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# The NLRB in Transition\*

JOHN H. FANNING\*\*

IN THE BEGINNING CONGRESS created the Wagner Act. That beginning was only 27 years ago, a date many of us can remember. What Congress did in 1935 was to introduce a dramatic and revolutionary change in the world of labor-management relations. For the first time an employer was required by law to bargain exclusively with the representative selected by a majority of his employees. For the first time the right of an employer to discharge an employee for trade union considerations was curtailed by law. Employees were given a statutory right to form or select unions for the purposes of collective bargaining. Obviously, changes of such magnitude in our industrial economy did not go unchallenged. All during the Thirties the controversy raged through the Board and the courts until the Second World War, evoking the great patriotism of all Americans, put a blanket on internal strife and united employees, their unions and leaders of industry in a common cause, the survival of the nation. But with peace came a new challenge, this time against the abuse of power by unions nurtured on the Wagner Act and the tremendous industrial impetus of the war effort. The country demanded a curb against secondary boycotts, closed shops, and coercion of those employees who preferred not to have a union represent them. In 1947, Congress initiated another historic change in labor-management relations—the Taft-Hartley Act. For the first time Congress forbade unions to engage in or induce strikes against employers with whom they had no actual dispute, but who were caught in the crossfire of the union's dispute with another employer. For the

\* An Address presented to the 27th Annual Meeting of the American Retail Federation, in Washington, D.C., April 26, 1962.

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first time unions were forbidden to coerce employees to join unions and were held equally liable with an employer when they caused an employer to discriminate against an employee. The reaction of organized labor was at least as great as that of management after the passage of the Wagner Act. Taft-Hartley was called a "Slave Labor Act" and tremendous efforts were made to repeal it in its entirety. The efforts were not successful and in 1959 Congress passed the Landrum-Griffin Act, adding further restrictions on union activity.

I cite this history of legislative changes in basic Federal labor law for two reasons. First, for the proposition that the National Labor Relations Act still is a relatively new and dynamic experiment in our national industrial way of life. The original Wagner Act and its subsequent amendments indicate that our country still is groping for a set of statutory rules that will protect the legitimate rights of employees, unions, and employers and at the same time safeguard the overriding interests of the public. My second reason for recalling to you these facts of recent history is in answer to current charges that the Board is now in the throes of tremendous changes and that these changes are the result of a so-called "New" Labor Board, "New" in the sense that there have been two new appointees by the current Administration, Chairman Frank W. McCulloch and Member Gerald A. Brown—so that the Board now consists of three Democrats and two Republicans; three Eisenhower appointees and two appointed by President Kennedy, and yet all of us have one thing uniquely in common—a comparable background of public service. Chairman McCulloch and Member Rodgers came to the Board from staff positions with the U. S. Senate; Member Leedom was a Justice of the Supreme Court of South Dakota; Member Brown had been a career employee of the Labor Board for some 20 years, and I had served in the Labor Department and with the Defense Department as Director of Industrial Relations for the Military Establishment for many years. This common background of public service unites us in a common desire to interpret the statute as written by the Congress and as authoritatively construed by the United States Supreme Court. Most of our decisions are unanimous. Our differences of interpretation are relatively few and come generally in those areas where amendments are recent or congressional intent uncertain.

Obviously, there have been some changes. A forty per cent turnover in top executive personnel of any corporation would be likely to produce some change. Historically, the Board has always considered and reconsidered its policies and rules to meet the needs of our constantly changing industrial economy. For as a dynamic society does not move *in vacuo*, so an abstract classification of tendencies can have only a relative value. Our process of re-examination and re-evaluation comes not without outside prompting. We have been impelled to this review by a variety of factors: by the criticisms and suggestions of Congressional studies, such as those of the Cox panel for the Sen-

ate Labor Committee in 1960, and the reports of the Special House Committee under Congressman Pucinski in 1961; by the legislative debates and amendments in the 1959 Landrum-Griffin Bill; by the Supreme Court, which in 1959 and 1960 reversed a number of the Board's prior decisions—including four in one day—and set down new guide lines for the Board's work; by the changing technological conditions brought to our attention in various new cases, by our efforts to bring greater stability to employer-employee relationships; and by changes in the administration of the Agency.

For example, one of the cases the Board lost was the *Curtis Bros.*<sup>1</sup> case and we lost it 9 to 0. Under the *Curtis Bros.* rule the then Board majority had held that picketing for recognition by a minority union was unlawful restraint and coercion. This rule was itself a most significant change in interpretation of the Taft-Hartley Act. It was an entirely novel theory unsupported by any legal precedent. While I did not participate in the original *Curtis* case. I was required to rule on this issue in several cases that arose early in my tenure as a Board Member. In the first one, *Andrew Brown Company*,<sup>2</sup> I pointed out that the moral position that a union which had lost an election should not be permitted to picket, at least for a reasonable period of time, was most appealing. From a legal standpoint, however, I could not agree with the majority that the Statute, as then written, prohibited such picketing. The Supreme Court affirmed my legal position and the *Landrum-Griffin* Section 8(b)(7)<sup>3</sup> amendments legislated my moral feelings into law. Obviously, both the Supreme Court and the *Landrum-Griffin* Act had their impact on Board law, and this was in the direction of change, but change that either returned the Board to pre-existing interpretation of the law or introduced an entirely new statutory policy for the Board to effectuate.

Last year the Supreme Court made a profound change in the law as it relates to exclusive union hiring halls. In the *Mountain Pacific* case,<sup>4</sup> the Board had held that any exclusive hiring hall agreement would be illegal unless it contained three protective safeguards, which were that referral must be on a non-discriminatory basis, that the employer must retain the right to reject any job applicant referred by the union, and that there must be adequate posting of the terms of the agreement. Once the Board found an illegal hiring arrangement, it frequently invoked what was known as the *Brown-Olds*<sup>5</sup> remedy, which required the reimbursement of all dues and assessments collected by the union from its members. In *Los Angeles-Seattle Motor Express, Local 357*,<sup>6</sup> the Court held that the promulgation of the *Mountain Pacific* doctrine

<sup>1</sup> N.L.R.B. v. Drivers Local Union, 362 U.S. 274 (1960).

<sup>2</sup> 120 N.L.R.B. 1425, 1430 (1958).

<sup>3</sup> Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519; 29 U.S.C. §158(b)(7) (1959).

<sup>4</sup> 119 N.L.R.B. 883 (1957), 127 N.L.R.B. 1393 (1960).

<sup>5</sup> 115 N.L.R.B. 594 (1956).

<sup>6</sup> Local 357, Int. Brotherhood of Teamsters v. N.L.R.B., 365 U.S. 667 (1961).

was a legislative act beyond the power of the Board. Similarly, the Court set aside the *Brown-Olds* remedy as punitive rather than remedial. These important decisions meant that the Board had to re-think its entire approach to hiring halls and related union activities. What the Court had said, in effect, was that the Board could not shift the burden of proof to force a union to disprove that it had violated the law even though some suspicion might be aroused by its conduct with respect to certain employees. It was the function of the General Counsel to introduce substantial evidence that actual discrimination had been practiced against such employees either by the Union, their employer, or both. Here, then, is another significant area in which changes, having nothing to do with the composition of the Board, have been required during the past year.

The central theme of many of the Supreme Court's reversals of Board decisions has been that the Board has been presuming illegality without establishing an adequate and supportable factual basis for such presumption, in other words, a *per se* theory of jurisprudence which the Court frowns upon. When you lose two-third's of your cases before the Supreme Court (and that has been the Board's record over the last two years), I suggest it's time for reflection, and the core of our reflection lies in a sincere effort to substitute a pragmatic *ad hoc* technique based upon reasonable rules of law for the previous *per se* doctrine which the Court has indicated clearly that it disapproves.

There have, of course, been changes at the Board level which do reflect the approach of the present Board majority. Some of these changes, particularly as they relate to the right of a Union to picket an employer with whom it has a dispute, or to publicize the facts of a labor dispute, reflect the Supreme Court's admonition that the Taft-Hartley Act is a balance of conflicting rights and interests and should not be effectuated by the use of rigid or inflexible rules. Others reflect a recognition that picketing in many of its aspects involves the constitutionally guaranteed right of freedom of speech. With that recognition the Board has weighed more carefully the employees' right to picket as against the other rights guaranteed by the statute. It was this recognition which prompted my dissent in the original *Crown Cafeteria* case,<sup>7</sup> and, I believe, the subsequent adoption of that dissent by the current Board majority. In *Fanelli Ford Sales, Inc.*,<sup>8</sup> the union picketed the company to protest the discharge of its principal employee organizer and to obtain his reinstatement. At issue was whether such picketing was to obtain recognition, for, if it was, the union had violated Section 8(b)(7)(C)<sup>9</sup> because it had picketed for more than 30 days without a petition being filed. Chairman McCulloch, Member Brown, and myself found that recognition was not the object

<sup>7</sup> 130 N.L.R.B. 570 (1961).

<sup>8</sup> 133 N.L.R.B. No. 163 (1961).

<sup>9</sup> *Supra* note 3.

of the picketing in this case. In doing so, we overruled the *Lewis Food Company* case,<sup>10</sup> which was decided in 1956. In that case, a majority of the then-constituted Board ruled that picketing to obtain the reinstatement of a discharged employee "necessarily" was to compel recognition or bargaining. During my tenure at the Board, I have frequently expressed my opposition to this view because it seemed to me to involve an application of a *per se* doctrine in this field. The only Circuit Court which had passed judgment on the *Lewis Food* decision also had rejected the view expressed by the majority in that case.<sup>11</sup> In *Plauche Electric Inc.*,<sup>12</sup> the Board reversed a rule known as the *Washington Coca Cola* rule.<sup>13</sup> The Board had held that when a Union was on strike against an employer, who had a regular place of business in the locality that could be picketed, it was a secondary boycott to engage in picketing of that employer at another location where the premises were shared with other employers. I had dissented on this point in a number of cases.<sup>14</sup> More important, however, three Circuit Courts of Appeals, the Second Circuit, the Fifth Circuit, and Circuit Court of Appeals for the District of Columbia, had rejected this doctrine of the Board as a *per se* doctrine that precluded a union from picketing a company at a location where all of its work was performed simply because the company had an office where the employees reported at the beginning and end of the working day. The "new" Board majority reversed the *Washington Coca Cola* rule to the extent that that rule automatically found a violation of the law if the picketed employer had a separate place of business in the locality. The rule today, which I am convinced is the correct one, is that this circumstance is only one factor to be considered in determining whether or not a secondary boycott has occurred.

Changes at the Board level have also occurred in the representation area where the Board has considerably more discretion to set the rules of the game. In the recent *Paragon Products* case,<sup>15</sup> the Board made a significant change in its contract bar policy. The precedent examined was a case known as *Keystone*.<sup>16</sup> The Board's contract bar policy comes into play when a petition is filed to represent a group of employees already covered by contract. If there is no question of the validity of the contract, if it is not of undue length, and if it is not about to expire, then the Board normally holds that it will bar an election. This is because the Board deems such contracts to have a desirable stabilizing effect upon labor-management relations. Many bargaining con-

<sup>10</sup> 115 N.L.R.B. 890 (1956).

<sup>11</sup> See *Douds v. Local 1250*, R.W.D.S.U., 170 F. 2d 695 (2d Cir. 1948).

<sup>12</sup> 135 N.L.R.B. No. 41 (1962).

<sup>13</sup> 107 N.L.R.B. 299 (1953).

<sup>14</sup> See, for example, *California Association of Employers*, 120 N.L.R.B. 1161, 1171-72 (1958); *Superior Derrick Corp.*, 122 N.L.R.B. 52, 62 (1958); *Pennsylvania Railroad Co.*, 127 N.L.R.B. 1327, 1329 (1960).

<sup>15</sup> 134 N.L.R.B. No. 86 (1961).

<sup>16</sup> 121 N.L.R.B. 880 (1958).



date. Last summer, anticipating that the delegation of representation cases to our Regional Directors would greatly shorten the period between petitions for elections and the elections themselves, the Board undertook to review this rule. Records on case processing since then show that the petition-to-decision period has, indeed, been greatly shortened. With this in mind, the Board granted oral argument in the case of *The Ideal Electric and Manufacturing Company*,<sup>18</sup> accepted amicus briefs, and after careful consideration, selected as the cut-off date for cases filed thereafter the date on which the petition was filed. Any conduct after the Board's processes have been invoked which tends to prevent a free election will now be considered as the basis for a post-election objection. The Board is unanimously of the opinion that this change is one in the right direction, but we shall, of course, follow closely the developments under it.

Another recent change in representation procedures involves the appropriate time within which a petition may be filed before the terminal date of an outstanding contract. In *Deluxe Metal Furniture*<sup>19</sup> the Board established a period between 150 and 60 days before the expiration of an existing contract as the proper time for the filing of a petition for a new election. However, the delegation to the Board's Regional Directors of authority to decide representation cases has reduced considerably the length of time between the filing of a petition and an actual election.

This could result in a stranger union winning an election and being certified substantially before the current contract expired—an obviously undesirable situation. Accordingly, to avoid holding an election too far in advance of the terminal date of the existing contract the Board decided unanimously in *Leonard Wholesale Meats, Inc.*<sup>20</sup> to modify the *Deluxe* rule by establishing a period between 90 and 60 days before the end of a contract as the time for filing a representation petition. We believe that this change will better effectuate the purposes of the Act.

The Board also has recently reexamined another long standing policy in the case of *Kalamazoo Paper Box Corporation*.<sup>21</sup> This policy has been one of granting severance to truckdriver groups from established plantwide bargaining units, thus permitting them to be separately represented. Obviously the theory behind the Board practice of ready severance for this group has been that truckdrivers generally, by the very nature of their duties and their considerable absences from the plant, do have interests that tend to set them apart from plant workers. But in *Kalamazoo* the Board has reconsidered the problem and a majority has decided that it will no longer grant a separate

<sup>18</sup> 134 N.L.R.B. No. 133 (1961).

<sup>19</sup> 121 N.L.R.B. 995 (1958).

<sup>20</sup> 136 N.L.R.B. No. 103 (1962).

<sup>21</sup> 136 N.L.R.B. No. 10 (1962).



unit to truckdrivers without an analysis of bargaining as it already exists for them and of the conditions of their particular employment. We believe that this type of analysis of each truckdriver severance problem will achieve our twofold goal of not undermining stable collective bargaining relationships by our unit findings and at the same time insuring to the employees concerned their rights to self-organization and a free choice of representatives.

Another quite recent Board decision should also have a stabilizing effect. I refer to the case of *Food Haulers, Inc.*,<sup>22</sup> in which a Board majority has found that a contract which happens to contain a hot cargo clause will not thereby cease to bar a petition for an election midterm of that contract. This is the position I took in an August 1960 case, *Pilgrim Furniture Company, Inc.*<sup>23</sup> Chairman McCulloch and Member Brown now view this problem in the same light. Members Rodgers and Leedom, on the other hand, would treat a hot cargo clause the same as an unlawful union-security clause for contract bar purposes. My position, as expressed in *Pilgrim*, is that a hot cargo clause is not like an unlawful union-security clause in its effect upon the selection of a bargaining representative by employees. For instance, a clause which requires that only union members be hired, or that new employees join the Union within 15 days of employment when the Act gives them 30, tends to act as a restraint upon those employees desiring to refrain from union activities. The Board deems it unwise to foster stability on the basis of contracts of that sort which perpetuate union membership and representation in a manner prohibited by the Act. But a hot cargo clause, such as the one in *Pilgrim* whereby the Employer agreed not to purchase materials from any company where a bona fide labor dispute existed with the contracting union, undesirable though that might be, has no parallel effect upon employees in the exercise of their rights under Section 7 and Section 8(a)(3) of the Act. Hence a majority of the Board in *Food Haulers* has decided to leave unaffected for election-bar purposes those contracts containing what *may* be hot cargo clauses.

In the pure "hot cargo" area I think it fair to say the Board has strictly enforced the prohibitions in Sections 8(e) and 8(b)(4)(A)—"no matter how disguised." A majority of Chairman McCulloch and Members Rodgers and Leedom have gone even farther than Member Brown and I would, interpreting the phrase "to enter into" in 8(e) more broadly than its literal meaning. But such cases as *Burt Mfg. Co.*,<sup>24</sup> *E. A. Gallagher & Sons*,<sup>25</sup> *Los Angeles Mailers Union*<sup>26</sup> and others indicate the entire Board's firm resolution to carry out the will of the Congress in combating the "hot cargo" and boycott evils.

Among the Board's most recent decisions is one—in line with a recommen-

<sup>22</sup> 136 N.L.R.B. No. 36 (1962).

<sup>23</sup> 128 N.L.R.B. 910 (1960).

<sup>24</sup> 127 N.L.R.B. 1629 (1960).

<sup>25</sup> 131 N.L.R.B. 925 (1961).

<sup>26</sup> 135 N.L.R.B. No. 107 (1962).

dation by Congressman Pucinski's Committee to which I have previously alluded—which I am sure excites a lively interest among lawyers and executives associated with the retail industry. The case to which I refer, of course, is *May Company Department Stores*,<sup>27</sup> issued by the Board on April 4 of this year. The center of the controversy was Cleveland, Ohio where the May Company operates two department stores employing about 3,000 employees. One store is located in downtown Cleveland and the other in a suburb. In February of 1958, two unions, the Retail Store Employees Union, Local 880, AFL-CIO and the Office Employees International Union Local 17, AFL-CIO, became interested in organizing these employees and embarked upon a major organizational campaign to that end. The Unions employed the standard organizational methods of employee meetings, handbillings, personal and telephone contacts, as well as the mass media of newspapers, television and radio. However, these efforts were stifled to some extent since the Unions did not have access to any employee list of names and addresses and because several television and radio stations, as well as newspapers would not accept union advertisements. At the same time, the May Company had in effect a no-solicitation rule which forbade union solicitation among employees on nonworking or free time as well as working time in the selling areas of the store. Now while this rule was being enforced, the Employer, through several of its executives, addressed anti-union speeches to massed assemblies of employees in groups of anywhere from 70 to 900 at both stores. The speeches were about 35 minutes in length. These speeches reached virtually every employee three times, at weekly intervals, during the three weeks immediately preceding the election. The Unions requested an equal opportunity to reply which the Employer denied. The election took place on April 28, 1960 and the Unions lost by a margin of greater than 2 to 1.

The Unions contested the election, charging that the Employer had interfered with the free choice guaranteed to employees by denying the Unions' request to reply after having made such anti-union speeches. The General Counsel of the Board issued a complaint, the case was heard, and a majority of the Board agreed that such employer activity, on these facts, did constitute a sufficient impairment of the employees' free choice to constitute an interference with employee organizational rights guaranteed under Section 8(a)(1) of the Act and the election was set aside and a new election directed.

What is the reason for this ruling? Why should the May Company's enforcement of a rule prohibiting employees solicitation on nonworking, or free time give rise to a union's right of reply after an employer addresses massed assemblies of employees? This is a legitimate source of concern to retailers, and I will try to clarify the Board's theory.

First of all, a no-solicitation rule which prohibits solicitation of employees,

<sup>27</sup> 136 N.L.R.B. No. 71 (1962).

by employees on their free time, as did the *May Company* rule, is generally, *in and of itself*, a violation of the Taft-Hartley Act under decisions of both the NLRB and the Supreme Court since the rule constitutes interference with the rights of employees to organize. I refer you specifically to a Board and United States Supreme Court case entitled *Republic Aviation Corporation v. N.L.R.B.*<sup>28</sup> Were it not for the fact that the *May Company* was a retail store, the rule being enforced therein would have, in and of itself, violated the Act, but because of the customer-oriented character of the retail department store business, such a broad rule has been held legal by the Board and the Courts. The majority felt that the *May Company*, already having been permitted to enforce such a broad rule and thereby limiting employee organizational activity even as to off-time, the employer could not, if a free and untrammelled employee choice were to be preserved, address anti-union speeches to massed assemblies of employees and at the same time deny to an organizing union any right to counteract the effect of such speeches under similar circumstances. However, no sooner had the case issued than it was loudly, extensively, and I believe, inaccurately heralded as a return to the *Bonwit Teller* doctrine.<sup>29</sup> Generally, the *Bonwit Teller* doctrine, as it finally evolved, provided that employers, both retailers and manufacturers, were obliged to grant to an organizing union, upon request, an opportunity to reply to employer speeches. This "equal opportunity" doctrine was rejected by the Board in the *Livingston Shirt* case<sup>30</sup> in 1953. But it is most important to understand, and the *May Company* decision makes it clear, that the Board in *Livingston Shirt* did not reject the doctrine as applied to retail stores, like the *May Company*, who enforce a broad no-solicitation rule which prohibits solicitation among employees on their free time as well as working time. It is clear that the retail industry, to that extent, was unaffected by the *Livingston Shirt* case. In *May Company*, the Board did not make new law, it simply followed the precedent established by prior cases, including the 1953 *Livingston Shirt* case.

Those who criticize the *May Company* case insist that regardless of the Board's position, the Supreme Court in the *Nutone* case<sup>31</sup> held that no union has any right of reply under any circumstances, including situations where a retail store is enforcing a no-solicitation rule extending to employees' free time. However, I believe a careful reading of that case discloses that the Supreme Court was interested primarily in balancing, as the court stated, "the opportunities for organizational communication." The Board felt that the presence of the *May Company's* broad rule, coupled with anti-union speeches, created the sort of imbalance that the Supreme Court desired to avoid. The

<sup>28</sup> 324 U.S. 793 (1945).

<sup>29</sup> 96 N.L.R.B. 608 (1951).

<sup>30</sup> 107 N.L.R.B. 400 (1953).

<sup>31</sup> N.L.R.B. v. United Steelworkers of America, 357 U.S. 357 (1958).

*May Company* case, in my opinion, did not do violence to the *Nutone* case, but rather protected the balance in "the opportunities for organizational communication" that the Supreme Court intended to preserve.

The Board's only object in deciding cases of this type is to insure a free election in which the choice of the employees will be accurately reflected by the vote. The *May Company* case does not mean that retail stores must now open their doors to smooth the path of any organizational drive. The right of reply is still quite a limited right, confined to certain particular sets of circumstances, and these circumstances must be present before any right of reply exists. Suppose the *May Company* had not actively maintained and enforced such a rule; suppose the *May Company* had refrained from addressing anti-union speeches to massed assemblies of employees; suppose the union had made no request to reply. The positive aspect of all these factors were found in combination in the *May Company* case. One must be careful to read this decision in the light of the particular facts which gave rise to its limited holding. I am not attempting to minimize the impact of the *May Company* case, but I do suggest that this decision should not generate any unwarranted assumptions about what the Board's determination might be on other facts.

Although I have devoted considerable time to a discussion of recent changes in the interpretation of the Statute, the more important changes during the past year, in my opinion, are procedural rather than substantive. Of these the delegation to our Regional Directors of initial decision making and direction of elections in representation cases is the most significant. The Board has always been criticized by Congress and the labor bar on the ground that it does too little and frequently is too late. Part of this criticism may have been justified. In part, however, the Board, like the courts, was helpless to reduce the delay in case handling because of the tremendous volume of cases that required the individual attention of the Board Members. In this area the *Landrum-Griffin* Act of 1959 gave the Board a powerful assist by specifically authorizing the Board to de-centralize the resolution of many representation questions. This the Board did in May of last year. The results have been most gratifying. The time required to issue a representation decision by one of our twenty-eight Regional Directors is about 45 days, contrasted with approximately 85 days in 1960, when the Board itself issued all decisions. Regional Directors are producing reports on objections and challenges to elections in an average time of about 30 days, less than half the time required in 1958. Moreover, further improvements are anticipated. I wish to emphasize, however, that the Board has not abandoned its obligation to guide and direct Board policy in the area of representation law. By appeal of the parties or by transfer from the Regional Director on his own motion, the Board continues to determine the novel and more difficult cases in this field. The time

thus saved has produced dramatic improvement in the handling of unfair labor practice cases also.

In 1956, for example, a year when the Board received about 5000 unfair labor practice cases for initial processing, it would have taken a median of 105 days before the General Counsel could issue a formal complaint. Contrast this with 1961, when over twice as many unfair labor practice cases were filed: the median time for issuing complaints was actually *reduced*, from 105 to about 46 days. In differing degrees, this speed-up is evident at every stage of Board proceedings. For example, at last report the Board's trial examiners were issuing intermediate reports in an average time of about 65 days, as contrasted with over 90 days less than a year ago. Final Board decisions are also issuing faster, though the figures may not fully reflect the improvement achieved, since many cases now issuing are ones that have been bottled up for a long time. Nonetheless, during the 1961 calendar year, the five-member Board issued an all-time high of 587 decisions in contested unfair labor practice cases—over fifty-five percent more than in 1960—and the biggest year in the Board's history. In so doing, the Board succeeded in reducing its backlog of unfair labor practice cases from 454 to 363, and we reduced processing time before the Board by 100 days. But we are still striving for improvement.

In emphasizing these substantial speed-ups that we have recently accomplished, I would not want to overlook the fact that, despite our best efforts, many decisions cannot properly be turned out in a hurry. To do so would in the long run waste time, since the questions involved would, if decided haphazardly, come back to haunt the Board—and practitioners—in future cases. I am referring of course to cases involving complex or unusual problems, issues of importance to the administration of the Act as a whole.

I hope that my discussion today has given you the flavor of some of the current problems that confront the Board. Complex as these problems are, I can assure you that all our efforts will be devoted to their resolution in an impartial and non-partisan manner that seeks the wisest accommodation between the demands of labor and management and the needs of the public.

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