THE NATIONAL LABOR RELATIONS BOARD'S

INTERPRETATION OF INTERFERENCE,

RESTRAINT AND COERCION

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RESTRAINT AND COERCION

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CHAPTER I

BACKGROUND OF THE PROBLEM

Section 8(1) of the National Labor Relations Act of 1935 provides that: "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7."\(^1\) The latter section, constituting the heart of the Act, states that: "Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."\(^2\)

This study will endeavor to present an analysis of the process in which the National Labor Relations Board gave specific meaning to "interfere with, restrain or coerce."\(^3\) Under Section 8(1) of the Act, the Labor Board,


\(^2\)Ibid.

\(^3\)This study concerns only the National Labor Relations Act of 1935 which existed until the Labor Management Act of 1947.
subject to judicial review, has the authority to declare illegal any management procedure which in its opinion involves interference, restraint or coercion. \( ^4 \) Spencer explains that: "The language of this prohibition, using three terms . . . in ascending severity, is designed to protect workers in their rights against any employer interference, whether mild or coercive, direct or indirect.\(^4\)"

The Board has held that any management violation of other subsections of Section 8 is at once an infringement of the first. However, not all irregularities of the first division have been found to be violations of the second, third, fourth and fifth subsections. Hence this study, through analyzing cases falling under the first category, will also point out practices not specified in other subsections as unfair but which have been held to interfere with, restrain or coerce employees.\(^5\)

The securing of these safeguards by employees and labor organizations in general has been the result of a long fight. The policy which was basic to the formulation of the National Labor Relations Act had its beginning in


\(^5\)D. G. Bowman, Public Control of Labor Relations, p. 69.
the creation of the War Labor Board in 1918.6 This Board, set up by executive order of President Wilson, observed the principle that

workers had the right to organize in trade unions and employers in associations. Each could bargain through representatives. The employers should not discharge for legitimate trade-union activities. Workers were not, in the exercise of their right to organize, to use coercive measures of any kind to induce persons to join the organizations nor to induce employers to bargain or deal therewith. The status quo ante was to be maintained.7

Although the War Labor Board ceased to exist in 1919, it did succeed in bringing about an awareness of the need for but not the enforcement of collective bargaining, protection of workers' right to organize, and free choice in the selection of bargaining representatives.8

In 1919 a National Industrial Conference met in Washington in an attempt to solve the great industrial battle which began after the government war-time boards and agencies were deactivated.9 This conference collapsed when an agreement could not be reached between labor and management on the meaning and methods of collective


7Ibid., p. 7.

8Ibid., p. 10.

bargaining. Thereafter the government temporarily discontinued its attempts to regulate industrial relations.

The Esch-Cummins Act, which returned the railroads to private control, was, from the first, unsatisfactory to labor, by reason of its inadequate local adjustment boards and the ineffectiveness of the non-compulsory decisions of the Railway Labor Board. The Esch-Cummings Act, therefore, was abolished by the Railway Labor Act of 1926. This latter act wisely returned the program to the mediation system as opposed to the decisive powers of the Railway Labor Board of the 1920 Act. The 1926 Act also asserted labor's right to bargain collectively through unions of its own choosing and provided for an emergency board in the event that mediation and arbitration failed to settle a dispute. This act, firmly upheld by the courts, was most significant in that it gave labor something for which it had fought since its earliest beginnings, namely a public policy protecting the workers' rights to organize and bargain collectively.

The Norris-La Guardia Act of 1932, passed as a result of the surging trend of liberalism of the period, was labor's first real protection from injunctions against

10 Ibid.

11 Bowman, op. cit., p. 15.
collective actions. This act dealt primarily with banning the issuance of the injunction by Federal Courts, but Section Three was valuable in its prohibition of "yellow-dog" contracts as being contrary to a stated public policy.\textsuperscript{12} The terminology, although negative in approach, was significant as a reiteration of the new policy toward the worker's right to organize.

Public policy in the early 1930's favored broadening the scope of national legislation to include industrial labor as well as that of carriers.\textsuperscript{13} Hence the National Industrial Recovery Act, enacted on June 16, 1933, included the protection of industrial workers. Section 7(a) of the Act restated and added to the labor policies adopted by the government in 1918 to guide the War Labor Board. This section provided that employees have the right to organize into a group or groups; such organized groups have the right to choose representatives who may bargain collectively in order to straighten out disputes and improve conditions, and discrimination against employees because of labor affiliations is barred.\textsuperscript{14}

The National Labor Board, headed by Senator Robert Wagner, was formulated August 5, 1933, to handle the labor

\textsuperscript{12}Ibid., p. 16.
\textsuperscript{13}Parr, \textit{op. cit.}, p. 17.
\textsuperscript{14}Bowman, \textit{op. cit.}, pp. 27-28.
dispersed that arose after passage of the National Industrial Recovery Act. However, the provisions for the protection of the worker proved ineffectual. Not only was the coverage of industries incomplete but definiteness was lacking in the interpretation of unfair labor practices under Section 7(a). The Spring of 1935 brought an end to the National Industrial Recovery Act with the Supreme Court's decision declaring the Act unconstitutional.

However, weak though it was, the labor provisions of the National Industrial Recovery Act pointed the way to more effective legislation. This took the form of the National Labor Relations Act, created by the 74th Congress and signed into law by the President on July 5, 1935. The passage of the National Labor Relations Act, often referred to as "The Wagner Act," culminated a seventeen year trend from tentative government intervention in labor-management disputes to an outright policy of protection of the right of individuals to organize.

The Act reflected Senator Wagner's philosophy that the whole economy would prosper through a better

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15Parr, op. cit., p. 20.
17Spencer, op. cit., p. 1.
18 Bowman, op. cit., p. 52.
distribution of the nation's goods brought about through collective bargaining, an essential attribute of a free society. He believed that only with legislative protection of the right of individuals to organize could collective bargaining become this essential attribute.  

Experiences of the administrators of the National Industrial Recovery Act and of the first Labor Board, created by the Act, indicated that achievement of these goals presupposed legislation which would prohibit unfair labor practices by making impossible the use of economic coercion.

Many were the problems facing this newly-created agency. "Even before the Board had completed its organization and published its first rules and regulations, the attempt to prevent administration of the Act began." The constitutionality of the Act was attacked during the first two years to such an extent that the Board was greatly hampered in its administration of the Act. In spite of these attacks, a sound basis of initial procedure seemed to have been established.

In these early cases the constitutionality of the Act rather than the legality of particular employer action


was paramount. The issue of constitutionality was settled affirmatively in the case involving the National Labor Relations Board vs. Jones and Laughlin Steel Company on April 12, 1937.\textsuperscript{21} Here the Supreme Court issued its vital decision holding the Act constitutional and applicable to industries in manufacturing fields as well as those in communication and transportation.\textsuperscript{22}

This decision, as well as other later court rulings, arose out of the employer's exercise of his right of judicial review as specified in Section 10 of the Act. It is important to note that whereas it was the Board's function to protect the workers from interference or coercion in connection with their right to organize and bargain collectively, it was the duty of the courts to interpret and protect basic constitutional rights of all parties. Therefore, the courts acted as a check should the Board unintentionally, in performing its function, encroach upon the right of the employers.\textsuperscript{23}

\textsuperscript{21}National Labor Relations Board, Court Decisions Relating to the National Labor Relations Act, Vol. I, p. 322, 301 U. S. 1, 33.

\textsuperscript{22}This decision was issued and applied, on the same date, to four other companies questioning the constitutionality of the Act.

\textsuperscript{23}Brown and Millis, \textit{op. cit.}, p. 175.
Over the years many employers have come to accept both the letter and intent of the Act. However, the practice of anti-unionism is deeply rooted in American industrial society and a powerful and influential minority carry on this tradition. It is with this group that the Board's formal decisions have been concerned. During the period from 1935 to 1945 a total of 84.1% of the actions brought under the Act were settled without formal procedure; the remaining 15.9% of the cases resorted to the formal hearings, reports, decisions and orders. This latter group was the basis for the formation of most public opinion toward the Board and its work. It is also the primary source of material for this study.

Through the cases discussed in the following pages, the Board has determined what constituted violations of Section 8(1) and it is through the analysis of some of these representative cases and their decisions that the following study will present the Board's definition of interference, restraint and coercion.

CHAPTER II

ESPIONAGE, SURVEILLANCE AND VIOLENCE

Employers in an effort to prevent, weaken or destroy the collective bargaining organizations of employers have resorted to the use of many devices. Among the most effective have been espionage, surveillance and violence. Such methods were standard anti-union practices and had grown to such an extent that the activities were spread generally throughout American industry by the early 1930's.\(^1\)

During the period in which the key cases involving the legality of these devices were decided employers were preoccupied with the question of the constitutionality of the Act itself rather than the legality of their action. Consequently these cases contain little discussion intended either to establish or challenge the Board's decision that espionage, surveillance and violence constituted violations of the Act.

Espionage and Surveillance

A Congressional committee, studying labor espionage in 1937, concluded that: "Espionage is the most efficient

\(^1\)Violations of Free Speech and Rights of Labor, a Senate Report prepared by the Committee on Education and Labor, 75th Congress, p. 9.
method known to management to prevent unions from forming, to weaken them if they secure a foothold and to wreck them when they try their strength."

Espionage, objectively defined as the process of systematic secret observation of the work and conduct of others, includes excessive or offensive surveillance. The Board thus had the problem of administering Section 8(1) as applied to the practices of both methods.

The hiring of professional detectives for the purpose of infiltrating the union, organized or being organized, was a standard employer practice. By joining the union the detective was expected to secure information concerning employee-members, planned activities and union strength. This could more easily be achieved if the detective succeeded in becoming an officer of the organization. Such procedure was involved in one of the first cases before the Board.

The Fruehauf Trailer Company hired a detective in order "to ferret out the union activities of the men" and to keep "informed of what was going on." To make the

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2 Ibid.


4 Decisions and Orders of the National Labor Relations Board, Vol. I, Case No. C-2, p. 73.
detective eligible for membership in the union, the company gave him employment in its plant. He proceeded to join the United Auto Workers Federal Labor Union No. 19375 and eventually became its treasurer. From such a position he was able to make weekly reports which, among other information, included names of all union members. These reports enabled the plant manager to warn various members against union activities and led to widespread confusion, unrest and suspicion among employees. The concern further put the espionage reports into use by discharging nine of the most active union members and by threatening three others with discharge. 5

In its answer to the charges, the company contended that the National Labor Relations Act was a violation of the constitution. Relying on this contention, the company made little effort to refute the Board's charge of action in violation of the law. The Board concluded that the employment of a detective for the purpose of espionage within the union constituted interference, restraint and coercion of employees in the exercise of the rights guaranteed in Section 7 of the Act. 6 With its charges unchallenged the Board did not prepare supporting arguments for its decision, apparently assuming that the illegal nature

5Ibid. 6Ibid., pp. 77-78.
of the action was self-evident. The trailer company was ordered to cease and desist from employing detectives or any persons for the purpose of espionage within employees' labor organizations.

Supporting its contention that the Act was unconstitutional, the company exercised its right of judicial review and carried the case to the courts. The Circuit Court of Appeals ruled in favor of the concern, stating that the relationship of the company and its employees was not involved in interstate commerce. The Board then proceeded to carry the case to the Supreme Court which reversed the lower court and established the Board's jurisdiction.

Employers are not restricted to professional detectives for their espionage and surveillance undertakings. The use of employees or company officials to accomplish such goals is a frequent practice. The legality of this method was tested in a case involving employees of the Friedman-Harry Marks Clothing Company who had formed a local of the Amalgamated Clothing Workers of America. The management expressed its hostility to the union and implied

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8 Ibid., p. 339, 301 U.S. 49.
it would not permit its workers to be members. The secretary of the concern, commenting on a union meeting, stated to one employee:

You had better let me know who is going, because if I notice any of you all over there that I do not know are going, you are going to get fired and I don't mean maybe. I don't mind your going if you go and then come back and tell me exactly what they are going to do.10

Upon two known occasions the president and the superintendent of the plant observed secretly the meetings of the local. Also, a former officer secured additional information through an employee instructed to attend union gatherings and report to him the names of those attending. The directed individual was paid for these services.11

The company's only argument concerned the validity of the Act itself and it therefore presented no counter argument on the charges of unfair practices.

The Board argued that surveillance by the company officials and the use of employees hired for the purpose of espionage interferes with the rights of workers by creating situations of intimidation and distrust. The Board ruled that by such interference, restraint and coercion the company had violated the rights of its

10 Ibid.
11 Ibid., p. 426.
employees as guaranteed by Section 7 of the Act. To remedy the situation it instructed the company to cease and desist these practices.\textsuperscript{12}

As in the case of the Fruehauf Trailer Company, the Supreme Court denied the argument of unconstitutionality.\textsuperscript{13}

Espionage activities frequently were performed by employer associations. In a case involving Clover Fork Coal Company and United Mine Workers of America, the Board found the management responsible for the anti-union activities of the Employers' Association of which it was a member.\textsuperscript{14}

The association with which the Clover Fork Coal Company was identified hired a "detective field man" in order to help combat the unionization of the mine employees. This individual had from twelve to fifteen men working under him. Some of the latter got jobs in the mines and obtained information about union activities there. Others were engaged to spy upon the various union organizers.\textsuperscript{15}

Data thus obtained was available to each association member. The Clover Fork Coal Company utilized such

\textsuperscript{12}Ibid.


\textsuperscript{15}Ibid., p. 207.
information in the discharge of over sixty men for their union activity.

In its answer to the complaint the company denied that its actions affected interstate commerce within the meaning of the Act. It further contended that it had previously resigned from the association and therefore was not responsible for the actions of the organization.\textsuperscript{16}

The Board ruled that such a contention was not credible in the light of testimony and evidence offered during the investigation. It further argued that the purpose of the association is clearly to interfere with, restrain and otherwise hinder union organization in the county, and the Clover Fork Coal Company was fully aware of this purpose. The Board concluded: "...it is clear that the respondent must be held responsible, for the anti-union activities of the association are, in effect, the acts of the respondent."\textsuperscript{17} The management was ordered not to contribute to, cooperate with or assist through membership any organization whose activities interfered with, restrained, or coerced its employees in their guaranteed rights.\textsuperscript{18}

\textsuperscript{16}\textit{Ibid.}, pp. 209-210. \textsuperscript{17}\textit{Ibid.}, p. 211.

\textsuperscript{18}\textit{Ibid.}, p. 240.
The company's argument that it was not involved in interstate commerce was held invalid by the Circuit Court of Appeals. 19

Observation of union meetings for the purpose of identifying employee-members also has been practiced under the immediate direction of management personnel. This surveillance is best accomplished by an employee who is familiar with all workers. The Metropolitan Engineering Company utilized such a program against its employees who were organizing a local of the United Electrical and Radio Workers of America, 20 a unit of the C.I.O. The first meeting was held at a local hotel. The management sent an office employee to find out the number and names of the workers attending the meeting. The directed individual stationed himself in the hotel lobby and obtained about twenty names. As a result of this information, the company questioned and threatened employees and finally attempted to stop the organization by means of a lockout. 21

The company denied that it was involved in unfair labor practices. However, the only argument presented in


21 Ibid., p. 546.
support of its action was to the effect that recognition of the C.I.O. would injure business. Upon cross-examination the general manager of the company reluctantly admitted that such feeling was without justification.\textsuperscript{22}

The Board pointed out that the company's first reaction, upon learning of the organization of its employees, was one of frank antagonism and the concern immediately set about to thwart organization by anti-union statements and by the use of spying tactics. The Board concluded that such acts had interfered with, restrained and coerced the employees in the exercise of their rights. The company was instructed that it must cease and desist "the practice of spying, maintaining surveillance, or employing any other manner of espionage over the meetings or meeting places of the United Electrical and Radio Workers of America, Local No. 1203, or any other labor organization of their employees."\textsuperscript{23}

\textbf{Violence and Incitement to Violence}

The use of violence by employers as an anti-labor device has resulted in much needless bloodshed, injury, and loss of life and property. Unfair labor practices are declared to exist when it is clear that management has

\begin{itemize}
\item \textsuperscript{22}\textit{Ibid.}, p. 547.
\item \textsuperscript{23}\textit{Ibid.}, pp. 564-565.
\end{itemize}
incited violence as a means of avoiding dealing with labor unions. This action may take numerous forms.

One of the most frequent methods of arousing violence is through a management-dominated group set up to oppose an outside organization. In such instances, as the following case points out, the employer's conduct amounts to a delegated authority.\textsuperscript{24} The General Shoe Corporation, upon receiving knowledge of the formation of a local of the United Shoe Workers of America among its employees, immediately helped to create a company union called the Association.\textsuperscript{25} The latter proceeded to circulate petitions asserting loyalty to the company. The Association also formed a "bouncer squad" which went to work immediately. The mission of this group involved telling union members to leave the plant or be thrown out. In several instances the latter method prevailed. This action apparently met with the approval of the supervisory personnel, as they made no attempt to stop the bouncer squad in its action.

Later, when the situation was questioned, the management contended that its position was one of complete neutrality. However, the Board ruled to the contrary, citing the fact that the company did not discharge or otherwise discipline a single employee for action which


\textsuperscript{25}Ibid., pp. 1008-1009.
constituted flagrant invasion of the management's control over its own plant. The Board then concluded: "... the respondent's conduct amounted to a delegation of authority which it knew and expected would be invoked and unlawfully exercised at the expense of union employees." The Board ruled that such action was a violation of Section 8(1) of the Act, the General Shoe Corporation was ordered to instruct all its employees that physical assaults and other acts of intimidation and coercion of employees within the plant would not be permitted.

The Civil Court of Appeals, in reviewing this case, rejected the company's argument that it was not responsible for the high state of feeling and the acts of violence, and affirmed the Board's finding in the following observation:

Difficult as an employers position may be under such circumstances its duty is plain. ... It was its duty to resist such violent domination of its right and power to employ whether manifested by or toward the United. It cannot escape responsibility for the consequences or its failure to discharge that duty. The findings as to these discharges are well sustained.

In many plants the management has been known to resort to unorganized group activity. A few extremely "loyal"

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26 Ibid., p. 1018.  
27 Ibid., p. 1019.  
employees have been "expected and encouraged" to do its bidding. This is especially true when there is a strong paternalistic feeling of employers toward their workers. Such was the relationship that existed at the Asherville Rosiery Co.29 This feeling was of particular significance when, following the organization of some employees into a C.I.O. affiliated union, the general manager implied that the plant would shut down if the trend toward unionism continued. Soon an anti-union group developed which set about to oust the more militant members of the local. There followed a series of anti-union activities. Petitions were circulated, ejections took place and threats of physical violence to union members were a part of the turmoil. The employer, fully aware of these outgrowths, exerted no effort to interfere.30

In the National Labor Relations hearing, the company contended that it held a position of neutrality. It also claimed not to have any responsibility or control over the personal feelings of its employees.

The Board argued, however, that the management created and encouraged the impression that it wished unionism to be ousted, therefore, the employer's actions were responsible for developing anti-union sentiment and

30Ibid., p. 1374.
for encouraging violence against union members. The National Labor Relations Board ordered the Company to instruct all workers that "physical assaults on and threats of physical violence to their fellow employees for the purpose of discouraging membership in, or activities on behalf of, a named union or any other labor organization will not be permitted in the plant."

An appeal to the Circuit Court of Appeals was more favorable to the hosiery concern. The court, in this case, ruled that the Board's evidence did not support its decision and modified the decision to the extent that the company was not to be held responsible for outbreak of violence. The court did uphold the order instructing all workers that physical assaults and threats of violence would not be permitted.

There is still another group which the management utilizes to discourage unionism. This group, composed of supervisory trainees, is in a strong position to carry forth the wishes of the employer due to the fact that they very often perform the same job as the other employees. A


pertinent case in the history of management-directed violence is found in the Goodyear Tire and Rubber Company of Alabama, and United Rubber Workers of America.\textsuperscript{34} Through various officers, employing irregular practices, the rubber concern denied the right of employees at its Gadsden plant to organize. In addition, it created the impression among local law enforcement officers that prevention of the employer's attempts to curtail unionization would result in a cessation of operations. Therefore, the union's officers, agents and organizers were deprived of local protection from violence and assault. Too, the company not only discharged two employees, both of whom were prominent members of the union, but also encouraged and abetted an episode of physical violence against the International president of the union who was there in Gadsden to aid the local in its organizational campaign.\textsuperscript{35} Additional disturbances were evidenced. Shortly thereafter, three workers, members of the local union, were severely beaten and four other employees, also union members, were forced to leave their jobs. Two weeks later there was a planned riot in which plant employees demolished the local offices of the union and administered

\textsuperscript{34}Ibid., p. 307.

\textsuperscript{35}N.L.R.B., Vol. XXI, Case No. C-311, p. 329.
severe beatings to six union organizers. Not only did the company's foremen expressly grant permission for and often encourage employees but many of the "squadron" members, i.e. supervisory trainees, actually aided the subsequent rioting.36 There was no police protection or interference offered nor did the police or the management perform any investigation to see who participated in the riot.

The company argued that it should not be held responsible for events occurring outside the plant. The employer's further contention was that he was not responsible for most of the foregoing events because they were committed by workers who could not be held to have acted therein as the company's agents.37

The Board pointed out in answer to these arguments that many of the events which occurred happened inside the plant and the others which occurred outside the plant were known to have existed and were clearly connected with the operation of the plant. Moreover, the management did not hesitate, on occasion, to participate in events outside the plant when it considered itself involved. It should also be noted that supervisory employees of the company, for whose conduct the latter must be held responsible, were participants in the affairs. The opinion was held that

certain of these workers had sufficient supervisory powers and duties to make them agents of the management. Moreover, the company was held to be responsible for "working supervisors" who spend at least 50 per cent of their hours directing employment, even though a portion of their time is related to ordinary production and maintenance work. 38

The Board also contended that company responsibility extended to cover the members of the squadron who were regarded as a reservoir of supervisory material. This opinion was based on the fact that these trainees were a select group directly related to the management and the recipients of special training and special prospects. Furthermore, they were prone to consider themselves as part of the supervisory staff, evidencing interests which were those of foreman rather than of the rank and file of employees. 39

As a summary the Board observed that through the above irregularities the management had engaged in unfair labor practices in violation of Section 8(1) of the National Labor Relations Act. It further ruled that the employer must take the necessary precautions to cease and desist in such actions in the future. 40

38Ibid., pp. 363-366. 39Ibid. 40Ibid., p. 366.
The creation of a special anti-union department has proved to be another medium of inciting violence in labor-management relations. One of the most pointed instances of this method is the case of Ford Motor Company and International Union of United Automobile Workers of America.\textsuperscript{41}

The Dallas branch adopted an anti-union program which was formulated and approved by the principal officials of the main office. This program consisted of both an "outside squad" of some twenty men and numerous "inside squads." The outside men were to prevent representatives of the C.I.O., with whom the union was affiliated, from unionizing any plant employee. The inside squads were to report any workers manifesting any interest in union membership. Of the two groups, the outside squad was the more direct and forceful in its role.\textsuperscript{42} Blackjacks, made in the plant itself, were weapons used to administer brutal beatings. Union organizers, members, sympathizers or persons who appeared to be in any of these groups were at times the victims of merciless brutality, extreme violence and banishment from Dallas on threats of bodily harm.\textsuperscript{43}

\textsuperscript{41}N.L.R.B., Vol. XXVI, Case No. C-1554 to C-1558 (inclusive), p. 322.

\textsuperscript{42}Ibid., pp. 339-342. \textsuperscript{43}Ibid., p. 341.
Ruthlessness and organized gangsterism characterized this anti-union program.

Testimony revealed that not only were special privileges granted these squads but also particular merit increases were given in compensation for their services.\textsuperscript{44}

Ford's argument, in disclaiming responsibility for the anti-union program, was in the testimony of the branch general manager. This official contended that he had ordered the plant superintendent to take action to avoid sit-down strikes and acts of sabotage like those which had occurred in Kansas. His orders did not include, the manager testified, any instructions calling for interference with union organizers. He further maintained that the choice of personnel and the strong arm tactics were decisions of the superintendent and were unknown to the branch manager or the officials of the main office.\textsuperscript{45}

The general manager stated that he had questioned the superintendent on each report of violence and once had threatened dismissal to prevent the fights on the outside.

The Board argued that the general manager not only was aware of the outside squad's activities but also was answerable for his immediate subordinates and the subsequent strong arm program.\textsuperscript{46} It should have been the

\textsuperscript{44}Ibid., p. 382.  
\textsuperscript{45}Ibid., pp. 378-379.  
\textsuperscript{46}Ibid., p. 380.
manager's initiative to prevent the acts of violence when the superintendent failed to heed orders.

The Board further contended that the main office helped to formulate and approved the Dallas plant's anti-union program.\textsuperscript{47} The latter was achieved through the aid and direction of a special non-production duties man from the Detroit plant. His appearance in Dallas coincided with the transfer of the outside squad leader from regular employee duties within the plant.

Since the facts indicated the ratification by the main office of the anti-unionism program of its immediate subordinates in Dallas, the Board found the management responsible for the acts of the latter branch. These acts were found to have interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act.\textsuperscript{48}

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CHAPTER III

ANTI-UNION STATEMENTS, LITERATURE, INTERROGATION AND BRIBERY

More subtle approaches to the prevention of labor's right to organize than those discussed in the last chapter have been evidenced at times. These include the use of anti-union statements, distribution of anti-union literature, interrogation concerning union membership and bribery.

Anti-union Statements

The administering of Section 8(1) of the Act in cases involving anti-union statements by employers has proved to be one of the most difficult and controversial problems of the Board. The question involved is whether or not the Board, in enforcing the Act's prohibition of interference with the rights of workers, has excessively limited the constitutional right of free speech on the part of employers.¹ As the more overt forms of interference were gradually eliminated, the issue of the right of the employer to freedom of speech became more controversial.

Greater attention was directed to this issue in discussion of the Act, and the policy of the Board and the courts gradually evolved.²

An early example of anti-union statements and the Board's ruling occurred in the Clover Fork Coal Company Case.³ In this instance the Board pointed to the use of management-issued, anti-union declarations which were intended to discourage employees from organizing.⁴ Company officials, admittedly biased against unionism, frequently expressed their opinion to their employees. Prospective workers were asked if they were union members or had ever belonged. On one occasion the foreman stated to the miners that they were free to join any church group and many other organizations but the company would not have anything to do with the United Mine Workers.⁵

At another time the employer pointed out to the colored workers that he had been good to them but his funds were sufficient for him to live on for ten years and that he would close the mine and deprive the men of their jobs for that period of time if they followed union organizers. At a succeeding meeting the company informed

²Ibid.


⁴Ibid.

the workers that the "Wagner Labor Relation Act was just a bluff." On numerous occasions the management encouraged violence against organizers and heckled speeches made by them at union meetings.

The company denied that it had participated in any unfair labor practices but could offer no argument to dispute the testimony and facts. The management's primary contention was that the company was not involved in interstate commerce and therefore was not under the jurisdiction of the National Labor Relations Act, but this position was overruled.

The Board found that the presence of management representatives at union meetings and their heckling of speakers, the expression of employer opinion toward labor unions and the verbal approval of anti-union sentiments were all unfair practices. The Board pointed out that such devices are attempts to coerce and influence the employees with complete disregard to the National Labor Relations Act and ordered the company to cease these practices.

Questioning, threatening or instructing of employees in regard to union activity has been regarded by many employers as one of their prerogatives. However the Board ruled to the contrary in another early case involving

\[\text{\textsuperscript{6}\textit{Ibid.}, p. 211.}\]
Botany Worsted Mills and Textile Workers Organizing Committee. It declared such activities unfair labor practices.\(^7\)

In this case the Textile Workers Organizing Committee entered the company's plant and conducted an active campaign to enroll members among the workers. The management, attempting to stop the organization, bluntly intimidated employees by numerous questionings and warnings regarding union activities and affiliation. One employee testified that he was called into the office of the assistant manager of his department and warned that his interest in the union was known and that he was being watched closely by the company.\(^8\)

The company made no attempt to contradict or refute the testimony of the witnesses establishing the facts as to the unfair labor practices, contending rather that the Board lacked jurisdiction.\(^9\)

The Board in its argument and conclusions pointed out that by such activities the employer had seized upon a powerful and destructive weapon. "Its effect is to create immediate personal fear of the loss of employment in present and prospective members of the union, and it obviously

\(^7\)N.L.R.B., Vol. IV, Case C-216, p. 292.

\(^8\)Ibid., p. 297.

\(^9\)Ibid.
constitutes, therefore, flagrant and unlawful interference, restraint, and coercion of employees.\textsuperscript{10} The Board further pointed out that these tactics had had the indicated effect upon employees and ordered the company to cease and desist from such practices.

**Distribution of Anti-union Literature**

A managerial attempt to influence employees by means of individual letters given prior to an election involving certification of representation has been an unfair method sometimes used. Such procedure was part of the case involving Letz Manufacturing Company and Federal Labor Union No. 22226, a C.I.O. affiliate.\textsuperscript{11} The employer had refused consistently to recognize the union as the bargaining agent of his employees. He at last acquiesced to an election to be held under the auspices of the National Labor Relations Board. On the evening preceding the election a letter, signed by Letz, was distributed to employees as they left the plant. This letter, in substance, inferred that bargaining individually rather than collectively would be to the employees' advantage and

\textsuperscript{10}Ibid., pp. 297-298.

\textsuperscript{11}N.L.R.B., Vol. XXXII, Case No. C-1816, p. 563.
intimated that the plant might close if the union won the election.\textsuperscript{12}

The employer's answer to the subsequent charges admitted that he was in the stream of inter-state commerce but denied the accusation of unfair labor practices. During the proceedings the company made no attempt to contradict any of the testimony which led to the above findings.

The Board held that such a letter violated the employer's obligation to maintain "a hands off position" with respect to the election. Additional findings stated that through such action the company was vigorously campaigning against votes for the union and was interfering with the rights of its employees.\textsuperscript{13} A cease and desist order was issued and the employer was ordered to distribute remedial notices to each of its employees.\textsuperscript{14}

The distribution of anti-union literature by an employer has been ruled a coercive attempt to influence the employee. Such practice was a phase of the Ford Motor Company's anti-union program.\textsuperscript{15} In the latter part of

\textsuperscript{12}Ibid., pp. 570-572. \textsuperscript{13}Ibid., p. 572.

\textsuperscript{14}Ibid., p. 573.

\textsuperscript{15}\textit{N.L.R.B.}, Vol. XXIX, Case No. C-950, p. 878.
1936 the United Automobile Workers of America, a C.I.O. affiliate, began organizational activity in the Richmond plant of the Ford Motor Company. As the U.A.W. activity was intensified resultant hostility among the company's supervisory employees prompted a campaign of intimidatory statements planned to discourage membership in the union. Following this development the company published and circulated pamphlets and leaflets containing statements disparaging to labor organizations. At the same time a booklet called "Ford Almanac" was distributed to the employees by the factory "service staff" whose members were also the watchmen and policemen of the plant.

The employer denied that distribution of this literature was an unfair labor practice within the meaning of the Act. He further asserted that such circulation met with the provisions of the First Amendment of the United States Constitution which guarantees the freedoms of speech and press. The company also pointed to the legislative history of Section 8(1) of the Act, contending that Congress permitted influence over employees in the exercise of the latter's rights, as set forth in Section 7, provided such action did not constitute interference,

16Ibid. 17Ibid., p. 878.
restraint or coercion of the workers in the exercise of such rights.\textsuperscript{18}

The Board contended that dominant economic power, wielded by the employer, gave to the latter's statement a compelling effect that would not have prevailed had the other party been of equal economic status.\textsuperscript{19} Additional argument asserted that the pamphlet entitled "Ford Almanac" expressed bitter opposition to labor organizations and could only be construed by the employees as a warning against unionization.\textsuperscript{20} The Board further contended that the claimed right to freedom of speech and press does not empower the company to utilize its economic superiority to interfere with, restrain or coerce employees in the exercise of their rights, as guaranteed by the Act. The claim by management that the Act does not prohibit an employer from influencing his employees was rejected by the Board. It argued that basic to the employer's overwhelming economic power his actions constituted not merely influence but actually interference, restraint and coercion as expressly forbidden by the Act. Ford Motor Company was ordered to cease and desist such compelling activities.\textsuperscript{21}

\textsuperscript{18}Ibid., p. 844. \hspace{2cm} \textsuperscript{19}Ibid., pp. 882-883.
\textsuperscript{20}Ibid., p. 884. \hspace{2cm} \textsuperscript{21}Ibid., pp. 882-883.
Interrogation Concerning Union Membership

Employers often have resorted to the procedure of questioning employees, both at work and in the home, concerning their labor affiliations and beliefs. The illegality of such practice was ruled in the case of the Metropolitan Engineering Company and the United Electrical and Radio Workers, Local No. 1203, affiliated with the C.I.O.22

When the United Electrical and Radio Workers began a unionization drive among the workers of the company, the plant's general manager, after receiving information on the union trend in the factory, interviewed singly and in groups about two hundred employees in order to ascertain individual opinion about working conditions. At these conferences the official questioned each employee about his union activities and affiliations, discussed personal grievances and, in several cases, adjusted wages. Following this movement the management sent several foremen to visit workers in their homes. Instructions were given the supervisors to observe the employee reaction to the interviews, to discover grievances and their source and to ascertain the feeling toward the United Electrical and Radio Workers.23 Later the general manager intimated a

23Ibid., p. 546.
possible shutdown in case of any "disturbance." He also suggested that recognition of a C.I.O. union would impair the sale of company products to the building trades controlled by the A.F.of L., causing a resultant curtailed production and an increase in plant unemployment. Supervisory employees again were sent to the homes of fellow workers to warn the latter against joining the union. Following a plant lockout, these same foremen once more were ordered to the homes to tell employees that the plant would not be reopened until they gave up their attempts at unionization.

The company later maintained the questionings resulted from its fear of loss of business. This fear, which the general manager admitted had no foundation, was the company's only argument in justification for such interrogating practices.

The Board contended that the instigating of home visits, questionings and anti-union statements were for the purpose of thwarting unionization and constituted an attempt at individual bargaining. Such procedures were found to have interfered with, restrained and coerced employees excessively.

\footnotesize\begin{align*}
  &^{24}\text{Ibid.}, \text{p. 547.} & ^{25}\text{Ibid.}, \text{pp. 548-549.} \\
  &^{26}\text{Ibid.}, \text{p. 547.} & ^{27}\text{Ibid.}, \text{p. 552.}
\end{align*}
The interrogation of employees regarding their union affiliations or activities and for the purpose of obtaining their signatures on individual contracts has been used at times by employers to avoid collective bargaining. Such a coercive measure was found in the case of the Superior Tanning Company and the National Leather Workers Association, Local No. 403.\textsuperscript{28} Shortly after the union began a membership campaign the company conferred with twenty-five or thirty men who were urged to make suggestions concerning their welfare. The company's counsel, after much questioning, insisted that the men accept individual contracts and disparaged the idea of unionization. That evening the management assembled all the workers and, after stating that the company and a group of employees had agreed to individual contracts, instructed the men to sign the contracts being distributed. Counsel for the company also advised and threatened the employees against joining a union.\textsuperscript{29}

The employer, in his argument, maintained that the meetings were on the occasion of the plant’s thirteenth anniversary and were designed to show the employees manifestations of his desire to continue the friendly relationship that had existed between them.\textsuperscript{30} The

\textsuperscript{28}N.L.R.B., Vol. XIV, Case No. C-560, p. 942.

\textsuperscript{29}Ibid., p. 946.

\textsuperscript{30}Ibid.
management further contended that the result of the first meeting was the establishment of individual contracts for the workers.

The Board maintained that the group and mass meetings had been effectuated in light of the union's campaign and thus were a pretense at collective bargaining. In addition the men who attended the group meeting had been selected without previous notice by the company. At the conference this group was confronted by the plant's officials as well as by a skilled lawyer. Consequently there would have been no opportunity to engage in genuine collective bargaining even if the workers had been informed of the desires of the employees whom they supposedly represented.31 The Board also pointed out that the mass meeting was obviously a method of challenging the attempted unionization and the men, recognizing the challenge, capitulated and signed the individual contracts of employment.32 The individual contracts, secured as they were by such unfair labor practices, were declared invalid and void. The company was ordered to cease and desist such practices.33

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31 Ibid., p. 956.  
32 Ibid., p. 957.  
33 Ibid., p. 969.
The Board's decision and rulings were upheld by the Circuit Court of Appeals when the court declined to reverse the Board's rulings.\textsuperscript{34}

The requirement of prospective employees to furnish information regarding their union affiliation constitutes another variant. The illegality of such practices was tested in the case of Spalek Engineering Company and the Society of Designing Engineers, Local 201.\textsuperscript{35} The Spalek Engineering Company furnished application forms for employment which provided a space in which prospective workers were asked to indicate their union affiliation.

The management asserted that such forms, standard in format and purchasable from any stationer, had been used by the company long before the emergence of any union activity and with no intention of discrimination. However, the Board was of the opinion that such questioning of prospective employees about their union affiliation constituted interference, restraint and coercion of workers. The management therefore was ordered to cease and desist such practices.\textsuperscript{36}


\textsuperscript{35}\textit{N.L.R.B.}, Vol. XXXV, Case No. C-2300, p. 1275.

\textsuperscript{36}\textit{Ibid.}
Bribery

Employers have resorted at times to the use of bribery. This method of coercing individual employees has been directed as a rule toward those in a responsible union position. The case of Patriarca Store Fixtures, Incorporated, evidenced the conditional offer of company stock to certain workers which was held by the Board to be interference, restraint and coercion. The employees of the fixture concern organized an unaffiliated labor organization. A committee of three was authorized to present demands to the company for the purpose of collective bargaining. On Christmas Eve the president of the plant offered to three workers, two of whom were members of the committee, two shares of stock apiece, provided they were still employed with the company three years hence.

The management in its argument stated that it always gave its employees a Christmas present, usually a small raise in wages or some personal item, and the conditional offer of stock was in the nature of a seasonal gift.

The Board could not accept the explanation, pointing out that the offer was made only to three workers, two of

37 N.L.R.B., Vol. XII, Case No. C-413, p. 93.

38 Ibid., p. 98.
whom were members of the bargaining committee. The third was an employee the company sought to substitute for the original third man who had been discharged for his organizational activities. The Board argued that through such means as the offer of stocks the employer sought to control the bargaining committee.\textsuperscript{39} It ruled that in making the conditional offer of stock to the three employees, the company had interfered with, restrained and coerced its workmen in violation of Section 7 of the Act. The company was further ordered to withdraw the offer.

\textbf{Issue of Employer's Freedom of Speech}

In many early cases the Board cited as unlawful those statements, or other activities, by employers which were plainly coercive or intimidating.\textsuperscript{40} During this early period the Board tended to act upon the theory that the law required the company to maintain strict neutrality during any efforts of the employees to organize. However, in 1939, the Smith committee advocated an amendment to the Act which would protect the employer's right to expressions of opinion provided they were not accompanied

\textsuperscript{39}\textit{Ibid.}, pp. 98-99.

\textsuperscript{40}Brown-Millis, \textit{From the Wagner Act to Taft-Hartley}, p. 175.
by coercive actions. The Board considered such an amendment not only dangerous but unnecessary.

The Supreme Court first considered this question in 1941 in the Virginia Electric and Power Company Case. The Board found a lengthy record of anti-union activity by the management. In 1937 when the A. F. of L. attempted to organize the company's employees, the concern issued bulletins and made speeches encouraging employees to set up an "inside" organization. An unaffiliated union was quickly organized with company assistance and a closed shop contract was signed. Subsequently many employees were discharged for refusal to join the company union.

The Board found the bulletins and speeches, as well as the other activities, to be illegal interference and, although the concern protested that such an order was an invasion of its right to free speech, the Supreme Court upheld the Board. The Court ruled that the company statements, while not coercive in themselves, were not privileged when they were part of an entire pattern of conduct which violated the Act.

In this case the Supreme Court laid down a general rule to guide the Board and the Courts when it decreed

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\(^{41}\) Ibid., p. 176.  
\(^{42}\) Ibid., p. 177.  
\(^{43}\) Ibid.  
\(^{44}\) Ibid.
that although the employers had a right to express their views on labor matters to their employees, they were not free to coerce by words any more than by acts; and the issue of whether or not words were coercive was to be determined in the light of the total context.45 This general ruling made it the Board's duty to decide, in particular cases, whether speech was privileged or whether, because of the particular circumstances, it illegally interfered with the employees' rights.46

The development of the issue continued with two important circuit court cases, one upholding the Board and one setting aside its order.47 In the American Tube Bending Case, the Board found that the president of the company had entered into an election campaign and had stated his position in a letter and a speech to the employees, following which a large majority voted against the union. The Board found the management, by its lack of neutrality, guilty of an unfair labor practice and set the election aside. However, the Circuit Court considered itself bound by the Virginia Electric and Power decision

45Ibid. 46Ibid.
and, since it found nothing in the record but a temperate speech, reversed the Board.

On the contrary, in the Trojan Powder Case, which also involved a series of letters, the Board was upheld. Here it was found that there had been an earlier organizational attempt which failed after a series of letters and anti-C.I.O. statements to the employees. The Supreme Court denied review on both these cases and the result then stood as before, that in the absence of unfair labor practices employers were free to speak if their words were not coercive in themselves. The question, however, still remained for the Board and the courts to determine what was permissible in a particular situation, and the Circuit Courts differed in the extent to which they accepted the Board's findings of coercion.\textsuperscript{48}

In 1946 the Board began to develop a theory of "separability" between speech and earlier unfair practices; under this principle speech was privileged provided that there was a time lapse between the action and the speech.\textsuperscript{49} Gradually also, a line was drawn beyond which speech was held to be coercive. A clear example of this is found where employers campaigned before an election with wage increases. The Board ruled that "... the

\textsuperscript{48}Ibid., p. 180. \textsuperscript{49}Ibid., p. 183.
presentation of economic benefits to employees in order to have them forego collective bargaining is a form of pressure and compulsion no less telling in its effect on employees because benign." There were still, however, great differences of opinion within the Board as to how far they should go in considering speech illegal because of its circumstances and background.

Gradually there was an increased emphasis on freedom to speak, with the exception of the "compulsory or captive audience" issue. The "compulsory audience" doctrine, adopted by the Board in August, 1946, held that when employees were compelled to assemble and listen to a speech this element of compulsion made such statements, otherwise privilege, coercive.51

The latitude thus permitted during the later years of the Act was quite broad. The Board's decisions rarely held that the "employers' statements went beyond mere persuasion and under the circumstances were coercive and therefore violations of the Act."52


51Ibid., pp. 183-184.

52Ibid., pp. 184-185.
CHAPTER IV

INTERFERENCE IN THE FORMATION AND ADMINISTRATION
OF LABOR ORGANIZATIONS

Employer methods used to discourage the employees in their rights to organize also have included: interference in the formation or administration of a labor organization; the contribution of support to such organization; the extension of privileges or favoritism to one of two or more rival labor organizations. In utilizing such methods management has either destroyed or made ineffective the collective bargaining organizations and efforts of employees.

Interference, Domination and Support of a Labor Organization

Most of the cases in which employers have engaged in such activities as interference in the formation or administration of a labor organization or the contribution of support have been ruled as unfair practices under Section 8(2) of the Act. There are, however, some exceptions where the Board had ruled the interference was not enough to warrant this ruling but at the same time was sufficient to interfere with, restrain and coerce employees in the exercise of their rights.
Such a ruling was made in a case involving the unaffiliated associations of the National Silver Company.\textsuperscript{1} In 1937 the vice-president of the concern, utilizing company time and property, spoke to the employees in favor of the unaffiliated organization. As a consequen the National Silver Company Employee's Association, including supervisory employees, was formed. Elected president was the head of the adjustment department.\textsuperscript{2} In 1940 the Wholesale and Warehouse Workers Union became active and filed charges with the National Labor Relations Board asserting that the association was a company-dominated union. The management thereupon broke off its relations with the Association, and the latter's members voted to dissolve their organization and create a second group which, with the exception of its president, was made up largely of the same officers.\textsuperscript{3} While this second body was negotiating for a new contract, the Wholesale and Warehouse Workers Union announced to the company that it had a majority of the company's employees and asked for recognition. Four of the six members of the new association's negotiating committee verified the union's announcement to the company's representatives saying that they were also on the executive committee of the Wholesale and Warehouse

\textsuperscript{1}\textit{N.L.R.B.}, Vol. I, Case No. C-2558, p. 570.

\textsuperscript{2}\textit{Ibid.}, pp. 575-576.

\textsuperscript{3}\textit{Ibid.}, p. 576.
Workers Union. The employer gave notice that there would be no contract or recognition of a majority union until an election was held under the auspices of the National Labor Relations Board. However, such an election was never held.\textsuperscript{4} A group of dissatisfied members of the second association hired a lawyer and authorized a committee of non-union workers to represent them. This dissatisfied group, referred to in the case as the third association, informed the company that they represented the majority of the management's employees and wished to negotiate for a contract. They were recognized by the company and a contract, which included a wage increase, was executed.\textsuperscript{5}

This group, with the support of their employer's recognition and contract, proceeded to take over the control and finances of the second association. They adopted a new constitution and by-laws, elected new officials and thus became a fourth association. On the expiration date of the third association's contract, the company took action to recognize and execute an agreement with this fourth group.\textsuperscript{6}

The management denied the commission of any unfair labor practices but the case did not include any supporting arguments. The fourth association denied that it had been

\textsuperscript{4}Ibid., pp. 576-580.  \textsuperscript{5}Ibid., pp. 580-584.

\textsuperscript{6}Ibid., pp. 584-585.
formed or sponsored or interfered with in its administration by the company and likewise denied that it was the successor to the third association. 7

The Board in its conclusions said that it was not fully satisfied with the argument of the trial examiner, that the second, third and fourth associations were heirs to the infirmities of the first association. It ruled that the company wiped the slate clean by posting notices disestablishing the first association as the bargaining representative of its employees. The ruling further stated, however, that the employer did render assistance to the third association at a time when a rival labor organization had apprised him of its claim to represent the company's employees. The Board ruled that the company accepted without question the third association's claim to majority standing and then hastily granted that organization recognition and a contract, including among its terms substantial wage increases. 8 The decision further held that although this conduct did not constitute domination or support within the meaning of Section 8(a) of the Act, it did violate Section 8(1). The Board ruled additionally that the fourth association was the successor to the third body and that the contracts entered into by the management and these organizations were unlawful, since

7Ibid., p. 574. 8Ibid., p. 570.
such agreements perpetuate the company's unlawful assistance to the association. The employer was ordered to withdraw and withhold recognition from the fourth association as the representative of any of its employees for the purpose of collective bargaining until certified by the Board. The order further directed the company to cease giving effect to the contract between the fourth association and the company.\(^9\)

Domination, support or interference is not necessarily limited to unaffiliated organizations. The Tri-State Union, despite a tardy affiliation with the A. F. of L., was found to have been dominated, supported and interfered with by the Eagle-Picher Mining & Smelting Company.\(^10\)

The International Union of Mine, Mill & Smelter Workers, a C.I.O. affiliate, organized some of the concern's employees in 1933. In the early part of 1935 the latter union made several efforts to bargain collectively with the Eagle-Picher Company. These efforts met with extreme company resistance and a strike was called.\(^11\)

After several weeks a back-to-work movement was started by various supervisory and non-supervisory

\(^9\)Ibid., pp. 570-571.


\(^11\)Ibid., p. 741.
employees and small operators of the area. These workers formed an organization called the Tri-State Union.\footnote{Ibid., p. 742.}

Three members of the executive committee, in which all control of the union existed, were supervisory employees of the Eagle-Picher Company. The president, also a member of the executive committee, was a leading financier in the district and closely connected financially and otherwise with the management. The vice-president of the Eagle-Picher concern took concrete steps to aid the newly organized union by arranging for the granting of credit to the organization by the local bank. A total of at least fifteen thousand dollars was loaned on various occasions to the union and always repaid by the company.\footnote{Ibid., pp. 748-749.}

The newly created organization, with the help of the management and the exercise of much violence, succeeded in breaking the strike, almost destroying the International Union of Mine, Mill & Smelter Workers in the process. Through the next couple of years the Tri-State Union continued to exist and, with the aid of pick handles and other forms of violence, thwarted all efforts of employees to reorganize the C.I.O. Union.

During this period the mining concern not only gave financial support but also allowed the Tri-State Union officers to address employees on company time and property.
The management further permitted the collection of dues and the signing of members inside the plant gate, granted the use of its bulletin boards for union announcements and helped pay for the printing of the Tri-State Union newspaper.\textsuperscript{14} The latter frequently propagandized against the A. F. of L., the C.I.O., the labor movement in general and particularly against the International Union of Mine, Mill & Smelter Workers. The sole function of the Tri-State organization seemed to be for the purpose of acting as a counter agent to the International Union.\textsuperscript{15}

Immediately after the decision of the Supreme Court upholding the constitutionality of the National Labor Relations Act, the Tri-State Union took steps to affiliate with the A. F. of L. During the open meeting of the union to determine whether to affiliate or not, the president of the union told all those in favor of affiliation to stand. He then informed those who were against affiliation "to stand up and get knocked down, please."\textsuperscript{16} Affiliation was unanimous. This was done without a change in the by-laws or constitution of the Tri-State Union or without any change in the administration of the group. The only change affected in the entire organization was the name of the

\textsuperscript{14}\textit{Ibid.}, p. 753.  \textsuperscript{15}\textit{Ibid.}, p. 761.

\textsuperscript{16}\textit{Ibid.}, pp. 768-769.
union. Upon affiliation it changed its name to the Blue Card Union and continued in its opposition to the International Union of Mine, Mill & Smelter Workers.\textsuperscript{17}

The company in its answer to the charges contended that, by the steps leading to affiliation, the Tri-State Union ceased its existence and was replaced by a wholly new organization. The concern also contended it was not responsible for the Tri-State Union's hostility and violence against the International Union.\textsuperscript{18}

The Board argued that the company, by the very nature of the Tri-State Union and its relations to the management, was responsible for the activities of the organization. The argument further contended that the latter was a creature of the employer and used to realize his anti-union purposes. The Board stated that through the company's financial and other support the Tri-State Union gained its initial impetus and the means for its continuance. Too, the argument continued, the very administration of the organization, through the executive committee, was in the hands of the management. The Tri-State Union actually acted as an agent for the company.\textsuperscript{19}

\textsuperscript{17}Ibid. \hfill \textsuperscript{18}Ibid., p. 770.

\textsuperscript{19}Ibid., p. 765.
The Board in furthering its argument pointed out that the evidence failed to establish that any substantial change in the Tri-State Union was accomplished by the formality of affiliation with the A. F. of L., contending that the Blue Card Union was identical with and a continuance of the Tri-State Union. 20

The statement continued:

Under such circumstances, we are compelled to conclude that mere observance of certain formalities and affiliation with a national labor organization, without more, are insufficient to change the character of a company-dominated union or to invest such a union or the company with immunity. At no time did the respondent withdraw from its relations with its creature; at no time was it announced that the Tri-State Union was ended. To the extent the respondent controlled and dominated the Tri-State Union, they also managed and controlled the 'transformation' into the Blue Card Union. We, therefore, find that by their participation in the formation and and administration of the Blue Card Union through membership of its supervisory officers and employees and through other representatives in the Blue Card Union, and the executive committee, thereof, the respondents have dominated and interfered with the formation of, and contributed support to the Blue Card Union and have thereby interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed in Section 7 of the Act. 21

The decisions and rulings by the Board were upheld by the Circuit Court of Appeals. 22 The mining concern contended in its petition to the court that their alleged

20Ibid., p. 770.  
21Ibid., p. 775.  
domination and support of the Blue Card Union was not an issue. The court ruled that such an argument was without merit and that in the company's answer to the Board it referred to the dissolution of the Tri-State Union and organization of the Blue Card organization. The court concluded that there could be no doubt that the Board was justified in its findings.

Privileges Accorded or Favoritism Shown to One of Two or More Rival Labor Organizations

Employers often endeavor to weaken and destroy a union they violently oppose and thereby secure a stronger position in collective bargaining by giving privileges or showing favoritism to one of two or more rival labor organizations. In such instances there is no question as to the legitimate character of the favored union.

One of the more prevalent forms of favoritism is allowing the members of one union to engage in union activities during working hours and on company property and at the same time denying this privilege to the other union. In the case of Consolidated Edison Company and United Electrical and Radio Workers of America, affiliated with the C.I.O., the Board found that such practices were unfair and in violation of Section 8(1). 23

After the United States Supreme Court rendered the decisions sustaining the validity of the National Labor Relations Act, the chairman of the Board of Trustees, who directed the company's labor policy, had two conferences with the International President of the International Brotherhood of Electrical Workers, an A. F. of L. affiliate, concerning the recognition of the International.

Several days later the chairman of the Board of Trustees called a meeting of the general councils of all the Employee's Associated Plans, a company-dominated and supported labor organization. He informed them that due to the recent Supreme Court decision that continued operation of the Plans would be illegal. The chairman then told them that he intended to recognize the International Brotherhood of Electrical Workers.\textsuperscript{24}

The management thereafter allowed the International organizers free access to all the company's buildings and permitted them to solicit employees individually and in groups during working hours. Similar privileges were denied organizers of the United Electrical and Radio Workers (C.I.O.). The delegates of International Electrical Workers were also permitted to collect dues on the company's premises. For that purpose they availed

\textsuperscript{24}Ibid., p. 87.
themselves of the foreman's offices or other rooms and, in some instances, were allowed to hang signs upon the doors bearing the legend "Pay A. F. of L. Dues Here." Similar privileges were denied the C.I.O. affiliated organization.25

The management, in its answer to the charges, challenged the jurisdiction of the National Labor Relations Board. During the hearings, however, the chairman of the Board of Trustees testified that he had given no orders to the company's department heads and foreman to act in behalf of the International Brotherhood of Electrical Workers.26

The Board pointed out that express orders were unnecessary as the attitude of the company had been made abundantly clear with the result that the supervisors took the steps appropriate for its attainment. The company, knowing that the United Electrical and Radio Workers, C.I.O., was the only active labor organization among its employees, dictated to them its preference for the International Brotherhood of Electrical Workers, A. F. of L. and accorded it recognition at a time when its membership was negligible. It allowed the organizers privileges in soliciting membership denied the United group and in such manner lead up to the stages of organization contemplated

25Ibid., p. 91. 26Ibid.
by the chairman of the Board of Trustees and the International President, in the execution of contracts.\textsuperscript{27}

Such activities were ruled not in keeping with the objectives of the Act and the company was ordered to cease and desist such practices unless similar privileges were granted to all other labor organizations of its employees.\textsuperscript{28}

Carrying the Board's decision to the Supreme Court, the Consolidated Edison Company and the A. F. of L. union both argued that when two independent labor organizations seek recognition, it cannot be said to be an unfair labor practice for the employer merely to express preference for one labor organization over the other. The court, in its ruling, said that, assuming such an argument to be true, there was still substantial evidence that attempts of intimidation or coercion were made in this case, due to the company's announced policies. It thus upheld the Board's order.\textsuperscript{29}

The granting of passes to representatives of one union while at the same time not permitting representatives of other unions to come onto company property is another method of preference used by employers. Such a practice may have a devastating effect upon the disfavored union,

particularly so in an area where contact with the workers is almost impossible without company permission. Such a situation is prevalent in the maritime industry. The case of Waterman Steamship Corporation and National Maritime Union of America illustrates the problem.30

Representatives of the International Seamen's Union were issued passes which authorized them to board the company's ships. This was permitted in the terms of the contract, Article II, Sections 3 and 4, between the International Seamen's Union, A. F. of I. affiliated, and the management.31

Prior to the holding of an election to determine whether the International Seamen's Union or the National Maritime Union, C.I.O. affiliated, should represent the company, it notified the International Seamen's Union that representatives of neither union would be permitted on the ships for the purpose of soliciting membership. The International replied that passes issued to I.S.U. delegates had not been utilized for this purpose and these delegates continued to use the passes.32 Thereafter the National Maritime Union requested passes to go on board the company's ships, citing the National Labor Relations

31 Ibid., p. 240.
32 Ibid., p. 241.
Board's decision in the Matter of American French Line, et al. This order stated that no preference should be shown to either of the unions involved by granting passes to representatives of one union while denying them to the other or by allowing representatives of either union to board vessels without passes. The company's executive vice-president refused, basing his decision on the contract with I.S.U. and the fact that it would cause trouble on the company's ships.

In its answers to the charges, the concern admitted that it had refused and still refused to grant passes to duly authorized representatives of the N.M.U. permitting such representatives to board its ships. It further insisted on its right to determine who shall and who shall not enter on its privately owned property so long as no laws are violated. Under its contract with the I.S.U., the management contended that it permits authorized representatives of that union to board its ships subject to regulations prescribed by the company. The latter also insisted that inasmuch as it has refused to permit representatives of either union to solicit membership on board its ships it has treated both unions alike.

34 Ibid., p. 238.
The Board replied that the evidence did not show that the company ever made any attempt to ascertain whether or not the I.S.U. was observing its instructions against solicitation. It argued that the employer's issuance of passes to the I.S.U. while denying them to the N.M.U. was obviously a discrimination in favor of the I.S.U. and has the necessary effect of impeding its employees in the free choice of representatives. Such activities were judged to have interfered with, restrained and coerced.\textsuperscript{36}

The Board did not answer the company's argument on the question of property right.

This issue was then taken to the Circuit Court of Appeals which reversed the Board's decision, commenting that the company was within its rights when it forbade the representatives of the unions to come aboard its vessels for the purpose of soliciting membership. It declared the employer played no favorite and the Board erred in its order in this respect.\textsuperscript{37}

However, this ruling was reversed in favor of the Board by the Supreme Court which ruled that the record had presented clear and overwhelming proof that the management had been guilty of discrimination against employees in

\textsuperscript{36}Ibid., pp. 241-242.

violation of the National Labor Relations Act. The Supreme Court went on to point out that Congress provided that "the findings of the Board as to facts, if supported by evidence, shall be conclusive" and that the courts must not encroach upon this exclusive power of the Board.\textsuperscript{38} The Supreme Court concluded that the Circuit Court of Appeals' failure to enforce the Board's orders resulted from the substitution of its judgment for that of the Board and that power to do that has been denied the Courts by Congress. The Supreme Court further ordered the Circuit Court of Appeals to enforce the Board's order in its entirety.\textsuperscript{39}

\textsuperscript{38}\textit{Ibid.}, p. 123, 309 U.S. 206.

\textsuperscript{39}\textit{Ibid.}, p. 124, 309 U.S. 206.
CHAPTER V

INTERFERENCE, RESTRAINT AND COERCION

INVOLVING COMPANY PROPERTY

Employers have utilized certain methods of economic coercion to deprive employees of their right to collective bargaining organizations. Such practices have had to do with the removal, cessation or change of operations, threatened or actual evictions and exclusions or restraint in the use of company property.

Removal, Cessation or Change of Operations

One of the most prevalent methods used to avoid dealing with union-organized employees is that of moving the plant to another area. In order to accomplish this end the employer usually relocates in a community which is hostile to the purpose and aims of organized labor.

Such a procedure was followed by the Klotz Manufacturing Company.¹ The concern had a union shop contract with the Suitcase, Bag and Portfolio Makers' Union and was operating in a plant located in New York City. Three

months prior to the move the owner began searching for a new location and building outside the city and located the town of Pawling to which the company moved. The general manager and the owner, in a talk with the mayor before the move, made sure that they would have "protection from the union." The general manager testified that the owner asked the mayor "if there were any union people that would come, what would he do for them?" The mayor, according to the general manager's testimony, replied, "We will put them in their place. We will even stick them in jail if we have to." With such assurances, the company proceeded to move to the smaller town.

At first, on announcing his intention to transfer to the smaller town, the owner gave indication of observing the union agreement. When the newly-located plant was in condition to start operations, the employer informed the union and requested that certain operators be sent to Pawling. He suggested that these employees could leave New York City on the 5:45 a.m. train and arrive at Pawling at 8:13 a.m. Upon their arrival, the workers were told that the factory opened at 8:00 "and when you are to report at 8:00 you are to report at 8:00, not 8:30." The

\[2\text{Ibid.}, p. 753.\] \[3\text{Ibid.}, p. 755.\]
union employees thus were locked out, and the management proceeded to operate with non-union workers.

The owner of the plant testified that he moved his plant because the lease had expired and he was notified to vacate the premises. He also claimed that he could not get other locations because of high rents, and

... due to constant doctor's bills which I paid in New York on my youngster, which he is an allergic child. The various doctors said the best thing would be for him to live in a country town where the climate is high and dry.⁴

The Board in rejecting these reasons, pointed out that neither case bore close scrutiny. Concerning his child's health, the ruling stated that the employer offered no evidence other than his own general statement that his son was "allergic." The nature of the allergy was not specified, nor did the father offer any evidence to show that the climate of Pawling was more conducive to the child's health than New York City.⁵

The Board also reflected upon the expiration of the New York City lease as the true reason for the shift to Pawling. The ruling pointed out that the company began its search for a new site at least a month prior to the receipt of the letter informing the concern to vacate. Further reflection was based on the facts that: ample

⁴Ibid., p. 750. ⁵Ibid.
evidence was established showing that the move was made in order to evade company obligations under the contract between it and the union; that the owner made sure of the attitude of the city officials on unionism before consenting to move there; and that he violated the terms of his contract with the union, locked out members, and forced them to return to New York. The Board concluded that the conduct of the employer was motivated by and part of a scheme to deny to his employees their right to join a union of their own choosing. The ruling further pointed out that the company, in order to rid itself of the Suitcase, Bag & Portfolio Makers' Union, had broken its contract with the organization. By such action the Board ruled the management had interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.\(^6\)

In order to remedy the situation, the Board ordered the company to comply with one of two procedures. It was either to pay for the reasonable expenses entailed in transporting and moving of the New York City union members and their families from New York to Pawling or to pay for the bi-weekly transportation to and from Pawling and New York City for those employees who wished to visit their families, at the option of the individual union members.

\(^6\)Ibid., p. 760.
The directive further stated that since the situation had been created by the company's own unfair labor practices, the concern was not to be permitted to shift the burden of expenses onto its employees. Therefore, by such action the Board found that the policies of the Act would be effectuated.\(^7\)

The company's cessation of operations after the formation of a union by employees is another management device used to coerce workers and to destroy their collective bargaining organization. Such action was involved in the case of the Chesapeake Shoe Manufacturing Company and United Shoe Workers of America.\(^8\)

The United Shoe Workers of America had organized the employees of a shoe factory adjoining the Chesapeake's factory and had negotiated a contract for them. Workers of the Chesapeake manifested an interest in organizing but the president of the concern, in an effort to offset this interest, called his men together, asked for their wholehearted cooperation and promised them shorter hours, a wage increase and a bonus at the end of the year. The shorter hours were put into effect but the wage increases were

\(^7\)Ibid., pp. 778-779.

\(^8\)N.L.R.B., Vol. XII, Case No. C-554, p. 832.
granted to only a few particular departments. Shortly thereafter, union organizational activity again made its appearance. During this period of organizing the company's superintendent stated to one of the leaders of unionization "that if the union ever did get in, that there would be no work in the factory, that they would go out of business, and would close up the shop." The official in another instance, when asking an employee for his help against the union, wanted to know if the employees were going to unionize. The superintendent added, "We got to know very soon or we got to close the plant down."

By the end of July a large majority of employees had become union members and about August 1st the factory was shut down.

The president of the concern claimed that the reason for closing was that he was obliged to spend so much of his time with union conferences that he had insufficient opportunity to obtain orders for shoes. He cited an instance of his dismissal of an important customer with whom he was conferring when interrupted by a union telephone call

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9Ibid., p. 835.                  10Ibid.
11Ibid.
demanding that the official meet with the union that day or the next morning. 12

The Board was convinced that the actions of the company's president "was captious, petulant and uncalled for." 13 The ruling further pointed out that by shutting down its factory the company was fulfilling its threat heretofore made to close if the union became organized and that such action was taken for the purpose of discouraging membership in the union. 14

The conclusion of the Board was that by such acts the employer had interfered with, restrained and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act. 15 Since the company had already resumed activities the Board did not order any affirmative action in regards to this part of the case.

Threatened or Actual Evictions, and Exclusions or Restraint in the Use of Company Property

Employees who live in company houses often have found themselves faced with employer interference and restraint in the former's right of collective bargaining. Such restraint usually take the form of threats of eviction or demands upon the tenant conditional to his continued occupancy of the company property. The legality of this

12Ibid., p. 836. 13Ibid. 14Ibid. 15Ibid.
situation was tested in the case of the Great Western Mushroom Company which utilized such a method in order to control its employees.\textsuperscript{16} The plant required each employee-tenant of the twenty-five dwellings, owned by the concern, to agree to defer all strike action until the mushrooms on the beds were harvested, a period requiring as long as several months.

After an organizational meeting of the United Mushroom Workers Local Union No. 300, when about twenty-five of the company's employees joined, the president of the firm approached each of the various tenants inquiring if they still agreed, in the event of a strike, "to finish all the mushrooms that were on the beds before they went out."\textsuperscript{17}

The company, in its answer to the restraint charges, denied the jurisdiction of the Board on the ground that business involved was wholly agricultural and further denied the allegations of unfair labor practices.\textsuperscript{18} The president of the concern, while testifying concerning the tenant-contracts, stated that the company required such a deferred-strike agreement if the employee was to receive free rent.\textsuperscript{19}

\textsuperscript{17}\textit{Ibid.}, p. 360.  
\textsuperscript{18}\textit{Ibid.}, p. 354.  
\textsuperscript{19}\textit{Ibid.}, p. 360.
The Board pointed out that the record disclosed that the free rental was compensation for wage reductions first instituted in 1929 and that nowhere in the record does it appear that the employee-tenants were given the alternative of paying rent if they refused to consent to the deferred-strike agreement. Under such circumstances, the ruling concluded that the privilege of continuing occupancy of a company house, and not the free rental thereof, was basic to the deferred-strike agreement. The Board pointed out that regardless of the latter consideration such a provision constituted an interference with the rights guaranteed by the Act. It further ruled that an agreement not to strike for a period of several months was, in fact, a limitation on the individual's right to engage in concerted activities. The Board continued that: such a limitation counteracted the right to self-organization since it destroyed one of the most productive means of gaining the ends for which organization is designed; that the restraint of the right to strike may be an acceptable act when it is resultant of collective bargaining. But it pointed out that imposing such a limitation upon the worker not only constituted coercing the individual, due to the inequality of bargaining position, but also presented a

\[20\] Ibid.
deterrent to the development of effective organization. Accordingly, the Board ruled that to the extent the employer thus had deprived his men of the rights guaranteed by the Act, he had been party to an unfair labor practice.21

The company was ordered to cease and desist in such practices. It also was directed to give separate written notice to each of its employee-tenants, consenting to a deferred-strike agreement, that such restraint was invalid under the National Labor Relations Act and therefore would not be held as a condition of employment or enforced in any manner.22

The Great Western Mushroom Company further utilized its plant-owned houses to emphasize its attitude toward unionization when it evicted a family in which both father and son were employees as well as union members.23

The management contended, as did the letter notifying the family of its eviction, that the removal was based solely on complaints received concerning the younger children of the family. With regard to the grievances, the company introduced as witnesses one of the two teachers of the district school, a grocer-copartner of the company president, and the foreman and employee-tenant at the plant.24

21Ibid., pp. 360-361.  
22Ibid., pp. 371-372.  
23Ibid., p. 366.  
24Ibid., p. 367.
The Board in rejecting this argument pointed out that the president of the concern had forewarned the family that further prosecution of a case, filed with the labor board by another son and brother, would result in trouble for the family. The testimony of the company's witnesses also showed that the activities of which the children had been accused had also been committed by other employee-tenant children without the same consequences. It also was reflected that the complaints in at least two instances were not reported to the president until after the family had been given notice to move.²⁵

Moreover, the Board concluded that in view of the threats made by the official, and referring to the case against the company by another member of the family, the removal followed thirteen continuous years' occupancy by the employee. Such eviction came immediately upon the close of the earlier hearing and because of the activities of the worker's sons in that case. It was found that the company had thus discriminated against this employee-tenant because of the activities of the father and his sons in union organization. The actual purpose was to discourage membership in the union. The management was ordered to offer the family immediate occupancy of their

²⁵Ibid., p. 368.
former or substantially equivalent living quarters in the plant-owned houses without requiring consent to a deferred-strike agreement or any modification thereof.\textsuperscript{26} The Board further directed the concern to reimburse the family for any rent that was paid from the date of eviction until the date of reinstatement, plus such additional expenses as were incurred during this period and directly resultant of said removal.\textsuperscript{27}

Another type of restraint, employed by management and involving company property, had to do with prohibiting union organizers access to company towns. Such a case involved Harlan Fuel Company and United Mine Workers of America.\textsuperscript{28} Citing the laws against trespassing, the fuel concern denied organizers the right to enter the company town of Yancey. Physical harm even was threatened such offenders.

The management, in pursuing its anti-union activities, sought to exclude these organizers from the company-owned homes of its employees; it refused them permission to enter or leave the employee homes over the private ways and thoroughfares of Yancey.

\textsuperscript{26}\textit{Ibid.}, p. 372. \hspace{1cm} \textsuperscript{27}\textit{Ibid.}, p. 372.

\textsuperscript{28}\textit{N.L.R.B.}, Vol. VIII, Case No. C-489, p. 25.

\textsuperscript{29}\textit{Ibid.}, p. 31.
The company contended in its objection to the Board's jurisdiction, that inter-state commerce was not involved. Too, the concern argued that its property holdings in the area of Yancey entitled it to denial of entrance to organizers and allowed the company the right to forcefully remove the outsiders as trespassers. The management also pointed out that licenses to traverse had been granted to certain organizers but that abuse of the privileges had prevailed, thus resulting in company denial of entrance and ejection of said trespassers. 30

The Board pointed out: that substantially all the employee-occupied homes in Yancey were completely surrounded by other lands owned by the mining company; the company-maintained thoroughfares, accommodating the tenants was restricted in use not only to the latter for purposes of ingress or egress but also to any persons transacting items of interest with the said employees. It argued that the union organizers were engaged in activities of mutual interest to the workers and relating directly to the exercise by the employees of their right under the Act to become members of collective bargaining organizations. Thus the company's denial of the use of thoroughfares to the organizers was adjudged not only as a violation of this

30 Ibid.
right guaranteed workers under Section 7 of the Act but also as an unfair labor practice within the meaning of Section 8(1) of the Act.\textsuperscript{31}

The company, therefore, was ordered to cease and desist from interfering with the right of union organizers to enter the town of Yancey.\textsuperscript{32}

Restraint in the use of company property has also been an issue in the maritime industry. As noted in the Waterman Steamship Case in Chapter IV, the maritime industry is such that contact with employees other than aboard vessels is often difficult. For this reason, when a collective bargaining contract is in effect most shipowners have granted passes to authorized union representatives so that union members aboard ship may consult with these men concerning grievances. Three companies' refusal to issue such passes was the basis of the case against the Cities Service Oil Company, Pure Oil Company and the Texas Company by the National Maritime Union of America, C.I.O., before the National Labor Relations Board.\textsuperscript{33} The union, which was certified as the bargaining agency of the companies' unlicensed personnel employed on

\textsuperscript{31}\textit{Ibid.}, pp. 31-32.  \textsuperscript{32}\textit{Ibid.}, p. 25.

\textsuperscript{33}\textit{N.L.R.B.}, Vol. XXV, Case Nos. C-1270, C-1271, and C-1272, p. 36.
tanker vessels complained that it was not allowed to have passes for its representatives to board the ships.\textsuperscript{34}

The union contended that such refusal was interference with the right of unlicensed personnel to bargain collectively through representatives of their own choosing because the limited and staggered shore leave of these seamen made impractical any other means of contact between employees and representatives. Such contacts, the union argued, were necessary for the purpose of ascertaining grievances, settling such if possible, informing employees of the latest union news and collecting dues. The union further contended that lack of representatives' access to members eliminated the first step in the handling of grievances thereby impeding the whole procedure and interfering with the rights of employees to bargain collectively concerning such irregularities.\textsuperscript{35}

The companies contended that denial of access was an inconvenience and not "interference" within the meaning of Section 8(1). They also maintained: that presence of shore delegates on ships would create a hazardous condition on and interfere with the efficient operation of their ships; that requiring the concerns to grant access to shore representatives would deprive the former of their property without due process of law, thereby contravening the Fifth

\textsuperscript{34}\textit{Ibid.}, p. 41. \hspace{1cm} \textsuperscript{35}\textit{Ibid.}, p. 42.
Amendment to the Constitution; and that forcing the companies to give permission to these particular representatives would entail granting similar privileges to representatives of all unions wanting to come on board, in order to avoid accusations of discrimination. 36

The Board found that the procedure involving access was necessary for the protection of the right of employees to bargain collectively through representatives of their own choosing. This ruling was based on a number of reasons. It pointed out that although companies urged other methods of conference between workers and representatives, these procedures were found to be impractical. Two such methods were cited. One was for the men to take their grievances ashore to union headquarters. This action was pointed out as having serious disadvantages in that seamen have limited shore leave and the union headquarters are not always easily accessible. Even if accessibility prevailed, the workers would want to spend their few hours ashore in normal recreational pursuits. Also, such individual bringing of grievances would result in the swamping of headquarters with a multitude of minor irregularities some of which, no doubt, would not be valid. The Board stated that although the companies were willing to grant representatives access

36 Ibid.
when a grievance necessitated a view of the ship, this method was not practical because the determination of necessity would rest with the company.\textsuperscript{37}

The second suggested method, that of having seamen meet with the shore delegate as the former left the ship, was also found to be impractical. It was pointed out that the representative could not meet with every crew member in view of the latter's staggered leave schedules. Neither would the representative have an opportunity to talk with officers concerning grievances or have a chance to see conditions on board ship.\textsuperscript{38}

The Board held the opinion that since practice of access was considered so important in shore industries where employees live on shore and can carry on union business, such activity was even more imperative where seamen are so briefly available.\textsuperscript{39}

The ruling, therefore, concluded that all other methods being impractical "the grievance procedure involving access is necessary for the protection of the right of the employees to bargain collectively through representatives of their own choosing as guaranteed in Section 7 of the Act."\textsuperscript{40}

\textsuperscript{37}Ibid., p. 48. 
\textsuperscript{38}Ibid., p. 48. 
\textsuperscript{39}Ibid., p. 50. 
\textsuperscript{40}Ibid., p. 56.
The Board issued cease and desist orders and instructed the companies to issue passes for the purpose of making employees accessible to representatives.\textsuperscript{41}

Dissatisfied with the Board's decision, the companies petitioned the Circuit Court of Appeals to reverse the opinion, contending that such a judgment interfered with their property rights in contravention of the Fifth Amendment.

The court in its decision upholding the Board, said that

\begin{quote}
\textit{it is not every interference with property rights that is within the Fifth Amendment and we see no basis for invoking the constitution in the present situation. The National Labor Relations Board is based largely upon a conception of the right to collective bargaining as the solvent of all industrial ills. Inconvenience, or even some dislocation of property rights, may be necessary to safeguard the right of collective bargaining.}\textsuperscript{42}
\end{quote}

The court sustained all the decisions of the Board but modified the order with the following provision: that granting of such company passes was subject to forfeiture if the holder utilizes his access to ships for the purpose of securing membership in the union or collecting dues for same.\textsuperscript{43}

\begin{footnotes}
\item[41]\textit{Ibid.}, p. 57.
\item[43]\textit{Ibid.}
\end{footnotes}
CHAPTER VI

SUMMARY AND CONCLUSIONS

This study has endeavored to present the Board's interpretation of Section 8(1) of the National Labor Relations Act of 1935 which provided that an unfair labor practice existed when an employer interfered with, restrained or coerced employees in the exercise of their right to organize.

The National Labor Relations Board was faced with a tremendously difficult job in administering the federal government's first attempt to enforce, widely, a legislative policy outlawing employer interference with the rights of workers to organize.

From the first the Board was working in a hostile atmosphere created by misunderstanding and opposition of the press. Its work evolved during periods of abnormality, ranging from severe depression to post-war expansion. And its problems involved the complex relationships between employer and employee.

The Act did not provide penalties for violations but it did give the Board authority to issue cease and desist orders and the power to require affirmative action to effectuate the policies of the Act. Utilizing such
provisions the Board developed a sound basis of procedure which involved thorough investigation followed by both informal and formal procedures. It was through these procedures that the cases included in this study materialized.

Cases presented in the second chapter involved the employer's use of espionage, surveillance and violence. Such activities were standard employer practices in the early 1930's and were among the most effective of anti-union devices. Employers in these cases provided little argument as to the legality of such practices, concentrating instead on attacking the constitutionality of the Act. It is to be concluded that such practices had no adequate defense and it is evident that the continuance of such procedures would defeat and destroy the labor organizations of employees. Therefore, these activities were ruled by the Board to be interference, restraint and coercion.

More subtle approaches of the employer were noted in chapter three. This portion of the study was concerned with one of the Board's most difficult and controversial problems, that of protecting the rights of the worker and, at the same time, meeting the provisions of the First Amendment of the Constitution, freedom of speech and press. Chapter three pointed out that between persons of
equal economic status such methods as anti-union statements, literature and questioning would not be coercive, but when utilized by an employer in a position of dominant economic power, these methods have a compelling effect and create a powerful and destructive anti-union weapon. In ruling on such methods, the Board took a realistic view of the situation. As the overt acts of the employers decreased, the Board and the courts proceeded to take a more liberalized view of what constituted interference, restraint and coercion in the use of such methods. This evolution of procedure developed from one requiring a "hands-off" policy by employers to a position that management could express its views within wide limits. The existence of coercion was considered with regard to the total pattern of a company's labor practices. The conclusion was reached that freedom of speech does not give the employer the right to employ threats and bribery in the exercise of such rights.

Chapter four revealed that employers, in order to avoid collective bargaining, often set up company unions or interfered in the administration of genuine labor organizations. Such interference also took the form of privileges granted one of two or more rival organizations. In such instances there was no question of the legitimate character of either group, but rather a question of
favoritism on the part of the employer. Such procedure, the Board argued, denied employees complete freedom of their rights and the privileges must either be withdrawn or be accorded all labor organizations. It is evident that the Board could not have fulfilled its purpose if it allowed the continuance of such activities to interfere with the rights of employees.

Chapter five involved the use of company property as a means of intimidating and controlling the organizations and the rights of employees. It was developed that such methods of economic coercion as ceasing to operate, moving company operations or placing restrictions on employees as a requirement of continued occupancy of company houses, were unfair practices. Also involved and ruled as unfair practices were evictions from company houses because of union activity and the denial to union organizers the right of entry into company towns. Nor were employers in the maritime industry allowed to escape collective bargaining by granting recognition to a union and then preventing shore representatives of that group from contacting members aboard vessels. It thus evolved the principle that property ownership may not be used as an excuse to interfere with the rights of employees regarding collective bargaining.

As evidenced in the previous pages of this study, such interpretation, as developed by the Board, included the following:
(1) The effective and destructive methods of espionage, surveillance and violence constitute interference, restraint and coercion.

(2) The firm is responsible for unfair labor practices committed by supervisory employees, agents or associations of which it is a member.

(3) Interrogation concerning union membership and activities is illegal.

(4) Actions involving anti-union statements and literature are powerful and destructive anti-union weapons because the economic status of the issuer is more powerful than that of the employee.

(5) Freedom of speech does not give the employer the right to question, threaten or bribe employees concerning union activities.

(6) The formation of or interference in the administration of a union in order to avoid dealing with legitimate or more aggressive organizations is an illegal practice.

(7) Completing the mere formalities of affiliating with some national organization is insufficient to change the character of a company-dominated union or to invest such a union or the company with immunity.

(8) The granting of privileges must be accorded all labor organizations of employees in order to be legal.
(9) Property ownership cannot be utilized as a method of avoiding collective bargaining.

(10) Cessation or moving of company operations cannot be utilized for the purpose of avoiding collective bargaining.

(11) Employers cannot require restrictive agreements as a condition of occupancy of company property if the agreements violate the rights of employees to organize and bargain collectively.

(12) The issuance of passes to authorized representatives of a recognized bargaining group for the purpose of visiting ships cannot be denied.

(13) Ownership of property surrounding a company-town does not give the owner the right to prohibit union organizers from entering.

Without such a broad and realistic interpretation, as developed by the Board, the National Labor Relations Act of 1935 could not have achieved its many accomplishments in protecting the rights of employees to organize for the purpose of collective bargaining.
BIBLIOGRAPHY

Books

Bowman, D. O., Public Control of Labor Relations, New
York, Macmillan Co., 1942.

Brooks, Robert R., Unions of Their Own Choosing, New
Haven, Yale University Press, 1939.

Brown, E. C., and Millis, H. A., From the Wagner Act to
Taft-Hartley, Chicago University of Chicago Press,
1950.

Goldberg, Herman, editor, Digest of Decisions of the
National Labor Relations Board, Washington, Govern-
ment Printing Office, 1946.

National Labor Relations Board, Court Decisions Pertaining
to the National Labor Relations Act, Vol. I, Washing-
ton, Government Printing Office, 1944; also Vol. II,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. I,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. IV,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. V,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. VII,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. VIII,

National Labor Relations Board, Decisions and Orders of
the National Labor Relations Board, Vol. XI,


Public Documents


Reports


Articles


Unpublished Material