Jurisdictional Dispute and the National Labor Relations Board
Hyonsan Kim

CONTENTS

Introduction
I. The Factual Setting — Definition of Jurisdictional Dispute
II. The Statutory Scheme of Jurisdictional Dispute
III. The NLRB and Jurisdictional Dispute Prior to 1960
IV. The CBS Case and Work Award
   1. The CBS Case
   2. Work Award by the Board — The First Post-CBS Determinations
V. The Sec. 10(k) Proceedings
   1. Steps to Invoke Sec. 10(k)
   2. Scope of Applicability of the Act
   3. Enforcement of the Award
VI. Standards for Award of Work
   1. Certification by the Board
   2. Collective Bargaining Contracts
   3. Awards of Joint Boards, Arbitrations, etc.
   4. Skills and the Work Involved
   5. Efficiency of the Operation
   6. Industry, Area and Nationwide Custom and Practice
   7. Assignment by Employer
   8. Acquiescence
VII. Other Relief Available under the NLRA
   1. Sec. 10(1) — Injunctive Proceeding in Courts
   2. Sec. 303 — Damage Action

Conclusion

INTRODUCTION

The major purpose of this discussion is to explain the jurisdictional dispute in the framework of the Labor Management Relations Act (hereinafter cited as LMRA) of 1947, as amended. The primary concern is focused on standard factors employed as crit-

* Assistant Professor Seoul Meongji College
eria when an award or assignment of work is made by the National Labor Relations Board (hereinafter cited as the Board or the NLRB), pursuant to directives of the LMRA.

In order to acquaint us with the nature of the problem involved and methods of solution, we will discuss the normal factual setting in which the dispute arises, the statutory scheme which is applicable to the factual problem, the brief survey of the historical approach to the problem by the NLRB and the courts, and try to examine the standards used by the Board in determining the section 10 (k) awards.

This, hopefully, may give a picture or may, at least, describe the atmosphere, of the problem of "jurisdictional dispute" traditionally known as the work assignment conflict.

I. The Factual Setting

—Definition of Jurisdictional Dispute—

JURISDICTIONAL disputes have been characterized as "work assignment" disputes in which two or more competing unions or groups of employees demand the disputed work for their members. "Such disputes should be distinguished from conflicts in which competing unions seek additional members as in the typical representation proceeding."

The normal factual setting in which the problem of "jurisdictional dispute" arises, involves two general types of situations that are most prevalent in jurisdictional cases:

First, there stand two unions representing different employees of the same employer. One union and the other represent certain employees doing work normally done by these unions respectively. There, a particular portion of work originates and the employer must make an assignment of the work to employees represented by one of the unions. The work may be of a new nature; it may combine features of the work normally done by members of each of the unions, or it may replace several old functions done by members of each union. The employer assigns the work to employees represented by one of the unions. Here, the other union, feeling, that the nature of the work is the type usually done by its members, protests the work assignment and attempts to get a reassignment of the work to employees represented by it. The

2) Dunlop, Jurisdictional Disputes, N.Y.U. Second Ann. Conf. on Labor, 477, 479-81 (1949); See also Mann & Husband, Private & Gov'tal Plan for the Adjustment of Interunion Dispute: Work Assignment Conflict to 1949, 13 Stan. L. Rev. 5-7 (1960) (hereinafter cited as Mann & Husband).

quarrel is between two unions over work; the unions are neither attempting to get recognition, nor are attempting to represent workers. They are quarrelling purely over whose members should be assigned the work.

Second, basically the same thing arises. A general contractor has a contractual relation with one union. He subcontracted certain portion of the work to someone who has the contractual ties with another union. The subcontractor may assign the work to employees represented by the latter union, and the former union will protest; two groups representing two different types of employees are quarrelling over who should be assigned certain work.

Thus the dispute, which we are to discuss hereinafter, is a dispute over work, rather than dispute over workers.\(^4\) It is a dispute between three parties, one employer and two unions, as opposed to a pure contest between two unions as to who will represent certain workers. The contest is to decide to whom the employer has the right to assign to work.\(^5\) It is thus differentiated from the representational dispute\(^6\) wherein two unions oppose each other as to which should represent certain groups of employees.

The House legislation in 1917 also dealt solely with the prohibition of "jurisdictional strikes," which were defined as follows:

"The term jurisdictional strike" means a strike against an employer, or other concerted interference with an employer's operations, an object of which is to require that particular work be assigned to employees in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class."\(^7\)

It is essential that this fine factual distinction be understood at the outset since there is a different approach to each problem by statutory direction.\(^8\)


\(^5\) Heidenreich, supra note 3, at 149.

\(^6\) National Union of Marine Cooks and Stewards, and Pacific Coast Firemen, Oilers, Water-tenders and Wipers Ass'n (Irwin-Lyons Lumber Company), 82 NLRB 916, 923 (1949); Lodge 68, Int'l Ass'n of Machinists and the Int'l Ass'n of Machinists (Moor Drydock Co.), 81 NLRB 1198, 1126 (1949).

\(^7\) Mann & Husband, supra at 45-46; H.R. 2620, 80th Cong., 1st Sess. § 2(15) (1947), as passed House, 1 1947 Leg. 184, 169.

II. The Statutory Scheme of Jurisdictional Dispute

Within the framework of the National Labor Relations Act (hereinafter cited as NLRA), Secs. 8(b) (4) (D) and 10(K) are commonly referred to as the major jurisdictional dispute sections. There are also several other relevant provisions concerning the jurisdictional disputes in the Act.

As a matter of fact, the dispute matures when a union or a group of employees initiates a "jurisdictional strike" against an employer or engages in other concerted interference with his operation in order to compel an assignment of the disputed work. However, this type of action pursued by the protesting group of employees should have been that type of concerted activity which would be protected under Section 7 of the Wagner Act. Thus, a general prohibition of certain activity the purpose of which is the reassignment of work by the employer is embodied in the Taft-Hartley Act. In the present statute Sec. 8(b) (4) (D) reads:

(b) It shall be an unfair labor practice for a labor organization or its agents...

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities to perform any services; or

(ii) to threaten, coerce, or restrain any person engaged in commerce, where in either case an object thereof is

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work...

In respect to all other unfair labor practice charges under the NLRA, once the NLRB's regional office has decided that a charge has merit the next step is issuance

of an unfair labor practice complaint by the General Counsel's office unless the matter is promptly settled. Then, the Board has the power to remedy the unfair labor practice.

This, however, is not so in the jurisdictional dispute charges and here the other two significant statutory provisions enter the picture. Whereas in the normal case the Board would proceed to determine immediately the case and take remedial action under Sec. 10(c), the procedure with respect to this single unfair labor practice contained in Sec. 8(b)(4)(D) is uniquely different. Prior to any use of general remedial power the Board is required to do certain things by Sec. 10(k), prescribed below.

10(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods of voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

These two sections are, as I indicated at the beginning, the basic statutory material necessary in considering "jurisdictional dispute" for the present discussion. Thus, under the statutory setup since 1947, whenever a Sec. 8(b)(4)(D) charge has been filed the Board must "hear and determine" the dispute as a preliminary to completion of action on the charge.

At this point we come to consider the role of the Board in the settlement of the jurisdictional dispute, and its two types of different approaches to this problem prior to and after, the CBS Case.

14) W. A. Johns, Jurisdictional Dispute under the NLRA 36-37 (1967)
15) Ibid.
18) The import of this conclusion is that before a 10(k) hearing may be held there must be reason to suppose violation of 8(b) (4) (D) and if a charge is filed the Board must conduct a 10(k) hearing, the holding of the hearing is not discretionary.
III. The NLRB and Jurisdictional Dispute Prior to 1960

It seemed to me that in the United States the traditional jurisdictional strike has been one of the more important and controversial of the economic weapons of labor for many years.\(^{19}\)

Turning back to one of the first major cases concerning the protection extended to this type of concerted activity, it was held that the Anti-injunction provisions of the Clayton Act\(^{20}\) and the Norris-LaGuardia Act\(^{21}\) protected the jurisdictional disputes.\(^{22}\)

There, however, was almost unanimous opinion that not only was it undesirable, but that it hurt all the parties concerned, the employer, the labor and the public.\(^{23}\)

In 1947, the United States Congress, with this background, considered the jurisdictional dispute when it came time to amend the Wager Act.

The new statutory provisions that emerged from the historic battle were tested within the next few years in a series of decisions rendered by the NLRB.\(^{24}\)

In *Moore Drydock Co.* Case, the Board approached the general factual situation presented earlier in this discussion, by ruling that Sec. 10(k) applied.\(^{25}\) The facts of the case might help illustrate the difficulties involved. Basically, the facts consisted of two unions claiming the same kind of work. The two unions had developed in two geographical areas. Thus the employer used members represented by one union in one area, and members represented by the other union in another area. Trouble resulted

\(^{19}\) Collister, Jr., supra note 4, 33 U.M.K.C. L.Rev. 39 (1965).
\(^{20}\) 36 Stat. 748 (1914).
\(^{21}\) 49 Stat. 70 (1932).
\(^{22}\) U.S. v. Hutchison, 312 U.S. 219 (1941).
\(^{23}\) The following statements are representative of feeling in Congressional hearings with respect to this problem. "Both witnesses and committee members were in substantial accord that many union practices, especially ..., jurisdictional disputes... should be subject to federal regulation." 1 Leg. Hist. of LMRA of 1947 413(1948) (S.Rep. No. 105). See note 1 supra.
\(^{24}\) Ship painters Local No. 961, AFL (Ship Sealing Contractors Association), 87 NLRB 92 (1949); Los Angeles Bldg. & Trade Council, AFL, et al. (Int'l Ass'n of Machinists, Local 1235), 83 NLRB 477 (1949); National Union of Marine Cooks & Stewards, and Pacific Coast Firemen, Oilers, Watertenders and Wipers Ass'n (Irwin-Lyons Lumber Co.), 82 NLRB 916 (1949); Int'l Longshoremen's & Warehousemen's Local No. 16, CIO (Juneau Spruce Corp.), 82 NLRB 650 (1949); Lodge 68, Int'l Ass'n of Machinists & Int'l Ass'n of Machinists (Moore Drydock Co.), 81 NLRB 1108 (1949).
when an employer association signed a "Master Agreement" with the International of one of the unions. Upon continued assignment of work to the other group, the first picketed the employer. It was at this time that charges were brought. The majority called this dispute under 10(k) and 8(b)(4)(D) and awarded the work to the members represented by the union that historically had done the work. 253 In this case they recognized that there was no representation claim, and that the parties admitted this. 257 The picketing was for the purpose of forcing the preferential hiring of the members of one of the unions rather than the other. 259 Even with this conclusion, however, the majority talked in terms of majority representation and related matters.

One of the dissenting opinions suggested that this was really a representational dispute. 299 It was urged that the "jurisdictional dispute" occurs between two different craft unions. Thus it was felt that a representation proceeding could best settle the dispute. While it is possible that a fact situation of this type could present a representational dispute, also it is possible that it could present only a jurisdictional dispute, i.e., a dispute only over who is assigned the work. In any case, this further illustrates both the nature of the jurisdictional dispute and the problem of defining this type of dispute as opposed to the representational dispute. 300

The other dissenter suggested that where the employer has assigned the work the Board should no longer determine the dispute under Sec. 10(k). 310 This perhaps, is an indication of the importance that is still placed on the assignment by the employer and on the employer's neutrality. 323

The crucial point in these decisions prior to the 1961 CBS 33 decision of the Supreme Court, was that the Board entertained every restrictive view of its obligations

253 Ibid. at 1118-19.
257 Ibid. at 1114-15.
259 Ibid.
299 Ibid. at 1120-24.
300 Collister, supra note 4, at 40-42 (1965).
310 Moore Drydock Co., supra note 24, 1124-28.
323 Local 991, Int'l Longshoremen's Ass'n, AFL-CIO, Local 1106, Int'l Longshoremen's Ass'n, AFL-CIO, South Atlantic and Gulf Coast District, Int'l Longshoremen's Ass'n, AFL-CIO (Union Carbide Chemical Corporation), 137 NLRB 750 (1962); Local Union No. 38, Int'l Brotherhood of Electrical Workers, AFL-CIO (Cleveland Electric Illuminating Co.) 137 NLRB 1719 (1962).
under the Sec. 10(k) mandates "to hear and determine the dispute" upon which the Sec. 8(b) (4) (D) charge had been predicated.

For the initial thirteen years after enactment of that section, the Board limited its obligation to holding a hearing and determining whether or not the charged union was entitled to engage in the conduct proscribed by Sec. 8(b)(4)(D) and refused to make an affirmative award of the work to any particular union. Relying upon the absence of standards in Sec. 10(k) on which to base an affirmative award, the Board construed Sec. 8(b)(4)(D) to guarantee the employer's right to make work assignments "without being subjected to strike pressure to compel a different assignment," and viewed 10(k) simply as a means of upholding that right. Therefore, all the Board would do when the dispute arose was to determine if the employer in his assignment of work had violated an outstanding Board certification or order, or the terms of an existing collective bargaining agreement. If there was such a violation the Board would dismiss the charge, but if not the Board would find that the union was committing an unfair labor practice and issue a cease and desist order.

This approach is interpreted to have relegated the Board's function under 10(k) to recognizing and protecting the employer's original work assignment. Although the Board would advance many reasons for this approach, it received a less enthusiastic recognition in the courts.

The approach of the courts was completely opposed to that of the Board, and

37) Local 175, Wood Lathers' Union, 121 NLRB 1094, 1108-09 (1958). The Board's position was supported by the Fifth Circuit in NLRB v. Local 450, Int'l Union of Operating Eng'rs, 275 F. 2d 413 (5th Cir. 1960), but rejected by the Third and Seventh Circuits in NLRB v. United As'n of Journeymen, 242 F.2d 722 (3d Cir. 1957), and NLRB v. United Brotherhood of Carpenters, 261 F. 2d 166 (7th Cir. 1958).
38) Collister, Supra note 4, at 41-42, N.33.
40) David, supra note 36 at 650.
41) Heidenreich, supra note 3, at 153.
42) Collister, supra note 4, at 42, Note 37. See supra note 37.
43) NLRB v. Radio & Television Broadcast Eng'rs Union, Local 1212, AFL-CIO, 272 F.2d 713: (2d Cir. 1959); See also 261 F. 2d 166 (7th Cir. 1958), 242 F. 2d 722 (3d Cir. 1957)
which almost completely changed the nature of the proceedings before the Board into a 10(k) determination.

IV. The CBS Case and Work Award

1. The CBS Case of 1960

The Board’s pre-1960 approach to its 10(k) determinations of not resolving “the dispute out of which” the Sec. 8(b) (4) (D) charge arose met the court’s refusal to enforce the cease and desist orders made by the Board. The Second, Third and Seventh Circuits held that the 10(c) order would not be enforced since the Board had not made the kind of determination it was supposed to make prior to the issuance of the 10(c) order in the 10(k) proceedings.

It was this conflict that brought the problem before the Supreme Court in the 1960 decision in NLRB v. Radio and Television Broadcast Engineer’s Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (hereinafter cited as the CBS case). In the CBS case, each of the unions, under contract with Columbia Broadcasting System, Inc. (hereinafter cited as CBS), represented workers currently employed by CBS. Each claimed that under its contract the employees of CBS represented by it were entitled to work in dispute. When the employer assigned the work to members of one union, the other union, attempted to use economic pressure to force reassignment of the work to their members. When their protest failed, the latter union took more serious action in the form of work stoppage forcing cancellation of the work. At this point an 8(b) (4) (D) charge was filed. Pursuant to its old policy of not awarding the work, the Board simply decided that the protesting union was not justified in their protest and issued a cease and desist order. The Circuit Court of Appeals for the Second Circuit refused to enforce the cease and desist order on the grounds suggested previously, and the Supreme Court issued certiorari.

44) See note 43 supra.
45) NLRB v. Local 430, Int’l Union of Operating Eng’rs, AFL-CIO, 275 F. 2d 413 (5th Cir. 1960).
48) NLRB v. Radio & Television Broadcast Eng’rs Union, Local 1212, AFL-CIO, 272 F. 2d 713 (2d Cir. 1959).
49) 313 U.S. 802 (1960).
The Supreme Court upheld the majority of the Circuit courts and rejected the position of the NLRB in the CBS. In its decision the Court stated that... "if Sec. 8(b) (4) (D) stood alone, what this union did in the absence of a Board order of certification entitling its members to be assigned to these particular jobs would be enough to support a finding of an unfair labor practice in a normal proceeding under Sec. 10(c) of the Act. But when Congress created this new type of unfair labor practice enacting Sec. 8(b) (1) (D) as part of the Taft-Hartley Act in 1947, it also added Sec. 10(k) to the Act. Sec. 10(k)... quite plainly emphasizes the belief of Congress that it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions. Accordingly, Sec. 10(k) offers strong inducements to quarrelling unions to settle their differences by directing dismissal of unfair labor practice charges upon voluntary adjustment of jurisdictional disputes." 50)

Summing up, the Court reasoned that since the statute says that the Board should "hear and determine" the dispute, this indicated that a decision as well as hearing should be made. 51) The Supreme Court concerned a "dispute out of which such unfair labor practice shall have arisen" in Sec. 8(b) (4) (D). The dispute thus reached by the statute is the jurisdictional dispute, i.e., who should do the work. 52) If purpose is to be given to obvious Congressional intention to settle the dispute problem the Board must do more than leave the real decision on assignment work in the employer’s hand. 53) If this was all that was to be done, the underlying problem of who was entitled, by right to do the work would remain unsolved. 54) Then the Court relied on extensive reference to the legislative history of the provision, just cited above, to determine that Congress’ intent must have been that the Board should make an affirmative award of the work in a 10(k) proceeding. 55)

The situation that prevailed then is that whenever it has jurisdiction to hear a Sec. 8(b)(4)(D) charge, the Board in a 10(k) proceeding, must award the disputed work

52) Ibid. at 579-80.
53) Ibid. at 579-80.
54) Ibid.
to one of the contesting unions, and then if necessary in a later hearing under 10(c) issue a cease and desist order.

2. Work Award by the Board The First Post-CBS Determinations

In February, 1962, the Board issued its first Sec. 10(k) determinations and awards under CBS. These three cases—set the pattern for future Sec. 10(k) hearings, determinations, and awards. In each case, after considering the evidence submitted by the parties as to why the work should be awarded the way each felt, the Board confirmed the assignment as made by the employer. In each case it cited the factors deemed to support its award. The Board got around the Sec. 8(a) (3) obstacle it had formerly considered a barrier to affirmative assignments of the work in dispute by stating in each case that it was assigning the work to the classification of worker, and not to the union which represented this classification of workers or to its members.

In one of these cases, the Board announced that it would not formulate “general rules” for the making of affirmative awards in Sec. 10(k) proceedings, and that each case would be “decided on its own facts” after consideration of “all relevant factors.” The Board then listed the following as illustrative of relevant factors:

“the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases the assignment made by the employer, and the efficient operation of the employer’s business.”

The Board stated in these cases that the “weight to be given the various factors” would be determined in each case as it arose.

Although the employers’ assignments of the work in these cases were affirmed and such have been affirmed by the Board and in the vast majority of case thereafter—the

58 133 NLRB at 1391, 1401, 1141. In some later cases the award was to a designated classification of workers without reference to representation by any union, such as to “sheet metal workers,” Lusterlitterite Corp., 151 NLRB 195, 203 (1965).
59 135 NLRB at 1410-1411; see also Int’l Union of Operating Eng’rs, Local Union No. 158 (E.C. Ernst), 172 NLRB No. 192, 69 LRRM 1033 (1968).
Board made it clear in its early Post-CBS determinations that an employer’s assignment of the work is not dispositive of the dispute; it is only one of the factors to be considered.60)

V. The Sec. 10(k) Proceedings

1. Steps to Invoke Sec. 10(k)

Concerted action in support of a work assignment dispute was made an unfair labor practice in 194761) as indicated above. The filing of a charge thereof, however, does not lead to the usual invocation of the Board’s proceeding under Sec. 10(c).62) Congress interposed a special procedure to be followed whenever such charges are filed. Here comes in the Sec. 10(k) proceeding, an clear language it requires the Board to “hear and determine” an unfair labor practice within the meaning of paragraph (4) (D) of Sec. 8(b) on its merits and must make an affirmative award of the disputed work among the two or more competing groups claiming the right to perform the work.63)

In order for the Board to proceed with determination under Sec. 10(k), the record must show that a work assignment dispute exists; that there is reasonable cause to believe that the respondent union has resorted to conduct which is prohibited by Sec. 8(b) (4) in furtherance of the dispute; and that the parties have not adjusted their dispute or agreed upon methods for its voluntary adjustment.64) We will proceed a further exploration in this respect.

After an employer files a charge, the Board usually makes three preliminary determinations.

FIRST: it must discern whether there is “reasonable cause” to believe that the respondent union has engaged in prohibited activity.65) Although Sec. 10(k)

63) 364 U.S. 573, 87 Sup. Ct. 330, 47 LRRM 2332.
65) General Teamsters, 144 NLRB No. 60 (1963) (B.P. John Furniture Corp).
when read literally requires only a "charge" of proscribed activity, it seems logical to require the employer to present a prima facie case. The Board has held that evidence must relate to "conduct or speech" of the union's representatives.

SECOND: the Board's "reasonable cause" standard has been extended to require an additional determination that a work dispute within the scope of Sec. 8(b) (4) (D) exists. Thus, the union must not only resort to prohibited activity to invoke the Board's authority, but it must be correct in its assumption that a work assignment dispute exists.

The Board has defined "work assignment dispute" rather narrowly. In *Local 107, Highway Truckdrivers* (Safeway Stores, Inc.) the Board has held that a work dispute under Sec. 8(b) (4) (D) must involve a situation in which two or more employee groups are actively seeking certain work. When no jurisdictional dispute is found to exist, the Board will abate the notice of hearing under Sec. 10(k).

THIRD: the last preliminary step to a 10(k) determination involves the existence of private settlement machinery. The Board is directed to hear and determine the dispute "unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute."

The section was intended to encourage private settlement and the "settlement" exception to Sec. 10(k) seems to have been designed to stimulate unions to resolve their own disputes. According to the remarks of Senator Morse, "the mere threat of governmental action will have a beneficial effect in stimulating labor organizations to set up appropriate machinery for the settlement of such controversies within their own rank, where they properly should be settled."

Indeed, "Sec. 10(k) offers strong inducement to quarrelling unions to settle their differences by directing dismissal of unfair labor practice charges upon voluntary

---

66) *Ibid.* See also, J.B. Atleson, the NLRB and Jurisdictional Disputes: The Aftermath of CBS, 53 Geo. L.J. 93, at 100, note 47 (hereinafter cited as Atleson).
69) 134 NLRB 1230 (1961).
70) Atleson, at 116, note 98.
adjustment of the jurisdictional dispute." The Board, however, has defined "parties to the dispute" to include the employer as well as the two employee groups, and it will not quash notice of a 10(k) hearing when agreement to private arbitration procedure is alleged if one party has not stipulated to such procedure. Furthermore, the Board has held that subcontractors and general contractors must also agree to the settlement or the methods of the settlement.

The Board will proceed with an unfair labor practice complaint against a union which will not comply with a private settlement, even when it refuses to render a decision under section 10(k). In Wood, Wire & Metal Lathers Union (Acoustical Contractors Association), the Board held that an 8(b) (4) (D) charge would be dismissed only upon compliance with the Board's decision "or upon such voluntary adjustment of the dispute," and not merely if a method of settlement existed. Thus, the existence of a method of adjustment precludes a 10(k) hearing, but not the issuance of an 8(b) (4) (D) complaint if the method is not successful. The "statute keeps the charge alive pending a final settlement... so that an 8(b) (4) (D) complaint action may be taken against a party that resorts to a jurisdictional strike despite the existence of an agreed method of adjustment." Since many private settlements do not provide effective enforcement devices, the Board's position makes this approach an enforcement arm of a private agency and this seems to comport with the congressional policy of settling jurisdictional disputes and encouraging private settlements.

When the employer is obstructing the private settlement by refusing to abide by a determination, and the respondent union has "complied" with the Board procedures, the Board will probably dismiss the charge.

72) NLRB v. Radio and Television Broadcast Eng'rs, 364 U.S. 573-77; Atleson, supra at 111.
73) Local 9, Wood, Wire & Metal Lathers Union, 113 NLRB 947 (1955) (A.W. Lee, Inc.). Affiliates of the Bldg. Trades Dept., AFL, are bound by Joint Board determinations through the Dept. 's constitution. Thus, Locals of national unions which are members of the Dept. are bound despite their failure to agree to Joint Board Procedures. See Atleson, supra at 110-111.
74) 119 NLRB 1345 (1958); 120 NLRB 837 (1958).
75) Acoustical Contractors Ass'n, 119 NLRB 1345, 1352 (1958). Congress may have wanted the Board to stay out of any dispute where there was an agreed upon method of settlement. Atleson, supra at 113.
2. Scope of Applicability of the Act

Concerning the scope of applicability of the Act, the agreement has been made that the Act should only apply to unions representing members employed by the same employee, but the Board has held that this is not the case so that it also extends to an attempt "to force the indirect assignment to work from employees of one employer to employees of another." 77

Sec. 10(k) applies not only where there is a demand for the present assignment of work to group of employees rather than another, but also where the demand is for a contract reassigning disputed work. If a union makes a demand for a contract clause assigning disputed work to it, and enforces its demand with picketing, this section applies. 78 A jurisdictional dispute within the meaning of 10(k) exists even though one of the group competing for the work is not made up employees of the employer having the work in dispute. 79

The employer and the other union are entitled to a Board adjudication of the merits of the disputes to help prevent future coercive activity by the disclaiming union. 80 If the contract between the employer and a union has been interpreted by an arbitrator to assign the work to that union, then the Board may follow the decision on the theory that the work is covered by that contract. 81 Where a contract between an employer and a picketing union clearly assigns that union the disputed work, the picketing does not violate Sec. 8(b)(4)(D), since the employer is contractually bound not to assign the work to another union. 82

3. Enforcement of Award

If the Board upholds the employer's assignment there is little difficulty in enforcing the 10(k) award, since the 8(b)(4)(D) charge will simply be dismissed upon compliance with the Board's award. 83

79) Local 862, Stage Employees (Allied Maintenance Co.) (1962), 137 NLRB. No. 79.
80) Dist. 50, United Mine Workers (Truman Constr. Co. (1962), 136 NLRB No. 91.
Noncompliance, on the other hand, subjects the union to both an unfair labor practice proceeding and, possibly, a damage action under Sec. 303. Little difficulty would seem to be encountered where the respondent union is awarded the work, the employer reassigns the work, and the union originally assigned the work strikes. Although this union is a party to the dispute, the unfair labor practice charge is directed against the other union. The employer may desire Board action even though an action under Sec. 303 may lie. He must file a Sec. 8(b)(4)(D) charge, and a literal reading of the Act would seem to require another 10(k) proceeding. However, since the Board has already heard and determined the dispute, it would seem reasonable to permit the Board to avoid unnecessary duplication. 84

If, however, the respondent union is awarded the work by the Board and the employer refuses to comply, 85 the Act contains no language which would make an award judicially enforceable against a recalcitrant employer. Statutory procedure for enforcement of any Board decision 86 is limited to “order” issued after unfair labor practice proceedings, and the 10(k) award is not such an “order”. 87 Failure of the employer to act in accordance with the 10(k) award would also not be an unfair labor practice since it is not a violation of Sec. 8

A cease and desist order may issue after a 10(k) proceeding, not because the union violating the Board’s a ward, but because noncompliance removes the bar to the prohibition of section 8(b)(4)(D). Furthermore, the successful employee group has no recourse under Sec. 303 since that section only provides a damage action for employers. Congress apparently assumed that employers were generally neutral and would voluntarily comply with Board awards. 88

There has been, however, argument from the standpoint of labor policy, that

83) LRMA Sec. 10(k), 61 Stat. 149 (1947), 29 U.S.C. Sec. 160(k) (1958): “Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.”
84) Mann & Husband, supra, at 53, note 315. Atleson, supra, at 143.
85) “The idea that Board determinations can be directly enforced against employers cannot be upheld on grounds of statutory construction, legislative history, or labor policy.” Farmer and Powers, The Role of the NLRB in Resolving Jurisdictional Disputes, 46 Va. L.R. 660, 694 (1960) (hereinafter cited as Farmer ), see also, Mann, at 53-55, also, Atleson, at 143.
86) LMRA Sec. 10(1) 61 State 147 (1947), 29 U.S.C. Sec. 160(1) (1958)
87) Mann, at 53-54, notes 310-17.
"compelling an employer to accept a Board determination that he assign specific work to one group rather than to another would be a totally unwarranted infringement on the rights of management and would seriously undermine collective bargaining..."

Although enforcement of Board awards would qualify managerial prerogatives, enforcement would be consistent with the interest in protecting the public from inter-union conflict.

The only recourse open to the employee group, then, seems to be concerted activity. However, such action would be literally prohibited by Sec. 8(b) (4) (D) since in enumerating the defenses to an 8(b) (4) (D) charge, Congress made no reference to employee activity in support of a Board decision. Furthermore Sec. 303 provides no defense in the employer's damage action, based upon a 10(k) award. On the union’s part, there is no failure of compliance, although its activity in support of a Board award is literally proscribed by the statute. It would not seem to be an abuse of discretion for the Board to refuse to proceed further than a 10(k) proceeding when the charged party is willing to comply.

A complaint is usually not issued under Sec. 8(b) (4) (D) unless a determination is not complied with, since a charge is sufficient to invoke the 10(k) procedure. The Board would not proceed under Sec. 10(b) in the absence of a complaint issued by the General Counsel, who may in his discretion refuse to issue complaints where the employer is failing to abide by a Board award or a voluntary settlement. Thus, it seems clear that no direct enforcement procedure against employers exist, while even indirect pressures may be insufficient.

It would seem anomalous for the Board to recognize a union’s right to certain work and then deny economic coercion to obtain such work. Thus, Sec. 10(k) determination would become little more than advisory opinions, seemingly contrary to the Supreme Court’s assumption in the CBS decision. The lack of adequate enforcement machinery is a deficiency which should be corrected.

80) Farmer, at 695, see also Atleson at 143-44.
90) Atleson, supra, at 144.
92) Manhattan Constr. Co. v. NLRB, 195 F. 2d 320 (10th Cir. 1952).
93) Atleson, supra, at 145.
VI. Standards for the Award of Work

HAVING reached the position in the disposition of a 10(k) proceeding the Board must consider the merits of the issue and award the work to one of the rival groups of employees. Here, we are to examine those standards which govern the Board’s issuance of such an award as its criteria.

In the case of International Association of Machinists, Lodge No. 1743 (Jones Construction Co.) the Board placed its emphasis on the fact that no one factor should be exclusive of all others in determining an award.\textsuperscript{94} The decision is to be made by weighing all relevant factors.\textsuperscript{95} It is specifically noted that an employer’s assignment as such is no longer dispositive of the issues, although as a practical matter this assignment may reflect the eventual outcome. A number of factors are suggested as being relevant, including: the skills of the relative labor groups and work involved, certifications by the Board, company, area, industry, and nationwide custom and practice, agreements between unions and between unions and employers, awards of arbitrators, joint boards, and AFL-CIO in the same or related cases, the assignment by the employer, and the efficient operation of the employer’s business.\textsuperscript{96}

1. Certification by the Board

This is probably the least important of all the factors in the sense that if a certification order is in existence that specifically covers the work involved, there would be no quarrel under 10(k) that amounts to a substantial controversy. As a matter of fact, in the cases that have arisen, where there have been certification orders in effect, the order was relatively unimportant in reaching a decision since the order referring to each union would be interpreted to include or exclude the work in dispute.\textsuperscript{97} In other words it couldn’t provide decisive weight since it didn’t specifically cover a specific assignment of work. The most that can be said is that it has been mentioned

\textsuperscript{94} 135 NLRB 1402. (1962).
\textsuperscript{95} J.A. Jones, Co., Supra note 94 1410-11.
\textsuperscript{96} Ibid.
\textsuperscript{97} American Radiator and Sanitary Corporation, 137 NLRB 1524 (1962).
that the assignment by the Board, or if it is the same as that of the employer, the assignment of the employer, is consistent with the certification order. 980

2. Collective Bargaining Contracts

Normally the contracts are general and do not definitively award the work to the members of either union. 990 It should first be noted that the agreements are normally said to be too ambiguous to support an award. To be a defense in a 10(k) proceeding, the contract must be clear and unambiguous. 1000 The Board Board has concluded that a contract between an employer and a union will be interpreted in a selfserving manner. As such, the value of the contract in determining the award of work is greatly reduced. 1010 Even so, contracts or collective bargaining agreements are relevant. They may provide a general indication of the nature of the business or work that the members of each are to perform and in that way aid in assignment of work.

A somewhat frustrating situation has been noticed by the Board in one case. 1020 That both contracts with the respective unions contained equally relevant and binding provisions covering the work in dispute. If you give effect to one then you must give effect to the other. In such a situation, the Board would ignore the contracts as a factor.

The contract may serve another purpose. For example, it may attempt to provide for future modernization of plants. The contract may contain a clause to the effect that the union performing a certain operation now will continue to do so when the operation is mechanized. 1030 As such, it probably has more effect as supplementing traditional prace, but it still has effect.

One final effect remains. The contract and negotiations pursuant thereto may be used to show evidence that one of the unions, which was aware of certain work being

100) Northern Metal Co., 137 NLRB 1451, 1457 (1962).
done by a rival, acquiesced in the members represented by that union being assigned
the work by not protesting at negotiation tim.104 But it will be suggested later in
more detail that the acquiescence argument may not be as substantial as others and
may well be overruled by other factors.

2. Awards of Joint Board, Arbitrators, etc.

The basic problem with these awards is that not all three parties are party to the
same arbitration agreement or joint award. Each union contract with the employer
may have an arbitration provision, but the other union is not a party to this clause.
Thus, not only is there no jurisdictional block to the 10(k) hearing, but not much
weight is attached to the arbitrator's award.105 The extent to which such an award
is in disfavor is evidenced by the fact that in the one instance where the award was
the basis of decision, the Board was split three to two, with the dissenting members
urging the use of other factors.106

The use of arbitration award, joint board award, etc., may as a practical matter
be dependent on the balance created by the other factors. In a case where the settle-
ment favored the union to whose members the work was ultimately awarded, the Board
could say that it was of some help because it reflected union opinion.107 It would ap-
pear that aside from the instances where the agreement is used to reflect opinions
or is used to bolster a decision based primarily upon other factors, the agreement
between unions or the award of the arbitrators is not significant in deciding these
cases on the merits.108

4. The Skills and the Work Involved

These factors seem to be more substantial in determining the award. Of course in
some cases, the effects are again very slight. Thus, the groups involved may not have

104 Manhattan Constr. Co. of Texas, Inc. and Binswanger Glass Co., Inc., 137 NLRB 975 (1962).
105 Consolidated Engineering Co., Inc., 141 NLRB 119, 62-1 CCH NLRB 18863 (1963); see also,
Acoustics & Specialties, Inc. and Constr. Specialties Co., 142 NLRB 1073, 63-1 CCH NLRB
19203 (1963).
106 Local Union No. 68, Wood, Wire & Metal Lathers Int'l Union, AFL-CIO, 142 NLRB 1073,
63-1 CCH NLRB 19293 (1963).
107 Teamsters, Chauffeurs, Helpers and Taxicab Drivers Local Union No. 327, Teamsters(S &
W Constr. Co. of Tenn., Inc.), 142 NLRB 170, 63-1 CCH NLRB 19150 (1963).
any specials kills, both may have special skills, or no special skill may be required for the work involved. Where both groups have some special skill, they both may simply cite the skill of one group as supporting the award to that group.\textsuperscript{109}

Most of the cases where the skill of the employee is a very significant factor are where an employer has a special crew formed to do either the special work he does or for a special job in the work he does. In these cases it is normally easy for the Board to justify an award to the special crew even though the other group was equipped to handle the same work, since the special crew was designed to fit and qualified for a special task in a larger operation.\textsuperscript{110}

There is another situation where both of the working groups have special skills but the skills of one group are a little more appropriate to the work involved. In a case where the work involved the installation of electrical equipment, the Board noticed that the installation involved work that comported more with the skills of electrical workers.\textsuperscript{111}

A third group of cases involves a special training or apprenticeship that is provided by the union. As a factor this aids in selecting one of the groups disputing the work. The fourth group of cases exist where the special skill determines that the group not possessing the skill should get the work.\textsuperscript{112} Thus, the special skill may define a group out of a job. It simply illustrates that in a normal situation they would not be expected to do simpler work. For example, where a group claiming the work possesses special skills to install glass, and the work involves moving the glass in crates from a lift site to the installation site, the work should be awarded to laborers who have no special skill.

5. Efficiency of the Operation

The more important criteria is the degree to which the award of work to certain groups will affect the efficiency of the operation. One of the significant occasions when this factor shows its importance is in a continuous type operation when the

\textsuperscript{108} Collister, supra, at 52.
\textsuperscript{109} Kaiser Nelson Steel & Salvage Corp., 141 NLRB 1285.
\textsuperscript{110} Bishopric Products Co., 140 NLRB 1304 (1963).
\textsuperscript{111} Western Electric Co., Inc., 141 NLRB 888.
\textsuperscript{112} Frank P. Badolato & Son, 135 NLRB 1392 (1962).
work in dispute fits somewhere in the middle of the operation. In such a case it may be that one group may operate on the job on either side of the disputed work, and thus deserve the work. Or the job may be one that should be done by the group which did the immediately preceding job, since to do otherwise would mean delay in securing members of the other disputing group who are at that moment engaged in a job occurring later in the operation.

Another type of situation occurs when the award of work may affect the cost of the operation. The award to one union may in effect result in “double-manning”. This additional cost factor aids the other contending group. Any other condition relating to the work may affect the cost efficiency, and thus aid in making a determination favoring the group representing the lower cost. A similar factor to this latter problem relates to labor supply. Thus, when the supply of one group is limited this may aid in determining the award for the other group.

6. Company, Industry, Area and Nationwide Custom and Practice

It is this one factor that provides the most substantial reasons for awarding the work to one special group. The unions, at least, have been organized to represent employees in the same line of work. These groups of employees naturally have been normally employed at certain tasks. By examining the history of these groups the Board can have been normally determine which of the groups is entitled to the work. This historical inquiry is in reality an examination of custom and practice. The industry examination is directed toward two areas, the practice in the industry as a whole and the practice with the particular employer involved in the work dispute.

Perhaps the custom and practice factor assumes more importance in a situation where a plant is becoming more mechanized or certain operations are being replaced and combined. The replacement of certain machines, the combining of certain processes,

114) Glaziers Local Union No. 1778, Bhd. of Painters, Decorators, and Paperhangers of America’ AFL-CIO (Manhattan Constr. Co. of Texas, Inc. and Binswagner Glass Co., Inc. 137 NLRB 975 (1962).
115) Western Electric Co., Inc. 141 NLRB 888.
and the later servicing of the machines. The decision was based on the fact that the members represented by the union who were awarded the work did similar work on predecessor machines or machines similar in nature.\textsuperscript{118} In this manner the custom and practice factor can be extremely relevant.

### 7. Assignment by the employer

The assignment by the employer is, after all, reflective of some of the factors that have been previously considered. The employer relates this assignment of the work to the applicable contracts, work skill, economy and efficiency, and practice in the industry. In this sense the employer is doing much the same thing as the Board when it makes a work award.

It has been suggested previously that the employer’s assignment is disparate of the case. In such a case the Board quickly decided that the employer’s assignment did not settle the matter.\textsuperscript{119} The Board has the power to make any award it chooses. It is not forced to accept the employer’s assignment. As a practical matter, the Board’s award may in fact be the same as the employer’s. It is suggested that this normally occurs because the decision by both the employer and the Board is based on practically the same factors.

When there is very little in other factors present, significant weight will be attached to the employer’s assignment.\textsuperscript{120}

### 8. Acquiescence

This is the factor that one or the other of the groups involved may have acquiesced in the assignment of work to the other group. While it has been noted that acquiescence to a contract provision may be relevant\textsuperscript{121} and that practice may in effect constitute a type of consent,\textsuperscript{122} the Board has on at least one occasion placed a great deal of emphasis on a factor of acquiescence. Even though the decision said this acquiescence was very important, a two-man dissent criticized the approach as creat-

\textsuperscript{118} American Radiator and Sanitary Corp., 137 NLRB 1524 (1962).
\textsuperscript{119} Int’l Association of Machinists, Lodge No. 1743 (J. A. Jones Constr. Co.) 135 NLRB 1402 (1962).
\textsuperscript{120} The New York Times Co., 137 NLRB 1435 (1962).
\textsuperscript{121} 137 NLRB 975 1962).
\textsuperscript{122} Northern Metal Co., 137 NLRB 1451 (1962).
ing a situation where more trouble than solution would inevitably result. The opinion suggested:

Indeed the Board's decision in this case may be a caveat to any skilled craftsman to refuse assistance from a new helper on the job in order to avoid later ruling by this Board that by failing to object at the proper moment he surrendered a part of his traditional work claim. 123)

Whether and to what extent this particular position will be maintained by a majority of the Board remains to be seen.

VII. Other Relief Available under the NLRA

1. Sec. 10(1): Injunction proceeding in courts

Whenever a regional representative has reasonable cause to believe that conduct violating Sec. 8(b) (4) (D) has occurred and a complaint should be issued, he may petition a federal district court for injunctive relief under section 10(1). 124) In jurisdictional disputes the regional officer is authorized to seek injunctive relief only when “such relief is appropriate”; his action is not mandatory as in other 10(1) injunctive proceedings.

The court’s function is limited to the question of whether based upon the evidence, the petitioner has “reasonable cause to believe” that the charges are true; 125) there is no requirement that the court decide whether a violation of the act has in fact been commuted. 126) The Board need not “conclusively show the validity of the propositions of law underlying its charge; it is required to demonstrate merely that the propositions of law which it has applied to the charge are substantial and not frivolous. 127)

Thus, the decision of a federal district court that an injunction should not be issued in a case alleging violation of Sec. 8(8) (4) (D) and its subsections is not ‘res judicata’ to a finding by the Board, since the district court proceeding is independent and

125) Douds v. Int'l Longshoremen's Ass'n 242 F. 2d 808, 810 (2d Cir. 1957).
126) Madden v. Int'l Organization of Masters, 259 F.2d 312 (7th Cir. 1958).
not on the merits of the case.\textsuperscript{128)}

A petition for an injunction pursuant to this section is made by the NLRB by a governmental agency seeking injunctive relief in the public interest.\textsuperscript{129)} In such a proceeding the doctrine of "clean hands" does not apply.\textsuperscript{130)} Hence, even if an employer may have violated its contract with a picketing union, the Board may be granted an injunction against such picketing believed to be in violation of Sec. 8(b) (4) (D) of the Act. Only the Board, and not an employer, may petition a federal district court for an injunction under this section, and only the Board may petition the court for an adjudication that a union is in civil contempt of court for alleged violation of an injunction granted pursuant to this section.\textsuperscript{131)}

2. Sec. 303: Damage Action

The relevant provision of the Act states as follows: Sec. 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in activity or conduct de minimis as an unfair labor practice in Sec. 8(b) (4) (D) of the NLRA, as amended.

(b) Whoever shall injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the U.S. subject to the limitations and provisions of Sec. 301 hereof without respect to the amount of controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.\textsuperscript{132)}

Employers may under Sec. 303 of the LMRA bring suits in federal courts for damages caused by union activity which violates Sec. 8(b) (4) (D). By referring to Sec. 8(b) (4) (D), Sec. 303(a) incorporates the standards necessary to a determination that Sec. 8(b) (4) (D) has been violated. A 10(k) award is not expressly made a defense to a 303 action, so the Board could conceivably permit what a court declared unlawful. While the remedy provided for Sec. 8(b) (4) (D) may be a cease and desist order, the remedy for Sec. 303 is an award of damages, and the two actions

\textsuperscript{128)} Denver Bldg. & Constr. Trades Council (1951), 341 U.S. 675, 95 L.Ed. 1284, 71 Sup. Ct. 943.
\textsuperscript{129)} Douds v. Lashers Union (3rd Cir. 1957), 245 F. 2d 223.
\textsuperscript{130)} Kingston Cake Co. (3rd Cir. 1953), 266 F. 2d 694, 32 LRRM 2449.
are construed as being independent of each other.\textsuperscript{133} Therefore, parallel actions before the Board and a district court arise the possibility of inconsistent results.

Sec. 303(b) of the LMRA, which provides that "whoever shall be injured... may sue..." allows either the primary or the secondary employer to sue for damages sustained by a secondary boycott. Diversity of citizenship is not required to bring an action under section 303.\textsuperscript{134} A federal district court retains jurisdiction of an action for damages brought under Sec. 303 even though the claim is joined with a nonfederal court action for tort.\textsuperscript{133}

Damages for an alleged violation of Sec. 8(b) (4) (D) of the Act may not be awarded unless there is evidence of an attempt to induce or encourage a work stoppage or proof that an employee did not work because of a picket or coercion.\textsuperscript{135}

As a matter of policy, as Professor David of State University of New York at Buffalo once recommended, it may be wise for courts to give substantial weight to a Board decision, but there is no statutory language making this mandatory. Furthermore, a 10(k) award does not decide whether an unfair labor practice was committed,\textsuperscript{136} and a union which is successful in a 10(K) proceeding may have violated Sec. 8(b) (4) (D).

The only practical solution is to limit Sec. 303(a), as well as Sec. 8(b) (4) (D), to Sec. 10(k).\textsuperscript{137} The Board has held that Sec. 8(b) (4) (D) is not "violated" until there is noncompliance with a 10(k) award. Similarly, there may be no violation of Sec. 303 until a 10(k) proceeding is held. Thus, if respondent union is successful in 10(k) proceeding, there would be no violation of either Sec. 303(a) or Sec. 8(b) (4) (D). Here, again, however, there is no statutory reason why a court cannot proceed with a damage action in the absence of 10(k) determination.

\textsuperscript{133} ILWU v. Juneau Spruce Corp. (1952), 342 U.S. 857, 72 Sup. Ct. 85.
\textsuperscript{134} Brick & Clay Workers v. Deena Artware (6th Cir. 1952), 198 F. 2d 637, cert. denied (1952), 73 Sup. Ct. 277.
\textsuperscript{135} Flame Coal Co. v. United Mine Workers (6th Cir. 1962), 303 F. 2d 39, cert. denied (1962), 83 Sup. Ct. 183.
\textsuperscript{136} Lascher Bldg. Serv. v. Local 133, Sheea Metal Workers (7th Cir. 1962), 310 F. 2d 391, 51 LRRM 2996.
\textsuperscript{137} Int'l Longshoremen's Ass'n (Nat'l Sugar Ref. Co.), 142 NLRB 257 (1963).
\textsuperscript{138} Atleson, 53 Geo. L.Rev. 149–50 (1964)
CONCLUSION

As Professor J.B. Atleson pointed out once, “jurisdictional disputes” are not a uniquely American phenomenon. Looking into some of the specific causes of jurisdictional disputes, the introduction of new materials, techniques or machinery often creates problems. Modification in material, tools and techniques, render existing definitions of job jurisdiction obsolete and inadequate. It is understood that especially in the periods of job scarcity, jurisdictional disputes are critical to those whose job may depend on the outcome of the strife. It is almost impossible to describe work tasks in exhaustive detail with the rapidly changing techniques in our process of industrial development too.

It may not be said that, among those which have launched an endeavour after promoting the rapid industrialization of their country, and eager to develop the new mode of economic progress and techniques as in Korea, we are the only exception who can afford to being free from such an ages-old plague as the jurisdictional work conflicts in the industrialized country within the labor and industrial relations, which we have just examined in the American picture. This brief survey of its experiences of an advanced society would positively present us a comprehensive example of a pattern of approach to this problem and serve as a useful suggestion of resource when we need one. We might as well learn something more of the practical wisdom from it in this field of labor law.