

ing unit covered by an agreement between their employer and a labor organization made pursuant to section 158(a)(3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

(July 5, 1935, ch. 372, § 9, 49 Stat. 453; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 143; Oct. 22, 1951, ch. 534, § 1(c), (d), 65 Stat. 601; Pub. L. 86-257, title II, § 201(d), title VII, § 702, Sept. 14, 1959, 73 Stat. 525, 542.)

AMENDMENTS

1959—Subsec. (c)(3). Pub. L. 86-257, § 702, substituted “Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike” for “Employees on strike who are not entitled to reinstatement shall not be eligible to vote.”

Subsecs. (f), (g). Pub. L. 86-257, § 201(d), repealed subsecs. (f) and (g) which required unions to file their constitutions, bylaws and a report, prescribed the contents of the report and directed the filing of annual financial reports, and are now covered by section 431 of this title.

Subsec. (h). Pub. L. 86-257, § 201(d), repealed subsec. (h) which related to affidavits showing union’s officers free from Communist Party affiliation or belief.

1951—Subsec. (e). Act Oct. 22, 1951, § 1(c), struck out par. (1) and renumbered pars. (2) and (3) as (1) and (2).

Subsecs. (f) to (h). Act Oct. 22, 1951, § 1(d), struck out “No petition under section 159(e)(1) shall be entertained” wherever appearing.

1947—Act June 23, 1947, amended section generally to allow employees to carry their grievances directly to the employer, to circumscribe certain powers of the Board, to make the union file with the Secretary of Labor its constitution, bylaws, and report before being certified as a bargaining agent, to require annual reports by labor unions, and to require labor unions to file affidavits with the Board showing that none of its officers are affiliated with or believe in the Communist Party.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 702 of Pub. L. 86-257 effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as a note under section 153 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

For effective date of amendment by act June 23, 1947, see section 104 of act June 23, 1947, set out as a note under section 151 of this title.

CERTAIN CERTIFICATIONS OF BARGAINING UNITS UNAFFECTED

Act June 23, 1947, ch. 120, title I, § 103, 61 Stat. 152, provided that: “No provisions of this title [amending this subchapter] shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act [this section] prior to the effective date of this title [sixty days after June 23, 1947] until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title [sixty days after June

23, 1947], until the end of the contract period or until one year after such date, whichever first occurs.”

§ 160. Prevention of unfair labor practices

(a) Powers of Board generally

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28.

(c) Reduction of testimony to writing; findings and orders of Board

The testimony taken by such member, agent, or agency or the Board shall be reduced to writ-

ing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of subsection (a)(1) or (a)(2) of section 158 of this title, and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an administrative law judge or judges thereof, such member, or such judge or judges as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) Modification of findings or orders prior to filing record in court

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) Petition to court for enforcement of order; proceedings; review of judgment

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person re-

sides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Review of final order of Board on petition to court

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an

application by the Board under subsection (e), and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) Institution of court proceedings as stay of Board's order

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title

When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by chapter 6 of this title.

(i) Repealed. Pub. L. 98-620, title IV, § 402(31), Nov. 8, 1984, 98 Stat. 3360

(j) Injunctions

The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Hearings on jurisdictional strikes

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 158(b) of this title, or section 158(e) of this title or section 158(b)(7) of this title, the prelimi-

nary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 158(b)(7) of this title if a charge against the employer under section 158(a)(2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 158(b)(4)(D) of this title.

(m) Priority of cases

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 158 of this title, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (l).

(July 5, 1935, ch. 372, § 10, 49 Stat. 453; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 146; June 25, 1948, ch. 646, § 32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85-791, § 13, Aug. 28, 1958, 72 Stat. 945; Pub. L. 86-257, title VII, §§ 704(d), 706, Sept. 14, 1959, 73 Stat. 544; Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 98-620, title IV, § 402(31), Nov. 8, 1984, 98 Stat. 3360.)

REFERENCES IN TEXT

The rules of evidence applicable in the district courts of the United States, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The rules of civil procedure for the district courts of the United States, referred to in subsec. (b), are set out in the Appendix to Title 28.

Chapter 6 (§101 et seq.) of this title, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act.

CODIFICATION

In subsec. (b), "section 2072 of title 28" substituted for "the Act of June 19, 1934 (U.S.C., title 28, secs. 723-B, 723-C)" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

In subsec. (c), "administrative law judge or judges" and "such judge or judges" substituted for "examiner or examiners" and "such examiner or examiners", respectively, pursuant to section 3105 of Title 5, Government Organization and Employees, and section 3 of Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 184, which is set out as a note under section 3105 of Title 5.

In subsec. (f), "United States court of appeals" substituted for "circuit court of appeals of the United States" on authority of act June 25, 1948, as amended by act May 24, 1949.

As originally enacted subsecs. (j) and (l) contained references to the District Court of the United States for the District of Columbia. Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-620 struck out subsec. (i) which provided for expeditious hearings on petitions.

1959—Subsec. (l). Pub. L. 86-257, §704(d), included unfair labor practices within the meaning of sections 158(e) and 158(b)(7) of this title, and inserted proviso prohibiting the officer or regional attorney from applying for any restraining order under section 158(b)(7) of this title if a charge against the employer under section 158(a)(2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue.

Subsec. (m). Pub. L. 86-257, § 706, added subsec. (m).

1958—Subsec. (d). Pub. L. 85-791, §13(a), struck out "a transcript of" after "until".

Subsec. (e). Pub. L. 85-791, §13(b), struck out "(including the United States Court of Appeals for the District of Columbia)" before "or if all the courts", and substituted "file in the court the record in the proceedings, as provided in section 2112 of title 28" for "certify and file in the court a transcript of the entire record in the proceedings including the pleadings and testimony upon which such order was entered and the findings and order of the Board" in first sentence, in second sentence substituted "the filing of such petition" for "such filing of" and struck out "upon the pleadings, testimony and proceedings set forth in such transcript" after "make and enter", in fifth sentence substituted "member" for "members" after "before the Board, its", and substituted "record" for "transcript", and in seventh sentence, substituted "Upon the filing of the record with it the" for "The", and "section 1254 of title 28" for "sections 346 and 347 of title 28".

Subsec. (f). Pub. L. 85-791, §13(c), substituted "transmitted by the clerk of the court to" for "served upon" and "the record in the proceeding, certified by the Board, as provided in section 2112 of title 28" for "a transcript of the entire record in the proceeding, certified by the Board including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board" in second sentence, and in third sentence substituted "the filing of such petition," for "such filing", and struck out "exclusive" before "jurisdiction".

1947—Act June 23, 1947, amended section generally and added subsecs. (j) to (l) which gives the Board general power to petition district court for temporary relief or restraining order, directs Board to hear and determine jurisdictional strikes, and to investigate boycotts and strikes to force recognition of an uncertified labor union and to petition district court for injunctive relief.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-257 effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as a note under section 153 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

For effective date of amendment by act June 23, 1947, see section 104 of act June 23, 1947, set out as a note under section 151 of this title.

§ 161. Investigatory powers of Board

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title—

(1) Documentary evidence; summoning witnesses and taking testimony

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceedings or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such