

exclude the wife of the president of the Company, who works in the office, in accordance with Section 2(3) of the Act. Hammond, a production employee who also answers the plant telephone during the absence of the president and his wife, does not responsibly direct employees, nor possess any of the other statutory indicia of supervisory authority, and we shall, therefore, include her in the unit.⁴

The chief function of the two truckdrivers, Arrendale and John Garratt, is to load their trucks, deliver bakery products to the grocery stores, pick up the stale rolls, stock the store shelves, and prepare sales slips. When they return from their routes, they unload their cargo and then work with the bakery employees for the remainder of the day. Garratt, who is the baker's son, works in the plant for several hours every day and usually on Sunday also. Arrendale works in the plant to a somewhat lesser extent. The only selling done by a driver consists of asking the manager of a new store on his route for permission to leave products in the store. The drivers, who are supervised by the president, are paid a straight salary. Under all the circumstances, we find that the drivers share a close community of employment interest with the bakery employees, and we shall therefore include them in the unit.⁵

Accordingly, we find that all the employees of the Employer's Atlanta, Georgia, bakery, including truckdrivers, but excluding the baker, the president's wife, office clerical employees, professional employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[Text of Direction of Election omitted from publication.]

⁴ The parties apparently agree to the inclusion of A M Phillips, who works alone at night mixing ingredients according to written instructions of the baker, and we shall include him.

⁵ *Tops Chemical Company*, 137 NLRB 736.

Woods Hole Oceanographic Institution and Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO,¹ Petitioner. Case No. 1-RC-7203. June 28, 1963

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 Henry M. Kelleher, hearing

¹ Subsequent to the hearing, the Petitioner moved to amend the name of the labor organization to that set forth above.

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the entire record³ in this case, the Board finds:

1. Woods Hole Oceanographic Institution⁴ is a private, nonprofit, Massachusetts corporation founded in 1930 to provide facilities for marine research and the teaching of oceanography.⁵ It is situated on the Atlantic Coast at Woods Hole, Massachusetts. Its physical plant includes a laboratory, a waterfront area where oceangoing research vessels are docked,⁶ sundry small administrative and research buildings, and an airplane hangar. In terms of the number of employees and research vessels, it is the largest institution for marine research on the east coast.⁷

At the hearing the parties stipulated that in 1961 Woods Hole purchased approximately \$2.5 million worth of supplies and materials, of which \$586,499 represented direct purchases, and a substantial portion of the remaining \$2 million represented indirect purchases from points outside Massachusetts. They also stipulated that during the 10-month period from January 1 to October 31, 1962, inclusive, Woods Hole purchased \$24,260 worth of fuel oil directly from points outside the Commonwealth, \$47,042 worth of fuel indirectly from points outside the Commonwealth, and a substantial portion of an additional \$215,141 worth of supplies either directly or indirectly from points outside Massachusetts.

The Institution is engaged solely in basic research, that is, research done for its own sake without thought of specific, practical application. The very nature thereof is such that the problem which will be attacked and the results which will be obtained cannot be predicted. The vast majority of its research activities, including the capital ex-

² The requests for oral argument made by the Petitioner and Employer are hereby denied, since the record, including all the briefs, adequately sets forth the issues and the positions of the parties.

³ Columbia, Fordham, and Miami Universities were permitted to intervene in this proceeding for the limited purpose of filing *amici* briefs. Following receipt of these briefs, the Petitioner was permitted to file a supplemental brief in reply thereto. Texas A. & M. College also informed the Board of its position via letter dated February 22, 1963.

By Order dated March 6, 1963, the Executive Secretary granted the Employer's motion to make some minor corrections in the instant record.

⁴ Hereinafter referred to as the Institution, Woods Hole, or the Employer.

⁵ Oceanography is essentially a collection of scientific disciplines such as mathematics, physics, chemistry, and biology which concern themselves with the ocean, the animals that live in or near the ocean, and the air above and the currents in the oceans.

⁶ In connection with its activities, the Institution maintains and operates a sizable fleet featuring four major oceangoing vessels, each of which sailed between 10,000 and 40,000 miles on research missions in 1961. Woods Hole also owns one airplane and has another on bailment from the Navy; these planes utilize military installations as landing fields. Occasionally, it also receives additional airplanes and/or Coast Guard cutters from the Government to assist with a particular mission.

⁷ The Woods Hole staff consists of about 400 full-time employees—150 have scientific and technical backgrounds, another 150 are laboratory assistants and service employees, and 100 are marine personnel (of whom there are about 50 unlicensed seamen who comprise the proposed unit). Each summer approximately 150 students are temporarily added to the regular employee complement.

penditures for the construction of new laboratories and research vessels, are financially underwritten by various Federal agencies through the medium of Government contracts.⁸ These contracts⁹ characteristically cover a wide range of marine research projects of a highly technical nature.¹⁰

The Employer does not perform any work for industrial concerns or private individuals;¹¹ nor does it manufacture products, design weapons, or develop warships for the Government. Rather, the work which it performs consists of making studies and investigations to obtain potentially significant information about oceanography. The end product of this work normally takes the form of a report to the particular agency which contracted for its research services. If the contents thereof are unclassified, these reports are also made available to the general public.¹²

The Woods Hole facility has a security clearance which enables it to perform work under Government contracts classified "Confidential" or "Secret," i.e., where the disclosure of any information would be detrimental to the defense of the United States. The most prominent example of the Employer's classified work involves its Sonar research in underwater sound detection. In terms of the Institution's overall program, less than 5 percent of the money received from the Federal Government in 1962 involved work under classified contracts. However, in certain instances, studies under unclassified contracts may subsequently result in classified reports. Likewise, some of the work performed under unclassified contracts may eventually be of value to the national defense.¹³

⁸ In 1962, for example, the Employer received approximately \$10 million of which 49 percent came from the National Science Foundation (an agency of the executive branch of the Federal Government); 39 percent from the Office of Naval Research; 7 percent from the Atomic Energy Commission; and 2 percent from other Federal agencies, including the Department of the Army, Department of the Air Force, National Institutes of Health, Weather Bureau, and Bureau of Commercial Fisheries. Private endowments and gifts accounted for the remaining 3 percent of the Employer's 1962 funds.

⁹ The process of obtaining a contract is usually initiated by a staff scientist who indicates a desire to study a particular problem area. If the Institution believes that the suggested project is worthwhile, it will submit a formal proposal to the appropriate Government agency(ies) for consideration and possible funding under a contractual agreement. Frequently, staff members confer with representatives of Federal agencies prior to the submission of a formal proposal. In such circumstances, these representatives may make known the reasons why they desire that such research be undertaken and the areas in which they hope to make use of the information.

¹⁰ Illustrative of the Institution's work are studies on oceanic circulation, marine meteorology, biology of deep sea animals, kinetic energy in the Gulf Stream, feeding and migratory habits of various fish, cloud formations under hurricane conditions, et cetera.

¹¹ However, certain instruments and pieces of equipment developed at Woods Hole in connection with research activities for the Government are now manufactured by private industry for public use.

¹² In World War II, the Institution published unclassified studies of chemicals that are toxic to plant life. These studies assisted private industry in developing antifouling paints for ship bottoms. It should be noted that the knowledge obtained from the Institution's meteorological investigations and studies of ocean currents and migratory habits of fish life, etc., are also beneficial to commercial concerns.

¹³ Woods Hole is presently conducting water contamination studies for the Atomic Energy Commission in an effort to investigate the effect of radioactive matter on animal

The Institution's educational activities seek to realize three overlapping purposes—promoting interest in marine research at all academic levels, using its staff and facilities to provide specific educational opportunities not available within the academic framework, and assisting academic institutions to maintain teachers with marine interests on their faculties. To these ends, Woods Hole maintains a working relationship with many colleges and universities throughout the United States,¹⁴ whereby students in oceanography may pursue a variety of research endeavors by utilizing the Employer's facilities. In addition, a small number of students attend a few highly specialized courses offered by Woods Hole each summer.

The educational budget of \$100,000 for 1962 amounted to only 1 percent of the Employer's total budget. Woods Hole does not offer any extensive curriculum, does not confer any degrees, and does not even have authority to confer credits for any of its courses. Students may, however, receive credit at the discretion of their own college or university. Thus, Woods Hole is not a college or university; nor does it purport to be one. But it does provide a training ground for oceanographers, and it stresses here that such activities are educational in the broadest sense of that term.

The Petitioner seeks to represent a unit of unlicensed seamen. It urges that the Board has statutory authority over the Employer; the Employer's operations also satisfy the Board's jurisdictional yardsticks for nonretail enterprises and enterprises affecting the national defense; and it would effectuate the policies of the Act to assert jurisdiction over all enterprises, such as Woods Hole, which have a substantial impact on commerce.

The Employer, on the other hand, contends that it is a nonprofit, charitable, educational institution which does not engage in commercial activities and that, therefore, the Board, in accordance with established precedent, should decline to assert jurisdiction.¹⁵ It urges three positions: (1) the Board lacks jurisdiction over its operations; and/or (2) the effect on commerce is not sufficient to warrant the exercise of Board jurisdiction; and/or (3) an election will not effectuate the policies of the Act. The Employer also contends in its brief that its activities do not have a "substantial impact" on national defense within the meaning of the Board's jurisdictional standard. The *amici* briefs submitted by Columbia, Fordham, and Miami Uni-

life in the ocean. Such information could be of critical importance in the event of accidental contamination resulting from nuclear tests.

¹⁴ Numerous members of the Employer's staff hold collateral appointments on university faculties and vice versa.

¹⁵ Parenthetically, the record discloses that, on the basis of an Internal Revenue ruling, Woods Hole is exempt from Federal taxes, because it is a nonprofit corporation engaged in educational research activities. Furthermore, the Treasury Department has ruled that the Employer's vessels are not engaged in trade and may operate as undocumented vessels, since they are engaged in scientific research

versities, and the letter submitted by Texas A. & M. College, all urge the Board to decline to assert jurisdiction for the reasons set forth in the Employer's brief.¹⁶

It seems clear, in view of the above jurisdictional information, that the Employer's activities affect commerce sufficiently to satisfy the requirements of statutory jurisdiction¹⁷ and the Board's self-imposed standards, not only for nonretail enterprises,¹⁸ but also for enterprises whose activities exert a substantial impact on the national defense.¹⁹

Notwithstanding the foregoing facts, the question arises whether we are precluded from finding Woods Hole to be an "employer" within the meaning of Section 2(2) of the Act by virtue of its nonprofit, scientific-educational character.²⁰

On the basis of a long line of Board decisions, it is now well established that a corporation's nonprofit status is not the controlling consideration²¹ in determining whether to assert jurisdiction. Where the particular activities of a nonprofit organization are commercial in

¹⁶ The record discloses that 12 colleges and universities throughout the United States (including Columbia, Miami, and Texas A. & M.), operate research vessels in conjunction with the work being performed by their respective institutions of oceanography. However, Woods Hole apparently occupies a unique position in that, unlike these other oceanographic institutions, it is not directly connected with any college or university.

¹⁷ *N.L.R.B. v. Reliance Fuel Oil Corp.*, 371 U.S. 224; and *Polish National Alliance, etc v. N.L.R.B.*, 322 U.S. 643.

¹⁸ *Simmons Mailing Service*, 122 NLRB 81.

¹⁹ The Employer does not deny that an interruption in its activities may have an ultimate impact on the national defense. Rather, it contends that the Board can only assert jurisdiction under the national defense standard if an interruption would produce an "immediate, present, adverse effect on the Nation's defense effort." The Board has not limited its jurisdictional test as urged by the Employer. It may be noted that in adopting its present national defense standard, the Board "eliminated the requirement that an enterprise's operations must be directly related to the national defense, must be performed pursuant to contracts or subcontracts with the Government, and must amount to at least \$100,000 a year" (*Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318, 320). And, for example, the Board has relied upon the national defense standard in asserting jurisdiction over an employer furnishing catering services to a defense contractor (*Colonial Catering Co.*, 137 NLRB 1607), and an employer leasing office space to the Commodity Stabilization Board of the Department of Agriculture (*Canal Marais Improvement Corporation*, 129 NLRB 1332).

²⁰ In amending Section 2(2), the Taft-Hartley Act expressly excluded only one category, nonprofit corporations operating hospitals, from the statutory definition of "employer." However, as the Board (*The Trustees of Columbia University in the City of New York*, 97 NLRB 424), and the Supreme Court (*Office Employees International Union, Local 11 (Oregon Teamsters) v. Labor Board*, 353 U.S. 313, 318-319), have noted, the legislative history of that section reveals that Congress was aware of the Board's general practice of excluding all nonprofit organizations from the coverage of the Act when the organizations were engaged in noncommercial activities. The House of Representatives attempted to give specific legislative approval to these exclusions by exempting from the Act any corporations, funds, or foundations "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals." And, although the Senate draft of this bill, which later was enacted into law, excluded only hospitals, the language of the conference report indicated clearly that the Congress declined to adopt the House version because the Board had only asserted jurisdiction in connection with commercial activities of nonprofit organizations.

²¹ See *Sheltered Workshops of San Diego, Inc.*, 126 NLRB 961; *Disabled Veterans, Inc. (Idento Tag Operation)*, 112 NLRB 864; *California Institute of Technology*, 102 NLRB 1402; and *Trustees of Columbia University*, 97 NLRB 424.

nature, they are not exempt from the operation of the Act.²² Through the years the formidable task of defining commercial versus non-commercial has given rise to a multitude of judicial refinements; for, the dividing line is not always easy to pinpoint. Nevertheless, in addressing ourselves to the problem posed by the instant proceeding, we can draw on our reservoir of past experience for guidance.

First, an employer need not necessarily be engaged in manufacturing or transmitting a specific product as a condition precedent to the Board's exercise of jurisdiction; indeed, we have frequently asserted jurisdiction over employers engaged in the business of furnishing services.²³ Secondly, with respect to nonprofit organizations providing such research services, the Board has exercised its jurisdiction where the research was sponsored by or for the benefit of private industrial concerns.²⁴ In such circumstances, the research activities were deemed to be commercial in nature. Parenthetically, this rule was applied even though the same employers were under contract to perform other research projects for the Federal Government.²⁵

On the other hand, there has been an underlying disagreement whether to assert jurisdiction over research organizations like Woods Hole, who are literally in the business of doing business with the Government, that is, their entire operations are dependent upon contracts with the Federal Government for research projects.²⁶ In the *Massachusetts Institute of Technology (Lincoln Laboratory)* case of 1954, the Board asserted jurisdiction over a nonprofit, educational institution engaged exclusively in a Government sponsored project relating to the national defense. Today, we reaffirm that result in principle.²⁷ For we are not persuaded here that there is any logical basis for differentiating or attributing to the Congress an intention to differentiate between nonprofit research corporations doing business with the Government and those which deal with private industry. This is particularly true since the employer's research activities are

²² See *Disabled Veterans, Inc.*, 112 NLRB 864; *California Institute of Technology*, 102 NLRB 1402; *Sunday School Board of the Southern Baptist Convention*, 92 NLRB 801; and *Port Arthur College*, 92 NLRB 152. These decisions were consistent with a number of earlier Board rulings made prior to the Taft-Hartley Act. See, for example, *Christian Board of Publication*, 13 NLRB 534; *American Medical Association*, 39 NLRB 385; *Polish National Alliance, etc.*, 42 NLRB 1375, *enfd.* 136 F. 2d 175 (C.A. 9), *affd.* 322 U.S. 643; *Henry Ford Trade School*, 58 NLRB 1535; and *Association Canad -Americaine*, 72 NLRB 520

²³ See, for example, *Williams Dimond & Company, et al.*, 2 NLRB 859; *U.S. Testing Co., Inc.*, 5 NLRB 696; and *Foster D. Snell, Inc.*, 69 NLRB 764.

²⁴ See *California Institute of Technology*, 102 NLRB 1402; also, *cf.* *Illinois Institute of Technology including Armour Research Foundation, etc.*, 81 NLRB 201, reversed on a reexamination of virtually the same facts in 107 NLRB 1052.

²⁵ *Ibid*

²⁶ See *Massachusetts Institute of Technology (Lincoln Laboratory)*, 110 NLRB 1611; but *cf.* *Armour Research Foundation*, 107 NLRB 1052, and the Board's administrative ruling in *Carnegie Institute of Technology*, 32 LRRM 1310 (1953).

²⁷ To the extent inconsistent herewith, *Armour Research Foundation*, 107 NLRB 1052, and *Carnegie Institute of Technology, supra*, are overruled.

beneficial to private industry,²⁸ generally exert a substantial impact on commerce, and are carried out, in part, on research vessels which traverse interstate and foreign waters, utilizing fuel and supplies obtained from numerous sources outside the Commonwealth of Massachusetts.

We also believe that as a matter of policy the assertion of jurisdiction is warranted herein. As the Supreme Court recently noted, "Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause."²⁹ Although the legislative history of Section 14(c) indicates that the Congress also wanted to give the Board discretion to decline jurisdiction over those employers whose activities are essentially local in character or do not have a substantial impact on commerce,³⁰ Woods Hole's operations do not satisfy either of the aforementioned criteria for declining to assert jurisdiction. In addition, a labor dispute at Woods Hole could have an adverse impact upon the national defense, and the Board's policy is directed at minimizing that possibility by asserting jurisdiction in such circumstances.³¹ Finally, by asserting jurisdiction, the Board would encourage collective bargaining for rank-and-file employees—one of the fundamental purposes of the Act.

In view of all the foregoing, we find, in agreement with the Petitioner, that the Employer's activities affect commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.³²

2. The labor organization involved claims to represent certain employees of the Employer.

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

4. We find, in accordance with the stipulation of the parties at the hearing, 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 unlicensed seamen on vessels owned and/or operated by Woods Hole Oceanographic Institution, but excluding captains, mates, engineers, boatswains, scientists, students, and all

²⁸ See footnotes 11 and 12, *supra*.

²⁹ *N.L.R.B. v. Reliance Fuel Oil Corp.*, 371 U.S. 224, 226.

³⁰ See, for example, the statements of Senator Goldwater (105 Daily Cong. Rec., 5766-5767, Apr. 21, 1959), Senator Dirksen (105 Daily Cong. Rec., 5749, Apr. 21, 1959), and Secretary of Labor Mitchell (105 Daily Cong. Rec., 1569, Feb. 4, 1959)

³¹ "[I]t [the Board] has a special responsibility as a federal agency to reduce the number of labor disputes which might have an adverse effect on the Nation's defense effort" *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318, 320.

³² In view of the interest displayed by the parties filing *amicus* briefs on behalf of various colleges and universities, we wish to emphasize the fact that the instant decision is limited to the particular facts presented herein.

other employees, guards, professional, and supervisory employees as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting :

I dissent from the decision to assert jurisdiction in this case.

In 1930, following a recommendation of the National Academy of Science and a grant of funds by the Rockefeller Foundation, the Employer, Woods Hole Oceanographic Institution, was founded as an educational institution to be engaged solely in basic research in the science of oceanography and in the training of qualified oceanographers and teachers of the ocean sciences. The results of the research are made available generally, as in the case of any educational institution, through published papers. Many colleges and universities in the United States and abroad either require or recommend that students take courses at Woods Hole for credit.³³

Woods Hole now operates four ships, which are involved in this case. The operation of the ships is connected with the research program conducted by Woods Hole, its overall educational program, and the courses it offers.³⁴

The United States Internal Revenue Service considers Woods Hole to be a nonprofit corporation engaged in educational research activities. The U.S. Treasury Department has also ruled that the four ships operated by Woods Hole are engaged in scientific research, and are not engaged in trade or commerce.

My colleagues apparently concede that Woods Hole is a nonprofit organization which does not engage in commercial business with individuals or private industrial concerns. They apparently also con-

³³ It appears, for example, that courses at Woods Hole must be taken to satisfy the requirements of Fordham University's Department of Biology for advanced degrees. Harvard University's Department of Oceanography offers such courses, but they are not necessarily required for credit. Other educational institutions which appear to utilize Woods Hole as a part of their educational program leading to degrees are: Amherst, Bowdoin, Cape Cod Community College, Clark, Johns Hopkins, M.I.T., New York University, Swarthmore, University of California at Los Angeles, University of Chicago, University of Connecticut, University of Manchester (England), University of Miami, University of Minnesota, University of New Hampshire, University of Rhode Island, University of Stockholm (Sweden), University of Wisconsin, and Yale.

The following educational institutions are also in the oceanographic field; operate from 1 to 7 ships; receive grants from the National Science Foundation; and have contracts with governmental agencies, including the Office of Naval Research: Lamont Geological Observatory and Hudson Laboratory, two separate divisions of Columbia University; the Institute for Marine Studies of Miami University; the Scripps Institution of Oceanography of the University of California; the Departments of Oceanography of Texas A. & M., of the University of Washington at Seattle, of Oregon State University, and Duke University; Department of Meteorology, New York University; School of Oceanography, University of Rhode Island; Chesapeake Bay Institute, Johns Hopkins University, Hopkins Marine Station, Stanford University; and Allen Hancock Foundation, University of California at Los Angeles.

³⁴ This appears to be conceded by the decision herein. Moreover, it is clear from the record that basic research conducted on shipboard is part of the educational program at Woods Hole.

cede that Woods Hole does not manufacture, sell, or design products to or for the Federal Government. They are asserting jurisdiction, however, apparently on the theory that the work done at Woods Hole relates to national defense.

Just how or why the activities of Woods Hole relate to national defense are not elucidated in the majority opinion. Indeed, it cannot be on the record before the Board. No military facilities, equipment, or personnel are directly involved at Woods Hole; nor is it shown that any are likely to be affected directly by the Employer's activities. Instead my colleagues appear to rely on the one fact that the Employer did not "deny" that "its activities may have an ultimate impact on the national defense." In my opinion, the assertion of the Board's jurisdiction should not turn on such conjecture.

But even were the record to support a finding that the activities here considered had a tangible impact on national defense, I would not assert jurisdiction because, in my view, such an assertion of jurisdiction would be contrary to the congressional intent. My views in this respect were set forth in the *Massachusetts Institute of Technology* case, 110 NLRB 1611, 1613-1615. In that case, decided in 1954, the question was whether the Board should assert jurisdiction over a laboratory operated by M.I.T., a nonprofit educational institution. The laboratory was engaged in a research project, known as Project Lincoln, for the Department of Defense. Unlike the instant case, any interruption of Project Lincoln, which involved some 1,600 employees, would have had an immediate, present, adverse effect on the nation's defense. Dissenting from the Board's decision to assert jurisdiction in the case, then Chairman Farmer and I said:

We dissent from the decision in this case to assert jurisdiction over a Government project operated by a nonprofit educational institution. We do not believe that Congress intended the Board thus to extend the exercise of its jurisdiction. This is persuasively indicated, in our opinion, by the legislative history of the nonprofit hospital exemption contained in Section 2(2) of the Act as amended in 1947. Thus Section 2(2) of H.R. 3020 as originally passed by the House contained the specific enumeration of various nonprofit organizations to be excluded from the statutory definition of "employer" as follows:

The term "employer" . . . shall not include . . . any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which

is carrying on propaganda, or otherwise attempting to influence legislation.⁵

The bill as amended by the Senate, and as finally passed by both Houses of Congress, omitted the several specific exclusions of the original House bill and in place of such exemptions excluded only "any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual."⁶ The conference Report, in explanation of the adoption of the Senate amendment, stated that :

The conference agreement . . . follows the Senate amendment in the matter of exclusion of nonprofit corporations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act.⁷

It is apparent that the Conference Report thus expressed its approval of assertion by the Board of jurisdiction over nonprofit organizations, including, among others, those for educational or scientific (i.e., research) purposes, "only in exceptional circumstances and in connection with purely commercial activities of such organizations." Both before and since the 1947 amendments of the Act, the Board, although it has asserted jurisdiction over nonprofit educational institutions, has done so only in cases where some substantial portion of the specific activities involved were "purely commercial"—that is, they were sponsored by, or were for the benefit of, private industrial concerns.⁸ Where the activity was not commercial in this sense, the Board has not asserted its jurisdiction over such an institution despite the fact that its operations may have been the indirect cause of a substantial flow of materials across State lines.⁹

⁵ 1 Legislative History of the Labor Management Relations Act, 1947, 161. See also *The Trustees of Columbia University in the City of New York*, 97 NLRB 424.

⁶ National Labor Relations Act, as amended, Section 2(2).

⁷ H. Conf. Rept. 510, 80th Cong., 1st sess., p. 32; 1 Legislative History of the Labor Management Relations Act, 1947, 505, 536.

⁸ [Footnote omitted.]

⁹ [Footnote omitted.]

In 1957, the Supreme Court considered the pertinent legislative history of the 1947 amendments referred to in the dissenting opinion in

the *M.I.T.* case, and likewise noted that Congress had placed its imprimatur on the Board policy of not asserting jurisdiction over the activities of nonprofit employers or their employees other than "in exceptional circumstances and in purely commercial activities."³⁵ Moreover, neither the 1959 amendments to the Act, nor their underlying legislative history, indicate any change in the congressional approval of this doctrine.

In the *M.I.T.* case it was at least shown that the employer's activities had a real impact on national defense. No such showing has been made in this case. In line with congressional policy, I would decline to assert jurisdiction over Woods Hole.

³⁵ See *Office Employees International Union, Local 11 (Oregon Teamsters) v. N.L.R.B.*, 353 U.S. 313, 318-319.

Hot Shoppes, Inc. and Hotel-Motel Service Workers, Drug Store, Sports Events and Industrial Catering Employees Union, Local 593, AFL-CIO, Petitioner. Case No. 13-RC-8969. June 28, 1963

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 Albert Kleen, 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:

1. The Employer is a Delaware corporation which operates a restaurant and airline catering business in a number of States in the United States. This proceeding involves the Employer's airline catering operations located in Chicago, Illinois. The Employer's gross volume of business during the year preceding the filing of the petition exceeded \$1 million. During the same period, the Employer sold goods whose value exceeded \$500,000 to firms engaged in interstate commerce and it purchased materials and supplies which were shipped into Illinois from outside the State whose value exceeded \$50,000. The Employer stipulated, and we find, that it is engaged in commerce within the meaning of the Act. However, the Employer moved that the petition be dismissed on the ground that the employees covered by the petition are subject to the jurisdiction of the Railway Labor Act, and, therefore, under Section 2(2) and 2(3) of the Act, the

¹ At the hearing the petition and the other formal papers in this proceeding were amended to show the correct names of the Employer and the Union as they appear in the caption.