

neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

(June 23, 1947, ch. 120, § 1, 61 Stat. 136.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "This Act" meaning act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to this subchapter and subchapters III (§ 171 et seq.) and IV (§ 185 et seq.) of this chapter. For complete classification of this act to the Code, see Tables.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-524, § 6(a), Oct. 27, 1978, 92 Stat. 2020, provided that: "This section [enacting section 175a of this title, amending sections 173 and 186 of this title, and enacting provisions set out as notes under section 175a of this title] may be cited as the 'Labor Management Cooperation Act of 1978'."

NATIONAL COMMISSION ON TECHNOLOGY, AUTOMATION, AND ECONOMIC PROGRESS

Pub. L. 88-444, Aug. 19, 1964, 78 Stat. 462, established the National Commission on Technology, Automation, and Economic Progress, to make a comprehensive and impartial study and make recommendations from time to time as needed for constructive action. The Commission was directed to submit a final report of its findings and recommendations to the President and the Congress by January 1, 1966, and ceased 30 days after submitting its final report.

EXECUTIVE ORDER NO. 10918

Ex. Ord. No. 10918, Feb. 16, 1961, 26 F.R. 1427, which established the President's Advisory Committee on Labor-Management Policy, was revoked by Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, formerly set out below.

EXECUTIVE ORDER NO. 11710

Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, as amended by Ex. Ord. No. 11729, July 12, 1973, 38 F.R. 18863, which established the National Commission for Industrial Peace, was revoked by Ex. Ord. No. 11823, Dec. 12, 1974, 39 F.R. 43529.

EXECUTIVE ORDER NO. 11809

Ex. Ord. No. 11809, Sept. 30, 1974, 39 F.R. 35565, which established the President's Labor-Management Committee, was revoked by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 142. Definitions

When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or

obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in subchapter II of this chapter.

(June 23, 1947, ch. 120, title V, § 501, 61 Stat. 161.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in par. (3), was in the original "the National Labor Relations Act as amended by this Act" [29 U.S.C. § 151 et seq.].

§ 143. Saving provisions

Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter.

(June 23, 1947, ch. 120, title V, § 502, 61 Stat. 162.)

§ 144. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 23, 1947, ch. 120, title V, § 503, 61 Stat. 162.)

SUBCHAPTER II—NATIONAL LABOR RELATIONS

CODIFICATION

This subchapter is comprised of the National Labor Relations Act, and is not part of the Labor Management Relations Act, 1947, which comprises this chapter.

§ 151. Findings and declaration of policy

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such ma-

terials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

(July 5, 1935, ch. 372, §1, 49 Stat. 449; June 23, 1947, ch. 120, title I, §101, 61 Stat. 136.)

AMENDMENTS

1947—Act June 23, 1947, amended section generally to restate the declaration of policy and to make the finding and policy of this subchapter “two-sided”.

EFFECTIVE DATE OF 1947 AMENDMENT

Act June 23, 1947, ch. 120, title I, §104, 61 Stat. 152, provided that: “The amendments made by this title [amending this subchapter] shall take effect sixty days after the date of the enactment of this Act [June 23, 1947], except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title [section 153 of this title] may be exercised forthwith.”

§ 152. Definitions

When used in this subchapter—

(1) The term “person” includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(2) The term “employer” includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term “representatives” includes any individual or labor organization.

(5) The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term “unfair labor practice” means any unfair labor practice listed in section 158 of this title.

(9) The term “labor dispute” includes any controversy concerning terms, tenure or con-

ditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 153 of this title.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.¹

(July 5, 1935, ch. 372, §2, 49 Stat. 450; June 23, 1947, ch. 120, title I, §101, 61 Stat. 137; Pub. L. 93-360, §1(a), (b), July 26, 1974, 88 Stat. 395; Pub. L. 95-598, title III, §319, Nov. 6, 1978, 92 Stat. 2678.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in pars. (2) and (3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended.

¹ So in original. Probably should be "persons."

which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

1978—Par. (1). Pub. L. 95-598 substituted "cases under title 11" for "bankruptcy".

1974—Par. (2). Pub. L. 93-360, §1(a), struck out provisions which had excepted from definition of "employer" corporations and associations operating hospitals if no part of the net earnings inured to the benefit of any private shareholder or individual.

Par. (14). Pub. L. 93-360, §1(b), added par. (14).

1947—Act June 23, 1947, amended section generally to redefine terms used in this subchapter and to define several new terms.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-360 effective on thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 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.

§ 153. National Labor Relations Board

(a) Creation, composition, appointment, and tenure; Chairman; removal of members

The National Labor Relations Board (hereinafter called the "Board") created by this subchapter prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal

The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot

under subsection (c) or (e) of section 159 of this title and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) Annual reports to Congress and the President

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

(d) General Counsel; appointment and tenure; powers and duties; vacancy

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

(July 5, 1935, ch. 372, §3, 49 Stat. 451; June 23, 1947, ch. 120, title I, §101, 61 Stat. 139; Pub. L. 86-257, title VII, §§701(b), 703, Sept. 14, 1959, 73 Stat. 542; Pub. L. 93-608, §3(3), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95-251, §3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 97-375, title II, §213, Dec. 21, 1982, 96 Stat. 1826.)

REFERENCES IN TEXT

The Labor Management Relations Act, 1947, referred to in subsec. (a), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to this chapter. For complete classification of this act to the Code, see section 141 of this title and Tables.

CODIFICATION

In subsec. (d), "administrative law judges" substituted for "trial examiners" 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.

AMENDMENTS

1982—Subsec. (c). Pub. L. 97-375 substituted "summarizing significant case activities and operations for that fiscal year" for "stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed".

1975—Subsec. (c). Pub. L. 93-608 struck out requirement that report contain the names, salaries, and duties of all employees and officers employed or supervised by the Board.

1959—Subsec. (b). Pub. L. 86-257, §701(b), authorized the Board to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under section 159(c) or 159(e) of this title and certify the results thereof.

Subsec. (d). Pub. L. 86-257, §703, authorized the President to designate the officer or employee who shall act as General Counsel in the case of a vacancy in the office of the General Counsel.

1947—Act June 23, 1947, amended section generally by increasing membership from three to five, delegating its powers and duties to a quorum of any three members, and by appointing a General Counsel and outlining his powers and duties.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-257, title VII, §707, Sept. 14, 1959, 73 Stat. 546, provided that: "The amendments made by this title [amending this section and sections 158, 159, and 160 of this title] shall take effect sixty days after the date of the enactment of this Act [Sept. 14, 1959] and no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which did not constitute an unfair labor practice prior thereto."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to making a report in writing to Congress at the close of each fiscal year, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 184 of House Document No. 103-7.

§ 154. National Labor Relations Board; eligibility for reappointment; officers and employees; payment of expenses

(a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No administrative law judge's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no administrative law judge shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may es-

establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this subchapter shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

(July 5, 1935, ch. 372, § 4, 49 Stat. 451; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 139; Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184.)

CODIFICATION

Provisions of subsec. (a) which prescribed the basic compensation of members of the Board and the General Counsel were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

In subsec. (a), "administrative law judge's" and "administrative law judge" substituted for "trial examiner's" and "trial examiner", respectively, pursuant to section 3105 of Title 5, 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.

AMENDMENTS

1947—Act June 23, 1947, amended section generally by increasing Board members' salaries from \$10,000 to \$12,000 per annum, by providing a salary of \$12,000 per annum for the General Counsel, striking out former subsec. (b) relating to termination of "Old Board", and redesignating subsec. (c) relating to payment of expenses of Board as subsec. (b).

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.

§ 155. National Labor Relations Board; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

(July 5, 1935, ch. 372, § 5, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

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.

§ 156. Rules and regulations

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of title 5, such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(July 5, 1935, ch. 372, § 6, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

CODIFICATION

"Subchapter II of chapter 5 of title 5" substituted in text for "the Administrative Procedure Act" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1947—Act June 23, 1947, amended section generally to provide that the rules and regulations issued by the Board should be in the manner prescribed by the Administrative Procedure Act.

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.

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

(July 5, 1935, ch. 372, § 7, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

AMENDMENTS

1947—Act June 23, 1947, restated rights of employees to bargain collectively and inserted provision that they have right to refrain from joining in concerted activities with their fellow employees.

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.

§ 158. Unfair labor practices

(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) Unfair labor practices by labor organization

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of

his employees subject to the provisions of section 159(a) of this title;

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of in-

ducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

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

(A) where the employer has lawfully recognized in accordance with this subchapter any other labor organization and a question concerning representation may not appropriately be raised under section 159(c) of this title,

(B) where within the preceding twelve months a valid election under section 159(c) of this title has been conducted, or

(C) where such picketing has been conducted without a petition under section 159(c) of this title being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 159(c)(1) of this title or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) Expression of views without threat of reprisal or force or promise of benefit

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

(d) Obligation to bargain collectively

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2) to (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of

the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158, 159, and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) Enforceability of contract or agreement to boycott any other employer; exception

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable¹ and void: *Provided*, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection and subsection (b)(4)(B) the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this subchapter shall prohibit the enforce-

ment of any agreement which is within the foregoing exception.

(f) Agreement covering employees in the building and construction industry

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3): *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

(g) Notification of intention to strike or picket at any health care institution

A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of subsection (d). The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

(July 5, 1935, ch. 372, §8, 49 Stat. 452; June 23, 1947, ch. 120, title I, §101, 61 Stat. 140; Oct. 22, 1951, ch. 534, §1(b), 65 Stat. 601; Pub. L. 86-257, title II, §201(e), title VII, §§704(a)-(c), 705(a), Sept. 14, 1959, 73 Stat. 525, 542-545; Pub. L. 93-360, §1(c)-(e), July 26, 1974, 88 Stat. 395, 396.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-360, §1(c), (d), substituted "any notice" for "the sixty-day" and inserted ", or who engages in any strike within the appropriate period specified in subsection (g) of this section," in loss-of-employee-status provision and inserted enumeration

¹ So in original. Probably should be "unenforceable".

of modifications to this subsection which are to be applied whenever the collective bargaining involves employees of a health care institution.

Subsec. (g). Pub. L. 93-360, §1(e), added subsec. (g).

1959—Subsec. (a)(3). Pub. L. 86-257, §201(e), struck out “and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 159(f), (g), (h) of this title” after “such agreement when made” in cl. (i).

Subsec. (b)(4). Pub. L. 86-257, §704(a), among other changes, substituted “induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment” for “induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment” in cl. (i), added cl. (ii), and inserted provisions relating to agreements prohibited by subsection (e) of this section in cl. (A), the proviso relating to primary strikes and primary picketing in cl. (B), and the last proviso relating to publicity.

Subsec. (b)(7). Pub. L. 86-257, §704(c), added par. (7).

Subsec. (e). Pub. L. 86-257, §704(b), added subsec. (e).

Subsec. (f). Pub. L. 86-257, §705(a), added subsec. (f).

1951—Subsec. (a)(3). Act Oct. 22, 1951, substituted “and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159(f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement;” for “; and (ii) if, following the most recent election held as provided in section 159(e) of this title the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement;”.

1947—Act June 23, 1947, amended section generally by stating what were unfair labor practices by a union as well as by an employer, and by inserting provisions protecting the right of free speech for both employers and unions.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-360 effective on thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by sections 704(a)–(c) and 705(a) 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.

AGREEMENTS REQUIRING MEMBERSHIP IN A LABOR ORGANIZATION AS A CONDITION OF EMPLOYMENT

Section 705(b) of Pub. L. 86-257 provided that: “Nothing contained in the amendment made by subsection (a) [amending this section] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.”

UNFAIR LABOR PRACTICES PRIOR TO JUNE 23, 1947

Act June 23, 1947, ch. 120, title I, §102, 61 Stat. 152, provided that: “No provision of this title [amending this subchapter] shall be deemed to make an unfair

labor practice any act which was performed prior to the date of the enactment of this act [June 23, 1947] which did not constitute an unfair labor practice prior thereto, and the provisions of section 8(a)(3) and section 8(b)(2) of the National Labor Relations Act as amended by this title [subsecs. (a)(3) and (b)(2) of this section] shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act [June 23, 1947], or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8(3) [see subsec. (a)(3) of this section] of the National Labor Relations Act prior to the effective date of this title [sixty days after June 23, 1947] unless such agreement was renewed or extended subsequent thereto.”

§ 158a. Providing facilities for operations of Federal Credit Unions

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this title, or acts amendatory thereof.

(Dec. 6, 1937, ch. 3, §5, 51 Stat. 5.)

CODIFICATION

This section was not enacted either as part of the Labor Management Relations Act, 1947, which comprises this chapter, or as part of the National Labor Relations Act, which comprises this subchapter.

§ 159. Representatives and elections

(a) Exclusive representatives; employees' adjustment of grievances directly with employer

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) Determination of bargaining unit by Board

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2)

decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) Hearings on questions affecting commerce; rules and regulations

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 160(c) of this title.

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. 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. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Petition for enforcement or review; transcript

Whenever an order of the Board made pursuant to section 160(c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section 160 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) Secret ballot; limitation of elections

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining 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 writing 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 resides 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 engag-

ing 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 preliminary 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 de-

leted 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 subses. (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 evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) Court aid in compelling production of evidence and attendance of witnesses

In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Repealed. Pub. L. 91-452, title II, § 234, Oct. 15, 1970, 84 Stat. 930

(4) Process, service and return; fees of witnesses

Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the indi-

vidual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) Process, where served

All process of any court to which application may be made under this subchapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) Information and assistance from departments

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

(July 5, 1935, ch. 372, §11, 49 Stat. 455; June 23, 1947, ch. 120, title I, §101, 61 Stat. 150; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 91-452, title II, §234, Oct. 15, 1970, 84 Stat. 930; Pub. L. 86-507, §1(57), June 11, 1960, as added Pub. L. 96-245, May 21, 1980, 94 Stat. 347.)

CODIFICATION

The original text of par. (2) contained a reference 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

1980—Par. (4). Pub. L. 96-245 inserted provisions authorizing service by certified mail.

1970—Par. (3). Pub. L. 91-452 struck out par. (3) which related to the immunity from prosecution of any individual compelled to testify or produce evidence after claiming his privilege against self-incrimination.

1947—Act June 23, 1947, restated section with addition of provisions requiring the issuance of subpoenas as a matter of course on the request of any party.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

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.

§ 162. Offenses and penalties

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

(July 5, 1935, ch. 372, §12, 49 Stat. 456; June 23, 1947, ch. 120, title I, §101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

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.

§ 163. Right to strike preserved

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

(July 5, 1935, ch. 372, §13, 49 Stat. 457; June 23, 1947, ch. 120, title I, §101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, amended section so as to provide that except as specifically provided for in this subchapter nothing shall interfere with or diminish the right to strike and that nothing was to be construed to affect the limitations or qualifications on the right to strike, thus recognizing that the right to strike is not an unlimited and unqualified right.

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.

§ 164. Construction of provisions

(a) Supervisors as union members

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Agreements requiring union membership in violation of State law

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts

(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant

to subchapter II of chapter 5 of title 5, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

(July 5, 1935, ch. 372, §14, 49 Stat. 457; June 23, 1947, ch. 120, title I, §101, 61 Stat. 151; Pub. L. 86-257, title VII, §701(a), Sept. 14, 1959, 73 Stat. 541.)

CODIFICATION

In subsec. (c)(1), “subchapter II of chapter 5 of title 5” substituted for “the Administrative Procedure Act” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86-257 added subsec. (c).
1947—Act June 23, 1947, amended section generally by inserting new subject matter. Section formerly referred to conflict of laws, see section 165 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.

§ 165. Conflict of laws

Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled “An Act to establish a uniform system of bankruptcy throughout the United States”, approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U.S.C., title 11, sec. 672), conflicts with the application of the provisions of this subchapter, this subchapter shall prevail: *Provided*, That in any situation where the provisions of this subchapter cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

(July 5, 1935, ch. 372, §15, 49 Stat. 457; June 23, 1947, ch. 120, title I, §101, 61 Stat. 151.)

REFERENCES IN TEXT

The Act approved July 1, 1898, referred to in text, popularly known as the Bankruptcy Act, was classified generally to former Title 11, Bankruptcy, and was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 164 of this title. Section formerly referred to separability provisions, see section 166 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.

§ 166. Separability

If any provision of this subchapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(July 5, 1935, ch. 372, §16, 49 Stat. 457; June 23, 1947, ch. 120, title I, §101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 165 of this title. Section formerly referred to short title of chapter, see section 167 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.

§ 167. Short title of subchapter

This subchapter may be cited as the “National Labor Relations Act”.

(July 5, 1935, ch. 372, §17, as added June 23, 1947, ch. 120, title I, §101, 61 Stat. 152.)

EFFECTIVE DATE

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.

§ 168. Validation of certificates and other Board actions

No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 159 of this title, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 159(f), (g), or (h) of this title prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 159(f), (g), or (h) of this title prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this chapter upon any person for failure to honor any election or certificate referred to above, prior to October 22, 1951: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 160(e) or (f) of this title and which have become final.

(July 5, 1935, ch. 372, §18, as added Oct. 22, 1951, ch. 534, §1(a), 65 Stat. 601.)

REFERENCES IN TEXT

Section 159(f), (g), or (h) of this title, referred to in text, was repealed by Pub. L. 86-257, title II, §201(d), 73 Stat. 525. See section 431 of this title.

§ 169. Employees with religious convictions; payment of dues and fees

Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a non-religious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of title 26, chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

(July 5, 1935, ch. 372, § 19, as added Pub. L. 93-360, § 3, July 26, 1974, 88 Stat. 397; amended Pub. L. 96-593, Dec. 24, 1980, 94 Stat. 3452.)

AMENDMENTS

1980—Pub. L. 96-593 inserted reference to nonlabor organization and provisions respecting charges to employee for use of grievance-arbitration procedure, and struck out applicability of provisions to employees of health care institutions only.

EFFECTIVE DATE

Pub. L. 93-360, § 4, July 26, 1974, 88 Stat. 397, provided that: "The amendments made by this Act [enacting this section and section 183 of this title and amending sections 152 and 158 of this title] shall become effective on the thirtieth day after its date of enactment [July 26, 1974]."

SUBCHAPTER III—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

§ 171. Declaration of purpose and policy

It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached

through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

(June 23, 1947, ch. 120, title II, § 201, 61 Stat. 152.)

EXECUTIVE ORDER NO. 11482

Ex. Ord. No. 11482, Sept. 22, 1969, 34 F.R. 14723, which related to the Construction Industry Collective Bargaining Commission, was revoked by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 11849

Ex. Ord. No. 11849, Apr. 1, 1975, 40 F.R. 14887, which related to the Collective Bargaining Committee in Construction, was revoked by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 172. Federal Mediation and Conciliation Service

(a) Creation; appointment of Director

There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

(b) Appointment of officers and employees; expenditures for supplies, facilities, and services

The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5, and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.