JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD

A Study in Expansion

In the historic decisions in the *Jones & Laughlin* and companion cases[1] sustaining the constitutionality of the National Labor Relations Act, the Supreme Court made no attempt to define or particularize the instances in which the invocation of the act by the Labor Board would constitute a valid exercise of the federal power. It contented itself with defining the limits of the Board's jurisdiction in the most general terms and eliminating certain previously existing conceptions of the boundaries of the commerce clause of the Constitution.

Reviewing generally the pronouncements of the court in these cases in order to create a perspective for examination of subsequent opinions: it was declared that experience had demonstrated that industrial unrest and strife had affected and was likely to affect, burden, obstruct and interfere with the free flow of interstate and foreign commerce; that Congress may legitimately legislate to prevent such interference; that the Labor Board may assume jurisdiction over a particular industry when it appears that disturbance of relations with its employees through violations of the act will cause or is likely to cause such interference; and that the problem of whether the disturbance is cognizable by the Board depends upon the degree of its effect on the free flow of the commerce of the employer

1. National Labor Relations Board v. Jones & Laughlin Steel Co., 301 U.S. 1, 81 L. E. 893 (1937); National Labor Relations Board v. Freuhauf Trailer Co., 301 U.S. 49 (1937); National Labor Relations Board v. Friedman-Marks Clothing Co., 301 U.S. 58 (1937); National Labor Relations Board v. Associated Press, 301 U.S. 103 (1937). See the writer's earlier article *Notes from Wagner's First Symphony in Labor*, 3 University of Newark Law Review, for extended discussion of these cases; also the note, 50 Harv. L. Rev. 1071.

involved. If the disturbance has a close and intimate effect upon interstate commerce, then the federal control contemplated by the law is complete. It was indicated that factors to be considered in determining the issue of jurisdiction are the size and scope of the interstate operations of the employer concerned, the degree of integration with other industries, and the size and scope of operations in the whole industry of the labor union involved.

The view that was rather widely held up to this time—that the scope of the congressional power was measured in the ultimate by the "stream of commerce" cases—was dissipated. "The instances in which this metaphor has been used," said the court, "are but particular, and not exclusive, illustrations of the protective power" of the federal government.[2]

The full extent of the influence of the act was explained in language which attributed to Congress the intention to respect and not to encroach upon the sovereignty of the individual states and not to interfere to any degree with the preservation and continuance of our dual system of government.[3]

The task assumed by the Board, therefore, in its broad outlines was to determine what industrial relations fitted into the gap between the valid exercise of federal power and the unconstitutional usurpation of state sovereignty. Which relations had the close and intimate effect on commerce to the necessary degree?

Study of the subsequent decisions of the courts and the Board demonstrates not only a more specific definition of the Board's jurisdiction, but a gradual extension thereof as well.

The industries whose industrial relations have been the subject of Board action may be divided into three classes. First, those that are themselves engaged in interstate commerce—that

2. Jones case, p. 36 (p. 911, L. Ed.)
3. Jones case, p. 31 (p. 908, L. Ed.)

may be designated interstate agencies;[4] second, those which receive and transmit materials in interstate commerce; and third, those that purchase their raw materials in intrastate commerce and sell some or all of their finished products in interstate commerce, and those that purchase some or all of their raw materials through the channels of interstate commerce and sell the finished products wholly intrastate.[5]

The first three cases to come before the Supreme Court are examples of the second class. In the *Jones, Freuhauf,* and *Friedman-Marks* cases[6] all of the companies were engaged in two-way commerce in raw materials and finished products and their interstate activities were the dominant ones. In each in-

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4. Black Diamond Steamship Corp. v. N.L.R.B., 94 F. (2d), cert. denied, 304 U.S. 579—steamship company engaged in interstate and foreign commerce; Appalachian Electric Power Co. v. N.L.R.B., 93 F. (2d) 985—public utility transmitting electric power across state lines; N.L.R.B. v. Bell Oil & Gas Co., 91 F. (2d) 509—oil company transporting gas and oil in two states. (Third Annual Report N.L.R.B., p. 219.) To these may be added interstate motor carriers (Washington, Va. & Md. Coach Co. v. N.L.R.B., 81 L. Ed. 601), interstate news agencies (Asso. Press v. N.L.R.B., 81 L. Ed. 603), telegraph and telephone companies (Pensacola Telegraph Co. v. Western Union, 96 U.S. 1 (1878); oil transmission companies (Pipe Line Cases, 234 U.S. 548); air transportation companies and radio communication systems (*In re* Los Angeles Broadcasting Co., N.L.R.B. case No. R. 332, Dec. 6, 1937.)

5. N.L.R.B. v. Lion Shoe Co., 97 F. (2d) 448—shoe manufacturer; Mooresville Cotton Mills v. N.L.R.B., 94 F. (2d) 61—towel manufacturer; N.L.R.B. v. Wallace Mfg. Co., 95 F. (2d) 818—textile manufacturer; N.L.R.B. v. Kentucky Firebrick Co., 99 F. (2d) 89—firebrick refractory; N.L.R.B. v. Carlisle Lumber Co., 94 F. (2d) 138—lumber company; N.L.R.B. v. American Potash & Chemical Corp., 98 F. (2d) 488—potash and borax manufacturer; Clover Coal Co. v. Board, 97 F. (2d) 331—coal-mining; Board v. Santa Cruz Co., 303 U.S. 453 (1938)—canner of fruits and vegetables; Consolidated Edison Co. v. Board, 305 U.S. 197 (1938)—intrastate utility furnishing power to interstate agencies; Board v. Somerville Mfg. Co. (Sup. Ct. 1939)—processer; N.L.R.B. v. Crowe Co., F. (2d), 1939—coal mining; Board v. Planters Mfg. Co.—manufacturers of containers for agricultural products.

6. N.L.R.B. v. Jones & Laughlin Steel Co., 301 U.S. 1 (1937); N.L.R.B. v. Freuhauf Tractor Co. id; N.L.R.B. v. Friedman-Marks Clothing Co., id.

stance more than fifty per cent of both raw materials and finished products moved in interstate commerce.

Following these decisions it was contended for a time that the act was applicable only to those enterprises which "make their relation to interstate commerce the dominant factor in their activities."[7] However, it was perfectly obvious from the beginning that in using the quoted language the Chief Justice was simply describing the case before him and not intending to limit the field of the Board's operation to such cases.

In these cases the court offered no suggestion as to the percentage of an employer's business that had to be done in commerce in order to subject him to the act. It left the Board to pass upon particular cases as they arose. The earlier cases seem to indicate that the Board looked for fifty per cent and upwards of two-way commerce before assuming jurisdiction. However, it was not long before the problem of whether or not to assume jurisdiction in instances of one-way interstate traffic "trivialized"[9] the two-way cases. It was obvious from the beginning, in view of the nationalistic attitude of the Supreme Court on the question of the boundaries of the federal domain, that there was no good reason why a fifty per cent products flow should be the line of demarcation between federal and state control of industrial relations.

The first important landmark on the jurisdictional road after the Jones decision is the *Santa Cruz* case.[10] It and the language employed by the Supreme Court through Chief Justice Hughes sanction and foreshadowed a tremendous expansion of the field of the Board's activity. There the employer was engaged in the business of canning fruits and vegetables, *raised in the state*,

7. Jones case, p. 41.
8. 1 N.L.R.B.
9. Justice Frankfurter's word in O'Malley v. Woodrough, 58 S. Ct. 838, 83 L. Ed. (1939).
10. Santa Cruz v. N.L.R.B., 303 U.S. 438 (1938).

and in disposing of its large output both locally and in interstate commerce, 37% of it going to destinations beyond the state. The company locked out some of its employees and the Board assumed jurisdiction of the consequent complaint of violation of the act. In addition to arguing that the interstate operations of the employer brought its industrial relations within the category of those having the requisite intimate effect on commerce, the Board in its brief put out a feeler, apparently with the thought in mind of drawing from the court some broad, expansive statement of the limit of its jurisdiction. It suggested that it should be permitted to invoke the act against all employers except those whose interstate transactions could be characterized as trivial. It said "A doctrine of *de minimis* may well be applicable," but that down to that point it should have jurisdiction. The feeler was not specifically acted upon, nor was the suggested rule adopted. However, a much broader vista for the Board's operation was opened up. The arbitrary fifty per cent products flow theory was discarded and the assumption of jurisdiction in one-way commerce cases was given full recognition. On the question of the propriety of the Board's action being determined by the application of a fifty per cent theory, Chief Justice Hughes, speaking for the majority, said:

> "It is plain that the provision cannot be applied by a mere reference to percentages, and the fact that an employer's sales in interstate and foreign commerce amounted to thirty-seven per cent, and not to more than fifty per cent of its production cannot be deemed controlling. The question that must be met under the act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made subject to federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

As to the necessity for two-way interstate movements or transactions, this view was taken that:

> "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate commerce. Burdens and obstructions may be due to injurious actions springing from other sources.
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> "Such injurious action burdening and obstructing interstate trade in manufactured articles *may spring from labor disputes irrespective of the origin of the materials used in the manufacturing process* . . .
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> "With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried and fruit and vegetables grown. The same principle must apply to injurious restraints of interstate trade which are caused by the practices of manufacturers and processors.
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> "The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry, although that industry when separately viewed is local."

Following this opinion there was no longer any room for doubt as to whether industries, whatever their character, which are engaged either in receiving their raw materials or finished products in interstate commerce, or transmitting their raw materials or finished products in interstate commerce, are within the Board's ambit, providing their labor relations affect interstate trade to the necessary degree.

It became plain from the attitude of the court that the percentage of interstate business of an employer, while a factor for consideration, was not to be regarded as controlling on the subject of constitutionality of federal control, so long as the

close and substantial relation of the labor practices to commerce was present.

No opinion was expressed on the *de minimis* theory offered by the Board. Whether the court had it in mind when it said:

> "It must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. To express this essential distinction 'direct' has been contrasted with 'indirect' and what is remote or distant with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' In maintaining the balance of constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion."

is difficult to say. However, in the light of the subsequent Somerville Manufacturing Co. decision, the impression is created that the Chief Justice did consider it, but preferred not to let the floodgates down at that time. All of the so-called New Deal Cases which mark what Attorney General Jackson calls the return of the court to the Constitution, generate the feeling that Chief Justice Hughes, who is obviously not so nationalistic-minded as his fellows, is simply bowing to the inevitable; that he is holding his finger in the dyke so that the transition of judicial and governmental thought to extreme nationalism will be less marked. This impression is strengthened by the unequivocal espousal of the *de minimis* doctrine by the more federal-minded Justice Stone in the Somerville case.

In any event, after the Santa Cruz success, the Board in stating its view of the prerequisite for jurisdiction in one-way com-

merce cases in its "Third Annual Report" to Congress, indicated that its intervention had been sanctioned where a "substantial proportion" of the employer's finished product was shipped in interstate commerce. In other words, since the court had not yet given its imprimatur to the *de minimis* principle, the Board was not ready to assert in its report that it had received judicial recognition as the measure of jurisdiction.[11]

After the Santa Cruz decision came the *Consolidated Edison* case.[12] There, federal control of the industrial relations of utility companies which operate wholly intrastate, but which furnish power to interstate agencies, was sustained. The proof showed that the company served railroads, steamships, telegraphs, telephones, the Port of New York authority, piers of transatlantic steamships, a transatlantic radio service, etc., which were engaged in interstate and foreign trade. In sustaining the assumption of jurisdiction, the court said that:

> "The criterion of the federal constitutional power to suppress unfair labor practices . . . is the injurious effect upon interstate and foreign commerce *rather than the source of the injury.*
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> "Whether or not particular action in the conduct of intrastate enterprises affects interstate or foreign commerce in such a close and intimate fashion as to be subject to federal control, depends on the particular case.
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> "There is no doubt that the federal power may intervene to protect interstate and foreign commerce even though the effect is produced by one who operates intrastate.
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> "It cannot be doubted that these activities, while conducted within the state, are matters of federal concern. In their totality they rise to such a degree of importance that the fact that they involve but a *small part* of the entire

11. Third Annual Report of N.L.R.B., p. 219.
12. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197 (1938).

> service rendered by utilities in their extensive business is immaterial in the consideration of the existence of the federal protective power."

The Chief Justice might have used "trivial" instead of "small" in describing the part the power sold to the interstate and foreign agencies of commerce represented of the total output of the employer. However, it would have seemed incongruous had he done so, not because the percentage of the total business was trivial, but because of the relative importance of the agencies which received the power and the obvious effect upon their operations if it ceased to be transmitted because of industrial strife. In any event, "small" is different from "substantial" and undoubtedly would justify the assertion that somewhat further extension of the Board's power had been sanctioned.

However, it was in the *Somerville Manufacturing Co.* case[13] that the *de minimis* contention of the Board was finally given full recognition. There, the employers were engaged in the business of processing materials into various types of women's sport garments. They opperated what is known as a "contract shop". Materials were supplied and owned by a New York company. Cloth was cut by this company in New York and shipped by truck to the employer in New Jersey. Sometimes raw materials were shipped at the order of the New York company directly from the manufacturing mills to the employer. Many of the mills are outside of New Jersey. All work done by the employer in New Jersey was under contract. Finished garments were delivered to a representative of the New York company who shipped them directly to the New York office and directly to customers throughout the country. Throughout the year there was normally a continuous day by day flow of shipments of raw materials to factory from points without the state and of

13. N.L.R.B. v. Somerville Mfg. Co.

finished garments from the plant to New York City and to other points outside New Jersey. In brief, the situation appeared to be that the employer took delivery of its raw materials which were shipped in commerce or ordered shipped in commerce by someone else and delivered the finished products to the representative of the shipper within the state, who in turn dispatched them in commerce.

Justice Stone, speaking for the majority of the court, said:

> "It is settled that an employer may be subject to the Act although not himself engaged in commerce. Here interstate commerce was involved in the transportation of the materials to be processed across state lines to the factory of respondent and in the transportation of the finished products to points outside the state for distribution to purchasers and ultimate consumers. Whether shipments were made directly to respondent as the Board found, or to a representative of the New York sportswear company at the factory is immaterial. *It was not* any less interstate commerce because the transportation did not begin or end with the transfer of title of the merchandise transported.
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> "Nor do we think it important that the volume of the commerce—though substantial for it—was small as compared with that in other cases arising under the act. The power of Congress to regulate interstate commerce is *plenary and extends to all such commerce*, be it great or small.
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> "The language of the Act seems to make it plain the Congress has set no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved.
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> "Given the other needful conditions, commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small.

"Examining the Act in the light of its purpose and of the circumstances in which it must be applied, we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected more than that to which courts would apply the maxim of *de minimis*.

"There are not a few industries in the United States which, though conducted by relatively small units, contribute in the aggregate a vast volume of interstate commerce. Some, like the clothing industry, are extensively unionized and have had a long and tragic history of industrial strife . . .

"In this, as in every other case, the test of jurisdiction is not the volume of the interstate commerce which may be affected, but the existence of a relationship of the employer and his employees to the commerce such that unfair labor practices have led or tend to lead to a labor dispute burdening or obstructing commerce."

This view establishes that the Board may take jurisdiction over any employer whose interstate operations are greater than "trivial," providing the cessation of those operations because of labor troubles would affect interstate commerce to the necessary degree. It was again indicated that one of the factors to be considered in determining whether the labor relations of a particular employer have a close and intimate relation to interstate commerce is the character of the industry in which he is engaged. Is he one unit—even though an independent one—of an industry which in the aggregate contributes a large volume of interstate commerce? If so, and if the industry is extensively unionized and has a history of industrial strife, it is probable that he is subject to the act even though his interstate business is just above the inconsequential.

The reference of Justice Stone to the history of industrial strife in a particular industry, to the fact of extensive unioniza-

tion thereof and to the fact that the industry in the "aggregate" may supply a large volume of commerce, poses a question which, if answered affirmatively, may further extend the Board's influence. Supposing an employer is a unit—independent and unrelated except in nature of work—of such an industry, and suppose his operations are purely intrastate. Will the size of the industry as a whole from a national standpoint, plus the fact of extensive unionization and a history of industrial strife, be sufficient to charge the individual employer with obedience to the Act? Having the present temper of the court in mind, it is not too much to expect that the federal authority to act would be sustained.

This is not the first time that mention has been made of the significance of the history of labor relations in a particular industry. In the Jones case it was said that commerce is a practical conception, that labor disputes were not to be considered in the abstract, but rather in the light of practical experience, and that the government had "aptly" referred to the 1919-1920 steel strike. Likewise, in *Friedman-Marks v. N. L. R. B.* the court's discussion, after referring to the fact that the company was a comparatively inconsequential figure in the industry, centered largely on the nature of the industry as a whole, its place in the national industrial scheme, the size and character of the union involved, the fact that it had over 125,000 men and women employed in the industry, the effect of industrial strife in the past, and the peace which collective bargaining had brought to the portion of the industry which had recognized the desirability of bargaining.

This willingness of the court to consider the labor history of an industry is of tremendous significance in connection with jurisdictional problems and the full impact of this willingness obviously has not yet been felt.

Many persons believed that the *Carter Coal* case,[14] which

14. Carter v. Carter Coal Co., 298 U.S. 238 (1936).

outlawed the Bituminous Coal Conservation Act of 1935, would preclude the application of the Wagner Act to mine operators. It was felt that the opinion dealt with employer-employee relations before commerce began, and stood for the proposition that such relations do not have the necessary proximity to commerce to justify regulation by Congress. However, in the Jones case this contention was summarily rejected with the statement that the issue in the Carter case was primarily one of due process and improper delegation of legislative power.

On the way to the Supreme Court at the present time is a controversy which will put at rest any further speculation about the value of the Carter case as a precedent in commerce problems. In July, 1939, the Circuit Court for the Eighth Circuit sustained the intervention of the Board in labor troubles in a coal mine.[15] The mine was a small one and the operator a Lilliputian in the industry. Two hundred and seventy thousand tons of coal were produced annually. Twenty-five per cent was sold to interstate railways, twelve per cent to jobbers, which was loaded in cars at the time and billed at their direction to other states. About ten per cent was purchased by a local power company which transmitted a small percentage of power to other states. Here not only was the suggested Carter rule thrust aside, but Justice McReynold's idea[16] that it is not the relation of the employer's interstate purchases and sales to his total purchases and sales which should control the application of the Act, but rather the relation of his interstate business to the total business done in the industry—that is, if the particular employer's business is inconsequential considered in the light of the whole interstate trade in the field, then cessation of his flow through labor strife would not have a direct effect upon commerce—was also rejected again.

Then the Fourth Circuit recently followed literally the Su-

15. N.L.R.B. v. Crowe Coal Co. (July 1939).
16. Dissent, Jones case, p. 94-6 (p. 933 L. Ed.).

preme Court mandate that percentage of an employer's interstate trade is not at all controlling if the proper effect of labor troubles on commerce is present. It declared that the Act was applicable to a manufacturer of containers for agricultural products even though only two to five per cent of its raw materials, and ten to twenty per cent of its finished product, were shipped in interstate trade. The principle was reiterated that it is immaterial that the volume of the shipments is small. And, in answer to the argument that the interstate parts of the business were so closely connected with its intrastate aspects that the regulation of the one was impossible without incidentally regulating the other, it said that this "necessarily leads to the extension of the federal regulating power rather than to its restriction. In other words, the fact that a business is predominantly intrastate in character does not evirate the federal authority; rather it produces extension thereof."

In August, 1939, the Board declared that it had power to act in connection with the labor dispute of employees of a commercial bank.[17] The Bank of America, which does business through correspondents in thirty-four states and which is one of the ten largest banks in the country, was held subject to the Act. It was said that the commercial banking business affects commerce, since commercial banks are the primary medium for the transfer of money credits from one part of the country to the other and constitute the instrumentality of commerce through which payment for goods shipped in interstate commerce is effected, and commercial banking affords facilities without which commerce would completely fail.

The opinion likens the bank to the interstate railroads which carry the physical goods, says that the bank moves the credits and, further, that without payment for goods commerce would fail immediately. It said:

17. N.L.R.B. v. Bank of America (Board decision Aug 5, 1939).

> "The credit system and the rise of bank checks as a medium of exchange lie at the very base of our economic life and are indispensable to the continued flow of commerce among the several states and with foreign countries."

If this view is sustained in the courts, and it is likely that it will be (the Board has never lost a case involving its jurisdiction), then it seems probable that all or almost all of the country's fifteen thousand commercial banks will be adjusting their labor problems in the national scene.

Undoubtedly the greatest length to which the Board has gone up to the present time in assuming jurisdiction is shown by the very recent case of the *Aaronson Printing Co.*[18] This printing company purchased one hundred and ten thousand dollars' worth of raw materials, sixty-six per cent of which was obtained from wholesale concerns in the city where it operated. The wholesalers filled the orders from their warehouse stock, eight to twenty-five per cent of which came from out-of-state sources. The charges to customers for the year amounted to $380,000 in all, only $2700 of which came from outside the state. A large part of the printed matter delivered intrastate to customers was sent *by them* out of the state. About fifteen per cent of the material printed was advertising matter used to a considerable extent by the *purchasers* to stimulate interstate sale in various products.

Here, the employer's interstate shipments amounted to seven-tenths of one per cent of his total business. If the trivial is to be the yardstick by which jurisdiction is measured, doesn't it seem reasonable to say that this inconsequential percentage is within the category? Another note is detected in the opinion. Jurisdiction is justified apparently not by the employer's inter-

18. N.L.R.B. v. Aaronson Printing Co. (Board decision July 21, 1939). *Labor Relations Reporter* 885, Aug. 14, 1939.

state trade, but rather by what his customers do with his finished product and by the sources from which those who sell raw materials to him obtain them. If even a comparatively small part of the raw materials purchased come to the seller thereof in commerce, and if some of the finished product reaches the channels of commerce through the agency of the employer's customers, then the Board may act. The reasoning seems to be that if such an employer engages in unfair labor practices and a strike results, this will interfere with his seven-tenths of one per cent commerce and may cause the person from whom the raw materials are bought to refrain from purchasing as much in commerce for resale to this employer and may prevent the customers from sending some of their finished advertising matter to other states and thus cut down their flow of interstate business. If this is to be the law, then the line of demarcation between the powers of the state and federal governments becomes a shadow. The illustration used by Justice Brandeis in describing direct and indirect effects on commerce of the stone dropped in the pond and the rings ever widening away from the center until they cannot be seen, but the repercussions of which may be felt at some remote place through some remote means, may well be used here. Possible remote results of industrial strife on interstate business of some third person as conferring jurisdiction seems to go beyond any presently accepted view of the federal power. This case is bound to engender the suspicion that the Board, having achieved its *de minimis* objective, is seeking a further extension of its power so that it may have jurisdiction where the interstate trade of some person other than the particular employer may be secondarily affected by his labor troubles.

In the writer's judgment, consideration of secondary effects is improper since they are the remote and not the direct consequences of the unfair labor practices. The inconsequential percentage of interstate products flow in the Aaronson case leads

to the conclusion that there should be a reversal on jurisdictional grounds in the courts. To take control of such cases out of the hands of the states is to offend their sovereignty.

One further case seems worthy of mention in this study of the growing range of the Board's activity. Also in July, 1939, its jurisdiction over the labor relations of a warehouse company whose goods had been stored for delivery to intrastate customers was upheld. It appeared that the company was in the trucking and warehouse business. Sixty per cent of its revenue came from the warehouse and forty per cent from trucking. The goods stored were shipped to the warehouse in interstate commerce by national dealers. The labor trouble was in the warehouse, and the company contended that the warehouse business was wholly intrastate in character and separate from the truckage transfer operations which were interstate in character. The Board rejected this contention, taking the position that the two phases of the business were interrelated.

Summarizing the scope of the jurisdiction of the Board, as it now seems plainly worked out, it is apparent that the industrial relations of (1) interstate agencies such as telephone, telegraph, and radio services, steamship companies and the like, (2) industries whose raw materials and finished products move in interstate commerce in greater than trivial proportion of their entire purchase of raw materials and sale of finished product, and providing the interruption of that flow through labor troubles will affect commerce to the necessary degree, (3) industries having a greater than trivial one-way flow of either raw materials or finished product, provided again that interference with the flow will affect commerce as required, and in these cases secondary effects of the interrupted flow seem to be a factor according to the latest decision of the Board, (4) industries such as utilities which operate purely intrastate, but which furnish motive power or materials to interstate agencies

which are essential to their continued operation,—are subject to the Labor Act.

Still in the speculation stage, with some evidence present that jurisdiction will be sanctioned, is the problem of a company operating purely intrastate, but which is an independent unit of an industry which in the aggregate furnishes a large volume of interstate trade and whose labor history shows strife and sympathetic strikes.

It will be observed that in all of the leading cases the courts have announced that the percentage of products flow in commerce is not dispositive of the issue of jurisdiction, but that the federal control is complete if the interference with the normal relations between employee and employer because of violations of the Labor Act will affect commerce to the necessary degree. This "necessary degree" proviso when the latest decisions are analyzed, would seem to be satisfied by proof of little more than the actual or threatened interruption of a products flow of a percentage of the employer's raw materials or finished products which is greater than a trivial percentage of his entire business. It is true that the interrupted flow is always pointed to as a result of the labor difficulties and then the consequences which in turn appear, or are likely to appear, in the wake of the interruption, even to the extent of secondary consequences; still the conclusion cannot be avoided that the major factor in determining jurisdiction is the volume of the products flow of a particular employer in commerce.

The impression may be created from this outline of what appears to be a gradual expansion of the jurisdictional lines of the National Labor Relations Board, that criticism of its attitude and conduct is intended. Nothing is further from the truth. In the writer's judgment, the Board would be derelict in its duty if it failed to seek out the full limit of its authority. When the Wagner Act was adopted, there were no really effective

state labor boards where the principle of collective bargaining received the character of recognition made mandatory by it. Since Congress had declared the national policy with respect to labor relations, it is plainly incumbent on the board to pursue its steps by step advance until the United States Supreme Court establishes the specific boundaries of its power.

JOHN J. FRANCIS.