

to decide—but on the question of whether the Board can do the job if Congress decides to give it to us.

My simple answer is that we can.

As you know, in addition to removing the agricultural exemption from Section 2(3) (National Labor Relations Act, as amended), the rider attached to our appropriations annually since 1946, precluding the use of Board funds in connection with agricultural labor, would also have to be removed if the Board is to exercise jurisdiction.¹

Other legislative amendments would be necessary only if the Congress itself wishes to determine the standard for the Board's assertion of jurisdiction over agricultural employers and to broaden the scope of bargaining units beyond single-employer units into multi-employer or production or marketing area units.

The problems that may be reasonably anticipated if H.R. 4769 is enacted can, and should without too much difficulty, be solved through the administrative process rather than by legislation.

The Board has had a wealth of experience in exercising jurisdiction over seasonal and migratory industries. Over many years it has built up in these industries a substantial body of case law and procedural practices that have won the approval and support of the Circuit Courts of Appeal and the Supreme Court.² And much of this experience was developed in industries directly and immediately related to agriculture, such as the packing, canning, and food-processing industries. Definition and content was given to the term "agricultural laborer" by the Board and the Courts in a number of representation and unfair labor practice cases. The tests were practical, evolved from the character of the work performed as modified by custom.³

The seasonal need for large numbers of temporary employees to handle highly perishable products is not unique to agriculture. Nor is the fact that some employees are migratory. These characteristics exist in fruit and vegetable packing, canning, and freezing, sugar processing, cotton ginning, production of alfalfa meal, fertilizer, potato warehousing, nursery stock warehousing, etc.⁴

¹ Since the establishment of the National Labor Relations Act in 1935, agricultural labor has been excluded from the coverage of the act and thus from its benefits and protection as well as from the responsibilities the Act imposes. The definition of employee, under Section 2(3) of the Wagner Act, specifically excludes "... any individual employed as an agricultural laborer..." This identical language was retained in the Taft-Hartley and Landrum-Griffin amendments of the Wagner Act.

In addition to this statutory exclusion, since 1946 Congress has added a rider to the Board's annual appropriation act which provides that no part of its funds shall be used in connection with bargaining units of agricultural laborers. However, unlike the statute which does not define or otherwise clarify the term "agriculture laborer," the appropriation rider defines the term as found in Section 3(f) of the Fair Labor Standards Act. Appendix A.

² *North Whittier Heights Citrus Ass'n. v. N.L.R.B.*, 109 F. 2d 76 (9th Cir. 1940), cert. den. 310 U.S. 632; *N.L.R.B. v. Tourea Packing Co.*, 111 F. 2d 626 (9th Cir. 1940), cert. den. 311 U.S. 669; *Idaho Potato Growers, Inc. v. N.L.R.B.*, 144 F. 2d 295 (9th Cir. 1944), cert. den. 323 U.S. 769; *N.L.R.B. v. Edinburg Citrus Association, Inc.*, 147 F. 2d 353 (5th Cir. 1945); *Bowie v. Gonzales*, 117 F. 2d 11 (1st Cir. 1941).

³ See cases cited in footnote 2.

⁴ (1) Packing: *American Fruit Growers*, 10 NLRB 316 (1938) (lettuce packing sheds in Salt River Valley, Arizona); *North Whittier Heights Citrus Association*, 10 NLRB 1269 (packing citrus); *Grover-Shipper Vegetable Association of Central California*, 15 NLRB 322 (1939) (packing lettuce); *John W. Campbell, Inc.*, 58 NLRB 1153 (1944) (packing tomatoes); *J. J. Crosetti Co.*, 98 NLRB 268 (1952); *Antile Carrots, Inc.*, 110 NLRB 741 (1954) (packing carrots); and *C. A. Glass Company, Inc.*, 111 NLRB 1366 (1955) (packing carrots and corn); *Bodine Produce Co.*, 147 NLRB 832 (melon packing shed); *Garin Co.*, 148 NLRB 1499 (asparagus packing house); *H. H. Zimmerli*, 133 NLRB 1217 (potato packing shed); *Norton & McElroy Produce*, 133 NLRB 104 (preparation of lettuce & trucking); *Stockbridge Vegetable Producers, Inc.*, 131 NLRB 1395 (lettuce warehouse).

(2) Canning: *H. J. Heinz Company*, 49 NLRB 573 (1943) (tomato catsup, chili sauce, tomato juice, etc.); *Wm. P. McDonald Corporation*, 83 NLRB 427 (1949) (canning citrus fruits and juices); *Stokely-Van Camp, Inc.*, 102 NLRB 1259 (1953) (canning peas, lima beans, potatoes, etc.); *G. L. Webster*, 133 NLRB 440 (1961) (canning asparagus, tomatoes, etc.).

(3) Processing sugar: *Franklin County Sugar Company*, 92 NLRB 1341 (1951); *Evan Hall Sugar Cooperative, Inc.*, 97 NLRB 1258 (1952).

(4) Processing green alfalfa into alfalfa meal: *Archer-Daniels-Midland Company*, 97 NLRB 1463 (1952).

(5) Ginning cotton: *J. G. Boswell Company*, 107 NLRB 360 (1953).

(6) Processing turkeys: *Nephi Processing Plant, Inc.*, 107 NLRB 647 (1953).

(7) Freezing vegetables: *Oregon Frozen Foods Company*, 108 NLRB 1668 (1954).

(8) Warehousing potatoes: *The Great Atlantic & Pacific Tea Company*, 113 NLRB 865 (1955).

(9) Seafood packing: *Coudbourne & Jewett*, 59 NLRB 176 (1944).

(10) Milk processing: *Alta-Dena Dairy*, 150 NLRB 1537; *Shoenberg Farms*, 129 NLRB 966.

(11) Egg and poultry processing: *Strain Poultry Farms*, 160 NLRB No. 22.