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Indiana Law Journal

Volume 42 | Issue 4

Article 2

Summer 1967

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National Labor Relations Board

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Recommended Citation

Little, William T. (1967) "The Role of the Regional Director in NLRA Representation Cases," *Indiana Law Journal*: Vol. 42 : Iss. 4 , Article 2.

Available at: <http://www.repository.law.indiana.edu/ilj/vol42/iss4/2>

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THE ROLE OF THE REGIONAL DIRECTOR IN NLRA REPRESENTATION CASES

WILLIAM T. LITTLE†

THE STATUTORY FRAMEWORK

Section 9(c)(1) of the National Labor Relations Act¹ provides:

. . . Wherever a [representation] petition shall have been filed, in accordance with such regulations as may be prescribed by the Board . . . the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Section 3(b) of the act further provides:

. . . The Board is also authorized to delegate to its regional directors its powers under Section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director.

† Regional Director, Region Twenty-five, National Labor Relations Board. The views and opinions stated herein are exclusively those of the writer and are not represented or intended to convey the views and opinions of the National Labor Relations Board or its General Counsel. Additionally it should be noted that since the topic deals with procedure actually followed in Regional Office administration of the act, exclusive reliance is placed on Board decisional rules and procedures which are binding on the Director, Insurance Agent's International Union, 119 N.L.R.B. 768, 772 (1958), rather than occasional court decisions which may question or cast doubt on them. Similarly, the article does not deal with the relatively rare situations where the case is transferred from the Region to the Board itself. In that event many of the functions herein ascribed to the Director are performed by the Board.

1. 49 Stat. 449 (1935), as amended, 29 U.S.C. §§ 151-68 (1964).

ELECTION AND PRE-ELECTION PROCEDURES

The Administrative Investigation and Determination

Both the investigatory and decisional aspects of this statutory function given the Board under section 9(c) have been delegated by the Board to its Regional Directors.² Thus under the direction and supervision of the Director, Regional Office personnel investigate the petitioner's merits.³

Based on such investigation the Director determines whether the statutory criterion of "reasonable cause to believe a question of representation affecting commerce exists" has been met and whether it is otherwise appropriate to proceed.⁴ If the finding is affirmative, he issues a notice of hearing unless the parties execute an election agreement waiving a hearing.⁵

If the Director finds that no question concerning representation exists or that it is otherwise inappropriate to proceed to an election, the petitioner is solicited to withdraw its petition. If it does so, the case is closed.⁶ If the petitioner refuses to withdraw its petition, the Director formally notifies it in writing that he will not issue notice of hearing and dismisses the petition administratively, *i.e.*, without a hearing. In such circumstances, or if the Director, having issued a notice of hearing, withdraws it prior to the close of the hearing, the petitioner has a full and complete administrative appeal to the Board in Washington.⁷

In addition to solicited withdrawals, the petitioner may voluntarily request leave to withdraw its petition at any time regardless of its merit. Any such request, to be effective, must be approved by the Director⁸ who also determines under rather clearly defined standards whether the withdrawal shall prejudice filing or refiling during the ensuing six months.⁹

The Hearing or Election Agreement

Election Agreement. As above noted, in meritorious cases, the Director issues a notice of hearing unless the parties execute an election

2. 29 C.F.R. § 102.63(a) (1965) (NLRB Rules and Regulations); 29 C.F.R. § 101.18, .21 (1965) (N.L.R.B Statement of Procedure). [The abbreviations RR and SP will hereinafter be used to cite, respectively, the NLRB Rules and Regulations appearing in 29 C.F.R. §§ 102.1-.125 (1965), and the NLRB Statements of Procedure appearing in 29 C.F.R. §§ 101.1-.43 (1965).]

3. SP § 101.18; RR § 102.63(a). The adequacy of the investigation is an administrative matter which cannot be litigated. *Lloyd A. Fry Roofing Co.*, 107 N.L.R.B. 1327 (1954).

4. RR § 102.63(a).

5. *Ibid.*

6. SP §§ 101.18(b), (c); RR § 102.60(a).

7. RR §§ 102.65(a), .71.

8. RR § 102.60(a).

9. 1954 NLRB ANN. REP. 19.

agreement in which they waive the hearing and consent or stipulate to an election. The agreement defines the appropriate bargaining and/or election unit, the eligibility date,¹⁰ and the time and place of election. The terms of the agreement are in all respects subject to the approval of the Director.¹¹ Although the Director normally gives great weight to the agreement of the parties to the extent that he frequently approves terms other than those he or the Board would order if the matter were litigated, he cannot and will not approve agreements that conflict with the statutory or Board policy,¹² (*e.g.*, the inclusion of supervisors, guards, or professional employees in production and maintenance units).

The Hearing. During the hearing the Hearing Officer is in substantially complete control of the proceeding in much the same manner as the Regional Director is at other times.¹³ Otherwise, unless and until the Director transfers the case to the Board for decision (which he may do at any time)¹⁴ or the Board grants review under the Request for Review Procedure, the Director controls the proceeding. Thus, he sets the time and place of hearing¹⁵ and determines whether the case should be consolidated with other proceedings.¹⁶ All requests for subpoenas and other motions (more commonly, motions to revoke subpoenas, dismiss, intervene, reopen the record, and most commonly, motions to postpone, continue, and extend time)¹⁷ are filed with and decided by the Director except in relatively rare situations (frequently dealing with motions to revoke subpoenas for immateriality) where he exercises his discretion to refer motions (other than motions to dismiss or withdraw upon which only the Director can rule)¹⁸ to the Hearing Officer for ruling. There is no provision for interlocutory appeals to the Board from such rulings which can be attacked by the limited request for review procedure after the Director has decided the case on the merits.¹⁹

The Decision and Review

Based on the record of the hearing, the Director issues a decision

10. This is the date on which the voter must have been employed to be eligible to vote.

11. RR §§ 102.62(a), (b).

12. *Growers Warehouse Co.*, 114 N.L.R.B. 1568, 1573 (1955); *Hoffman Hardware Co.*, 112 N.L.R.B. 982, 983 n.2 (1955). As a result units consented to in election agreements are of little or no precedential value in subsequently litigated cases. *Hecks, Inc.*, 159 N.L.R.B. No. 104 (1966).

13. RR §§ 102.65-.66.

14. RR § 102.67(h).

15. RR § 102.63(a).

16. *Parker Bros.*, 119 N.L.R.B. 139, 140 n.2 (1957); *Heating, Piping, and Air Conditioning Contractors*, 110 N.L.R.B. 261, 262 (1954).

17. RR §§ 102.65(a), .66(c), .67.

18. RR § 102.65(a). *Southern Greyhound Lines*, 141 N.L.R.B. 753, 754 n.2 (1963).

19. RR §§ 102.65(c), .67(c)(3).

embodying appropriate findings of fact and conclusions of law.²⁰ Normally, the decision either directs an election in the unit found appropriate or dismisses the petition.²¹ The decision is final, although subject to the review procedure outlined below.²² Although any party has the right to request review, the review procedure is rather limited; the Board will grant review only where there exists compelling reason.²³ The decision has other aspects of finality: (1) although an election cannot be conducted while a request for review is pending, neither the request nor the granting thereof operates as a stay of the decision unless expressly ordered;²⁴ (2) issues that are not timely raised before the Director cannot be raised on review;²⁵ and (3) issues which were or could have been raised for decision in the case cannot be relitigated in any subsequent related unfair labor practice proceeding absent a change in circumstances or newly discovered evidence if review of the Director's decision was not requested²⁶ or was requested and denied.²⁷

The Election.

Elections are normally conducted under the direction and supervision of the Director of the Region in which the petition is filed.²⁸ In consent and stipulated elections the election agreement normally sets forth the appropriate unit in which the election is to be conducted, the eligibility date,²⁹ and the place, date, and hours of balloting.³⁰ In the case of directed elections the appropriate unit and eligibility date are specified in the Director's or the Board's decision. Although normally incidents of

20. RR § 102.67(b).

21. *Ibid.*

22. *Ibid.*

23. RR § 102.67(c). For this reason § 102.67(c) limits the reasons for review to the following grounds:

(1) That a substantial question of law or policy is raised because of (a) the absence of, or (b) a departure from, officially reported Board precedent.

(2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

24. RR §§ 102.67(b), (g). Staub Cleaners Inc., 148 N.L.R.B. 278, 296 (1964).

25. RR § 102.67(d). K-Mart Div., S. S. Kresge Co., 161 N.L.R.B. No. 92 (1967). See also Schott Metal Prods. Co., 150 N.L.R.B. 1652 n.1 (1965); Coney Island, Inc., 140 N.L.R.B. 77 n.1 (1962).

26. RR § 102.67(f). Dazzo Prods., Inc., 49 N.L.R.B. 182, 188-89 (1964); Warehouse & Mail Order Employees, 144 N.L.R.B. 888, 892 (1963).

27. RR § 102.67(f). Maphis Chapman Corp., 151 N.L.R.B. 73, 84-85 (1965); United Furniture Workers of America, 146 N.L.R.B. 474 (1964).

28. RR § 102.69(a).

29. See note 10 *supra*.

30. RR §§ 102.62(a), (b).

the election expressly provided for in the election agreement are binding on the Director and not discretionary,³¹ matters not expressly covered are generally subject to the provision of the agreement that the election "shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations and the applicable procedures and policies of the Board."³² Thus, in areas not expressly provided for in the election agreement the Director's function and discretion are substantially the same as in directed elections. In such matters the Director has broad discretion in the conduct of the election³³ so long as his action does not conflict with the express Board policy.³⁴

Thus, in situations where the election cannot be immediately scheduled as (a) in cases of seasonal industries where the direction of election issues in the off season, or (b) in cases where unremedied unfair labor practices have created an atmosphere in which an election cannot be directed and held immediately, the Board customarily directs the Director to schedule the election when a representative group of employees are employed, at the peak of the season, or when the effect of the unfair labor practices has been dissipated and to fix the eligibility date by issuance of the election notice.³⁵

In directed elections the Director decides the date,³⁶ hours,³⁷ and place³⁸ of election. In all cases, he exercises a broad discretion in determining the various other incidents and details of the election.³⁹ Illustrative of the scope and area of discretion in election matter is the fact that the Director determines: (a) the format of the ballot, including the place of the respective parties thereon,⁴⁰ and whether the ballot should be printed in a foreign language;⁴¹ (b) whether to hold a pre-election

31. M. W. Breman, 115 N.L.R.B. 247, 249 (1956).

32. Merrimac Hat Corp., 85 N.L.R.B. 329, 330, 332 (1949). In that case a consent election agreement provided for an election on a specified date with a specified eligibility date, but made no provision for eligibility in a rerun or second election. The Director was held authorized in accordance with customary practices to provide a current eligibility date rather than the stale eligibility date originally agreed upon for the second or rerun election.

33. Augusta Cartage Co., 120 N.L.R.B. 73, 74 (1958); Independent Rice Mill, Inc., 111 N.L.R.B. 536, 537 (1955); Continental Bus System, 104 N.L.R.B. 599, 601 (1953).

34. Gail W. Glass, 120 N.L.R.B. 914 (1958); Alterman-Big Apple, Inc., 116 N.L.R.B. 1078 (1956); Edward J. Schlachter Meat Co., 100 N.L.R.B. 1171, 1172 (1952).

35. Federal Envelope Co., 147 N.L.R.B. 1030, 1045 (1964); Bordo Prods. Co., 117 N.L.R.B. 313, 317 (1957).

36. Plant City Welding & Tank Co., 119 N.L.R.B. 131 (1957); University Metal Prods. Co., 98 N.L.R.B. 1194 (1952).

37. Grinnell Bros., 99 N.L.R.B. 948 (1952).

38. Korber Hats, Inc., 122 N.L.R.B. 1000, 1001 (1959); Cupples-Hesse Corp., 119 N.L.R.B. 1288 (1958); Millham Prods. Co., 114 N.L.R.B. 1544 (1955).

39. Jat Transp. Corp., 131 N.L.R.B. 122 (1961).

40. East Texas Pulp & Paper Co., 114 N.L.R.B. 885 (1955).

41. V. LaRosa & Sons, 121 N.L.R.B. 671 (1958).

conference to familiarize the parties with the mechanics of the election and check the eligibility of voters;⁴² (c) whether to conduct a mail, manual, or combined mail-manual ballot,⁴³ and in a manual ballot election whether absentees may vote by mail;⁴⁴ (d) whether to give special notice of the election to laid off employees who because of their absence from the plant would not see the posted election notices;⁴⁵ (e) the means of identifying eligible voters at the polls;⁴⁶ (f) whether to postpone an election because of the pendency of unfair labor practices or proceed with the election and impound the ballots;⁴⁷ (g) whether to impound the ballots for other reasons;⁴⁸ (h) whether to extend or refuse to extend announced voting hours to conform to special circumstances.⁴⁹

SPECIAL PROCEEDINGS RELATING TO REPRESENTATION CASES

Petitions for Clarification of Bargaining Unit or Amendment of Certification

In addition to petitions for election under section 9(c) of the act, parties may petition for clarification of an existing bargaining unit or amendment of existing certification in the absence of a question concerning representation.⁵⁰ Such petitions are processed in a manner closely analogous to the pre-election processing of petitions seeking certification described above,⁵¹ and the Director in his discretion may decide the case and amend the certification or clarify the unit or refuse to do so either on the basis of the administrative investigation or a hearing⁵² subject to the limited request for review procedure outlined above.⁵³ However, where the certification is based on a consent election agreement that reserves post-election problems for the Director rather than the Board, the Director's decision on the petition for amendment or clarification is binding on the parties unless it is arbitrary or capricious.⁵⁴

42. Eisner Grocery Co., 116 N.L.R.B. 976, 978 (1956).

43. Shipowners' Ass'n of the Pacific Coast, 110 N.L.R.B. 479, 480 (1954); Continental Bus System, Inc., 104 N.L.R.B. 599, 601 (1953); Seattle Bakers' Bureau, Inc., 104 N.L.R.B. 270 (1953).

44. Kresge-Newark, Inc., 112 N.L.R.B. 869 (1955); E. I. DuPont de Nemours, 79 N.L.R.B. 345, 346 (1948).

45. Rohr Aircraft Corp., 136 N.L.R.B. 958 (1962).

46. New York Shipping Ass'n, 109 N.L.R.B. 310, 311 (1954).

47. Korber Hats, Inc., 122 N.L.R.B. 1000 (1959); cf. Edward J. Schlachter Meat Co., 100 N.L.R.B. 1171 (1952) (where ballots were not impounded).

48. Independent Rice Mill, Inc., 111 N.L.R.B. 536 (1955).

49. Glauber Water Works, 112 N.L.R.B. 1462 (1955).

50. RR §§ 102.61(d), (e).

51. Except that the Director's dismissals of petitions without hearing are subject to the limited request for review rather than the appeal procedure. RR § 102.63(b).

52. Radio Station KHQ, 111 N.L.R.B. 874 (1955).

53. RR § 102.63(b).

54. Santa Clara Lemon Ass'n, 112 N.L.R.B. 93, 94 (1955).

Expedited Elections

Section 8(b)(7)(C) of the act provides that in certain situations involving picketing or threatened picketing, the Board "shall forthwith direct" an election without first holding a hearing.⁵⁵

In such situations the Director on the basis of the administrative investigation dismisses the petition if it fails to meet section 8(b)(7) standards unless it satisfies the requirements of section 9(c)(1), in which event he processes the petition as an unexpedited petition under section 9(c)(1).⁵⁶ The Board has delegated its powers under section 8(b)(7) to the Directors. Hence in cases where the statutory standards of section 8(b)(7) are met, absent an election agreement,⁵⁷ the Director on the basis of the administrative investigation directs an election, fixing the date, hours, and place of voting, and the eligibility requirements therefor, unless he finds that the issues require a hearing.⁵⁸ Otherwise the Director's function in expedited election cases is not significantly different from other representation cases except that appeals and review of his actions are normally available only by special permission of the Board, which must be promptly sought⁵⁹ except in the relatively rare situation where hearings are directed and the normal (but expedited) request for review procedure obtains.⁶⁰

POST-ELECTION ISSUES

After an election two possible questions (customarily called post-election issues) may arise. The ballots of voters challenged as ineligible may be determinative of the election, or a party to the election may file objections to the conduct of the election or to conduct affecting the results of the election. Absent such post-election issues the Director performs

55. Section 8(b)(7) provides:

[It shall be an unfair labor practice] to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) . . . direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof. . . .

56. RR §§ 102.80(a), (b).

57. RR § 102.79.

58. RR §§ 102.77(b), .78.

59. RR § 102.80.

60. RR § 102.77(b).

the ministerial act of issuing a certification of the results of the election "with the same force and effect as if issued by the Board."⁶¹ If post-election issues arise, the Director through the Regional Office staff must investigate them. The investigation may be and customarily is conducted on an ex parte basis.⁶² Neither the Director's jurisdiction nor the investigation is limited to the issues raised by the parties in their challenges⁶³ or objections.⁶⁴ After the investigation is completed, the procedure to be followed varies with the basis on which the election was held.

Consent Election Cases

Consent Election Agreements, sometimes referred to by the Rules as "a consent election agreement pursuant to Section 102.62(a)" provide for a final determination by the Director, not only of all post-election issues,⁶⁵ but also of the manner and means by which such issues shall be investigated.⁶⁶ Thus, post-election hearings which are not mandatory in any case are within the Director's discretion in consent election cases.⁶⁷

If a hearing is directed, the Hearing Officer or Trial Examiner (who sometimes hears election cases when they are consolidated with charge cases) files his report, in which he makes credibility findings, findings of fact, and recommendations, to the Director since the parties have agreed that he, and not the Board, will decide the matter. The Director then decides the case and issues an appropriate certification on the basis of the hearing, the Hearing Officer's report, and the parties' exceptions thereto. Indeed, because of the terms of the consent election agreement even where post-hearing issues in consent elections have been consolidated for hearing with unfair labor practice proceedings, the Board refuses to pass on the consent election issues, but severs the proceeding and remands it to the Director following the Trial Examiner's decision making the necessary credibility findings.⁶⁸ Then the Director, rather than the Board, decides the case and issues an appropriate certification. In all consent cases, the Director's decision is final and binding and no exceptions or appeal can be taken from it to the Board.⁶⁹

61. RR § 102.69(b).

62. Thomas Electronics, Inc., 109 N.L.R.B. 1141, 1145 (1954).

63. City Tire Co., 117 N.L.R.B. 753 (1957).

64. International Shoe Co., 123 N.L.R.B. 682, 684 (1959); Edward J. Schlachter Meat Co., 100 N.L.R.B. 1171 (1952).

65. RR § 102.62(a).

66. Specifically, the agreement provides "The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding."

67. Hillcrest Poultry Indus., Inc., 144 N.L.R.B. 1220 (1963); International Idlewild Catering Corp., 124 N.L.R.B. 513, 519 (1959).

68. Collins & Aikman Corp., 143 N.L.R.B. 15, 16 (1963).

69. McMullen Leavens Co., 83 N.L.R.B. 948, 951 (1949).

To collaterally attach a Director's certification in a consent election case when subsequent proceedings are brought to enforce the certification, it does not suffice to show that the Director erred or that the Board might have decided the matter otherwise.⁷⁰ The decision and concomitant certification will be honored by the Board in subsequent proceedings unless there is a showing that it was arbitrary or capricious or tainted with fraud, misconduct, or such gross mistake as to imply bad faith.⁷¹

Stipulated and Directed Elections

Stipulations For Certification Upon Consent Election (herein called stipulated elections) but sometimes referred to by the Rules as a "consent election agreement pursuant to Section 102.62(b)," is the name given to election agreements that provide for Board determination of post-election issues.⁷² In such cases at the conclusion of the administrative investigation, the Director may order a hearing or issue a report to the Board recommending disposition of the post-election issues.⁷³

Directed election cases (wherein either the Board or the Director has ordered an election) afford the Director the alternative at the completion of the administrative investigation of either issuing a decision deciding the case and certifying the results of the election subject to the request for review procedure, or issuing an election report that recommends a decision to the Board rather than actually decides the case.

The necessity for hearing. Although a Director in his discretion may order a hearing in any case, hearings are not mandatory even in stipulated or directed election cases; they are required only where there are substantial and material factual issues⁷⁴ since, absent such factual issues, a hearing serves little purpose.⁷⁵ Where there are substantial and material factual issues, hearings, of course, are matters of constitutional right (except in the consent election situation where the parties have waived that right by agreement). Accordingly, where such factual issues exist, a hearing is directed.⁷⁶ In either case, in the Director's Report or Decision, he reports the facts developed by the administrative investiga-

70. Pepsi-Cola Bottling Co., 159 N.L.R.B. No. 130 (1966); General Tube Co., 141 N.L.R.B. 441, 445 (1963).

71. Pepsi-Cola Bottling Co., *supra* note 70; James H. Matthews Co., 145 N.L.R.B. 1680 (1964); Hillcrest Poultry Indus., Inc., 144 N.L.R.B. 1220, 1232 (1963); General Tube Co., *supra* note 70; McMullen Leavens Co., 83 N.L.R.B. 948 (1949).

72. RR § 102.62(b).

73. RR § 102.69(c).

74. United Furniture Workers of America, 146 N.L.R.B. 474, 479 (1964); Midwest Television, Inc., 144 N.L.R.B. 972 (1963).

75. Plant City Welding & Tank Co., 123 N.L.R.B. 1146, 1153 n.21 (1959); see also L. C. Ferguson, 118 N.L.R.B. 315 (1957)

76. RR § 102.69(c). Ballas Egg Prods., 121 N.L.R.B. 107 (1958); Murray Ohio Mfg. Co., 120 N.L.R.B. 1060 (1958); Paramount Cap Mfg. Co., 115 N.L.R.B. 747 (1956).

tion. In cases where he has not ordered a hearing, the Director's Report or Decision, together with the parties' exceptions or the request for review, serve to frame the issue and enable the Board to determine whether there is a substantial and material factual issue.⁷⁷ If there is such an issue in cases where the Director refuses to direct a hearing, the Board will order a hearing.

The decisional process. As above noted, the Director in directed election cases may decide post-election issues on the basis of the administrative investigation and issue an appropriate certification. If he directs a hearing, the Hearing Officer normally reports to the Director in a report that makes appropriate findings of fact, credibility resolutions, and recommendations, and on the basis of such report, the transcript, and the exceptions of the parties, the Director decides the case. Whether he decides the case on the basis of the administrative investigation or a hearing, his decision is subject to the request for review procedure. Additionally, of course, as previously noted, the Director can refuse to decide a directed election case and transfer it to the Board at any time.

In stipulated election cases the Director's connection with the case closes when he issues his report and makes his recommendation to the Board or directs a hearing, since the parties have agreed that post-election issues should be determined by the Board and not by the Director.⁷⁸

SUMMARY

From the above it would appear that in addition to granting the Director a substantial discretion in procedural matters, the Board has utilized almost its full authority under section 3(b) to delegate to the Director the power to decide substantive matters, subject to review procedure. In the interest of due process of law and preserving a petitioner's right to a hearing in all cases in which he could conceivably have a claim thereto, the Board has preserved the right of a complete appeal in cases that are dismissed on the basis of an administrative investigation and without full hearing. Additionally, in the interest of fostering election agreements and avoiding hearing and litigation in consent election situa-

77. Because some confusion may exist as to whether factual issues are resolved without a hearing due to a misunderstanding of the law of exceptions, some of the more commonly cited principles are set forth below: Absent a claim of newly discovered evidence, the excepting party cannot raise matter in its exceptions that was not raised before the Director, *General Electric Co.*, 115 N.L.R.B. 306 (1956), nor will a general statement that evidence is available to support the excepting party's case serve to raise a factual issue absent an allegation or specific facts in support of the exception. *Southern Press*, 121 N.L.R.B. 1080 (1958); *B. B. McCormick & Sons*, 119 N.L.R.B. 1679 (1957). Rather, to raise a factual issue, the excepting party must proffer supporting evidence to the Board or refer to specific evidence which the Director failed to consider or investigate.

78. For that reason when a hearing is directed, the Hearing Officer reports to the Board rather than the Director.

tions, the Board has permitted the parties to enlarge the Director's authority and give him plenary powers, including powers that would otherwise be exercised by the Board. Similarly, in stipulated election cases it has permitted the parties to withdraw powers normally vested in the Director and vest them in the Board with the concomitant imposition of additional burdens on the Board. In all other respects, the Board appears to have delegated the representation case powers vested in it to its Directors within and subject to the limitations of the statutorily required review procedure.