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NATIONAL LABOR RELATIONS BOARD

Activities of the Philadelphia Regional Office

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DIVISION

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The Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on Labor, Health
and Human Services, and Education
Committee on Appropriations
United States Senate

The Honorable Arlen Specter
United States Senate

This fact sheet is in response to your July 18, 1985, letter concerning allegations by several union representatives from the Philadelphia area that, over the past 2 years, the National Labor Relations Board's (NLRB's) Philadelphia Regional Office operated in a biased manner.

In later discussions with Senator Specter's office, we agreed to obtain statistical information on the operations of the Philadelphia office. We also agreed to obtain from several Philadelphia labor union leaders and legal representatives examples of cases that they believed represented antiunion bias and to obtain both union representatives' and NLRB's views on these cases.

In performing our work, we relied on unverified data that were readily available from NLRB's Philadelphia and headquarters offices. From NLRB, we obtained summaries of most of the cases identified by union representatives. We also obtained Philadelphia officials' responses to union representatives' comments on these cases. The statistical data and other information we obtained are summarized in this letter and discussed in the fact sheet. Appendix I contains summaries, union comments, and NLRB's responses for cases identified by union representatives as allegedly evidencing antiunion bias in the Philadelphia office's operations.

Data on charges of unfair labor practices investigated by the Philadelphia Regional Office showed that the percentage of cases against unions that were found to have merit decreased from 40.4 percent in fiscal year 1983 to 34.1 percent in fiscal year 1985. Over the same period, the percentage of cases against employers that were found to have merit decreased from 46.7 to 41.5 percent.

Other data comparing the Philadelphia Regional Office with NLRB national averages showed that for fiscal years 1982-85, (1) the percentage of cases dismissed by Philadelphia that were later reversed on appeal to NLRB's Office of General Counsel did not significantly exceed the average for all regional offices and (2) the percentage of cases in which Philadelphia's decision was later upheld by either an administrative law judge or members of NLRB generally exceeded the national average.

In addition to the statistical data on Philadelphia's operations, an NLRB Associate General Counsel believed that the results of annual quality reviews of case handling activities for the period 1979-85 showed that the Philadelphia office processed its cases in a high-quality manner and in conformance with NLRB policies and procedures.

In response to union representatives' allegations that the Philadelphia office indiscriminately and disproportionately imposed fines and penalties against labor unions without similar enforcement against employers and sought injunctions against labor unions much more frequently, the Philadelphia Regional Director told us that the region plays a limited role in imposing fines and issuing injunctions. For each of these actions, the region makes recommendations to NLRB's General Counsel, which in turn makes recommendations to the Board. The Board then determines if the case should be referred to the courts, and the courts decide if a fine or an injunction is warranted.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from its issue date. At that time we will send copies to NLRB; the Director, Office of Management and Budget; the Philadelphia area union leaders and legal representatives who raised the issue of antiunion bias; and other parties on request.

Should you need additional information on the contents of this document, please call me on 275-5451.

Sincerely yours,

Franklin A. Curtis

Franklin A. Curtis
Associate Director

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ABBREVIATIONS

BCTC	Building and Construction Trades Council
IBEW	International Brotherhood of Electrical Workers
MPI	Metal Processing, Inc.
NLRB	National Labor Relations Board

ACTIVITIES OF

NLRB'S PHILADELPHIA REGIONAL OFFICE

IN INVESTIGATING UNFAIR

LABOR PRACTICE CASES

Several labor union leaders and legal representatives from the Philadelphia area alleged that the National Labor Relations Board's (NLRB's) Philadelphia Regional Office had, in the past 2 years, functioned in a biased manner. These individuals complained that regional office operations had changed. As stated in a July 18, 1985, letter requesting our review, this change had allegedly

> ". . . come in the form of a failure to impartially consider labor union complaints of unfair labor practices, indiscriminate and disproportionate imposition of fines and penalties against labor organizations without similar tough enforcement against employers, and vastly increased frequency of seeking injunctive relief[1] against labor unions seeking to organize new bargaining units."

The individuals alleging bias told us that their complaint was solely with the operation of the Philadelphia office, not with NLRB's national policies or recent decisions.

OBJECTIVES, SCOPE, AND METHODOLOGY

In responding to the request from the Chairman, Subcommittee on Labor, Health and Human Services, and Education, Senate Committee on Appropriations, and Senator Arlen Specter, we examined selected activities of NLRB's Philadelphia Regional Office as they related to investigating and processing unfair labor practice cases. As agreed with Senator Specter's office, our objectives were to (1) obtain statistical information on the Philadelphia office's operations and (2) review and obtain union representatives' and NLRB's comments on cases in which union representatives alleged that the office had acted in a biased manner.

In obtaining statistical data on Philadelphia's operations, we relied on the data that were readily available from NLRB's headquarters and Philadelphia offices. We did not independently

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[1]The term injunctive relief refers to the issuance of a legal order that provides for curtailment of an unlawful practice.

verify the statistical data obtained from NLRB. We also interviewed NLRB officials from both offices and reviewed publications that contained information on NLRB operating practices and procedures.

We also met with several labor union officials (representing two unions) and union legal representatives and asked them to identify examples of unfair labor practice cases in which the Philadelphia office had acted in a biased manner. They identified 28 examples and provided comments on why they believed NLRB handled these cases inappropriately. In turn, NLRB Philadelphia officials were asked to respond to the union representatives' comments. Of the 28 cases identified, we have included information for the 19 cases that the Philadelphia office considered closed. Appendix I contains summaries, union comments, and NLRB's responses on these 19 examples, which we further consolidated into 10 case studies.

We discussed the information developed during our work with NLRB headquarters and Philadelphia office officials and have incorporated their comments where appropriate.

BACKGROUND

The Congress enacted the National Labor Relations Act (29 U.S.C. 151) to define and protect the rights of employees and employers, to encourage collective bargaining, and to eliminate certain practices on the part of labor and management that are harmful to the general welfare.

The act defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing. To protect the rights of employees and employers and to prevent labor disputes that would adversely affect the rights of the public, the law defines specific unfair labor practices, such as the refusal to bargain in good faith and the restraint and coercion of employees.

The act is administered and enforced by NLRB and its General Counsel acting through 52 regional and other field offices in major cities throughout the United States. NLRB's regional office staffs investigate and process unfair labor practice cases and conduct elections to determine employee representatives. The five-member Board decides cases involving charges of unfair labor practices and questions on the election of representatives.

According to the Philadelphia Regional Director, only when requested does NLRB investigate and process charges of unfair labor practices brought against either unions or employers. If

the region's investigation indicates that the unfair labor practice has occurred (the charge has merit), the region if it is unable to settle the case informally will issue a complaint against the offending party--either a union or an employer. NLRB attempts to settle most cases without formal proceedings.

For cases in which the region refuses to issue a complaint, the charging party may appeal to NLRB's Office of General Counsel in Washington, D.C. If a charge is determined to have merit and a complaint is issued, a hearing is scheduled before an NLRB administrative law judge to review and decide the case. Parties to this hearing have the right to appeal the judge's decision to the Board. Finally, Board decisions may be appealed to the U.S. court of appeals. If an employer or a union fails to comply with a Board order, the Board can petition the court of appeals to enforce the order.

ALLEGATIONS OF ANTIUNION BIAS BY NLRB'S PHILADELPHIA REGIONAL OFFICE

Several labor union leaders and legal representatives in the Philadelphia area contended that NLRB's Philadelphia Regional Office, over the last 2 years, has been biased against unions. These individuals believed that, in investigating and processing charges of unfair labor practices brought against either unions or employers, the regional office was more likely to have found that these charges had merit in cases against the unions.

Table 1 contains statistical information for fiscal years 1982-85 on the percentage of unfair labor practice cases in which the Philadelphia office made a merit determination.

Table 1:
Merit Determinations by NLRB'S
Philadelphia Regional Office
(Fiscal Years 1982-85)

Fiscal year	Charges filed	Percentage of cases that Philadelphia found to have merit		
		Total	Against union[a]	Against employer[a]
1982	1,165	42.1	39.0	43.3
1983	1,195	44.9	40.4	46.7
1984	1,100	39.9	37.0	41.0
1985	1,294	39.5	34.1	41.5

[a]For cases with merit, the Philadelphia office maintained statistical data on the percentages of these cases. During these years, the total number of charges against unions ranged from 315 to 332 and against employers ranged from 753 to 858.

Source: NLRB

According to these statistics, the percentage of cases against unions that were found to have merit has decreased from 40.4 percent in fiscal year 1983 to 34.1 percent in fiscal year 1985. Over the same period, the percentage of cases against employers that were found to have merit also decreased. As shown, however, the percentage of cases in which the region found that employers' and unions' charges of unfair labor practices had merit has remained about the same over the last 4 years.

Comparison of Philadelphia with NLRB national averages

NLRB's Office of General Counsel assesses each regional director's performance by measuring such factors as (1) the region's reversal rate and (2) the percentage of cases won in which regional offices' determinations were upheld when reviewed by administrative law judges or the Board. (NLRB refers to this percentage as the litigation results rate.)

Employers or unions may appeal a regional office refusal to issue a complaint to NLRB's Office of General Counsel. According to an NLRB Associate General Counsel, these appeals are reviewed by individuals who have no connection with the regional office. He also told us that about 3 to 5 percent of all cases appealed are reversed and that Philadelphia's performance in this area was in the normal range. Table 2 contains information

on cases in which regional offices' decisions to dismiss charges have been reversed by NLRB's General Counsel.

Table 2:
Philadelphia Regional Office and National Reversals (1982-85)

Calendar year	Reversals			
	Philadelphia		National	
	Number	Percent	Number	Percent
1982	7	4.8	[a]	4.4
1983	7	4.5	[a]	3.8
1984	1	0.7	[a]	3.6
1985[b]	6	4.9	82	2.8

[a]Not available.

[b]Through September.

Source: NLRB

Table 3 contains information on cases won by a regional office. In such cases, after the regional office has issued a complaint against one of the parties, a hearing is scheduled before an administrative law judge to review and decide the case. Parties may also request the Board to review the administrative law judge's decision. If all or part of the regional office's determination is upheld, NLRB considers the region to have "won" the case.

Table 3:
Philadelphia Regional Office and National Cases Won (1982-85)

Calendar year	Cases won			
	Philadelphia		National	
	Number	Percent	Number	Percent
1982	49	89	1,632	81
1983	43	81	1,032	77
1984	51	69	1,270	73
1985[a]	20	83	493	73

[a]Through June.

Source: NLRB

According to an NLRB Associate General Counsel, on the average over the past several years, the percentage of cases won by the Philadelphia office generally exceeded the national average.

In addition to the information in tables 2 and 3, NLRB's Division of Operations Management routinely reviews many cases in which NLRB's regional offices make determinations. These reviews include (1) a review of every complaint issued by a regional office for legal sufficiency, (2) review and approval of all formal settlement agreements prepared by a regional office before they are transmitted to the Board, and (3) a review of all regional office recommendations for either enforcing a Board order or seeking a contempt adjudication against a party that violated such an order. According to the Associate General Counsel, these reviews act as a further check on a region's case handling performance.

In addition to these reviews by the Division of Operations Management, the division conducts an annual quality review of regional office cases that were withdrawn or dismissed. For this review, 40 case files from each regional office are randomly selected and reviewed for such quality standards as (1) contacting all pertinent witnesses, (2) following up leads, (3) making reasoned decisions based on sufficient evidence, (4) properly analyzing data, (5) adequately performing the legal research, and (6) making the proper decision.

According to the Associate General Counsel, annual quality reviews of the Philadelphia office for 1979-85 showed that it processes its cases in a high-quality manner and in conformance with NLRB policies and procedures. In summarizing the statistical data on Philadelphia's operations, the results of annual quality reviews of its case handling activities, and assessments of cases routinely reviewed by the Division of Operations Management, the Associate General Counsel said the region's case handling "is not merely adequate, but . . . excellent."

IMPOSITION OF FINES AND PENALTIES

As described in the July 18, 1985, letter requesting this review, union leaders alleged indiscriminate and disproportionate imposition of fines and penalties by the Philadelphia Regional Office against labor organizations without similar "tough" enforcement against employers. However, according to the Philadelphia Regional Director, regional offices play a limited role in the enforcement processes that may result in the imposition of fines and penalties against repeat violators of the act. Regarding fines and penalties, the region's role consists of identifying a violation of a party's noncompliance with

a Board order and making recommendations to NLRB's General Counsel to institute a contempt proceeding against the violator. If the General Counsel agrees, it recommends that the Board authorize the region to petition the federal courts to institute civil contempt proceedings. If the court determines the party is in contempt, it may impose fines or penalties.

Table 4 contains information on fines against unions in the Philadelphia area for 1981-85.

Table 4:
Fines Imposed on Unions
in the Philadelphia Region
(1981-85)

Union	Year	Fine/prospective fine
Building and Construction Trades Council	1982	Prospective fines of $6,500 per violation
Building and Construction Trades Council	1983	$3,000 fine, plus prospective fines of $13,000 per violation
Local 30, Roofers	1984	$25,000 fine, plus prospective fines per violation of $20,000 against the union and $500 against its business agent

Source: NLRB

According to the Regional Director, over the years penalties have been imposed against only one employer in the Philadelphia region. He said that individual employers in the Philadelphia region have not accumulated an extensive history of past violations that would warrant the imposition of fines or penalties.

Fines against Building and Construction Trades Council

According to NLRB's Philadelphia Regional Director, the imposition of fines in cases involving the Building and Construction Trades Council (BCTC) were the result of BCTC's history of repeated unfair labor practices and its failures to comply with court orders for past violations. These failures have resulted in contempt proceedings and the imposition of fines.

In more than 30 cases during 1981-85, the Philadelphia Regional Office determined that unfair labor practice charges filed against BCTC merited the issuance of complaints. Since 1981, NLRB has authorized contempt proceedings in five cases against BCTC. The courts imposed fines in two instances. In the other three instances, contempt actions were consolidated into a single case that was pending as of December 1985.

FREQUENCY OF SEEKING INJUNCTIVE RELIEF

As described in the July 18, 1985, letter requesting this review, union officials alleged that the Philadelphia Regional Office seeks injunctive relief against labor unions much more often than in prior years. According to the Regional Director, the authority to seek injunctive relief depends on which section of the act was violated. The region gives priority to investigations of violations of sections relating to boycotts, picketing, and work stoppages over other types of cases. If a preliminary investigation of such cases shows there is a reasonable cause to believe a charge is true and that the parties are not willing to settle the case, the regional office must petition the court for an injunction.

For other violations of the act (nonpriority cases), where the region has issued a complaint, it has discretion to recommend to the General Counsel that the Board petition the court for an injunction under section 10(j) of the act.

Table 5 contains Philadelphia Regional Office data on the number of times that employers requested the office to seek injunctive relief against unions where it had discretion (i.e., nonpriority cases) in recommending such relief.

Table 5:
Handling of Section 10(j)
Injunctive Relief Cases Against Unions
(Fiscal Years 1981-85)

Fiscal year	Requested by employers	Recommended by Philadelphia to General Counsel	Recommended by General Counsel to the Board
1981	7	1	1
1982	3	1	1
1983	8	0	0
1984	6	1	1
1985	6	1	1

As shown in table 5, the Philadelphia Regional Office has not sought injunctive relief more frequently in recent years.

CASES IDENTIFIED BY UNION REPRESENTATIVES AS SHOWING ANTIUNION BIAS

Teamsters Local 115, BCTC, and a Philadelphia labor attorney (representing BCTC and other unions) identified 28 examples allegedly evidencing antiunion bias in the Philadelphia Regional Office's operations. We obtained information on 19 of the 28 cases that the Philadelphia office considered closed.

These 19 cases consisted of 12 against employers and 7 against unions. Where appropriate, we have consolidated these 19 cases and have presented them as 10 case studies in this appendix. Each case study includes (1) the charge(s), (2) the Philadelphia office's determination, (3) the disposition of the case(s), (4) the union's allegation of bias, as presented to us, and (5) the Philadelphia office's responses to that allegation.

Except for the unions' allegations, the information presented in these case studies is generally taken from NLRB summaries of the cases. However, certain segments of these summaries have been paraphrased in nontechnical terms. The union allegations represent our understanding of their concerns about the regional office's handling of the case.

CASE STUDY 1

Teamsters Local 115 v. Koski Trucking, Inc. (4-CA-14300-4).

Charge

On May 3, 1984, Local 115 filed a charge that Koski Trucking, acting as an agent of Gross Metal Products, Inc., violated the act by threatening, coercing, and causing bodily injury to an employee engaged in a legal strike. Local 115 also filed a companion charge against Gross Metal based on the same incident.

Regional Office Determination

The charges arose out of an accident that occurred outside a loading dock at the Gross Metal facility on April 27, 1984. A Koski truck was backing into the loading area to make a delivery. Local 115 was engaged in a strike against Gross Metal, and its members were picketing in front of the loading area. As the truck backed up to the loading dock, it pinned an employee against a pole at the entrance of the loading area, fracturing his pelvis. NLRB's summary of this case stated that the employer's videotape of the incident showed that the union

member had ample opportunity to move but deliberately kept positioning himself behind the moving truck in an attempt to block its path. The summary also stated that after viewing the videotape, NLRB concluded that the incident was an unfortunate accident that was as much or more the fault of the picket as the driver and that neither Koski nor Gross Metal had violated the act.

Disposition

The region dismissed the charge on June 7, 1984. The union did not appeal the case.

Union Allegation

Local 115 contended that the region should not have dismissed the charge because

--The company's agent (Koski) acted in a violent manner, striking and seriously injuring a picketing employee with its truck.

--The region found that less violent acts by the union (such as snowball throwing and littering an employer's premises with trash) to be charges meriting the seeking of a contempt citation.

Regional Office Response

The Regional Director responded to us by stating that his office had resolved this charge on the basis of the videotape.

According to NLRB's response, although a picketing employee was struck and injured, it cannot be said that the truck driver, Koski, or Gross Metal acted violently. Local 115's action in blocking ingress and egress to Gross Metal's facility was a violation of the act.

Local 115's claim that the region sought a contempt citation for "snowball throwing" and "littering of the employer's premises" refers to another Local 115 and Gross Metal Products Company case that involved substantial picket-line misconduct for which the Board authorized the institution of proceedings for injunctive relief on July 19, 1984. On August 30, 1984, the district court issued an injunction forbidding Local 115 from (1) blocking ingress to or egress from the employer's facility, (2) threatening bodily harm to employees or other individuals at the facility, (3) assaulting employees or other individuals, and (4) attempting to cause or causing damage to the property of the employer or persons doing business with the employer.

After the injunction was issued, Gross Metal filed additional unfair labor practice charges against Local 115, alleging further picket-line misconduct. Based on the evidence obtained in the region's investigation, NLRB determined that Local 115 had engaged in the following unlawful conduct: (1) placing a nail under a delivery truck tire; (2) throwing snowballs, hitting, and injuring the owner of Gross Metal; (3) blocking ingress and egress at the facility; (4) throwing bricks at vehicles entering Gross Metal's facility; (5) throwing nails and glass and hitting a security guard; and (6) threatening a delivery driver with reprisals. Based on these cases, NLRB authorized the institution of contempt proceedings, alleging violation of the district court's injunction. At the May 13, 1985, hearing on the contempt petition, counsel for Local 115 told the court that the union would take steps to comply with the injunction. Based on Local 115 statements, the court has continued the case.

CASE STUDY 2

Teamsters Local 115 v. Oakwood Chair Mfg. Company, Inc. (4-CA-13527) (4-CA-13527-3).

Oakwood Chair Mfg. Company, Inc. v. Teamsters Local 115 (4-CB-4583).

Charge

On February 1, 1983, Oakwood Chair filed a charge alleging that Local 115 had restrained and coerced the former's employees by engaging in mass picketing, blocking ingress and egress to its facility, and jostling, threatening, and assaulting a supervisor and others in the presence of employees. Oakwood Chair also alleged that Local 115 had vandalized one of its trucks and tampered with locks at its warehouse.

On February 11, 1983, Local 115 filed a charge alleging that Oakwood Chair had (1) threatened to close its business rather than negotiate, (2) urged its employees to abandon Local 115, (3) promised its employees that it would help form and support a company union if the employees would abandon Local 115, and (4) promised that it would deal directly with its employees and refuse to negotiate in good faith with Local 115 and discharge striking employees in an attempt to discourage their union activity. On March 18, 1983, Local 115 further charged that an Oakwood Chair employee had assaulted a union member in retaliation for his union activity.

Regional Office Determination

The region's summary of this case stated that Local 115 had been certified as the collective bargaining representative of certain Oakwood Chair employees. The parties engaged in negotiations for 5 months but failed to reach agreement. The evidence established that on several occasions commencing on November 23, 1982, the president of Oakwood Chair offered employees money, an automobile, and other benefits as inducements to encourage them to file a decertification petition with NLRB. On November 29, 1982, the president met with employees concerning wages and benefits and promised wage increases and medical benefits if they would abandon their support for Local 115. The President also promised to execute a collective bargaining agreement with a "company" union if they would abandon Local 115.

On January 24, 1983, Local 115 commenced a strike and engaged in mass picketing at Oakwood Chair's Philadelphia facility. On the same date, Local 115 agents blocked a supervisor and two trucks from entering or leaving the Philadelphia facility, jostled a supervisor and threatened bodily harm and property damage, and threatened an individual performing services for Oakwood Chair with bodily harm and property damage, all in the presence of Oakwood Chair employees. On January 25, Local 115 agents again blocked the ingress of customers to the plant in the presence of employees. On January 28, agents for Local 115 assaulted and injured the secretary-treasurer of Oakwood Chair in the presence of employees.

On January 28, the president of Oakwood Chair told an employee that the company would not execute a collective bargaining agreement with Local 115. On January 28 and again on February 1, the president made an implied threat to an employee that it would close its Philadelphia plant if the employees did not cross the picket line and return to work. On February 2, Oakwood Chair informed its employees that it would not negotiate with Local 115.

On March 10, Oakwood Chair's secretary-treasurer arrived at the Philadelphia plant at about 5:00 a.m. and found that the padlock was filled with glue. The secretary-treasurer saw an employee who had engaged in picketing on behalf of Local 115 walking away from the area and followed him to a telephone booth. According to the employee, the secretary-treasurer hit him in the chest and he banged his head on the telephone. The employee stated that he pushed the secretary-treasurer out of the way and ran away. The region's report states that there was no evidence that the employee was injured.

The region concluded that Local 115's actions described above had violated the act. The region also decided that insufficient evidence existed to hold Local 115 responsible for vandalizing Oakwood Chair's truck and tampering with the locks. In view of Local 115's conduct, particularly the assault on the secretary-treasurer, the region insisted on a formal settlement agreement between Oakwood Chair and Local 115, if Local 115 wished to settle the case. The region proposed an order limited to conduct involving this employer and sent Local 115 a proposed formal settlement stipulation. The proposed stipulation was never signed.

The region also concluded that Oakwood Chair had violated some sections of the act but that some of the charges brought by Local 115 should be dismissed. Oakwood Chair's statement that it would execute a collective bargaining agreement with a "company" union was found to violate the act. The region determined that Oakwood Chair had not, in fact, discharged striking employees and that the company president's comments to two employees that "You don't have a job. There are no jobs. I'm not signing any contract with Local 115" violated the act. The region decided that the strike was an unfair labor practice from its inception.

Disposition

In Oakwood Chair's case against Local 115, the region issued a complaint against the union on March 11, 1983. The complaint stated, in effect, that Local 115 had engaged in unfair labor practices. Local 115 rejected the opportunity to enter into a formal settlement agreement; the union's counsel requested continuances of the unfair labor practice hearing criminal proceedings against Local 115's agents. The requests were granted, and the case was heard by an administrative law judge on June 4 and 5, 1984. On March 21, 1985, the judge issued a decision finding violations of the act on all allegations of the complaint. In addition, based on Local 115's unlawful conduct as found in prior litigated cases, the judge found that the union had demonstrated a proclivity to violate the act and issued a broad cease-and-desist order. Counsel for NLRB had not sought such an order. The case went before the Board on exceptions filed by Local 115 on April 29, 1985. On November 25, 1985, the Board upheld the judge's decision to issue the cease-and-desist order.

On March 24, 1983, the region issued a complaint against Oakwood Chair for threatening to close its business. Oakwood

Chair agreed to enter into an informal agreement to correct violations cited in the complaint. This agreement required Oakwood Chair, which had ceased operations, to bargain with Local 115 upon request and to offer employees reinstatement if operations resumed. Local 115 declined to enter into this agreement and objected to the proposed informal agreement on the grounds that it believed that Oakwood Chair had not ceased operations. A further investigation disclosed that Oakwood Chair had gone out of business. NLRB approved the settlement on July 25, 1983, and Local 115 did not appeal. The region closed the case on November 25, 1983.

Union Allegation

Local 115 contended that the region sought a punitive remedy (a broad formal order) against it because of the violence involved, but did not seek to impose a comparable remedy against Oakwood Chair (only an "informal notice" was required) despite "countless" violations of the law.

Local 115 contended that this case typifies the region's inequitable treatment of unions and employers in terms of remedies sought.

Regional Office Response

According to the region's summary, the office did not seek a broad cease-and-desist order against Local 115 either in settlement negotiations or in litigation. The administrative law judge had recommended the broad order. The region had sought a formal settlement agreement providing for a Board order and court judgment in settlement negotiations because of the violence and Local 115's history of similar unfair labor practice conduct. However, the region had never proposed or requested an order requiring Local 115 to cease and desist from engaging in such unlawful conduct regarding the employees of any other employer.

As to the unfair labor practice cases against Oakwood Chair, while the firm committed substantial unfair labor practices, the region's summary stated there was less violence involved. The allegation of an "assault" by Oakwood Chair on an employee involved an incident in which the firm's secretary-treasurer hit an employee in the chest, but this did not result in any injury. Moreover, there had been only one prior unfair labor practice case against Oakwood Chair that had been found to have merit. It had been disposed of by an informal settlement agreement. Local 115 declined to enter into the informal

settlement in this case and did not appeal the region's approval of the unilateral settlement agreement.

CASE STUDY 3

Teamsters Local 115 v. Metal Processing, Inc. (4-CA-14825).

Charge

On January 16, 1985, Local 115 charged that Metal Processing, Inc. (MPI), which had a collective bargaining relationship with Local 115, violated the act by terminating its operations in Philadelphia and reopening at another location in New Jersey under the name G.R. Wharton Steel Co. in order to avoid its collective bargaining obligations. Local 115 also requested injunctive relief under the act.

Regional Office Determination

Until August 1984, MPI operated a metal processing facility in Philadelphia. MPI employed about 25 production employees engaged in pickling, slicing, and warehousing metal products. (Pickling is a cleaning process involving dipping metal coils in various solutions. Slicing is a process for reducing the width of metal coils.) On August 12, 1984, MPI's chief executive informed MPI's shop steward that there would be no additional work for the employees because it had filed for bankruptcy. The only work performed at MPI thereafter consisted of preparing materials and equipment for sale to various customers.

When MPI filed for bankruptcy, its chief executive resigned and went to work in northern New Jersey for a company called Wharton, which was principally owned by a friend of his. The friend was also a minority shareholder in MPI. Wharton was principally engaged in buying and selling steel products. None of Wharton's employees were formerly employed by MPI.

Disposition

The regional office dismissed the charge on March 7, 1985. Notwithstanding the fact that MPI's chief executive had worked for both companies, the evidence failed to establish that Wharton was a disguised continuance or "alter ego" of MPI. The investigation disclosed that the two companies performed different work with different processes and employees. Local 115 did not file an appeal after the charge was dismissed.

On March 28, 1985, Local 115 requested that the region reopen its investigation based on certain newly discovered evidence. Local 115 submitted a Dun & Bradstreet report to the region indicating that MPI's chief executive was the president and 100-percent owner of Wharton. On April 17, the region reopened the investigation, which established that, while MPI's chief executive was the president of Wharton, he owned only about 10 percent of the outstanding stock. Wharton later purchased some of MPI's inventory and equipment but only for resale. MPI and its chief executive jointly owed a creditor $130,000. The creditor had a security lien on MPI's inventory and equipment and threatened to foreclose and auction the inventory and equipment. Because foreclosure and resale at a low price would have affected the president's personal liability, Wharton purchased the materials to resell them for something closer to their true value. Wharton has advertised the equipment for sale. The region determined that the new evidence did not alter its earlier conclusion that Wharton and MPI were not "alter egos." Upon being informed of the region's decision to dismiss this case, Local 115 withdrew the charge on May 31, 1985.

Union Allegation

Local 115 contended that in this case the the employer moved his business and operated it under another name.

Local 115 contended that the regional office did not perform an adequate investigation and simply took the president's word that MPI had gone out of business.

Regional Office Response

The region's response states that there was insufficient evidence to support the allegation that MPI moved its business and was operating under another name. Wharton does not have the facilities or employees to perform the type of work done by MPI. If Local 115 believed that the regional office's investigation was inadequate based on the region's summary, the union should have appealed the original dismissal.

CASE STUDY 4

Teamsters Local 115 v. Triangle Press (4-CA-13960).

Charge

On September 13, 1983, Local 115 filed a charge alleging that Triangle Press violated the act on September 12, 1983, by declining to recognize Local 115 as the collective bargaining representative of Triangle's eight employees and by laying off the employees who supported the union. Local 115 requested a bargaining order remedy and relief under the act.

Regional Office Determination

The region's investigation disclosed that, on September 12, 1983, Local 115 representatives went to Triangle's plant with authorization cards to demonstrate that they represented a majority of Triangle's employees. These representatives demanded recognition, and Triangle declined. Immediately thereafter, Triangle laid off virtually its entire work force. However, on the afternoon of the same day, Triangle's attorney advised the firm to repudiate its actions. Triangle representatives telephoned the employees, apologized for what had occurred, reinstated them and told them that they would be paid for the day. All employees returned to work the following morning, when Triangle's president told them that he had made a mistake on the previous day. He also said that everyone had a right to select or reject Local 115, that he would not take action against anyone whether they were for or against union representation, and that he would not ask any employee about their union sympathies.

The region determined that Triangle had violated the act by discharging employees because of their union sympathies and activities. However, in view of Triangle's prompt and unequivocal repudiation of its unlawful conduct, including the immediate reinstatement of employees with back pay, the region concluded that Triangle's unfair labor practice conduct was not sufficiently serious and pervasive to warrant a bargaining order remedy.

Disposition

On October 26, 1983, the region dismissed charges that Triangle had refused to bargain with employee representatives. Local 115 filed an appeal with NLRB's General Counsel, and the appeal was denied on November 30, 1983.

Triangle agreed to enter into an informal settlement agreement to remedy violations related to union organization activities. The region offered Local 115 an opportunity to enter into the settlement agreement, but the union declined. Local 115 did not file written objections to the proposed settlement agreement, and the agreement was approved unilaterally on December 8, 1983. Local 115 did not appeal. Upon compliance with the terms of the settlement agreement, the case was closed on December 30, 1983.

Related Representation Case

On September 12, 1983, Local 115 filed a petition seeking an election in the same unit of employees for whom it had demanded recognition. Further proceedings on the representation case were blocked pending disposition of the unfair labor practice charge. After the settlement agreement was approved on December 8, 1983, processing of the representation case was resumed. Local 115 and Triangle entered into an election agreement, which the Regional Director approved on December 22, 1983, providing for an election to be conducted on January 27, 1984. At the election, the employees voted 6 to 1 against representation by Local 115. On February 1, 1984, Local 115 filed objections to conduct affecting the results of the election based on conduct unrelated to the original unfair labor practices. Following an investigation, the region, on March 8, 1984, issued a report on objections to the election and recommended that the objections be dismissed and that a certification of results be issued. No exceptions to the report were filed by either party within the time provided, and on March 29, 1984, the Board adopted the report and recommendations and issued a certification of results.

Union Allegation

Local 115 contended that the regional office did not seek an adequate remedy against Triangle, which had clearly violated the act by firing employees for their organizing activities.

Local 115 contended that a bargaining order should have been issued as a result of this incident, that Triangle's actions clearly intimidated the employees, and that the lack of an appropriate remedy failed to restore the status quo that existed before the violation.

Regional Office Response

According to a region's response, the Supreme Court has held that the issuance of a bargaining order by the Board is appropriate in cases where an employer has engaged in outrageous and pervasive unfair labor practices and in cases involving serious, although less pervasive, unfair labor practices that have the tendency to undermine the union's majority and impede the election process. The Court stated that

> "If the Board finds that the possibility of erasing the effects of past (unfair labor practices) and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an offer should issue." NLRB v. Gissel Packing Co., Inc., 395 U.S. 575, 613-15 (1969).

The region's response further states that there was no question that Triangle engaged in a serious violation of the act when it discharged its employees after it became aware of their union organizing activity. However, within 24 hours, after consulting with counsel, Triangle reinstated all of the employees without any loss of pay or benefits. In addition, Triangle unequivocally repudiated its actions and assured the employees in writing that it would respect their statutory rights. In these circumstances, the region concluded that this was not a case in which the possibility of erasing the effects of Triangle's unfair labor practice conduct and of ensuring a fair election by the use of traditional remedies was slight.

CASE STUDY 5

Teamsters Local 115 v. Miracle Core/Solvent Machinery & Filter Systems (4-CA-13264).

Charge

On October 12, 1982, Local 115 charged that Miracle Core violated the act. Specifically, Local 115 alleged that it had demanded recognition as representative of Miracle Core's 21 employees on October 7, 1982, and that the firm had unlawfully refused to grant recognition to the union and that on October 11, 1982, had laid off all of its employees to avoid its obligation to bargain with the union. Local 115 sought a bargaining order as a remedy and requested injunctive relief under the act.

Regional Determination

The region's investigation disclosed that Miracle Core lost $201,315 for the fiscal year ended April 30, 1982. During May 1982, the owners of Miracle Core decided that they would either sell the business or liquidate its assets. Negotiations for the sale of the business began later that month. On October 1, 1982, after lengthy negotiations, the attorney for a competitor and potential buyer sent a proposed agreement for the purchase of Miracle Core's assets to the firm's attorney. Not until October 5 and 6, 1982, did Miracle Core employees contact Local 115 and sign union authorization cards. On October 7, 1982, two Local 115 representatives made a demand for recognition, which Miracle Core rejected, despite being shown authorization cards from a majority of the employees. Over the following weekend, the agreement to sell Miracle Core to its competitor was finalized and the employees were informed that they were being permanently laid off on October 11.

The region made a determination to dismiss the charge based on the conclusion that Miracle Core sold its business for economic reasons. The region's summary stated that while there was evidence that Miracle Core may have made statements in April or May 1982 that violated the act, the region decided that it would not effectuate the act's purposes to proceed further with respect to these statements as the firm had gone out of business.

Disposition

The charge was dismissed on November 24, 1982. Although a time extension was granted to file an appeal, none was filed.

Related Case

On November 12, 1982, Local 115 filed a charge in a case against the company that purchased Miracle Core's assets. The charge alleged that this company refused to hire employees who had previously worked for Miracle Core and refused to bargain with Local 115.

The investigation disclosed that the company refused to hire one employee because of her union activity, but that other individuals were denied employment for unrelated reasons. On January 31, 1983, the charge was dismissed as to all allegations except the failure to hire the one employee. The partial dismissal was not appealed. An informal unilateral settlement

of the remaining allegation was approved on February 28, 1983, and Local 115's appeal of the region's acceptance of that settlement was denied on April 15, 1983. The case was closed on compliance with the settlement agreement on August 8, 1983.

Union Allegation

Local 115 contended that Miracle Core sold the business to avoid recognition of the union. Local 115 further contended that the new business and the old business were, in fact, the same and that the charge should not have been dismissed.

Local 115 contended that the regional office simply accepted the word of Miracle Core and did not adequately investigate the case.

Regional Office Response

The region contended that the evidence obtained in its investigation established the following facts regarding this case. More than 4 months before the onset of union activity, after the fiscal year financial report from its certified public accountant showed significant losses, Miracle Core decided either to sell its business or liquidate its assets. This information was confirmed by a bank vice president who was consulted by Miracle Core about a possible sale in May 1982 and was interviewed during the investigation. The bank had a lien on all of Miracle Core's assets.

Miracle Core entered into discussions with two competitors concerning a possible sale. The eventual purchaser was not a new entity set up to evade Miracle Core's statutory obligations, but a long-time competitor. Miracle Core first discussed a sale to this competitor at a trade show in California in May 1982. Representatives of this competitor inspected Miracle Core's facility in August 1982. The competitor's attorney began drafting a proposed agreement of sale on September 9, 1982, and the covering letter transmitting the proposal to Miracle Core is dated October 1, 5 days before the employees contacted Local 115. According to the region's response, Miracle Core's position that its plan to sell the business predated the commencement of union activity was well supported by witnesses and documentary evidence. Local 115 had no evidence to support its contention that the old business and the new business were the same. It is not unlawful for an employer to dispose of its business by selling it to another unrelated employer in an arm's length, bona fide transaction.

CASE STUDY 6

Teamsters Local 115 v. DeRavin Security Co. (4-CA-14300-2).

Charge

On March 20, 1984, Local 115 charged that DeRavin Security Co., acting as agent for Gross Metal Products, Inc., violated the act by threatening and damaging the property of employees engaged in lawful union activities.

Regional Office Determination

DeRavin Security was hired by Gross Metal to provide security services during a strike by Local 115. On March 13, 1984, a firm's truck driven by DeRavin security guards left the Gross Metal plant. The truck was followed by two cars containing some union pickets, including a union organizer, assertedly for the purpose of engaging in lawful ambulatory picketing when the truck stopped for deliveries. After unsuccessfully attempting to elude these cars for several hours, DeRavin personnel drove to an abandoned housing project for which DeRavin had a security contract and entered a cul-de-sac on the property. The driver of the truck was instructed to lead the cars to the housing project because it is private property and posted with "No Trespassing" signs. Three DeRavin vehicles blocked their exit as they pulled into the cul-de-sac. Although the evidence was conflicting, the region found that DeRavin guards carrying night sticks and clubs approached the cars, screaming obscenities and threatening to kill the occupants. One of the cars was slightly dented by a night stick, and a side window was broken. The drivers of the cars accelerated out of the cul-de-sac, striking a DeRavin vehicle in their haste to escape.

The region concluded that DeRavin's conduct in threatening employees and assaulting the vehicles violated the act. However, the region determined that this "ambush" had been entirely carried out by DeRavin away from the Gross Metal facility and without Gross Metal's knowledge and that the DeRavin guards were not acting within the scope of their authority as Gross Metal's agents. Only DeRavin was named in the charge as the charged party, and Local 115's counsel advised the region that he did not intend to appeal the determination that Gross Metal was not liable for DeRavin's conduct, and that, therefore, issuing a partial dismissal letter was not necessary.

Disposition

Both DeRavin and Local 115 entered into an informal settlement agreement that remedied the violations established by the region's investigation. The case was closed on July 26, 1984, upon compliance with the terms of the settlement agreement.

Union Allegation

Local 115 contended that in this case (involving violence against union members legally performing ambulatory picketing), the regional office's remedy (an informal settlement simply requiring the posting of notices) was insufficient in view of the seriousness of the violation.

Local 115 contended that a similar violation by the Teamsters would result in a broad orders, fines, and penalties.

Regional Office Response

In concluding that an informal settlement agreement was appropriate in this case, the region noted that its records disclosed that DeRavin Security had no history of engaging in unfair labor practices and that the conduct involved, while serious, was a single isolated incident, occurring on one day, that did not result in any injury.

Local 115 entered into the informal settlement agreement, although it was free to object and to decline to execute the settlement. Had it done so, and the settlement agreement been approved over Local 115's objection, the union could have sought review of this action by filing an appeal with NLRB's General Counsel attacking the settlement's adequacy.

Contrary to Local 115's contention that similar violations by it would result in broad orders, fines, and penalties, the Region has accepted informal settlement agreements in cases involving similar violations by the union. See Republic Packaging Corp. (4-CB-4464); DeSoto, Inc. (4-CB-4434); Cedarbrook Manufacturing Corp. (4-CB-3759); and Master Chef Foods, Inc. (4-CB-3991 and 4-CB-4036).

Republic Packaging Corp. involved the conduct of a union official in threatening physical violence and bodily harm against an employee, and thereafter unlawfully causing the employee's discharge, in retaliation for his having complained that the union had failed to enforce certain contractual terms. DeSoto, Inc. involved the physical assault on a representative

of the employer by the union's secretary-treasurer during a bargaining session that was attended by employees. In Cedarbrook Manufacturing Corp., union agents or representatives blocked ingress and egress of employees, threw a rock at a supervisor in the presence of employees, threatened bodily harm to an employee, and spat on a supervisor in the presence of employees. Finally, in Master Chef Foods, Inc., union agents and representatives damaged vehicles of officials of the employer on 11 occasions, sometimes in the presence of employees; assaulted officials of the employer on 4 occasions in the presence of employees; threatened officials of the employer and employees in 7 instances, including threats of bodily harm and threatening the lives of individuals; and followed automobiles driven by company officials.

CASE STUDY 7

Abington Memorial Hospital v. BCTC (4-CC-1565).

Wohlsen Construction Company v. BCTC (4-CC-1568).

Southeastern Pennsylvania Chapter, Associated Builders and Contractors, Inc. v. BCTC (4-CC-1574).

Charges

Abington Memorial Hospital, Wohlsen Construction Company, and Southeastern Pennsylvania Chapter, Associated Builders and Contractors, Inc., filed charges against BCTC on April 11, 1984, April 23, 1984, and May 25, 1984, respectively. The charges alleged that BCTC threatened, coerced and restrained Abington Hospital and other prospective users of construction services in the Philadelphia area by picketing, handbilling, and demonstrating with large numbers of pickets with an object of forcing or requiring the hospital and others to cease doing business with Wohlsen and others.

Regional Determination

These cases arose out of an event that occurred on April 14, 1984, when about 2,500 persons engaged in a "march" or "demonstration" around Abington Memorial Hospital with signs calling for a boycott of the hospital. In October and November 1983, Abington Hospital solicited bids for a small renovation job valued at about $2.5 million. Early in the bidding process, only one union general contractor submitted a bid, and its bid was higher than the bids submitted by the nonunion contractors and higher than the amount the hospital had budgeted for the project.

Representatives of BCTC became aware of this job and requested a meeting with hospital officials. On October 19, 1985, hospital officials met with representatives of BCTC and affiliated unions. The BCTC representative suggested that the union contractors be given a further opportunity to bid and that the bidding process conclude with the selection of a union general contractor. The BCTC representative said that, if it did not, he could not guarantee that some form of reprisal would not occur. On October 27, a further meeting was held, attended by hospital officials, union contractors, the BCTC representative, and other union representatives. The union contractors stated that they did not bid for the job because they could not compete with the nonunion contractors. The BCTC representative's position throughout the discussion was that the hospital should consider only union contractors. In December 1983, the hospital had chosen the lowest bidder, Wohlsen Construction Company.

On February 7, 1984, the BCTC business manager and officials of affiliate unions met with hospital officials. The business manager explained that AFL-CIO members spent from $6 to $7 million each year at the hospital and that BCTC was offended that Wohlsen had been chosen for the job. He told hospital officials that "we are about to embark on a demonstration against Abington Hospital." The business manager stated that, although he realized that the hospital had made a business decision, his concern was with Wohlsen and not with Abington, and that other area hospitals had to be shown that using contractors such as Wohlsen would prove a poor business decision.

On April 10, 1984, the business manager, along with the BCTC attorney, met with Abington Township officials. The BCTC attorney objected to the hospital's use of a nonunion construction contractor and said BCTC wanted to demonstrate its concern to the public. The attorney explained that on April 14, 1984, BCTC members would assemble at a parking lot at a nearby shopping center, march to the hospital, circle the hospital, and return to the parking lot where speeches would be made. BCTC business manager told the police chief that 500 to 1,000 marchers were expected to participate.

On April 14 about 2,500 individuals assembled at the shopping center parking lot. They marched to the hospital in columns carrying placards reading "boycott Abington Memorial Hospital" and identifying the names of various labor organizations, most affiliated with BCTC. The march was peaceful, and there was no evidence of disruption of hospital services.

Disposition

The case was submitted to NLRB's Division of Advice because it presented a complex issue involving the application and interpretation of the act with constitutional overtones. The case was also submitted to NLRB's Contempt Branch, Division of Enforcement Litigation, because the General Counsel and the Board, not the Regional Director, determine whether contempt proceedings should be instituted. Because of the substantial question as to whether the demonstration constituted an exercise of constitutionally protected free speech, the region recommended against instituting contempt proceedings against BCTC.

On September 18, 1984, the Division of Advice authorized issuance of a complaint alleging that by (1) its threat to the hospital that BCTC could not guarantee that some form of reprisal would not occur, (2) its threat of possible picketing, (3) its threat that there would be a demonstration, and (4) its march, BCTC coerced the hospital with an object of forcing it to cease doing business with Wohlsen in violation of the act. On September 24, 1984, the Contempt Litigation Branch advised the region that it would not seek Board authorization to institute contempt proceedings because of the unusual factual and legal circumstances of the case. On October 12, 1984, the Regional Director issued an order that consolidated the Wohlsen and Associated Builders cases against BCTC, alleging that the union was engaged in unfair labor practices. This order gave BCTC 10 days to respond to the charges.

In February 1985, the parties signed a formal settlement stipulation providing for entry of a board order and court judgment. The formal settlement stipulation was pending before the Board in December 1985.

Union Allegation

BCTC's attorney contended that there was no violation of the act in this instance and the charge should have been found without merit.

The attorney contended that the finding of merit in frivolous charges such as this, and the resulting settlements, adds to a union's history of unfair labor practices and can unjustly increase the likelihood of it being fined or penalized for future violations.

Regional Office Response

According to the region, the factual and legal basis for the determination that BCTC's conduct constituted violations of the act was set forth in the memorandum from the Division of Advice. The region contended that the charges can hardly be characterized as frivolous.

If BCTC's attorney thought this was such a frivolous and meritless case, he was free to litigate the matter. BCTC was not coerced into executing the formal settlement stipulation. For whatever reasons, BCTC chose to settle the case. As for this case becoming part of BCTC's history of unfair labor practices, BCTC already had a substantial history before this case arose, including Board orders, court judgments, and contempt adjudications. BCTC would not have to be concerned about its future exposure under these judgments and adjudications if it had not persisted in committing violations of the act.

CASE STUDY 8

Local No. 169 v. Yarway Corporation (4-CA-13928).

Charge

On August 24, 1983, Local No. 169, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, charged that Yarway Corporation had violated the act by unlawfully granting preferential seniority status and classification rights to two employees who returned to work during a strike, thereby penalizing and discriminating against those employees who engaged in the strike.

Regional Office Determination

From June 5 to August 2, 1983, the employees represented by Local No. 169 engaged in a strike against Yarway. At the time of the strike, the two subject employees had been laid off since July 1982. On June 29, 1983, these two employees received identical mailgrams from Yarway stating that they were being recalled from layoff and were required to report to work on July 5. Yarway considered the two employees permanent replacements for the strikers. After the strike ended, Yarway recalled a majority of the strikers to positions other than the ones they held before the strike. The two previously recalled employees continued in their employment after the strike although they had less contractual seniority than other strikers who were not recalled.

Disposition

On October 25, 1983, the region submitted this case to NLRB's Division of Advice in Washington because it presented a novel legal issue. The region recommended that a complaint be issued. The Division of Advice agreed and, on April 30, 1984, the region issued a complaint and notice of hearing alleging that Yarway had violated the act by failing to reinstate two strikers who had more seniority than the two recalled employees.

Meanwhile, the parties had submitted the underlying dispute for arbitration, pursuant to their collective bargaining agreement. After the complaint was issued, the region learned that an arbitrator had denied Local No. 169's grievance and found that Yarway's conduct in refusing to reinstate the two strikers did not violate the collective bargaining agreement. On May 29, 1984, Yarway filed a motion for summary judgment with the Board, claiming that the complaint should now be dismissed pursuant to the Board's policy of deferring to arbitration awards.

The region resubmitted the case to the Division of Advice on the question of whether the charge should now be dismissed based on the arbitrator's award. On June 5, 1984, the Division of Advice directed that the charge be dismissed as the award met the criteria for deferral established by the Board.

On June 12, 1984, the region filed with the Board its response to Yarway's motion for summary judgment, requesting that the case be remanded to the Regional Director in order to dismiss the charge. On September 28, 1984, the Board issued an order remanding proceeding to the Regional Director, and by letter dated October 18, 1984, he advised all parties that he was deferring to the arbitrator's award, withdrawing the complaint and notice of hearing, and dismissing the charge. Local No. 169 filed an appeal of this action with NLRB's General Counsel, and the appeal was denied on November 30, 1984.

Union Allegation

Local No. 169's attorney contended that the regional office improperly dismissed the charge against Yarway apparently because the region was adhering to NLRB policy to defer to an arbitration decision on the issue in question. The attorney claimed, however, that the policy was improperly applied because the arbitrator was not addressing the unfair labor practice in question; hence, the charge should have resulted in the issuance of a complaint.

The attorney also claimed the region's decision typifies its antiunion philosophy, which results in it taking every opportunity to interpret the facts to the disadvantage of unions.

Regional Office Response

The charge was dismissed in accordance with the Board's current policy on deferral to arbitration awards, as set forth in Olin Corporation, 268 NLRB 573 (1984). In Olin, the Board held that it would find that an arbitrator had adequately considered the unfair labor practice if (1) the contractual and unfair labor practice issues were factually parallel and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. As the arbitrator's award herein satisfied these requirements, that deferral to the award was deemed appropriate.

The decision to dismiss this charge was made by the Division of Advice, not the Regional Director.

CASE STUDY 9

Telefi, Inc. v. Local 98 International Brotherhood of Electrical Workers (IBEW) (4-CC-1588 and 4-CD-634).

Charge

On July 9, 1984, Telefi, Inc., filed charges against IBEW Local 98, alleging that the union had violated the act by picketing the Telefi job site with an object of forcing GTE Sprint Communications, Inc., to cease doing business with Telefi. In another case, Telefi charged that Local 98 violated the act by picketing with an object of requiring the firm to assign the work of installing switches to employees represented by Local 98 instead of its employees, who were represented by Teamsters Local 363.

Regional Office Determination

Telefi had a contract with GTE Sprint to install telecommunications switches at GTE Sprint's offices in downtown Philadelphia. The Telefi employees were represented by Local 363 of New York. In early July 1984, in response to a request from Local 98 for a discussion, the Telefi project manager and a representative of Local 363 contacted the Local 98 business manager. While the Telefi representative remembered that the Local 98 official commented that the work the firm was going to

do was really IBEW work, the Local 363 representative remembered only that the Local 98 official complained about the use of non-union truck drivers to deliver the equipment to be installed. In any event, following this conversation, Telefi arranged for a union hauler to deliver the switching equipment.

On July 6, 1984, the Telefi representative received a message from the Local 98 business manager stating that the work being performed by Telefi was Local 98 work and that there would be picketing if delivery trucks arrived on July 7 and employees other than Local 98 members were unloading the switching equipment. On July 7, when the hauling company trucks attempted to deliver the switching equipment, they were confronted by about 100 pickets carrying "area standards" picket signs who blocked the loading docks so that no delivery could be made. Picketing resumed again on July 12, 1984, when a delivery was next attempted without success.

Disposition

The region determined that, although Local 98 claimed the purpose of the picketing on July 7 and 12 was to protest sub-standard wage and benefit rates, the conversations between Local 98 agents and representatives of Telefi and Local 363 showed that other objects of the picketing were to secure the installation work for members of Local 98 and to force Sprint to cease doing business with Telefi. On July 19, the region filed a petition for an injunction under the act in the U.S. district court. On July 27, a complaint was issued against Local 98 in one case, and on August 1, a notice of hearing was issued in the other. On August 2, Local 98 entered into a consent decree before the U.S. district judge. Local 98 was enjoined from engaging in conduct in violation of the act pending disposition of the unfair labor practice charges by the Board. In addition, Local 98 agreed not to picket at all until after midnight August 12, 1984. This hiatus in the picketing was not part of the consent decree.

On August 7, Local 98 disclaimed the work in dispute, and on August 9, Telefi submitted a withdrawal request with respect to the consent decree. On August 15, an order postponing the hearing indefinitely was issued. Local 98 agreed to enter into an informal settlement agreement in the first case. From August 2 through 12, there was no picketing at the job site.

Beginning on August 13, 1984, Local 98 pickets again appeared at the job site and began approaching nearly every delivery truck and talking to the drivers. While some of the

drivers made their deliveries, others left without doing so. Because of the resumption of picketing, approval of the withdrawal request in the second case was held in abeyance. The region submitted a request for advice to the Office of the General Counsel in Washington with respect to whether the conduct that Local 98 engaged in after the entering of the consent decree was in contempt of the decree. On December 13, the Division of Advice notified the regional office it had concluded that contempt proceedings were not warranted. After consulting with Telefi, the region approved the withdrawal request on January 18, 1985. Telefi refused to enter into the informal settlement agreement in the first case but did not object inasmuch as it had completed the work. Accordingly, the unilateral settlement agreement was approved and the matter was closed.

Union Allegation

Local 98's attorney contended that the charges against the union should have been dismissed since it was clearly involved in picketing permitted under the law if its purpose is to protect its area wage standards. The attorney contended that the region, in keeping with its antiunion philosophy, arbitrarily decided that Local 98 had other, unlawful motives for its picketing and found them to have merit.

Regional Office Response

The region contended that the principal issue in this case was determining the object of Local 98's picketing and other conduct. If the object was to protest the destruction of area standards by an employer paying substandard wages and benefits, the picketing would have been lawful. But if the object was to cause a cessation of business between Telefi and a neutral employer, or to force Telefi to assign certain disputed work to employees represented by Local 98 instead of Telefi's own employees, the picketing would have been unlawful.

Although Local 98's signs reflected an "area standards" concern, the statements made by Local 98 representatives to Telefi evidenced that the true object was to force Telefi to assign the work involved to Local 98 employees instead of employees represented by Local 363 and to force GTE Sprint to cease doing business with Telefi. While representatives of Local 98 denied that they had made the statements attributed to them and denied that their picketing had an unlawful object, they would not give sworn statements. In these circumstances, there was no basis for discrediting the evidence obtained in the

investigation that supported Telefi's allegations. Although Local 98 had the option of litigating the case in the courts in an injunctive relief proceeding and before the Board, the union elected to enter into a consent decree before the district court and also an informal settlement agreement. When Local 98 resumed picketing, the region submitted the matter to the Division of Advice on the issue of whether the new picketing was in contempt of the consent decree. The division agreed with the region's recommendation that the subsequent picketing was not contempt.

CASE STUDY 10

Boilermakers, Cement Division, Local 54 v. National Gypsum Company (4-CA-14807; 4-CA-14993; 4-CA-14494; and 4-CA-14944).

National Gypsum Company v. Boilermakers, Cement Division, Local 54 (4-CB-4963).

This case study relates to a series of unfair labor practice cases mentioned above involving National Gypsum Company and Local 54.

Charge (4-CA-14807)

Local 54 filed an unfair labor practice charge on January 9, 1985, alleging that National Gypsum had violated the act by (1) unilaterally implementing a December 18, 1984, proposal when no valid impasse had occurred; (2) refusing to provide Local 54 with requested health insurance information concerning the proposal, thereby making meaningful negotiations impossible; and (3) bargaining in bad faith, deliberately impeding negotiations.

Regional Determination

The Regional Director determined that the allegations related to National Gypsum's refusal to provide information with regard to the December 18 contract proposal and its failure to bargain in good faith had no merit. However, he found that National Gypsum had unilaterally implemented its final offer before impasse in violation of the act. The Director cited the brief period from National Gypsum's December 18 proposal until its December 24 implementation of the proposal. According to the region's summary, because there was no evidence to establish that the parties were at an impasse, the region concluded that Local 54 had not had sufficient time to evaluate and bargain over the substantial changes in National Gypsum's proposal.

Disposition

The Regional Director issued a complaint on February 22, 1985, on the allegations that National Gypsum had unilaterally implemented its December 18, 1984, proposal even though a valid impasse had not been reached. A hearing was scheduled on the case.

On June 4, 1985, National Gypsum filed a motion for summary judgment, which contended, in effect, that it had no obligation to bargain with Local 54 because of faulty affiliation procedures that attended the merger of the Cement, Lime, Gypsum, and Allied Workers union and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers.

On June 13, 1985, the Board issued an order transferring the proceedings to the Board and a notice to show cause why National Gypsum's motion for summary judgment should not be granted. Subsequently, Local 54 and NLRB's General Counsel filed opposition to National Gypsum's motion for summary judgment. According to the Regional Director, shortly after National Gypsum's motion for summary judgment was denied in September 1985, the union requested withdrawal of charges in this case.

Charge (4-CA-14993)

On April 12, 1985, Local 54 amended charges against National Gypsum, again alleging that the firm failed to bargain in good faith.

Regional Determination

In the April 12, 1985, case, the Regional Director concluded that National Gypsum had not breached its duty to bargain in good faith and that the parties had reached an impasse in negotiations. National Gypsum could, therefore, implement its last offer.

When confronted with Local 54's demand for wage increases, National Gypsum insisted on the wages cited in its February 28, 1985, proposal. The Regional Director deemed National Gypsum's action to be insufficient to establish that it had bargained in bad faith.

The Regional Director determined that the parties had reached an impasse based on the following considerations: (1) the bargaining history, (2) the good faith of the parties in

APPENDIX I

negotiations, (3) the length of negotiations, (4) the importance of the issues where there was disagreement, and (5) the contemporaneous understanding of the parties as to the state of the negotiations.

Disposition

The Regional Director found that the evidence established that an impasse had occurred and therefore National Gypsum was free to implement its final proposal. Accordingly, in a May 23, 1985, letter, the Regional Director dismissed the charge.

Local 54 appealed the case to NLRB's General Counsel on June 4, 1985. After reviewing the arguments raised on appeal, the General Counsel denied the appeal substantially for the reasons set forth in the Regional Director's dismissal letter.

Charge (4-CB-4963)

National Gypsum filed a charge against Local 54 on December 18, 1984, alleging that the union refused to bargain in good faith by insisting that the firm accept the terms of another cement industry employer's collective bargaining agreement and that Local 54 failed to meet with the firm on December 19, a date previously scheduled by the parties for a meeting.

Regional Determination

According to a letter from NLRB's General Counsel to Senator Heinz, the Regional Director, after full investigation of these charges, found that the contracts proposed by Local 54 contained terms substantially different from the terms of the contract that the union had reached with another cement industry employer and, in any event, the union's conduct in making those proposals did not amount to unlawful insistence on those terms.

Disposition

The Regional Director concluded the charges lacked merit. National Gypsum did not appeal the decision.

Union Allegations

Local 54's attorney contended that the weight of evidence warranted a decision by an administrative law judge concerning the union's charges that National Gypsum (1) failed to bargain

in good faith and (2) unilaterally implemented reductions in terms and conditions of employment before reaching an impasse. National Gypsum's negotiation tactic was to declare a series of ultimatums, knowing that the proposals were too unreasonable to be negotiated. In substance, Local 54 considered National Gypsum, through the tactics used, to not be bargaining in good faith.

The attorney contended that these cases

> ". . . reflect the Region's philosophy that employer charges factually disputed warrant being decided by an Administrative Law Judge, but union charges, if factually disputed by an employer, will result in a fact determination made by the Region, normally to the detriment of the charging union."

Regional Office Response

According to the region's response, Local 54 first raised the issue of National Gypsum's bargaining conduct in the case filed on January 9, 1985. The investigation of that charge disclosed that, on December 24, 1984, National Gypsum unilaterally implemented its final offer before reaching an impasse in bargaining. A formal complaint was issued against National Gypsum on February 22, 1985. In September 1985, Local 54 withdrew the charge based on National Gypsum's agreement to remedy the alleged unlawful conduct by paying $400 to each of the approximately 160 unit employees, by distributing to employees moneys that had been held in escrow (about $200 per employee), and by paying about $100 per employee to a supplemental unemployment benefit account.

Regarding the allegations that National Gypsum had not bargained in good faith and that the firm had unilaterally implemented its March 18, 1985, final offer, the region concluded that the evidence established that the firm had not violated its statutory obligation to bargain in good faith and had lawfully implemented changes in terms and conditions of employment on March 18. Local 54's attorney claimed that National Gypsum gave the union a series of proposals that were too unreasonable to be negotiated. Although National Gypsum sought substantial concessions from previous contracts, the region found that the firm's conduct was not unlawful and that the positions it took reflected the changing economic conditions in the cement industry brought about by foreign competition. Some charges that were dismissed were appealed to NLRB's General Counsel. The General Counsel denied the appeals, finding that

the change in National Gypsum's bargaining position was necessitated and precipitated by a change in its economic and competitive position within the industry. In sum, insufficient evidence existed to establish that National Gypsum engaged in bad faith bargaining.

Contrary to the contention of Local 54's attorney, the evidence obtained in the investigation failed to support the allegations of the charges. In his appeals of NLRB's dismissals of charges in the first two cases, the attorney argued that when National Gypsum presented its December 18, 1984, and February 21, 1985, proposals, it offered no economic justification for recanting its earlier agreements and did nothing more than to issue an ultimatum to Local 54 that certain additional reductions would be implemented unless an agreement was reached. The affidavits of a Local 54 witness indicate that both these factual assertions were incorrect and that on both occasions National Gypsum explained the basis for its position. In addition to the charges against National Gypsum discussed above, charges were filed in two other cases alleging that National Gypsum had engaged in bad faith bargaining. The region found no merit to these charges, and both were dismissed. National Gypsum's appeal in one of these cases was denied by NLRB's General Counsel.

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