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## NOTES

### THE "GLOBE RULE" FOR DETERMINING APPROPRIATE BARGAINING UNITS UNDER THE WAGNER ACT

Under the Wagner Act the agent selected by a majority of employees in an appropriate bargaining unit is the exclusive representative of all the employees in that unit for the purposes of bargaining with the employer.<sup>1</sup> The National Labor Relations Board is empowered by Section 9(b) of the act to determine in each case what unit of workers is appropriate for bargaining.<sup>2</sup>

<sup>1</sup> 49 Stat. 449, 453 (1935), 29 U.S.C.A. § 159(a) (Supp. 1938).

<sup>2</sup> "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." 49 Stat. 449, 453 (1935) 29 U.S.C.A. §159(b) (Supp. 1938).

This determination is not reviewable by the courts unless clearly arbitrary.<sup>3</sup> Thus labor organizations and employers who have reason to prefer certain groupings for bargaining purposes find the Board's determinations as to the proper unit vital to their interests.

By virtue of the majority rule principle embodied in the act, the possibility of gerrymandering in the demarcation of units presents itself. For example, the inclusion of a group of office workers in a unit of production employees in a plant, where a union had but a slight majority of the production employees and no members or sympathizers in the office group, would be desirable to an employer who did not want to bargain with the union since it would probably result in a failure by that union to get a majority and certification. The converse situation arises where a union has a strong majority in a rather large group in the plant and desires the inclusion of smaller groups, whose vote would not upset the union majority, in order to increase the number for whom the union is the sole bargaining agent,<sup>4</sup> thereby strengthening the union's bargaining position. Where rival unions seek certification, each desires a unit including those employees among whom its organizing campaign has been successfully conducted and not such other employees as may be able to defeat, if included in the unit, the union's claim to a majority.<sup>5</sup>

At the time of the passage of the act, the Board was not faced with the task of deciding claims as to the appropriateness of bargaining units in an atmosphere charged with clashes between nationally powerful unions. Conflicting claims by several unions over groups of workers were resolved by referring the competing organizations to the parent body to settle the "jurisdictional dispute" in which the Board refused to engage.<sup>6</sup> This policy was pursued while the C.I.O.-A.F. of L. breach widened, until finally the Board recognized

<sup>3</sup> N.L.R.B. v. Carlisle Lumber Co., 94 F. (2d) 138 (C.C.A. 9th 1937) *cert. denied* 304 U.S. 575 (1938). In this case the unit comprised employees in sawmill, shingle mill, yard, pond and logging operations. The officer in charge of the election excluded 17 foremen, 8 clerical employees, and 30 Japanese. This cut the unit to 360 of which the Union got 191 and certification. The total number of employees, however, was 416 and the employer questioned the Board's approval of the election officer's report. The Board's decision is reported in 2 N.L.R.B. 248 (1936).

<sup>4</sup> In Commonwealth Division of General Steel Castings Corp., 3 N.L.R.B. 779 (1937) the C.I.O. union having 2100 members in a plant of 2500 men, opposed the separation from the unit of about 400 welders, machinists, and pattern makers. Cf. Marcus Loew Booking Agency, 3 N.L.R.B. 380 (1937) where an A.F. of L. Theatrical Stage Employees Union tried to engulf 18 radio broadcast engineers, which the American Radio Telegraphists' Association (a C.I.O. craft union) claimed, in a unit of "all the employees of the Company and Loew's Inc. employed in the mechanical department of the theatrical stage."

<sup>5</sup> Pacific Gas & Electric Co., 3 N.L.R.B. 835 (1937) where a C.I.O. union admitting outside or physical workers, in opposition to an independent employees' association, requested the exclusion of the clerical workers from the unit, because 75% of them were women and had never before 1937 shown any union sympathies.

<sup>6</sup> Aluminum Co. of America, 1 N.L.R.B. 530 (1936); Axton-Fisher Tobacco Co., 1 N.L.R.B. 604 (1936).

that the Committee for Industrial Organization, having been suspended, would not submit to the Federation's authority in such disputes and that solution of what were formerly internal "jurisdictional" problems could no longer be avoided.<sup>7</sup>

To say that the difference between the A.F. of L. and the C.I.O. is that one is a craft union group and the other an organization of industrial unions is to oversimplify a complex situation. In cases decided by the Labor Board prior to March 1, 1939, A.F. of L. unions have requested some form of industrial unit in approximately 210 cases and a craft form in approximately 100 cases.<sup>8</sup> The C.I.O. has in some cases requested smaller units than the A.F. of L. contended for.<sup>9</sup> In a great number of cases the rival confederations agreed as to the unit and the only question was which had been more successful in organizing a majority in that unit.<sup>10</sup> It is in the cases of disagreement between the rivals as to the propriety of units that the Board finds the task imposed by Section 9(b) a very difficult and delicate one.

Since these problems have arisen because of the existence of two powerful independent labor union groups, it would be well to consider the origin of this dichotomy in order to appreciate the conflicting claims which these groups raise.<sup>11</sup>

The A.F. of L. is a federation of autonomous national and international unions each of which has a certificate of affiliation, or charter, indicating the class of workers over whom it exercises jurisdiction.<sup>12</sup> The executive council of the A.F. of L. can issue charters directly to local trade unions or federal labor unions, which charters, however, cannot conflict with the jurisdiction of the already existing national or international<sup>13</sup> affiliates of the federation. The federal local has been used principally for organizational purposes in industries hitherto unorganized. After the establishment of a local comprising a heterogeneous group of workers, the more skilled men so organized are generally

<sup>7</sup> Interlake Iron Corp., 2 N.L.R.B. 1036 (1937).

<sup>8</sup> These figures are from Report of the National Labor Relations Board to the Senate Committee on Education and Labor upon S. 1000, S. 1264, S. 1392, S. 1550, and S. 1580, pp. 148-9 (April, 1939).

<sup>9</sup> See, e.g., Marcus Loew Booking Agency, 3 N.L.R.B. 380 (1937); and see note 4 *supra*. Friedman Blau Farber Co., 4 N.L.R.B. 151 (1937) (in a knitting mill the C.I.O. union wanted only workers in the production of knitted goods while the A.F. of L. group wanted and got a unit including all other production workers, including box makers and shipping department employees).

<sup>10</sup> Up to March 1, 1939 there were 190 cases decided by the Board in which both the A.F. of L. and the C.I.O. took part and in which the question of appropriate bargaining unit was involved. In 90 of these cases there was complete agreement as to the unit. In 26 more they agreed on the general outlines of the unit with minor disagreements as to exclusion and inclusion of employees. See Report, *op. cit. supra* note 8, at 148.

<sup>11</sup> See Philip Taft, *The Problem of Structure in American Labor*, 27 *Am. Econ. Rev.* 4 (1937).

<sup>12</sup> For an explanation of the structure of the A.F. of L. see Feller and Hurwitz, *How to Deal with Organized Labor* 90-108 (1937).

<sup>13</sup> Constitution of the American Federation of Labor, Art. XIV, Sec. 2.

allocated to already existing locals or to a new local of the national which claims jurisdiction over them.

Great numbers of workers in the mass production industries, in which craft lines were not clearly defined and practically no organizing had been done, were stimulated to organize by Section 7(a) of the National Industrial Recovery Act, which had guaranteed the right of collective bargaining. Workers in the auto and rubber industries, organized into federal locals, asked the Federation to grant charters to new national unions which would have jurisdiction over all workers throughout the auto and rubber industries respectively. They wanted to preserve the membership of the locals intact instead of allowing the more skilled men to be allocated to the older nationals which might claim them.

At the A.F. of L convention in San Francisco in 1934 a resolution was passed that the executive council grant industrial charters to the automobile, aluminum, and cement workers. The charters given by the council, however, exempted maintenance men and skilled workers from the jurisdiction of the new unions, fully protecting the jurisdictional rights of the craft unions.<sup>14</sup> At Atlantic City in 1935 a minority report was submitted to the convention urging the grant of unrestricted industrial charters for new unions in the mass production industries. The report did not purpose to "permit the taking away from national or international craft unions any part of their present membership, or potential membership in establishments where the dominant factor is skilled craftsmen coming under a proper definition of the jurisdiction of such national or international unions."<sup>15</sup> The craft unions, controlling a majority of votes, defeated this proposal.<sup>16</sup>

The Committee for Industrial Organization was formed shortly after the convention<sup>17</sup> to promote the organization of workers in the mass production and unorganized industries of the nation according to the policies outlined in the minority report, but with the hope of keeping within the Federation. At a later date the unions in the C.I.O. were suspended by the Federation's executive council,<sup>18</sup> and, two years after the formation of the C.I.O., its constituent

<sup>14</sup> See article by Louis Stark, N.Y. Times, sec. IV, p. 7, col. 5 (Oct. 20, 1935).

<sup>15</sup> Report of Proceedings of the Fifty-fifth Annual Convention of the American Federation of Labor 523-4 (1935). This was submitted by Charles P. Howard, David Dubinsky, Frank B. Powers, John L. Lewis, A. A. Myrup, and J. C. Lewis. The speeches contained in 521-75 are illuminating on the differing attitudes of Federation leaders toward the problems indicated in the minority report.

<sup>16</sup> N.Y. Times, p. 12, col. 1 (Oct. 17, 1935).

<sup>17</sup> Chairman, John L. Lewis, United Mine Workers of America. Secretary, Charles P. Howard, Internat'l Typographical Union. Members, Sidney Hillman, Amalgamated Clothing Workers of America; David Dubinsky, Internat'l Ladies Garment Workers Union; Thomas F. McMahon, United Textile Workers of America; Harvey C. Fremming, Oil Field, Gas Well and Refinery Workers; Max Zaritsky, Hatters, Cap and Millinery Workers Internat'l Union; Thomas H. Brown, Internat'l Union of Mine, Mill, and Smelter Workers; Glenn W. McCabe, Federation of Flat Glass Workers.

<sup>18</sup> The Council suspended all of the unions listed in note 17 *supra*, except the Typographical Union and the Hatters, and further suspended the Amalgamated Association of Iron, Steel, and

unions were expelled by the A.F. of L. convention.<sup>19</sup> In November, 1938 the Committee for Industrial Organization adopted a constitution and officially became an independent federation of thirty-two unions and eight organizing committees under the name of the Congress of Industrial Organizations.<sup>20</sup>

As attempts to reconcile the A.F. of L. and the C.I.O. have thus far proved unsuccessful, the Board still faces its unhappy duty of deciding the conflicting claims of the rivals. It has devised a method for handling the close cases arising from a disagreement as to the proper unit. In *Matter of Globe Machine and Stamping Co.*,<sup>21</sup> in a plant which manufactured radiator grilles for automobiles, the United Automobile Workers (C.I.O.) contended that the proper unit was all the production and maintenance employees, while the Metal Polishers Union (A.F. of L) and the International Association of Machinists (A.F. of L) urged that the polishers and buffers and the punch press operators were separate craft groups and should be considered units apart from the rest of the production workers, who were claimed by a federal labor union (A.F. of L) as well as by the Automobile Workers. It was impossible to tell from the proof offered which union had a majority among the polishers and the punch press operators, as many had joined at various times both the U.A.W.A. and the A.F. of L. unions. The Board considered the evidence as to the degree of departmental interdependence of the plant, the history of bargaining, and differences in skill, and decided that:

in a case where the considerations are so evenly balanced the determining factor is the desire of the men themselves. . . . We will therefore order elections to be held separately for the men engaged in polishing and those engaged in punch press work. We will also order an election for the employees of the Company engaged in production and maintenance, exclusive of the polishers and punch press workers. . . .

On the results of these elections will depend the determination of the appropriate unit for the purposes of collective bargaining. Such of the groups as do not choose the U.A.W.A. will constitute separate and distinct appropriate units, and such as do choose the U.A.W.A. will together constitute a single appropriate unit.<sup>22</sup>

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Tin Workers, Internat'l Union United Automobile Workers of America and the United Rubber Workers of America. Report of Proceedings of the Fifty-sixth Annual Convention of the American Federation of Labor 80-6 (1936). See also N.Y. Times, p. 1, col. 8 (Aug. 6, 1936).

<sup>19</sup> N.Y. Times, p. 1, col. 3 (Oct. 12, 1937).

<sup>20</sup> "The structure of the newly established Congress of Industrial Organization is in many respects similar to that of the American Federation of Labor. It is composed of affiliated national and international unions, national organizing committees which have the status of national unions, and local industrial unions chartered directly by the Congress. In addition, state, city, and county industrial councils are organized with functions corresponding in most respects to those of city centrals and state federations of labor." 47 Monthly Labor Review 1326, 1327 (1938).

<sup>21</sup> 3 N.L.R.B. 294 (1937).

<sup>22</sup> *Id.* at 300. The Auto Workers Union won the election among all groups and was certified for the unit it had requested. The same thing happened in City Auto Stamping Co., 3 N.L.R.B. 306 (1937).

What "considerations," the balance of which leads to application of the *Globe* rule, does the Board take into account in making its own decisions establishing appropriate bargaining units?<sup>23</sup> The list of criteria is long and the precise weighting of each factor is impossible to ascertain. The Board has avoided the formulation of rigid rules which might hamper its discretion and proceeds in each case to examine its particular circumstances.<sup>24</sup> The circumstances which merit the attention of the Board will be discussed briefly.

The lines along which the employees themselves have chosen to organize is illuminating in selecting a proper unit,<sup>25</sup> and a history of previous negotiations with the employer by a certain group evidences strongly the propriety of that group as a unit.<sup>26</sup> That a particular type of unit has had a successful bargaining history in other establishments in the same industry weighs heavily in its favor.<sup>27</sup> The rules of eligibility of the unions which employees form or join are persuasive, but not necessarily conclusive, as to the limits of the proper unit.<sup>28</sup>

The contentions of *bona fide* labor organizations are sustained by the Board except where they are opposed by another labor group or are quite impractical. Having decided in several cases that licensed engineers and licensed deck officers were functionally separate groups, it has refused to combine such employees into one unit merely because they all were required to have licenses.<sup>29</sup> An employer does not generally prevail against a unit proposed by a union.<sup>30</sup>

Mutual interests of employees serve to bind them together into appropriate units. Men who do the same type of work have the same bargaining problems

<sup>23</sup> For a very good analysis of the holdings in bargaining unit cases, see Second Annual Report of the National Labor Relations Board 122-40 (1937), and Third Annual Report of the National Labor Relations Board 156-97 (1938). See also Rice, *The Determination of Employee Representatives*, 5 *Law and Contemp. Prob.* 188, 200-13 (1938); Stix, *The Appropriate Bargaining Unit under the Wagner Act*, 23 *Wash. U. L. Q.* 156 (1938); see also 32 *Ill. L. Rev.* 593, 599-610 (1938).

<sup>24</sup> *Bendix Products Corp.*, 3 *N.L.R.B.* 682 (1937).

<sup>25</sup> See Third Annual Report of *N.L.R.B.*, *op. cit. supra* note 23, at 163 and cases cited.

<sup>26</sup> *Bell Oil and Gas Co.*, 1 *N.L.R.B.* 562 (1936); *Shell Oil Co. of Cal.*, 2 *N.L.R.B.* 835 (1937); *Motor Transport Co.*, 2 *N.L.R.B.* 493 (1936); *Huth and James Shoe Mfg. Co.*, 3 *N.L.R.B.* 220 (1937); *Waterbury Clock Co.*, 4 *N.L.R.B.* 120 (1937).

<sup>27</sup> *American Steel & Wire Co.*, 5 *N.L.R.B.* 871 (1938).

<sup>28</sup> *Marlin-Rockwell Corp.*, 5 *N.L.R.B.* 206 (1938).

<sup>29</sup> *Ocean Steamship Co. of Savannah*, 2 *N.L.R.B.* 588 (1937). The United Licensed Officers, the single petitioning union, was certified, however, as representative for both units. This decision will undoubtedly influence the plan of organizational campaigns by this union. In *Great Lakes Engineering Works*, 3 *N.L.R.B.* 825 (1937), a proposed unit of plumbers, machinists and electrical workers was not allowed; the individual crafts each were clear cut units.

<sup>30</sup> See, however, *Merchants and Miners Transportation Co.*, 2 *N.L.R.B.* 747 (1937) (licensed men in permanent unlicensed positions excluded over union wishes); *Bendix Products Corp.*, 3 *N.L.R.B.* 682 (1937) (office workers, policemen, nurses, excluded); *Southern Chemical Cotton Co.*, 3 *N.L.R.B.* 869 (1937) (casual employees).

with respect to wages, hours and working conditions.<sup>31</sup> Thus, highly skilled men, with a background of special training or apprenticeship may be set off from groups of relatively unskilled men.<sup>32</sup> A showing of functional coherence and interdependence of departments or workers within a plant argues against splitting workers into less than plant units<sup>33</sup> even though there may be some differences in the type of work they do or in their relative skills. The unit of "production and maintenance employees" or "production employees" recurs constantly in the decisions.

If a particular employer has more than one plant the boundaries of a unit may be drawn to include the several plants or may cover only one. The most important considerations in this situation are the degree of functional interdependence of the plants,<sup>34</sup> the integration of management,<sup>35</sup> geographical location,<sup>36</sup> the desires of the employees,<sup>37</sup> and the history of bargaining.<sup>38</sup> If the employment policies of a corporation are centrally formulated for a widespread system of plants, the employer unit would seem most feasible.

A policy on the part of employers of dealing with workers and employment problems by means of an association of those employers, has dictated as proper a unit larger than any individual employer unit.<sup>39</sup> This type of unit has not been used except where there has been a history of such industry-wide dealings.

Just as mutual interest tends toward joining workers in a unit, dissimilarities of interests or outlook will result in separation. Certain classes of employees regularly excluded from units of production workers are supervisory employees,<sup>40</sup> office and clerical workers,<sup>41</sup> technical and laboratory employees,<sup>42</sup> doctors

<sup>31</sup> *Rossie Velvet Co.*, 3 N.L.R.B. 804 (1937).

<sup>32</sup> *Associated Press*, 1 N.L.R.B. 686 (1936) (editorial employees); *Internat'l Filter Co.*, 1 N.L.R.B. 489 (1936) (machinists); *Internat'l Mercantile Marine Co.*, 1 N.L.R.B. 384 (1936) (marine engineers); *Delaware-New Jersey Ferry Co.*, 1 N.L.R.B. 85 (1935); examples of craft units run throughout the cases. See a list of the craft unit cases in *Data on Administrative Problems of the N.L.R.B.* 6-8 (Publications Division: January 15, 1939).

<sup>33</sup> *Acklin Stamping Co.*, 2 N.L.R.B. 872 (1937); *Sheba Ann Frocks, Inc.*, 3 N.L.R.B. 97 (1937); *Huth and James Shoe Mfg. Co.*, 3 N.L.R.B. 220 (1937).

<sup>34</sup> *Bell Oil and Gas Co.*, 1 N.L.R.B. 562 (1936); *Ohio Foundry Co.*, 3 N.L.R.B. 701 (1937); *Goodyear Tire and Rubber Co. of Cal.*, 3 N.L.R.B. 431 (1937); *Columbia Broadcasting System, Inc.*, 6 N.L.R.B. 166 (1938).

<sup>35</sup> *Internat'l Mercantile Marine Co.*, 3 N.L.R.B. 751 (1937); *Bingham & Taylor Corp.*, 4 N.L.R.B. 341 (1937); *Whittier Mills Co.*, 3 N.L.R.B. 389 (1937).

<sup>36</sup> *Pittsburgh Steel Co.*, 1 N.L.R.B. 256 (1936); *Atlantic Refining Co.*, 1 N.L.R.B. 359 (1936).

<sup>37</sup> *Hoffman Beverage Co.*, 3 N.L.R.B. 584 (1937); *Atlantic Refining Co.*, 1 N.L.R.B. 359 (1936).

<sup>38</sup> *Shell Oil Co. of Cal.*, 2 N.L.R.B. 835 (1937).

<sup>39</sup> See note 78 *infra*; *cf. Aluminum Line et al.*, 8 N.L.R.B. 1325 (1938).

<sup>40</sup> *Southern Chemical Cotton Co.*, 3 N.L.R.B. 869 (1937).

<sup>41</sup> *Bendix Products Corp.*, 3 N.L.R.B. 682 (1937).

<sup>42</sup> *Southern Chemical Cotton Co.*, 3 N.L.R.B. 869 (1937); *Hubinger Co.*, 4 N.L.R.B. 428 (1937).

and nurses,<sup>43</sup> watchmen and policemen.<sup>44</sup> Temporary and casual workers<sup>45</sup> likewise are not included with regular employees. Salaried employees are generally excluded from units composed of persons paid by hourly rate or piece work.<sup>46</sup> Differentials in hours<sup>47</sup> and other conditions of work may require the separation of groups of workers.

Certainly it can be said for the *Globe* doctrine that it is an attempt to be impartial as between the A.F. of L. and the C.I.O., but the application of the rule has been severely criticized both by the craft group<sup>48</sup> and the industrial group.<sup>49</sup>

The rule when applied in the *Allis Chalmers* case evoked a dissent from Edwin S. Smith who thought the Board was "abandoning its necessary judicial function under the Act of making a reasonable interpretation of the appropriate bargaining unit in accordance with the facts of the particular case."<sup>50</sup> He objected to separating from an industrial unit the firemen and oilers who controlled the power plant because it would give them as a small craft group a great strike weapon while denying it to the vast majority of employees. "If the oilers and firemen and the skilled maintenance electricians bargain separately,

<sup>43</sup> Bendix Products Corp., 3 N.L.R.B. 682 (1937); Arbuckle Bros., 7 N.L.R.B. 1247 (1938).

<sup>44</sup> Bendix Products Corp., 3 N.L.R.B. 682 (1937); Armour & Co., 5 N.L.R.B. 975 (1938); Plankinton Packing Co., 5 N.L.R.B. 813 (1938).

<sup>45</sup> Southern Chemical Cotton Co., 3 N.L.R.B. 869 (1937); Westinghouse Airbrake Co., 4 N.L.R.B. 403 (1937); Portland Gas & Coke Co., 2 N.L.R.B. 552 (1937).

<sup>46</sup> Fedders Mfg. Co., 3 N.L.R.B. 818 (1937).

<sup>47</sup> S. Blechman & Sons, Inc., 4 N.L.R.B. 15 (1937).

<sup>48</sup> "Superficially the doctrine appears to be fair, but no more subtle device has been conceived by an administrative body to permit abuse of discretion . . . the Board has led the public to believe that this doctrine merely follows the rule set forth in the Railway Labor Act and the New York Labor Relations Act. That is not true. In both these acts the right to vote on the unit is vested in the craft groups by operation of law. Under the *Globe* doctrine the right to vote on the unit depends on the will of the Board. . . . The Board has made certain that it can deny the craft of the right to vote whenever it is so disposed, by injecting the subtle indefinable phrase 'where the considerations are evenly balanced.' And who determines what these 'considerations' are? And who determines when the considerations are 'evenly balanced'? The Board of course. By this unique device the Board may and does play favorites." Explanatory Comment on the A.F. of L. Amendments to the National Labor Relations Act 17-18 (1939).

<sup>49</sup> "This policy of the Board with respect to bargaining units becomes daily a more serious matter. In no important instance has the majority of the Board failed to find that the factors favoring the industrial unit were fully balanced by factors favoring the craft unit, so that in accordance with the announced rule, the determination of the bargaining unit would be left to the employees involved in the craft group.

"Thus in effect, the Board has amended the National Labor Relations Act by incorporating into it the Frey proposal perpetuating craft elections for all plants which was approved at the Denver Convention of the American Federation of Labor last fall." 1 C.I.O. Legal Bulletin, No. 2, p. 5 (March 10, 1938).

<sup>50</sup> *Allis-Chalmers Mfg. Co.*, 4 N.L.R.B. 159, 175 (1937).

by so much is the united economic strength of the employees as a whole weakened. Anything which weakens the bargaining power of the employees will tend to lessen reliance on peaceful collective bargaining as the means for achieving the workers' economic ends. Such a tendency is plainly contrary to the purposes of the act."<sup>51</sup>

If the nature of the plant is such that an industrial unit seems preferable, he thinks the rule inapplicable where the craft group cannot show previous bargaining with the employer,<sup>52</sup> or where the employees whom the craft union desires in a unit do not fall within the traditional limits of the craft.<sup>53</sup> But where there has been a history of bargaining by the group,<sup>54</sup> or there is a dissimilarity between the group and the other production employees,<sup>55</sup> he does not object to the setting up of the separate unit.

Up to March 31, 1939, twenty-one cases have been found in which the Board has ordered elections between A.F. of L and C.I.O. to determine the appropriate

<sup>51</sup> *Id.* at 177.

<sup>52</sup> *Worthington Pump and Machinery Corp.*, 4 N.L.R.B. 448, 454 (1937).

"In this plant of 1800 employees, there was up until the coming of the S.W.O.C. no effective labor organization. The Association had succeeded in organizing about twenty per cent of the wood pattern makers, but the record is silent as to any effective bargaining between the Company and this minority group. With the advent of the industrial union, labor organization gathered headway rapidly in the plant; at the time the S.W.O.C. made its agreement with the Company in May about ninety-five per cent of the employees had affiliated with it. The union of pattern makers, which had remained for many years on an ineffective basis, now achieved a sudden spurt as a result of the general enthusiasm for organization created by the S.W.O.C. . . . The question is whether its history in the plant entitles the craft, on whose behalf it functions, to be set aside as a separate bargaining unit, in view of the considerations which indicate the appropriateness of an industrial unit."

<sup>53</sup> *Combustion Engineering Co., Inc.*, 5 N.L.R.B. 344, 355 (1938).

" . . . The self organization which has already taken place in this plant of more than a thousand employees, although occurring within craft unions, has actually been on an industrial basis . . . the I.A.M. and the Brotherhood have roamed far and wide in the plant seeking members. . . . Craft organizations, after building up memberships in a particular plant, based on exclusions and inclusions which do not correspond to any recognizable homogeneous craft grouping, cannot then be heard to claim that they have established an appropriate craft bargaining unit. . . . The I.A.M. introduced authorization cards solicited from such diverse employees as electricians, a shipping clerk, a millwright, and three pipe fitters. The result of the joint efforts of the two organizations, as reflected in their membership, is quite as clearly an argument for an industrial unit as the frankly industrial organization efforts of the S.W.O.C." In the same case he approved of separating as a unit the foundry employees, who had been organized by the International Molders' Union (A.F. of L.).

<sup>54</sup> *American Hardware Corp.*, 4 N.L.R.B. 412, 422 (1937), saying of the machinists, "The efforts zealously and effectively made to build up this craft as a bargaining entity should not, I think, be wiped out, in deference to the interests of the majority of the employees, without permitting a vote . . ." These men had been organized by the Internat'l Association of Machinists. See also *Vultee Aircraft Division*, 9 N.L.R.B. No. 9 (1938) (wood pattern makers).

<sup>55</sup> *Allis-Chalmers Mfg. Co.*, 4 N.L.R.B. 159, 177 (1937) (draftsmen and technical engineers).

bargaining unit.<sup>56</sup> In three cases, the C.I.O. unions have withdrawn from the election, conceding the issue of the bargaining unit.<sup>57</sup> In other cases there has been no need, after applying the *Globe* rule, to conduct an election, where the majority of the group in question has been proved to belong to one of the rival organizations,<sup>58</sup> or where a consent election had previously been held.<sup>59</sup>

Up to March 31, 1939, election results as to these separate polls were reported in seventeen cases<sup>60</sup> of the twenty-one in which elections had been ordered. Thirty-nine groups voted<sup>61</sup> under the *Globe* rule. In twenty-three groups the majority voted for an A.F. of L. affiliate and consequently the group remained an appropriate bargaining unit. Majorities of eight groups voted for affiliates of the C.I.O. and were merged for bargaining purposes into the generally larger bargaining units. Eight groups voted for neither labor organization, thereby disposing of any question as to what unit should properly include them.<sup>62</sup>

In terms of numbers of men<sup>63</sup> in the disputed groups for whom these rival

<sup>56</sup> *Globe Machine & Stamping Co.*, 3 N.L.R.B. 294 (1937); *City Auto Stamping Co.*, 3 N.L.R.B. 306 (1937); *Commonwealth Division of General Steel Castings Corp.*, 3 N.L.R.B. 779 (1937); *Pacific Gas & Electric Co.*, 3 N.L.R.B. 835 (1937); *Allis-Chalmers Mfg. Co.*, 4 N.L.R.B. 159 (1937); *Schick Dry Shaver Co.*, 4 N.L.R.B. 246 (1937); *Shell Chemical Co.*, 4 N.L.R.B. 259 (1937); *American Hardware Corp.*, 4 N.L.R.B. 412 (1937); *Combustion Engineering Co., Inc.*, 5 N.L.R.B. 344 (1938); *Falk Corp.*, 6 N.L.R.B. 654 (1938); *Joseph S. Finch & Co.*, 7 N.L.R.B. 1 (1938); *Shell Oil Co. of Cal.*, 7 N.L.R.B. 417 (1938); *Boston Daily Record*, 8 N.L.R.B. 694 (1938); *Walworth Co.*, 8 N.L.R.B. 765 (1938); *Mobile Steamship Ass'n et al.*, 8 N.L.R.B. 1297 (1938); *Aluminum Line et al.*, 8 N.L.R.B. 1325 (1938); *Vultee Aircraft Division*, 9 N.L.R.B. No. 9 (1938); *Shell Petroleum Corp.*, 9 N.L.R.B. No. 76 (1938); *Armour & Co.*, 9 N.L.R.B. No. 121 (1938); *Union Premier Food Stores, Inc.*, 10 N.L.R.B. No. 26 (1938); *Milwaukee Publishing Co.*, 10 N.L.R.B., No. 29 (1938).

<sup>57</sup> *Commonwealth Division of General Steel Castings Corp.*, 3 N.L.R.B. 779 (1937); *Schick Dry Shaver Co.*, 4 N.L.R.B. 246 (1937); *American Hardware Corp.*, 4 N.L.R.B. 412 (1937).

<sup>58</sup> *Worthington Pump & Machinery Corp.*, 4 N.L.R.B. 448 (1937); *Harnischfeger Corp.*, 9 N.L.R.B. No. 64 (1938).

<sup>59</sup> *Armour & Co.*, 5 N.L.R.B. 535 (1938) (eighteen of the twenty-one machinists had previously voted for the Internat'l Association of Machinists).

<sup>60</sup> They are the cases listed note 56 *supra*, with the exception of: *Falk Corp.*, 6 N.L.R.B. 654 (1938); *Walworth Co.*, 8 N.L.R.B. 765 (1938); *Vultee Aircraft Division*, 9 N.L.R.B. No. 9 (1938); *Union Premier Food Stores, Inc.*, 10 N.L.R.B. No. 26 (1938). In three of the cases the affiliate of the C.I.O. did not appear on the ballot. See note 57 *supra*.

<sup>61</sup> In *Joseph S. Finch & Co.*, 7 N.L.R.B. 1 (1938), elections had been ordered under the *Globe* rule to be held among the firemen and water tenders and among the carpenters. At the time of election, however, there was only one carpenter in the plant. The Board decided that, as one man does not constitute an appropriate bargaining unit himself, his desires as to exclusion or inclusion were not determinative. He was included in the industrial unit, 10 N.L.R.B. No. 78 (1938).

<sup>62</sup> Five of the eight groups were checkers and clerks of steamship companies in New Orleans, voting under the order of the Board in *Aluminum Line et al.*, 8 N.L.R.B., 1325 (1938); the elections are reported in 9 N.L.R.B. No. 16a (1938).

<sup>63</sup> These are calculated from the numbers of men eligible to vote in each group.

unions gained the right to be sole collective bargaining agents, the results of these elections were:

Affiliates of the A. F. of L.....	1593
Affiliates of the C.I.O.....	1152
Neither.....	166

The explanation for the much better showing of the C.I.O. in terms of men than in terms of groups is that the two largest groups involved in the elections picked the C.I.O., giving it 808 of its 1152 votes.<sup>64</sup> Conversely, although the A.F. of L. won twenty-three groups, nine of these comprised less than twenty men each, which circumstance does not tend to swell greatly the numbers won by the Federation. In three cases C.I.O. unions won all the groups voting,<sup>65</sup> thus being completely upheld in their original contentions as to the proper unit, and in three more they were successful as to some of the groups separately polled.<sup>66</sup>

An interesting case to illustrate the necessity for discretion and flexibility in the determination of bargaining units is that of Shell Oil Company of California. On May 24, 1937, the Board decided <sup>67</sup> that the proper bargaining unit was the company's hourly paid employees throughout California engaged in the production, pipe line, absorption plant, refinery and automotive departments. Certified jointly as the exclusive representative of these workers were the International Association of Oil Field, Gas Well and Refinery Workers of America, the International Association of Machinists, the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, and the International Brotherhood of Electrical Workers, all affiliates of the American Federation of Labor.

When negotiations were begun with the company in July, 1937, the Oil Workers, who had broken with the A.F. of L. and affiliated with the C.I.O., and the other unions disagreed as to the method of handling grievances of individual employers. The negotiations reached an impasse, and the remaining A.F. of L. unions petitioned the Board for a change of the appropriate bargaining unit into separate craft groups, although such units would still be state-

<sup>64</sup> A group of 510 were in the unit claimed by the Boilermakers in Combustion Engineering Co., Inc., 5 N.L.R.B. 344 (1938) election reported in 6 N.L.R.B. 488 (1938), and 298 were in the group claimed by the Machinists in Shell Oil Co. of Cal., 7 N.L.R.B. 417 (1938), elections reported in 8 N.L.R.B. 920 (1938), 9 N.L.R.B. No. 85 (1938).

<sup>65</sup> Globe Machine & Stamping Co., 3 N.L.R.B. 294 (1937); City Auto Stamping Co., 3 N.L.R.B. 306 (1937); Shell Petroleum Corp., 9 N.L.R.B. No. 76 (1938), elections reported in 10 N.L.R.B. No. 101 (1939), 11 N.L.R.B. No. 47 (1939).

<sup>66</sup> Shell Chemical Co., 4 N.L.R.B. 259 (1937); Combustion Engineering Co., Inc., 5 N.L.R.B. 344 (1938) election reported in 6 N.L.R.B. 488 (1938); Shell Oil Co. of Cali., 7 N.L.R.B. 417 (1938), 9 N.L.R.B. No. 85 (1938). In the latter two cases the C.I.O. affiliates won more men to represent from the disputed groups than did the A. F. of L.

<sup>67</sup> 2 N.L.R.B. 835 (1937).

wide. The Oil Workers requested that the unit remain as it had been determined, claiming a majority in that unit.<sup>68</sup>

The Board applied the *Globe* rule, conducting elections among: (I) Machinists, (II) Electrical Workers, (III) Blacksmiths, and (IV) Boilermakers to determine whether they should remain in the large unit by voting for the Oil Workers or should form separate bargaining units by choosing A.F. of L. affiliates. An election among all the employees in the original unit except those voting in the separate groups, was held for the purpose of choosing between the Oil Workers and the Metal Trades Council (A.F. of L).

At the first election<sup>69</sup> Group II voted for the I.B.E.W. and a single unit. A majority of votes of Group III were cast for "neither," leaving Group III unrepresented and in no unit. In Group I the Oil Workers had a plurality, but not a majority, and in Group IV the A.F. of L. and C.I.O. unions were tied. Run-off elections were ordered, the men in Group I to indicate whether or not they wished the Oil Workers to represent them, and the men in Group IV to vote again on the same issue they had voted on. These resulted in victory for the Oil Workers in Group I, while in Group IV the Boilermakers gained a plurality but not a majority.<sup>70</sup> Another run-off was necessary to decide whether or not a majority of the men in Group IV wanted to be represented by the Boilermakers or not. At this election the majority of Group IV voted not to be represented.<sup>71</sup> The units arrived at after all this balloting were a) the electricians and b) the original 1937 unit excluding electricians, boilermakers, and blacksmiths.

Although the treatment accorded by the Board to claims of A.F. of L. affiliates as to appropriate bargaining units seems to be fair and reasonable,<sup>72</sup> the A.F. of L. is sponsoring certain amendments to Section 9(b) along with other proposed changes in the act.<sup>73</sup> To Section 9(b) the A.F. of L. would add the following provisos:

<sup>68</sup> 7 N.L.R.B. 417 (1938).

<sup>70</sup> 9 N.L.R.B. No. 85 (1938).

<sup>69</sup> 8 N.L.R.B. 920 (1938).

<sup>71</sup> 10 N.L.R.B. No. 119 (1939).

<sup>72</sup> Up to March 1, 1939, there had been seventy-four cases in which there was important disagreement as to units between the A.F. of L. and the C.I.O. These were decided by the Board in the following manner:

A.F. of L. contention upheld	35
C.I.O. contention upheld	30
Contentions of each upheld in part	8
No decision necessary	1

See Report of N.L.R.B., *op. cit. supra* note 8, at 148. See the full discussion of cases in which A.F. of L. craft claims were rejected, pp. 153-5. Most of the seventy-four cases (those up to December 15, 1938) are listed and classified as to decision in Data on Administrative Problems of the N.L.R.B., Y-9 (supplement) pp. 1-2 (Jan. 15, 1939).

<sup>73</sup> Senator Walsh proposed these amendments in S. 1000 to the 76th Congress on January 25, 1939. It is interesting to note that A.F. of L. groups sought protection of craft units as a matter of right shortly after the formation of the C.I.O., before the Board had recognized a split. See N.Y. Times, p. 14 col. 5 (Dec. 19, 1935).

*Provided*, That when a craft exists, composed of one or more employees, then such craft shall constitute a unit appropriate for the purpose of bargaining for such employee or employees; a majority of such craft employees may designate a representative for such unit; and: *Provided further*, that an appropriate unit shall not embrace employees of more than one employer. Two or more units may, by voluntary consent, bargain through the same agent or agents with an employer or employers, their agent or agents.

In requiring as a matter of law that craft units be set up, the first proviso would impose a tremendous burden upon the Board in the simplest representation case. Just what is a "craft"? The lines are by no means clearly defined,<sup>74</sup> yet the Board would be required in each case to split a plant into all possible units and properly allocate the employees among these crafts, for in no other way could it ever be certain that any labor organization had a majority in the appropriate bargaining unit. This provision would put up to the Board in each case where the issue was raised the problem of "jurisdiction" between two unions affiliated with the same parent body. "Jurisdictional" issues have troubled the A.F. of L. for years; and it would intolerably hamper the Board to force it to decide these questions, even if it were the desire of the Federation (and it is certainly not) so to allow the Board to decide.<sup>75</sup>

The craft unit proposal would be annoying not only to the C.I.O. organizations but to the A.F. of L. unions which have increasingly sought the establishment of industrial or semi-industrial units.<sup>76</sup>

The provision forbidding a unit to embrace the employees of more than one employer is of questionable soundness. In instances where two companies are operated as a single enterprise and the labor policies are controlled and administered from one source, a unit including the several companies has been deemed wise for effective bargaining.<sup>77</sup> Where there has been a history of successful bargaining by an association of employers, the most natural and appropriate unit would seem to include all the employees affected by the association's dealings.<sup>78</sup> The Federation has disliked the results in some

<sup>74</sup> Note the men included by one craft union, the Internat'l Association of Machinists, in an appropriate bargaining unit:

"All machinists, machinists' helpers and apprentices, header mill specialists, drill press operators and helpers, milling machine operators, drill machine operators, bolt machine operators, handymen, engineers, crane operators employed in the machine shops, planer operators, repairmen, maintenance men, and tool room helpers, exclusive of those employed in the foundry." Combustion Engineering Co., 5 N.L.R.B. 344 (1938).

<sup>75</sup> See the Board's discussion of the difficulties inherent in this provision, *op. cit. supra* note 8, at 157-64.

<sup>76</sup> *Id.* at 148-9.

<sup>77</sup> See Waggoner Refining Co., 6 N.L.R.B. 731 (1938); Art Crayon Co., 7 N.L.R.B. 102 (1938).

<sup>78</sup> Shipowners' Ass'n of the Pacific Coast *et al.*, 7 N.L.R.B. 1002 (1938) (all longshoremen on Pacific Coast); Mobile Steamship Ass'n, *et al.*, 8 N.L.R.B. 1297 (1938) (all longshoremen in port of Mobile); Admiar Rubber Co. *et al.*, 9 N.L.R.B. No. 35 (1938) (all doll makers in and

cases,<sup>79</sup> but it seems detrimental to its own interests to forbid such widespread units since it has itself established such units for bargaining and has profited therefrom.<sup>80</sup>

Senator Walsh had previously submitted an amendment to Section 9(b) providing:

"Provided however that in any case where a majority of the employees of a particular craft shall so decide, the Board shall designate such craft as an appropriate unit for the purposes of collective bargaining."<sup>81</sup> This type of amendment establishes the *Globe* rule in every case, regardless of the balance of other factors usually considered by the Board. While not as restrictive as the latest Walsh proviso as to craft units, this amendment would apply a rigid rule in a field where flexibility of rules is desirable in view of the varied and complex situations with which the Board is faced. Furthermore, this amendment is not necessary for the preservation of the craft unions, for, without it, the Board has freely used the *Globe* rule and, as already indicated, the *Globe* rule has benefited the A.F. of L.

Among many other drastic amendments to the act, Senator Burke, representing the National Association of Manufacturers, has submitted this amendment to Section 9(b):

*Provided*, That if the majority of any craft union within a plant or employer unit signify its wish for the craft unit, the Board shall designate the craft unit as the unit appropriate for the members of that union: *Provided further*, That without prejudice to the preceding provision if the majority of the employees of any plant within an employer unit signifies its wish for the plant unit for voting or representation in preference to the employer unit the Board shall designate the plant unit as the unit appropriate for collective bargaining for the employees of that plant.<sup>82</sup>

The language of the first provision is not entirely clear. Construed literally it would seem to deny the majority rule principle, in that members of a craft union could always set themselves apart as a unit from other employees doing

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around New York City); Monon Stone Co. *et al.*, 10 N.L.R.B. No. 6 (1938) (quarry workers in Indiana Limestone District); Hyman-Michaels Co. *et al.*, 11 N.L.R.B. No. 60 (1939) (all employees of junk dealers in San Francisco).

<sup>79</sup> The C.I.O. contended for the employers' association unit in Shipowners' Ass'n of the Pacific Coast *et al.*, 7 N.L.R.B. 1002 (1938), in Monon Stone Co. *et al.*, 10 N.L.R.B. No. 6 (1938), and in Admiar Rubber Co. *et al.*, 9 N.L.R.B. No. 35 (1938).

<sup>80</sup> The A.F. of L. was successful in this type of unit in Mobile Steamship Ass'n *et al.*, 8 N.L.R.B. 1297 (1938), and Hyman-Michaels Co. *et al.*, 11 N.L.R.B. No. 60 (1939). It was the A.F. of L. which had begun the technique of coast-wide bargaining in the Pacific coast long-shoremen case.

<sup>81</sup> S. 2108, 75th Cong., 1st Sess. April 7, 1937.

<sup>82</sup> S. 1264, 76th Cong., 1st Sess. February 9, 1939. Senator Burke would also require a union to have a majority of those *eligible* to vote in an appropriate unit, rather than those actually voting, to obtain certification. He would also provide that if a petitioner failed of certification in an election, the petitioner could not ask the Board for another election for a year, and he would give employers the right to petition the Board to certify representatives.

exactly the same kind of work merely by virtue of their membership in such an organization. Another interpretation of the provision is that it means that the desires of a majority of workers in a craft unit will be accepted as final in the determination of the appropriate bargaining unit. As thus interpreted it is a codification of the *Globe* rule and subject to the criticism offered to Senator Walsh's amendment contained in S. 2108.<sup>83</sup>

The amendment allowing single plants to be separated from a multiple-plant unit is undesirable because it lays down a rigid rule which may prevent a practical appropriate bargaining unit from being set up by the Board. The Board should be allowed to use discretion as to whether bargaining history or geography or other factors warrant the grouping or separation of the several plants of one employer.<sup>84</sup>

The Senate is at present conducting hearings on the questions raised by the various proposed amendments to the Wagner Act. Whether changes in sections of the act other than Section 9(b) are desirable or not is not here considered.<sup>85</sup> It does not seem advisable that Section 9(b) be amended in accord with any of the above-mentioned proposals. On the problem of the appropriate bargaining unit the Board must be allowed a large measure of discretion. The Board seems to have used the discretion granted by Section 9(b) intelligently and fairly,<sup>86</sup> and no good reason is seen why it should be hampered in the efficient administration of its duties by the enactment of amendments restricting its discretion in the determination of the "appropriate bargaining unit."

<sup>83</sup> Report of the National Labor Relations Board, *op. cit. supra* note 8, at 165-6.

<sup>84</sup> *Id.* at 174-6.

<sup>85</sup> The Legal Department of the C.I.O. has prepared booklets: *The Wagner Act Threatened with Destruction!* Pub. No. 25 (Feb., 1939), and *Why the Wagner Act Should Not Be Amended*, Pub. No. 23 (Dec., 1938). See also, *Explanatory Comment on A.F. of L. Amendments to the National Labor Relations Act (1939)*.

<sup>86</sup> See the G— D— Labor Board, *Fortune* 52 (Oct., 1938). Other *Fortune* articles dealing with the Board are William Green, *Labor Board vs. Labor Act*, *Fortune* 79 (Feb., 1939), and John L. Lewis, *The Proposed NLRA Amendments*, *Fortune* 76 (April, 1939).