

## CONCLUSIONS OF LAW

1. Technicolor Motion Picture Corporation is an employer within the meaning of Section 2(2) of the Act.

2. Local 683 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Technicolor Motion Picture Corporation is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

4. Technicolor Motion Picture Corporation has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. Local 683 of the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, AFL-CIO, has not engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

[Recommendations omitted from publication.]

---

**Siemons Mailing Service, Petitioner and San Francisco-Oakland Mailers Union No. 18, ITU, AFL-CIO; Independent Mailers' and Addressers' Union, and Bookbinders & Bindery Women, Local 32-125, I.B. of B. Case No. 20-RM-260. November 14, 1958**

## DECISION AND DIRECTION OF ELECTION

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

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

1. The Employer is a California corporation engaged in the operation of a mailing service in Oakland, California. In the course of its operations it processes, addresses and mails written materials submitted to it by its customers for that purpose. During the year 1957 its total revenues were approximately \$240,000, of which \$77,000 was received in connection with services performed on materials which were mailed outside the State of California by the Employer. The Employer urges the Board to assert jurisdiction on the theory that it performed more than \$50,000 worth of services on materials which were mailed outside the State of California, and therefore its direct outflow satisfies the minimum jurisdictional requirements established in the *Jonesboro* case.<sup>1</sup>

On October 2, 1958, the Board publicly announced<sup>2</sup> the adoption of new jurisdictional standards, which would be set forth in decisions rendered in cases issuing thereafter. In this case, the Board sets forth the \$50,000 outflow-inflow standard for nonretail enterprises, and the

<sup>1</sup> *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

<sup>2</sup> Press Release (R-576).

general considerations which led it to revise its jurisdictional policies at this time.

The Board has revised its jurisdictional policies as a consequence of the situation to which the Supreme Court referred in its decision in *Guss v. Utah Labor Relations Board*.<sup>3</sup> The Court held therein, that the proviso to Section 10(a) of the Act is the exclusive means whereby States may be enabled to act concerning the labor relations matters which Congress entrusted to the National Labor Relations Board, thus foreclosing State action as to labor disputes over which the Board, in the exercise of its discretionary authority declines to assert jurisdiction. The Court then adverted to "a vast no-man's-land subject to regulation by no agency or court" which might result from the lack of State power to act. It noted, however, that its decision foreclosing State action was compelled by the congressional judgment in favor of a uniform national labor relations policy as expressed in the Act and that Congress could change the situation at will, or "the National Labor Relations Board can greatly reduce the area of the no-man's-land by reasserting its jurisdiction." By this and other language in its decision, the Court left little doubt that a reexamination of the Board's jurisdictional policies was in order. Accordingly, the Board immediately reappraised its existing policy in regard to the assertion of jurisdiction, the available facilities and resources by which its responsibilities under the Act could be discharged, and the extent to which its current jurisdictional standards might be deemed to satisfy its obligations as the administrator of the national labor policies embodied in the Act.<sup>4</sup> The Board concluded that a revision of its jurisdictional standards was in order, but that before it could handle the increased caseload to be expected from any significant liberalization of its standards, a larger appropriation was necessary, a conclusion which it communicated to Congress. Congress responded by voting increased appropriations of which \$1,500,000 was appropriated to enable the Board to extend its jurisdiction into some of the areas falling within the "no-man's-land."<sup>5</sup> Thereafter, on July 22, 1958, the Board published various proposed changes in its jurisdictional standards, and invited comments and briefs from interested parties. On October 2, 1958, as already indicated, the Board after giving due consideration to the comments and briefs received in response to its July 22 announcement, published revised jurisdictional standards, to be applied as of that date to all pending and future cases. The Board has taken this action so that more individuals, labor or-

<sup>3</sup> 353 U.S. 1.

<sup>4</sup> See *Edwin D. Wemyss, an individual, d/b/a Coca-Cola Bottling Company of Stockton*, 110 NLRB 840, 841, where the Board indicated readiness to review and revise its jurisdictional standards, when changes in circumstances required.

<sup>5</sup> S. Rept. 1719, 85th Cong., 2d sess., at p. 44; H. (conference) Rept. 1565, 85th Cong., 2d sess.

ganizations and employers may invoke the rights and protections afforded by the statute.

The Board is aware that the revised standards do not cover all enterprises which the broad reach of the Act has reposed within its legal jurisdiction, and that, accordingly, there will remain a "no-man's-land" "subject to regulation by no agency or court." It believes, however, that the jurisdictional line delineated by its new standards will bring within its exercised jurisdiction a significant number of the enterprises previously falling outside that area and that the expected caseload resulting from these standards represents the maximum workload that can be expeditiously and effectively handled by the Board and its staff within existing budgetary policies and limitations. To broaden its exercised jurisdiction still further at this time, would, in the Board's opinion, produce a caseload of such proportions as seriously to lengthen the time for processing cases, thus lessening the efficacy of the Board as a forum to which labor disputants may turn for aid in resolving their disputes. In these circumstances, the Board has exercised its discretionary authority<sup>6</sup> to decline to assert its full statutory jurisdiction, by the adoption of the revised jurisdictional standards in the belief that such a policy will best effectuate the policies of the Act.

The Board's decision to continue to utilize jurisdictional standards to aid it in making determinations as to whether or not to assert jurisdiction is dictated by its experience in making such determinations both with and without the aid of announced standards.<sup>7</sup> That experience has demonstrated that an *ad hoc* or case-by-case approach inevitably leads in practice to the establishment of roughly drawn standards or tests, simply by virtue of the fact that previous decisions are urged upon the Board as precedent by parties before the Board, and relied on by the Board to justify its determinations. Experience has shown, however, that jurisdictional guide lines thus established are extremely time and energy consuming to apply, and result in confusion and uncertainty as to exactly where the dividing line will be drawn in particular cases, not only for parties appearing before the Board but for members of its staff as well, with the result that a disproportionate share of the available resources of the Board is utilized in the investigation of jurisdictional questions. The Board's experience under its 1950 and 1954 jurisdictional standards demonstrated that the utilization of jurisdictional standards, if simply drawn and relatively few

---

<sup>6</sup> The Supreme Court, although reserving opinion on the validity of any set of jurisdictional standards has affirmed the existence of the Board's discretionary authority to decline to assert jurisdiction when the policies of the Act would not be effectuated by its assertion. See *Office Employees International Union, Local No. 11 (Oregon Teamsters) v. N.L.R.B.*, 353 U.S. 313.

<sup>7</sup> For the first 15 years of its existence, the Board determined when not to exercise jurisdiction on a case-by-case basis. Thereafter, the Board utilized varying sets of jurisdictional standards to aid it in making such determinations.

in number, significantly reduces the amount of time, energy, and funds expended by the Board and its staff in the investigation and resolution of jurisdictional issues, thus enabling the Board to devote a greater portion of its resources to the processing of substantive problems in a greater number of cases. The Board believes that, in the present circumstances, its primary function is 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. It believes that when, as now, it is simply not possible for it to exercise its jurisdiction in every case, its discretion to decline to assert jurisdiction is more reasonably exercised by the utilization of the revised jurisdictional standards, rather than by following a case-by-case approach. It believes that these standards will reasonably insure that the Board will process all cases involving labor disputes which exert or tend to exert a pronounced impact on commerce.

Under the new standards, the Board will continue to apply the concept that it is the impact on commerce of the totality of an employer's operations that should determine whether or not the Board will assert jurisdiction over a particular employer.<sup>8</sup> Accordingly, the Board will continue its past practice of totaling the commerce of all of an employer's plants or locations to determine whether the appropriate jurisdictional standard is met. Pursuant to this principle we shall adhere to our past practice of considering all members of multiemployer associations who participate in or are bound by multiemployer bargaining negotiations as single employers for jurisdictional purposes.<sup>9</sup>

The Board has determined that it will, as it did in 1954,<sup>10</sup> apply the revised jurisdictional standards to all future and *pending* cases. This, of course, applies to pending unfair labor practice cases as well as to representation cases. With respect to complaint cases it is of course possible that complaints will issue based upon unfair labor practices occurring at a time when the operations of the particular employer involved, did not satisfy the then current 1954 jurisdictional standards. However, the Board does not believe that the mere fact that a respondent had reason to believe by virtue of the Board's announced jurisdictional policies that the Board would not assert jurisdiction over it, gave it any legal, moral, or equitable right to violate the provisions of the Act.<sup>11</sup> This is especially true since the issuance of the

<sup>8</sup> See *The T. H. Rogers Lumber Company, Inc.*, 117 NLRB 1732.

<sup>9</sup> See *Insulation Contractors of Southern California, Inc., etc.*, 110 NLRB 638.

<sup>10</sup> See *Coca-Cola Bottling Company of Stockton*, *supra*.

<sup>11</sup> To the extent that our decision herein may be deemed to be inconsistent with the Board's decision in *Almeida Bus Service and Almeida Bus Lines, Inc.*, 99 NLRB 498, it is hereby overruled. To the extent that our decision herein may be deemed to conflict with the decision of the Ninth Circuit Court of Appeals in *N.L.R.B. v. Guy F. Atkinson Co., etc.*, 195 F. 2d 141, we note our disagreement and we respectfully decline to follow its dictates.

*Guss* decision, which eliminated all possible basis for believing that in such circumstances the provisions of the Act did not apply, or that State law could or would apply to its conduct. In the final analysis what is conclusive with us is the fact that any other policy would benefit the party whose actions transgressed the provisions of the Act at the expense of the victim of such actions and of public policy. In pursuing this policy we shall not, however, reopen any complaint case in which the Board has dismissed a complaint on jurisdictional grounds.

Turning now to consideration of the effect of the Employer's operations on commerce in the light of the revised standards. The Employer is a nonretail enterprise, and furnishes services valued in excess of \$50,000 to firms whose operations satisfy the Board's revised jurisdictional standards. More than \$50,000 of its services are performed on goods which the Employer shipped out of State on behalf of its customers. Whether such services are regarded as direct outflow as the Employer contends, or as indirect outflow, is not here determinative. For the Board has concluded that it will best effectuate the policies of the Act if jurisdiction is asserted over all nonretail enterprises which have an *outflow or inflow across State lines of at least \$50,000, whether such outflow or inflow be regarded as direct or indirect*. For the purposes of applying this standard, *direct outflow* refers to goods shipped or services furnished by the employer outside the State. *Indirect outflow* refers to sales of goods or services to users meeting any of the Board's jurisdictional standards except the indirect outflow or indirect inflow standard.<sup>12</sup> *Direct inflow* refers to goods or services furnished directly to the employer from outside the State in which the employer is located. *Indirect inflow* refers to the purchase of goods or services which originated outside the employer's State but which he purchased from a seller within the State who received such goods or services from outside the State. In applying this standard, the Board will adhere to its past practice of adding direct and indirect outflow, or direct and indirect inflow. It will *not* add outflow and inflow.

The \$50,000 outflow-inflow standard as described above represents a telescoping of the multiple and varied outflow-inflow standards applied to nonretail enterprises in the past. The Board has concluded that such telescoping is advisable for two basic reasons: (1) A labor

---

<sup>12</sup> The furnishing of goods or services to individual units of retail enterprises will constitute indirect outflow only where the particular unit of the retail enterprise, itself satisfies the new jurisdictional standard for retail enterprises. This is a continuation of our past practice enunciated in *New Jersey Poultry & Egg Cooperative Association, Inc.*, 114 NLRB 536.

We will also continue our past practice of treating sales of goods or services to enterprises or organizations which are themselves exempted from the Board's jurisdiction as indirect outflow, where such enterprises' or organizations' operations are of the magnitude necessary for assertion of jurisdiction over comparable nonexempt organizations. See, for example, *G. C. McBride Company*, 110 NLRB 1255; *Madison County Construction Co.*, 115 NLRB 701; *J. Tom Moore & Sons, Inc.*, 119 NLRB 1663.

dispute obstructs commerce to the same extent whether the movement of goods which is obstructed is to or from an employer's operations; and (2) the Act accords the same importance and applies equally to operations which affect commerce and those which are directly engaged in commerce across State lines. The Board believes that the single test it has adopted will more nearly conform its jurisdictional policy to the basic policy expressed in the Act, and will be substantially simpler to administer than were the former multiple outflow-inflow tests, thus materially reducing the proportion of time, money, and energy expended by the Board and its staff in the investigation of jurisdictional questions.

Accordingly, as the Employer furnishes services valued in excess of \$50,000 annually to enterprises which satisfy the Board's jurisdictional standards, the Board finds that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations named herein claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer and the Independent Mailers' and Addressers' Union contend that a plantwide unit is appropriate. The San Francisco-Oakland Mailers Union No. 18, ITU, AFL-CIO, and the Bookbinders & Bindery Women, Local 32-125, I.B. of B., would apparently divide the plant into two units, one for mailing functions and one for assembly functions to be represented by each of them respectively.

All employees work in one large room, except that there is a small office in which one girl, the president, and his son work. All employees have the same job benefits. The work is simple and skill in it is readily acquired. There are no job classifications as such. The Employer frequently interchanges employees on the various types of machines. On this record we find that an all-employee unit is appropriate.<sup>13</sup>

Accordingly we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer at its Oakland, California, letter and mailing shop, including office clerical employees, truckdrivers, shipping and receiving clerks, and seasonal employees, but excluding salesmen, guards, and supervisors as defined in the Act.

5. The Employer's business is seasonal, with peak seasons occurring monthly, at which time it regularly rehires employees who have worked in earlier peak periods. In accord with the Board's usual practice with respect to seasonal industries, we shall direct that the

<sup>13</sup> See *Lawton V. Crocker & Henry F. Crocker d/b/a The National Survey*, 106 NLRB 97.

election be held at or about the time of the next employment peak, on a date to be determined by the Regional Director, among the employees in the appropriate unit who are employed during the payroll period immediately preceding the date of issuance of notice of election by the Regional Director.

[Text of Direction of Election omitted from publication.]

MEMBER JENKINS, concurring specially:

I concur in the result. Nevertheless, I must note again my disagreement with the use of mechanical monetary standards as a substitute for judicial discretion in meeting the problem of enforcing the Act within the language and scope of the Act. The line of demarcation between Federal and State power rests with Congress. In the *Guss* case<sup>14</sup> the Supreme Court said "*Congress is free to change the situation at will . . . . The National Labor Relations Board can greatly reduce the area of the no-man's land by re-asserting its jurisdiction. . . .*" [Emphasis supplied.] In my opinion the Board, pending such action as the Congress may in the future decide to take, should reassert its jurisdiction as the Supreme Court suggested, and, within the limitations imposed by time and space, budgetary considerations, limited personnel, and the facilities Congress has seen fit to provide, endeavor to apply its power in those cases where, in the exercise of sound judicial discretion, it appears the policies of the Act will be most effectively implemented. The use of mechanical monetary standards such as inflow and outflow in terms of dollars becomes absurd when a comparison is made of the size of States, their location in relation to each other, their state of industrial development, the organized or unorganized position of the workers therein, the vulnerability of industries therein to "secondary boycotts," the opportunities of employees discharged in violation of law to find other employment because of the prevailing community or sectional attitude toward collective bargaining, etc. In short, the Board should use its expertise to most effectively utilize its power so as to make the Act a vital and living force in the economic life of the Nation, rather than succumb to mechanical rules of thumb.

Further, all citizens are required to obey the law whether enforced against them or not. The very existence of the power to enforce in the Board, would, if mechanical standards had not been approved, act as some deterrent to those otherwise disposed to disobey the law, because they would not know when the Board might be inclined to move against them.

---

<sup>14</sup> *P. S. Guss d/b/a Photo Sound Products v. Utah Labor Relations Board*, 353 U.S. 1, 77 S. Ct. 598 at p. 603.

While it would seem to me to have been much wiser for Congress to have limited the Board's jurisdiction, leaving much to the States, that is the province of Congress and not the Board. Since Congress, as its actions have been interpreted by the Supreme Court, did not see fit to do so, it seems to me incumbent upon the Board to "reassert its jurisdiction" as the Supreme Court suggested, but that it should do so in a more realistic way.

Since I would have asserted jurisdiction over this enterprise in any event, I concur in the result.

---

**Carolina Supplies and Cement Co. and General Drivers, Warehousemen and Helpers, Local Union No. 509, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 11-RC-1147. November 14, 1958**

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John M. Dyer, 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:

1. The Employer is a South Carolina corporation engaged in the business of selling building supplies at retail in Charleston, South Carolina. During the 1957 calendar year the Employer's gross volume of business was approximately \$635,000. All sales were made within the State of South Carolina. Its purchases for the same period amounted to approximately \$523,000 of which \$336,000 were received from points outside the State of South Carolina. The Employer contends that the Board should not take jurisdiction because its operations do not satisfy the jurisdictional standards for retail enterprises applied by the Board since 1954.<sup>1</sup>

Ever since the enactment of the National Labor Relations Act in 1935 the Board has consistently held to the position that it better effectuates the policies of the Act and promotes the prompt handling of cases not to exercise its jurisdiction to the fullest possible extent under the authority delegated to it by Congress. For the first 15 years the Board exercised its discretion in this area on a case-by-case basis. In 1950 the Board first adopted certain jurisdictional standards designed to aid it in determining where to draw the dividing line between exercised and unexercised jurisdiction. In 1954 the

<sup>1</sup> *Hogue and Knott Supermarkets*, 110 NLRB 543; *The T. H. Rogers Lumber Company*, 117 NLRB 1732.