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JURISDICTIONAL DISPUTES UNDER THE NLRB

WALTER L. DAYKIN*

I. INTRODUCTION

THE struggle to elevate or maintain a group's relative position dictates the formulation of methods designed to obtain the desired objective. In the area of labor relations unions have developed such techniques as various types of union security, strikes, seniority, apprenticeship, and jurisdictional disputes designed both to protect their present role and to increase their scale of living. The employer has either willingly or reluctantly accepted some of these union activities and has agreed to make them matters of collective bargaining. However, one of the most offensive behavior patterns of labor unions, developed to elevate their status, is the jurisdictional dispute which occasionally arises in various industries. Few persons other than the union groups actually participating in such disputes condone them. Even though the time lost because of jurisdictional dispute strikes is relatively small, the records show that when this type of a strike does occur it often becomes quite severe. This is due partially to the fact that unions have been more uncompromising when fighting each other than in their struggles with their employers.

Jurisdictional disputes, as used in this study, involve two or more individuals or two or more groups of organized or unorganized workers who engage in a conflict over the right to perform certain duties or jobs. Statistics reveal that these disputes occur more frequently between craft unions composed of skilled workers than they do between unions composed of unskilled workers or unions that are organized on an industry-wide basis. While industrial unionism, partially because of the amalgamation involved, reduces jurisdictional disputes it does not completely eliminate them. The available data also show that among the craft unions the building trades have been a fertile field for these disputes. However, this type of industrial conflict is in no sense limited to this industrial area. In fact, jurisdictional disputes are not strictly limited to the field of industrial or labor relations. They occur quite frequently in business and in the institutions of higher learning. In these areas the disputes assume the form of conflicts over the type of goods various establishments shall sell, the territories where the goods shall be sold or what departments shall have jurisdiction over the various courses that are offered.

Jurisdictional disputes in industry are due to various factors present in the social and economic environment. Numerous competing labor organizations have arisen over the years and have engaged in struggles to control the field of competition. Probably the most significant reason for

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jurisdictional disputes is the desire for economic security. The union wishes to give its members jobs or wishes to protect work opportunities. To be sure, these jurisdictional disputes if they result in more jobs and more union members will increase the power and prestige of the union successful in the jurisdictional conflict. Jurisdictional disputes are often intensified by the complexity of modern industry with its many and varied operations, by the narrow structural make-up of unions, and by the constant changes in industrial methods, machinery, processes, and materials.

In the main, jurisdictional disputes have had negative effects as far as unions are concerned. While these conflicts have undoubtedly increased the power of some unions, they have created serious barriers for union cooperation which is so necessary for a successful labor movement in America. The existence of these union conflicts over the right to perform various jobs has demonstrated the validity of the sociological truism that conflict from without solidifies the group, but conflict from within divides and destroys the group. Only a few of the jurisdictional disputes lead to strikes, but when a strike does occur it causes much inconvenience to the workers, to innocent employers, and to the public. The end result of this has been an unfavorable reaction to the union movement. In other words, jurisdictional disputes have resulted in unwholesome public relations and an antiunion attitude on the part of the public because it is offensive to fail to intelligently solve disputes, and especially so if innocent employers are caused to suffer. History reveals that favorable public sentiment or public opinion is a vital necessity for group survival.

This unfavorable reaction both on the part of some labor organizations and the public has led unions to attempt to solve the problem of jurisdictional disputes. Unions are realizing that any organization to survive and prosper must function in terms of the codes established by society over the years. From the structural point of view, the AFL formulated such departments as the Building and Construction Department and the Metal Trades Department to deal with these disputes in their industries. In general, however, the AFL has followed the policy of using persuasion, negotiation and conferences to solve this problem. Some of the union leaders have contended that the amalgamation of related trades is the solution to jurisdictional disputes because this would eliminate the possibility of such conflicts. While unions have made some efforts to eliminate jurisdictional disputes, the available evidence justifies the conclusion that these attempts have failed to adequately solve this problem in some industries.

II. NATIONAL LABOR RELATIONS ACT (WAGNER ACT)¹

The National Labor Relations Act¹ passed in 1935 contained no sections dealing directly with the matter of jurisdictional disputes. However, this

problem often confronted the Board entrusted with the power and the obligation to effectuate the policies of the statute. These jurisdictional disputes involved not only conflicts over job performance, but conflicts over union representation. In the administration of the National Labor Relations Act the Board was reluctant to deal with problems relating to the internal affairs of the unions. This administrative body stated that it was better to encourage the procedure of collective bargaining and to protect the employee's right of self-organization because such activities would effectuate the policies of the act and therefore, would result in industrial peace.² Consequently the Board would not intervene in jurisdictional disputes or any form of internal controversies of the unions even if the unions involved were affiliated with the same parent organization.³ On the basis of this reasoning the Board refused to exercise jurisdiction where two or more unions affiliated with the same parent organization sought to represent the same employees.⁴

However, the Board was required by the factors and circumstances present in the area of industrial relations to modify its earlier position and to deal with jurisdictional disputes. So it established the policy of refusing to allow rival unions affiliated with the same parent organization to use the administrative processes of the statute for settling jurisdictional disputes if they had adequate machinery for the settlement of such disputes available to them in the parent organization.⁵ In the *Mountain States Power Company*⁶ case the Board thoroughly established the policy of asserting jurisdiction over a jurisdictional dispute if the trouble between the unions involved was of long standing, universal in scope, and if the conflict appeared to be insoluble without resorting to the administrative processes outlined in the National Labor Relations Act. Following this principle the Board entertained jurisdictional disputes that were not settled by the parent organization several years after their occurrence, if it appeared rather certain that some administrative body would have to process the case.⁷ The Board also reasoned that even if the unions were affiliated with the same parent organization this did not prevent the determination of representatives if the dispute was of long standing and there was no prospect of settlement by the parent organization.⁸

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1. 29 U.S.C.A. §§ 151-66 (1935).
 2. Aluminum Co., 1 NLRB 530 (1936).
 3. Axton-Fisher Tobacco Co., 1 NLRB 604 (1936); Standard Oil Co., 1 NLRB 614 (1936).
 4. Weyerhaeuser Timber Co., 16 NLRB 902 (1939).
 5. Southwestern Pub. Service Co., 58 NLRB 926 (1944).
 6. 58 NLRB 109 (1944).
 7. Armour and Co., 68 NLRB 425 (1946); Fraser Furnace Co., 72 NLRB 637 (1947).
 8. Chemurgic Corp., 60 NLRB 412 (1945); United States Industrial Chemicals, Inc., 71 NLRB 940 (1946); Grinnell Co., 71 NLRB 1370 (1947); National Foundry of N.Y., Inc., 73 NLRB 16 (1947).

III. LABOR MANAGEMENT RELATIONS ACT OF 1947 (Taft-Hartley Act)

As stated earlier the public generally reacts negatively to jurisdictional disputes. While the unions have made some efforts to voluntarily solve this problem and the National Labor Relations Board functioning under the Wagner Act assumed a limited jurisdiction over these conflicts, the fact still remained that unions in some areas attempted to force the employers to allow their membership to perform the disputed tasks. Because the unions, who had been given numerous rights and powers by statutory enactments to organize and to participate equally with management in the field of labor relations either would not or could not successfully eliminate these disputes, the question arose as to whether these conflicts could best be settled through voluntary means or by governmental intervention. Congress held that some legislative action was necessary in order to protect the innocent employers from the suffering that resulted from such conflicts. So in 1947 this legislative body passed the Labor Management Relations Act,⁹ which contains several sections that outline the process for dealing with jurisdictional disputes.

Section 8(b) (4) (D) of the Taft-Hartley Act¹⁰ provides in substance that it is an unfair practice or unlawful for a union to either strike or to encourage or induce a strike in order to make an employer assign work to a specific group or craft if he has already assigned the job to another craft or group unless the union has already had the work assigned to its members by a Board certification.

Section 10(k) of the act¹¹ gives to the Board the power to determine jurisdictional disputes over the right of unions or trades, classes and crafts to perform work if an unfair labor practice charge has been made. This section attempts to outline the procedure that the Board is to follow in this area. In the first place, when a charge is filed with the Board, the regional director is to investigate the charge and is to determine whether or not a dispute actually exists. If a dispute does exist he gives those involved in the dispute a ten day notice of the intention to hold a hearing to settle the conflict unless the disputants show to the Board that they have either settled the conflict or have agreed upon intelligent methods for a voluntary settlement or adjustment of the dispute in question. If no settlement is reached at the end of the ten days the regional director is required by the statute to hold a hearing before a hearing officer. Evidence is presented at this time and the record of the hearing is sent to the Board without any recommendations by the hearing officer. The

9. 29 U.S.C.A. §§ 141-97 (1947).

10. 29 U.S.C.A. § 158(b) (4) (D) (Supp. 1954).

11. 29 U.S.C.A. § 160(k) (Supp. 1954).

Board reviews the evidence and makes a decision. If the award is accepted by the disputants it becomes a law. If it is rejected then there is a formal hearing before a trial examiner of the Board. The disputants are the respondents and a formal order which is enforceable in the circuit court of appeals may be issued by the Board against the disputants. If it is necessary an injunction can be issued to enforce the order.

It is clear that section 10(k) of the Taft-Hartley Act makes provision for the bringing of jurisdictional disputes to the Board on charges just as in any complaint case. However, instead of issuing a complaint the Board is both directed and empowered to hear and determine the dispute. As a result the National Labor Relations Board becomes a compulsory arbitration Board to decide these disputes. Any union can avoid this compulsory arbitration by setting up interunion machinery for the adjustment of such disputes by voluntary arbitration or any other acceptable method. Any legal ruling or settlement made by such voluntary arbitration is binding upon the Board.

Section 303(b)¹² makes provision for damage suits in the appropriate courts if a business or any property is injured because of the worker's participation in an illegal jurisdictional dispute.

A. *Meaning of Jurisdictional Conflicts*

In the application of these sections of the Taft-Hartley Act dealing with jurisdictional disputes, the Board has been confronted with several major problems. One of these is the determination of the meaning of a jurisdictional dispute so that the rules established by the statute can be legally applied. Since the power of the Board to determine disputes under section 10(k) is limited by section 8(b) (4) (D) to cases in which the dispute is over the assignment of work, this task of properly understanding the meaning of these conflicts is important. In the *Plumbers and Pipefitters*¹³ case the Board held that a dispute that ended in a strike was a jurisdictional dispute and that the Board could legitimately apply the rules outlined in the statute. The union argued that the strike was caused by low pay but the Board held that the strike resulted from the union's effort to force the assignment of some disputed work to its members rather than to the members of a rival union.

In another decision¹⁴ this administrative body ruled that a strike called when the union removed two men from their jobs was not a jurisdictional dispute. The strike was not caused by any work dispute between the two parties, but it was the result of certain conditions of employment. Nor, according to the Board, was the economic strike converted into a juris-

12. 29 U.S.C.A. § 187(b) (Supp. 1954).

13. 107 NLRB 463 (1953).

14. Sheet Metal Workers Int'l Ass'n, AFL, 90 NLRB 1015 (1950).

dictional dispute because the strikers were replaced by members of another union and the striking union had attempted to settle its dispute with the employer before engaging in picketing. The pickets did not originate and participate in a new strike but merely continued the lawful economic strike. Furthermore, the Board has held that if a union pickets ships that are being painted by contractors who employ members of a rival union at a rate of pay below the wage scale for this work established by the union doing the picketing, no jurisdictional dispute exists. The dispute is not over the assignment of work but over differing scales between the two unions.¹⁵

B. *Authority of NLRB to Proceed*

The problem of deciding when the Board shall proceed in a jurisdictional dispute case has occupied much of the time of this administrative body. Section 10(k) makes it quite clear that if charges are made that a union through its concerted activities is attempting to force or has actually unlawfully forced an employer to assign disputed work to its members then a dispute is originated which the Board is required to determine.¹⁶ When charges are made against the union it is the responsibility of the regional director to decide whether the Board can or cannot determine the dispute. If this director has reasonable evidence or cause to believe that section 8(b) (4) (D) is being violated by the union's efforts to induce or encourage employees to strike in order to compel the employer to assign work to its members, then the Board has jurisdiction to determine the dispute.¹⁷

Various unions have contested the Board's authority to determine jurisdictional disputes. For example, in the *International Fur and Leather Workers*¹⁸ case a union argued that the Board had no jurisdiction over the dispute because no violation of the statute had been found. However, the Board interpreted the purpose or objective of section 10(k) of the act to permit it to assume jurisdiction over a dispute when charges are filed claiming that section 8(b) (4) (D) has been violated, and the regional director after a thorough investigation of the conflict has sufficient relevant evidence to cause him to believe that this section of the law has been violated. Also in this decision the Board held that while the awards resulting from the voluntary arbitration of these disputes are usually binding upon it, in this case this body was justified

15. Ship Scaling Contractors Ass'n, AFL, 87 NLRB 92 (1949).

16. International Longshoremen's Union, CIO, 82 NLRB 650 (1949).

17. Lodge 68 of the Int'l Ass'n of Machinists, 81 NLRB 1108 (1949); Ship Scaling Contractors Ass'n, AFL, 87 NLRB 92 (1949); National Ass'n of Broadcast Engineers, CIO, 103 NLRB 479 (1953).

18. 90 NLRB 1379 (1950).

in refusing to accept an arbitration award as controlling because the award was made without the participation of one of the unions involved in the conflict, and the award failed to respect the past practices used by the employer in the assignment of work.

In the *Building and Construction Trades Council*¹⁹ case the union involved argued that before the Board could proceed to determine a jurisdictional dispute charge alleging that the union violated section 8(b) (4) (D) of the act, it must first set forth the unfair labor practice within the meaning of this section. This labor organization also contended that any charge of violation of this phase of the statute must consider all of the elements required to prove a violation of section 8(b) (4) (D) before the Board could determine a jurisdictional dispute in terms of the meaning and intent of section 10(k). Otherwise, argued the union, the charge would usurp the function of a complaint. The Board rejected the union's arguments.

It has been decided that the statute empowers the Board to determine a jurisdictional dispute whether the dispute is a conflict over the entire operation of work or whether it is a struggle over the reassignment of overtime work to union members.²⁰ In exercising its power to assert jurisdiction over a conflict involving work assignment the Board has made it quite clear that it is immaterial whether two rival unions are the conflicting parties, or whether the employees engaged in the dispute are members of a union or not. The controlling fact is whether or not the employees belong to another class of workers recognized as coming within the jurisdictional proceeding of the act or whether the workers come within the meaning of the jurisdictional provisions of the law.²¹ Furthermore, the jurisdictional disputes' rules or provisions of the act will be applied if it can be proven that the employees whom the contending union is trying to replace will be illegally affected, or if it can be shown that the interests of the employer will be prejudiced by the replacements.²² The jurisdictional dispute does not become moot nor is the importance of the problem lessened because the employer temporarily acquiesces to the demands or requests of the union to hire its members to perform the disputed work.²³ Also the Board has the legal authority to determine a dispute over the assignment of work although at the time of a strike to compel the employer to incorporate in the contract a section assigning the disputed work to the interested union, there is no dispute relative to the specific work. Even though the actual work on the struck job is not in

19. 92 NLRB 632 (1950).

20. Local 450, Int'l Union of Operating Engineers, AFL, 112 NLRB No. 60 (1955).

21. William Fargo, 91 NLRB 1003 (1950).

22. Truck Drivers Union, AFL, 92 NLRB 1715 (1951).

23. See note 20 supra.

dispute there is an active and basic dispute in existence over the assignment of jobs.²⁴

Section 10(k) of the act in formulating a procedure for the handling of jurisdictional disputes states rather clearly that the Board must withhold the determination of a jurisdictional conflict if there has been a voluntary agreement reached between the interested parties, or if the parties have arranged methods for the voluntary settlement or adjustment of the disputes. In applying this principle or standard the Board has ruled that it is without authority to determine a dispute where all the parties involved in the conflict entered into an agreement before the conflict occurred to accept the determination of any jurisdictional dispute by the agents of the local unions. This was considered by the Board to be substantial evidence that the parties to the dispute had formulated adequate methods for the voluntary settlement of such conflicts. The fact that the employer would not accept the determination of the disputes by the business agents of the union was immaterial.²⁵

Furthermore, the Board has held that it has no authority to determine a jurisdictional dispute if the parties involved enter into an agreement, before the dispute arises, that they will be bound by a decision or ruling of the National Joint Board for Settlement of Jurisdictional Disputes. The National Labor Relations Board considers such activity as an acceptable method for the voluntary settlement of disputes in terms of the rules established in section 10(k) of the statute.²⁶ Following this standard this administrative body ruled in the *Wood, Wire and Metal, Lathers, AFL*²⁷ case that it would not determine a dispute over the assignment of work because when the charge was filed the parties had agreed to a voluntary adjustment by the Joint Board for Settlement of Jurisdiction Disputes and the dispute had been determined by this agency. Both the local unions and the employer were bound by the agreement to submit this case to this special Board and it was considered immaterial that one union in the case refused to accept the award made by this special body. Also, the National Labor Relations Board is not empowered with the authority to determine a jurisdictional dispute if the employer and one union participating in the conflict have made a contract prior to the occurrence of the trouble that another union is entitled to perform the disputed work. It is immaterial that the employer later violated the contract.²⁸

On the other hand, if a union uses coercive methods to force an em-

24. Local 9, Wood Int'l Union, AFL, 113 NLRB No. 118 (1955).

25. International Brotherhood of Teamsters, AFL, 97 NLRB 1003 (1952).

26. United Brotherhood of Carpenters, AFL, 96 NLRB 1045 (1951).

27. 113 NLRB No. 108 (1955).

28. General Warehouse Union, AFL, 99 NLRB 662 (1952).

ployer to assign disputed work to its members rather than to his own employees, no voluntary settlement has been reached and the Board will proceed in the determination of the dispute. For example, in the *United Brotherhood of Carpenters and Joiners of America*²⁹ case the evidence revealed that several months of the disputed work was yet to be done and the employer assigned the work to members of the union because he feared that the union would resort to picketing which would cause the job to close. It was ruled that no voluntary settlement had been reached and the Board had jurisdiction in the case. The Board does not consider that a legitimate settlement has been reached even if the work-disputed job is completed, if the completion is due only to the fact that the employer was forced to concede to the union's demands and not because a settlement was consummated on a voluntary basis.³⁰ In the *Plumbers and Pipefitters, AFL*³¹ case the Board assumed jurisdiction over a dispute involving the assignment of work even though the job in question had been completed. The Board contended that there had been no legal settlement of the dispute because the contractor was negligent in binding himself to respect earlier jurisdictional awards and the union had never relinquished its claim to perform the job in question or changed its original position.

Work disputes are not considered moot if the employer's plant burns down and he has made no plans for rebuilding unless the corporation is dissolved and the union admits that it engaged in unfair labor practices by trying to force the assignment of the disputed work to its members. Otherwise the union can resume its demands and practices if the plant is restored and operations are started again.³² The Board can proceed to determine a jurisdictional dispute if the union encourages a strike of its members to force an employer to illegally assign certain work to them. It is not significant that the strike is ended unless the union abandons its right to perform the disputed work. It was reasoned that a final settlement of the dispute was necessary to protect the employer's future business operations and unless such settlement was reached the union could resume its claim and engage in another strike in the future.³³

The Board can proceed to determine a jurisdictional dispute even though the union that is asserting the right to perform the disputed tasks claims that the work dispute has been presented to the National Joint

29. 88 NLRB 844 (1950); *William Fargo*, 91 NLRB 1003 (1950).

30. *Local 58, Int'l Brotherhood of Electrical Workers, AFL*, 107 NLRB 1004 (1954); *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL*, 108 NLRB 186 (1954).

31. 109 NLRB 783 (1954).

32. *International Longshoremen's Union, CIO*, 90 NLRB 1753 (1950).

33. *National Ass'n of Broadcast Engineers, Ind.*, 95 NLRB 1470 (1951).

Board for Settlement of Jurisdictional Disputes and an agreement has been reached. The union must present substantial and convincing evidence to prove that the interested parties have agreed to present the matter to the Joint Board and be bound by its decision, that the Joint Board has made a decision, or that the parties involved in the dispute have reached an agreement to settle the conflict.³⁴

In the *United Brotherhood of Carpenters and Joiners of America*³⁵ case the Board held that a jurisdictional dispute was not in the process of being settled in terms of the standards established in the statute for the hearing and determining of such disputes. The Board based its ruling upon the following evidence: (1) the National Joint Board for Settlement of Jurisdictional Disputes was induced to accept jurisdiction either by the charging party or the union which was not a party to the proceedings, (2) the determination issued was ignored by the employer and the union, and (3) the Joint Board stated that its decision applied only to a job which had been completed and was not intended to apply to any work in progress.

C. Compliance With Determination of NLRB

The Labor Management Relations Act of 1947 in section 10(k) states that the Board can only proceed with unfair labor practice charges when the parties involved in the jurisdictional dispute fail or refuse to comply with its determination of the conflict. So this creates the problem on the part of the Board to designate when the interested parties have or have not complied with its decision. In these complaint proceedings the general counsel is delegated with the power of alleging and proving noncompliance with the Board's determination of a jurisdictional dispute.³⁶ In determining when the parties are complying with the Board's determination of the dispute and whether or not to proceed with unfair labor practice charges the Board has established the principle that the failure of a union to submit to the regional director notice of the steps taken to comply with the determination is not adequate evidence to prove noncompliance if no affirmative action is required in the determination. Under such circumstances the union is under no obligation to formulate any steps or procedures to bring about compliance. Neither is the fact that a strike was called by the union before the Board issued its determination, proof of noncompliance.³⁷ However, if so directed by the proper authorities the union must furnish to the regional director a written notice outlining the provisions being made to comply with the

34. International Union of Operating Engineers, 99 NLRB 1481 (1952).

35. 98 NLRB 346 (1952).

36. Los Angeles Building Trades Council, AFL, 88 NLRB 1101 (1950).

37. Los Angeles Building Trades Council, AFL, 94 NLRB 415 (1951).

Board's determination of the dispute. Refusal to do so is a violation of the law and the Board can proceed with unfair labor practice charges.³⁸

In the *Plumbers and Pipefitters, AFL*³⁹ case the Board held that unions are guilty of noncompliance if they are ordered to furnish to the regional director, ten days after the ruling, a written notice of the steps made to comply with the order and fail to do so, if they ignore an offer of assistance made by the regional director, if one of the unions involved in the work assignment dispute continues to strike to force the disputed work to be assigned to its members regardless of the fact that the Board has decided that this striking union is not legally entitled to perform the work in question, and if the unions had expressed their intention of not complying with the determination until they were ordered to do so by the court and the Board. In such cases the Board has assumed that it was justified in its attempt to effectuate the policies of the act to issue a very broad remedial order to protect all employers in the area from recurring jurisdictional dispute activities outlawed by the statute. Therefore, it required the participating unions to publish in the daily newspapers, at their own expense, the terms of the written notice.

D. Persuasion Distinguished From Coercion

In the determination of jurisdictional disputes the Board has ruled that section 8(b) (4) (D) of the statute does not prohibit the proper inducement or encouragement of employers by unions to assign disputed work to a certain union, but it does specifically prohibit the union's inducement and encouragement of employees to strike or picket to force the assignment of work to its employees.⁴⁰ Consequently it is not a violation of the law for unions to request employers to discriminate in favor of its members by hiring them to perform various jobs. The Board interprets these requests merely as attempts to persuade and not actually cause the employer to engage in discriminatory behavior. However, if the union threatens to strike or picket or actually engages in peaceful concerted activities to compel the employer to assign work to its members or to hire its members for various disputed jobs then this behavior is interpreted as an attempt to cause the employer to discriminate and such behavior violates the Taft-Hartley Statute.⁴¹

The Board has been quite consistent in applying this reasoning in cases where conflicts over work assignment involve rival unions, only one union, or members of unions and nonmembers of unions. For ex-

38. Local 595, Int'l Ass'n of Bridge Workers, AFL, 112 NLRB No. 110 (1955).

39. 112 NLRB No. 147 (1955).

40. See note 32 supra.

41. Denver Building Trades Council, 90 NLRB 1768 (1950).

ample, in the *International Woodworkers of America CIO*⁴² case only one union was involved in the work dispute. It was ruled that this union was not legally justified in its efforts to induce its employees to strike to force an employer to assign work to laid off fellow union members rather than to his own employees. Also it has been held by the Board that it is illegal for a union and its agents to encourage and induce employees to engage in a work stoppage to force the assignment of disputed work to its members rather than to nonmembers of the union or to a rival union.⁴³

E. Standards in Determining Right to Disputed Work

In the formulation of standards for the determination of work disputes the Board has been confronted with various problems. While it is designated in the procedural standards for the settlement of these disputes that awards made by arbitrators, in cases where the parties involved agree to voluntary arbitration, must be given much consideration, these awards are not controlling unless all participants in the dispute are parties to the award.⁴⁴ Matters of historical practices, customs or traditions in the industry, such as those that have existed for years in the maritime industry and with the teamsters' union, are not considered relevant by the Board in cases involving job assignment requests. Neither are such job factors as differentiation of skills and functions or various governmental requirements considered important by the Board in determining jurisdictional disputes unless the unions involved bargain for the workers concerned and have contractual and certification rights.⁴⁵

In adjudicating these cases the Board has placed some emphasis upon the relationship between the disputed work and the regular assigned functions of the employees participating in the conflict. For example, in the *National Association of Broadcasting Engineers and Technicians*⁴⁶ decision the Board held that the stage electricians should perform the disputed work connected with the projector operations rather than the engineers because the special lighting effects are included in the lighting duties and the work was more closely related to the duties performed by the stage electricians than to the duties performed by engineers. In

42. 107 NLRB 1141 (1954).

43. Local 595, Int'l Ass'n of Bridge Workers, AFL, 112 NLRB No. 110 (1955); Local 562, United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL, 107 NLRB 542 (1953); Truck Drivers Union, AFL, 113 NLRB No. 50 (1955); ILA 1351, Steamship Clerks Ind., 108 NLRB 712 (1954); Sheet Metal Workers Int'l Ass'n, AFL, 111 NLRB 1307 (1955); Los Angeles Building Trades Council, AFL, 83 NLRB 477 (1949).

44. International Longshoremen's Union, CIO, 94 NLRB 388 (1951).

45. International Longshoremen's Union, CIO, 82 NLRB 650 (1949); National Union of Marine Cooks Ass'n, 82 NLRB 916 (1949); Teamsters Union, AFL, 107 NLRB 223 (1953).

46. 103 NLRB 479 (1953); Radio and Television Broadcast Engineers Union, AFL, 103 NLRB 1256 (1953).

settling an argument between a meat cutters' union and a retail clerks' union over the handling and displaying of pre-packaged meat at a new store of their employer, the Board held in favor of the meat cutters' union because it was the job of the employees affiliated with this union to handle meat and there was no basis for differentiating between pre-packaged and bulk meat. The fact that the members of the clerks' union handled pre-packaged meat at the old store of the employer was not considered controlling.⁴⁷ In a dispute between teamsters and fur and leather workers over the operation of trucks the teamsters' union would not allow its members to load and unload the trucks of a tanner and wool processor unless the job of driving the trucks was assigned to its members. As this conflict was over the allocation and assignment of work, the Board proceeded to determine the dispute. In its decision the Board held that the operation of cabs and trailers for interplant hauling at the plant of this processor was included in the production and maintenance employee's unit which was represented by the fur and leather worker's union and not by the teamsters' union.⁴⁸

An analysis of the cases rendered by the Board leads to the conclusion that this administrative body has placed its major emphasis in the determination of disputed work upon the contractual and certification rights of the parties in the dispute. No union can legally force an employer to assign work to its members unless the union has some derivative rights under an existing legal contract covering the work in dispute, or unless the union has been given rights in a certification or order by the Board affecting the work in dispute.⁴⁹ In other words, there must be in existence a contract or a certification allowing the union legal right to perform the duties or the union cannot compel the employer to give the work to its members or induce a strike among the affected employees to obtain the disputed work.⁵⁰ Therefore, if a legitimate contract is made by the employer and the union and a section of the contract clearly assigns the disputed work to the members of the union then the Board will hold that this union is entitled to perform the work in question.⁵¹ Also the Board has held that an electrical union affiliated with the AFL could not legally require that the electrical work on a construction job be done by its union members rather than by the employees of the contractor, because the employees of the contractor were affiliated with the CIO and their union had been properly certified.⁵²

47. *Amalgamated Meat Cutters, AFL*, 101 NLRB 181 (1952).

48. *International Fur Workers Union*, 90 NLRB 1379 (1950).

49. *United Brotherhood of Carpenters, AFL*, 88 NLRB 844 (1950).

50. See note 33 *supra*.

51. *National Ass'n of Broadcast Engineers, CIO*, 105 NLRB 355 (1953).

52. *Local 58, Int'l Brotherhood of Electrical Workers, AFL*, 107 NLRB 1004 (1954).

Following this reasoning the Board has consistently ruled that a union cannot lawfully require or compel an employer to assign specific disputed work tasks to its members if the union is not the bargaining agent for the employees doing the disputed work,⁵³ if the union has no contract upon which to base its claim, if the employer has no bargaining relations with the union, or if the employer is not failing to comply with any order or certification from the Board.⁵⁴ The employer can assign disputed work to his own employees or to a rival union, free of strike pressure, if he does not violate an order of the Board determining the bargaining agent for the employees doing the work or if the contending union is not certified as the bargaining agent of the employees performing the disputed work.⁵⁵

There are some limitations as to the assignment of disputed work even though a contract has been consummated between the employer and the union and proper certification has been given. For example, the Board has ruled that if a hod carriers' union has a contract with an independent contractor and this contractor is hired by a telephone company to assist in construction work, the hod carriers' union cannot legally force the telephone company to cease using its own employees, who belong to another union and to give all the work to the hod carriers. The telephone company was not a party to the contract made with the hod carriers.⁵⁶ Also a contract made by a teamsters' union and interstate transport companies does not permit a teamsters' union to force a transport company with which it holds no contract to give the job of loading and unloading its trucks to the members of the teamster's union rather than to its non-union drivers.⁵⁷ If a legitimate contract has been made by a contractor and the union providing that all disputed work be done by the pipefitters, these workers are not entitled to perform disputed work if it is assigned by an employer other than the contractor who was a party to the agreement.⁵⁸

In adjudicating the problem of jurisdictional disputes as affected by

53. See note 34 *supra*.

54. *Pile Drivers Union, AFL*, 105 NLRB 562 (1953); *Local 553, United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL*, 106 NLRB 186 (1953); *Local 595, Int'l Ass'n of Bridge Workers, AFL*, 108 NLRB 823 (1954); *International Longshoremens' Ass'n, AFL*, 101 NLRB 77 (1952); *William Fargo*, 91 NLRB 1003 (1950); *International Longshoremens' Union*, 106 NLRB 1030 (1953); *International Longshoremens' Union*, 107 NLRB 1637 (1954).

55. *United Brotherhood of Carpenters*, 98 NLRB 346 (1952).

56. *International Hod Carriers Union, AFL*, 91 NLRB 598 (1950).

57. See note 22 *supra*.

58. *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL*, 108 NLRB 186 (1954); *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL*, 109 NLRB 783 (1954).

contractual relations, the Board held in the *United Mine Workers of America*⁵⁹ case that a clause in the contract stating that the determination of the classification of the employees who were not functioning under the contract would be a matter of negotiation between the interested parties did not obligate the employer to place new jobs to be developed into a department where the union was represented and then assign the work to employees in this area. Even if a contract is made between the employer and the union which specifies that certain work is to be performed by the union members, this does not require the employer to do so if the contract contains an illegal union security clause and the provisions of the contract are inseparable.⁶⁰ In another case the Board made it quite clear that there is no necessary relationship between jurisdictional disputes and certification because certification does not assure approval of the job jurisdictional claims of the certified union because an uncertified union can legally secure a contract assigning jobs to its members.⁶¹

F. Enforcement Procedures

The Taft-Hartley Statute is based upon the philosophy that laws to be effective must include some enforcement procedure. Therefore, incorporated in various sections of the law are methods to effectuate the policies of the act. These methods are intended to be remedial and not punitive. In dealing with the problem of jurisdictional disputes, when the Board makes a ruling in this area the interested parties are required to respect and to materialize the determination of this agency. The order of the Board is enforceable in the appropriate courts. In adjudicating the cases involving jurisdictional disputes the Board has been concerned with the making whole of the injured employees by requiring the guilty parties causing the injury to pay back pay to them. For example, in the *Associated General Contractors of America, Incorporated*⁶² case it was considered a violation of the statute for a building contractors' association and a carpenters' union to make a verbal agreement requiring the contractors to hire members of the carpenters' union to perform millwright work. The carpenters' union violated the law by causing the employer to hire members of its union and to refuse to hire six members of the machinists' union capable of doing the available millwright work. The union was required to pay these six men back pay for the time lost due to its illegal behavior.

The Board has ruled that if an employer cooperates, either willingly

59. 101 NLRB 425 (1952).

60. United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL, 108 NLRB 186 (1954).

61. Heating Contractors Ass'n, 110 NLRB 261 (1954).

62. 107 NLRB 965 (1954).

or unwillingly, with the union in the illegal assignment of disputed work he is guilty of an unfair labor practice. In the *Association of Motion Picture Producers, Incorporated*⁶³ case the employer either discharged, laid off or attempted to force some of his employees to transfer their membership from one union to another. The Board held that the employer was guilty of discriminatory behavior even though his activities were the result of threats of economic reprisals from rival unions arising out of jurisdictional conflicts. Such threats of pressure emanating from work disputes do not permit the employer to violate the law, so the employer involved was required to pay back pay to the affected employees. This reasoning has been substantiated in a circuit court of appeals decision in the *NLRB v. Gluek Brewing Company*⁶⁴ case. Here the court ruled that it is an unfair labor practice for an employer to participate in a jurisdictional dispute by favoring one union in the dispute even though he does so unwillingly and for self-preservation purposes. It was held that not even the economic interests of the employer constitute valid reasons for violations of law.

In this area of jurisdictional disputes if the situation warrants the issuing of an injunction to prevent irreparable damage then one will be issued. Also, the statute permits the affected persons to engage in damage suits for their protection and for recompense for their losses incurred because of the illegal behavior involved. Various United States courts have upheld the right of the regional director and the Board to sue for an injunction and for the injured employer to recover damages because of the unfair practices of the unions. In *Le Baron v. Los Angeles Building & Construction Trades Council*⁶⁵ case a United States district court held that section 8(b) (4) (D), which makes it an unfair labor practice for unions to engage in concerted activities to compel work to be assigned to their members rather than to other nonunion employees or members of other unions, is constitutional. This section in no way violates the free speech rights of workers and it is a lawful exercise of the commerce power of Congress. The court ruled that the regional director of the Board is justified in getting a temporary injunction if such will be for the public good and if the evidence presented establishes a reasonable ground for believing that the strike engaged in by the union is to force the employer to discriminatively assign the disputed work to its members rather than to the members of a rival company union.

In this case, the court also ruled that it is not necessary for the regional director to have evidence or facts to prove an actual violation of the statute before he can be granted a temporary injunction. It is sufficient

63. 79 NLRB 466 (1948); McGraw Construction Co., 107 NLRB 1043 (1954).

64. 144 F. 2d 847 (8th Cir. 1944).

65. 84 F. Supp. 629 (S.D. Cal. 1949).

if the facts available be such that they would cause a reasonable man to believe that the law had been violated. If the Board has made a decision in the jurisdictional dispute and still there is a failure on the part of the interested parties to comply with the decision or to otherwise adjust the dispute, the proceeding in which the regional director seeks a temporary injunction is not rendered moot. This court recognized that the Taft-Hartley Act does not always encourage the development of union organizations, but curtails their authority by giving rights to other organized and unorganized employees. This same reasoning, relative to the issuing of injunctions in cases involving jurisdictional disputes, is evident in the decisions rendered by other district courts.⁶⁶

Very recently a court ruled that the employer could recover damages from a union for losses caused by the unfair labor practices committed by this labor organization. One of the unfair labor practices engaged in by the union was that of demanding disputed work be assigned to union men.⁶⁷ The United States Supreme Court in the *International Longshoremen's Union, AFL v. Juneau Spruce Corporation* case⁶⁸ applied sections 303 (a) (4), (b)⁶⁹ of the statute and held that a lumber company was legally entitled to judgment for damages against a longshoremen's union. This union engaged in picketing, prior to the Board's decision, in order to compel the lumber company to assign the work of loading barges to its members rather than to the members of the Woodworkers' Union even though the company had a contract with the woodworkers designating that the disputed work was assigned to them. The Court held that the longshoremen were not entitled to the disputed work in terms of the meaning and intent of section 10(k) of the Taft-Hartley Act.

IV. CONCLUSION

By way of summary it might be stated that an interpretation of the cogent and relevant data dealing with the matter of jurisdictional disputes justifies the conclusion that the conflict over various jobs, duties and authority is not confined to the area of labor and industrial relations. These conflicts can be found in such fields as education and medicine as well as in industry and business. These disputes arise out of the forces in the social and economic environment. In the field of industry such factors as the number and structural makeup of the labor unions, the many varied operations in our complex modern industry, the desire of workers

66. *Brown v. Roofers Union, AFL*, 86 F. Supp. 50 (N.D. Cal. 1949); *Graham v. Int'l Longshoremen's Union, CIO*, 24 Lab. Rel. Ref. Man. 2105 (D. Alaska 1949); *Sperry v. Building Trades Council, AFL*, 36 Lab. Rel. Ref. Man. 2585 (W.D. Mo. 1955).

67. *Denver Building Trades Council v. Shore*, — Colo. —, 287 P. 2d 267 (1955).

68. 342 U.S. 237 (1952).

69. 29 U.S.C.A. §§ 187(a) (4), (b) (Supp. 1954).

for economic security, and the periodical changes in industrial methods, processes, machinery and materials have been responsible for the origin of these conflicts. Also the data reveal that while jurisdictional disputes occur in all phases of industrial life they tend to be more prevalent among skilled workers affiliated with craft unions, especially in the building trades and the plumbing business. It is now recognized that these disputes have resulted in much injury to the unions, to employees, to innocent employers and to the public. Consequently attention has been focused upon these conflicts for the purpose of solution.

In dealing with this problem of jurisdictional disputes it has been recognized that groups that are given rights must also assume some responsibilities. If they are either unable or unwilling to settle their problems voluntarily then the government will enter into the dispute. If either the state or federal powers are forced to assume the role of adjusting jurisdictional disputes then this results in the modification of the free enterprise system. For some years, the unions were given an opportunity to settle their jurisdictional disputes voluntarily. While the AFL created the departments in its structural organization to deal with these problems, in the main this parent union has used persuasion, negotiation and conferences to attempt to eliminate these jurisdictional disputes. Congress felt that these devices were not adequate, therefore this legislative body incorporated various sections in the Taft-Hartley Statute to deal with the situation.

These sections entrust the National Labor Relations Board with the power and the responsibility to effectuate the designated policies relative to jurisdictional disputes. Therefore, the Board has been forced to decide on the meaning of the jurisdictional conflicts, when it is authorized to proceed to determine a jurisdictional dispute, when the parties involved are complying with the Board's determination of the dispute, and it has been required to establish standards for the determination of whose right it is to perform certain disputed work. In establishing these standards little emphasis has been placed upon the historical practices and customs in the industry, but such factors as the relationship between the disputed work and the related duties of the employees engaged in the conflict, and the contractual and certification rights of the unions are controlling. Furthermore, because the statute attempts to retain the right of the unions and persons engaged in the dispute to voluntarily settle their conflict over work assignment, the Board is confronted with the problem of deciding when the voluntary settlement procedures meet the requirements of the law. In harmony with the recent trends in the area of labor legislation, rigid enforcement procedures are included in the Taft-Hartley Act. If conflicts over work assignments result in loss to innocent parties, the Board is empowered to require back pay from the offending parties

and provisions are also made for the use of injunctions and damage suits.

It is rather difficult to predict the effects of the application of these sections of the Taft-Hartley Law dealing with jurisdictional disputes upon labor and management relations. However, it is recognized that while it is hard, if not impossible, to legislate groups into righteousness, laws do make it inconvenient for these groups to be "bad." Since the Board in adjudicating these conflicts puts so much emphasis upon the contractual rights of the employees engaged in the disputes, the unions susceptible to these work assignment conflicts are attempting to protect their job rights in the formulation of their contracts. Furthermore, these legislative efforts to prevent jurisdictional disputes have focused the attention of unions upon this type of concerted activity. Unions are becoming more conscious of the fact that these disputes create internal union strife which is disastrous to the labor movement, and that they create an unfavorable public sentiment relative to unionism which may eventually undermine the status of these labor organizations in the United States. Also, it is evident that unions are becoming cognizant of the fact that their failure to solve their work assignment problems adequately and intelligently is responsible for governmental regulations relative to the functioning of their organizations. This has resulted in suggestions, as well as recommendations, that amalgamation be substituted for craft unionism in order to eliminate the possibility of jurisdictional disputes.

As has been stated earlier the sections dealing with the control of jurisdictional disputes incorporated in the statute make provision for the unions to avoid governmental intervention in this area. This end can be accomplished if the unions formulate devices and procedures for the voluntary settlement of work assignment disputes. This provision plus the Board's application and interpretation of the sections in the law has caused the unions, both in the AFL and the CIO, to work out their own procedure for the settlement of these disputes over the assignment of work within their own family rather than to allow the Board to determine them. For example, the unions and the Contractors' Association in the building and construction industry have organized a Joint Board for the Settlement of Jurisdictional Disputes which is empowered to make final and binding settlements. The Teamsters' Union, the Meat Cutters' Union, and Printing Unions, the Machinists' and the Plumbers' Union have also established procedures for settling these jurisdictional conflicts. These unions are reaching agreements outlawing raiding and are defining the work jurisdiction of each union. The CIO unions, since the passing of the Taft-Hartley Act, have made provision for impartial arbitrators to settle disputes relative to work assignments. These devices have resulted in a substantial decrease of jurisdictional disputes in American industry.