

free flow, whatever the amount involved. In effect, the majority say that because this Employer receives less than \$100,000 for hauling United States mail (only \$59,093), it is of no concern to this Board as a Federal agency to see that industrial disputes do not disrupt its free flow—anything less than \$100,000 is a matter of State concern. Whatever argument may be made for this approach in matters of private commerce, it is patently inapposite to the transportation of United States mail. I would think that the majority's effort to divest this Board of its jurisdiction would at least be halted short of this point.

In view of the fact that transportation of the mails has uniformly been regarded by the Board and the courts as activity clearly "affecting commerce" within the meaning of the Act, and because the majority opinion affords no basis in fact or law for overturning this long-standing position in favor of an inapposite "receipts" standard, I must respectively dissent from the instant decision. I would, instead, assert jurisdiction over this Employer and all other employers engaged in the transportation of United States mail.

THE VIRGIN ISLES HOTEL, INC. *and* ST. THOMAS LABOR UNION—L. I. U.
 #1812—C. I. O. CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER. *Case No. 24-RC-681. October 26, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Arthur A. Greenstein, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds that the Employer operates a hotel on St. Thomas Island, Virgin Islands. Its direct inflow of goods from outside the Islands is in excess of \$100,000 annually and its indirect inflow of such goods during the same period is in excess of \$50,000. The Employer neither admits nor denies that it is engaged in commerce.

It has been the Board's long-standing policy not to exercise jurisdiction over the hotel industry. This policy was reasserted, after the enactment of the present Act, in the *White Sulphur Springs Co.* case¹ and the *Hotel Association of St. Louis* case.² In the latter case, a majority of the Board,³ in declining to assert jurisdiction said:

We do not believe that a settled policy, endorsed by all those members of Congress who have recorded an opinion on the subject,

¹ 85 NLRB 1487

² 92 NLRB 1388

³ Members Reynolds and Murdock dissenting

should be lightly overturned by the action of this administrative Board.⁴

In deciding to adhere to that policy with respect to this hotel which is located in the Virgin Islands, we are aware that exceptions have heretofore been made with respect to hotels operating within the District of Columbia or any Territory, for the reason that the Act gives the Board plenary jurisdiction over all business enterprises operating in such places.⁵ However, we are convinced, upon examination of this rule and the exception thereto, that the exception is unwarranted. While it is true that the operations of this Employer are not wholly unrelated to commerce, the relationship to commerce is no greater here than in the case of a hotel operating in any of the 48 States and we do not believe that the impact on commerce is sufficient in either instance to warrant the assertion of jurisdiction. Accordingly, we shall dismiss the instant petition.

[The Board dismissed the petition.]

MEMBER PETERSON, concurring:

I concur in the majority's decision to dismiss the petition herein.

The Employer operates a resort hotel on St. Thomas Island in the Virgin Islands. It caters almost exclusively to the vacationing public, accommodating at the height of its busy season a maximum of 240 guests. It furnishes its guests with the usual hotel services, including laundry services performed by employees whose representation the Petitioner seeks.

I have serious doubts that Congress, in enacting the Act, intended that the Board, in the exercise of its discretion, extend itself to the Virgin Islands to take jurisdiction over this local enterprise, if indeed Congress intended that the Board exercise any jurisdiction at all in this island possession. In any event, I am unable to conceive how a work stoppage at the resort hotel in question could have an impact on commerce as to warrant the Board's assertion of jurisdiction over that business. Whatever effect a cessation of the Employer's business could possibly have on commerce appears to me to be at most remote and inconsequential. In these circumstances, I find that it would not effectuate the policies of the Act to assert jurisdiction in this proceeding.

MEMBER MURDOCK, dissenting:

I would assert jurisdiction in this case.

I have consistently opposed the application of different jurisdictional standards to the hotel industry than are applied to other enter-

⁴ *Hotel Association of St. Louis, supra*, at 1390.

⁵ *Roy C. Kelley*, 95 NLRB 6.

prises.⁶ As indicated in my dissents in those cases, I can perceive no reasons why this Board should afford an exemption from the provisions of this Act to the hotel industry, which exemption is not to be found in the express provisions of the Act.

But assuming that the legislative statements relied on by the majority indicate congressional approval of the Board's practice of declining to assert jurisdiction over hotels in the United States, the same statements indicate congressional approval of the Board's practice of asserting jurisdiction over hotels in the Territories. The policy of asserting jurisdiction over hotels in the District of Columbia and the Territories on the basis of the Board's plenary powers,⁷ has as long a history as has the policy of declining to assert jurisdiction over hotels operating in 1 of the 48 States. Thus, the same considerations which the majority find require a continuation of the latter policy, likewise require a continuation of the former policy. The legislative statements disclose no dissatisfaction on the part of Congress with the Board's exercise of plenary jurisdiction over enterprises operating in the Territories.

Thus a proper application of the statement quoted by the majority from the *Hotel Association of St. Louis* case that

We do not believe that a settled policy, endorsed by all those members of Congress who have recorded an opinion on the subject should be lightly overturned by the action of this administrative Board.

should require the Board to assert jurisdiction over the Employer in this case.

Apart from its specific effect upon hotels in the Territories, and the District of Columbia, the instant decision indicates a marked reversion of the Board's plenary jurisdiction in these areas. The Board has previously exercised such plenary jurisdiction, for well-founded reasons, without regard to the size, type, or volume of business of the enterprise involved. The majority opinion, in this case, accordingly, constitutes a major alteration in this Agency's jurisdictional policy comparable to those affecting the continental United States (except for the District of Columbia) upon which I have commented generally in my dissenting opinion in *Breeding Transfer Company*, 110 NLRB 493. As was true of the new standards of jurisdiction discussed in the *Breeding* case, this change is similarly inconsistent with the Act and the responsibilities which it imposes on this Agency, involving a determination to withhold protection of the Act which properly should be made by Congress.

⁶ See my dissents in *Hotel Association of St. Louis*, *supra*, and *The White Sulphur Springs Company*, 85 NLRB 1487.

⁷ E. g., *Willard, Inc.*, 2 NLRB 1094; *The Raleigh Hotel Company*, 7 NLRB 353; *Westchester Apartments, Inc.*, 17 NLRB 433; *Rutland Court Owners, Inc.*, 44 NLRB 587.

The broad exercise of jurisdiction over enterprises in the Territories and the District of Columbia is specifically directed in the statute which the Board administers. As the courts have previously pointed out,⁸

. . . Congress can constitutionally regulate purely intraterritorial commerce. And we think there can be no doubt that Congress must have intended to exercise this power when in Section 10 (a) of the National Labor Relations Act it gave the Board authority to prevent any person from engaging in any unfair labor practice affecting commerce, and in Section 2 (6) of the Act defined commerce to include "*trade . . . within . . . any Territory.*" [Emphasis supplied.]

The Board has previously observed that, by this statutory definition "*all trade within any Territory is embraced by the term 'commerce,'* whereas with respect to a State, only trade between such State and outside points is embraced by that term."⁹ [Emphasis, in part, supplied.] It is thus clear that the statement of the majority decision in this case that "the relationship to commerce is no greater here than in the case of a hotel operating in any of the 48 States" is contrary to the explicit terms of the Act which define commerce differently with respect to Territories and the District of Columbia. The concurring opinion also fails to recognize the fact that "commerce" is differently defined with respect to Territories. The operations of this or any other employer in a Territory or the District of Columbia will obviously have a greater effect upon all trade within that area than the operations of a similar establishment in the States would have upon commerce between and among the States.

Indeed, it is readily apparent that the Federal Government is vitally interested in furthering the economic development of the Virgin Islands. To this end, Congress, in 1949 established the Virgin Islands Corporation,¹⁰ in order, *inter alia*,

to encourage, promote, and develop, and to assist in the encouragement, promotion, and development of tourist trade in the Virgin Islands.¹¹

Tourist expenditures in the Virgin Islands amounted to more than \$3,000,000 in 1951,¹² and to more than \$6,000,000 in 1952.¹³ Total imports to the Virgin Islands amounted to \$11,162,888 during 1952.¹⁴ Of the more than \$6,000,000 of tourist expenditures for 1952, hotel

⁸ *N. L. R. B. v. Gonzalez Padin Company*, 161 F. 2d 353 (C. A. 1).

⁹ *Panaderia Sucesion Alonso*, 87 NLRB 877 at 878.

¹⁰ Tit. 48 U. S. C. S. 1407.

¹¹ Tit. 48 U. S. C. S. 14076 (b)

¹² 1952 Annual Report of the Governor of the Virgin Islands to the Secretary of Interior.

¹³ *Ibid.*

¹⁴ *Ibid.*

receipts accounted for \$2,269,481,¹⁵ restaurant and shops receipts accounted for \$3,548,515,¹⁶ and taxi and sightseeing receipts accounted for \$622,448.¹⁷

The foregoing figures show the obvious importance of tourist expenditures to the economic well being of the Virgin Islands, and the necessary part adequate hotel accommodations play in encouraging and developing the tourist trade. I find it somewhat strange that in the face of the policy of the Federal Government to encourage, promote, and develop the tourist trade in the Virgin Islands, my colleagues feel no obligation on the part of this Agency to provide the benefits of this Act to insure against industrial disputes which might shut down the hotels which are essential to attract and house overseas tourists, and thereby interfere with the orderly implementation of a clearly expressed governmental policy.

The expressed doubt in the concurring opinion that the Board has any jurisdiction at all in this "island possession," should be quickly resolved by reference to available authorities which plainly demonstrate the authority of this Board over labor disputes in the Virgin Islands. In *People of Puerto Rico v. Shell Co.*¹⁸ the Supreme Court, after referring to its language in an earlier case which held that Puerto Rico was an organized Territory, although not incorporated into the United States, held that the Sherman Anti-Trust Act was applicable to Puerto Rico because as

Congress intended by the Sherman Act to exert all the power it possessed in respect to the subject matter—trade and commerce— . . . Congress [also] intended to include all territories to which its powers might extend. . . . [T]he word "territory" was used in its most comprehensive sense as embracing all organized territories whether incorporated into the United States or not, including Porto Rico.

In the *Gonzalez Padin Company* case, cited *supra*, the Court of Appeals for the First Circuit after its discussing of the language of Section 2 (6) of the Act, in holding a Puerto Rico employer within the plenary jurisdiction of the Board, said:

That is to say we think Congress in the National Labor Relations Act intended to deal comprehensively with labor disputes affecting commerce . . . just as in the Sherman Anti-Trust act . . . it intended to deal comprehensively with contracts, combinations and restraints of trade (*Puerto Rico v. Shell Co.*, 302 U. S. 253, 259 . . .) and to that end exercised all the power it

¹⁵ Condensed Report on Tourist Activities in Virgin Islands, dated January 1, 1954, submitted by Virgin Islands Tourist Development Board.

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ 302 U. S. 253

possessed in the premises. (*Atlantic Cleaners & Dyers v. United States*, 286 U. S. 427, 435 . . .)

"The Virgin Islands is an outlying possession of the United States, and as such had been governed as a territory of the United States."¹⁹ Its organization and powers are set forth in an organic law passed by the Congress of the United States in 1936,²⁰ which provided for a legislature, a territorial governor, and other officers appointed by the President with the advice and consent of the Senate of the United States. As the Virgin Islands is a completely organized Territory, although not incorporated into the United States, it is clear that it occupies the identical position which Puerto Rico did prior to becoming a Commonwealth, during which time both the Board and courts held that the Act embraced Puerto Rico.²¹ Accordingly, it seems plain that the Virgin Islands are a "Territory" within the meaning of Section 2 (6) of the Act.²² No legislative or judicial authority to the contrary or providing a basis to doubt this fact is cited in the majority or concurring opinions.

There is an additional factor which requires consideration. The cutting of the Board's plenary jurisdiction will mean an absence of any regulation or control of industrial disputes in these areas. For even where local administrative agencies have been established in the Territories to perform duties comparable to those of the Board, it has been held that Section 10 (a) prohibits them from either accepting jurisdiction by cession from the National Labor Relations Board or exercising jurisdiction over matters which are within the scope of the Act.²³ Unlike the situation in any of the States, the Congress is in a real sense the "local" legislature for these areas.

In summary, when the Act, itself, directs this Board to exercise jurisdiction over all trade within the Territories and the District of Columbia; when the Board has proceeded on that basis for a number of years without comment or alteration of the statute by the legislature; and when the exercise of such plenary jurisdiction has been continually supported by the courts, it is singularly inappropriate now to restrict our performance of that statutory duty. Particularly so, when by so restricting our plenary jurisdiction, we leave commerce within those areas unprotected by any other agency of Government from the impact of labor disputes affecting it. For the foregoing reasons, there-

¹⁹ *Harris v. Municipality of St. Thomas & St. John*, 111 F. Supp. 63. (D. C., Virgin Islands.)

²⁰ Organic Act of the Virgin Islands of the United States, June 22, 1936, c. 699, Sections 41, 49 Stat. 1807

²¹ The Board continues to hold Puerto Rico embraced by the Act since achieving commonwealth status

²² Cf. *Puerto Rico v. Shell Co*, *supra*, p 258; *Kopel v Bingham*, 211 U. S. 468, 474, 476, *N. L. R. B. v Gonzalez Padin Company*, *supra*.

²³ *Bayamon Transit Company, Sucesora v. Puerto Rico Labor Relations Board*, 70 P. R. Sup Ct. No 3, p 292 See also *Panaderia Sucesion Alonso*, *supra*.

fore, I find that the Employer is engaged in commerce as defined in the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

THE GREENWICH GAS COMPANY AND FUELS, INCORPORATED *and* NORMA SCOTT, PETITIONER *and* LOCAL 380, UTILITY WORKERS UNION OF AMERICA, CIO. *Case No. 2-RD-206. October 26, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before M. Geller, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

The Greenwich Gas Company, a local public utility, is engaged in the distribution of natural gas and the sale of gas appliances and of services in Greenwich, Connecticut. During the past year, the Employer's direct and indirect purchases outside the State consisted of appliances valued at \$105,000 and natural gas valued at \$128,000, a total of \$233,000. During this same time, the total dollar volume of the Employer's business was approximately \$952,000, of which less than 1 percent reflects sales to customers located outside the State. Within the State, the Employer made sales amounting to \$67,000 to The Conde Nast Publications, Inc.; \$2,800 to Arnold Bakers; \$8,000 to Homelite Corp.; \$3,900 to Electrolux Corp.; and \$515 to New Haven Railroad. Fuels, Incorporated, a wholly owned subsidiary of The Greenwich Gas Company, is engaged in the distribution of bottled gas and the sale of gas appliances in Connecticut. Its total purchases for the past year amounted to \$12,000. Its sales for the period exceeded \$30,000, of which less than 5 percent was made out of the State.

It has been the consistent position of the Board that it better effectuates the purposes of the Act, and promotes 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. In furtherance of that policy, the Board in October 1950 adopted certain standards to govern its assertion of jurisdiction. Those standards resulted from a study of the Board's experience up to that time.

¹ Fuels, Incorporated, waived notice of hearing. The petition and other formal papers were amended to show Fuels, Incorporated, as an Employer involved.