

## THE APPROPRIATE BARGAINING UNIT UNDER THE WAGNER ACT

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The National Labor Relations Act<sup>1</sup> provides that it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of a majority of his employees in a unit appropriate for collective bargaining.<sup>2</sup> Elsewhere it sets forth that whenever a question arises concerning the representation of employees, the Board may investigate the controversy and certify to the parties the name of the representative that has been selected.<sup>3</sup> Cases arising under either of these provisions make it necessary for the Board, pursuant to the power given it by Section 9 (b) of the Act,<sup>4</sup> to determine what unit

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1. (1935) 49 Stat. 449, 29 U. S. C. A. sec. 151.

2. Sec. 8 (5).

3. Sec. 9 (c).

4. The section reads: "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."

The legislative history of this section is as follows: As originally introduced by Senator Wagner on February 28 (calendar day, March 1) 1934, the bill provided: "The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping." (S. 2926, sec. 207 (a), 73d Cong., 2d Sess.) When re-introduced the following year the bill had been changed considerably and this section read: "The Board shall decide whether, in order 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 other unit. (S. 1958, sec. 9 (b), 74th Cong., 1st Sess., introduced February 15, calendar day February 21, 1935). A companion bill was introduced in the House by Representative Connery on February 28, 1935. (H. R. 6288, 74th Cong., 1st Sess.) The section is mentioned in the Hearings before the Committee on Education and Labor, United States Senate, 74th Cong., 1st Sess. on S. 1958 (1935) at pp. 82-83, 203, 433, 652, 738, 738-739, 755, 782, 789, 791, 809, 820, 821, and 875; and in Hearings Before Committee on Labor, House of Representatives, on H. R. 6288, 74th Cong., 1st Sess. (1935) at pp. 175, 220, and 231. The Senate Committee reported the section without change. (Sen. Rep. No. 573, 74th Cong., 1st Sess., 1935.) The House Committee likewise reported the section without change (H. R. Rep. No. 972, 74th Cong., 1st Sess., 1935), but the bill was recommitted and reported out the second time with the section amended to read as it does in the statute, except that in place of the last three words there appeared the words "or other unit." (H. R. Rep. No. 1147, 74th Cong., 1st Sess., 1935.) On the floor of the House upon the motion of Representative Ramspeck these words were added: "provided, that no unit shall include the employees of more than one employer." (79 Cong. Rec. 9727-28, 1935.) The joint Conference Committee compromised on the form in which

is appropriate for collective bargaining. These determinations are the subject of this paper.<sup>5</sup>

Both the sponsors and opponents of the Wagner Bill realized the importance of the authority conferred by Section 9 (b). The former, aware of the logical necessity for determining the appropriate unit, felt that designation of the unit would be better lodged in the government than made dependent upon the choice of the employer or the employees.<sup>6</sup> The sponsors knew that neither the predecessor National Labor Board<sup>7</sup> nor the (old) National Labor Relations Board<sup>8</sup> had been expressly given this power, and that these earlier bodies had been compelled to derive it by implication from the powers more clearly conferred on them.<sup>9</sup> The opponents feared that the Board would abuse this power and "district" plants arbitrarily,<sup>10</sup> suggested that employees be given the right to choose the unit by ballot,<sup>11</sup> or merely indicated their opposition towards this provision in their blanket indictments of the Bill.<sup>12</sup> No one, however, foresaw the significance which this section was to assume as a result of the dispute between the American Federation of Labor and the Committee for Industrial Organization.<sup>13</sup>

It is the purpose of this article (1) to analyze the Board's decisions from the aspect of the unit which has been designated,

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the section was finally enacted. (H. R. Rep. No. 1371, 74th Cong., 1st Sess., 1935.) Additional references to this section may be found in 79 Cong. Rec. 10259 (Senate), 10299 (House) (1935).

5. This article comprises decisions rendered prior to December 1, 1937.

6. See, for example, in Senate Hearings, *supra*, note 4, statement of Francis Biddle (p. 82) and comments of Senator Wagner (p. 433); Sen. Rep. No. 573, *supra*, note 4, at p. 14; H. R. Rep. No. 1147, *supra*, note 4, at p. 22.

7. Created by President Roosevelt on August 5, 1933; its authority was clarified and broadened by Exec. Orders of Dec. 16, 1933, Feb. 1, 1934, and Feb. 23, 1934; dissolved by Exec. Order of July 9, 1934.

8. Created by Exec. Order on June 29, 1934, under authority of Public Res. 44, 73d Cong. (June 16, 1934).

9. For a discussion of the decision of the two earlier Boards see Note (1935) 48 Harv. L. Rev. 630 at 633, and Statute Law (1937) 12 Wis. L. Rev. 367. The latter article discusses decisions of the present Board as well.

10. See, for example, in Senate Hearings, *supra*, note 4, brief of Mfrs.' Association of Conn., Inc. (p. 789); brief of National Erectors' Association (p. 809); brief of Indianapolis Employers (p. 820); letter from Automotive Parts & Equipment Mfrs., Inc. (p. 821).

11. See, for example, in Senate Hearings, *supra*, note 4, statement of Clifford U. Cartwright (p. 652) and letters (pp. 738, 738-39, 755).

12. See, for example, in Senate Hearings, *supra*, note 4, brief of Linoleum and Felt Base Mfrs. (p. 782); brief of Mfg. Chemists of U. S. (p. 791).

13. Hereafter, for brevity, these organizations are referred to as the A. F. of L. and the C. I. O.

(2) to discuss the inclusion or exclusion of particular types of employees, (3) to point out various factors upon which the Board has relied in making its determinations, and (4) to consider the Board's action in the critical situation where one union desires a craft and another an industrial unit.

At the outset it is important to note that, in accordance with the intent expressed in the legislative history of Section 9 (b)<sup>14</sup> the Board has attempted to consider each case on its own merits rather than to apply a set of fixed rules. While one does not expect to find precise logical consistency among the Board's decisions, they are admirably constant in their attention to the specific direction of the Act that the unit should be so designated as to insure employees the full benefit of their right to self-organization and collective bargaining.<sup>15</sup>

#### I. CRAFT, PLANT, AND OTHER UNITS

The craft has invariably been designated the unit where no one contested the union's allegation that it was appropriate.<sup>16</sup>

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14. See statement of Francis Biddle, *supra*, note 6, at p. 83: "It is impossible to lay down a definite rule for the determination of the appropriate unit, for such an attempt would result in rigidity and confusion. The whole system of industrial control and development depends on flexibility, and such considerations must be taken into account as the question of management and supervision, routine employment contracts, existing plans of collective bargaining, and the distinctiveness of the occupation." Also H. R. Rep. No. 1147, *supra*, note 4, at p. 22: "This matter is obviously one for determination in each individual case." Cf. (1936) First Annual Rep. of the National Labor Relations Board, 112ff.

15. For convenience cases will be cited by the name of the employer only. Cases which will appear in volumes 3 and 4 of the National Labor Relations Board reports will be cited by volume and by the number they bear in the advance sheets. Although some of the cases cited have been reviewed by the courts no court citations are given inasmuch as none of the court decisions involves the issue of the appropriate unit.

Of the cases necessitating a determination of the appropriate unit approximately four-fifths have been "representation" cases and one-fifth cases of refusal to bargain. Of the latter the only cases in which any substantial question was raised respecting the unit are: Suburban Lumber Co. (1937) 3 N. L. R. B. no 17; Shell Oil Co. of California (1937) 2 N. L. R. B. 835; Globe Mail Service, Inc. (1937) 2 N. L. R. B. 610; Consumers' Research, Inc. (1936) 2 N. L. R. B. 57; Bell Oil and Gas Co. (1936) 1 N. L. R. B. 562; The Canton Enameling & Stamping Co. (1936) 1 N. L. R. B. 402; Atlantic Refining Co. (1936) 1 N. L. R. B. 359. There is no perceptible difference in the Board's treatment of the question in the two types of cases.

In three cases there were both a complaint of refusal to bargain and a petition for certification, but in each the petition was dismissed. Shell Oil Co. of California, *supra*; International Filter Co. (1936) 1 N. L. R. B. 489; Atlantic Refining Co., *supra*.

16. Cosmopolitan Shipping Co., Inc. (1937) 2 N. L. R. B. 759 (marine engineers); Santa Fe Trail Transportation Co. (1937) 2 N. L. R. B. 767 (bus drivers); Merchants and Miners Transportation Co. (1937) 2 N. L. R. B. 747 (licensed deck officers and licensed engineers each held to con-

Moreover, the Board has overridden objections by employers<sup>17</sup> and by an independent union<sup>18</sup> when it appeared that workers in a particular occupation have traditionally organized along craft lines, or where prior organization in the plant has been on that basis.

An industrial or plant unit,<sup>19</sup> on the other hand, has been ordered if no objection was raised to the union's expressed preference for it.<sup>20</sup> Likewise, in a number of disputed cases, such a unit has been designated if prior bargaining in the plant<sup>21</sup> or industry<sup>22</sup> had been on a plant rather than a craft basis and the work of the entire plant was functionally coherent.

stitute appropriate unit; question raised as to junior engineers); New York and Cuba Mail Steamship Co. (1937) 2 N. L. R. B. 595 (similar case); Ocean Steamship Co. of Savannah (1937) 2 N. L. R. B. 588 (licensed deck officers and licensed engineers); American-Hawaiian Steamship Co. et al. (1936) 2 N. L. R. B. 424 (licensed deck officers); Swayne & Hoyt, Ltd. (1936) 2 N. L. R. B. 282 (licensed marine engineers); D. & H. Motor Freight Co. (1936) 2 N. L. R. B. 231 (chauffeurs and helpers, comprising all employees except its clerical and supervisory staff); Agwilines, Inc. (1936) 2 N. L. R. B. 1 (longshoremen and dockworkers); The Associate Press (1936) 1 N. L. R. B. 686 (editorial employees); Edward E. Cox, Printer, Inc. (1936) 1 N. L. R. B. 594 (printing pressmen and assistants); Duplex Printing Press Co. (1935) 1 N. L. R. B. 82 (machinists). Cf. P. Lorillard Co., Inc., (1937) 3 N. L. R. B. no. 49 (cigarette factory); M. H. Birge & Sons Co. (1936) 1 N. L. R. B. 731 (three wall paper crafts).

17. Central Truck Lines, Inc. (1937) 3 N. L. R. B. no. 26; The Canton Enameling & Stamping Co. (1936) 1 N. L. R. B. 402. Cf. Suburban Lumber Co. (1937) 3 N. L. R. B. no. 17; International Filter Co. (1936) 1 N. L. R. B. 489.

18. Motor Transport Co. (1937) 2 N. L. R. B. 492.

19. As used in this article these terms refer to units of production workers.

20. Stipulation between affiliated (see note 43, *infra*) union and company: The Belmont Enameling & Stamping Co. (1936) 1 N. L. R. B. 378.

Stipulation between affiliated union, independent union, and company: Solomon Mfg. Co. (1937) 3 N. L. R. B. no. 96; West Virginia Pulp & Paper Co. (1937) 3 N. L. R. B. no. 67.

Stipulation between two affiliated unions and company: Todd Seattle Dry Dock, Inc. (1937) 2 N. L. R. B. 1070.

Stipulation between two affiliated unions: Hunter Packing Co. (1937) 3 N. L. R. B. no. 10.

Stipulation between affiliated union and independent union: Fedders Mfg. Co. (1937) 3 N. L. R. B. no. 86.

Cases in which company does not deny union's allegation as to what constitutes the appropriate unit: The Ontario Knife Co. (1937) 4 N. L. R. B. no. 4; Lane Cotton Mills Co. (1937) 3 N. L. R. B. no. 31; Stimson Lumber Co. (1937) 2 N. L. R. B. 568; Rollway Bearing Co., Inc. (1936) 1 N. L. R. B. 651. Many other cases might be cited.

Cases in which the opinion does not expressly state but where one may infer that the issue of the unit was uncontested: Georgia Duck & Cordage Mill (1937) 4 N. L. R. B. no. 2; Atlas Bag & Burlap Co., Inc. (1936) 1 N. L. R. B. 292. Numerous other cases could be cited.

21. The Acklin Stamping Co. (1937) 2 N. L. R. B. 872.

22. Sheba Ann Frocks, Inc. (1937) 3 N. L. R. B. no. 9.

The Act provides that the Board shall decide whether the appropriate unit is "the employer unit, craft unit, plant unit, or subdivision thereof."<sup>23</sup> In some cases the Board has found it best to overlook the first three possibilities and hew out new bargaining groups.

Where the unit proposed by the union could be classified neither as employer, craft, or plant but all the parties were agreed upon its suitability, the Board has acceded to their desires. The unlicensed personnel employed by a shipping company has been held an appropriate unit where rival seamen's unions were in accord on this issue.<sup>24</sup> In *Mergenthaler Linotype Company*<sup>25</sup> an A. F. of L. union and a C. I. O. union stipulated that there should be two units, one consisting of the polishing department and the other of all production employees exclusive of those in the polishing department. No question was raised by the employer in *M. H. Birge & Sons Company*<sup>26</sup> or in *Hat Corporation of America*<sup>27</sup> as to whether in the former case two skilled crafts taken together and in the latter the front or finishing department should be denoted the unit.<sup>28</sup> Nor was the issue raised in *Remington Rand, Inc.*,<sup>29</sup> where the Board held that the production workers in six widely separated plants (out of fourteen operated by the respondent in the United States) constituted the appropriate unit.

In two cases the employer did object, although to no avail, to the union's allegation that somewhat unusual subdivisions constituted the appropriate unit. In *Bell Oil and Gas Company*<sup>30</sup> where the company's business was divided into production, pipe line, repressure and refinery departments, and the refinery employees lived 20 to 25 miles away from the workers in other departments, the Board sustained the union's contention that the remaining three departments should be the unit and overruled the company's plea to have the refinery included. In *The American Tobacco Company*,<sup>31</sup> the union asked that the cigarette department of the company's Reidsville, North Carolina, plant

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23. Sec. 9 (b).

24. *American France Line et al.* (1937) 3 N. L. R. B. no. 7; *International Mercantile Marine Co. et al.* (1937) 2 N. L. R. B. 971.

25. (1937) 3 N. L. R. B. no. 51.

26. (1936) 1 N. L. R. B. 731.

27. (1937) 3 N. L. R. B. no. 99.

28. *Mosinee Paper Mills Co.* (1936) 1 N. L. R. B. 393.

29. (1937) 2 N. L. R. B. 626.

30. (1936) 1 N. L. R. B. 562.

31. (1936) 2 N. L. R. B. 198.

be declared the unit and the company requested that the little cigar department be included. The former unit was chosen because of the desire of the employees to have an organization separate from that of the little cigar department workers and because of the virtual independence of the two departments as manufacturing enterprises.

The Board has been unwilling to designate as a single unit several of many crafts in a plant if they have no more in common with each other than with the remaining crafts.<sup>32</sup>

If a company has several plants or departments located at a distance from one another, there may be a dispute as to whether the unit should be confined to a single plant or should be co-extensive with the company's production facilities. In one instance where this question was presented the Board refrained from reaching a decision. It merely held that it would not enter into what was essentially an internal dispute within the A. F. of L.<sup>33</sup> In other cases it has alluded to such factors as geographical separation,<sup>34</sup> the similarity or difference of the work performed,<sup>35</sup> prior relations between employer and employee in the plant<sup>36</sup> or industry,<sup>37</sup> the feasibility of transferring employees from one plant to another and of having an integrated seniority system,<sup>38</sup> and the desire of the employees who have sought the advantages of collective action.<sup>39</sup> This last consideration appears to have been predominant.

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32. Great Lakes Engineering Works (1937) 3 N. L. R. B. no. 85.

33. Aluminum Co. of America (1936) 1 N. L. R. B. 530.

34. Single plant unit designated: Hoffman Beverage Co. (1937) 3 N. L. R. B. no. 64 (soft drink plant, other plants 18-86 miles away); Central Truck Lines, Inc. (1937) 3 N. L. R. B. no. 26, Motor Transport Co. (1937) 2 N. L. R. B. 492 (interstate trucking companies with terminals several hundred miles apart); Bell Oil and Gas Co. (1936) 1 N. L. R. B. 562 (oil company's field departments, located 20-25 miles from refinery, held appropriate unit); Atlantic Refining Co. (1936) 1 N. L. R. B. 359 (single refinery in Georgia, others in Pennsylvania).

Multiple plant unit ordered: Rossie Velvet Co. (1937) 3 N. L. R. B. no. 82 (two textile mills, 40 miles apart); Shell Oil Co. of California (1937) 2 N. L. R. B. 835 (production departments all over state of California); Portland Gas and Coke Co. (1937) 2 N. L. R. B. 552 (production and distribution departments of gas company, located seven miles apart).

35. Difference: Bell Oil and Gas Co., supra, note 34. Similarity: Rossie Velvet Co., supra, note 34.

36. Chase Brass and Copper Co., Inc. (1937) 4 N. L. R. B. no. 8.

37. Central Truck Lines, Inc., supra, note 34; Motor Transport Co., supra, note 34.

38. Central Truck Lines, Inc., supra, note 34; Portland Gas and Coke Co., supra, note 34.

39. Chase Brass and Copper Co., Inc. (1937) 4 N. L. R. B. no. 8; Jones Lumber Co. et al. (1937) 3 N. L. R. B. no. 89; Hoffman Beverage Co. et al. (1937) 3 N. L. R. B. no. 89 where, since no objection was

A unique situation was presented in *Ohio Foundry Company*<sup>40</sup> where the company had three plants and its employees were distributed among three unions, one affiliated with the I. W. W., another with the A. F. of L., and a third with the C. I. O. The C. I. O. union alleged that all three plants constituted the unit; the A. F. of L. group contended that foundry plant "A" should be the unit. The I. W. W. had no members except in enameling plant "C." Plants "B" and "C" were on the same parcel of ground which was located apart from "A." Work done at the enameling plant had little relation to that done in the foundries. The I. W. W. had a 100% membership in plant "C"; the company had dealt with it since 1934 as a separate unit, and there had been no cooperation between employees in it and those of the other two plants during strikes which had occurred at the company. The organizational history of plants "A" and "B," however, failed to reveal that either of the two rival unions had been predominant; the work performed in these two factories, while not identical, was similar in character and employees were frequently shifted from one to the other. In this situation the Board held that plants "A" and "B" together constituted a unit and that plant "C" by itself constituted a separate unit.

Parent and subsidiary companies present another phase of the unit problem. The authorities on this topic are as yet meagre. The Board has included in the same unit with employees of a national press association the reporters working for a local press bureau which had originally been independent but 80% of whose stock had been acquired by the national association.<sup>41</sup> It was brought out that there was a close relation between the local and national organizations in management and finance.

A different result was reached in *Pennsylvania Salt Manufacturing Company*.<sup>42</sup> An affiliated<sup>43</sup> and an independent union both desired to include boiler house workers in the unit. These workers were employed by a wholly owned subsidiary power com-

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(1937) 3 N. L. R. B. no. 64; R. C. A. Communication, Inc. (1937) 2 N. L. R. B. 1109; Motor Transport Co. (1937) 2 N. L. R. B. 492; Atlantic Refining Co. (1936) 1 N. L. R. B. 359.

40. (1937) 3 N. L. R. B. no. 71.

41. United Press Associations (1937) 3 N. L. R. B. no. 29. Cf. *Pennsylvania Greyhound Lines et al.* (1937) 3 N. L. R. B. no. 69.

42. (1937) 3 N. L. R. B. no. 74.

43. This word is used to denote a union affiliated with an organization such as the A. F. of L. or the C. I. O.

pany, a minor part of whose business consisted in furnishing power to the sale company. The record did not reveal whether the boiler house workers were the entire production force of the power company, but it showed that the management and current financial direction of the power company were independent of the parent organization and that they were operated as separate business entities. The Board, therefore, excluded the boiler house workers from the unit. Similarly where two wholly owned subsidiaries of a parent steamship company sought to have a single election for the engineers employed by both companies, the Board held that each subsidiary should have its own unit because there was little connection in the operation of the two companies.<sup>44</sup>

Language which would have authorized the Board to designate a unit consisting of the workers of two or more employers appeared in the Wagner Bill as originally introduced<sup>45</sup> but is not present in the statute. In a recent case<sup>46</sup> two companies, a majority of whose stock was owned by the same people, had several directors and officers in common. Their plants occupied the same building, used the same payroll numbers, and paid their employees in a single pay line. An employee reporting for work would not know in advance to which company he would be assigned. The union and the companies agreed that the employees of both companies constituted an appropriate unit, and the Board so held. While one may question whether the Board did not in this case exceed its authority, one should bear in mind that it is empowered to find appropriate the "employer unit," that in this case the two companies were in effect a single employer, and that the Act defines "employer" to include "any person acting in the interest of an employer, directly or indirectly."<sup>47</sup>

A discussion of recent cases involving the designation of multiple units within a single plant will be found in a later section.<sup>48</sup>

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44. *Grace Line, Inc. et al.* (1936) 2 N. L. R. B. 369; but see *Pennsylvania Greyhound Lines* (1937) 3 N. L. R. B. no. 69.

45. See note 4, *supra*.

46. *Whittier Mills Co.* (1937) 3 N. L. R. B. no. 34b; cf. *Bell Oil and Gas Co.* (1936) 1 N. L. R. B. 562 (repressure plant owned jointly by respondent and two other companies; employees, by agreement between the joint owners, were paid and supervised by respondent; respondent held to be the "employer").

47. Sec. 2 (2).

48. *Infra*, p. 174.



## II. INCLUSION OR EXCLUSION OF PARTICULAR EMPLOYEES

The Board has frequently been presented with the problem as to whether a particular group of employees should be included in a unit the general outlines of which satisfy all parties.

Supervisory employees, ineligible for membership in many unions, are customarily excluded from the unit where no reasons are presented for including them;<sup>49</sup> or they may be excluded by agreement between the parties.<sup>50</sup> Where, however, the point is controverted, the Board has considered specifically whether the employees in question have the right to "hire and fire" and generally whether their interests are more closely allied with those of the workers or those of the management. On the basis of these criteria persons employed in a supervisory capacity have been excluded both in opposition to the wishes of an employer<sup>51</sup> and of an affiliated union.<sup>52</sup> On the other hand, they have been included in one case at the request of a union, where the company raised no objection,<sup>53</sup> and in another case over the objection of an affiliated union.<sup>54</sup>

Occasionally there may be doubt as to whether a particular employee should be classed as supervisory. Here, too, the factors just discussed influence the Board's decision. It has excluded from the unit a personnel director who could make recommendations but did not have the final authority in hiring and firing,<sup>55</sup> the supervisor and assistant supervisor of company housing, together with the manager of the maintenance supply room,<sup>56</sup> and managers of branch offices of a press association, except those

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49. Georgia Duck & Cordage Mill (1937) 4 N. L. R. B. no. 2.

50. Solomon Mfg. Co. (1937) 3 N. L. R. B. no. 96; The Belmont Stamping & Enameling Co. (1936) 1 N. L. R. B. 378.

51. United States Stamping Co. (1936) 1 N. L. R. B. 123; cf. Pennsylvania Salt Mfg. Co. (1937) 3 N. L. R. B. no. 74.

52. United Press Associations (1937) 3 N. L. R. B. no. 29 (inclusion sought by employer); Pacific Manifold Book Co., Inc. (1937) 3 N. L. R. B. no. 54 (inclusion sought by independent union).

53. Campbell Machine Co. (1937) 3 N. L. R. B. no. 79. Cf. Jones Lumber Co. et al. (1937) 3 N. L. R. B. no. 89, where, since no objection was raised by the employer or the A. F. of L. union, foremen, who had previously participated in collective bargaining, were, at the request of the C. I. O. union, included in the unit.

54. Johns-Manville Products Corporation (1937) 2 N. L. R. B. 1048 (assistant foremen).

55. Consumers' Research, Inc. (1936) 2 N. L. R. B. 57. Cf. Southern Chemical Cotton Co. (1937) 3 N. L. R. B. no. 90 (foremen); General Mills, Inc. (1937) 3 N. L. R. B. no. 73b (handymen).

56. Pennsylvania Salt Mfg. Co. (1937) 3 N. L. R. B. no. 74.

who had no subordinates.<sup>57</sup> In specific cases the Board has found that the duties of time-keepers or time-checkers were purely clerical and not supervisory and has ordered that the unit comprise them,<sup>58</sup> although in earlier cases a contrary result was reached.<sup>59</sup>

Company policemen and watchmen are generally excluded from the bargaining unit without any controversy because they are not engaged in production.<sup>60</sup> Where they hold special appointments from the city government the Board has refused to include them in an industrial unit and has ordered that there be a separate unit composed of policemen only.<sup>61</sup> In a prior case a company had objected to the right of deputized watchmen to join a union, asserting that if permitted to join a union they would be less diligent in performance of their duties, that in the event of a strike its property would go unguarded, and that a police department rule forbade membership in an organization which would interfere with or control an officer's work. The Board failed to find any evidence of the first contention, was of the opinion respecting the second that the inconvenience did not differ substantially from that caused by a strike of any other employees, and so construed the rule of the police department as not to forbid union membership.<sup>62</sup> In that case the company's objection was directed primarily to the watchmen's right to organize at all rather than at the inclusion of the watchmen with other employees. Consequently, while in effect the later decision<sup>63</sup> overrules the earlier case,<sup>64</sup> the point was not expressly in issue in the earlier case.

Office employees are generally excluded from a unit of production workers<sup>65</sup> on grounds that their interests and social outlook

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57. *United Press Associations* (1937) 3 N. L. R. B. no. 29.

58. *Bendix Products Corporation* (1937) 3 N. L. R. B. no. 68; *Mergenthaler Linotype Co.* (1937) 3 N. L. R. B. no. 51.

59. *Consolidated Aircraft Corporation* (1937) 2 N. L. R. B. 772; *R. C. A. Mfg. Co., Inc.* (1936) 2 N. L. R. B. 159.

60. *Campbell Machine Co.* (1937) 3 N. L. R. B. no. 79; *International Nickel Co., Inc.* (1936) 1 N. L. R. B. 907; *Pittsburgh Steel Co.* (1936) 1 N. L. R. B. 256; *Bendix Products Corporation* (1936) 1 N. L. R. B. 173.

61. *Bendix Products Corporation* (1937) 3 N. L. R. B. no. 68.

62. *Luckenbach Steamship Co., Inc. et al.* (1936) 2 N. L. R. B. 181. Cf. *Williams Dimond & Co. et al.* (1937) 2 N. L. R. B. 859 (no objection raised by company to unit composed exclusively of watchmen).

63. *Supra*, note 61.

64. *Supra*, note 62.

65. *Pacific Gas and Electric Co.* (1937) 3 N. L. R. B. no. 87; *Campbell Machine Co.* (1937) 3 N. L. R. B. no. 79; *Bendix Products Corporation*

are different, that they do a different kind of work, that few or none of them have shown a desire to join a union, and that they receive a salary rather than hourly wages.<sup>66</sup> Similar considerations have led to the exclusion of engineers,<sup>67</sup> chemists,<sup>68</sup> and draftsmen.<sup>69</sup>

Often the question arises, however, whether clerical workers employed in the factory, as distinguished from the "front office," should be included in a unit consisting essentially of production workers. In an early case<sup>70</sup> an affiliated and an independent union disputed the propriety of including in the unit a group of these workers and the former's contention that they should be excluded was upheld because a majority were paid salaries rather than hourly wages, their hours differed from those of production workers, they occupied offices adjoining the foreman's and had "the appearance of a foreman's office staff," their jobs were clerical rather than manual, and their interests and problems were distinct. Recently, however, the Board has exhibited an inclination to permit the inclusion of these workers in the unit,<sup>71</sup> especially if they are eligible for membership in all of the competing unions.<sup>72</sup> In the *Goodrich* case the opinion discusses in detail the work of the "factory technical department" and the "factory control department" and finds that the duties of persons

(1937) 3 N. L. R. B. no. 68; Northrop Corporation (1937) 3 N. L. R. B. no. 19a; Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772; Motor Transport Co. (1937) 2 N. L. R. B. 492; The American Tobacco Co. (1936) 2 N. L. R. B. 198; R. C. A. Mfg. Co., Inc. (1936) 2 N. L. R. B. 159; United States Stamping Co. (1936) 1 N. L. R. B. 123.

66. Pacific Gas and Electric Co., *supra*; Bendix Products Corporation, *supra*; Northrop Corporation, *supra*; Consolidated Aircraft Corporation, *supra*; R. C. A. Mfg. Co., *supra*; United States Stamping Co., *supra*.

67. Allis-Chalmers Mfg. Co. (1937) 4 N. L. R. B. no. 24; Bartlett & Snow Co. (1937) 4 N. L. R. B. no. 11; Northrop Corporation, *supra*, note 65; Consolidated Aircraft Corporation, *supra*, note 65; R. C. A. Mfg. Co., Inc., *supra*, note 65.

68. Southern Chemical Cotton Co. (1937) 3 N. L. R. B. no. 90; Pennsylvania Salt Mfg. Co. (1937) 3 N. L. R. B. no. 74. But see *The B. F. Goodrich Co.* (1937) 3 N. L. R. B. no. 40a.

69. Allis-Chalmers Mfg. Co., *supra*, note 67. All these classes of employees can, however, claim the benefits of the Act. Allis-Chalmers Mfg. Co., *supra*; United Press Associations (1937) 3 N. L. R. B. no. 29; Consumers' Research, Inc. (1936) 2 N. L. R. B. 57; Chrysler Corporation (1936) 1 N. L. R. B. 164.

70. R. C. A. Mfg. Co., Inc. (1936) 2 N. L. R. B. 159. See also Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772.

71. *The B. F. Goodrich Co.* (1937) 3 N. L. R. B. no. 40a; Bendix Products Corporation (1937) 3 N. L. R. B. no. 68.

72. *The B. F. Goodrich Co.*, *supra*.

in those sections differ little from those of other skilled workers, that they exercise few, if any, discretionary and managerial powers, and that their work is essentially routine in character. Similarly, in the *Bendix* case, the Board says: “\* \* \* the \* \* \* factory clerks work with the manual employees, are paid on an hourly basis, and have little, if any, direct contact with other clerical employees.”<sup>73</sup>

Many businesses hire additional temporary employees during peak seasons; others never enjoy a flow of work permitting them to maintain any employees on a steady basis. In the latter situation the Board has sometimes delimited the unit by admitting to it only such employees as have worked a set number of days or hours for the employer during a fixed period.<sup>74</sup> In one case, however, it declared eligible to vote all regular employees and such casual employees as happened to be working for the particular employer on the day the election was held.<sup>75</sup> This latter solution is scarcely satisfactory but may perhaps be explained by the peculiar facts of the case, that the decision was rendered upon a consolidation of many cases, each affecting a different steamship line, and that the employees involved, if not regularly employed by one company, worked casually for a number of the lines.

Where a company has both regular and extra employees, the Board is generally disposed to exclude the latter.<sup>76</sup> In *Richards-Wilcox Manufacturing Company*,<sup>77</sup> however, it found that the union's distinction between temporary and permanent workers was without foundation and ordered the inclusion of all production employees.

Somewhat specialized problems have been presented in cases involving marine employees. The Board early established the rule that marine engineers constituted an appropriate unit which

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73. *Bendix Products Corporation*, supra, note 71, at p. 5. See also *Pacific Gas and Electric Co.* (1937) 3 N. L. R. B. no. 87, in which the meter readers, collectors, salesmen, and estimators of a gas and electric power company were included in a unit of “outside physical workers,” the three rival unions so desiring it and the company raising no objection.

74. *International Mercantile Marine Co. et al.* (1937) 3 N. L. R. B. no. 75; *McCabe, Hamilton & Renny, Ltd.* (1937) 3 N. L. R. B. no. 53.

75. *Luckenbach Steamship Co., Inc. et al.* (1936) 2 N. L. R. B. 181.

76. *Southern Chemical Cotton Co.* (1937) 3 N. L. R. B. no. 90; *Globe Mail Service, Inc.* (1937) 2 N. L. R. B. 610. Cf. *Williams Dimond & Co. et al.* (1937) 2 N. L. R. B. 859.

77. *Richards-Wilcox Mfg. Co.* (1936) 2 N. L. R. B. 97.

should not comprise deck officers.<sup>78</sup> This conformed to the scheme of organization of the Marine Engineers' Beneficial Association and of the Masters, Mates, and Pilots; and in later cases the United Licensed Officers, which had previously advocated the combined unit, apparently became resigned to the Board's attitude and conceded that the units should be separate.<sup>79</sup>

These three unions limit their membership to licensed officers; other marine unions, such as the International Seamen's Union (A. F. of L.) and the National Maritime Union (C. I. O.) confine theirs to unlicensed personnel. Most of the employees who are not required to hold licenses are laborers or craftsmen, but a few are technicians. These technicians have generally been excluded from units of *unlicensed* personnel.<sup>80</sup>

To make the situation more complex, however, many of the people occupying positions such as that of junior engineer, for which a license is not required, do in fact hold licenses and are therefore eligible for the unions of licensed personnel. Pardonably troubled by these conflicting considerations the Board has reached varying decisions on the subject of junior engineers. In two cases the Board, anxious not to disrupt the homogeneity of a group of engineers, disregarded the eligibility rules of some of the unions concerned and ordered that the unit of licensed engineers include all junior engineers, whether licensed or not.<sup>81</sup> In a subsequent case, upon proof that the company required all junior engineers to be licensed but offered few of them any prospect of advancement, the Board excluded them from the unit.<sup>82</sup> The Board has approached each case on the basis of its particular facts and has perhaps done as well as possible in difficult situations.

### III. FACTORS AFFECTING THE DETERMINATION OF THE UNIT

Roughly classified there have been three groups of factors affecting the Board's decisions. First and most important have

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78. International Mercantile Marine Co. et al. (1936) 1 N. L. R. B. 384; Black Diamond Steamship Co. (1936) 2 N. L. R. B. 241; Agwilines, Inc. (1936) 2 N. L. R. B. 390.

79. New York and Cuba Mail Steamship Co. (1937) 2 N. L. R. B. 595; Ocean Steamship Co. of Savannah (1937) 2 N. L. R. B. 588.

80. American France Line et al. (1937) 3 N. L. R. B. no. 7; International Freighting Corp. et al. (1937) 3 N. L. R. B. no. 70.

81. Grace Line, Inc., et al. (1936) 2 N. L. R. B. 369; New York and Cuba Mail Steamship Co. (1937) 2 N. L. R. B. 595.

82. Merchants and Miners Transportation Co. (1937) 2 N. L. R. B. 747. See also International Mercantile Marine Co. (1936) 1 N. L. R. B. 384.

been those factors related to the desire of the Board to aid employees in their effort to act collectively through a labor organization and to prevent the employer from thwarting that effort. Secondly, there have been factors pertaining to the character of the employees, their work, and their relations to the employer. Finally there have been factors connected with prior relationships between employer and employee, not alone in the particular business but also in the industry.

In a number of cases the Board has based its finding as to the appropriate unit on the expressed or manifested desire of the employees.<sup>83</sup> Conversely, where one group asks to be declared the unit and the suggestion is made by the employer or by another union that a distinct class of employees be included in the unit, the Board has not acted favorably upon the suggestion if none of the employees in the distinct class has manifested a desire to join a labor organization or to be included in the unit;<sup>84</sup> but if such a desire has been manifested,<sup>85</sup> or if both unions have admitted to membership a substantial number of persons in the second group,<sup>86</sup> the Board may order it included.

In certain situations the Board has found guidance in the union's criteria of eligibility for membership. The unit may be ordered to consist of all employees eligible for membership in the union if only a single union is involved<sup>87</sup> or if the same group

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83. Larger unit proposed by rival union: Ohio Foundry Co. (1937) 3 N. L. R. B. no. 71; Marcus Loew Booking Agency (1937) 3 N. L. R. B. no. 33. Larger unit proposed by company: R. C. A. Communications, Inc. (1937) 2 N. L. R. B. 1109; The American Tobacco Co. (1936) 2 N. L. R. B. 198. Geographically more extensive unit proposed by company: Central Truck Lines, Inc. (1937) 3 N. L. R. B. no. 26; R. C. A. Communications, Inc., *supra*. Geographically more extensive unit proposed by independent union: Hoffman Beverage Co. (1937) 3 N. L. R. B. no. 64; Motor Transport Co. (1937) 2 N. L. R. B. 492.

84. Northrop Corporation (1937) 3 N. L. R. B. no. 19a (independent union's plea for inclusion of clerical help refused); Motor Transport Co., *supra* (independent union's request for inclusion of employees in other localities refused); Bell Oil and Gas Co. (1936) 1 N. L. R. B. 562 (company's request for inclusion of another department refused); United States Stamping Co. (1936) 1 N. L. R. B. 123 (company's request for inclusion of office help refused.)

85. Goodyear Tire and Rubber Co. of California (1937) 3 N. L. R. B. no. 81.

86. Friedman Blau Farber Co. (1937) 4 N. L. R. B. no. 23.

87. Plant unit ordered: Jeffery-De Witt Insulator Co. (1936) 1 N. L. R. B. 618; Rabhor Co., Inc. (1936) 1 N. L. R. B. 470; Beaver Mills—Lois Mill (1936) 1 N. L. R. B. 147; Gate City Cotton Mills (1935) 1 N. L. R. B. 57. Craft unit ordered: International Filter Co. (1936) 1 N. L. R. B. 489; Harbor Boat Bldg. Co. (1936) 1 N. L. R. B. 349. In these cases no issue was raised as to the unit.

of employees is eligible for membership in both of the competing unions.<sup>88</sup> The Board will be more inclined to order a craft unit, even over the employer's protest,<sup>89</sup> or to decree that certain classifications of workers be excluded from the unit,<sup>90</sup> if it be shown that there is in the industry or in the plant a group of craft unions whose jurisdictional lines dovetail and that the excluded employees are eligible for another craft union. If it appears, however, that the petitioning union is the only labor organization active in the industry or plant and that if a unit were designated other than that requested by the union certain employees might be deprived of the opportunity for collective action, the Board will not be apt to accede to the employer's request for a modification of the unit sought by the union, either by way of extending it to include other employees<sup>91</sup> or of excluding particular employees from it.<sup>92</sup> In two cases which have been mentioned previously the Board held that unlicensed junior engineers should be included in a unit of licensed engineers even though they were not eligible for membership in some of the unions involved in the dispute as to representation. The Board felt that the men might wish to be represented by one of the organizations which they were ineligible to join.<sup>93</sup>

The second group of factors with which the Board has been concerned in determining the appropriate unit are those pertaining to the skill of the employee, the nature of his work, the rate and manner of his compensation, and his relation to the management.

Frequently where the propriety of a craft or departmental unit has been questioned by the employer, the Board, in sustaining the small unit, has relied on the differences in training and

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88. Craft unit ordered: *New England Transportation Co.* (1936) 1 N. L. R. B. 130. Plant unit ordered: *Johns-Manville Products Corporation* (1937) 2 N. L. R. B. 1048; *Interlake Iron Corporation* (1937) 2 N. L. R. B. 1036; *The Acklin Stamping Co.* (1937) 2 N. L. R. B. 872; *Portland Gas and Coke Co.* (1937) 2 N. L. R. B. 552.

89. *Delaware-New Jersey Ferry Co.* (1935) 1 N. L. R. B. 85 (marine engineers held appropriate unit; employer wanted pilots included).

90. *International Freighting Corp. et al.* (1937) 3 N. L. R. B. no. 70; *American France Line et al.* (1937) 3 N. L. R. B. no. 7. Cf. *General Mills, Inc.* (1937) 3 N. L. R. B. no. 73b; *The Canton Enameling & Stamping Co.* (1936) 1 N. L. R. B. 402; *Harbor Boat Bldg. Co.* (1936) 1 N. L. R. B. 349.

91. *R. C. A. Communications, Inc.* (1937) 2 N. L. R. B. 1109.

92. *Luckenbach Steamship Co., Inc. et al.* (1936) 2 N. L. R. B. 181.

93. *Grace Line, Inc. et al.* (1936) 2 N. L. R. B. 369; *New York and Cuba Mail Steamship Co.* (1937) 2 N. L. R. B. 595. Cf. *supra*, note 81.

skill between the workers in the particular craft and those outside it.<sup>94</sup> In other cases it has considered these differences sufficient ground to exclude the more highly skilled workers from a unit of production workers.<sup>95</sup> Where, however, a separation of units has been urged and the evidence has failed to reveal that the two groups of employees differ in experience or ability, the Board has found it proper to order a single unit.<sup>96</sup>

The Board has excluded from a unit of production workers persons whose work differed substantially from that performed in the production departments,<sup>97</sup> who received a salary rather than an hourly wage,<sup>98</sup> or whose compensation was higher<sup>99</sup> than that of employees in the production departments. Conversely, similarity in the nature of the work performed<sup>100</sup> or of the man-

94. R. C. A. Communications, Inc. (1937) 2 N. L. R. B. 1109 (live traffic department of communications company); The American Tobacco Co. (1936) 2 N. L. R. B. 198 (cigarette workers as distinguished from cigar workers); M. H. Birge & Sons Co. (1936) 1 N. L. R. B. 731 (color mixers, machine printers, and print cutters in wall paper plant); The Canton Enameling & Stamping Co. (1936) 1 N. L. R. B. 402 (machinists). Cf. Harbor Boat Bldg. Co. (1936) 1 N. L. R. B. 349 (carpenters); Chrysler Corporation (1936) 1 N. L. R. B. 164 (designing engineers); and marine cases discussed *supra*, pp. 167-168.

95. Clerical workers: Pacific Gas and Electric Co. (1937) 3 N. L. R. B. no. 87. College trained research workers: Pennsylvania Salt Mfg. Co. (1937) 3 N. L. R. B. no. 74; Northrop Corporation (1937) 3 N. L. R. B. no. 19a; Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772. Radio operators, chief electricians: American France Line et al. (1937) 3 N. L. R. B. no. 7. But see The Acklin Stamping Co. (1937) 2 N. L. R. B. 872 (tool and die makers, etc.).

96. Ohio Foundry Co. (1937) 3 N. L. R. B. no. 71 (heavy and light molders); Fleischer Studios, Inc. (1937) 3 N. L. R. B. no. 18 (workers in animated film production).

97. Clerical employees: Pacific Gas and Electric Co. (1937) 3 N. L. R. B. no. 87; Campbell Machine Co. (1937) 3 N. L. R. B. no. 79; Northrop Corporation (1937) 3 N. L. R. B. no. 19a; R. C. A. Mfg. Co., Inc. (1936) 2 N. L. R. B. 159; United States Stamping Co. (1936) 1 N. L. R. B. 123. Watchmen, stock room employees: Campbell Machine Co., *supra*. General maintenance employees: Northrop Corporation, *supra*.

98. Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772; R. C. A. Mfg. Co., Inc., *supra*, note 97.

99. American France Line et al. (1937) 3 N. L. R. B. no. 7; R. C. A. Communications, Inc. (1937) 2 N. L. R. B. 1109; The Canton Enameling & Stamping Co. (1936) 1 N. L. R. B. 402.

100. Rossie Velvet Co. (1937) 3 N. L. R. B. no. 82; Ohio Foundry Co. (1937) 3 N. L. R. B. no. 71; Richards-Wilcox Mfg. Co. (1936) 2 N. L. R. B. 97; Bell Oil and Gas Co. (1936) 1 N. L. R. B. 562. Cf. Huth & James Shoe Mfg. Co. (1937) 3 N. L. R. B. no. 20; Portland Gas and Coke Co. (1937) 2 N. L. R. B. 552 (skilled work equally distributed among various departments).



ner<sup>1</sup> or amount<sup>2</sup> of compensation has been alluded to as a reason for placing employees in the same unit.

These elements of skill and training, nature of work, and amount and manner of pay are some of the things which give rise to a "community of interest" among different groups of employees. Unquestionably, however, intangible and psychological factors are of great importance in creating this sympathy and commonalty. Considerable discussion is devoted in a recent case to the difference in social outlook between office workers and manual workers, particularly as evidenced by the apathy of the former toward labor organizations.<sup>3</sup> Elsewhere the Board takes cognizance of the fact that specially trained engineers, chemists, or designers have economic interests different from those of factory workers and that their relations with management are not on the same plane.<sup>4</sup> We find, therefore, many cases in which this factor of community of interest plays a part in determining the appropriate unit.<sup>5</sup>

Occasionally when the Board orders that the unit be an industrial one it mentions the "functional coherence" of the various departments of the plant.<sup>6</sup> One can easily understand that where, for example, the work of a company is concentrated on the manufacture of a single product such as dresses<sup>7</sup> or shoes<sup>8</sup> there is a

1. Fleischer Studios, Inc. (1937) 3 N. L. R. B. no. 18 (all employees salaried); Shell Oil Co. of California (1937) 2 N. L. R. B. 835 (hourly-rate employees); Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772 (same).

2. Rossie Velvet Co. (1937) 3 N. L. R. B. no. 82. Cf. Fleischer Studios, Inc., *supra* (higher wages equally distributed among various departments).

3. Pacific Gas and Electric Co. (1937) 3 N. L. R. B. no. 87 at p. 14.

4. Goodyear Tire and Rubber Co. of California (1937) 3 N. L. R. B. no. 81; Pennsylvania Salt Mfg. Co. (1937) 3 N. L. R. B. no. 74; Northrop Corporation (1937) 3 N. L. R. B. no. 19a; Consolidated Aircraft Corporation (1937) 2 N. L. R. B. 772; R. C. A. Mfg. Co., Inc. (1936) 2 N. L. R. B. 159. See also Consumers' Research, Inc. (1936) 2 N. L. R. B. 57, where the mailers were excluded from a unit of "white collar workers."

5. Rossie Velvet Co. (1937) 3 N. L. R. B. no. 82; R. C. A. Communications, Inc. (1937) 2 N. L. R. B. 1109; International Mercantile Marine Co. et al. (1936) 1 N. L. R. B. 384; United States Stamping Co. (1936) 1 N. L. R. B. 123.

6. Rossie Velvet Co., *supra*, note 5; Huth & James Shoe Mfg. Co. (1937) 3 N. L. R. B. no. 20; Fleischer Studios, Inc. (1937) 3 N. L. R. B. no. 18; Sheba Ann Frocks, Inc. (1937) 3 N. L. R. B. no. 9; The Acklin Stamping Co. (1937) 2 N. L. R. B. 872; Globe Mail Service, Inc. (1937) 2 N. L. R. B. 610; The Canton Enameling & Stamping Co. (1936) 1 N. L. R. B. 402.

7. Sheba Ann Frocks, Inc., *supra*.

8. Huth & James Shoe Mfg. Co., *supra*, note 6.

persuasive reason for a plant unit, which reason does not exist if one department turns out castings and another does enameling of wholly unrelated pieces.<sup>9</sup>

The final group of factors used by the Board in its determination of the unit comprises those related to the practice of the management in organizing and directing production and to the prior dealings that may have existed between employer and employee in the company or in the industry taken as a whole.

Where an employer in its operations conducts a department as a separate division,<sup>10</sup> groups its payroll under headings of "factory" and "others,"<sup>11</sup> engages the employees of a particular section through a separate personnel director,<sup>12</sup> or treats a group of plants in adjacent towns as a division,<sup>13</sup> the Board regards these facts as significant in deciding what the proper unit should be.

If an employer is seeking the designation of a unit other than that desired by the union, the Board may point out to the employer that when it set up a company union it found satisfactory the unit now sought by the union,<sup>14</sup> or that during a strike it requested the union to permit its engineers, whom it now wishes to include in the unit, to pass the picket line on the ground that they constituted a separate department;<sup>15</sup> but where the unit observed in dealings with an employee representation plan differs from that requested by the union, the Board is apt to attach little weight to the prior practice.<sup>16</sup> The history, however, of the company's relations with a *bona fide* union has had greater weight with the Board.<sup>17</sup> Similarly the fact that a certain type of unit has become traditional in an industry has been instrumental in bringing about the designation of that unit in particular cases.<sup>18</sup>

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9. Ohio Foundry Co. (1937) 3 N. L. R. B. no. 71.

10. New England Transportation Co. (1936) 1 N. L. R. B. 130.

11. Jeffery-De Witt Insulator Co. (1936) 1 N. L. R. B. 618.

12. R. C. A. Communications, Inc. (1937) 2 N. L. R. B. 1109.

13. Westinghouse Electric & Mfg. Co. (1937) 3 N. L. R. B. no. 1.

14. The Acklin Stamping Co. (1937) 2 N. L. R. B. 872.

15. Bartlett & Snow Co. (1937) 4 N. L. R. B. no. 11.

16. The B. F. Goodrich Co. (1937) 3 N. L. R. B. no. 40a; Atlantic Refining Co. (1936) 1 N. L. R. B. 359. Cf. Goodyear Tire and Rubber Co. of California (1937) 3 N. L. R. B. no. 81.

17. Rossie Velvet Co. (1937) 3 N. L. R. B. no. 82; Ohio Foundry Co. (1937) 3 N. L. R. B. no. 71; Shell Oil Co. of California (1937) 2 N. L. R. B. 835; M. H. Birge & Sons Co. (1936) 1 N. L. R. B. 731; Bell Oil and Gas Co. (1936) 1 N. L. R. B. 562.

18. Huth & James Shoe Mfg. Co. (1937) 3 N. L. R. B. no. 20 (shoes); Sheba Ann Frocks, Inc. (1937) 3 N. L. R. B. no. 9 (dresses); Motor Trans-

## IV. MULTIPLE UNITS

There remains to be discussed the most interesting and the most significant of the questions which have arisen with regard to the designation of the appropriate unit,—namely, that of determining the appropriate unit when one union wants it to be along craft and another wishes it to be along industrial lines. When this problem first became acute the Board found little enlightenment in its prior opinions. The resultant decisions in *Globe Machine and Stamping Company*<sup>19</sup> and later cases constitute a group distinct from and difficult to compare with their precursors. For this reason discussion of them has been deferred until now.

By way of introduction it is relevant to notice that the problem had arisen in a few earlier cases. In some of them<sup>20</sup> the Board very wisely established the rule, to which it has faithfully adhered, that it would not undertake to decide jurisdictional disputes between unions within the A. F. of L., even though the conflicts could be described in the phraseology of the Act as questions pertaining to the appropriate bargaining unit.

Jurisdictional disputes are \* \* \* no new phenomenon \* \* \*. \* \* \* The National Labor Relations Act did not give rise to these problems \* \* \*. While the Act provides a new vocabulary in which such jurisdictional disputes may be described, it does not alter their nature \* \* \*. The Board will not \* \* \* determine the appropriate bargaining unit.<sup>21</sup>

In two decisions prior to the *Globe* case the controversy arose between an affiliated union claiming that the plant unit was appropriate and an independent union seeking the designation of the craft unit.<sup>22</sup> In both cases the Board's determination that the plant was the proper unit was based on considerations treated in the foregoing discussion, such as the eligibility of all persons in the plant for both unions,<sup>23</sup> the functional coherence of the

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port Co. (1937) 2 N. L. R. B. 492 (motor trucking); M. H. Birge & Sons Co., *supra*, note 17 (wall paper); International Mercantile Marine Co. et al. (1936) 1 N. L. R. B. 384 (shipping); Harbor Boat Bldg. Co. (1936) 1 N. L. R. B. 349 (carpentry).

19. (1937) 3 N. L. R. B. no. 25.

20. The Axton-Fisher Tobacco Co. (1936) 1 N. L. R. B. 604; Standard Oil Co. of California (1936) 1 N. L. R. B. 614. See also Aluminum Co. of America (1936) 1 N. L. R. B. 530.

21. (1936) 1 N. L. R. B. 604 at 611, 613.

22. The Acklin Stamping Co. (1937) 2 N. L. R. B. 872; Portland Gas and Coke Co. (1937) 2 N. L. R. B. 552.

23. *Ibid.*

work,<sup>24</sup> the prior bargaining history,<sup>25</sup> the even distribution of skilled workers<sup>26</sup> and the transferability of employees among various departments.<sup>27</sup>

Another case involved rival affiliated unions. In *Huth & James Shoe Manufacturing Company*<sup>28</sup> two unions had been active in the plant since 1933. One of them, at the time the dispute arose, was affiliated with the A. F. & L., the other with the C. I. O. Each union, in the departments where it was dominant, had elected representatives to a single shop committee, and the shop leader of each union had dealt with the management on behalf of those departments. The record revealed that in other plants and localities the A. F. of L. union pursued the same vertical lines as the C. I. O. union and that craft organization was virtually unknown in the shoe industry. The A. F. of L. affiliate relied largely on the history of collective bargaining in the Huth & James plant, but the Board was unable to find that a practice had existed of bargaining by departments. Basing its decision on the further grounds of the custom throughout the industry and the fact that the departments, while specialized as to function, could not be differentiated as to the skill or wages of the workers, the Board ordered that the unit should be composed of all the production workers in the plant.<sup>29</sup>

The issue involved in these early cases became more warmly contested with the increasing bitterness of the conflict between the A. F. of L. and the C. I. O. On August 11, 1937, the Board handed down the decision in the *Globe* case<sup>30</sup> which introduces an entirely new method of handling the problem. In that case the Polishers' Union and the International Association of Machinists, both affiliates of the A. F. of L., claimed that their crafts constituted appropriate units, while a third A. F. of L. union, for which all production employees other than polishers and machinists were eligible, sought to have a unit coterminous with the scope of its membership. On the other hand the United Automobile Workers of America, a C. I. O. union, urged that the unit

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24. The Acklin Stamping Co., *supra*, note 22.

25. *Ibid.*

26. Portland Gas and Coke Co., *supra*, note 22.

27. *Ibid.*

28. (1937) 3 N. L. R. B. no. 20.

29. Cf. Marcus Loew Booking Agency (1937) 3 N. L. R. B. no. 33, decided after the *Globe* case.

30. *Supra*, note 19.

comprise the entire plant. In support of the crafts' contention it was shown that the machinists and polishers possessed greater skill and received higher wages than the remaining employees, that their departments were located apart from the others, and that there had been prior bargaining relations between the company and the crafts. The Auto Workers proved, however, that the plant functioned as a single productive entity and that an agreement covering all the production employees had been negotiated a month before the hearing. The Board was of the opinion that on these facts either a single unit for the entire factory or three units, along the lines proposed by the A. F. of L. unions, would be appropriate. The following solution to this dilemma was adopted:

In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves. (This factor was held to be of significance in *Matter of Atlantic Refining Co.*, 1 N. L. R. B. 359; *Matter of Chrysler Corporation*, 1 N. L. R. B. 164; *Matter of International Mercantile Marine Co. et al.*, 1 N. L. R. B. 384; and in *Matter of New England Transportation Co. and International Association of Machinists*, 1 N. L. R. B. 130).<sup>31</sup> On this point, the record affords no help. There has been a swing toward the U. A. W. A. and then away from it. The only documentary proof is completely contradictory. We will therefore order elections to be held separately for the men engaged in polishing and 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 and of clerical and supervisory employees.

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>32</sup>

Substantially similar situations were presented in other cases and similar decisions reached.<sup>33</sup> In the case of *Commonwealth*

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31. Footnote appearing in the opinion.

32. 3 N. L. R. B. no. 25 at p. 7.

33. Allis-Chalmers Mfg. Co. (1937) 4 N. L. R. B. no. 24; Commonwealth Division of General Steel Castings Corporation (1937) 3 N. L. R. B. no. 78; City Auto Stamping Co. (1937) 3 N. L. R. B. no. 24. Cf. Shick Dry Shaver Co. (1937) 4 N. L. R. B. no. 35; Pacific Gas and Electric Co. (1937) 3 N. L. R. B. no. 87.

*Division of General Steel Castings Corporation*<sup>34</sup> the C. I. O. union presented sufficient evidence of its membership to convince the Board that its members constituted a majority of all workers, regardless of whether the men in three disputed crafts were included or not. It was therefore unnecessary to hold an election for the non-craft employees, although the Board withheld certification of their representative until the unit had been determined by the election among the craft workers. The original Board order provided that the workers in three crafts should designate by secret vote whether they desired to be represented by the C. I. O. or by an A. F. of L. union, but on petition of the C. I. O. union its name was later ordered left off the ballot and the decision amended to provide that such of the craft groups as did not choose an A. F. of L. union should be excluded from all of the units found by the Board to be appropriate.<sup>35</sup>

The *Allis-Chalmers* case<sup>36</sup> is of particular interest because of the dissent of one Board member, Edwin S. Smith. The evidence revealed that while the first attempts at organization in this plant had been on a craft basis, the workers, even before the origin of the C. I. O., had despaired of achieving satisfactory results from that form of union, had surrendered their craft characters, and had established a "Federal" (industrial) union under A. F. of L. auspices. This plant organization grew rapidly and only two crafts, both small but one very important, were able to resist the secession movement. The Board ordered that separate elections be held for each of these two crafts and for the rest of the plant. Mr. Smith criticizes the prevailing opinion, (and his dissent in this case is pertinent, if not applicable, to all cases decided on the "Globe theory") which claimed to be making the choice of unit in accordance with the desire of the workers, for vesting a small minority of employees with the power of determining which unit is most appropriate. Conceding that the interests of the minority are well protected under such an arrangement, Smith argues that this protection is afforded only at the expense of disregarding the interests of the majority. Here, he says, as in other cases, the unit should be determined on the basis

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34. *Supra*, note 33.

35. (1937) 3 N. L. R. B. no. 78b.

36. *Supra*, note 33.

of the particular facts presented which in this case seemed to him clearly to point to the propriety of a single industrial unit.<sup>37</sup>

In several cases in which the *Globe* principle has been applied there have been interesting factual variations. In *Pennsylvania Greyhound Lines et al. (Atlantic Greyhound Lines)*<sup>38</sup> an A. F. of L. union claimed that the mechanics were an appropriate unit; another A. F. of L. union and a railway brotherhood, both of which had attempted to organize the drivers, argued that the drivers should constitute the unit; and an independent union urged the designation of an industrial unit of all employees. Despite the absence of an A. F. of L.—C. I. O. controversy, the Board used the same approach as in the *Globe* case.<sup>39</sup>

Three crafts in *Schick Dry Shaver Company*<sup>40</sup> asked that a single craft union be designated their representative. The Board, while directing that a multiple election should be conducted, held, as in the *Globe* case, that each craft should constitute an appropriate unit and refused to sanction a semi-industrial unit made up of the three crafts.<sup>41</sup>

Another case involved three plants belonging to the same company.<sup>42</sup> Skilled workers were employed only in one of these plants, but the Board held that each of the several crafts in that plant constituted an appropriate unit and that the unskilled employees of that plant, together with all the workers in the other two, constituted a distinct unit.

Where A. F. of L. unions for a considerable period had had closed shop agreements covering two crafts and relations were still carried on pursuant thereto, the Board excluded the crafts from a plant unit without ordering an election to determine the workers' desires.<sup>43</sup>

Finally there have been cases in which a C. I. O. or an A. F. of L. union has requested certification for the plant or for a single craft and the opposing group, without claiming a majority of the workers in the alternative unit, has sought to prevent designation of the unit asked for by the petitioning union. In

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37. See also Mr. Smith's dissent in *Schick Dry Shaver Co.*, supra, note 33.

38. (1937) 3 N. L. R. B. no. 69.

40. (1937) 4 N. L. R. B. no. 35.

41. Cf. *Great Lakes Engineering Works* (1937) 3 N. L. R. B. no. 85, discussed supra, note 32, at p. 161.

42. *Shell Chemical Co.* (1937) 4 N. L. R. B. no. 36.

43. *The H. Neuer Glass Co.* (1937) 4 N. L. R. B. no. 14. Cf. *Pittsburgh Plate Glass Co.* (1937) 4 N. L. R. B. no. 30.

*Gulf Oil Corporation*<sup>44</sup> the A. F. of L. Boilermakers' union, which had a majority in its craft, petitioned for certification. The C. I. O. Oil Workers' union offered no evidence that it had a majority of either the plant or of the boilermaking craft but argued that the plant unit would be more effective for purposes of collective bargaining than the craft unit. The Board ruled, however, in favor of the craft unit on the ground that "wherever possible, it is obviously desirable that, in the determination of the appropriate unit, we render collective bargaining of the Company's employees an immediate possibility."<sup>45</sup> The converse situation was presented in *The Texas Company, West Tulsa Works*<sup>46</sup> where the A. F. of L. Machinists opposed the request of the C. I. O. Oil Workers for a plant unit although admittedly they had no members in the craft. The basis of the Machinists' argument was that before the C. I. O. union had broken away from the A. F. of L. it had agreed not to accept as members persons eligible for the Machinists' organization, but the Board was of the opinion that in the absence of a parent body able to enforce a jurisdictional agreement of this kind it should not have controlling weight.<sup>47</sup>

One need not have pursued one's studies any further than articles in the daily press to realize that the cases with which we have been dealing in this section are in the nature of compromise decisions. So far as effective collective bargaining is concerned, multiple units leave much to be desired. The Board has expressed itself in favor of a reconciliation between the two camps of labor, and, if that were to come to pass, it would furnish the best solution to the problem of the *Globe* case. To the writer it seems not improbable that the Board felt that the *Globe* decision would help to bring a cessation of hostilities, but the conflict still goes on and the Board is committed, for the present at least, to a policy of allowing two or more units with a single plant. There are indications, however, in the *Allis-Chalmers* case<sup>48</sup> that the facts of every new situation will be closely scrutinized before the Board will say that the considerations for a craft and those for a plant unit are evenly balanced and that therefore the de-

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44. (1937) 4 N. L. R. B. no. 17.

45. *Id.* at p. 5.

46. (1937) 4 N. L. R. B. no. 27.

47. *Cf. Interlake Iron Corporation* (1937) 2 N. L. R. B. 1036.

48. (1937) 4 N. L. R. B. no. 24, discussed *supra*, note 36.



sire of the men, as expressed in an election by the craft, should be the determining factor. In that case there were facts which might have justified the Board in divorcing from the plant unit several crafts in addition to the two for which it directed separate elections to be held, but the Board was of the opinion that there was a balance of considerations only with respect to the two crafts.

### CONCLUSION

At the beginning of this article it was intimated that, because of the Board's desire to decide each case on its own merits, it might be difficult to find a thread of consistency running throughout the decisions. The foregoing survey of decisions of the Board would seem to confirm the accuracy of such a prediction.

The duty of determining the appropriate unit was placed on the Board because it seemed impractical to permit either the employer or the employees to do it. This provision of the Act affords both employer and employee protection against arbitrary groupings. The power it confers is, however, a secondary or auxiliary one. If first consideration were given to what would constitute the *ideal* unit for collective bargaining, the primary purpose of the Act might be thwarted; the tail would wag the dog.

Research would probably indicate that in certain industries and under certain conditions one unit is more effective and successful than another. Perhaps it is not too early for the Board to begin a study of the relation which the unit bears to the success and the results of collective bargaining. Even though such a study were available today it would nevertheless be improper to base decisions wholly upon it because it is not the intent of the Act that the interests of workers who are already organized in small units should be sacrificed to the symmetry of a theoretically more appropriate unit. While a comprehensive unit may be appropriate if organization is widespread, it is extremely inappropriate where organization is confined to one craft or to one of several plants operated by the same employer. A unit, like a shoe, must fit in order to be appropriate. The Board has wisely recognized that in practice the unit appropriate "for the purposes of collective bargaining" may of necessity vary from that which is most desirable in theory.

Critics of the Board have said that in designating the unit it has given greater weight to the union's desires than to the employer's. There are numerous instances, however, in which the Board has reached a decision contrary to the wishes of a union. Furthermore, in a large number of cases where the Board has designated the unit desired by the union, there was actually no controversy.

If, however, it be admitted that the criticism is to a certain extent true, this does not mean that the Board's attitude is without justification. On the one hand, since workers in the shop are anxious to establish a relationship of collective bargaining and since they know the situation at first hand, their preference in the matter of the unit is a factor deserving of careful consideration. The employer, on the other hand, is in many cases hostile to the very thought of dealing with a union and may attempt to gerrymander the unit and make it difficult, if not impossible, for the union to obtain a majority. It is not unreasonable, therefore, that the Board should be interested in that unit which the workers think will be most effective for collective bargaining and that it should be on its guard against captious objections advanced by the employer.

The Wagner Act is a law intended to facilitate and not to hinder the organization of workers. It is the opinion of the writer that those persons who assert that the Board has shown a labor bias in its administration of the statute would do well to reflect that the "impartial" administration which they seek would be possible only if the Board members were to disregard the purpose for which the Act was passed.