

ignated collective-bargaining representative of all steward department employees on vessels operated in the steam schooner trade by the Member Companies of the Shipowners' Association of the Pacific Coast, excluding cook-stewards and other supervisors within the meaning of the Act.]

MEMBER MURDOCK took no part in the consideration of the above Second Supplemental Decision and Certification of Representatives.

JONESBORO GRAIN DRYING COOPERATIVE *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 32-RC-693. 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 Vivan E. Burks, 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,¹ the Board finds:

The Employer, Jonesboro Grain Drying Cooperative,² is a non-profit farmers' cooperative formed for the purpose of making savings on the services of drying rice, and composed of 90 members who are rice farmers located in and around Jonesboro, Arkansas. It operates a dryer which functions only as a dryer and storer of rice. Connected by a spout to the Employer's dryer is a mill owned and operated independently by Arkansas Rice Growers Cooperative Association,³ an enterprise concededly engaged in interstate commerce.⁴ All of the rice handled by Jonesboro is sold by the rice farmers directly

¹ As the record and briefs adequately present the issues and positions of the parties, the requests for oral argument filed by the Employer and the Petitioner are hereby denied.

² Hereinafter referred to as Jonesboro

³ Hereinafter referred to as Association. Although, of necessity, all 90 farmer-members of Jonesboro are also members of the Association, and it appears that there is a certain overlapping of the board of directors and managerial personnel between Jonesboro and the Association, no contention is made that the two are not separate employers. Even if such were the case, the relationship is similar to that involved in *Producers Rice Mill, Inc.*, 106 NLRB 119, wherein the issue was raised and the Board found the two enterprises to constitute separate employers.

⁴ The Association is a cooperative composed of approximately 3,200 member-farmers, including the 90 members of Jonesboro, and is engaged in milling and marketing for interstate commerce the rice grown by its members. As noted herein, however, although the member-farmers of the Association deliver their rice to various drying cooperatives located in 11 areas throughout the State for drying purposes, later to be redelivered by the drying cooperatives to the Association, the rice at the time of delivery to the drying cooperatives is sold to the Association by the member-farmers, and the ownership is then vested in the Association which is charged with the responsibility of selling that rice for the member's account.

to the Association, 75 percent of which is then sold in interstate commerce. Each farmer delivers his rice to the Employer's dryer where it is dried and graded. It is then stored, either by the Employer in the dryer's storage facilities or by the Association's storage facilities in the latter's mill. At the time the rice is delivered to the Employer's dryer, legal title is vested in the Association for the purpose of borrowing operating capital with which to advance to the farmer 75 percent of the current market value per bushel. At no time does legal title vest in the Employer. If, on occasion, the Employer stores the rice for the Association, it charges the latter for such storage. The Employer charges the farmer 12.5 cents per bushel for drying services, such amount being deducted by the Association from the 75 percent of the market value which is advanced to him. Record testimony reveals that the Employer's annual gross income from its services for drying and storing rice approximates \$75,000 to \$90,000.

The Employer, in effect, contends that inasmuch as it neither buys nor sells rice and functions only for the purpose of performing drying services for its member-farmers, its operations are essentially local and that it would not effectuate the purposes of the Act for the Board to assert jurisdiction. Although the Employer admits that legal title to the rice passes from the farmer to the Association for borrowing purposes upon delivery to the Employer's dryer, it contends that the equitable title remains in the farmer, and, therefore, the services rendered by the Employer are performed for the individual member-farmer rather than for the Association. The Petitioner contends, however, that regardless of title, the drying services are performed for the Association. Were the Board to find merit in the Petitioner's contention, it would normally assert jurisdiction on the basis of the *Hollow Tree*⁵ formula. For reasons noted hereinafter, however, we deem it unnecessary to our finding in this case to pass upon this issue, even if we were to assume, *arguendo*, that the Petitioner's contention is correct.

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 date.

⁵ *Hollow Tree Lumber Company*, 91 NLRB 635.

Among the standards adopted in 1950 were those set forth in the *Stanislaus*,⁶ *Hollow Tree*,⁷ *Dorn's*,⁸ *Federal Dairy*,⁹ *Borden*,¹⁰ and *Rutledge*¹¹ cases. Pursuant to those standards, the Board limited the exercise of its jurisdiction, respectively, to: (1) An employer which produces or handles goods destined for out-of-State shipment, or performing services outside the State in which the firm is located, valued at \$25,000 or more; (2) an employer which furnishes goods or services necessary to the operations of other employers engaged in commerce, without regard to other factors, where such goods or services are valued at \$50,000 per annum or more, and are sold to public utilities or transit systems, instrumentalities and channels of commerce, and enterprises engaged in producing or handling goods destined for out-of-State shipment, or performing services outside the State, in the value of \$25,000 per annum or more; (3) an employer which has an indirect inflow of \$1,000,000 annually; (4) an employer which has a direct inflow of \$500,000 annually; (5) an employer which has such a combination of inflow or outflow of goods or services, coming within various categories of the Board's jurisdictional plan, that the percentages of each of the categories in which there is activity taken together add up to 100 percent; and (6) local establishments that operate as integral parts of a national or multistate enterprise, irrespective of the size of the enterprise or the local establishment involved or the possible effect upon interstate commerce.

Early this year the Board undertook to study and reappraise the 1950 jurisdictional standards in the light of the Board's experience, since their adoption and also in the light of changing economic conditions. Based upon that study and the reappraisal, it is our opinion that the jurisdictional standards established in 1950 should be revised in order better to attain the Board's long-established policy of limiting the exercise of its jurisdiction to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce.

Accordingly, we have determined that in future cases the Board will assert jurisdiction over enterprises which annually meet one or more of the following standards:

(1) *Direct inflow standard*: An enterprise which receives goods or materials from out of State, valued at \$500,000 or more.¹²

(2) *Direct outflow standard*: An enterprise which produces or handles goods and ships such goods out of State, or performs services

⁶ *Stanislaus Implement and Hardware Company, Limited*, 91 NLRB 618.

⁷ *Hollow Tree Lumber Company*, *supra*.

⁸ *Dorn's House of Miracles, Inc.*, 91 NLRB 632.

⁹ *Federal Dairy Co., Inc.*, 91 NLRB 638.

¹⁰ *The Borden Company, Southern Division*, 91 NLRB 628.

¹¹ *The Rutledge Paper Products, Inc.*, 91 NLRB 625.

¹² For modification of the inflow standard established in *Dorn's House of Miracles, Inc.*, *supra*, see *Hogue & Knott Supermarkets*, 110 NLRB 543.

outside the State in which the enterprise is located, valued at \$50,000 or more.¹³

(3) *Indirect inflow standard*: An enterprise which receives goods or materials from other enterprises in the same State which those other enterprises received from out of State, valued at \$1,000,000 or more.¹⁴

(4) *Indirect outflow standard*: An enterprise which furnishes goods or services to other enterprises coming within subparagraph (2) above, or to public utilities or transit systems, or instrumentalities or channels of commerce and their essential links, which meet the jurisdictional standards established for such enterprises; and (a) such goods or services are directly utilized in the products, services, or processes of such enterprises and are valued at \$100,000 or more; or (b) such goods or services, regardless of their use, are valued at \$200,000 or more.¹⁵

(5) *Multistate standard*: An establishment other than retail¹⁶ which is operated as an integral part of a multistate enterprise, and (a) the particular establishment involved meets any of the foregoing standards; (b) the direct outflow of the entire enterprise amounts to \$250,000 or more; or (c) the indirect outflow of the entire enterprise amounts to \$1,000,000 or more.¹⁷

We have further determined that unless an employer's volume of operations meets one of the Board's new independent jurisdictional standards, we will not accumulate those standards in order to assert jurisdiction.¹⁸

Because it appears from record testimony that the Employer's operations do not meet any of these standards we find that it will not effectuate the purposes of the Act to assert jurisdiction over the Employer in this case, and shall dismiss the instant petition.

[The Board dismissed the petition.]

MEMBER PETERSON, concurring:

I agree with the majority of my colleagues that jurisdiction should not be asserted over the Employer in this case and that the instant petition should be dismissed. However, as the majority is utilizing

¹³ To the extent that *Stanislaus Implement and Hardware Company, Limited, supra*, and cases relying thereon, are inconsistent with our decision here, those cases are overruled.

¹⁴ For modification of the inflow standard established in *Federal Dairy Co., Inc, supra*, see *Hogue & Knott Supermarkets, supra*

¹⁵ To the extent that *Hollow Tree Lumber Company, supra*, and cases relying thereon are inconsistent with our decision here, those cases are overruled.

¹⁶ Cf. *Hogue & Knott Supermarkets, supra*, for standards applicable to multistate retail establishments

¹⁷ To the extent that *Borden Company, Southern Division, supra*, and cases relying thereon are inconsistent with our decision here, those cases are overruled.

¹⁸ To the extent that *The Rutledge Paper Products, Inc, supra*, and cases relying thereon are inconsistent with our decision here, those cases are overruled. See, also, the majority decision in *Breeding Transfer Company*, 110 NLRB No 64

the present case as a convenient vehicle for setting forth some of its new jurisdictional standards—most of which appear not to be related to the specific issue involved—I propose to indicate here the extent to which I agree or disagree with the use of these particular yardsticks.

The majority's direct and indirect inflow standards apparently remain the same as they were under the Board's 1950 jurisdictional plan,¹⁹ except that solely for retail establishments the minimum dollar requirements of each of the standards are doubled.²⁰ I concur in the continued use of the direct and indirect inflow standards of the 1950 plan and the requisite dollar minima contained therein, but as I have stated elsewhere,²¹ I fail to perceive the reason or logic in the majority's special treatment of retail enterprises and therefore would not adopt these monetary changes which they have made.

According to the majority's direct outflow standard, jurisdiction will be asserted over an enterprise which produces or handles goods and ships such goods out of State, or performs services outside the State in which the enterprise is located, valued at \$50,000 or more. This standard differs from that of the 1950 plan²² in that the goods or services must be valued at \$50,000 or more, rather than \$25,000. As I stated, and for the reasons given, in my separate opinion in the *Breeding* case,²³ I agree with this change in the total dollar volume figure made by the majority. The standard also differs from that of the 1950 plan and from the majority's press release of July 1, 1954, in that the language "ships such goods out of State" replaces the language "destined for out-of-State shipment." However, as this new language merely states explicitly what has become the Board's interpretation of the old language as a result of the decision in the *McCormack* case,²⁴ I have no difficulty in accepting this revision. Applying the standard to the instant case, it is clear that the Employer does not ship goods which it handles out of State—this is done by the independent Association—nor does the Employer perform services outside the State. Therefore, there is no basis under this standard for asserting jurisdiction over the Employer.

The majority's indirect outflow standard represents changes from the 1950 plan²⁵ in both monetary and substantive requirements. Thus, the majority states that henceforth either (a) the goods or services must be directly utilized in the products, services, or processes of the interstate enterprise and must be valued at \$100,000 or more or (b)

¹⁹ *Dorn's House of Miracles, Inc.*, footnote 8, *supra*; *Federal Dairy Co., Inc.*, footnote 9, *supra*

²⁰ *Hogue & Knott Supermarkets*, footnote 12, *supra*.

²¹ See my separate opinion in *Breeding Transfer Company*, 110 NLRB 493, see also my concurring opinion in *Wilson-Oldsmobile*, 110 NLRB 534

²² *Stanislaus Implement and Hardware Company, Limited*, footnote 6, *supra*.

²³ *Breeding Transfer Company*, footnote 21, *supra*.

²⁴ *Thomas Eulen McCormack, d/b/a John McCormack Co and C. N. Hill*, 107 NLRB 606.

²⁵ *Hollow Tree Lumber Company*, footnote 5, *supra*

the goods or services, regardless of their use, must be valued at \$200,000 or more. As I indicated in my separate opinion in *Breeding*, I do not favor any change in the substantive requirements and would adhere to the 1950 standard in this respect, to wit, that the materials or services furnished merely be necessary to the operation of the interstate enterprise. In view of my rejection of the substantive requirements in part (a) of the majority's new standard, it follows that I likewise find the change in part (b) unacceptable. However, as I stated in *Breeding*, I do agree with my majority colleagues to the extent that they would raise the minimum total dollar volume of business figure for this standard from \$50,000 to \$100,000.

In passing, I note that the substantive requirements set forth by the majority here differ considerably from those which it announced in its press release of July 1, 1954. In the press release it was stated that the goods themselves ultimately would have to go outside the State and the services would have to become part of the stream of interstate commerce. In my separate opinion in *Breeding*, when the only details as to the new standards which were available to anyone other than members of the majority were contained in the press release, I asserted that I could find no persuasive reason for this change in substantive requirements. As these requirements have now been discarded, apparently my majority colleagues likewise were unable to find a valid reason for the change. However, the unexplained substitution of the more vague new requirements announced for the first time in this case appear to me to be equally as arbitrary. I would be less than candid if I did not admit that the rather obscure language which my majority colleagues have chosen here to describe their new standard—that the goods or services must be directly “utilized in” the products, services, or processes of the interstate enterprise—makes it difficult for me to ascertain what they have in mind. However, I find it is unnecessary to attempt to plumb or fathom the basis for their action because I consider it a reasonable conclusion that, as their overall aim is to restrict the Board's jurisdictional area, the new standard is designed to aid in the achievement of this objective.

Although the Employer's services in this case were necessary to the operation of the interstate enterprise—the Association—and therefore satisfy the substantive requirement of the old plan, I would not assert jurisdiction because the Employer's business does not meet the \$100,000 figure which I would now require under this standard.

In my separate opinion in *Breeding*, I pointed out that under the 1950 plan the Board took jurisdiction of establishments which, although local in character, operate as integral parts of a multistate enterprise without regard to the total volume of business of the particular establishments or the entire enterprise involved.²⁶ The princi-

²⁶ *The Borden Company, Southern Division*, footnote 10, *supra*.

pal feature of the majority's new multistate standard is the imposition of minimum total dollar volume of business requirements. I stated in *Breeding*, and I repeat here, that I would adhere to the standard of the 1950 plan with respect to multistate enterprises. In my opinion, it is clear that by its very nature the impact upon commerce of an establishment which is truly an integral part of a multistate enterprise is so pronounced regardless of the dollar volume figures involved that the Board should assert jurisdiction on that basis alone.

Finally, the majority is now abolishing the so-called "combination category," of the 1950 plan,²⁷ that is, jurisdiction will no longer be determined by combining the percentages which a company has in each of the dollar volume categories. As I stated in my *Breeding* opinion, I agree to the abandonment of this standard because, while I believe it is logically defensible, it has had the effect of an irritant scarcely worth the price.²⁸

MEMBER MURDOCK, dissenting:

This is another in the series of cases announcing in decisional form for the first time the new and severe restrictions upon the assertion of Board jurisdiction first announced in press releases on July 1 and 15. In my dissenting opinion in *Breeding Transfer Company, supra*, I set forth in detail my basic objections to the entire body of these new standards as conflicting with the Act and the Board's legal responsibilities thereunder; as involving the exercise of legislative power to reallocate authority between the Federal and State Governments; and as absent any justification based upon compelling budgetary or administrative necessity—objections which apply in full to the particular standards involved herein.

I note at the outset that this is a somewhat unusual lead case under the new standards. It is not confined to the normal role of a lead case in announcing in decisional form and explicating the new jurisdictional standard which is involved in the case.²⁹ Instead, it has been converted into a receptacle into which has been dumped 6 separate jurisdictional standards, at least 4 of which have absolutely nothing to do with this case. Inasmuch as there is no explication of the latter, their inclusion in this decision would seem to serve no purpose beyond which the press releases have already served, except to the extent that they may be amendatory of the press releases. I see no reason to prolong

²⁷ *The Rutledge Paper Products, Inc*, footnote 11, *supra*.

²⁸ In any event this standard accounted for a small handful of cases. Our staff study shows that of the 413 cases pending before the Board on May 1, 1954, only 3 involved the combination theory of jurisdiction. Of these 3, only 1 would be dismissed because of the abandonment of that standard; obviously, this indicates a *de minimis* curtailment of Board jurisdiction.

²⁹ In the press releases it was stated that "The changes indicated were made by majority vote in *specific* cases." [Emphasis supplied.]

this dissent to discuss what amounts to dicta by the majority as to what standards they will follow in wholly unrelated cases. Accordingly, I shall limit this opinion to a discussion of the implications and faults implicit in the revised "direct outflow" and "indirect outflow" standards actually involved herein, under which the majority refuses to assert jurisdiction over this Employer. My dissenting views on the "multistate," *Rutledge* "combination" formula,³⁰ and retail enterprise standards will be set forth in other cases which directly concern their application.

In the instant decision, the Board majority announces and puts into effect changes in the direct and indirect outflow standards previously in effect and known as the *Stanislaus* and *Hollow Tree* standards from the lead cases which announced them under the 1950 plan. These changes amount to a doubling or more of the dollar volume required for assertion of jurisdiction under both standards and the addition of a number of other restrictive qualifications. Thus out-of-State sales or services of \$50,000 or more are now required under the former, while sales or services to interstate firms over whom the Board would assert jurisdiction, of either \$100,000 or \$200,000 are now required under the latter, depending upon the use of such products or services. The Board majority having made such drastic revisions of these two standards, we may well ask, "Why?"

The fact of the matter is that the majority has failed here, as in the press releases, to set forth any indication of why these new standards are either necessary or proper. We have only the cryptic statement that these severe restrictions are based upon a study and reappraisal of the 1950 jurisdictional plan and that dismissal of petitions thereunder will effectuate the purposes of the Act. What that study and reappraisal were; what specific factual or legal findings were made thereunder; what particular "purposes" of the Act will be effectuated by this broad slash in our operations is largely left to the imagination. A passing reference to enterprises having a "pronounced" impact upon the flow of interstate commerce, standing alone, is hardly adequate to explain why it is suddenly necessary, without benefit of legislation, to exclude what may well amount to one-third of those enterprises previously under the restraints and protections of the Act. Particularly when, for the past 19 years, the very enterprises now excluded by the majority have been consistently found by the Board and the courts to involve economic activity in which labor disputes would indeed have a substantial impact upon the free flow of commerce.

The majority opinion makes reference to the "light of changing economic conditions." Precisely what is meant by this statement is

³⁰ *The Rutledge Paper Products, Inc*, footnote 11, *supra*

difficult to determine. Apparently my colleagues are implying, without directly stating, that the trend of prices in the past 4 years requires the 1950 dollar minimum requirements to be increased and to the extent done herein. The basis for such an assertion is, again, left undisclosed. However, an examination of the consumer price indices published by the Bureau of Labor Statistics discloses that the cost of living has increased approximately 10 percent since the 1950 jurisdiction plan was placed in effect. Accordingly, if the Board's jurisdictional figures were to be adjusted in conformance with this increase, the direct and indirect outflow figures would be increased \$2,500 and \$5,000 respectively. Yet my colleagues have increased those figures \$25,000 in the first case and up to \$150,000 in the second instance, or an increase of from 100 to 300 percent. At the very least this is faulty arithmetic on the part of the majority. More probably, it is simply a clear indication that any change in economic conditions which has occurred in this Nation in the past 4 years has had nothing to do with the creation of the current revisions. Moreover, a relatively small change in price levels which might bring a few more cases to the Board under the 1950 standards does not necessarily require any change in the standards. If the Board is able to handle its existing case load, as it is, there is no reason to change those standards. As I pointed out in my *Breeding Transfer* opinion, financial or personnel considerations do not require a slash in our jurisdiction.

The majority, however, is not content with merely this great increase in the dollar minimum requirements. Whereas the 1950 standards would assert jurisdiction over employers "engaged in producing or handling goods *destined* for out of state shipment valued at \$25,000 per annum," the majority has not only doubled the minimum but has limited the coverage of this standard as stated in this decision to those firms "which produce or handle goods *and ship* such goods out of state." The addition of a requirement that the employer actually ship the goods concerned has been made sometime in the period since the issuance of the press releases for both of them merely repeat the language of the 1950 standard in this respect. The effect of such a change in the standard apparently will be to require those employers who handle or produce goods destined for interstate commerce but who do not possess title to the goods when they are shipped to have operations of at least \$100,000 before we will assert jurisdiction. Yet the majority decision, as in other instances, contains no indication of why such a distinction is either necessary or is in accord with the effect of those operations upon commerce; nor is there any specific statement that the press releases have been amended in this respect.

But the confusion compounded by the majority does not cease there. In setting forth the bare bones of the \$100,000 standard, both the press

releases and the majority decision here speak in terms of enterprises “furnishing” and “supplying” goods and services rather than “selling.” Yet in the recent *Brooks Wood Products* case,³¹ the Board, over my dissent, held that the goods must actually be sold by the employer to an interstate enterprise. There, the fact that the employer directly delivered goods to an interstate enterprise was held to be insufficient grounds for asserting jurisdiction because the title in the sale first passed through the hands of a third party. The *Brooks* decision issued before the press releases and the instant decision, yet neither appears either to overrule it or accept it, and there is no way for the public, let alone Board personnel, to know whether or not the language of the instant decision qualifies the *Brooks* case or the reverse.

Furthermore, the majority have added the entirely new requirement that if the goods or services are not “directly utilized” the dollar minimum becomes \$200,000 instead of \$100,000. And if the enterprise furnishing the services is a multistate chain, an additional test of \$1,000,000 for the entire chain is brought into possible play. If the reader finds this complex and confusing, he is not alone. Repeated reading, study, and checking of the July 1 and 15 press releases and the instant majority decision fail to resolve the many questions which are inherent in these new restrictions. The press releases and the instant majority opinion are in conflict, for one thing, as to whether or not the multistate test of \$1,000,000 is to be used only if services are concerned or whether it also covers a multistate enterprise furnishing materials. Is that test to be effective only when the services and/or goods are not “directly utilized” or also when they are “directly utilized”? And, above all, what is meant by the novel and undefined term “directly utilized”? Is the rice drying performed by the Employer herein a case of “direct utilization”? The majority ostensibly uses this case to explicate the new rule and then does not bother to do so. (In fact, it does not even specify which standard is the basis for the dismissal of this petition.) Is furnishing fuel to heat a plant building “direct utilization”? Bookkeeping and accounting services? Construction of a plant building? Delivery and setting up of heavy machinery? If not, why not?

Furthermore, I question as to what the grounds or findings are on which the majority now bases the premise at the heart of this distinction between goods and services “directly utilized” and “not directly utilized.” What evidence does the majority have that a labor dispute affecting the supply of the latter materials or services would not have an appreciable impact upon commerce? The experience of this Board has certainly not given rise to such a premise and the majority cites none. In fact, as the Supreme Court, with whose findings on such ex-

³¹ 107 NLRB 237.

perience the majority seem to be in consistent disagreement, has stated:³²

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 or foreign commerce. *Burdens and obstructions may be due to injurious action springing from other sources.* [Emphasis supplied.]

For almost two decades this agency has proceeded upon that premise, as stated by the Court. I do not think we can discard that conclusion of years' experience and adopt its opposite on a showing restricted to the introduction of a new phrase—"directly utilized."

The majority opinion here is also interesting, if hardly informative, with respect to another major element of these new restrictions. In the press release of July 1, the majority announced that it had established a new requirement that "the goods supplied by firms" under this category must "ultimately go outside the state" and that any services supplied "be part of the stream of interstate commerce" if the \$100,000 minimum was to obtain. The press release of July 15 reiterated this requirement and specifically stated that "jurisdiction will *not* be exercised over enterprise supplying materials to other firms which do interstate business unless the materials themselves go outside the state." Under this latter announcement even the \$200,000 standard would not apply if the materials furnished did not go outside the State. Yet the instant decision neither affirms nor denies these rules. Has the majority dropped such requirements? If so, the public, which was informed of these rules even before any decisions containing them could issue, should certainly be specifically told so to avoid confusion which will arise from continued reliance upon the July 1 and 15 press releases.

There is a broader aspect of the new standards involved in this case which should also be taken into consideration. As I noted in my *Breeding Transfer* opinion, with respect to the overall effect of the new standards, these new and substantial restrictions upon the exercise of our jurisdiction encompass a large number of the Nation's smaller plants and businesses along with many not so small. The size of such enterprises, as I have shown there, is no indication of what would be the impact upon commerce of labor disputes affecting their operations. But their size is important for another, vital reason. The Board is well aware of the fact that, while the industrial giants in the Nation's major industries now have a high incidence of employee self-organization and a history of stable collective bar-

³² *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, at 36

gaining, the organization of unions and the progress of collective bargaining has not kept pace in the smaller industrial and business units. Quite naturally, these unorganized areas are now receiving a major share of the organizational efforts of employee groups. The experience of this agency has established beyond question the fact that it is during these organizational efforts, the struggles for recognition and attempts to achieve collective bargaining that the representation and unfair labor practice procedures of the Board and the protections and restraints of the Act are most necessary. Yet it is here, in the present area of greatest labor-management tension, where the majority would withdraw our facilities from use by employees and employers. I can only conclude that this action of the majority, far from effectuating the policies of the Act, acts as a barrier to the performance of our statutory duty.

The facts of the instant case illustrate the extent to which the revised standards here involved will imperil and obstruct the protection of the free flow of commerce from the impact of labor disputes. In the past year, this Employer received over \$75,000 for its services in drying rice. The majority opinion looks this far, consults its statistics, and denies jurisdiction. I may be forgiven, I hope, if I probe a bit deeper into the impact of this Employer's operations on interstate commerce. The \$75,000 which the Employer received was its payment for drying some 646,000 bushels of rice. This rice was valued at approximately \$1,453,500; and of the total processed by the Employer, approximately 75 percent, or over \$1,000,000 was thereafter shipped in interstate commerce by the Association. A labor dispute halting the processing of rice by the Employer would not alone affect the \$75,000 which that enterprise received as payment for its services. On the contrary and much more important, it is evident that such a work stoppage could prevent the shipment of as much as \$1,000,000 in rice in interstate commerce. The majority apparently views this sum as being insignificant. In fact, for jurisdiction to be asserted under the new standards now announced herein, the Employer would have to process one-fourth again as much rice or, in the event the majority does not deem this service to be "directly utilized," the Employer would have to process grain destined for interstate shipment valued at more than \$2,300,000. I cannot agree that such a standard in any way adequately protects the free flow of commerce.

Accordingly, because the standards utilized herein are not only subject to the objections which I noted in the *Breeding Transfer* case, but are both unclear and unsupportable in fact, I must dissent from the establishment of those standards and the rejection of jurisdiction herein.