10124–10194 *Settlements*

10124 *Settlements in General*

10124.1 *Policy:* It is the policy of the Board and the office of the General Counsel to provide full opportunity to the parties to reach a mutually satisfactory resolution of issues as an alternative to litigation. Settlement of a meritorious case is the most effective means to improved relationships between the parties and to permit the Board to concentrate its decisional activities in other cases, thereby expediting all case action.

The expenditure of funds in connection with the formal stages of a case and the effect of the passage of time on the effectiveness of the Board in accomplishing the objectives of the Act dictate that the achievement of voluntary remedial action be given high priority and that complete and diligent effort be exerted to achieve the settlement of the greatest possible number of meritorious cases.

NOTE: If charge is partially dismissed, approval of agreement should await expiration of appeal period or disposition of appeal.

10124.2 *Principal Factor in Achieving Settlement:* Experience has clearly demonstrated that, by far, the principal factor affecting a Region's success in achieving settlement is the confidence of the public in the ability and integrity of the Regional Office; when the public is convinced that the Regional Office, when proposing or negotiating settlement, has fully investigated and considered the facts of the case and honestly believes that the formal prosecution of the case would result in the finding of unfair labor practices, the chances of settlement are considerably increased. In this regard, it should be noted that those Regional Offices with a high rate of successful litigation also have a high rate of settlement of meritorious cases.

10124.3 *Scope of Remedy:* Public confidence is also nurtured by the history of the nature and extent of the settlements sought and obtained by the Regional Office. In this connection, it should be noted that the remedy provided for in a settlement must not exceed that which would be expected from a fully favorable Board decision. It should not, for example, require backpay for one who is not entitled to it on the facts of the case. Moreover, adjustment of a charge by settlement is limited to securing compliance with the Act. It may not include provisions on matters in which the Agency has no jurisdiction under the Act. By the

same token, a settlement agreement should substantially remedy all unfair labor practices committed. Any proposal of less than a substantial remedy must be affirmatively related to the special factors or demands of the particular case (i.e., by patent trial weaknesses, overall costs, time elements).

10124.4 *Limitations on Regional Authority:* See section 11751.2 where clearance from Division of Operations Management should be sought before approval of settlement agreements.

10126 *Timing of Settlement Attempts*

10126.1 *Initial Steps to Achieve Settlement:* The desirability of voluntary disposition at an early stage in the life of a charge cannot be overemphasized. The process to obtain such voluntary disposition deserves the devotion of sincere effort, and no case can be considered well investigated unless all attempts to settle a meritorious charge at the earliest stage possible have been made. Thus, it is incumbent on the Board agent investigating the case to take the initial steps to achieve settlement. If, at the conclusion of the investigation, the Board agent and his supervisor are convinced that the charge allegations, in whole or in part, have merit, the initial steps to effectuate a proper settlement should be taken by the Board agent. The taking of such action is, of course, subject to whatever restrictions the Regional Director and/or the regional attorney may place on members of the regional investigatory staff. In certain cases in which the charge allegations clearly have merit, the Board agent may take indicated action to settle the matter without expressed clearance through his supervisor. It is the responsibility of the Regional Director to police this type of action and place such restrictions on individual Board agents as may be required (i.e., requiring advanced telephonic authorizations or imposing any other appropriate limitations on the scope of settlement authority possessed by individual Board agents).

When initial approach to achieve settlement, discussed above, precedes regional determination as to the merits of the case, the Board agent, during the initial settlement interview, should make clear to the parties that the proposal of settlement is based on the investigator's conclusions in the matter and that any agreement reached would be subject to the Regional Director's adoption of the investigator's recommendation.

10126.2 *Further Efforts Prior to Complaint:* If settlement efforts prior to regional determination fail, and if it is ultimately determined to issue complaint, further efforts to achieve settlement should be made prior to actual issuance of the complaint. Indeed, experience has indicated that quite often this period has been critical and fruitful in consummating settlements. The investigative agent, in conjunction with his/her supervisor, and the Regional Office settlement coordinator, is directly responsible for making these settlement efforts. Because of the settlement coordinator's relatively long years of experience in regional operations, the stature he/she has achieved through such experience, the settlement coordinator's role in the settling of cases may be likened to that of an ''elder statesman'' and for this reason would presumably increase the possibility of settlement during the 15-day period between regional determination and issuance of complaint.

Of course, issuance of complaint should not be unreasonably delayed during the 15-day period and, where it is clear from the outset that settlement at this stage will not be achieved, complaint should issue immediately. Conversely, the assistant to the Regional Director should be given a reasonable period of time during the 15-day period to effectuate settlement before complaint issues. Normally, the charged party should feel satisfied that discussions up through the assistant to the Regional Director constitute a full exploration of settlement possibilities and at that time will make a determination whether or not to settle. In certain situations, however, where, for example, there are indications that the charged party feels that his settlement offers have not been fully explored or where the assistant to the Regional Director believes that further settlement efforts may prove fruitful, the assistant to the Regional Director should at this time make known the Regional Director's availability for further settlement negotiations.

10126.3 *Efforts After Complaint:* Settlement efforts should, of course, continue at all appropriate stages of the proceeding. Settlement efforts after complaint should be continued by the attorney assigned to the case. It should be noted that settlement procedures at all stages should continue to be flexible (i.e., if the services of the settlement coordinator or any member of the Regional Office hierarchy would be of value they should be utilized after complaint has issued and even after hearing has opened).

The attorney assigned to try the case, if he/she has not participated in settlement discussions prior to complaint, should review all previous efforts to ascertain whether untried approaches exist that may lead to an agreement.

10128 *Techniques of Settling*

10128.1 *Basic Requirement:* Skill in attaining settlements is gained primarily from experience *and the following discussion of settlement techniques can only serve as guidelines to be followed in settlement negotiations*. There is, however, one basic requirement that is absolutely essential before settlement efforts are commenced, and that is *a complete and thorough knowledge of the case*, both as to the facts and to the law. The Board agent should display confidence where the available facts support his position and indicate that there exists a proper case for disposition by settlement. Although a settlement conference is not a forum for trying a case, a knowledgeable point made or a telling answer given will go a long way toward breaking down the opposition's willingness to test the issues.

10128.2 *Conduct of Board Agent:* Most often it is the reaction of the charged parties to the Board agent's initial approach in the direction of settlement that determines whether or not settlement will be ultimately consummated. For this reason, it is important that the Board agent conduct himself/herself so as to insure the best chances of obtaining a favorable reaction from the charged party to the proposal of a settlement. At all stages of settlement negotiations, particularly during the initial conference with the charged party, the Board agent should conduct himself/herself in an objective and detached manner and thereby convey to the charged party that the Board has no ax to grind in the particular case and that settlement is being offered because

a. It is required by the provision of the Administrative Procedure Act (Sec. 5(b) ''Procedure . . . (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit'') (5 USC § 554(c)(1)).

b. After full and careful investigation and consideration of the matter the Board agent (or the Regional Director after determination to issue complaint has been made) is convinced that certain unfair labor practices have been committed.

c. Both the Government and parties to the case would save considerable time and expense by voluntary adjustment of the matter.

Once the charged party is convinced of the benefits to be achieved not only by the charged party but also by the Government in the voluntary adjustment of the case, much has been accomplished toward the ultimate settlement of the matter. This is not, however, meant to minimize the effect of the subsequent negotiations of the details of the settlement.

In attempting to adjust a meritorious C case, the Board agent is faced with somewhat of a dilemma:

a. The Board agent must reveal enough to demonstrate that the case can be won but must not disclose enough to endanger the case should settlement negotiations prove fruitless.

b. In no event should the Board agent reveal names of witnesses or other sources of information.

c. In sum, the Board agent should give a general picture of what the latter believes occurred, adding that in his/her own opinion the available evidence will support the picture.

10128.3 *Reservations in Settlement Contacts:* It is important that settlement contacts, even subsequent to regional determination to issue complaint, should be accompanied by certain clearly expressed reservations. It should be made clear (unless, in a regional committee meeting, instructions to the contrary have been given) that the proposed settlement agreement is being recommended by the agent negotiating the settlement subject to the approval of the Regional Director. It should also be stressed that the proposal is based on available facts and is being made without prejudice to any other position that might be taken should the settlement efforts fail. The approach should furnish ''protection'' against a refusal of the Regional Director to acquiesce in the proposed arrangement because of disagreement on the facts or law, any change of position that might follow the procurement of additional facts, and/or any ''stiffening'' of requirements should further action be deemed necessary (i.e., insistence on a consent judgment).

10128.4 *Draft in Advance of Negotiations:* If time permits, a draft of the proposed settlement agreement should be prepared in advance of settlement negotiations. The draft agreement should include all remedial

action that, under the circumstances, might be ordered by the Board on a successful prosecution of the case. Everything should be done to convey that what is being asked of the respondent is *standard* practice. When appropriate, the printed settlement form, NLRB-4775, should be used. The form is adaptable for settlements of either employer unfair labor practices or union unfair labor practices. Care should be taken when using the form to strike out those words and phrases that are not applicable to the particular settlement situation. (The types of settlements to be proposed are discussed under sec. 10140.) The respondent also should be told that any deviations from standard practice, while appropriate under certain circumstances, must be supported by valid justifications.

10128.5 *Nature and Limitations of Settlement Discussions:* When the possibility of settlement is real, and in order to promote settlement, the Region should be prepared to openly discuss the legal theory and the cases on which it relies.

In addition, it should be prepared to discuss the nature of the evidence on specific violations short, of course, of revealing the names of witnesses. Following are examples of the kind of evidence that, in appropriate circumstances, should be revealed to the respondent.

a. With respect to an allegation of surveillance, inform the respondent that we have evidence from more than one witness that a supervisor [give name] was observed on the night of [give date] about [give time] in an automobile [describe] and further indicate that our witnesses have been able to describe the manner in which the supervisor was dressed.

b. In an 8(a)(3) case where the respondent is defending that the alleged discriminatee was discharged because of absenteeism, we should indicate that we have evidence that the supervisor orally excused the absences of the discriminatee and that we have evidence from several employee witnesses that their absences of a similar nature were also orally excused by several employer supervisors.

c. In an 8(b)(7)(C) case, we should indicate that we have witnesses who overheard, on a particular date and at a particular place, the business representative and the steward in a discussion wherein it was conceded that the purpose of picketing was not area standards, but was recognitional and organizational. In such a case, we can also inform the respondent that we have evidence from several employee witnesses that on a particular date they were contacted by a particular business agent who solicited authorization cards from these witnesses.

It should be clear that the above-described specificity in settlement discussions should occur only where settlement is a *real* possibility. Where in the Region's good judgment the possibility is very remote, the Region is not required to engage in marathon detailed settlement discussions for the purpose of permitting the respondent to discover the General Counsel's case.

While settlement discussions should be sufficient to explore fully all settlement possibilities, they should not be permitted to drag out unnecessarily. In this connection, it is usually useful to require the respondent to state all objections to the proposed settlement before discussing any one of them individually. As soon as agreement is reached as to the basic requirements of the settlement agreement, the respondent's signature should be obtained. For example: If the respondent agrees to reinstate with backpay, but the amount of backpay plus interest computed at the adjusted prime interest rate in effect has not been computed, the agreement may, under certain circumstances, be completed and executed without the amount of backpay specified, but should include the statement ''amount of backpay plus interest to be computed by the Regional Director in accordance with existing Board formula.''

If the amount of backpay can be liquidated at the time of basic agreement to the settlement, such amount should be specified in both the settlement agreement and in the notice. (In an *informal* settlement, listing backpay in the notice shall be within the Regional Director's discretion; in connection with *formal* settlements, see further discussion on this point under sec. 10164.5.)

10128.6 *Participants:* Generally, settlement discussions, to be most effective, should be conducted with the respondent alone, or with its representative or counsel. Usually, a joint conference of the parties is useful only to dispose of details after the respondent has agreed in principle

to the settlement. The joint conference, when held, should not be made the occasion for recriminations, arguing merits, expounding theories, investigation, or ''horse-trading.'' A request that a stenographer record the discussions should ordinarily be rejected by the Board agent, who should explain that the presence of a recorder is a deterrent to free and open discussion and exploration of possible solutions.

10130 *Substance*

10130.1 *Generally:* Settlements are as varied as the circumstances of cases and no standards can be set down that will cover all cases. The principles appearing in this subsection are offered as guides for action.

Problems involving reinstatements, computation of backpay, interest, deductions and withholdings, and lump sum settlements are substantially the same as those encountered in compliance with administrative law judge decisions, Board orders, and court judgments, and substantially the same principles should be applied. (See Compliance Manual.)

In preparing settlement agreements, both formal and informal, that provide for interest on backpay be sure to include the following footnote:

> Interest computed at the adjusted prime interest rate in effect per annum shall be added to [here insert backpay, dues, fees, and/or assessment, as appropriate] to be computed in the manner set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962); *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

A lump sum settlement should be based on the combined estimate of net backpay and interest (sec. 10623.4). NOTE: Social security and withholding taxes are deducted on the amount of backpay but not on the interest. Interest payments are not ''wages'' subject to these taxes.

10130.2 *Reinstatement Refused or Not Desired:* Where, because of nondiscriminatory changes in the charged party's operations, reinstatement to one's old position is not feasible (sec. 10528), it may be agreed that there will be reinstatement to another position or that employment will be offered at some time in the future. In such cases, the settlement agreement should set forth specific details in order to avoid future difficulties. Also, if an offer of reinstatement has been refused or the discriminatee does not desire reinstatement, the settlement agreement should so state.

10130.3 *Joint and Several Liability:* In companion CA–CB cases growing out of the same acts of discrimination, the settlement agreement may require the respondent employer and the respondent union jointly and severally to make whole the discriminatees. The agreement should generally not attempt to apportion the liability between the employer and the union. However, where the joint and several liability of an employer and union refers solely to a dues reimbursement remedy and they agree that the union alone shall make such reimbursement, no further efforts need be made to require equal apportionment of the liability in the absence of unusual circumstances such as a domination of the union by the employer.

In cases when all respondents indicate a desire to settle, each should pay its equal share. When one party is willing to settle, but the other respondent insists on trial of the case, a settlement agreement may be taken from the party who is willing to settle. Appropriate provisions should be inserted in the agreement, however, to assure that the respondent or respondents signing the agreement will bear only its or their proportionate share of the backpay liability unless efforts to obtain payment of the remaining portion of the backpay from the other respondent or respondents should fail. It is suggested that the full amounts of backpay (including the portion that should be borne by the party or parties refusing to enter into the settlement) be set opposite the names of the discriminatees in the ''make-whole'' provisions of the agreement and that language similar to the following be inserted in another paragraph of the agreement:

> For purposes of this agreement [stipulation] the respective amounts of backpay set forth herein represent the full loss of earnings of these employees respectively to this date. Upon [approval of this agreement] [entry of a Board order pursuant to this stipulation] the respondent will pay immediately to each of said employees one-half of the amount set forth opposite that individual's name. The respondent will pay the remaining half of each such amount only on being informed by the Regional Director that efforts to obtain payment from any other respondent have failed.

10130.4 *Departure from Equal Proportions Basis:* One of two potential joint-and-several respondents may be willing to settle by paying its share of the backpay as well as the share of the other respondent. Such offer *should not be solicited* as part of the settlement agreement. However, if such desire is a *voluntary* one and *all* reasonable efforts to

obtain settlement from the other respondent have failed, full payment may be accepted from one in order to avoid hardship to the individuals involved.

The offer of one respondent to pay all shares voluntarily may be rejected when this appears advisable (e.g., when the recalcitrant respondent has repeatedly proved difficult in this connection and when formal proceedings with possible eventual collection therefrom would have an exemplary impact). The offer to pay all shares of the backpay should be accepted only without prejudice to processing further in all other respects the case against other respondents and only with the clear understanding of the parties that full payment satisfies our make-whole requirements and forecloses us from later seeking a proportionate share from other respondents. In this connection, Board clearance, through the Division of Operations Management, is required for the proposed acceptance of a formal backpay settlement on other than a proportionate basis.

The above statements about division of backpay liability are, of course, applicable only to periods during which there may be joint-and-several liability on the part of more than one respondent. For a period in respect to which only one respondent is liable, the agreement should, of course, provide for backpay liability only for the one respondent. For example, a labor organization may toll its liability for backpay by giving notice to the employer and the employee involved that it no longer objects to the employment of the discriminatee by the respondent employer. Under these circumstances, it is not necessary that the backpay liability be apportioned for the period after the respondent union has tolled its liability.

10130.5 *Respondents Insolvent:* When there are several respondents involved in a case and one or more becomes insolvent before paying its share, the unpaid amount should be solicited without delay from the other respondents. (See also 10505 regarding the respondent's ability to comply and issues of derivative liability.)

10130.6 *Parties; 8(a)(2) or 8(b)(3) Situations:* In cases involving disestablishment, withdrawal of recognition from, or voiding of all or any part of an agreement with a labor organization, that organization should be a party to the agreement (secs. 10134.3 and 10134.4).

10130.7 *Nonadmission Clauses:* Nonadmission of liability by the respondent should not be routinely incorporated in settlement agreements. Nonadmission clauses may not be incorporated in a formal settlement which does not provide for a court judgment (see sec. 10168, par. 10). Board policy is that nonadmission clauses should not be included in notices. (See *Independent Shoe Workers of Cincinnati, Ohio (U.S. Shoe Corp.)*, 203 NLRB 783 (1973).)

10130.8 *Position of Discriminatees:* If the respondent wishes to know whether discriminatees desire reinstatement and how much backpay is due, every effort should be made to ascertain and convey this information. On the other hand, no effort should be made to persuade discriminatees to take a position on reinstatement for the purpose of obtaining settlement other than they would take if formal action were undertaken; on the contrary, they should be told what they might expect should formal action be successfully taken and what they might expect should the case eventually be lost.

Even though a discriminatee's willingness to forgo reinstatement is a determining factor in a respondent's willingness to settle, the stipulated order and notice in such case should recite either (a) that discriminatee does not desire reinstatement and would not accept such an offer or (b) that an offer of reinstatment has been refused, as the case may be. In such cases, the discriminatee's *rejection for purposes of this settlement* should also be procured in writing and inserted in the file.

10130.9 *Remedy; Exclusive Hiring Hall Arrangement:* In many instances referrals to jobs pursuant to an exclusive hiring hall arrangement are made from a seniority list based on the number of hours worked in the employing group. Careful consideration should be given to the seniority standing of the discriminatee in settling this type of case. The settlement agreement, in addition to backpay, should provide that the discriminatee be given credit in the seniority formula for the number of hours of employment discriminatorily denied him.

10132 *Notices to be Posted*

10132.1 *Posting and Language of Notices:*

a. *Posting, generally:* Settlement agreements should provide for posting of notice to employees or union members that reassure them of their rights under Section 7 and that outline the action taken in connection with the settlement. The posting should be for 60 consecutive days unless prior clearance has been obtained from the Division of Operations Management.

b. *Posting, CA–CB cases:* Settlement agreements entered into in related CA and CB cases (where the company and the union are jointly and severally liable) should provide for posting of the respondent union's notice and the respondent company's notice at the same places and under the same conditions.

c. *Language:* While the Regional Offices have considerable latitude in determining language to be used, they should, in general, follow the language of notices in Board orders in comparable cases. Equal care should be taken in drafting language for use in notices in informal cases and for recommendations to the administrative law judges and the Board in formal proceedings. Particularly remember, while it is proper to require the posting of a notice that declares publicly that a party will conform *in the future* to the mandates of the Act, it is improper to force a party to confess past guilt. The cases precluding such confession of guilt are collected in *NLRB v. Express Publishing Co.*, 312 U.S. 426, 438–439 (1941). Thus, notices may not be phrased so as to require a respondent to admit a violation of the Act, either directly (e.g., ''We violated the law when we fired John Smith'') or by implication (e.g., ''We will not fire anyone for union activity *again*'').

10132.2 *Preparation:* The notices to be posted should be prepared by the Regional Office and not by the respondent. Use the preprinted notices available to Regional Offices.

Informal Settlement

Forms NLRB-4722 and 4724 (Notice to Employees)
Forms NLRB-4723 and 4725 (Notice to Members)
Forms NLRB-4781 and 4782 (Notice to Employees and Members)

Formal Settlement

Forms NLRB-4727 and 4728 (Notice to Employees)
Forms NLRB-4726 and 4729 (Notice to Members)
Forms NLRB-4758 and 4759 (Notice to Employees and Members)

Insert the following suggested language in the formal settlement notice, as appropriate:

> ''Pursuant to a stipulation providing for a Board Order''
>
> or
>
> ''Pursuant to a stipulation providing for a Board order and a consent judgment of any appropriate United States Court of Appeals''

Notices attached to settlement agreements, both formal and informal, which provide for interest, should include the backpay and/or dues, reimbursement paragraph—''with interest computed at the adjusted prime interest rate in effect'' (sec. 10130.1). For suggested language in notices see sections 10136, 10168, and 10170.

10132.3 *Union-Security Proviso:* In States where union security is prohibited, the Regional Director is authorized to delete, upon request of the respondents, the standard union-security proviso:

> . . . 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 8(a)(3) of the Act as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(For suggested language in notices in 8(b)(4) and 8(e) settlement, see sec. 10136.)

10132.4 *Posting Sites:* 8(a) notices are to be posted at the situs or premises of the employer involved. 8(b) notices should be posted at the union hall and, where appropriate, at the union meeting place and at the situs or premises of the employer(s) involved. Where the circumstances require it, there should be a mailing of notices to individuals. (See sec. 10132.1 where joint CA and CB cases are involved.)

Occasionally, mere posting will be considered inadequate—for example, where the work project at which the unfair labor practices took place has terminated or has been discontinued, where there was an unlawful hiring hall that affected employment of persons who are widely scattered or unidentified, or where the unlawful activities involve ''general'' or ''widespread'' practices. In such cases, publication in a daily newspaper of general circulation, as opposed to publications serving only specialized groups of readers, should be required. Publication should be at the respondent's expense and should be effected on 3 separate days within a 1-week period designated by the Regional Director. Such publication should be in addition to, not a substitute for, such other notice posting as is required by the circumstances.

10132.5 *Number Required:* At the time the settlement agreement is executed, the number of notices required for posting should be ascertained so that a number sufficient for attachment to copies of the agreement and for eventual posting can be prepared in the first ''run.''

10134 *Parties to Informal or Formal Settlements*

10134.1 *Charged Party (Respondent):* The charged party is a necessary signatory to any informal or formal settlement. Without his cooperation there can be no basis for settlement.

10134.2 *Charging Party:*

a. Normally, the charging party should be a party to the settlement.

b. *Unilateral settlement:* Where the respondent agrees to take action that will effectuate the purposes of the Act, an agreement may be consummated without the participation of the charging party. (See sec. 10152 on informal settlements and sec. 10164.7 on formal settlements.)

c. Where, for reasons of his/her own, the charging party does not wish to enter into the agreement but has no real objections to the remedial action proposed, he/she may be willing to sign a separate document to the effect that he/she is aware of the contents of the agreement and that he/she has no objections to it or will not appeal from a dismissal based on it.

10134.3 *Other Parties Involved in CA Cases:* In every CA case in which the contemplated settlement provides for the disestablishment of a labor organization, or for the withdrawal and/or withholding of recognition from a labor organization, or for ceasing to give effect to part or all of an existing collective-bargaining contract with a labor organization, that organization should be a party to the settlement. It must, before approval of the agreement,

a. Be a party or signatory to the agreement itself; or

b. File with the Regional Director a letter or other document stating that it has knowledge of the proceedings and of the contemplated settlement and that it waives any right to be a party to the proceedings or to contest the settlement; or

c. File with the Regional Director an affidavit signed by the last executive officer of the organization certifying that the organization is dissolved and out of existence and that it does not claim to represent any of the employees in the unit involved.

Where, in a formal settlement, either b or c is used, the letter, document, or affidavit must be made part of the record (see sec. 10166.5).

10134.4 *Other Parties in CB Cases:* In a CB case in which the contemplated settlement provides for ceasing to give effect to part or all of an existing collective-bargaining contract with an employer, that employer should be a party to the settlement. It must, before approval of the agreement, follow step a or b, above.

10134.5 *Nonparticipation of Necessary Parties:* Where the participation of other necessary parties cannot be obtained, it is necessary that the General Counsel's representative proceed formally. The allegedly dominated organization, for example, should be served with complaint and notice of hearing. If it fails to appear, only the respondent, charging party, and the General Counsel's representative remain as participants in the case. Under such circumstances, they may enter into a settlement stipulation reciting the facts of service on and nonappearance of the 8(a)(2) union.

10134.6 *CE Cases:* Settlements of cases involving CE charges contemplate that the charged party will cease giving effect to or attempting to enforce that part of the contract that contravenes the limitations of Section 8(e) of the Act. In addition, no settlement should be approved in a CE case where only one of the contracting parties is charged, unless the party not charged shall:

a. Be a party or signatory to the agreement itself; or

b. File with the Regional Director a letter or other document stating that it has knowledge of the proceedings and of the contemplated settlement and that it waives any right to be a party to the proceedings or to contest the settlement.

10136 *Proposed Notices in 8(b)(4) and 8(e) Settlements*

10136.1 *8(b)(4) Notices:* The following language is suggested to assist in drafting proposed notices:

WE WILL NOT (a) engage in, or induce or encourage any individual employed by or by any other 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 (b) threaten, coerce, or restrain , or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is [insert appropriate object listed below]. [Where the violation is limited to either 8(b)(4)(i) or (ii) the clause not involved should be omitted and the ''where in either case an object thereof is'' should be changed to ''where an object thereof is.'']

1. (a) . . . forcing or requiring , an employer or self-employed person [in situations where the union is attempting to force a number of employers or self-employed persons to join, it would be appropriate to substitute '' , or any other employer or self-employed person''] to join , or any other labor or employer organization.

or (b) . . . forcing or requiring , to enter into any agreement containing the following clause: [set forth specific clause] or to enter into any other agreement that is prohibited by Section 8(e) of the National Labor Relations Act, as amended.

2. (a) . . . forcing or requiring , or any other 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 [''or any other person'' if appropriate] or (b) . . . forcing or requiring [''or any other employer'' if appropriate] to recognize or bargain with a labor organization as the representative of its employees unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the National Labor Relations Act. [If only one of these objects is involved, that object only should appear in the notice.]

3. . . . forcing or requiring to recognize or bargain with , or any other labor organization, as the representative of its [or his/her] employees so long as , or any other labor organization, is the certified representative of such employees pursuant to provisions of Section 9 of the National Labor Relations Act.

> 4. . . . forcing or requiring [''or any other employer'' if appropriate] to assign the work of [describe work] to employees who are members of or represented by , rather than to employees who are members of or represented by [or who are not members of or represented by], unless and until is certified by the Board, or the Board orders to bargain with , as the representative for employees performing such work.

10136.2 *8(e) Notices:* Although the violation under Section 8(e) is to ''enter into'' the prohibited contract, the language in the proposed notice for settlements involving Section 8(e) provides, in addition, that the respondent employer and/or union will not ''maintain, give effect to, or enforce'' the 8(e) contract or agreement. The latter was inserted because it is believed that such remedial language is necessary to give meaning and effect to Congress' intent to interdict ''hot cargo'' clauses in collective-bargaining contracts.

The following is proposed as an appropriate notice where there is a settlement involving Section 8(e):

> WE WILL NOT maintain, give effect to, or enforce our agreement with [union or employer], entered into on , insofar as it provides: [set forth clause]; or to any extension, renewal, modification, or supplement thereof, or enter into any other agreement with [''or any other (labor organization) (employer)'' if appropriate] whereby [we] [such employer] cease(s) or refrain(s) or agree(s) to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any employer, or to cease doing business with any other person.

10137 *Settlement of 8(b)(4)(D) Cases:* In view of the legislative purposes underlying Sections 8(b)(4)(D) and 10(k), a work assignment dispute would not be viewed as ''settled'' if the charging party involved in the dispute objects to the proposed settlement agreement and if the agreement does not contain an unequivocal disclaimer by the charged union to the disputed work. It should be kept in mind, however, that where the work assignment dispute is to be viewed as no longer extant because of a *clear and unequivocal* disclaimer to the disputed work at an appropriate time, further proceedings on the charge would be unwarranted. In such cases the charge, absent withdrawal, should be dismissed.

10137.1 *Unilateral Settlement Agreement:* A unilateral settlement agreement that provides for no unequivocal disclaimer by the charged union to the disputed work should not be approved over the objection of the charging party involved in the dispute, since such a settlement could not be said to have settled the underlying dispute. On the other hand, if the respondent union clearly and unequivocally disclaims interest in the disputed work, a settlement agreement of the charge may be approved even over the objection of the charging party.

In the first instance, reassertion of the claim to the disputed work by the charged union, unaccompanied by new 8(b)(4)(i) or (ii) conduct after execution of a ''settlement'' agreement that contains no disclaimer, would not permit its being set aside since the union thereby merely undertook not to engage in subsection (i) or (ii) conduct in support of an 8(b)(4)(D) object. On the other hand, where a unilateral settlement agreement contains a clear and unequivocal disclaimer by the respondent union of the disputed work, a new claim for the disputed work by the respondent union would be inconsistent with the disclaimer in the settlement agreement and, even in the absence of new conduct, would accordingly warrant setting aside the settlement and proceeding in the case.

10137.2 *Settlement Agreement Where No Objection by Charging Party:* A settlement agreement can be approved, even in the absence of a clear and unequivocal disclaimer by the respondent union to the disputed work, if the charging party involved in the dispute agrees to the settlement. In such cases the respondent union's agreement to refrain from 8(b)(4)(D) conduct is apparently accepted by the charging party as a resolution of the dispute and, accordingly, the settlement agreement can be approved by the Regional Director.

However, if the agreement does not contain a clear and unequivocal disclaimer by the respondent union to the work in dispute, the reassertion of a claim to the disputed work by the respondent union would not, standing alone and in the absence of new 8(b)(4)(i) or (ii) conduct, permit setting aside the settlement agreement. Consequently, prior to approval of a bilateral settlement agreement without a clear and unequivocal disclaimer by the respondent union to the disputed work, the Region should satisfy itself that the charging party is aware that merely a new claim by the charged union for the work in dispute would not warrant setting aside the settlement agreement.

10140 *Types of Settlement*

10140.1 *Generally:* In some cases, the filing of a charge may result in the taking of action by the charged party, which while not coinciding with Board remedies may satisfy the charging party; in others, the charged party may take some or all of the remedial action that the Board would order but will not enter into a settlement agreement calling for such action. Whether either of these categories of ''settlement'' will be considered sufficient to dispose of the charge will be discussed in non-Board settlements (sec. 10142); but whether or not they serve this purpose, they are not considered settlement agreements.

A settlement agreement, as the term is used here, is an agreement on which the Board has placed its imprimatur, with which the Board will police compliance, and on the basis of which, when complied with, the parties are notified that the matter has been closed (sec. 10150).

Settlement agreements consist of *informal* (secs. 10146–10155) and *formal* agreements (secs. 10164–10174).

10140.2 *Informal v. Formal, Prior to Complaint:* Where complaint has not yet issued and there is no history of unfair labor practices by the charged party indicating an apparent likelihood of recurrence or extension of the instant unfair labor practices, the normal device for effecting a voluntary adjustment is the *informal* settlement.

Where there is an unfair labor practice history tending to demonstrate a likelihood of recurrence or extension, a *formal* settlement should be sought even though complaint has not yet issued.

10140.3 *Violence:* Where in a particular case there is either continuing violence or an apparent likelihood of recurring violence, even absent an unfair labor practice history, a *formal* settlement should be sought, even though complaint has not yet issued.

Where there are relatively isolated instances of violence that have since terminated and if the Regional Director is satisfied that in all the circumstances there will be no recurrence of violence, an *informal* settlement may be utilized to effectuate a voluntary settlement.

10140.4 *Deviation from Rules:* Deviation from these rules requires explanation in the file.

10142 *Non-Board Settlements:* On occasion during the course of the investigation, Board personnel may be asked, by one or more of the parties to a case, whether they may meet directly with each other ''to work out a mutually satisfactory solution.'' (On other occasions, they may meet without consultation with the Region.) The official attitude of the Region should be that it would not, if it could, prevent the parties from ironing out their difficulties privately. However—and this is particularly important where rights of individuals are involved—the inquiring party should be informed that any arrangement thus reached will not necessarily be recognized by the Board as disposing of the case. Investigation will continue.

Should the Region be notified that a ''private settlement'' has been reached and that the charging party wants the case dropped (either in such language or by submitting a withdrawal request) the terms of the settlement should be procured. (See sec. 10122.6.) Where the non-Board adjustment encompasses the obligation to bargain and the adjustment includes extension of the certification year, it may be appropriate to note this in the non-Board adjustment. See *Straus Communications v. NLRB*, 625 F.2d 458 (2d Cir. 1980); *Gulf States Manufacturers* v. *NLRB*, 598 F.2d 896 (5th Cir. 1979); *Vantran Electric Corp.*, 231 NLRB 1014 (1977), enf. denied 580 F.2d 921 (7th Cir. 1978). Cf. *Deister Concentrator Co.*, 253 NLRB 358, fn. 2 (1980).

The approval of the withdrawal request should then be granted or withheld in accordance with criteria laid down in section 10120. In those situations where individual discriminatees are not represented by counsel or a union, caution should be exercised to insure that the non-Board settlment is not repugnant to the purposes of the Act or that an individual has not been taken advantage of in the private negotiations.

Likewise a charged party may, on occasion, take remedial action as proposed by a Regional Director without, however, being willing to enter into a written settlement agreement or to acknowledge by a posted notice that the action is being taken pursuant to settlement of a charge. (Examples: Interrupted bargaining negotiations may be resumed; a dischargee may be offered reinstatement with backpay; a union may cease striking for an illegal form of union security.)

When such action is accompanied by a voluntary withdrawal request from the charging party, approval of the request should ordinarily be granted. The case may be closed as adjusted, but the parties should not be notified that the remedial action has the imprimatur of the Board. They should be sent the usual withdrawal request approval letter.

In light of the Board's ruling in *Winer Motors*, 265 NLRB 1457, the Region should take into consideration the strictures of Section 10(b) in deciding whether to approve a withdrawal request before all of the requirements contemplated by the non-Board settlement have been carried out. Approval may be withheld pending full performance of the requirements of the parties' private settlement. In the normal situation when all of the requirements of the non-Board settlement have been carried out, the Region is to continue to issue the standard letter approving the withdrawal request.

In those rare cases when approval is given before all of the requirements have been carried out, the following letter should be used in conditionally approving the withdrawal:

> This is to advise you that I have conditionally approved the withdrawal request that [you] [the charging party] submitted in the above matter. I have conditionally approved the withdrawal request based on a representation that a private settlement has been reached between the parties. Therefore, this approval is conditioned on the performance of the undertakings in the private settlement between the parties. On application by the charging party, supported by evidence that those undertakings have not been complied with, the charge is subject to reinstatement for further processing.

See section 10148.5 concerning handling of a Board or non-Board settlement agreement at trial before an administrative law judge.

If approval is withheld, the parties should be so notified, and investigation should continue.

If approval is granted, the case may or may not be closed as *adjusted*. The case should be closed as adjusted if the terms of the settlement, while not constituting the full remedy that appears to be called for, provide for a substantial part of the remedy and are all consistent with the purposes of the Act. It should not be closed as adjusted if this standard is not met—it should be closed if withdrawn ''because charging party does not wish to proceed.''

In no such case should the parties be notified that the settlement has the approval of the Board. They should be sent the usual withdrawal request approval letter.

When the action is not accompanied by a withdrawal request because the charging party is not satisfied that the action taken remedies the unfair labor practices, the Regional Director must determine whether effectuation of the purposes of the Act calls for further proceedings. Normally, if the action taken is a full or substantial remedy in fact, if there is no history of prior similar practices by the same charged party, and if there is no likelihood of recurrence, the charge should be dismissed on the ground that effectuation of the purposes of the Act does not warrant further proceedings.

(See sec. 10122.) The case, when closed, should be considered adjusted and so reported to Washington.

10146–10155 *Informal Settlements*

10146 *Nature of Informal Settlements*

10146.1 *Generally:* An informal settlement agreement is a simple written agreement, providing that the charged party will take certain action in remedy of the unfair labor practices. It requires the approval of the Regional Director but does not provide for a Board order or court decree.

In considering whether to approve an informal settlement, the Regional Director should take into consideration whether there is a history of unfair labor practices by the same charged party.

See section 10124.4 for cases in which Washington should be consulted.

This is the most valuable and efficient method of adjusting an unfair labor practice charge and, unless circumstances indicate otherwise (see infra), is the goal most to be sought in cases that have merit.

See section 10653 for settlement language in those cases when installment payment or a security agreement may be appropriate.

10146.2 *After Complaint:* Informal settlement agreements may be used after complaint has issued, provided that there has been no extensive history of unfair labor practices by the charged party.

10146.3 *Settlement Agreement Form:* Form NLRB-4775 will accommodate settlements in which the respondent is either an employer or a labor organization. It will be necessary, when preparing the form, to strike out those words and phrases that may not be applicable to the particular settlement situation. (The form is printed in sets on carbon-backed paper. Avoid accidental smudging of copy pages and use a ballpoint pen when signing to obtain legible signatures on distribution copies.) For necessary parties see section 10134. For details as to effectuation, see sections 10150–10152.

10146.4 *Partial Bilateral Settlements in a Single Case:* If an informal bilateral settlement by its terms does not dispose of all violations alleged in the charge, but it is nevertheless intended by the parties and the Region to be a settlement of the entire charge, the charge should be amended to conform to the settlement or a sentence should be inserted

in the settlement that ''this settlement disposes of all unfair labor practices alleged in the charge.''

When the Region does not intend to remedy certain alleged unfair labor practices by settlement, and these unfair labor practices are to be alleged in a complaint, the settlement agreement should so note by specifically excluding these unfair labor practices from the agreement. For example, ''This settlement does not remedy the allegations that John Doe was terminated by the Charged Party on or about January 2, 19 , or that the Charged Party during the period from January 1, 19 , through January 30, 19 , has refused to bargain in good faith by bargaining directly with employees concerning wage increases.'' Cf. *Sundstrand Castings Co.*, 209 NLRB 414 fn. 2 (1974).

Where some allegations of the charge are settled bilaterally and others are dismissed, the settlement should not be approved prior to the expiration of the appeal period (if no appeal is filed) or the denial of the appeal on the dismissed allegations. (This includes situations where the only dismissed allegation is a refusal to find strikers to be ULP strikers.) If the appeal is sustained, the Region should attempt to include in the settlement the allegations found meritorious on appeal. If such efforts fail, the Region may proceed as set forth in the preceding paragraph if the parties are agreeable to the partial settlement, knowing that complaint will issue on the other allegations found meritorious on appeal; or the Region may refuse to approve the partial settlement and proceed to complaint on all the allegations.

(For partial unilateral settlement in a single case, see sec. 10152.2. For settlement of some, but not all, of related cases, see sec. 10155.)

10148 *Informal Settlement After Issuance of Complaint*

10148.1 *Clearance or Transmittal Requirements:* Advance clearance from Washington for acceptance of an informal settlement after issuance of complaint is not required either before or after opening of hearing.

In cases not requiring prior Washington approval, the file should contain a memorandum noting the settlement action and reasons therefor.

(See also sec. 10275, wherein notification of withdrawal of complaint is required.)

10148.2 *Agreement Executed Prior to Opening of Hearing:* Regional Directors have the authority to approve informal settlement agreements executed at any time prior to the opening of the hearing and, on such approval, to withdraw the complaint. Form NLRB-4775 is designed to serve both of these purposes.

10148.3 *Obtaining Approval of Informal Settlement Agreement After Hearing Opens:* Whether the settlement is all party or unilateral, and whether the hearing is in progress or has been adjourned or closed, the agreement must be submitted to the administrative law judge for approval pursuant to Section 101.9(d) of the Statements of Procedure, if a decision has not issued. If the hearing is in progress, the administrative law judge shall indicate approval or rejection on the record. If settlement is reached after the hearing has been adjourned or is closed, but before issuance of a decision, the agreement is submitted to the administrative law judge for approval; the administrative law judge's action is thereafter indicated by issuance of an appropriate order and notification to the parties. In the latter situation, the Regional Office should follow up through the office of the Chief Administrative Law Judge if no ruling on the proposed settlement is forthcoming within a reasonable period of time.

In the event an administrative law judge disapproves a settlement or approves a unilateral settlement, the General Counsel's representative (or any other aggrieved party) may ask for leave to appeal to the Board as set forth in Section 101.9(d)(2) of the Statements of Procedure and Section 102.26 of the Rules and Regulations.

If the settlement agreement is approved by the administrative law judge and there is no appeal, the General Counsel should move for an indefinite adjournment in order for the respondent to comply with the settlement. After compliance has been effected, a motion to withdraw the complaint should immediately be sent to the administrative law judge.

In the event of noncompliance thereafter, the Regional Director may set aside the agreement and institute further proceedings (see Sec. 101.9(e)(2) of the Statements of Procedure).

(See sec. 10164.6b for approval of formal settlement agreements after hearing opens.)

10148.4 *Role of Administrative Law Judge in Settlement Effort:* Before the hearing opens, the administrative law judge will advise the parties of the importance to the Board of settlements; invite them to take advantage of such opportunity; assure them that reasonable requests for hearing recesses for the purpose of settlement will be granted; inform them that settlement efforts will in no way be construed as a sign that their case is weak; and in fact, recess the hearing at specific times to urge reconsideration by the parties of the advisability of settling the case.

At the conclusion of the General Counsel's case and again before the close of the hearing the administrative law judge may afford the parties opportunity to explore settlement of the issues, thus averting the need for Board decision.

10148.5 *Appeal from the Decision of an Administrative Law Judge to Accept a Withdrawal of the Charge:* Where the parties, at trial, reach a settlement (non-Board or Board) that is viewed as repugnant to the Act, the General Counsel should protest the proposed withdrawal of the charge, citing *Clear Haven Nursing Home*, 236 NLRB 853 (1978), and if necessary, promptly file a request for special permission to appeal the administrative law judge's ruling if the administrative law judge approves the withdrawal of the charge. In the event the administrative law judge dismisses the complaint, a request for review should be filed within 28 days in accordance with Section 102.27 of the Rules and Regulations. Such action should only be taken after consultation with the regional attorney.

10148.6 *Inclusion in Settlement of Provisions That Appear in Board Order and Remedy Section:* In drafting language to be placed in the settlement agreement, one should be careful to include, when applicable, provisions that may be found in the Board's order and remedy section as well as those that appear in the Board's notice. The mere patterning of the settlement agreement after a Board notice may result in the omission of important aspects of an appropriate remedy.

10150 *Effectuation; Performance; and Closing of All Party Settlement Case*

10150.1 *Action on Approval of Agreement:* On approval by the Regional Director of a settlement agreement in which the charging party joins, the parties through their attorneys or representatives should be informed of the fact and the charged party through an attorney or representa-

tive should be requested immediately to take the action called for in the agreement. The charged party should be furnished with sufficient copies of the notice and be given whatever other assistance the Region can render toward carrying out the agreement.

10150.2 *Policing Performance:* Performance of the agreement should be policed in the same manner as administrative law judge decisions, Board orders, and court judgments. (See sec. 10504.6.) If the 5- and 60-day reports called for by the agreement are not received, parties should be reminded of the requirements.

10150.3 *Closing of Case:* When the Regional Director is satisfied that the provisions of the agreement have been carried out—after passage of the notice-posting period—the case should be closed as adjusted, and the parties should be so notified. The notification should specifically state that the closing is conditioned on continued observance of the terms of the settlement agreement.

10152 *Effectuation; Performance; and Closing of Unilateral Settlement Case*

10152.1 *Charge Found Meritorious:* In cases where the Regional Director finds the charge to be meritorious, the procedure is as follows:

a. *Notification to Charging Party:* When a charging party refuses to enter into a proposed settlement, either formal or informal, the attorney or representative of record, if any, should be sent a letter with a copy to the charging party setting forth briefly the reasons for proposing its approval.

   In particular, reasons for any departure from standard Board remedy practice should be given. Reasons should be formed as an expression of judgment, rather than assertion of fact or law.

   The charging party should also be informed that any objections to the settlement, together with supporting argument, should be submitted in writing to the Region within 7 days after service of the letter. (See Rules, Sec. 101.9(c)(1).)

If the settlement is to be approved, notwithstanding the objections (or at the end of the 7-day period if objections are not submitted), the charging party should be so informed and given a brief statement of the reasons for doing so.

b. *Dismissal of Charge:* On approval of an informal settlement agreement, the Regional Director should dismiss the charge in accordance with the terms of the agreement.

The dismissal letter, when issued, should cite the agreement as the basis for dismissal; the pattern letter shown in section 10122.8 should contain the following second paragraph:

> In view of the undertakings contained in the attached settlement agreement, it does not appear that it would effectuate the purposes of the National Labor Relations Act to institute further proceedings at this time. I am, therefore, refusing to issue [reissue] complaint in this matter.

The last paragraph, including instructions for filing an appeal, should be unaltered; and a copy of the approved agreement should be attached.

10152.2 *Partial Unilateral Settlement in a Single Case:* Where the Region does not intend to remedy certain alleged unfair labor practices by the unilateral settlement, and these unfair labor practices are to be alleged in a complaint, the settlement agreement should so note by specifically excluding these unfair labor practices from the agreement. Additionally, the settlement should provide that the evidence bearing on the settled allegations may be introduced into evidence at any hearing on the unsettled allegations.

Where some of the allegations of the charge are settled unilaterally and others are dismissed, the settlement should not be approved prior to the expiration of the appeal period (if no appeal is filed), or the denial of the appeal on the dismissed allegations. (This includes situations where the only dismissed allegation is a refusal to find strikers to be ULP strikers.) Whenever either of these events occur, the unilateral settlement should be approved and the portion of the charge that has been settled should be dismissed as set forth in section 10152.1. On the other hand, if the appeal of the dismissed allegations has been sustained, the Region should attempt to include in the settlement the allegations found meritorious on

appeal. If such efforts are successful but the charging party still refuses to enter into the settlement, the revised settlement should be approved and the charge dismissed as set forth in section 10152.1. If such efforts fail, the Region may proceed as set forth in the preceding paragraph if the charged party is still agreeable to the partial settlement, knowing that complaint will issue on the other allegations found meritorious on appeal (in this situation the settlement should be approved and that portion of the charge underlying the settlement dismissed as set forth in sec. 10152.1), or the Region may refuse to approve the partial settlement and proceed to complaint on all the allegations.

(For partial bilateral settlement in a single case, see sec. 10146.4. For settlement of one of related cases, see sec. 10155.)

10152.3 *Compliance:* After the appeal period has passed, if no appeal has been filed, the Regional Director instructs the charged party to take the action called for in the agreement. If an appeal has been filed, the instruction is not given unless and until the General Counsel has upheld the action of the Regional Director. In either case, the policing of compliance and closing of the case should be in accord with the procedures described in sections 10150.2 and 10150.3.

If the charged party commenced performance of the terms of the agreement *prior to* being so instructed by the Regional Director, the performance eventually required shall be only to the extent not already performed.

10154 *Noncompliance:* In the event that, in the opinion of the Regional Director, the provisions of the agreement have not or will not be carried out, the Regional Director will notify the parties of this fact and inform them that, despite the execution of the agreement, such action as appears necessary to effectuate the purposes of the Act will be taken. Thereafter, appropriate action, as if there had been no settlement agreement, will be taken; complaint will be issued, or reissued, and pressed on its merits and not on the basis of noncompliance with the agreement.

10155 *Settlement of Less Than All of Related Charges:* Where there is either a bilateral or unilateral settlement of some but not all of the related charges, the settlement should provide that it does not cover or settle the allegations of the other charges.

10164–10174 *Formal Settlements*

10164 *Nature of Formal Settlements*

10164.1 *Generally:* A formal settlement is a written stipulation calling for remedial action in adjustment of unfair labor practices and providing that, on approval by the Board, a Board order in conformity with its terms will issue. Ordinarily it will also provide for the consent entry of a court judgment enforcing the order.

10164.2 *Use:* A formal settlement agreement may be utilized either before or after issuance of complaint where there is a history of prior unfair labor practices. Further, a formal settlement may be warranted where there is a likelihood of recurrence or extension of the instant unfair labor practices, as well as where there is either continuing violence or a likelihood of recurring violence. In such cases, the complaint is issued simultaneously with execution of the stipulation; stipulation should include a waiver of notice of hearing as well as a waiver of the hearing itself. It should be noted, however, that in no case should there be a sacrifice of remedy in order to procure a formal instead of an informal settlement agreement.

In those situations when a formal settlement agreement is required and it appears that the respondent's purpose in refusing to execute such an agreement is the belief that a Board order can be avoided by complying with the administrative law judge's decision that will issue after hearing, the respondent should be apprised that, under the statute and Sections 102.48 and 101.11 of the Board's Rules and Regulations, a Board order will be issued even though the respondent does not file exceptions to the administrative law judge's decision and agrees to comply with the administrative law judge's recommended Order.

In the absence of unusual circumstances, a respondent who executes a formal settlement stipulation should not be permitted to withdraw from the stipulation after the General Counsel has approved it but prior to the Board's approval of it. *George Banta Co.,* 236 NLRB 1559 (1978). In the event that the respondent attempts to withdraw from the stipulation while it awaits General Counsel approval, the Region should immediately submit the matter, with its recommendation, for advice to the Division of Operations Management.

10164.3 *Basic Record:* The formal settlement provides a stipulation as a substitute for a hearing. The basic record available to the Board (and court) consists of the complaint and charges and the stipulation. If the charge is not in conformance with the complaint on which the stipulation is based, an amended charge should be secured if possible. (The answer, if one has been filed, is a part of the record only if the respondent insists; preferably, it should be withdrawn.) Under the stipulation, the parties agree on facts that add up to unfair labor practices, and agree on an order that the Board may issue. They may or may not agree that an appropriate circuit of the court of appeals may enter a judgment enforcing the order without notice to the respondent.

10164.4 *Court Judgment Preferred:* A stipulation providing for a court judgment is preferred to one without this provision, since this serves as a more efficient deterrent to future violations of the Act. Whether or not there is provision for a court judgment (in addition to a Board order) often depends on whether the respondent does not wish to admit the commission of unfair labor practices. Such an admission is unnecessary where entry of a court judgment is provided for. This is often an important factor in persuading a respondent to consent to the entry of a judgment.

Where a formal settlement stipulation provides for a court judgment, entry of such a judgment will be sought, and no contrary commitment, oral or written, should be made. On the contrary, field personnel negotiating the stipulation should take affirmative measures to make it clear that the settlement contemplates the entry of a Board order and court judgment, even though the Board order may have been complied with in the interim.

10164.5 *Backpay Provisions:* With respect to backpay, it is preferred practice in a formal settlement to liquidate and to set forth the exact amount agreed on rather than to leave it to future computation. (Cf. treatment in informal settlements, see sec. 10128.5.) This amount should be specified in the stipulation and in the notice. And, in order to guard against further loss of earnings that may be incurred because of delay in compliance, it is good practice to include, in the stipulated Board order, a provision that the respondent will make whole the discriminatees for any additional loss of earnings plus interest caused by a failure to offer reinstatement within 10 days of the entry of the Board order, by paying them the respective amounts they would have earned if properly reinstated, less actual earnings, computed on a quarterly basis, from the 11th day after the entry of the Board order to the date of a proper offer of reinstatement. This must include appropriate interest per annum (sec. 10623). Where

such a provision is used, the stipulated order should provide also that all payroll and other records necessary to a determination of backpay due will be made available to Board agents. In those situations when the respondent is paying backpay by installment payment, or when the respondent's financial condition is doubtful, the Region may wish to include a security agreement or installment payment schedule in the formal settlement. (See sec. 10653.)

10164.6 *Obtaining Approval of Formal Settlement*

a. Before Hearing Opens: A formal settlement requires approval by the General Counsel and by the Board. The settlement should be submitted to the Division of Operations Management with a transmittal memorandum giving all details pertinent to the settlement, *especially calling attention to and explaining any deviations from established law or any unusual facets* (sec. 10172.5). If there is no provision for a court judgment, the reason should be given. The record in the case (sec. 10166.5) must be stapled or securely fastened to the transmittal memorandum.

b. After Hearing Opens:

1. Whether the settlement is all party or unilateral, and whether the hearing is in progress or has been adjourned or closed, the agreement must be submitted to the administrative law judge for approval pursuant to Section 101.9(d)(1) of the Statements of Procedure, if a decision has not issued. If the hearing is in progress, the administrative law judge shall indicate approval or rejection on the record. If formal settlement is reached after the hearing has been adjourned or is closed, but before issuance of a decision, the agreement is submitted to the administrative law judge for approval; the administrative law judge's action is thereafter indicated by issuance of an appropriate order and notification to the parties. In the latter situation, the Regional Office should follow up through the office of the Chief Administrative Law Judge if no ruling on the proposed settlement is forthcoming within a reasonable period of time.

2. On approval by the administrative law judge, the Regional Office shall assume the responsibility for transmission of the stipulation and the required number of documents making up the formal record (see sec. 10172.5) to the Division of Operations Management, which will in turn submit the stipulation directly to the Board for its approval.

3. In the event an administrative law judge disapproves a settlement stipulation, or approves a unilateral settlement stipulation, the General Counsel's representative (or any other aggrieved party) may ask for leave to appeal to the Board as set forth in Section 101.9(d)(2) of the Statements of Procedure and Section 102.26 of the Rules and Regulations.

10164.7 *Parties:* Normally, the charging party is a party to the formal settlement agreement. However, an agreement that fully remedies all unfair labor practices should be accepted—subject of course to approval by the General Counsel and the Board—whether or not the charging party acquiesces. (Cf. *Marine Engineers' Beneficial Assn. No. 13 (Taylor & Anderson) v. NLRB*, 202 F.2d 546 (3d Cir. 1953); *Leeds & Northrup Co. v. NLRB*, 357 F.2d 527 (3d Cir. 1966).)

With respect to the treatment of interested parties, see section 10134.

10166 *Elements*

10166.1 *Disposition of Allegations:* A formal settlement stipulation provides for the disposition of all allegations of the complaint, so that the complaint and stipulation conform. Thus, if a complaint has already issued, all allegations not covered by the stipulation are disposed of by withdrawal or dismissal, and the Regional Director's order reflecting such action is included in the stipulated record. The settlement stipulation may provide for dismissal of allegations. In consolidated cases the stipulation may provide for severance of allegations if the circumstances so require. If a complaint is to issue concurrently with the settlement, all allegations therein are disposed of in the stipulation.

10166.2 *Overall Content of Stipulation:* In addition to its remedial provisions, the stipulation contains a recital of jurisdictional facts; a waiver of formal hearing and further proceedings; an enumeration of the documents and pleadings that constitute the entire record; a recital of facts that are not apparent from the pleadings; an express consent to the entry by the Board of an order in conformity with the stipulation without further notice;

where appropriate, an express consent to the entry by an appropriate United States Court of Appeals of a judgment enforcing the order; a statement that the entire agreement between the parties is contained in the stipulation; and a statement that the settlement is subject to the approval of the Board.

10166.3 *Jurisdictional Facts:* Formal settlement stipulations recite commerce facts sufficient to support an assertion of jurisdiction under the Board's current standards. An admission that the Board has jurisdiction of the respondent's operations is not sufficient; the stipulation must recite the essential facts from which the Board and the court may determine the relationship of the business of the respondent to commerce and its effect thereon. Where gross volume of business is the sole test for asserting jurisdiction, the settlement stipulation should include commerce data on inflow or outflow sufficient to establish statutory jurisdiction.

10166.4 *Waiver of Further Proceedings:* Formal settlement stipulations include a waiver of further proceedings and formal hearing in the matter.

10166.5 *Contents of the Record:* The parties should agree on and list the documents in the record: the stipulation; the charge and amendments; the complaint and notice of hearing (and affidavits of service if the facts of service have not been set forth in the stipulation); the answer, if any, and if not previously withdrawn; the order of severance if consolidated complaint had issued and severance occurred; and any letter, document, or affidavit disposing of the rights of other interested parties (sec. 10134). Hearing transcripts should not be incorporated as part of the record. One of the principal reasons for the limiting of the instruments to be included in the record is the cost of preparation of the record for the appellate court upon the filing of a petition for enforcement.

10166.6 *Facts:* Under Section 10(c), a Board order must be based on the preponderance of the testimony. Except where the respondent has stipulated to the entry of a court judgment, it is necessary that there be ''testimony,'' in one form or another, to support the order. Therefore, either in the pleadings or the stipulation, the *facts* of the unfair labor practice involved must be clearly set forth. Allegations in the complaint, either undenied or expressly admitted, may fill this requirement. If they do not, the facts must expressly be set forth in the stipulation itself. Where there is some question as to the clarity of the facts as they appear in the pleadings, all doubts should be resolved in favor of insisting that they be inserted in the stipulation.

Certain factual elements *must* be included in the stipulation whether or not they can be gleaned from the pleadings. Jurisdictional facts should be included (sec. 10166.3). Also, in a stipulation calling for a bargaining order, the document should include a description of the appropriate bargaining unit and an agreement that the union involved represents a majority of the employees therein.

10166.7 *Consent to Board Order:* Within the stipulation, the parties must consent to the entry of a Board order without further notice. The terms of the order must be set forth with exactitude, and, since the Board, if it acts at all, must act in conformity with the stipulation, there should be no deviation from standard Board language.

EXCEPTION: It is permissible on insistence of a party to substitute ''shall not'' for ''shall cease and desist from,'' with corresponding grammatical changes.

10166.8 *Consent to Court Judgment:* Self-explanatory. See paragraph 10 of Pattern for Formal Settlement of CA Case, section 10168.

10168 *Pattern 60, Settlement Stipulation in CA Case*

IT IS HEREBY STIPULATED AND AGREED by and between ABC Company (the Respondent), XYZ Union (the Union), Mutual Benefit Society (the Intervenor), and the General Counsel of the National Labor Relations Board, that:

1. Upon a charge filed by the Union on June 1, 19 , and served on the Respondent on June 4, 19 , an amended charge filed on June 8, 19 , and a second amended charge filed on June 15, 19 , and served on the Respondent on June 15, 19 , receipt of which charges is hereby acknowledged by the Respondent, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (the Board), by the Regional Director for Region 30, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Board's Rules and Regulations, issued a complaint against the Respondent on June 18, 19 , together with a notice of hearing thereon. True copies of the aforesaid complaint and notice of hearing were duly served by registered mail on the Respondent, the Intervenor, and the Union on June 18, 19 , receipt of which hereby acknowledged by all parties.

2. The Respondent is a Delaware corporation maintaining its principal office in New York, New York, and operating a plant at Columbia, Alabama (the facility herein involved), herein called the Columbia plant, where it is engaged in the manufacture, sale, and distribution of furniture.

   Respondent, in the conduct of its business operations at the Columbia plant during the 1-year period ending June 30, 19 , its operations during said period being representative of its operations at all times material herein, purchased raw materials consisting principally of lumber, of a value in excess of $1.5 million more than 50 percent of which was purchased directly from business concerns located outside the State of Alabama, and was shipped by such concerns from points outside the State of Alabama directly to the Respondent at the Columbia plant. During the same period the Respondent, at the Columbia plant, manufactured and sold finished products of a value in excess of $1 million more than 20 percent of which, in value, was sold and shipped to customers outside the State of Alabama.

   Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

4. All parties hereto waive the filing of answer, hearing, administrative law judge's decisions, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact or conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

5. This stipulation, together with the charge, amended charge, second amended charge, and complaint and notice of hearing [include affidavits of service of charge, amended charge, second amended charge, and complaint and notice of hearing if the service of these documents and their receipt by the parties has not been set forth in the stipulation; also include the answer if the Respondent or the Intervenor insists] shall constitute the entire record herein.

6. [When appropriate.] All employees of the Respondent at the Columbia plant, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7. [When appropriate.] On or about May 1, 19 , a majority of the employees in the unit described in paragraph 6 above designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent. At all times since said date, the Union has been the representative of a majority of the employees in the aforesaid unit, and, by virtue of Section 9(a) of the Act, it has been and is now the exclusive representative for the purposes of collective bargaining of all employees in said unit.

8. [When there is no provision for entry of a court judgment.] The Respondent admits the allegations contained in paragraphs of the complaint herein.

9. Upon this stipulation and the record herein as described in paragraph 5 hereof, and without any further notice of proceedings herein, the Board may enter an order forthwith providing as follows:

The Respondent, ABC Company, its officers, agents, successors, and assigns, shall

[8(a)(2)]

Cease and desist from:

(a) Dominating or interfering with the administration of Mutual Benefit Society, or dominating or interfering with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Mutual Benefit Society or to any other labor organization of its employees.

[8(a)(2)]

(b) Recognizing Mutual Benefit Society as the representative of any of its employees for the purposes of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

[NOTE: If the case involves assistance only, and not domination, subparagraph (a) above should be omitted and the following inserted in lieu thereof:

> ''Contributing support to Mutual Benefit Society or to any other labor organization of its employees.''

and to subparagraph (b) there should be added the language:

> ''unless and until said organization shall have been certified by the National Labor Relations Board as the exclusive representative of such employees.'']

[NOTE: If the case involves a contract between the Respondent and the assisted or dominated organization, an additional provision will have to be added to the order to set aside the contract. See, e.g., *International Metal Products Co.*, 104 NLRB 1076 (1953).]

[8(a)(5)]

(c) Refusing to bargain collectively with XYZ Union as the exclusive representative of all its employees at the Columbia, Alabama, plant, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act.

[8(a)(3)]

(d) Discouraging membership in XYZ Union, or in any other labor organization, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment.

[8(a)(1)]

(e) [NOTE: Insert language covering specific 8(a)(1) violations alleged in complaint; likewise, the notice should be a restatement of the provisions of the order.]

In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist XYZ Union or any other labor organization, 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, or to refrain from any and all such activities, except to the extent that such right might be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the said Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw all recognition from Mutual Benefit Society as representative of any of its employees for the purpose of dealing with the Respondent with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish Mutual Benefit Society as such representative.

[NOTE: If the case involves assistance only, and not domination, the language ''and completely disestablish Mutual Benefit Society as such representative'' should be omitted, and in its place should be added the language ''unless and until said organization shall have been certified by the National Labor Relations Board as such representative.'']

[8(a)(3)]

(b) [*Installment payments:* When the agreement provides for installment payments and the total amount of backpay has been compromised, every effort should be made to employ the language below. This provides a measure of protection in the event of nonpayment, dissolution, or bankruptcy and is especially necessary where installment payments are extended over a relatively lengthy period of time.]

Make whole the following employees for loss of pay suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule that follows. In consideration of timely payment of all but the final installment of the amounts due each employee in accordance with such schedule, plus interest, payment of said final installment is hereby waived; but if any installment other than the final installment is not paid on or before the date due, the full unpaid amount shall become immediately due and payable.

[Total amount calculated as due was $5,000: compromise amount agreed to is $4,000.]

SCHEDULE

Name of Employees	*Amt. Due and Date of Payment*			*Total*
	8/1/89	9/1/89	10/1/89	
J. Smith	$ 500.00	$ 500.00	$ 350.00	$1,350.00
M. Brown	900.00	900.00	325.00	2,125.00
S. Cohen	600.00	600.00	325.00	1,525.00
Totals	$2,000.00	$2,000.00	$1,000.00	$5,000.00

(Final Installment)

[8(a)(5)]

(c) Upon request, bargain collectively with XYZ Union as the exclusive representative of all its employees at its Columbia, Alabama, plant, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

[NOTE: When a refusal to bargain occurs during the certification year, the certification year should be extended to compensate for that period of time during which no good-faith collective bargaining was conducted due to the respondent's unlawful refusal to bargain (*Mar-Jac Poultry Co.*, 136 NLRB 785 (1962)). In cases involving refusals to bargain during the certification year, the bargaining order should conform to this provision and specifically extend the certification year for the appropriate period of time. For example, in *General Electric Co.*, 163 NLRB 198 (1967), the Board's order provided as follows:

> On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit and if an understanding is reached, reduce it to writing and sign it. Regard the Union on resumption of bargaining and for [balance of year—number of months] thereafter as if the initial year of the certification has not expired.

In cases when there has been no bargaining during the certification year, the word ''commencement'' should be substituted for ''resumption.'']

[8(a)(3)]

(d) Offer to the following employees immediate and full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges:

[list]

(e) Expunge from our records any reference to the discharge(s) of [name of employee(s)], and notify said employee(s), in writing, that this was done, and take no action inconsistent therewith.

[8(a)(3)]

(f) Make whole the following employees for any loss of pay they may have suffered by reason of the [alleged] discrimination against them, by payment to them, of the amounts set opposite their respective names:

[list]

[8(a)(3)]

(g) Make whole the above-named employees for any additional loss of pay caused by the Respondent's failure to reinstate them in accordance with the provisions of this Order, within 10 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 11th day after the date of this Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed on a quarterly basis.

(h) On request make available to the Board or its agents, for examination and copying, all payroll and other records necessary to a determination of the amounts of backpay due under paragraph(s) 2(d) [and] 2(f) this Order.

(i) Post at its Columbia, Alabama plant copies of the attached notice marked ''Appendix A.'' [See sec. 10132.2 for caption that is to be put on the notice.] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[NOTE: In all CA and CB cases, where the company and union as correspondents have entered into a joint settlement agreement, the settlement should provide for additional posting by the respondent-company by inserting an additional paragraph after (i), as follows:]

Post at the same places and under the same conditions, as set forth above, copies of the attached notice to employees [or members] marked ''Appendix B'' as soon as they are forwarded by the Regional Director for Region 30.

(j) Notify the Regional Director in writing within 20 days from the date of this Order, what steps the Respondent has taken to comply.

10. The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the order of the Board in the form set forth in paragraph 9 hereof. The Respondent waives all defenses to the entry of the judgment, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words and figures set forth in paragraph 9 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order after entry of the judgment only to the extent that it has not already done so.

[NOTE: If the stipulation contains no provision for a consent judgment, there must be an admission of the allegations of the complaint or a stipulation of facts showing the commission of unfair labor practices (see par. 8). Such an admission or stipulation is essential to enforcement of the Board order in the court of appeals in the event of the respondent's failure to comply.]

11. This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, that varies, alters, or adds to it [except (this may appear only in those situations described in sec. 10130.6 and only in stipulations providing for court judgment) that it is understood that the signing of this stipulation by the Respondent does not constitute an admission that it has violated the Act].

12. This stipulation, together with the other documents constituting the record as described in paragraph 5 hereof, shall be filed with the Board. The stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. On the Board's approval of the stipulation, the Respondent will immediately comply with the provisions of the order as set forth in paragraph 9 hereof.

Signed at

(city) (state)

, 19
(date)

ABC Company

By

Harold Jones
President

(street)

(city and state)

Signed at
(city) (state)

, 19
(date)

XYZ Union

By

James Johnston
International Representative

(street)

(city and state)

Signed at

(city) (state)

, 19

(date)

Mutual Benefit Society

By

Joseph Martin
President

(street)

(city and state)

Approval by the General Counsel recommended:

John Smith
Attorney, Region
National Labor Relations Board
[address]
[date]

Approved:

Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

[date], 19

Attach a copy of the notice to all employees to the stipulation and mark it ''Appendix A.'' It should follow Board precedents and should be in line with the terms of the stipulated order. (See sec. 10132.)

10170 *Pattern for Settlement Stipulation in CB, CC, and CD Cases:* The above pattern for settlement stipulations in CA cases is generally applicable also to CB, CC, and CD cases. The only differences of substance between the CA pattern and the stipulation in CB, CC, and CD cases will be in the Board order as set forth in paragraph 9 of the form, and in the attached notice to employees. The commerce paragraph will, of course, have to be drafted to fit the facts of the particular cases. This portion of the stipulation can usually be taken directly from the commerce allegations of the complaint. For these reasons the entire stipulation form is not being incorporated here. The following redraft of paragraph 9, however, should be substituted in CB, CC, and CD cases for the corresponding paragraph in the settlement pattern for CA cases:

9. Upon this stipulation and the record as described in paragraph 5, above, and without any further notice of proceedings herein, the Board may forthwith enter an order providing as follows:

The Respondent, XYZ Union, its officers, agents, and representatives, shall

1. Cease and desist from

   (a) Restraining or coercing employees of ABC Company [or any other employer] in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

   (b) Restraining or coercing ABC Company [or any other employer] in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

   (c) Causing or attempting to cause ABC Company [or any other employer] to discriminate against any employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8(a)(3) of the Act, as amended.

   (d) Giving effect to paragraph(s) of its contract with ABC Company.

(e) Refusing to bargain collectively with ABC Company on behalf of all employees of its Columbia, Alabama, plant, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act.

(f) Engaging in, or inducing or encouraging any individual employed by D Company, or any other 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 threatening, coercing, or restraining D Company or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require D Company, or any other person, to cease doing business with ABC Company.

(g) Engaging in, or inducing or encouraging any individual employed by ABC Company [or any other 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 threatening, coercing, or restraining the ABC Company [or any other person engaged in commerce or in an industry affecting commerce], where, in either case, an object thereof is forcing or requiring ABC Company to join [or any other labor or employer organization].

(h) Engaging in, or inducing or encouraging any individual employed by ABC Company [or any other 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 threatening, coercing, or restraining ABC Company [or any other person engaged in commerce or in an industry affecting commerce], where, in either case, an object thereof is forcing or requiring ABC Company to enter into an agreement whereby ABC Company agrees to cease doing business with any other person.

(i) Engaging in, or inducing or encouraging any individual employed by D Company, or any other person engaged in commerce or in an industry affecting commerce except ABC Company, 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 threatening, coercing, or restraining D Company or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to recognize or bargain with XYZ Union, or any other labor organization, as representative of any of the employees of ABC Company, unless and until such labor organization has been certified by the National Labor Relations Board as the representative of such employees.

(j) Engaging in, or inducing or encouraging any individual employed by ABC Company [or by any other 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 threatening, coercing, or restraining ABC Company [or any other person engaged in commerce or in an industry affecting commerce], where, in either case, an object thereof is forcing or requiring ABC Company to recognize or bargain with XYZ Union as the representative of any employees of ABC Company in a bargaining unit covered by a certification issued on [date], in Case [number] to an organization other than XYZ Union.

(k) Requiring of employees covered by an agreement authorized under Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959, the payment as a condition precedent to becoming members of XYZ Union of a fee in an amount that is excessive or discriminatory.

(l) Causing or attempting to cause ABC Company to pay or deliver, or to agree to pay or deliver, any money or other thing of value in the nature of an exaction for services that are not performed or not to be performed.

(m) Engaging in, or inducing or encouraging any individual employed by ABC Company [or by any other 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 threatening, coercing, or restraining ABC Company [or any other person engaged in commerce or in an industry affecting commerce], where, in either case, an object thereof is forcing or requiring ABC Company to assign the work of [describe the work in dispute] to employees who are members of, or represented by, XYZ Union rather than to employees who are not members of, or represented by, XYZ Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify ABC Company, in writing, that it has withdrawn its objections to the said Company's employment of Joe Doaks and now requests the Company to reinstate Joe Doaks. Notify Joe Doaks, in writing, that it has so informed ABC Company.

(b) Make whole Joe Doaks for any loss of pay suffered by reason of the [alleged] discrimination against him by payment to him of the amount of $.

(c) Make whole the said Joe Doaks for any additional loss of pay caused by the failure of the Respondent, within 10 days from the date of this Order, (1) to notify ABC Company in writing that it has withdrawn its objections to said Company's employment of the said Joe Doaks and requests the Company to reinstate him, or (2) to notify Joe Doaks, in writing, that it has so informed ABC Company; by payment to the said Joe Doaks of the amount that he would have earned if reinstated by ABC Company, from the 11th day after the date of this Order to date of the giving of the said notices by the Respondent to ABC Company and to the said Joe Doaks, less his net earnings during such period, said amounts to be computed on a quarterly basis.

(d) Bargain collectively, upon request, with ABC Company in regard to rates of pay, wages, hours of employment, or other terms and conditions of employment of all employees at the Columbia, Alabama plant of the said Company, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act.

(e) Post at its business office in Columbia, Alabama, copies of the attached notice marked ''Appendix A.'' Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(f) Mail to the Regional Director for Region 30 signed copies of the said notice for posting, if ABC Company is willing, in the plant of ABC Company at Columbia, Alabama, in the places where notices to employees are customarily posted. Copies of said notice, on forms provided by the Regional Director for Region 30, after having been signed by the Respondent's representative, shall be forthwith returned to the Regional Director for such posting by ABC Company.

[NOTE: In all CA and CB cases, where the company and union as correspondents have entered into a joint settlement agreement, delete the words ''if ABC Company is willing,'' in par. (f), above.]

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

10172 *Effectuation and Performance*

10172.1 *Generally:* Formal settlement stipulations may be arrived at before or after a complaint issues. If complaint has not issued, one issues in conjunction with the settlement.

If complaint has issued, settlement may be reached either before or after the opening of a hearing. If the former, an order shall be issued adjourning the hearing indefinitely. If the latter, the administrative law judge should be apprised of the facts, should be requested to adjourn the hearing temporarily for settlement discussions, and, on execution of the stipulation, should be requested to adjourn the hearing indefinitely.

10172.2 *Prior Authority:* Before entering into the stipulation, the General Counsel will make his/her recommendation to and procure the approval of the Regional Director, although there should be no provision on the face of the stipulation for approval of the Regional Director. The recommendation and approval may, if necessary, be telephonic, but, at one point or another, they should be reduced to writing.

10172.3 *Final Approval:* The Board agent negotiating the settlement should make clear that the settlement not only is subject to approval by the Board, but also is subject to approval by the General Counsel's office in Washington. Parties should be given copies of the stipulation as the time the Region's attorney signs it and at that time advised that they will be notified by the Regional Office of approval of the General Counsel, and the date thereof, so that they may accordingly conform their copies.

(Regional Offices will receive copies of the transmittal memorandum from the General Counsel to the Executive Secretary approving the settlement. This will obviate the necessity of the General Counsel's office in Washington mailing conformed copies to the Regional Office.)

10172.4 *Action Required on Execution:* If the stipulation calls for issuance of a complaint, for withdrawal of an answer, or for the filing of an answer admitting the allegations of the complaint, these acts should be taken at or about the time of execution.

10172.5 *Transmittal to Division of Operations Management:* Original and five copies of the transmittal memo and original and three copies of the executed stipulation should be submitted to the Division of Operations Management. The transmittal memo should give all details pertinent to the settlement, *especially calling attention to and explaining any deviations from established law or any unusual facts.*

The original and three copies each of the documents constituting the record in the case should be submitted with the settlement stipulation. If any of them have been introduced at a hearing interrupted by the settlement, they should be procured from the reporter immediately.

(The stipulation, and other documents making up the record, will be transmitted to the Board by the Division of Operations Management, with appropriate explanations.)

10172.6 *Compliance:* On approval by the Board, as signified by Board order, the Region will assist in compliance in accordance with usual procedures. (See Compliance.) However, where a consent judgment is provided for, the case is not closed until the judgment is entered, even though full compliance has been effected earlier (sec. 10772.1).

10174 *Nonapproval by Board:* If the stipulation is *not* approved by the Board, the case will resume its status as before the execution. An answer filed or withdrawn in connection with the settlement may by stipulation of the parties be withdrawn or refiled, respectively. Hearing dates should be reset. Or, of course, the stipulation may be revised for resubmission to the Board.