holds that it is unnecessary to rule on the validity of this ballot, finding that, since the Employer failed to challenge or otherwise to question the validity of any ballots at the time they were counted, the Employer's so-called objections, based solely on its subsequent and belated reexamination of the ballots, constitute a post-election challenge, and are therefore untimely.[2] Chairman Farmer and Members Peterson and Beeson disagree with the latter policy as applied to these circumstances, and would entertain an objection to both ballots and consider the merits of the objections. However, they would find that the ballot marked "Yes," to which the Employer filed the belated exception, is in fact without any identifying mark, and is therefore valid. For the reasons variously stated, the Board hereby overrules the Employer's objections,[3] and certifies the Petitioners jointly as the exclusive bargaining representative of all employees in the appropriate unit.

[The Board certified Local 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and District Lodge No. 67, International Association of Machinists, AFL (Local 1486), as the designated collective-bargaining representative of all employees engaged in maintaining, repairing, and servicing motor vehicle equipment at the Employer's automobile and truck rental establishments in the District of Columbia, and at the Washington National Airport, including auto and truck mechanics, body and fender men, tiremen, washers, porters, servicemen, and helpers; but excluding office employees, guards, watchmen, and working foremen and other supervisors as defined in the Act.]

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

[2] *Oppenheim Collins & Co*, 108 NLRB 1257.

[3] In view of our decision, we deem it unnecessary to consider the other contentions made with respect to the issues herein raised The Employer's request for oral argument on its exceptions is denied, as in our opinion the record clearly set forth the positions of the parties

EDWIN D. WEMYSS, AN INDIVIDUAL, D/B/A COCA-COLA BOTTLING COMPANY OF STOCKTON *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 439, AFL *and* STOCKTON BEVERAGE EMPLOYEES ASSOCIATION, SOMETIMES KNOWN AS STOCKTON BEVERAGE ASSOCIATION, PARTY TO THE CONTRACT. *Case No. 20–CA–626. November 10, 1954*

Determination and Order on Respondent's Motion

On January 27, 1953, the Board issued a Decision and Order in the above-entitled proceeding,[1] finding that the Respondent had formed,

[1] 102 NLRB 586

dominated, interfered with, and contributed support to Stockton Beverage Employees Association, herein called the Association, in violation of Section 8 (a) (2) and (1) of the Act. The Board ordered the Respondent, *inter alia*, to disestablish and to cease recognizing the Association as representative of any of its employees. Upon petition for enforcement, the United States Court of Appeals for the Ninth Circuit enforced the Board's order with modifications.[2] On May 13, 1954, the court entered a decree in accordance with its opinion which required the Respondent, *inter alia*, to withhold recognition from the Association until that organization should be certified as collective-bargaining representative by the Board.

On August 13, 1954, the Respondent filed a motion with the Board requesting it to withdraw its order and to petition the court to withdraw its decree upon the grounds that (1) the Board would not assert jurisdiction over the Respondent under its recently announced jurisdictional standards, and (2) the outstanding court decree based upon the Board's order has become moot.

The Respondent is engaged in bottling, selling, and distributing, at wholesale, bottled Coca-Cola in Stockton, California. It operates under a royalty agreement with Coca-Cola Bottling Company of Stockton, Ltd., herein called the Corporation, of which the Respondent is president and sole shareholder except for two qualifying shares owned by other individuals who serve as officers and directors. The essence of the Coca-Cola drink is the syrup which is manufactured by the Coca-Cola Company, a Delaware corporation, in various plants throughout the United States. The Coca-Cola Company's San Francisco plant supplies syrup to Pacific Coast Coca-Cola Bottling Company, herein called Pacific, which in turn supplies the Respondent with syrup pursuant to a franchise agreement between Pacific and the Corporation and a royalty agreement between the Corporation and the Respondent. In 1951, the year of the unfair labor practices, the Respondent purchased supplies and materials valued at approximately $190,000, of which amount about $6,000 was shipped directly to the Respondent's plant from points outside the State. All the Respondent's sales were made locally. By virtue of the franchise agreement between Pacific and the Corporation, the Coca-Cola Company exercised considerable control over the manner in which the Respondent conducted its business.

On the above facts, the court upheld the Board's assertion of jurisdiction, finding that the Respondent's business was an integral part of the Coca-Cola Company's national system of distribution and was therefore subject to the Board's jurisdiction under the rationale of the Supreme Court decision in *Howell Chevrolet Co.* v. *N. L. R. B.*,

[2] *N. L. R. B.* v. *Edwin D Wemyss, d/b/a Coca-Cola Bottling Co. of Stockton*, 212 F. 2d 465 (C. A. 9).

346 U. S. 482. It further held that it was for the Board to determine in the exercise of its discretion whether to assert jurisdiction and that it could find no abuse of discretion in the Board's decision to assert jurisdiction in this case. However, the Respondent contends that the Board, under its new jurisdictional standards, would not today assert jurisdiction over the Respondent's operations and therefore urges the Board to take the necessary steps for vacating its order and the court decree based thereon.

The Board asserted jurisdiction in this case in conformity with a policy determination made in 1950 that it should exercise its discretion in favor of taking jurisdiction of companies whose operations, although local in character, form an integral part of a multistate enterprise.[3] The Board had also previously decided that a local soft drink bottling company which operated under a franchise agreement from a nationwide organization was a part of a multistate enterprise and the Board should therefore take jurisdiction over such a company.[4]

Recently, the Board reexamined its jurisdictional policy in the light of 4 years' experience under the 1950 plan, the realities of industrial life as they exist at the present time, and especially upon consideration of the basic purposes of the Act as a whole and the Board's statutory obligation to effectuate those purposes in relation to its total volume of cases and available funds and personnel. After making its reappraisal, the Board decided that certain changes in its jurisdictional standards were desirable for the future. These have been formulated in a series of recently issued decisions.[5] In making these changes, the Board was not motivated by any thought that the Board in adopting the 1950 plan either erred in the exercise of its discretion or acted arbitrarily. Rather we recognize that at that time the Board was properly influenced in its determinations, as we have been in ours, by consideration of all of the circumstances prevailing at the time of determination.

We are also aware that further changes in circumstances may again require future alterations of our own determinations one way or another. The Board's jurisdictional standards are not, and by the very nature of the Board as a quasi-judicial agency charged with the statutory responsibility to effectuate the congressional purposes embodied in the Act which gave it existence, cannot be, static, immutable standards. From what we have said it is also clear that the present Board had no thought, indeed no valid basis, for overruling prior Board de-

[3] *The Borden Company*, 91 NLRB 628.

[4] *Seven-Up Bottling Company of Miami, Inc.*, 92 NLRB 1622.

[5] *Breeding Transfer Company*, 110 NLRB 493; *The Daily Press, Incorporated*, 110 NLRB 573; *Greenwich Gas Company and Fuels, Inc.*, 110 NLRB 564; *Jonesboro Grain Drying Cooperative*, 110 NLRB 481; *William T Wilson and Mabel J. Wilson, a partnership d/b/a Wilson-Oldsmobile*, 110 NLRB 534; *J. R. Knott and Hugh H. Hogue d/b/a Hogue and Knott Supermarkets*, 110 NLRB 543; *McKinney Avenue Realty Company (City National Bank)*, 110 NLRB 547; *Maytag Aircraft Corp.*, 110 NLRB 594.

cisions correctly made under jurisdictional criteria in effect at the time of determination.

Accordingly it was, and is, Board policy for the future, to proceed as follows: The Board will apply the recently announced jurisdictional standards to all future and to all pending complaint cases which have not yet resulted in the issuance of a decision and order either finding unfair labor practices or dismissing the complaint. As to all other complaint cases in which a decision and order has already issued, the Board will proceed with compliance, enforcement, and contempt proceedings, depending upon the status of the case, without regard to whether the particular case meets the revised jurisdictional standards.

It is to be noted that as to all such cases, there have already been major expenditures of Government funds and of the energies of the personnel of this agency by the time a decision and order is issued. There is every reason therefore for proceeding with the final steps necessary to complete any such case. It also seems to us that any other policy would tend to encourage a disregard for law. Thus, the statutory necessity for investigation of charges, service of complaint, hearing, intermediate report, and ultimate Board consideration and determination can be time-consuming. There is also an expectancy of normal turnover in Board membership because, at a minimum, the terms of Board members are, by statute, regulated to provide for expiration of at least one term in each calendar year. These considerations may in combination induce willful violation of the Act upon the hope that delay accompanied by changes in Board memberships may operate to the advantage of persons willing to hazard that risk. We ought not ourselves encourage even the possibility of such an attitude. Nor does such a policy seem to us to create any inequities merely because the Board as a matter of administrative self-restraint would today refuse to decide the case of a respondent that presently fails to meet its current standards, but would seek enforcement of a decision already issued respecting another respondent engaged in the same general occupation and doing approximately the same volume of business. It is an obvious fact that until a decision and order of the Board has issued there has been no *final determination* that the challenged conduct put in issue either by charge or complaint in fact occurred, or, if it did, that it was in fact illegal, or that it would effectuate the purposes of the Act for the Board to assert jurisdiction over the particular dispute involved. But once a final determination has been made by the Board after hearing under Section 10 (c) that illegal conduct occurred, a proper respect for the operation of law and of the decisions of quasi-judicial agencies seems to us to require that those Board decisions and orders be honored by compliance or enforced whenever necessary. We need hardly add that we have no doubt whatsoever that a decree of enforcement under either Section

10 (e) or (f) should be, and must be, honored by compliance in every respect.[6]

The Board's order in this case, issued in 1953, was proper when made. Furthermore, at the time the unfair labor practices occurred there was no basis for any valid doubt respecting either the obligations of the statute or the scope of its coverage under the Board's controlling precedents. The order is therefore valid and will not be vacated.

The Respondent also contends that the Board's order should be vacated because compliance with the court's decree is now impossible, as it requires the Respondent to cease recognizing the Association until it shall have been certified as bargaining representative by the Board, and under the present jurisdictional standards the Board would not entertain a representation petition to resolve any question of the Association's right to represent the Respondent's employees. In order to carry out the terms of the court's decree, and for that purpose only, we shall receive and process a representation petition, otherwise lawfully filed, for the purpose of determining whether the Association represents a majority of the Respondent's employees.[7]

Accordingly, we shall deny the Respondent's motion to withdraw the order.[8]

[The Board denied the Respondent's "Motion to Withdraw Order."]

MEMBER MURDOCK, concurring:

I concur in the result and in the contents of the majority decision with the exception of certain statements which are unnecessary to the decision. These statements are contrary to my views concerning the development of the new jurisdictional standards expressed in my dissenting opinion in *Breeding Transfer*, 110 NLRB 493.

MEMBER RODGERS took no part in the consideration of the above Determination and Order on Respondent's Motion.

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[6] See, for example, the refusal of the Fifth Circuit to modify its decree in *N. L. R. B.* v. *Concrete Haulers, Inc.*, 212 F. 2d 477, motion to modify decree denied October 16, 1954. In that case, following the issuance of the decree which directed respondents to reinstate certain employees, to bargain collectively, and to cease and desist from violations of Section 8 (a) (1), (3), and (5), the Board promulgated its new jurisdictional standards under which it would not as an original proposition now assert jurisdiction over the respondents. Respondents, relying on the *National Gas* decision (215 F. 2d 160), thereupon filed a motion in the Fifth Circuit seeking to have the decree vacated insofar as it applied to respondents' future obligations, and particularly to the bargaining obligation. The court denied the motion, leaving the decree in full force and effect.

[7] We find no merit in the Respondent's further argument that the Board should vacate its order so that the State court may be free to exercise its jurisdiction.

[8] Member Rodgers would grant the Respondent's motion. He believes that the Board, as a matter of policy, should not pursue its enforcement remedies against parties over which it would not now assert jurisdiction. Were this case now pending before the Board for review in the first instance, it is clear that the Board, acting pursuant to its new jurisdictional standards, would not proceed against the Respondent. He believes it inconsistent to proceed with the case simply because it has reached a more advanced stage in the proceedings