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TRENDS IN THE ADMINISTRATION OF THE
TAFT-HARTLEY ACT*

WALTER L. BROWN**

The Taft-Hartley Act undertook to modify and give a new direction to the national labor policy reflected in the Wagner Act and the rulings and decisions resulting from thirteen years of its administration. In an address before the Texas Bar Association on July 1, 1948, the General Counsel of the National Labor Relations Board stated:

"The Act was enacted to create a mutuality or responsibility and standing and to bring employers and the representatives of their employees to a parity of obligations and privileges; to eliminate the unilateral advantages that existed in the past; and to give to everyone in the labor-management relations field an even break."

That everyone in the labor-management field did not receive "an even break" in the past resulted from a law with unbalanced provisions and a National Labor Relations Board which gave it an unbalanced administration. The Taft-Hartley Act made extensive additions to the substantive provisions of the Wagner Act. In the main they were designed to give balance to our national labor policy by imposing responsibilities on labor organizations and by protecting the legitimate rights of employers and the individual employee who may choose not to belong to a labor organization. Also the Taft-Hartley Act introduced administrative and procedural changes, the most significant of which was the creation of the office of General Counsel of the Board. Appointed by the President, the General Counsel has final authority with respect to investigating charges and issuing and prosecuting complaints. Consequently, the functions of investigator, prosecutor and judge have been separated. In addition, there were other changes in past Board procedure designed to emphasize the Board's semi-judicial character. In a real sense the act created a "new" National Labor Relations Board.

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1 See NLRB Rel. R-102.
The Taft-Hartley Act was passed over a Presidential veto on June 23, 1947, and the purpose of this paper is to take a brief look at the first year of its administration. It is not surprising that a law so controversial and with such a stormy legislative history has already brought forth official rulings and decisions numbering in the hundreds. Most of the available opinions construing and applying the new Act are opinions of the Board and its trial examiners but there have been a few significant court decisions and a number of opinions of the General Counsel on matters of importance. Of course the latter are not binding on the Board but they are a relevant part of the administrative picture. Moreover, as was to be expected, there has been extensive comment in legal periodicals. As a result there now exists a considerable literature to aid one who has occasion to deal with the new act.

It is quite evidently beyond the scope of this paper to attempt a comprehensive review of the work of the Board, the courts and the General Counsel during the first year of the act. Nevertheless, an examination of the treatment of a few problems of general in-

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2 This represents a departure from the practice pursued under the Wagner Act when the General Counsel assiduously avoided rendering opinions. These opinions have been informal in nature and are not compiled but appear in releases issued by the Board from time to time which are published in private labor law reporting services such as the Labor Relations Reference Manual (Bureau of National Affairs) and Commerce Clearing House Labor Law Reports. For example, see the public addresses by the General Counsel, Associate General Counsel and Assistant General Counsel which are reported in NLRB releases R-51, R-64, R-67, R-79, R-80, R-85, R-87, R-102, R-107, R-108.

interest should indicate the direction which the administration of the act is taking.

FREE SPEECH AND COERCION

Under Section 8(a)(1) of the Wagner Act it is an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." The Constitution guarantees freedom of speech and in principle the old Board recognized the right of an employer to express an opinion regarding unions and the union activity of employees as long as coercion was avoided. Nevertheless, under the administration of the old Board the expression of an opinion by an employer was a very hazardous undertaking. There was a strong tendency to construe any forcefully expressed opinion as coercive; and if coercion could not be found in the language, the statement was often treated as evidence of a "course of conduct" which was coercive. Consequently, the Taft-Hartley Act added Section 8(c), the so-called free speech amendment, which provides that, "The expressing of any views, argument or opinion . . . shall not constitute or be evidence of an unfair labor practice . . . . if such expression contains no threat of reprisal or force or promise of benefit."

It is too early to say just how extensive a change will result from this provision; but it is clear that the new Board is prepared to go much farther than the old Board in upholding expressions of management. Its chairman has said that there is no doubt that the law has been modified; and in applying the new section to some old cases the Board has reversed trial examiners' reports and in recent cases has avoided reliance upon the "course of conduct" theory. Most significant is the changed attitude towards vigorous action of an employer in connection with a representation election. Completely gone is the old Board's doctrine requiring employer neutrality. In a recent case the Board reversed a trial examiner's finding that an employer violated the act by sending employees sample ballots marked against the union and strongly worded anti-union notices and announcements in which

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5 E.g., Fulton Bag & Cotton Mills, 75 N. L. R. B. 111 (1947).
6 Bailey Co., 75 N. L. R. B. 113 (1947); Tygart Sportswear Co., 77 N. L. R. B. 98 (1948).
the company was treated as the opponent of the union in a forthcoming NLRB election.7 Also, the General Shoe case, which I shall discuss presently, recognizes the right of an employee to enter a campaign and strongly oppose unionization. Another decision clearly abandons the "captive audience" doctrine of the Clerk Brothers case8 and holds that it is no longer an unfair labor practice for an employer to compel employees to listen to an anti-union address on company time and property.9 In step with this general administrative trend the Circuit Court of Appeals for the Seventh Circuit has held that an employer did not violate the act when he sought to poll employees by mail on the question whether they were willing to accept the last offer made to the union before negotiations broke down.10

On the other hand, the new Board has held that the "free speech amendment" will not protect interrogation of employees about their union affiliation and related matters because such questioning is not the expression of "views, argument, or opinion";11 nor will it protect a letter to employees advising them prior to an election that they will "find it difficult, if not impossible" to get a job with any other employer in the industry if they vote for the union.12 These decisions are reminders that, as the Circuit Court of Appeals for the Fifth Circuit recently stated, "employers still may not, under the guise of merely exercising their right of free speech, pursue a course of conduct designed to coerce their employees."13

The problem of distinguishing between what is a proper exercise of the privilege of free speech and what is coercive is not always an easy one. Nice distinctions are sometimes called for. For example, the new Board has held that a statement made by a foreman that the day the union "came in was the day he was leaving" was protected free speech.14 On the other hand, in the subsequent West Ohio Gas case,15 a majority held that a statement by a foreman that "there will never be a union around" anywhere

8 70 N. L. R. B. 803 (1946).
9 Babcock and Wilcox, NLRB Release R-84.
15 76 N. L. R. B. 27 (1948).
he works was coercive. Both decisions seem sound. In the first case the foreman expressed an antipathy to unions strong enough to induce him to quit if the union came in; but there was no threat either express or implied. In the second statement, however, the threatening overtones are quite definite.10

The same majority has made a legal distinction of questionable validity in the case of the General Shoe Corporation.17 There the company had taken a very active part in an election campaign, circulating letters and leaflets to its employees, and publishing newspaper advertisements, forcefully opposing the union. On the day before the election the president of the company had the foremen take employees away from their work in groups of twenty to twenty-five and bring them to his office, which the Board referred to as the “locus of authority in the plant,” where he read to each a strong six page speech opposing the union. It was held that none of the statements of the employer went beyond privileged free speech and none was coercive. Nevertheless, with two members dissenting, the Board set aside the election saying, with reference to the conduct of the president in calling the employees to his office,

“In our opinion, this conduct,18 and the employer’s instructions to its foremen to propagandize employees in their homes, went so far beyond the presently accepted custom of campaigns directed at employees’ reasoning faculties that we are not justified in assuming that the election results represented the employees’ own wishes. . . .”

The significance of the case lies in the fact that the majority holds that conduct which cannot be considered as evidence of an unfair labor practice, because of Section 8 (c), may nevertheless constitute grounds for setting aside an election if an atmosphere is created making a free choice of employees improbable. The minority took the position that if the method by which the company expressed its views was such as to preclude “the free expression of choice by employees in an election, it would be only logical to conclude that the employment of such ‘method’ by an employer

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10 Probably the Board would not consider a single statement of this character sufficient grounds for Board action in itself. cf. Goldblatt Bros., Inc., 77 N. L. R. B. 204 (1948). There were other features to the West Ohio Gas case.
17 General Shoe Corp., 77 N. L. R. B. 18 (1948).
18 Emphasis supplied.
to express its views is sufficiently coercive to be violative of the act." However, the minority did not consider that there had been any coercion.

In a case decided on July 22, 1948, the Board distinguishes *General Shoe* and indicates that it will be given a restricted application. It is of interest that the Board there refers to the case as one in which the employer's conduct "so far abused normal campaign tactics that the employees were inhibited in their free choice of a bargaining representative"; which seems to say that what the employer did was coercive. If the Board had put its decision in *General Shoe* on the ground that what the president said had the force of a command, under the particular circumstances in which he said it, and consequently there was an implicit threat of reprisal if his views were not complied with, one would have less difficulty with the decision. What the Board did was to solve a hard case by making what I deem to be bad law. To say that an employer's conduct which is not violative of the Act may be the basis for setting aside an election seems unsound.

Both *General Shoe* and *West Ohio Gas* were difficult cases, about which opinions may well differ. I think it is a healthy sign that they were both three to two decisions. Also I think that the available opinions under the free speech amendment, considered as a whole, indicate that the Board is striving to give it a balanced construction and application.

**Discharge for Cause**

It will be remembered that Section 10 (c) of the Act says that the Board may not require an employer to reinstate an employee "suspended or discharged for cause." Critics widely asserted that this provision would enable employers with impunity to discharge employees active in union matters on the slightest pretext. Like other prophecies of doom that followed on the heels of the passage

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20 See the Board's most recent decision on the subject in Gray Drug Stores, Inc., Daily Labor Report 193, p. A-1. While the full text of the opinion in that case was unavailable at the time this article was completed, a summary report of the decision indicates that the Board may have circumscribed its *General Shoe* ruling to a point just short of extinction. In that case the Board declined to set aside an election despite the fact that in the two days prior to a representation election, the vice-president, general manager and personnel director of a drug store chain system toured each of the stores in the chain and delivered anti-union addresses to employees individually and in small groups on company time and property.
of the Taft-Hartley Act, this one proved unwarranted. Shortly after the act became effective, Counsel Denham announced that his office would attempt to ascertain the true reason for action in each case and would reject a “good cause” as the true reason for discharge “if it has all the earmarks of nothing but subterfuge.”

The construction of the act implicit in this statement is reasonable, but it must always be borne in mind that the provision in question was brought about by the old Board’s practice of inferring improper motives despite the existence of legitimate cause for discharge. Presumably Congress did not intend to legalize discrimination against an employee for union activity merely because grounds exist which justify disciplinary action when considered abstractly. Therefore, where it clearly appears that union activity was the true reason for discharge, the provision should not apply. On the other hand, if the new Board unduly extends itself to find that the cause advanced by the employer is a subterfuge rather than the true reason, the purpose of the provision will be defeated.

The provision offers another good example of the need of a balanced administration and, thus far, the decisions of the new Board indicate that it will be so administered. In many cases the causes for discharge assigned by the employer have been accepted despite the availability of facts that might have been used to support contrary inferences. On the other hand, where it appears that the “cause” is a pretext, as where it was contrary to past practice to discipline for that reason, or where an employee discharged for alleged inefficiency had not been warned, and the timing of the discipline coincides with union activity, the Board has ordered reinstatement. Moreover, a decision of the Circuit Court of Appeals for the Second Circuit and two Board decisions have held that “for cause” refers not alone to the business reason for discharging, but also to the basis of selection of em-

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ployees discharged. Consequently, although an employer may have a legitimate reason for disciplinary action, he may be in trouble if he discharges those active in union affairs but overlooks the offense in the case of others.

**Illegal Collective Action**

There are some significant decisions of the new Board regarding the right of an employer to discharge, or to refuse to reinstate, an employee because of participation in illegal collective action.

In the *International Nickel* case, the Board broke away from its precedents to recognize the right of an employer to discharge leaders of a strike who barred a plant entrance to supervisors by an "implied threat of violence." Despite the absence of any overt acts of violence, the Board held that the action of the employees was not protected free speech, because of the implied threats of force. The Board was careful to place its decision on the fact that they had personally participated in the picket line activity and thereby avoided deciding whether the strike leaders could have been discharged merely because they directed how the picketing was conducted. The decision has been construed as initiating a considerable extension of the *Fansteel* doctrine. It will be recalled that in the historic *Fansteel* case the Supreme Court held that employees taking part in a sit-down strike forfeited their right to reinstatement. The old Board construed and applied the decision very narrowly, restricting it to the sit-down situation, ordering reinstatement to employees discharged for other strike violence. This construction of the decision remained substantially unchallenged until the Circuit Court of Appeals for the Seventh Circuit, in a decision rendered after the Taft-Hartley Act became effective, ruled that the protection afforded peaceful picketing did not extend to barring an employer from his property by implied threats of violence. *International Nickel* follows the lead of the Seventh Circuit. In the *Dearborn Glass* case, which came later, the Board refused to reinstate a strike leader who had been discharged for mass picketing. More recently the Board

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expanded upon its decision in *International Nickel* by holding that an employer did not violate the law when he discharged some employees and laid off others who had participated in a mass demonstration and blocked entrance into the plant by an implied threat of bodily harm to employees of an independent contractor retained by the employer.\(^{32}\)

In another decision of importance, the Board looked to the purpose of a strike and ruled that employees who strike to protest the demotion of their foreman, and not to protect their own interests, need not be reinstated.\(^{33}\) This decision was later restricted somewhat when the Board held that it was a protected concerted activity when only one of the two purposes of the activity was in the employees' own interests.\(^{34}\) In that case the employees met for the dual purpose of discussing rehiring of a discharged foreman and the matter of a restroom for employees.

Several forthcoming decisions by the Board on the matters of strikes and picketing will be of considerable interest. Early opinions by trial examiners reveal conflict with the views of the General Counsel and among trial examiners themselves. The General Counsel has contended that a strike during the term of a labor contract may of itself constitute restraint and coercion of employees in the exercise of their rights under the act. In the first case involving this important question,\(^{35}\) a well written opinion of the trial examiner disagrees with the General Counsel and subsequently the same position has been taken by another trial examiner.\(^{36}\) Both of these cases involved organizational strikes but the contention of the General Counsel seems to be broad enough to include any strike for the purpose of interfering with a valid contract between an employer and the representative of his employees. Both trial examiners concluded, however, that the only

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\(^{32}\) Socony Vacuum Oil Co., Inc., 78 N. L. R. B. 169 (1948).


union restraint or coercion outlawed in Section 8 (b)1 is the use of force, the threat of force, mass picketing and the like; and that a strike does not involve coercion, whether or not it is justifiable, as long as it is peaceful and those who desire to work are not prevented from doing so. In the Perry-Norvell opinion, the trial examiner cites some persuasive legislative history to support his views.

On August 17, 1948, the Board decided the National Maritime Union case in which it disagreed with the General Counsel as to the meaning of “restrain or coerce” in Section 8 (b)1 of the act, with one dissent. The legislative history of the act, the Board noted, strongly suggests that by the provision in question “Congress was interested in eliminating physical violence and intimidation by unions or their representatives as well as the use by unions of threats of economic action against specific individuals in an effort to compel them to join.” The Board added,

“...we are not prepared to say, as the General Counsel and the Trial Examiner did, that a strike for an illegal objective necessarily ‘restrains’ and ‘coerces’ employees, as those terms were intended to be applied in Sec. 8 (b) (1) (A). The touchstone of a strike which is violative of Sec. 8 (b) (1) (A) is normally the means by which it is accomplished so long as its objective is directly related to the interests of the strikers, and not directed primarily at compelling other employees to forego the rights which Sec. 7 protects.”

A related problem is the extent to which the “free speech amendment” protects peaceful picketing connected with strikes and boycotts outlawed by the act. Several trial examiners have held that peaceful picketing which is an integral part of an unlawful secondary boycott is not protected. One trial examiner recently said “...the picketing here under consideration is essentially not speech but rather a verbal facet of an illegal strike.” However, at least one trial examiner has decided to the contrary.

In a precedent-making decision rendered recently, the new Board found a union guilty of an unfair labor practice for the

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37 78 N. L. R. B. 137 (1948).
40 Gould and Preisner, NLRB Release R-106.
41 Scalright Pacific Ltd., NLRB Release R-78.
first time in history. The charge was engaging in a secondary boycott in violation of Section 8(b)(4)(A) of the new act and the decision contains several highly significant rulings. Saying that it did so “in order to effectuate the policies of the Act,” the Board denied the motions of the complainant employers to withdraw their charges. Also the Board held that the employer involved in the primary dispute with the union can file secondary boycott charges, because the act permits any person to file a charge; and that a union cannot escape liability for engaging in a secondary boycott because of an alleged alliance between the primary employer and the other employer “which rests solely on the fact that the so-called ally is an independent sales outlet for the products of the primary employer” and “there is no financial or other connection other than that of seller and buyer” between the two firms.42

**Collective Bargaining Obligations of Employers**

The first year of the new act witnessed something of a trend away from the former tendency to stamp all unilateral action of employers on collective bargaining matters as unfair labor practices. The Board has sustained the action of an employer who granted a unilateral wage increase after two years of bargaining in good faith had failed to result in any agreement and where other firms in the area had made similar increases and the union had approved increases subsequently made by the company.43 In another case the Circuit Court of Appeals for the Fifth Circuit sustained a unilateral wage increase given after an impasse had been reached in collective bargaining where the union had called a strike vote and the raise was given to meet competitors’ wages in the area.44 However, it is still an unfair labor practice to give a wage increase without consulting the union even though bargaining has ceased and a strike has resulted from failure to agree on union security provisions.45

Other decisions clearly reflect a disposition to extend greater freedom to management in regard to its bargaining obligations. Thus, for example, the Board declined to find that the company

43 Exposition Cotton Mills, 76 N. L. R. B. 183 (1948).
had refused to bargain where the home office sent instructions to a plant manager that its policy was to refuse maintenance of membership contracts. There was no refusal to bargain, said the Board, because the company gave its reasons for refusing the provisions, made counter-proposals and other concessions and reached agreement on a substantial pay raise and other matters.\textsuperscript{46}

The Board likewise recently upheld the action of an employer who raised the pay of unorganized workers alone while negotiating a contract with a union representing the organized group. The employer, it found, committed no unfair labor practice in refusing to accede to the union's demand that its members receive the same pay raise pending negotiation of a contract. "Absent an unlawful motive," said the Board, "an employer is privileged to give wage increases to his unorganized employees, at a time when his other employees are seeking to bargain collectively . . ."\textsuperscript{47} In another case where the majority of the Board found the motive for a wage increase was to prevent the reorganization of a union, it was held to be interference.\textsuperscript{48}

Also, the Board has held pension plans and group health and accident insurance programs to be proper subjects of collective bargaining.\textsuperscript{49} A trial examiner has ruled that group insurance and other social security programs are matters on which the employer must bargain,\textsuperscript{50} and the Circuit Court of Appeals for the Sixth Circuit has held that the granting of merit increases is a subject for collective bargaining.\textsuperscript{51}

On September 23, 1948, the first court to pass directly upon the question sustained the Board's position that pension and retirement plans are subjects for collective bargaining.\textsuperscript{52}

\section*{Union Security}

One of the principal features of the Taft-Hartley Act was the amendment of Section 8 (a) (3) so as to prohibit discrimination against employees to encourage or discourage membership in a

\begin{footnotesize}
\begin{enumerate}
\item Inland Steel Co., 77 N. L. R. B. 1 (1948); W. W. Cross & Co., 77 N. L. R. B. 188 (1948).
\item General Motors Corp., NLRB Release R-81.
\item Inland Steel Co. v. NLRB, 17 U. S. L. Week 2135 (C. A. 7th, Sept. 28, 1948).
\end{enumerate}
\end{footnotesize}
union except under a contract containing a union shop provision authorized by a vote of a majority of the employees in a unit. The effect is to outlaw the closed shop and to require an election to authorize a union shop or any lesser form of union security. The administrative construction of this union security provision has thus far come from the office of the General Counsel.

After the passage of the act, questions arose as to whether "maintenance of membership" or "maintenance of dues" provisions could be included in contracts and, if so, whether elections were necessary. The General Counsel has ruled that union security provisions less than the union shop are valid if the union obtains authorization to negotiate a union shop contract by a majority vote in the required election. He has also held that a union security provision may be included in the contract before the necessary election has been held if the effectiveness of the provision is conditioned upon the union's first obtaining the requisite vote. While there is some ambiguity on both of these matters, these seem to be good practical answers. He has also ruled that where a contract containing a union shop provision is executed without the union having obtained the requisite authority in an election, the mere execution of the contract is a violation of Section 8(a)(1) in the absence of a condition that the provision shall not be effective until the union shall have obtained the necessary authority in an election; that the union shop election must be conducted by the NLRB; and that a union failing to file non-Communist affidavits or to comply with the other filing provisions of the act may not enter into a valid union security provision since it is not eligible to participate in such an election.\(^\text{53}\)

The statistics on the union shop elections during the first year are interesting. Over 26,000 petitions for union shop authorization elections were filed with the Board. As of June 1, 1948, 13,500 such elections had actually been conducted and authorization won by unions in 13,300 or 98% of the elections. Almost a million and a quarter employees voted in these elections and about 95% voted to authorize their union to enter into a union shop contract.\(^\text{54}\) It was this experience which prompted Senator


\(^{54}\) See address of Assoc. Gen. Counsel Finding before Southern Industrial Relations Conference NLRB Rel. R-107, p. 10.
Ives to introduce a bill in the Senate designed at eliminating union shop elections.  

**Severance of Craft Units**

Section 9(b)2 of the new act favors greater liberality in the separation of true craft units, where a plant or company is organized on an industrial basis, through providing that the Board may not "decide that any craft unit is inappropriate . . . . on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation." The new Board recently asserted that it has been "easing the path of a union desiring severance of a craft union" and there is certainly an imposing number of decisions in which craft severances have been granted. However, due to the great variety of facts encountered in craft severance cases, it is difficult to compare decisions by the old and new board.

The Board has refused to accept the position that the new act requires craft severance elections in all cases. Rather, the Board has held that the new act preserves its discretion in determining units, except that it can not refuse a craft severance election on the sole ground that a different unit was established by a prior Board determination.

**Jurisdiction over Local Concerns**

The Taft-Hartley Act made no change in the coverage of the Wagner Act — the coverage of both extending to businesses "affecting" interstate commerce. Yet, under the Wagner Act, the Board declined to assert its jurisdiction over many activities which affected commerce, including particularly the construction industry, cases where the effect on commerce was not substantial, and

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56 In an important decision, National Tube Co., 76 N. L. R. B. 169 (1948), the board in refusing to grant a craft severance election pointed out very significantly, "Recent decisions should make it apparent that the Board has been inclined recently to exercise discretion in the direction of easing the path of a union desiring severance of a craft unit . . . . That is not the primary problem before us here, nor is this decision to be taken to mean that that trend is about to be reversed."
58 American Rolling Mills Co., 76 N. L. R. B. 170 (1948); National Tube Co., id. 169.
borderline cases, usually on the ground that the assertion of juris-
diction would not effectuate the purposes of the act. Although
there is lack of agreement between the Board and its General
Counsel as to the extent to which the Board’s jurisdiction should
be asserted, there is a clear tendency to extend the exercise of its
jurisdiction. The General Counsel takes the position that the
Board should take jurisdiction to the full extent of the authority
conferred by the act. It is of particular interest that in arguing
for his position, he stresses the protection which the act gives the
employer. In recent testimony before the Congressional Joint
Committee on Labor-Management Relations, Mr. Denham stated
that a small businessman has “just as much right to protection”
as a large one.60 Consistent with this line of reasoning, he had pre-
viously advised the House Committee on Executive Expenditures
that very few firms were outside the coverage of the act. Thus, he
felt that hotels were covered because their customers were in inter-
state commerce and because they obtained goods from outside the
state. It was also his opinion that a laundry is covered if it serves
industrial establishments engaged in interstate commerce.61

The Board itself has shown reluctance about going to that
length. In his testimony before the Joint Committee on Labor-
Management Relations, Board Chairman Herzog, referring to Mr.
Denham’s views in the matter, said:

“... the Board members are not nearly so anxious to
move that far into new field, and ... we have discovered
no legal obligation to do so. The Board members’ determina-
tion as to what will best effectuate the policies of the Act
must presumably prevail, unless and until Congress or the
Courts tell us that we are wrong.”62

Despite this disagreement with the General Counsel, the
Board has continued to move into wider fields than did its prede-
cessor under the Wagner Act. For example, Mr. Herzog has
agreed that the Board may be obliged to move into the construc-
tion field because Congress clearly intended to regulate various
practices prevalent in that industry.63 Also, the Board ruled that
it would take jurisdiction over a retail automobile dealer, the bulk

60 N. Y. Times, June 12, 1948, p. 6.
63 Ibid. In keeping with this position, a board trial examiner, disagreeing
of whose sales were made locally but whose goods came directly from outside the state;\textsuperscript{64} over a retail dry goods store whose only connection with commerce was its receipt of 50% of its goods from outside the state;\textsuperscript{65} over local bus and trolley lines which purchased substantial amounts of equipment from out of state sources, carried passengers who were employed by businesses engaged in interstate commerce, and connected with interstate carriers at various points.\textsuperscript{66} In other recent decisions on the question, however, the Board has fallen back to the old Wagner Act standby “that it would not effectuate the policies of the Act to exercise jurisdiction” and refused to step into controversies involving a small grocery chain in Texas,\textsuperscript{67} a local bus company,\textsuperscript{68} a building materials manufacturer,\textsuperscript{69} a fertilizer manufacturer,\textsuperscript{70} and a bakery which obtained most of its raw materials from outside the state although the activities of each of the employers involved in those cases “affected” commerce to some extent.

Very recently the Board decided that it would not assert jurisdiction over an employer operating a general office building occupied to a substantial extent by the office and clerical staffs of firms engaged in interstate commerce such as railroad and telegraph companies.\textsuperscript{72} The operation of a general office building is “essentially local in character” the Board concluded.\textsuperscript{13}

\textsuperscript{64} Liddon-White, 76 N. L. R. B. 165. The dissenting members felt that the decision meant a “general change in policy.”
\textsuperscript{65} Parks-Belk Co., 77 N. L. R. B. 71 (1948).
\textsuperscript{67} Hom-Ond Stores, 77 N. L. R. B. 101 (1948).
\textsuperscript{68} Duke Power Co., 77 N. L. R. B. 103 (1948).
\textsuperscript{72} Midland Building Co., 78 N. L. R. B. 171 (1948).
\textsuperscript{73} The decision of the Board relies to a great extent upon the decision in 10 East 40th Street Building Inc. v. Callus, 325 U. S. 578 (1945) where it was held that employees employed in a similar building were not engaged in interstate commerce or production of goods for interstate commerce under the FLSA.
In another significant decision regarding coverage, the Board said that its determination to assert jurisdiction in a particular case would depend upon the extent to which a firm's activities have affected commerce over a period of years and not alone on the extent of the firm's commerce activities at the time of the alleged commission of an unfair labor practice. Otherwise, the Board reasoned, a firm might be covered by the act one week, month or year, but not the next.

CONCLUSION

In the address from which I quoted at the outset, General Counsel Denham said:

"The success or failure of this Act will depend upon how it is utilized by those who come within its orbit, and upon how those who are responsible for its administration apply it."

How management and labor use the act is indeed important. It is to be hoped that they will both avoid taking extreme positions and will give the act a reasonable and practical construction in their day-to-day relations. However, the success of the act truly depends upon the manner in which it is administered. To be effective it must have that balanced administration which the Wagner Act did not receive. Thus far, to my mind, there is every indication that the Board is endeavoring so to administer it.

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74 Barton Brass Works, 78 N. L. R. B. 56 (1948).