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THE "NO-MAN'S-LAND" AND THE NATIONAL LABOR RELATIONS BOARD'S JURISDICTIONAL POLICIES

by

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The "No-Man's Land" is real since the Supreme Court decided *Guss v. Utah Labor Relations Board.*[1] Guss was a small employer in Salt Lake City who manufactured photographic equipment for the Air Force. He purchased some of his materials outside the state, and he shipped some of his products to places outside Utah. The Steelworkers of America had been certified by the National Labor Relations Board as the bargaining representative. Thereafter a Regional Director refused to issue a complaint on the Union's charge of an unfair labor practice. The Director concluded that the activities of the Union were predominantly local in character and did not meet the Board's revised jurisdictional standards.[2] The Union filed the same charges with the Utah Board. Relief was granted through a remedial order which was affirmed in the Utah Supreme Court. It was that decision which was reversed by the United States Supreme Court. Because the operations of an employer fall short of the national Board's jurisdiction requirements, the state Board does not thereby acquire jurisdiction. In companion cases[3] the Supreme Court held that the prohibition of state authority applied to state courts as well as state labor boards, and was applicable even though no attempt had been made to invoke the processes of the national board.[4]

The *Guss* decision has its roots in the Court's *Bethlehem Steel Co. v. N. Y. S. L. R. B.* decision.[5] In that case the Supreme Court held that

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[1] 353 U.S. 1 (1957).

[2] The Respondent's purchases from outside the State of Utah were less than $50,000. The Board's applicable jurisdictional standard required purchases of $500,000. *Jonesboro Grain Drying Cooperative,* 110 NLRB 481 (1954).

[3] *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427 AFL v. Fairlawn Meats, Inc.,* 353 U.S. 20 (1957); *San Diego Building Trades Council v. Garmon et al.,* 353 U.S. 26 (1957).

[4] Thus answering the question left open in *Building Trades Council v. Kinard Construction Company,* 346 U.S. 933 (1954).

[5] 330 U.S. 767 (1947).

where the federal board has jurisdiction over an industry and has asserted jurisdiction over the labor relations in the industry generally, there remained no room for the operation of state authority. The Court referred to the commendable effort of the national and state boards to avoid conflict in this overlapping area of their labor relations statutes, but found that in their negotiations, the national board had made no concession or delegation of power to the states to deal with the subject involved in the case, *i.e.,* whether foremen might constitute themselves a bargaining unit. The Court made reference to the problem eventually resolved in *Guss* in the following words:

> "The election of the National Board to decline jurisdiction in certain types of cases, for budgetary reasons presents a different problem which we do not now decide."

Justice Frankfurter wrote a separate opinion in which he interpreted the majority opinion:

> ". . . to mean that it is beyond the power of the National Board to agree with State agencies enforcing laws like the Wagner Act to divide, with due regard to local interests, the domain over which Congress had given the National Board abstract discretion but which practically, cannot be covered by it alone. If such cooperative agreements between State and National Boards are barred because the power which Congress has granted to the National Board ousted or superseded State authority, I am unable to see how State authority can revive because Congress has seen fit to put the Board on short rations."

Though it can be argued that Justice Frankfurter's interpretation of the majority opinion in the *Bethlehem* case is open to question because it seemingly ignores the fact that the Court there found that the national Board had made "no concession or delegation of power to the States" to deal with the subject involved in the litigation, Congress apparently agreed with him, and as noted by the Court in the *Guss* decision, enacted the proviso to Section 10 (a) of the Labor Management Relations Act, of 1947, in direct response to the problem he outlined. Section 10 (a) "empowers the Board to prevent . . . unfair labor practices . . . affecting commerce" which power shall be unaffected "by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise:

> "Provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases . . . even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act, or has received a construction inconsistent therewith."

Read in the light of such a background, the Court held that

> ". . . the proviso to Section 10(a) is the exclusive means whereby States may be enabled to act concerning the matters which Congress has entrusted to the National Labor Relations Board."

It found support for its holding in a prior decision[6] where it had pointed to the proviso as demonstrating a Congressional intention that the national Act should preempt the field, and described it as authorizing cession agreements only where state law is consistent with the national legislation, thus insuring that the "national Labor policy will not be thwarted even in the predominantly local enterprises to which the proviso applies."[7]

The Court recognized that a denial of state jurisdiction in cases arising under the Act, but as to which the NLRB declined to exercise its statutory jurisdiction, would give rise to a "no-man's-land area subject to regulation by no agency or court." However, since the only alternative, a holding that states could act in this area, would produce confusion and conflict with federal policy, and since Congress had expressed its judgment in favor of uniformity the Court had no real choice, if it desired to conform to its past decision in which it had discussed at some length the destructive nature of the conflicts which arise when both state and federal governments lay hold of the same relationship. In the *La Crosse Telephone Corp.* case,[8] a unanimous Court said:

> "In practical effect the true measure of conflict between the state and federal scheme of regulation may not be found only in the collision between the formal orders that the two boards may issue. We know that administrative practice also disposes of cases in which no order has been entered. Disposition of controversies on an administrative as distinguished from a formal basis will often reflect the attitudes of the National Board which have not been reduced to orders in those specific cases. A certification by a state board under a different or conflicting theory of representation may therefore be as readily disruptive of the practice under the federal act as if the orders of the two boards made a head-on collision. These are the very real potentials of conflict which lead us to allow supremacy to the federal scheme even though it has not been applied in any formal way to this particular employer. The problem of employee representation is a sensitive and delicate one in industrial relations. The uncertainty as to which Board is master and how long it will

[6] *Amalgamated Association of Employees* v. *W.E.R.B.*, 340 U.S. 383 (1951).

[7] *Id.* 23. See also *Algoma Plywood & Veneer Co. v. Wisconsin Board*, 336 U.S. 301, 313 (1949); *California v. Zook*, 336 U.S. 725 (1949).

[8] *La Crosse Telephone Corporation v. Wisconsin Employment Relations Board*, 336 U.S. 18, 26 (1949). See also the *Bethlehem* case supra, where the Court said "If the two Boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict." And see *Garner v. Teamsters Union*, 346 U.S. 485 (1953), where the Court stated "Congress evidently considered that centralized administration of specially designed procedures were necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies."

> remain such can be as disruptive of peace between various industrial factions as actual competition between two boards for supremacy."

By denying state authority to act in matters covered by the Act, the Court has precluded such mischievous conflicts as would arise from the exercise of both federal and state authority, as well as those conflicts and diversities likely to result from the application of a variety of local procedures and attitudes toward labor controversies within the province of the national Act. However, its decision does not automatically ensure that the national labor policy embodied in the Act will be uniformly applied to all enterprises which fall within the broad reaches of the Act.

This circumstance arises from two factors: first, the broad reach of the Board's jurisdiction, and second, the fact that throughout its existence the NLRB has declined to exercise its full statutory jurisdiction. The legislative history of the Wagner Act makes it plain that in giving the Board authority over labor disputes "affecting commerce" Congress undertook to regulate all conduct that constitutionally it could regulate. Senate Report No. 573,[9] commenting on the committee decision to eliminate a provision which would have excluded from the definition of employers those enterprises employing 10 or fewer employees, stated:

> "After deliberation, the Committee decided not to exclude employees working for very small employers units. The rights of employees should not be denied because of the size of the plant in which they work. Section 7(c) imposes no such limitation. And in cases where the organization of workers is along craft or industrial lines, very large associations of workers fraught with great public significance may exist, although all members work in very small establishments. Furthermore, it is clear that the limitation of this bill to events affecting interstate commerce is sufficient to prevent intervention by the Federal government in controversies of purely local significance."

And later the same report states:[10]

> "While this bill of course does not intend to go beyond the commerce power of Congress, *as that power may be marked out by the Courts,* it seeks the full limit of that power."

As marked out by the courts the grant of authority of the Board is indeed extensive. It extends to "activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce.[11] Coverage under "the Act does not depend on any particular volume of commerce affected more than that

[9] Senate Report No. 573, on S. 1958, p. 7.
[10] *Ibid,* pp. 17-18.
[11] *Polish National Alliance of the United States of North America v. N.L.R.B.* 322 U.S. 643, 647 (1944).

to which courts would apply the maxim *de minimis.*[12] And *de minimis* in the law has always been taken to mean trifles—matters of a few dollars or less.[13] "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze."[14] Indeed, the Board has been almost completely successful in defeating challenges to its jurisdiction. In the picturesque words of the third circuit opinion in the *Suburban Lumber* case:

> "Our courts have been addressed by the constant contention that the National Labor Relations Board lacks jurisdiction. This is the more remarkable in view of its complete lack of success. Locusts destroy but appeals against regulation by the National Labor Relations Board of business on the ground that it is intrastate are harmless insects indeed."

At the time of the enactment of the 1947 amendments to the Act it was a settled principle that the Board's jurisdiction did indeed encompass all that constitutionally Congress could grant. The legislative history of those amendments reveals that Congress desired no limitation on the scope of the Board's jurisdiction. Indeed the concern in this area was quite the other way, and Congress actually broadened the scope of the Board's authority to cover union unfair labor practices, some of which were aimed specifically at protecting small employers from union excesses.

This extensive grant of authority has not been an unmixed blessing for the Board. Though the Board was quick to maintain its authority when challenged, it soon became apparent that assertion of its entire jurisdiction was not feasible, if the Board was to be able to process expeditiously the large number of cases which are filed. Accordingly, the Board has declined to assert jurisdiction over some enterprises because their operations were "essentially local in character," or had "too remote or insubstantial effect on commerce" or "because their operations were inherently local in nature." For the first 15 years of its existence the Board made such jurisdictional determinations on a case to case basis. Out of such decisions there naturally emerged a rough pattern delineating the areas in which the Board would assert and those areas in which it would not assert jurisdiction. In 1950 the Board departed from its practice of determining jurisdiction on a case to case basis, and enunciated a series of jurisdictional standards. It chose the *Hollow Tree Lumber* case to justify its action, stating:[15]

[12] *N.L.R.B. v. Fainblatt,* 306 U.S. 601 (1939).
[13] *N.L.R.B. v. Suburban Lumber Co.,* 121 F. 2d 829 (C.A. 3d. 1941).
[14] *United States v. Women's Sportswear Manufacturer's Association,* 336 U.S. 460 (1949).
[15] *Hollow Tree Lumber Company,* 91 NLRB 635 (1950).

> "The Board has long been of the opinion that it would better effectuate the purpose of the Act, and promote the prompt handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce. This policy should, in our opinion, be maintained. The time has come, we believe, when experience warrants the establishment of certain standards which will better clarify and define where the difficult line can best be drawn."

The standards chosen "reflected in large measure, the results reached in the Board's past decisions disposing of similar jurisdictional issues,"[16] and were chosen not alone to promote the prompt handling of cases, but also in "the interest of certainty,"[17] as to where the jurisdictional dividing line would lie. In an accompanying statement released to the press coincidentally with the issuance of the decisions setting forth the standards, the Board termed its action a reiteration of "its policy of not exercising jurisdiction, despite its power to do so, over business operations so local in character that a labor dispute would be unlikely to have a sufficient impact upon interstate commerce to justify an already burdened Federal Board in expending time, energy and public funds."[18]

These standards remained in effect until July 1, 1954, when a divided Board established new jurisdictional standards, which were generally more restrictive in nature, and which added significantly to the number of enterprises falling in the "twilight zone between unexercised federal jurisdiction, and unquestioned state jurisdiction." In its opinion in the *Breeding Transfer* case[19] justifying the 1954 standards, the Board majority stated:

> "In making these modifications, we have given due consideration to all of the criteria spelled out by the Board in 1950, including (1) the problem of bringing the case load down to manageable size, (2) the desirability of reducing an extraordinarily large case load in order that we may give adequate attention to more important cases, (3) the relative importance to the National economy of essentially local enterprises as against those having a truly substantial impact on our economy, and (4) overall budgetary policies and limitations. If one of the inevitable consequences of our action is to leave a somewhat larger area for local regulation of disputes, we do not share our colleagues' apparent view that this is a sinister development. We do say, however, that a desire to establish broader State jurisdiction is in no wise a factor in our decision. We are concerned here solely with the problem of defining the limits of our jurisdiction pursuant to the discretionary power vested in us by Congress."

The majority's action was met by two dissents; but it is interesting to note

[16] *Ibid.*
[17] *Dorn's House of Miracles, Inc.*, 91 NLRB 632 (1950).
[18] Press Release, R-342, October 6, 1950.
[19] 110 NLRB 493 (1954).

that though there was disagreement as to the propriety of further restricting the Board's jurisdiction, there was no disagreement as to the existence of the Board's discretionary power, to decline to exercise its full jurisdiction. Moreover, both the dissenting and majority members were in basic agreement that a discretionary declination of jurisdiction must be based primarily on budgetary considerations. A major point of disagreement was over whether or not the considerations cited by the majority justified the action taken, i.e., whether in terms of the existent budgetary situation, the size of the Board's case load and backlog required such action.

The Board's claim of a discretionary power to decline to assert jurisdiction when it determines that such action would best effectuate the policies of the Act has generally met with approval in the Courts. The ninth circuit's decision in *Haleston Drug Stores v. NLRB*[20] fairly reflects the general view. The general counsel had issued a complaint in *Haleston,* although the company's operations failed to satisfy the Board's recently adopted 1950 jurisdictional standards, pursuant to his view that the Act required the Board to assert its full jurisdiction. The Board dismissed the complaint. The company argued before the court, that as Section 3(d) which was added to the Act in 1947, gave the general counsel sole authority to decide whether or not to issue complaints, the Board was without authority to dismiss the complaint on jurisdictional grounds. The court rejected the argument, finding that Section 3(d) in no way abridged the Board's "discretionary authority to decline to assert jurisdiction" and noted that prior to the 1947 amendments:

> "The Board itself, without judicial challenge acted on the assumption that it could, for reasons of policy, or for budgetary or other reasons decline to issue an unfair labor practice complaint, or to dismiss a complaint after issuance, without determining the existence of an unfair labor practice, if in its reasoned judgment the policies of the Act would best be served by that course. Of this assumption and practice one cannot doubt that Congress was fully cognizant."

Accordingly, the question was, not whether there is power to withhold jurisdiction, but whether such power rather than residing solely in the general counsel was not also possessed by the Board, and the court's answer was in the affirmative. In numerous other cases the courts were asked to pass upon the propriety of the Board's jurisdictional determinations under the 1950 jurisdictional plan, and the general view was that in the absence of arbitrary or capricious action, the question of whether the Board should exercise jurisdiction is for the Board to determine and

[20] 187 F. 2d 418 (C.A. 9th, 1951).

not the courts. The existence of some degree of discretion was also noted by the Supreme Court in *NLRB* v. *Denver Bldg. & Constr. Trades Council:*[21]

> "Even when the effect of activities on interstate commerce is sufficient to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

Thus as a practical matter the Board had been successful both in marking out the widest possible area in which to act, should it so choose, and in maintaining its discretionary power to decide for itself whether it should act.[22] During this period the states indicated willingness to step in when the Board declined to act,[23] with the result that there was not, before *Guss,* an actual "no-man's-land, subject to regulation by no agency or court," but rather a "twilight zone between exercised federal jurisdiction and unquestioned state jurisdiction." Manifestly, in transmuting this "twilight zone" into a "no-man's land" the *Guss* decision fell short of ensuring that the labor policy decreed by Congress would be applied uniformly to all labor disputes within the Board's province.

The Court showed its concern for this aspect of the problem by directing the attention of Congress and the Board to the problem and inviting those agencies, and the states as well, to take action to eliminate or reduce the extent of the no-man's-land area. This problem is a serious one, for to the extent that federal power has displaced state power in the "sensitive and delicate" area of labor relations, only to remain unexercised, the federal government is in danger of appearing to adopt a "dog in the manger" attitude towards the states. This is a circumstance which must ultimately be reflected in a diminution of respect for the federal government, and a consequent weakening of our federal-state system.[24]

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[21] 341 U.S. 675 (1951).

[22] In a case decided after *Guss,* the Court although reserving opinion on the validity of any set of jurisdictional standards, and although finding that the Board had exceeded its authority in declining to assert jurisdiction over labor unions when acting as employers, as a class, seemed to affirm the existence of the Board's discretionary authority to decline to assert its full statutory jurisdiction. See *Office Employees' International Union Local No. 11* v. *NLRB,* 353 U.S. 313 (1957).

[23] See for example *Wisconsin Employment Relations Board v. Reuping Leather Company,* 228 Wis. 473, 279 N.W. 673 (1938).

[24] Compare the concern displayed in Justice Burton's dissenting opinion in *Guss* with the effect of that decision on our federal-state system: "Congress has demonstrated a continuing and deep interest in providing governmental machinery for handling labor controversies. The creation by [the Court] of a large unsupervised no-man's land flies in the face of that policy. Due regard for our federal system suggests that all doubts on this score should be resolved in favor of a conclusion that would not leave the States powerless when the federal agency declines to exercise its jurisdiction."

It may be taken for granted that the Supreme Court will examine carefully the response of these agencies to its invitation, if called again to pass upon cases arising in the no-man's land area.[25]

Both Congress and the NLRB have responded to the Court's invitation, and have done so by taking action designed to reduce significantly the extent of the no-man's-land area. Though a proposed amendment to the Act, which would have made it mandatory upon the Board to exercise its full statutory jurisdiction, or else arrange for cession to the states, where possible, failed of passage in the 85th Congress with the defeat of the Kennedy-Ives bill, (S. 3974), Congress did appropriate an extra $1,500,000 for the express purpose of enabling the Board to extend its jurisdiction. The Board for its part has proceeded to reexamine its jurisdictional policies and has revised its jurisdictional standards. In its lead decision announcing this change of policy, the Board stated that its action would enable more individuals, labor organizations and employers to invoke the rights and protections afforded by the Act.[26] The Board conceded that its new standards would not entirely eliminate the no-man's-land area. The *Siemons Mailing Service* decision makes it clear, however, that this was because

> "the expected caseload resulting from [the revised standards] represents the maximum workload that can be expeditiously and effectively handled by the Board and its staff within existing budgetary limitations. To broaden its exercised jurisdiction 'ill further at this time would . . . produce a caseload of such proportions seriously to lengthen the time for processing cases, thus lessening the effi y of the Board as a form to which labor disputants may turn for aid in l lving their disputes."

While one may disagree with the Board's estimate as to its case handling capabilities, surely the Board is in the best position to judge this factor, and one must grant that the Board in moving into the no-man's-land has acknowledged its responsibility "to extend the national labor policies embodied in the Act as close to the legal limits of its jurisdiction established by Congress as its resources permit."[27]

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[25] The Supreme Court heard argument in one such case on November 10, 1958. *Hotel Employees Local No. 255, et al.* v. *Boyd Leedom, et al.* October Term 1958, No. 21.

[26] *Siemons Mailing Service,* 122 NLRB No. 13 (1958).

[27] *Siemons Mailing Service, supra,* ($50,000 inflow-outflow standard for non-retail enterprises). See also *Raritan Valley Broadcasting Company,* 122 NLRB No. 16, ($100,000 annual gross volume of business standard for communications systems other than newspapers); *Carolina Supplies and Cement Co.,* 122 NLRB No. 17, ($500,000 annual gross volume of business standard for retail enterprises); *Sioux Valley Empire Electric Association,* 122 NLRB No. 18, ($250,000 annual gross volume of business standard for local public utilities, or alternatively application of $50,000 inflow-outflow test for non-retail enterprises generally); *Ready Mixed Concrete & Materials, Inc.,* 122 NLRB No. 43, (substantial impact on national defense); *H P O Service, Inc.,* 122 NLRB No. 62, (standard

Furthermore, the Board has made an obvious effort to meet the objection to its 1954 jurisdictional standards explicitly noted by the Court, that the reasons for those standards did not appear to be basically budgetary in nature, but had more to do with the Board's concept of the class of cases to which it should devote its attention.[28]

The Board has thus taken a significant step in the direction of a truly uniform application of the federal labor policies embodied in the Act. Though it contends that it cannot go the whole way at this time, it has indicated its intention to continually review and police its policies and procedures, to the end of a further extension of its jurisdiction.

The problem involved herein, is not alone that of the federal government. It is one in which the states are also intimately involved. Labor disputes in the no-man's-land may have only a small impact on interstate commerce, but their impact can be greatly disruptive of local commerce, and it is as much a matter of state concern as of federal concern that they not go unregulated. Congress enacted the proviso to Section 10 (a) to enable the NLRB to cede jurisdiction in certain areas to those state agencies applying regulatory provisions not inconsistent with the provisions of the Act, with the evident intention that the states should adopt labor laws modelled on the Act. The states have chosen not to pass such labor laws. So long as it appeared that the states might succeed to authority to regulate the labor relations of enterprises over which the Board declined jurisdiction, one could not quarrel with their desire to apply their own laws in such circumstances. Now that this possibility has been foreclosed, a reexamination of policy by the states, as well as by the federal government is called for. The states could, without retreating from their desire to regulate labor relations which are outside the Board's jurisdiction as they see fit, make it possible for the Board to cede jurisdiction to them over the no-man's-land, by enacting provisions authorizing a state agency to apply the provisions of the federal Act in such cases, thus enabling the NLRB to enter into cession agreements with them.

As the situation now stands, the NLRB takes the position that it is unable to enter into cession agreements with any state, because of the lack of consistency between State Acts and the Federal Act.[29] In the *Fairlawn*

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for transportation enterprises and their essential links—$50,000 revenues from interstate (or linkage) portion of operations, or from services performed for employers in commerce); *Belleview Employing Printers,* 122 NLRB No. 58, ($200,000 gross annual volume of business standard for newspaper companies.)

[28] *Guss* v. *Utah Labor Relations Board, supra,* at page 19.

[29] See Thirteenth Annual Report of the NLRB, p. 18. See also footnote 17 of the Supreme Court's decision in the *Guss* case.

case the Court stated:[30]

> "Congress did not leave it to state labor agencies, to state Courts, or to this Court to decide how consistent with federal policy state law must be. The power to make that decision in the first instance was given to the National Labor Relations Board, guided by the language of Section 10 (a)."

It has been suggested that the Board takes too narrow a view of its authority under Section 10 (a) by requiring in effect that state laws contain provisions parallel to the national Act,[31] and that all that is required is that a state be delegated authority to process cases which would be decided under particular provisions which are consistent with similar provisions of the Act. Though this approach of partial cession of jurisdiction under 10 (a) may be worthy of exploration, it is doubtful that it will greatly aid in eliminating the no-man's land. In the first place, the cession proviso was enacted to ensure that the federal policy would not be thwarted even in the predominantly local enterprises to which the proviso applies, and it constituted, at least in part, as already noted an invitation to the states to adopt labor legislation modelled upon the federal law. Not a single state has accepted the invitation. And it must be remembered that authority for a state agency to act, whether pursuant to a cession agreement or otherwise comes from the state legislature. A cession agreement cannot add to its powers, nor, it would appear to be axiomatic, detract from its responsibilities. Could a state agency lawfully expend appropriations granted by its state legislature in order to enforce only part of the provisions of the Act which constitute the policy of the state? Secondly, the purpose to be achieved by the Board in ceding jurisdiction over the no-man's-land would be to bring under the Act the labor relations of those enterprises as to which it is not now able to assert its authority because of "budgetary limitations." Were it to enforce some of the provisions of the national policy by virtue of a partial cession agreement, would it not have to accept jurisdiction over the enterprises affected by such cession, in order to enforce those provisions as to which cession is not possible due to the insufficiency of the State statute? Moreover, could the Board cede jurisdiction with respect to local enterprises in one state, without itself asserting jurisdiction over similar enterprises in states having no agency to which cession can be made? Would this be consistent with both the Congressional intention to apply a uniform national labor policy across the broad reaches of the Act, an intention so overriding that

[30] *Supra.*

[31] *The Misinterpretation of Section 10 (a)*, Alfred W. Blumrosen, Labor Law Journal, April 1958.

the Supreme Court felt compelled to deny state authority even where the NLRB has declined to act? Would it be consistent with the constitutional requirement of uniform application of legislation of a general nature? If the answer to any of these questions is in the negative, partial cession agreements actually would result in increasing the Board's case load, and thus fail to achieve their purpose. If, on the other hand, these prove to be but insubstantial objection, there is the likelihood that under "partial cession agreements" the Board would have to devote so much time in determining in which cases cession would be possible, and in advising state agencies as to Board policy,[32] and in generally policing the agreements, as to make such agreement simply not a feasible means of ensuring that the national labor policies of the Act are brought to bear upon the no-man's-land. However that may be, it appears doubtful, to say the least that the answer to the no-man's-land will be found through partial cession agreements.

The answer appears to lie instead along the avenue chosen by the Board, which seems to lead to a virtually complete assertion of the federal authority over the no-man's-land. This may require additional funds from Congress, which has already indicated its great concern that its policies be applied to the full extent intended in the enacting legislation. In the meantime, we can be sure that the Court will have the opportunity to pass upon the reasonableness of the Board's response to the problem in adopting its new jurisdictional standards.[33] While we cannot be sure of the Court's future decision in this regard, so long as the Board adheres to the spirit of its *Siemons Mailing Service* decision, we can expect a sympathetic understanding of the Board's efforts responsibly to deal with the problem of the no-man's-land. For the Board has indicated an awareness that the continued existence of any appreciable no-man's-land cannot long be tolerated.

[32] As the Supreme Court noted in the *La Crosse Telephone* case, *supra*, "Disposition of the controversies on an administrative as distinguished from a formal basis will often reflect the attitudes of the National Board which have not been reduced to orders in those specific cases."

[33] See footnote 27 *supra*.