board endorsed the
union's propaganda claims.\textsuperscript{521} In the Allied Electric Products
case,\textsuperscript{522} the Board deemed the use in the pre-election campaign
of a marked official sample ballot as suggestive of the fact
that the material appearing thereon bears the approval of the
Agency. In setting the election aside the Board ruled that:

In the future it will not permit the reproduction of
any document purported to be a copy of the Board's
official ballot, other than one completely unaltered
in form and content and clearly marked sample on its
face, and upon objection validly filed, will set aside
the results of any election in which the successful
party has violated this rule.

Following this decision, the Board ruled six elections set a-
side\textsuperscript{523} on the bases that the rule was to apply to all future
cases, not merely future elections;\textsuperscript{524} that violation by the
other parties to the election did not excuse the use of the
altered ballot by the successful party;\textsuperscript{525} and that despite the

\textsuperscript{521} Anderson Air Activities, 106 NLRB No. 93.
\textsuperscript{522} 109 NLRB No. 177.
\textsuperscript{523} Tube Reducing Corporation, 110 NLRB No. 175; Scharco
Manufacturing Corporation, 110 NLRB No. 267; Memphis Furniture
Manufacturing Company, 111 NLRB No. 31; Hoffman Hardware Company;
112 NLRB No. 125; Wallace and Tiernan, Inc., 112 NLRB No. 163;
The De Vilbiss Company, 114 NLRB No. 148.
\textsuperscript{524} Tube Reducing Corporation, loc. cit.
\textsuperscript{525} Scharco Manufacturing Company, loc. cit.
lack of similarity between the marked sample ballot and the Board's official ballot and the propaganda material which accompanied it, the Board's standards had not been met. 526

However, in two cases, the Board overruled the objections and declined to set aside the election on the ground that the objectionable activity consisted merely of the distribution of a leaflet on which the ballot boxes only had been reproduced, which activity is not proscribed by the Allied Electric Products Rule. 527

6. Pre-election Speeches—Based on the Bonwit Teller Doctrine a violation was alleged to have occurred when a union representative addressed the voters over a loudspeaker system during the first twenty minutes of the initial one of three separate two-hour voting periods. 528 Such activity was alleged by the employer to have deprived him of an equal opportunity to address his employees. The objection was overruled by the Board on the basis that the speaker had stopped when so requested by the Board Agent and the conduct could not have had substantial effect on the employees.

526 Wallace and Tiernan, Inc., 112 NLRB No. 163.
527 Lincoln Plastics Corporation, 112 NLRB No. 43; Consolidated Cigar Corporation, 115 NLRB No. 69.
528 Higgins, Inc., 106 NLRB No. 145.
Violation of the Peerless Plywood Rule, which prohibits the making of speeches to massed assemblies on company time during the twenty-four hour period preceding the election, was alleged to have occurred in nine of the cases studied. The objections were overruled in eight of these on the basis that the speeches were made from loudspeakers outside the plant and were heard by the employees on their own time; the meetings were held on the employees own time and attendance was voluntary; and that the activity did not consist of election speeches made to massed assemblies of employees, but of the distribution of balloons bearing campaign slogans, or of campaign leaflets. The election in the remaining case was set aside because the union had addressed employees on company time from a sound truck in front of the plant which was heard by a substantial number of employees inside the plant, which constituted a violation in substance if not in form.

529 Underwood Corporation, 108 NLRB No. 199; Repeal Brass Manufacturing Company, 110 NLRB No. 24.

530 Ohmite Manufacturing Company, 111 NLRB No. 148; Delco, Inc., 116 NLRB No. 102; Superior Sleeprite Corporation, 117 NLRB No. 65.


532 Autoryre Division of Eko Products Company, 116 NLRB No. 11.

533 Phelps Dodge Copper Products Corporation, 111 NLRB No. 152

534 U. S. Gypsum Company, 115 NLRB No. 104.
B. Conduct During the Election

1. Interference with the Voting—In two of the cases, the union was alleged to have been responsible for the defacing of the official Notice of Election posted on bulletin boards. The objections in both cases were overruled by the Board on the bases that the act could not be definitely attributed to the union.

In five cases, objections were filed charging that the participating union had interfered with the balloting by confusing the eligible voters. In three of these instances, the allegations concerned the activity of the union in inducing former and temporary employees to vote in the election.\(^535\) In each of these cases, the Board overruled the objections in that the ballots were cast under challenge and the questioning and submission to the challenges caused no disorder and had no effect on the qualified voters. In the two remaining cases, the shouts that the election was over by adherents of the union while the balloting was still in progress was ruled insufficient to warrant the setting aside of an election;\(^537\) as was the wearing of campaign buttons by a participating union with the same color

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\(^535\) Lloyd A. Fry Roofing Company, 108 NLRB No. 178; Murray Chair Company, Inc., 117 NLRB No. 151.

\(^536\) Hitchcock Corporation, 110 NLRB No. 85; Minerals and Metals Corporation, 110 NLRB No. 107; Lloyd A. Fry, loc.cit.

\(^537\) Stern Brothers, 87 NLRB No. 10.
scheme as the badges worn by the Board Agent and the observers.

In the latter case, the Board deemed the coincident failed to misleading the voters as to the standing of the union with the NLRA.

In a subsequent case, an employer objected to the activity of a union representative in advising certain employees that it was not necessary to vote at the election and failure to vote would be counted as a vote against the union, thereby dissuading four employees from voting.\textsuperscript{539} The objection was overruled by the Board on the ground that the only employees failing to vote were those absent from the plant on the day of the election. The sending of a photographer to the polling place while the polls were still open was overruled due to lack of merit inasmuch as all had completed voting.\textsuperscript{540}

2. Electioneering at the Polls--Certain activities of the union prior to the voting periods have been made the subject of objections in that such conduct was alleged to have constituted electioneering at the polls. Among these activities were the visit of the union representatives to the plant,\textsuperscript{541} and to the voting area,\textsuperscript{542} which were overruled in that such activity

\textsuperscript{538}Western Electric Company, Inc., 96 NLRA No. 55.
\textsuperscript{539}Round Mountain Gold Dredging Corporation, 92 NLRA No. 142.
\textsuperscript{540}General Electric Company, 114 NLRA No. 3.
\textsuperscript{541}G. H. Hess, Inc., 82 NLRA No. 52.
\textsuperscript{542}Darling Retail Shops, Corporation, 102 NLRA No. 42.
did not prejudice the holding of a fair election; the electioneering at the polls prior to the election, which was deemed insufficient to set aside the election;\(^{543}\) and the distribution of literature outside the polls before the balloting began which was overruled on the ground that there is no prohibition of distribution prior to the election, which distribution took place beyond the proscribed area.\(^{544}\)

Twenty cases contained allegations that the union through its agents and adherents electioneered at or near the polls during the voting period thereby interfering with the conduct of a free election. The objections in all of these cases were overruled on the ground that the objectionable activity (holding of campaign posters; wearing of union buttons, tee shirts; mere presence of officers) was not proscribed;\(^{545}\) that it was a single

\(^{543}\) South Bend White Swan Laundry, Inc., 106 NLRB No. 217.

\(^{544}\) Lloyd A. Fry Roofing Company, 108 NLRB No. 178; Dallas City Packing Company, 110 NLRB No. 4; Huf-Nut Garment Manufacturing Company, 110 NLRB No. 83.

\(^{545}\) Glenn L. Martin Company, 76 NLRB No. 107; Craddock-Terry Shoe Corporation, 80 NLRB No. 185; Mutual Distributing Company, 83 NLRB No. 74; Swift and Company, 88 NLRB No. 164; Southwestern Electric Service Company, 90 NLRB No. 155; Darling Retail Shop Corporation, 102 NLRB No. 42; R. H. Gabrinsk Manufacturing Company, 114 NLRB No. 147; Furniture City Upholstery, 115 NLRB No. 234; Autoryve Division of Ekco Products Company, 116 NLRB No. 11.
incident unlikely to affect the results;\textsuperscript{546} that it occurred outside the prohibited area;\textsuperscript{547} and that electioneering did not take place as alleged.\textsuperscript{548}

In nine cases, similar objections were filed to the electioneering of the union outside of the restricted polling area during the election periods. Six of these objections were overruled on the basis that no statements were made that were not privileged and there was no violation of the "no electioneering" designation.\textsuperscript{549} A further allegation charging the union with having "runners" in the plant intimidating the employees about to vote was overruled in view of the lack of any evidence of coercion.\textsuperscript{550} Two cases involved allegations that the union electioneered during the balloting by means of a sound truck located outside the plant. In the first of these

\textsuperscript{546} Southern Wood Preserving Company, 89 NLRB No. 24; U. S. Gypsum Company, 92 NLRB No. 253.
\textsuperscript{547} Moyer and Pratt, Inc., 100 NLRB No. 190; Kaiser Services, 111 NLRB No. 176; Burson Plant of Kendall Company, 115 NLRB No. 222.
\textsuperscript{548} Continental Can Company, 80 NLRB No. 124; Rockwood Mills, 105 NLRB No. 127; Higgins, Inc., 106 NLRB No. 145; Superior Sleeprite Corporation, 117 NLRB No. 65; G. E. Lasater, 118 NLRB No. 69; Cheez T. Brandt, Inc., 118 NLRB No. 123.
\textsuperscript{549} Calcor Corporation, 106 NLRB No. 92; Phelps Dodge Copper Products Corporation, 111 NLRB No. 162; The Hackle Company of Texas, 117 NLRB No. 67; Burson Plant of Kendall Company, 115 NLRB No. 222; Gimbel Brothers, 115 NLRB No. 255; Eastern Metal Products Corporation, 116 NLRB No. 149.
\textsuperscript{550} Furniture City Upholstery, 115 NLRB No. 234.
cases, the election was set aside despite the fact that there was no evidence that the broadcast had been heard at the polling place. 551 In the latter case, the Board declined to set the election aside on the basis that the material broadcast did not constitute electioneering. 552

In two cases it was charged that the proscription against electioneering should be extended to the transporting of the eligible voters to the polls. 553 The Board overruled both objections on the ground that the transportation of the voters to the polls is not in itself objectionable. The objections filed in six cases alleged the distribution of handbills by the union during the voting period as sufficient to warrant the setting aside of the election. Five of these objections were overruled on the basis that the activity took place beyond the "no-electioneering" limits; 554 while one objection was sustained and the election set aside due to the union's refusal to cease the distribution when so ordered by the Board Agent. 555

551 Alliance Ware, Inc., 92 NLRB No. 11.
552 Southern Fruit Distributors, Inc., 104 NLRB No. 39.
553 Hoague-Sprague Corporation, 80 NLRB No. 252; Gastonia Combed Yarn Corporation, 109 NLRB No. 87.
554 G. H. Hess, Inc., 82 NLRB No. 52; Marinette Knitting Mills, 93 NLRB No. 53; Linde Air Products Division, Union Carbide and Carbon Corporation, 94 NLRB No. 91; Hittenbaum Brothers, 104 NLRB No. 135; Allen-Morrison Sign Company, Inc., 104 NLRB No. 137. 555 Continental Can Company, 80 NLRB No. 124.
CHAPTER V

SUMMARY AND CONCLUSIONS

It has been the purpose of the writer in the preparation and presentation of this thesis to endeavor to discern the trends present in the decisions and rulings of the National Labor Relations Board, relative to objections to representation elections. The pertinent cases have been studied and have been presented, grouped according to the type of objection filed, in the preceding chapters as background for the conclusions which follow.

From the chapter which is concerned with the objections filed to the activities of the National Labor Relations Board and its Agents, little in the way of a trend may be found. As seen from the cases presented therein, many of the objections pertain to the administrative activities of the Board which are clearly set forth in the Act; and the Procedure, Rules and Regulations of the National Labor Relations Board. In conducting elections, the Board demands that these standards be met, and will decline to certify, upon objections validly filed, the results of any election in which there is a departure from these requirements. However, as indicated by the rulings of the Board,
no election will be set aside based on objections alleging non-compliance with the Board's standards, if the requirements have been deemed satisfied in its prior rulings. The Board has consistently maintained that previous issues decided in hearings may not be made the subject of objections to elections, as such matters are not litigable by the parties to the proceeding.

Many of the issues raised in the objections filed against the activities of the Board and its Agents charged abuse of their discretion in matters not codified in law or regulations, but which have become unwritten policies or customary procedure which are respected and followed in conducting elections. These standards of conduct are believed to be the best known measures of behavior to insure the continued following of the policies of the Act. Of the objections alleging an abuse of this discretionary authority, the Board has considered as valid only those objections which have raised issues and furnished evidence to support the contention that the uninhibited desires of the voters were not ascertained in the election as a result of the activity. As is obvious, the Board has declined to set aside elections on objections which are based on irregularity or alleged impropriety. Such designations are overruled in the absence of flagrant abuse or a distinct departure from Board policy, on the basis that such action was provoked in order to meet the necessary standards in conducting an election and not to
interferes with the process.

It is in the chapters pertaining to the objections filed against the conduct of the employers and unions prior to and during an election that the trends are best illustrated. In examining the allegations filed and the Board's disposition of these objections, it became evident to the writer that the constant recurrence of an objection, or of a type of objection, prompted the Board to investigate its prior decisions and policies. Frequently these previous guideposts were found to be inadequate and new policies had to be formed in order to effect the continued observance of the intents and policies of the Act.

One of the instances resulting from the finding of old measures to be insufficient was the ultimate definition by the Board of the sensitive period. Early in the history of the Act, the Board refused to invalidate the results of an election on an objection to an activity of which the objecting party had knowledge prior to the election.556 Such objections were overruled in view of the fact that the improper conduct was not protested until after the election which implied acquiescence of the objecting party to the activity. However, the Board was prompted to review this policy and establish a new preced-

556*Pentagon Sleeping Garment Mills, Inc.*, 93 NLRB No. 47.
ent in a subsequent case in which it decided that the rule of estoppel failed to effectuate the policies of the Act.\textsuperscript{557} In accordance with this decision, the Board ruled that fair elections would be facilitated if it considered those substantiated objections to activities occurring after either the execution by the parties of the Consent-Election Agreement or a Stipulation for Certification upon Consent-Election; or the date of issuance by the Regional Director of a Notice of Hearing. However, the Board would refuse to consider election objections alleging interference which occurred prior to those dates. By this ruling, a crucial, or sensitive period was established.

The definition of the sensitive period was further refined \textsuperscript{558} in a subsequent ruling by the Board. The cut-off date of the Notice of Hearing was found to be inadequate in contested cases which resulted in a considerable time lapse between the date of the Notice and the ensuing election. Since the time lapse in consent-election cases, where the cut-off date is the execution of the election agreement or the stipulation, constituted a discrepancy, the Board revised its prior ruling. In order to maintain a crucial period of similar duration and significance, the Board ruled that the cut-off date in contested

\textsuperscript{558}K. W. Woolworth Company, 109 NLRB No. 203.
cases was to consist of either the date of the issuance of the
Decision and Direction of Election or the date of any amendments
thereto. Thus has the Board attempted to safeguard the efficacy
of the policies of the Act.

Another trend appeared obvious to the writer in connection
with the Captive Audience Doctrine. Immediately following the
enactment of the Labor-Management Relations Act, the Board had
occasion to rule that the holding in involuntarily attended
meetings of employees on company time and property by the em-
ployer for the purpose of expressing his views was permissible
activity under the Act.559 This concept was later modified by
what has come to be known as the Bonwit Teller Doctrine,560 ac-
cording to which the assembly of employees whether voluntarily
or involuntarily, by the employer for campaign purposes consti-
tuted illegal interference with the employees' freedom of choice
when such activity was coupled with the refusal to the union of
an equal opportunity to reply. The Board, in their attempt to
safeguard the rights of employees as guaranteed by the Act with
respect to representation, believed it encompassed the right to
hear from both parties under circumstances which approximate
equality.

559 Seebock and Wilcox, 77 NLRB No. 96.
560 96 NLRB No. 73.
Within the next two years, a great many cases were brought to the attention of the Board in which the objections alleged that the employer, by the timing of his address in proximity to the election, effectively denied the union the opportunity of making a similar speech under like circumstances. Such a tactic of preempting the last opportunity was regarded by the Board as tantamount to a refusal and an infraction of the Bonwit Teller Doctrine. However, even in those cases in which the opportunity to reply had been granted, the Board had come to realize that such last-minute speeches were prone to interfere with the free choice sought in the election in that unfair advantage was given to the party who obtained the opportunity to last address employees on company time and property. In order to establish preselection equality, which was not guaranteed by the Bonwit Teller rule, the Board decided that neither employers nor unions would be permitted to make election speeches on company time during the twenty-four hour period preceding the election.561 From this decision, as well as subsequent rulings, it is obvious that the employer is not permitted to make coercive speeches prior to the proscribed period, but he is permitted to deliver noncoercive addresses prior to this period without granting the union an opportunity to reply.

561Peerless Plywood Company, 107 NLRB No. 106.
At first glance it would appear that the former Bonwit Teller Doctrine had been replaced by the Peerless Plywood Rule. However, this is not the case, the doctrine has not been discarded but merely modified as evidenced in the Livingston Shirt case. In its decision the Board ruled that the employer may use the captive audience technique without granting the union an opportunity to answer such speeches on company time and property provided there is no prohibition of union solicitation during non-working hours. As seen from this modification, the Bonwit Teller Doctrine is now invoked only in cases involving department stores where solicitation is prohibited during non-working hours on selling floors; and in logging camps, etc., where the employees live on the employer's premises.

Throughout its history, the Board has consistently refused to police and censor campaign propaganda advanced by the parties to the election. However, upon objections properly filed, the Board will set aside any election in which the propaganda issued has lowered the level of the campaign to a point where it is impossible to ascertain the uninhibited desires of the employees. One example of a trend in Board decisions regarding its interpretation of "objectionable propaganda" is found in its rulings with respect to the distribution of marked sample ballots. In its earlier cases, the Board refused to set aside 562

107 NLRB No. 109.
elections on objections alleging the distribution of such a ballot when the ballot in question was clearly marked "sample" and did not bear the name and title of the Regional Director. The Board maintained that no confusion could arise therefrom, nor could it be interpreted that the party had the support of the Regional Director and the Board. However, in 1954, the Board ruled that the use of any altered ballot for campaign purposes had the effect of intimating the approval of the Board and its Agents to such a designation and thereby interfered with the conduct of a free election. 563 Although this ruling had the effect of prohibiting the circulation of the ballot, the reproduction of marked voting boxes has been permitted.

A further instance in which the Board's policy regarding campaign propaganda was modified occurred in its rulings regarding the publication of falsities and their effect on the voters. In an earlier decision, the Board declined to set aside an election merely because of false statements which were alleged to have coerced the judgment of the employees. 564 The Board maintained that it would refuse to consider the truth or falsity of utterances unless the ability of employees to evaluate such utterances was so impaired by the use of forgery or trickery that

563 Allied Electric Products, Inc., 109 NLRB No. 177.
the true desires of the employees could not be determined. In a subsequent case, objections were filed to the effect that the petitioning union had misrepresented its contracts with other employers, which misrepresentations were repeated over a denial by the employer. 565 In rendering its decision, the Board ruled that such conduct exceeded the limits of legitimate propaganda and lowered the standards of campaigning to a level which impaired the free and untrammeled expression of choice by the voters.

A further revision of the Board's policy with regard to false campaign propaganda occurred in its overruling the objections in a case containing substantially the same allegation, on the basis that the employer had refuted the misstatements with no subsequent reaffirmation by the union. 566 However, in a later case, the objection that the misrepresentations were made in such close proximity to the election as to prevent the injured party from correcting such falsities caused the Board to set aside the election. 567 In so ruling, the fact that the employees did not have independent knowledge of the facts to enable them to evaluate the propaganda was equally determinative.

565 The Gummed Products Company, 112 NLRB No. 141.
566 Horder's Inc., 114 NLRB No. 125.
567 The Calidyne Company, 117 NLRB No. 145.
With regard to the **technique of interviewing employees**, either singly or in groups, for the purpose of urging them to vote against the union, the Board has had occasion to set forth a clear-cut policy in decisions subsequent to the cases studied. Although beyond the scope of this thesis in point of time, it is the contention of the writer that these rulings be included in order to complete the trend and present policy according to which the Board formulates its decisions in this domain.

In the first of these cases, the Board ruled that:

> It is well established that the technique of calling employees individually or in small groups into a private area removed from the employees' normal workplace and urging them to reject the union is in itself conduct which interferes with the conditions necessary to a free choice by the employees in the selection of a bargaining representative and warrants setting the election aside.568

In a subsequent decision, the Board held that:

> It is the isolation of individuals or of small groups of employees, most often just a few, from the bulk of their fellow workmen into the locus of managerial authority which supports the interference that company expressions of anti-union sentiment in these circumstances borders too close upon coercive influence over the choice expressed later in the election. When employees are gathered to hear the views of company representatives regarding the election in open areas of the plant where they are not unaccustomed to find themselves, there results free and open discussion with both management and employees enjoying the confidences and assurances which are normal aspects of collective and group

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568 *People's Drug Store, Inc.*, 119 NLRB No. 85.
activity.569

As can be seen from the above decisions, the two determinants of whether or not the interviewing is objectionable, appear to be the site of such activity and the manner in which the interviewing is conducted. However, the decisions quoted above, as well as those studied previously, prompt the writer to conclude that the number and composition of the group interviewed are also of importance in ruling on the legality of an election. In the writer's opinion, if the group is sufficiently large to insure anonymity of its members, any harmful effects of the interviews tend to be offset.

Throughout its history, the Board has had occasion to overrule objections which have failed to satisfy the requirement for specificity in filing objections.570 Such a matter had been deemed necessary by the Board in order to eliminate the useless investigation of spurious allegations. However, the Board has recently had occasion to reconsider this ruling and has found it unrealistic in that it thwarts the purpose of the rule for specificity. In the instant case, an objection was filed which vaguely referred to conduct which had occurred but of which the objecting party had no knowledge until after the objections had

569Mead-Atlanta Paper Company, 120 NLRB No. 110.
570Don Allen Midtown Chevrolet, Inc., 113 NLRB No. 102.
been filed. In the course of an investigation, evidence was discovered which supported the objection and which the Board deemed satisfied the requirements:

Where objections are reasonably specific on their face, the Regional Director might still be unable to determine from the objection alone whether the objecting party possessed knowledge of misconduct when objections were filed and therefore could not determine whether the objecting party was using objection proceedings for purposes of delay unless that party submits evidence in support...It is submission of evidence of misconduct, not solely knowledge that warrants an investigation.571

Such have been the conclusions which the writer has been enabled to draw from the study. They represent an attempt to uncover the trends present in the decisions of the National Labor Relations Board, with respect to representation elections.

571 Atlantic Mills Servicing Corporation, 120 NLRB No. 164.
SOURCE MATERIAL


APPENDIX I

LABOR MANAGEMENT RELATIONS ACT

SECTION 9

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; Provided That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly
with an organization which admits to membership, employees other than guards.

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such a hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.
(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

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

(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board, shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of
employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as
the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organisation copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.
APPENDIX II

STATEMENTS OF PROCEDURE, RULES AND REGULATIONS

Section 102.69 Election procedure; tally of ballots; objections; certification by Regional Director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Regional Director in whose region the proceeding is pending.

All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the Regional Director, whose decision shall be final, have its name removed from the ballot: Provided, however, That in a proceeding involving an employer filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition, may not have its name removed from the ballot without giving timely notice in writing to all parties, including the Regional Director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of his own selection, subject to such limitations as the Regional Director may prescribe. Any party and Board Agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of the ballots. Within five days after the tally of ballots has been furnished, any party may file with the Regional Director four copies of objections to the conduct of the election or conduct affecting the results of the election, which should contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objects shall immediately be served upon each of the other parties by the party filing them, and proof of service shall be made.

(b) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election
is to be held pursuant to section 102.70, the Regional Director shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

(c) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate such objections or challenges, or both, and shall prepare and cause to be served upon the parties a report on challenged ballots or objections, or both, including his recommendations, which report together with the tally of ballots, he shall forward to the Board in Washington, D.C. Within ten days from the date of issuance of the report on challenged ballots or objections, or both, or within such further period as the Board may allow upon written request to the Board for an extension made not later than three days before such exceptions are due in Washington, D.C., with copies of such request served on each of the parties, any party may file with the Board in Washington, D.C., seven copies of exception to such report which shall be legibly printed or otherwise legibly duplicated. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service shall be made to the Board. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

(d) If exceptions are filed either to the report on challenged ballots or objections, or both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial or material issues with respect to the conduct or the results of the election, the Board may decide the matter forthwith upon the record, or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the Regional Director or other Agent of the Board to issue and cause to be served upon the parties a notice of hearing on said exceptions before a Hearing Officer. The hearing shall be conducted in accordance with the provision of sections 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the Agent conducting the hearing, if directed by the Board, shall prepare and cause to be served upon
the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections, or both, if it is to be a consolidated report. The Agent conducting the hearing shall forward to the Board in Washington, D.C., the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence, all of which, together with the objection to the conduct of the election or conduct affecting the results of the election, the report on such objections, the report on challenged ballots, and exceptions to the report on objections or to the report on challenged ballots, and the record previously made, together with the report, if any, shall constitute the record in the case. In any case in which the Board has directed that a report be prepared and served, any party may, within ten days from the date of the issuance of the report on challenged ballots or objections, or both, file with the Board in Washington, D.C., seven copies of exceptions to such report. Provided, however, that in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing, the provisions of section 102.46 shall govern with respect to the filing of exceptions to the intermediate report and recommended order. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service shall be made to the Board. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to section 102.68.

(e) In any such case in which the Board upon a ruling on challenged ballots, has directed the Regional Director to open and count such ballots and to issue a revised tally of ballots, and no objections to such revised tally is filed by any party within three days after the revised tally of ballots has been furnished, the Regional Director shall forthwith issue to the parties certification of the results of the election, including certification of representatives where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed.

Section 102.70 Runoff Election

(a) The Regional Director shall conduct a runoff election, without further order of the Board, when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and "Neither") results in no choice
receiving a majority of the valid ballots cast and no objections are filed as provided in section 102.69. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are employed in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and "neither" or "none" is equally divided among the several choices; or in the event the number of ballots cast for one choice in such selection is equal to the number cast for another of the choices but less than the number cast for the third choice, the Regional Director shall declare the first election null and shall conduct another election, providing for a selection from among the three choices afforded in the original ballot; and he shall thereafter proceed in accordance with paragraphs (a), (b) and (c) of this section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and the petition shall be dismissed. Only one such further election pursuant to the paragraph may be held.

(e) Upon the conclusion of the runoff election, the provisions of section 102.69 shall govern, insofar as applicable.
APPENDIX III

MISCELLANEOUS OBJECTIONS

Of the cases made the subject of research, a certain few served to be of no value in furnishing information upon which a conclusion could be based. It was necessary, therefore, to omit them from the more comprehensive study. However, it is the opinion of the writer that these cases merit some enumeration in order to preserve the completeness of the research. These cases are presented below together with reasons for their exclusion.

Of the seven major categories in this appendix, the first section of cases, six in number, were omitted because of the lack of specificity of the objections as contained in the Decisions and Orders of the National Labor Relations Board, and the subsequent decision of the Board to withhold a ruling on the cases contingent upon the revised tallies following the opening of the challenged ballots which were determinative of the results of the election in each of the cases.\textsuperscript{572} In the

\begin{footnotesize}
\begin{itemize}
\item Roland Manufacturing Company, 89 NLRB No. 30; Cooper’s, Inc., 94 NLRB No. 225; Reidbord Brothers Company, 99 NLRB No. 23; Mangel’s of Little Rock, Inc., 103 NLRB No. 27; Certain-Teed Products Corporation, 108 NLRB No. 210; Kero Radio TV, 116 NLRB No. 10.
\end{itemize}
\end{footnotesize}
event the revised tally indicated the objecting party to have secured a majority of the votes cast, the objections would be withdrawn. However, should the objecting party fail to receive the majority, the objections would then be considered and a decision either to set aside the election or to certify the results would be rendered by the Board. Since no later decisions were handed down in these cases, the writer has assumed the elections to have been won by the objecting parties.

The second major category consists of those cases in which the objections filed were not enumerated in the Decisions and Orders. Of the sixteen cases in this group, fourteen resulted in certification of the results by the Board. In the remaining two cases, the objections filed raised sufficient mater-

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573 Lehigh River Mills, Inc., 75 NLRB No. 37; Bakelite Corporation, 82 NLRB No. 114; Trueman Fertilizer Company, 82 NLRB No. 115; Strand Leather Goods Company, Inc., 83 NLRB No. 31; New York Butchers Dressed Meat Company, Division of Armour and Company, 83 NLRB No. 129; Adams and Sons Grocery Company, 83 NLRB No. 154; American Partition Corporation, 100 NLRB No. 9; The Coleman Company, Inc., 101 NLRB No. 51; Globe Steel Tubing Company, 103 NLRB No. 124; Shareco Manufacturing Company, Inc., 112 NLRB No. 195; Aroostook Federation of Farmers, Inc., 117 NLRB No. 12; Schwabacker Hardware and Company, 110 NLRB No. 82; Weill's, Inc., 105 NLRB No. 38; Essex-Graham Company, 108 NLRB No. 156.
m issues to warrant the election set aside. 574

Another major group consists of those cases involving the question of compliance as required by Section 9 (f), (g) and (h) of the Act. Early in the history of these requirements, the Board dismissed two objections filed by petitioning unions because of the unions' non-compliance. 575 In a similar case, objections filed by a petitioning union which did not secure a majority of the valid votes case were overruled by the Board and the election declared null based on the report of the Regional Director which disclosed the fact that the union had formed a local which represented employees at the time of the Direction of Election and the subsequent election, which local had not complied with the filing requirements of the Act. 576

Another group of cases that failed to yield valuable information were five in which the Board dismissed the petitions and failed to rule upon the merit of the objections due to a time lapse of a period in excess of one year between the elec-

574 Schwarzenbach Huber Company, 82 NLRB No. 111; Atlantic Mills Servicing Corporation of Cleveland, Inc., and Its Subsidiaries, 113 NLRB No. 132.

575 American Packing Corporation, 76 NLRB No. 3; Times Square Stores Corporation, 81 NLRB No. 46.

576 Brookings Plywood Corporation, 100 NLRB No. 69.
tion and the decision of the Board.\footnote{577} Since either party is free to file a new petition without prejudice, little purpose could be served by the Board in ruling on the instant allegations.

Since the rules and regulations of the Board, as previously quoted, require that the objecting party, within five days after the tally of ballots has been furnished, file four copies of the objections with the Regional Director and with each of the other parties to the election, the Board will consistently set aside any objections not satisfying these requirements.

The next segment of cases consists first of all, of those where timely service was not made to the Regional Director. Of the eleven cases in question,\footnote{578} two involved objections over-
ruled because, although notice to file objections was served immediately, the evidence in support of the allegations was not timely filed.\textsuperscript{579} In another instance, the objections were overruled because of the refusal of the objecting party to submit evidence, claiming that such evidence would be produced only at a hearing.\textsuperscript{580} The Board made very evident its strict adherence to its rule in two cases in which the objections were overruled although in one case the tardiness was due to a delay in mail delivery caused by the postal service for which the objecting party was not responsible,\textsuperscript{581} and in another case where the objections reached the Board Office after the close of business on the last day for filing objections and after all the personnel had departed.\textsuperscript{582}

Also included in this category are eight cases where timely service was made to the Regional Director but not to the

\textsuperscript{579} \textit{Mission Appliance Corporation}, 104 NLRB No. 63; \textit{Progressive Brass Foundry Company, Inc.}, 114 NLRB No. 149.

\textsuperscript{580} \textit{Adler Metal Products Corporation}, 114 NLRB No. 40.

\textsuperscript{581} \textit{General Box Company}, 115 NLRB No. 50.

\textsuperscript{582} \textit{Smithfield Packing Company, Inc.}, 112 NLRB No. 117.
other parties to the election. In one of these cases, although the intention of filing objections was made known to all parties involved, the specific allegations and evidence thereof were submitted only to the Regional Director, and then only upon his request, and not to the other parties. As a result, the objections were considered not timely filed. In another case, the Board overruled objections which had been timely filed with all parties on the ground that the exceptions to the report of the Regional Director had not been timely filed with one of the parties, as disclosed in a Board hearing. This action of the Board was over the exceptions of the objecting party that the instant exceptions had been forwarded by regular mail and since all other documents were similarly dispatched and received, the instant exceptions should be assumed to have been received, and were received, before the opening of the above mentioned hearing.

583 Owens-Illinois Glass Company, 100 NLRB No. 144; Davstrom Instrument Division, Davstrom, Inc., 101 NLRB No. 234; General Electric Company, 103 NLRB No. 12; General Time Corporation, 112 NLRB No. 11; Tung Sol Electric, Inc., et al., 114 NLRB No. 22; Beacon Manufacturing Company, 94 NLRB No. 26; National Carbon Company, Division of Union Carbide and Carbon Corporation, 99 NLRB No. 117; Freeport Gas Coal Company, 99 NLRB No. 142.

584 Owens-Illinois Glass Company, loc. cit.

585 Beacon Manufacturing Company, loc. cit.
The sixth group of cases involves those proceedings in which the objections to the election were dismissed by the Board inasmuch as the party filing the objections was not a valid party to the proceeding. In two of these, the allegations were filed by individual employees of the employer. In two others, the objections were filed by an intervening union whose name did not appear on the ballot, thereby denying it status in the proceeding. In the remaining case, the objections were filed by a committee of employees of the employer who deemed themselves a proper party to the election and whose objections alleged a denial of the privilege of having an observer present at the election and the neglect of the Board Agent to furnish them a tally of ballots. The Board refused consideration of their objections on the grounds that they were not a party and hence had no rights and privileges in respect thereto.

The final category consists of miscellaneous objections charging activities not attributable to the Board or its Agents, employers, or unions. The first of these cases encom-
passes an objection filed by an employer claiming that the conduct of an employee in filing suit against him for assault and imprisonment and the subsequent publication of the suit by the press on the day preceding the balloting, prevented a fair election.\textsuperscript{589} The Board declined to set aside the election inasmuch as the publication was not coercive and free choice was not impaired.

An objection filed by a union alleged that an intoxicated employee appeared at the polls and through his actions attached levity to the election.\textsuperscript{590} Since his activity was not coercive, the objection was overruled.

In a case containing an objection filed by the employer and one of the unions, the election was set aside because of the atmosphere of confusion and fear of reprisal resulting from threats and coercion by employees from another company.\textsuperscript{591}

A request by an intervening union to have the allegations filed in its unfair labor practice charges considered as objections to an election was denied by the Board on the ground

\textsuperscript{589} \textit{U. S. Gypsum Company}, 81 NLRB No. 198.
\textsuperscript{590} \textit{Tampa Transit Lines, Inc.}, 85 NLRB No. 230.
\textsuperscript{591} \textit{Diamond State Poultry Company, Inc.}, 107 NLRB No. 19.
that charges dismissed by the General Counsel will not be entertained in representation proceedings. 592

592 Martinolich Ship Repair Company, 111 NLRB No. 120.