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Once the Board issues a cease-and-desist order, the offending party must post a notice that it violated the Act and will not repeat those violations.

MANY BUSINESS DECISIONS result in work transfer. Some are unlawful designs to avoid unions or obligations under a collective bargaining agreement, some have that effect but are lawful, and others are economically motivated business decisions unrelated to employee self-organization.

EDITOR'S NOTE: This article is derived from a chapter in the authors' new book, LABOR RELATIONS LAW IN THE PRIVATE SECTOR (ALI-ABA, Philadelphia, 2d ed. 1986). Part 1 of this article appeared in the March issue of THE PRACTICAL LAWYER and discussed the general statutory restrictions on employer interference with employee organizing attempts.

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These decisions may have significant duty-to-bargain implications and some may constitute unlawful employer discrimination.

RUNAWAY SHOP AND PLANT CLOSINGS • The "runaway shop," according to the Supreme Court, entails an employer "transfer[ring] its work to another plant or open[ing] a new plant in another locality to replace its closed plant." *Textile Workers Union v. Darlington Mfg. Co.*, 380 U.S. 263, 272-73 & n.16 (1965). They clearly violate section 158(a)(3) of the National Labor Relations Act ("Act") when initiated:

- To discourage union membership;
- To punish unionized employees for exercising rights protected by section 157;
- To evade the duty to bargain;
- Or otherwise to run away from the union. *See In re Jacob H. Klotz,* 13 N.L.R.B. 746 (1939).

(Unless otherwise indicated, all section references will be to the Act, as codified in 29 U.S.C. §151 et seq.) A more difficult case arises if the employer demonstrates sound economic reasons but has also manifested hostility toward the union.

The principles enunciated in *NLRB v. Transp. Management Corp.*, 462 U.S. 393 (1983), control analysis of "mixed motive" section 158(a)(3) cases arising in employee discipline contexts and seemingly would also now control a mixed motive runaway shop case. *Cf. NLRB v. Rapid Bindery, Inc.*, 293 F.2d 170 (2d Cir. 1961) (plant relocation one month after union certification seen as mixed motive case). The subcontracting of employees' work presents the functional equivalent to the "runaway shop." The employer remains stationary but the bargaining unit work is transferred to another employer. When discriminatorily motivated, this conduct also violates section 158(a)(3). *See Universidad Interamericana de Puerto Rico, Inc.*, 268 N.L.R.B. 1171 (1984).

Alter Ego

Alter ego cases raise an additional complexity. Historically, they arose when the employer nominally ceased doing business by dissolving an existing company but then transferred bargaining unit work to another business the same employer controlled. More recently "double-breasted" operations have raised alter ego questions: a unionized company creates a second nonunion company and transfers bargaining unit work to it. Alter ego transactions violate section 158(a)(3) when the new entity is simply the "disguised continuance" of the former and has been established to defeat employees' section 157 rights. *Compare Garwin Corp.*, 153 N.L.R.B. 664 (1965), *enforced in part,* 374 F.2d 295 (D.C. Cir.), *cert. denied,* 387 U.S. 942 (1967) (alter ego found) *with B&B Industries, Inc.*, 162 N.L.R.B. 832,

835 n.4 (1967) (alter ego not found). For a summary of the factors that the Board considers in determining alter ego status, *see Crawford Door Sales Co., Inc.*, 226 N.L.R.B. 1144 (1976).

The *Milwaukee Spring* Doctrine

A recent development regarding work transfer and unlawfnl discrimination involves the *Los Angeles Marine Hardware Co.* doctrine, 235 N.L.R.B. 720 (1978), *enforced,* 602 F.2d 1302 (9th Cir. 1979). Because of its revival, explication, and demise in *Milwaukee Spring Div. of Illinois Coil Spring Co.*, 265 N.L.R.B. 206 (1982), *rev'd,* 268 N.L.R.B. 601 (1984), *enforced sub nom. Automobile Workers v. NLRB,* 765 F.2d 175 (D.C. Cir. 1985), it is now more commonly referred to as the *Milwaukee Spring* doctrine.

In *Milwaukee Spring,* without the union's consent the employer transferred an assembly operation from its unionized facility to an unorganized facility in a different city during the term of a collective agreement. This resulted in the layoff of unionized employees. The parties stipulated that both facilities were a single employer and that the decision to transfer work was not the result of antiunion animus but rather was economically motivated to avoid the relatively higher wage costs in the union contract. In these circumstances, the National Labor Relations Board ("Board") found a section 158(a)(3) violation in *Milwaukee Spring I,* reasoning that since the work transfer was designed to avoid the contract's wage provisions and thereby deny the unionized employees the fruits of collective bargaining, the employer's conduct was "inherently destructive" of employee rights. *Cf. Greyhound Lines, Inc.*, 112 L.R.R.M. 1437 (Advice Memorandum from NLRB General Counsel, March 2, 1983) (no *Milwaukee Spring* violation when employer relocated a small portion of bargaining unit work as part of overall consolidation solely to enhance operational efficiency).

Milwaukee Spring II

In *Milwaukee Spring II,* the Board, in a split decision, reversed itself, holding that because the employer complied with statutory bargaining obligations before deciding to transfer the work, the work transfer and subsequent layoff were not "inherently discriminatory." Accordingly, no inference of unlawful motive was warranted. In the foreseeable future the Board can be expected to find that the transfer of work and the layoff of bargaining unit employees to avoid contractual economic obligations do not constitute section 158(a)(3) conduct absent proof by a preponderence of the evidencc of an intent to retaliate against employees for their protected activities. It is premature to specnlate what, if any, effect this development will have on the double-breasted cases, previously discussed, which also entail work transfers to

avoid wage implications in collective bargaining contracts.

EMPLOYER'S RIGHT TO MANAGE BUSINESS? • Plant closings, like work transfers, have also involved the employer's right to manage its business without restraint. The landmark case is *Textile Workers Union v. Darlington Mfg. Co.*, 380 U.S. 263 (1965). The union had won an election in September, and one week later the board of directors voted to liquidate the corporation, a move that was accomplished by November. The Board found that since the closing was motivated by antiunion animus, it violated section 158(a)(3). The court of appeals refused to enforce the order, ruling that an employer may close all or part of its operation for any reason, including antiunion animus. The Supreme Court held that an employer has an absolute right to close its entire business, regardless of motive, but that a partial closing motivated by antiunion animus may violate section 158(a)(3).

For the Court the proposition that a single businessperson or company cannot choose to go out of business completely, regardless of motivation, represented such a startling innovation that it could not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent. The Court's reasoning was that a complete liquidation of business yields no future benefit for the employer if the termination is in good faith and that the personal satisfaction an employer may derive from standing on its beliefs or the mere probability that other employers will follow its example is too remote to be considered a danger at which the labor statute is aimed.

By dictum, the Court noted that its decision would not permit an employer to "threaten" to close its plant but acknowledged that it may "announce a decision already reached" that it would close if the employees vote for the union. An employer determined to defeat unionization can thus make a "definite decision" before the election and advise the employees accordingly. If the employees take the announcement seriously and vote against the union, the sincerity of the decision cannot be tested. If the employees gamble that the employer is bluffing and vote for the union, the employer can continue operations. Although the Board could find that the employer's announcement of the definite decision was in reality an unlawful threat and hence a section 158(a)(1) violation, its cease-and-desist order will be quite painless for the employer and quite ineffective for the employees and the union.

Partial Closing vs. Complete Liquidation

A partial closing was distinguished from a complete liquidation of business because the former may result in future benefits for the employer by discouraging its other employees

from exercising their section 157 rights. The Court therefore held that "a partial closing is an unfair labor practice under §158(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that the closing would likely have that effect." 380 U.S. at 275. Further, an organizational integration of locations or corporations is not a prerequisite for this rule to apply. The closing of one location or any part of it for antiunion reasons is unlawful if:

- The persons exercising control have an interest in another business, whether or not affiliated with, or engaged in, the same line of business as the closed operation, of sufficient substantiality that they will benefit from discouraging unionization in that business;

- The closing is for the purpose of producing such a result; and

- The persons involved occupy a relationship to the other business that makes it realistically foresecable that employees of that business might fear that it, too, may be closed if they persist in organizational activities.

The Court did sustain the Board's finding in *Darlington* that there had been a partial, not a total, closing, since the dissolved corporation had been controlled by a larger corporate enterprise.

The Board has emphasized that evidence of an actual "chilling effect" on employees at remaining plants need not be proved; only a finding of its reasonable foreseeability is required. *George Lithograph Co.*, 204 N.L.R.B. 431 (1973).

RETALIATION RELATED TO ENFORCEMENT OF LEGAL RIGHTS • Section 158(a)(4) prohibits any employer from discharging or otherwise discriminating against an employee because he or she has filed charges or given testimony under the Act. This section has generated little litigation over the years, but the Supreme Court has interpreted it to encompass giving a sworn statement to a Board field examiner investigating an unfair labor practice charge filed against an employer. *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972).

Although discrimination for giving sworn statements did not fall within the literal prohibition of section 158(a)(4), the legislative history supports the view that it should be read to "prevent the Board's channels of information from being dried up by employer intimidation of prospective complainants . . . ." Similar considerations militate in favor of extending the protection of section 158(a)(4) to employees coerced by employers to give false testimony, or any testimony, in support of the employer's position at an unfair labor practice hearing. *NLRB v. Retail Store Employees Union, Local 876*, 570 F.2d 586, 591-

92 (6th Cir.), *cert. denied,* 439 U.S. 819 (1978) (prohibiting coercion of employees who refuse to testify voluntarily in support of discrimination position is rational means of guarding against coercing employees to give NLRB false or misleading testimony). In short, "section 158(a)(4) by itself neither encourages or discourages testimony: it simply leaves employees free to choose their actions before the Board without fear of employer reprisals." *Id.*

Freedom of Choice Principle

The freedom of choice principle underlying section 158(a)(4) may be jeopardized seriously by a retaliatory lawsuit brought by an employer against employees to impede their exercising rights guaranteed by the Act. The Supreme Court has recognized that by suing an employee who files charges with the Board or engages in other protected activities, "an employer can place its employees on notice that anyone who engages in such conduct is subjecting himself to the possibility of a burdensome lawsuit . . . . [T]he chilling effect . . . is multiplied where the complaint seeks damages . . . ." *Bill Johnson's Restaurants Inc. v. NLRB,* 461 U.S. 731, 740, 741 (1983). It is plain, however, that a fundamental first amendment value is access to courts, both state and federal, for redress of alleged wrongs. *Id.* at 742-43. Thus filing a well-founded lawsuit is protected by the Constitution, irrespective of any retaliatory motive. *Id.* Prosecution of baseless litigation is not so protected. Therefore, the Board may find the filing of a lawsuit a violation of the Act upon a showing that:

- The lawsuit was filed to retaliate against the exercise of statutory rights; and
- The lawsuit lacked a reasonable basis in law or fact. *Id.* at 744-46.

This principle clearly applies in section 158(a)(4) contexts. *J.W. Rhodes Dept. Stores,* 267 N.L.R.B. 381 (1983); *cf. Access Control Systems,* 270 N.L.R.B. 823 (1984). The principle also applies to union interference with section 157 rights or rights of employers recognized by national labor policy. *See Sheet Metal Workers, Local 355 v. NLRB,* 716 F.2d 1249, 1260 & n.11 (9th Cir. 1983).

REMEDIES • Section 160(c) of the Act empowers the Board to remedy unfair labor practiees by issuing cease-and-desist orders and by requiring violators "to take such affirmative action including reinstatement of employees,with or without backpay, as will effectuate the purposes of this Act." The Board requires the offending party to post a notice reciting that it has been found to have violated the Act and has been ordered to post the notice and keep its word about what it says it will do. The notice then details the specific acts that the party will not do, the affirmative action it will take, and the rights of the parties.

The Board's General Counsel now also routinely seeks inclusion of a visitorial clause in all Board remedial orders. Secured to help monitor compliance with court enforced Board orders, it authorizes Board agents to obtain discovery from respondents to determine or secure compliance. The discovery is conducted under the supervision of the United States Court of Appeals enforcing the order. *See* NLRB, General Counsel, *Inclusion of Visitorial Clauses in the Board's Remedial Orders* (Memorandum GC 85-5, Sept. 23, 1985), *reprinted in* 120 Lab. Rel. Rep. (BNA) 137 (Oct. 14, 1985).

In unusual cases involving isolated and technical violations of the Act, the Board is empowered not to issue a remedial order. That decision is for the Board and not the courts. *Champion Parts Rebuilders, Inc. v. NLRB,* 717 F.2d 845, 853 n.9 (3d Cir. 1983); *see also Safeway Stores, Inc.,* 266 N.L.R.B. 1124, 1124-25 & n.2 (1983).

Cease-and-Desist, Reinstatement, Backpay

The simple cease-and-desist order is generally the only remedy for violations of sections 158(a)(1) and 158(b)(1)(A). To remedy section 158(a)(2) violations, the Board orders the disestablishment of an employer-dominated union or the withdrawal of recognition from a union with which the employer has unlawfully interfered through assistance or other means and, in appropriate cases, abrogation of an existing collective bargaining agreement and reimbursement of union dues and fees. Reinstatement, backpay, or both are the traditional remedies for violations of sections 158(a)(3), 158(b)(2), and 158(a)(4). In recent years the Board, in unlawful discipline cases, has added a requirement that an employer expunge from its records all references to the unlawful discipline. *Sterling Sugars, Inc.,* 261 N.L.R.B. 472 (1982).

Joint & Several Liability for Backpay

When an employer and union have been found to have violated section 158(a)(3) and section 158(b)(2), respectively, they are held jointly and severally liable for any backpay awarded. *Int'l Harvester Co.,* 270 N.L.R.B. 1342 (1984). Backpay includes fringe benefits, and discriminatorily discharged employees receive interest on their awards equal to the "adjusted prime rate"—that used by the Internal Revenue Service to calculate the interest due on overpayments or underpayments of federal taxes. *See Florida Steel Corp.,* 231 N.L.R.B. 651 (1977), *enforcement denied on other grounds,* 586 F.2d 436 (5th Cir. 1978).

Backpay liability continues until an unequivocal and unconditional offer of reinstatement is clearly communicated to an unlawfully discharged employee. *Hickory's Best, Inc.,* 267 N.L.R.B. 1274 (1983); *see also Morvay v. Maghielse Tool & Die Co.,* 708

F.2d 229 (6th Cir. 1983) (collecting cases). Reversing 30 years of precedent, the Board held in *Sheet Metal Workers Union, Local 355 (Zinsco Electrical Products),* 254 N.L.R.B. 773 (1981), *enforced in relevant part,* 716 F.2d 1249 (9th Cir. 1983), that when a union is solely liable for an uulawful discharge, it will be solely liable for backpay suffered until the employee discharged is reinstated by the employer or obtains similar employment elsewhere. As a practical matter, if a union is unable to persuade an employer to reinstate a discharged employee, backpay liability might continue indefinitely, uuless the union finds the discharged employee a substantially equivalent job.

Mitigation of Damages Requirement

In *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177 (1941), in addition to sustaining an order requiring the initial hiring of applicants who had been discriminatorily refused employment because of their union activities, the Supreme Court ruled that the doctrine of mitigation of damages must be applied in computing backpay. A discriminatee is, therefore, obligated to make a rcasonably diligent search for suitable interim employment, but registration with federal and state employment agencies does not fulfill the obligation.

The Board generally has held that dischargees need seek and accept ouly employment substantially equivalent to their previous positions and are not under a duty "to lower their sights." But courts of appeals, on occasion, have taken the position that after a reasonable period of time dischargees are required to seek interim, suitable employment outside tlieir regular craft or occupation. *See, e.g., NLRB v. Madison Courier, Inc.,* 472 F.2d 1307 (D.C. Cir. 1972).

The burden of proof on the issue of failure to mitigate rests with the employer. If an employee willfully conceals earnings from interim employment, backpay may be denied for ull calendar quarters in which the concealment occurred. *See Am. Navigation Co.,* 268 N.L.R.B. 426 (1983); *see also Alumbaugh Coal Corp. v. NLRB,* 635 F.2d 1380 (8th Cir. 1980) (postdischarge misconduct may deprive discriminatorily discharged employee either reinstatement or backpay) (collecting cases).

Compliance Proceedings

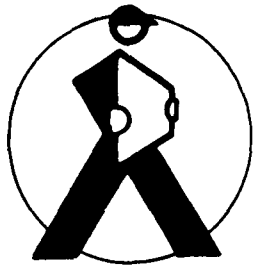
Onee a backpay order is issued and enforcement granted, a compliance proceeding begins, and a backpay specification is formulated that details the exact amounts of backpay due. In the course of complianee proceedings the Board must tailor "the remedy to suit the individual circumstances of each discriminatory discharge." *Sure Tan, Inc. v. NLRB,* 467 U.S. 883, 901-902 & n.11 (1984). Even if the Board inordinately delays in formulating the backpay specification, the courts must enforce the backpay order. Otherwise, wronged

employees would be punished for the Board's nonfeasance. *NLRB v. Ironworkers Local 480,* 466 U.S. 720 (1984).

Difficult Remedial Problems

Runaway shops and plant closings that violate the Act create difficult remedial problems. It is often impractical to order a return to the old location, a reopening of a plant, or even reestablishment of an operation discriminatorily terminated. *See, e.g., Hood Indus. Inc.,* 273 N.L.R.B. No. 1587 (1985) (Board rescinds order to reestablish operation because status quo ante remedy would endanger employer's continued economic viability).

In *In re Jacob H. Klotz,* 13 N.L.R.B. 746 (1939), the runaway employer was ordered to pay either the moving expenses of the employees to the new location or their commuting expenses. The Board has also ordered a runaway employer to reinstate the employees at the new location with backpay and to reimburse them for expenses incurred in moving. *Industrial Fabricating Inc.,* 119 N.L.R.B. 162 (1957) *aff'd as NLRB v. Mackneish,* 272 F.2d 184 (6th Cir. 1959). Although in *Garwin Corp.,* 153 N.L.R.B. 664 (1965), the Board directed a runaway shop employer to bargain with the union at its new location, the court of appeals refused to enforce the order on the ground that it interfered with the section 157 rights of the nonunion employees at the new location. *Local 57, ILGWU v. NLRB,* 374 F.2d 295 (D.C. Cir. 1967).



In the *Darlington* case upon remand, after the partial closing had been found unlawful, the liquidated corporation and its affiliated corporations were held jointly and severally liable for backpay due employees from the time their jobs had been terminated until they obtained substantially equivalent employment or were placed on a preferential hiring list by the companies. *Darlington Mfg. Co.,* 165 N.L.R.B. 1074 (1967), *enforced,* 397 F.2d 760 (4th Cir. 1968), *cert. denied,* 393 U.S. 1023 (1969). The Board has also ordered an employer found to have unlawfully closed a profitable division of the company for the purpose of chilling unionization to reopen the division. *George Lithograph Co.,* 204 N.L.R.B. 431 (1973). This holding applies the general rule that the proper remedy for discriminatory conduct is resumption of the status quo unless the wrongdoer can dem-

onstrate that the normal remedy would cause "undue economic hardship" endangering its "continued viability." *See Monongahela Steel Co. & Youngstown Steel Corp.*, 265 N.L.R.B. 262 (1982).

Recidivists vs. First Offenders

In fashioning remedies, the Board takes into consideration whether the respondent is a recidivist rather than a first offender. If the circumstances so warrant, the Board may issue a broad cease-and-desist order that covers both the unlawful activity found in the case and "similar" misconduct or that proscribes violation of the Act "in any other manner" or with respect to "any other" employer, union, or employees. *See, e.g., Union Nacional de Trabajadores (Catalytic Industrial Maintenanee Co. Inc.),* 219 N.L.R.B. 414 (1975), *affd,* 540 F.2d 1 (1st Cir. 1976) (unions found to have proclivity to engage in violence and threats of violence ordered to cease and desist from restraining or coercing employees of any employer in Puerto Rico). The breadth of a court-enforced Board order can be significant because the Board has the option of instituting a contempt proceeding in the event of subsequent allegedly unlawful activity by the party to whom the order runs.

When an employer has committed massive, pervasive, and flagrant violations of sections 158(a)(1) and 158(a)(3), the Board has sought to develop more effective remedies to overcome the effects of an unlawful anti-union campaign. This is best illustrated by the series of cases arising out of the effort by the Textile Workers Union to organize J.P. Stevens & Co., and the company's full-scale campaign against unionization and persistence in flouting the law. In violation of section 158(a)(3), it discharged scores of union adherents, and in violation of section 158(a)(4), it discharged other employees who testified at Board proceedings. Moreover, the company engaged in unlawful surveillance, interrogations, threats, and other tactics violative of section 158(a)(1). As case after case was heard, first by the Board and then by various courts of appeals—the Board decided 12 cases in five years—the Board and the courts became increasingly impatient with the company and resorted to more stringent remedies. Most of the eases are collected in *J.P. Stevens & Co., Inc.,* 190 N.L.R.B. 751 n.3 (1971); *see also Textile Workers Union of Am. AFL-CIO v. NLRB,* 547 F.2d 792 (4th Cir. 1976).

Among the remedies invoked were the requirements that:

- The usual notice be mailed to all employees in a two-state area, as well as posted on all plant bulletin boards in a three-state area;
- That the notice be read by a company official or a Board agent during working time to all assembled employees at the plants where unfair labor practices had becn committed;

- That the company furnish the union with a list of the names and addresses of the employees at such plants;

- That the union be permitted limited access to company premises to make speeches to assembled employees on company time under certain circumstances; and

- That supervisors be given written instructions to comply with court orders.

In one case, in which the company and a number of its agents were found in civil contempt for refusal to obey previous orders, the company was also ordered to pay all costs and expenses incurred by the Board in preparing and prosecuting the contempt proceedings. *NLRB v. J.P. Stevens & Co., Inc.*, 464 F.2d 1326 (2d Cir. 1972).

Similarly, extraordinary remedies have been invoked against recalcitrant recidivist unions. *See, e.g., NLRB v. Union Nacional de Trabajadores,* 540 F.2d 1 (Ist Cir. 1976), *cert. denied,* 429 U.S. 1039 (1977) (union decertified because of violent misconduct and required at its expense to publish Board notice to employees in all Puerto Rican papers of general circulation as well as any union newspaper); *Teamsters Local 901,* 193 N.L.R.B. 591 (1971) (union required to mail copy of Board's notice, in English and Spanish, to all employees).

SCOPE OF JUDICIAL REVIEW • Remedial issues often raise questions of the appropriate function and scope of judicial review. The courts of appeals have authority under sections 160(e) & (f) of the Act "to make and enter a decree . . . modifying, and enforcing as so modified," the orders of the Board. Yet, clearly, they "should not substitute their judgment for that of the Board in determining how best to undo the effects of unfair labor practices . . . ." *Sure Tan, Inc. v. NLRB,* 467 U.S. 883, 899 (1984). The line between permissible modification and unwarranted substitution of judgment is not always clear. That line is deemed to have been crossed, however, when a court expands the Board's original remedial order in contexts requiring the Board's "informed judgment . . . superior expertise and long experience in handling specific details of remedial relief." *Id.* at 905. If a reviewing court believes a Board remedy to be inadequate, the proper course is to remand the case of the Board for further consideration. *Id.* at 900 n.10; *see also NLRB v. Food Store Employees,* 417 U.S. 1, 10 (1974).

Injunctive Relief: Board's Recent Arsenal

Finally, the Board has increasingly added section 160(j) injunctive relief to its remedial arsenal in recent years. The Board must demonstrate to a United States district court "reasonable cause" to believe respondent em-

ployer or union has violated the Act and that the requested injunctive relief is "just and proper" either to maintain the status quo or to prevent a nullification of the Board's ultimate remedial order. During calendar years 1980-83, the Board authorized 237 section 160(j) cases. Complete or substantial success was achieved in 87 per cent of the cases that were processed to conclusion. NLRB, General Counsel, *Report on Utilization of Section 160(j) Injunction Proceedings January 1, 1980 through December 31, 1983* (Memorandum GC 84-7, Apr. 23, 1984), *reprinted in* 116 Lab. Rel. Rep. (BNA) 128 (June 18, 1984) and 116 Lab. Rel. Rep. (BNA) 149 (June 25, 1984). This form of relief may be requested in a variety of circumstances. Those most relevant to this discussion are:

- Employer interference with union organizational campaigns (enjoining violations and securing affirmative order reinstating discriminatees);
- Employer subcontracting or other changes to avoid bargaining obligations (affirmative restoration order);
- Employer undermining of incumbent bargaining representative by use of threats or discrimination against union leaders (enjoining unlawful conduct and affirmative order reinstating discriminatees);
- Recognition of a minority union and otherwise unlawfully assisting or dominating a labor organization (enjoining unlawful conduct, including request for abrogation of collective bargaining agreement);
- Mass picketing and union violence (enjoining the misconduct);
- Employer refusal to permit access to property to engage in protected activity (affirmative order to gain access requested); and
- Interference with access to the Board's processes (enjoining section 158(a)(4) conduct to limit its chilling effect on other employees). *Id.*

The ability of an employee to air fully before the Board a charge of an unfair labor practice has been recognized as crucial in effectuating the purposes of the Act, both to deter and remedy the commission of unfair labor practices and to ensure "the functioning of the Act as an organic whole." *Bill Johnson's Restaurants, Inc. v. NLRB,* 461 U.S. 739, 740 ("rights secured by §157 of the Act" to employees "includ[e] . . . the right to utilize the Board's processes"); *NLRB v. Industrial Union of Marine & Shipbuilding Workers,* 391 U.S. 418, (because "[a]ny coercion used to discourage, retard, or defeat . . . access [to the Board for relief] is beyond the legitimate interests of a labor organization").

Sheet Metal Workers' Int'l Ass'n v. N.L.R.B., 716 F.2d 1249, 1259 (9th Cir. 1983).