July 9, 1946

Board of Governors

Mr. Vest

Memoranda filed with

National Labor Relations Board

With reference to the labor union question at the Federal Reserve Bank of Dallas, Mr. Hutchings, President of the Office Employes International Union, who was recently in to see Chairman Eccles, has addressed a letter to the National Labor Relations Board enclosing a memorandum prepared by Counsel for the A.F. of L. Copies of these documents were sent to me by Mr. Thatcher of the legal staff of the A.F. of L.

For the information of the Board, there are attached a copy of the memorandum which the Board of Governors has filed with the National Labor Relations Board on this subject, a copy of Mr. Hutchings' letter to the Labor Board, and a copy of the memorandum enclosed therewith.

Attachments

GBV

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date June 25, 1946.

To Chairman Eccles

Subject:

From R. F. Leonard

R.F.L.

Attached are memoranda prepared by Mr. Vest on:

"Summary of Important Points in
National Labor Relations Act"

"Proceedings for Employee Organization
at Federal Reserve Bank of Dallas"

PROCEEDINGS FOR EMPLOYEE ORGANIZATION AT FEDERAL RESERVE BANK OF DALLAS

The following are briefly the facts regarding the proposal to organize the employees of the Federal Reserve Bank of Dallas:

About May 10, 1946, an attorney in the National Labor Relations Board came to our Legal Division for the purpose of securing information as to whether Federal Reserve Banks are a part of the United States, saying that a member of the Labor Board had asked for an opinion on the question whether Reserve Banks are subject to the Wagner Act. At approximately the same time the Dallas papers indicated that the A.F.L. Office Employees International Union was attempting to organize the Federal Reserve Bank of Dallas as a part of a large scale program.

On May 16 Messrs. Leonard and Vest went to the Labor Board and talked with Mr. Reilly, a member, explaining that they were merely seeking counsel and information. After discussion, Mr. Reilly suggested that the Labor Board might advise its regional offices that if a question arose regarding the employees of a Federal Reserve Bank it be referred to Washington before any action were taken. Mr. Reilly said that if this were done ample opportunity would be given the Board of Governors to consider the matter and, if it desired, to file a memorandum of its views as to whether the Act applies to the Reserve Banks. The Dallas Bank was advised of this conference.

About May 17 the Dallas Bank received a letter from the Vice President of the Office Employees International Union stating that a majority of the personnel of the bank had authorized Local No. 45, an A.F.L. Union, to represent them for collective bargaining and asking an early conference. On May 25 Mr. Gilbert replied, "After giving consideration to all the existing circumstances, it appears that no useful purpose could be served by a conference, such as you suggest, at this time."

On June 7 the Fort Worth Regional Office of the Labor Board advised the Dallas Bank that they had received a petition for certification from the Office Employees International Union A.F.L. Messrs. Leonard and Cherry on June 10 discussed the matter informally with the members of the National Labor Relations Board. Chairman Herzog said their Legal Division had under consideration the question whether the Act is applicable to Reserve Banks and assured that in case of doubt and in any event before coming to the conclusion that the Act is applicable they would give the Board of Governors an opportunity to submit a memorandum. Pursuant to a suggestion made by Mr. Herzog at this conference, the Dallas Bank later advised the Fort Worth Office that it understood the matter was being considered in Washington because a question of national policy is involved.

On June 14 the Dallas representative to whom the case had been assigned telephoned Mr. Gilbert that he would proceed with an investigation. Mr. Leonard called this to the attention of the Labor Board here. The matter was then straightened out and the Fort Worth Office was instructed to do nothing at that level until further instructions from Washington. The Dallas Bank subsequently received a letter from the Fort Worth Office advising that the matter is being held in abeyance pursuant to instructions from Washington.

There is attached a brief summary of the law on the subject.

SUMMARY OF IMPORTANT POINTS IN NATIONAL LABOR RELATIONS ACT

The Wagner Act of 1935 (National Labor Relations Act), which established the National Labor Relations Board, provides that employees shall have the right to self-organization, to form or join labor organizations and to bargain collectively through representatives of their own choosing.

Representatives for Collective Bargaining. - Representatives selected by a majority of employees in a unit shall be the exclusive representatives of all employees in the unit for collective bargaining. The Labor Board is authorized to decide the appropriate unit for this purpose and the Board may investigate and certify the representatives selected after hearing or after an election if necessary.

Procedure for Certification. - A proceeding for investigation and certification of representatives is commenced by filing a petition with the Regional Director of the National Labor Relations Board. He may order a hearing before a trial examiner and may conduct an election. Elections are frequently held by consent without holding a hearing.

Unfair Labor Practices. - It is an unfair labor practice for an employer to interfere with the employees' rights to form or join a union or bargain collectively; to contribute financial support to a union; to discourage membership in a union by discrimination in hiring or otherwise; to discharge an employee because of labor union activities; or to refuse to bargain collectively with representatives of employees. It is understood that increasing wages of employees or providing benefits for them during attempts to form a union in some cases has been considered an unfair labor practice.

Procedure for Prevention of Unfair Labor Practice. - A charge may be filed with the Regional Director of the Labor Board that an employer has engaged in an unfair labor practice. After a hearing before a trial examiner (and sometimes review by the Board in Washington) the proceedings will be dismissed or a cease and desist order issued against the employer. This order is subject to review by the courts, but the findings of the Board as to the facts, if supported by evidence, are conclusive.

United States Not Subject to Act. - The Act applies in general where interstate commerce is affected but does not apply where the employer is "the United States or any State or political subdivision thereof".

Information from Government Agencies. - The several departments and agencies of the Government, when directed by the President, must furnish the Labor Board all records and information in their possession relating to any matter before the Board.

Right to Strike. - The Act provides that nothing therein shall interfere with or impede the right to strike.

OFFICE EMPLOYES INTERNATIONAL UNION
Affiliated with the American Federation of Labor

1221 G Street N. W.
WASHINGTON 5, D. C.

Phone: Executive 4464

Mr. Paul M. Herzog, Chairman
Mr. Gerard D. Reilly, Member
Mr. John M. Houston, Member
National Labor Relations Board
815 Connecticut Avenue, N.W.
Washington, D.C.

July 3, 1946

Mr. Chairman and Members of the Board:

In accordance with the suggestion of the Board, I am filing with you herewith a short memorandum prepared by our counsel in connection with a matter presently before the Board involving the Federal Reserve Bank of Dallas and our Local Union No. 45 (your Case No. 16-R-1798). I would also like to take this opportunity to briefly supplement Attorney Thatcher's memorandum with a few expressions of my own relative to this situation, which you may find to be of some value in connection with your deliberations on the same.

Late in April 1946, our International Union Vice President C. A. Stafford, who serves as organizer for our organization in the Southwestern States, was contacted by a delegation of nine employes of the Federal Reserve Bank of Dallas, who were interested in determining what possible gains could be achieved by the workers in that bank through organization and collective bargaining. After a frank discussion of several hours, application cards were supplied and arrangements were made for the group to meet again with Mr. Stafford the following week. This second meeting was attended by thirty-five workers from this bank, and the following week a general meeting was held in Liberty Hall of Dallas (May 7), which meeting was attended by two hundred employes of the Federal Reserve Bank of Dallas, representing every department in the bank. Also in attendance at this May 7 meeting were delegations of employes from four or five other Dallas banks who were present to observe the progress being made by their co-workers employed in the Federal Reserve Bank of Dallas, of which their employing banks were stockholders and members.

At the time of the May 7 meeting we had already signed on membership application cards approximately 200 of the estimated 550 eligible office and clerical workers of the Dallas Federal Reserve Bank. This meeting received widespread publicity in the daily press of Dallas. The Dallas Daily Times and the Dallas Morning News both carried large front page stories with regard to the organizational efforts of the Federal Reserve Bank workers. The Daily Press of Dallas on Friday, May 10, carried a news story of Federal Reserve Bank President R.R. Gilbert announcing a 15 per cent salary increase being granted by that bank to all of its employes, retroactive to May 1. Mr. Gilbert

was quoted as stating that such increase would apply to employes of the branch banks in El Paso, Houston and San Antonio. Interestingly enough, the Dallas Times on Friday, May 10, in its story relative to such increase, included the following comment: "The bank's executives continued Friday to decline to comment on whether the raise had any connection with disclosure of A.F. of L. organizational activities among the Dallas system's workers". The story in the Dallas Morning News added the following comment: "He (Gilbert) said the salary increase was approved last week".

In the announcement which the bank made to its employes under date of May 9, regarding the 15 per cent general increase, it pointed out that the Personnel Committee of the Board of Directors authorized such increase in a meeting held on May 3, for all employes of the bank. The announcement further indicated that such action was approved by the Board of Governors of the Federal Reserve System and ratified on May 9 by the Board of Directors of the Dallas Bank.

We are advised by our representative that very shortly after the announcement was made concerning the general 15 per cent increase for the Federal Reserve Bank workers, all of the commercial banks in Dallas and Fort Worth announced similar 15 per cent general increases to their employes. Under date of May 15, our general Vice President addressed a letter to President Gilbert of the Federal Bank, pointing out that as of that date we held signed membership application cards from a majority of the office and clerical workers in the bank and requested a conference with him relative to the establishment of our exclusive bargaining rights for such group. On May 24 our petition in this case was filed with your Fort Worth office and on the following day President Gilbert replied to our communication indicating that he could see no purpose in holding such a conference at this time.

The subject matter of our petition has since been receiving the attention of your Board relative to the question of jurisdiction of the Board over the employer involved. I might point out that during this interim it has been indicated to me by our Vice President on the basis of reliable reports to him that the Dallas Federal Reserve Bank since May 9 has granted free Blue Cross hospitalization to its workers and also that the bank has engaged in a program of hiring an additional complement of clerical workers which it is estimated will approximate 150 by July 1. We understand that these new hires are recent high school graduates and that they are questioned specifically as to their feelings with regard to union organization before they are accepted for employment. Such new hires are most unreceptive to organization and it has been impossible for our committeemen and members to get any of them to sign application cards.

You will also be interested in learning that it has been reported to us that many of the Dallas banks other than the Federal Reserve Bank have, within the past several weeks, either granted pension plans or announced that such plans were in the process of preparation and that the employes should be careful of voiding such proposed plans through their activities. One large Dallas bank has called employe meetings and its executives have given talks to the workers on why they should not organize and have emphasized to them

the old theme that individual initiative and the reward for loyal work will mean more to them in pay than organization can possibly obtain for them, and that if organization comes into their bank it will retard wage increases and other employment gains rather than to bring about more liberal employment conditions.

A further indication of the concern of the banks in the Dallas area over the possibilities of our successful organization of their workers is indicated by a report I received from our Vice President stating that he has been given oral notice by his landlord to move out of his apartment. His landlord who is the assistant cashier in one of the local banks, naively indicated that "his officers had directed him" to give Mr. Stafford notice to move. His landlord also indicated to him that it was his advice that Mr. Stafford leave Dallas because the banks were so against organization that they would not hesitate to do him personal harm, and that it was his opinion that regardless of where Stafford moved in the Dallas area he would be forced to leave after his occupation became known.

I have pointed the above matters out to you because it is my sincere feeling that one of the basic purposes of the National Labor Relations Act is to assure workers freedom in the exercise of their rights to self organization and collective bargaining through the agency of their own choice. The banks who are members of the Federal Reserve System and who operate within its Eleventh District constitute the full complement of stockholders of the Federal Reserve Bank of Dallas. The workers of these banks are cognizant of such ownership of the Dallas Federal Reserve Bank by their employers. The publicity given by the daily press to our successful organization of the clerical workers in the Federal Reserve Bank of Dallas has focused the attention of the bank workers in both the Dallas and Fort Worth communities on our pending case which has become the keystone of bank organization in the entire area.

On the basis of existing Board policy I believe there would be no question but that the Board would entertain and process any case filed by us involving the individual member banks of the Federal Reserve Bank of Dallas. Such member banks constitute the full complement of stockholders of the Federal Reserve Bank of Dallas. Each such bank, as a member of the Federal Reserve System, is subject to the controls of the Federal Reserve Act and its amendments. As the Board would recognize the Act as applying to each banking establishment which is a stockholder of the Federal Reserve Bank of Dallas, and as such banks collectively (through the election of two-thirds of the members of the Board) control the operational policies of the Federal Reserve Bank of Dallas within the limitations of the Federal Reserve Act, logically it would appear that the Board could exercise jurisdiction over such Federal Reserve Bank.

By virtue of the provisions in the Federal Reserve Act exempting the twelve district banks from all taxation except local property taxation, the employes of the Federal Reserve Bank of Dallas are barred from participation in the old age retirement program of the Social Security Act, and also from the benefits of the Texas Unemployment Compensation Act. At the same time these workers are not Government employes and cannot obtain the benefits of wage increases gained by Government workers through legislative enactments.

It is my considered opinion that there is no question but that your Board has every legal right to exercise jurisdiction over the Federal Reserve Bank of Dallas. The problem as I see it is not one of legal right to exercise jurisdiction, but rather one of administrative discretion and we recognize that under your statute the Board has broad administrative discretion in determining whether it desires to exercise jurisdiction in the instant case.

As spokesmen for the majority of the close to 600 office and clerical workers in the Federal Reserve Bank of Dallas, and also on behalf of the thousands of bank workers in the Dallas and Fort Worth areas, as well as on behalf of all office and clerical bank workers, including the close to 25,000 employed in the remaining eleven District Banks of the Federal Reserve System, we urge that the Board authorize the handling of this case.

Bank workers, including those involved in this case, have suffered tremendous hardships with the increases in living costs and the retention of salary schedules by their employers which are all out of line with the value of their services to the banks. These workers have not experienced the benefits of collective bargaining and the banking industry today is one of the few remaining large industries in this country still operating solely on a unilateral basis with regard to wages, hours and working conditions.

We realize that in considering this matter the Board must give due consideration to its budgetary limitations and the possibility of this case being litigated through the courts. In view of the basic considerations of the case, however, we believe that such expenditure as may be necessary in pursuing this matter to its ultimate successful conclusion will constitute a real worth while step toward bringing to the workers in the banking industry their rights to self organization and collective bargaining, and the removal of the inequality of bargaining power presently existing between individual and unorganized bank workers and the corporations which employ them.

Respectfully submitted,

PRH/rg

Paul R. Hutchings,
International President.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of	)	
	)	
FEDERAL RESERVE BANK OF DALLAS	)	
	)	
and	)	CASE NO. 16-R-1798
	)	
LOCAL UNION NO. 45, OFFICE EMPLOYES INTERNATIONAL UNION	)	
	)	
	)	

MEMORANDUM BRIEF ON BEHALF OF OFFICE EMPLOYES INTERNATIONAL UNION - RE QUESTION OF NATIONAL LABOR RELATIONS BOARD JURISDICTION OVER EMPLOYEES OF FEDERAL RESERVE BANKS.

A large majority of the employees of the Federal Reserve Bank of Dallas, Texas, have become members of Local No. 45 of the Office Employes International Union. Having been refused recognition by the bank officials, the Local filed a petition under Section 9 of the Act with the Sixteenth Regional Office in Fort Worth. A question has been raised as to whether the Board has jurisdiction over the Bank's employees, it being claimed that the Bank is an instrumentality of the United States and, as such, is exempt from the provisions of the Act under Section 2(2) excluding "the United States" from the definition of an "employer."

It is submitted that the employees of any of the various Federal Reserve Banks, as distinguished from employees of the Federal Reserve Board, are entitled to the benefits and the protections of the National Labor Relations Act, such banks clearly not being the United States or instrumentalities thereof. This conclusion is inescapable not only by reason of the provisions of the Federal Reserve Act itself but by reason of various decisions of the Circuit Court and of the Supreme Court of the United States.

The purpose and function of the Federal Reserve System established under the Federal Reserve Act is to provide a centrally regulated national banking system and as a means of exercising control over national fiscal policies to the end of prevent-

ing or lessening financial stringencies. See 7 Amer. Juris. 603. Under the Federal Reserve Act, 12 Federal Reserve Banks, located in various parts of the country, were created. In addition to acting in banking capacities for their member banks and to acting as government fiscal agents under the direction of the Federal Reserve Board, these banks are authorized to engage in a number of the usual activities of any commercial bank, including the making of loans on commercial, industrial or farm transactions. While the banks are under the general supervision of the Federal Reserve Board and at times are called upon to act as aides in carrying out the fiscal policy of the Federal government in the interest of the national economy, each bank is privately owned and privately operated for private profit. The stock of each Federal Reserve Bank is owned solely by private commercial banks; indeed, the Federal Reserve Act provides that such stock can be subscribed by and issued to the general public. The federal government owns no stock in any Federal Reserve Bank and subscribes or issues no funds to any Federal Reserve Bank except in return for services rendered, for which services it must pay just as any other customer of the Bank. Each Federal Reserve Bank is entirely self-supporting, that is, it receives no financial grants or allowances through Congressional appropriations or other Congressional action, and whatever profit is earned by the Bank in carrying out its banking functions inures to the private individuals or entities who own the stock, such profits being allowed up to a maximum of 6%, surplus profits being payable to the federal government as a franchise tax in lieu of all other forms of taxation except real estate taxes. The banks are operated by nine directors, three of whom are selected by the Federal Reserve Board, but six of whom are selected by the private banks owning stock in the Reserve Bank. These directors are empowered to and

do elect officers of the Reserve Bank and determine wages, hours and working conditions of the employees who are hired by the officers.

Employees of the Federal Reserve Banks, as distinguished from government employees, are not subject to the Civil Service laws and are not entitled to any of the various benefits and protections which are available to employees of the federal government. Most important, of course, is the fact that wage increases granted to employees of the Federal Reserve Banks would not require Congressional approval or need Congressional appropriations to make them effective as would be the case with government employees, and thus collective bargaining would not in effect be collective bargaining with the United States Congress as is, in the last analysis, collective bargaining by government employees.

While the compensation paid to any employee of a Federal Reserve Bank by its officers and directors is subject to approval by the Federal Reserve Board, this approval is forthcoming as a matter of course and each Bank has the widest latitude in determining the working conditions of its employees, there being no uniformity between employment conditions of employees in the various Federal Reserve Banks. Although, as before stated, the Federal Reserve Board does reserve general supervision over the Federal Reserve Banks, this supervision is no more than that exercised by state utility commissions over public utilities, or by the Federal Communications Commission over such a utility as Western Union, and there is no more reason to assert that the supervisory authority exercised by the Federal Reserve Board over Federal Reserve Banks in the interest of the national economy operates to make such banks instrumentalities of the United States than there is to say that the control exercised by the Federal Communications Commission over Western Union or the control exer-

cised by state utility commissions over utilities makes those utilities instrumentalities of the United States.

By the terms of the Federal Reserve Act, each Reserve Bank is an autonomous, self-governing institution, having its separate corporate existence with its own seal, and with the ability to sue and be sued in its own name and to make its own private profits for its private owners. The Act specifically provides that "The Board of Directors shall perform the duties usually appertaining to the office of directors of banking associations." Each bank is empowered to hire such employees as it deems necessary, "to define their duties . . . and to dismiss at pleasure such officers or employees."

Under all of the foregoing circumstances, it is difficult to conceive of any theory under which employees of the Bank can be considered employees of the United States Government.

Indeed, the Reserve Banks themselves do not consider that they are an instrumentality of the United States except in so far as they carry out certain fiscal policies necessary to the welfare of the national economy. In a book published by the Federal Reserve Bank of Richmond, entitled "Questions and Answers on The Federal Reserve System," the following appears:

> "11. Are the Federal Reserve Banks Government Institutions?
>
> "Since all the stock in the Federal reserve banks is owned by member banks, and since the majority of the board of directors of each Federal reserve bank are elected by member banks, Federal reserve banks are not under the control of the Government. They are required however to perform certain services for the Government, generally known as Fiscal Agency Operations (see Question No. 25), and these operations are closely supervised by the Federal Reserve Board." (page 9)

. . . . . .

"The Federal Reserve Board exercises general supervision over the Federal reserve banks; that is to say, through general oversight and inspection, it has the duty of seeing that the Federal reserve banks operate in accordance with the provisions of law, but it does not assume responsibility for the detailed management of the banks." (page 7)

. . . . . .

"19. How Are the Salaries of Officers and Employees of a Federal Reserve Bank Fixed?

"The salaries of the Chairman of the Board and Federal Reserve Agent and of Assistant Federal Reserve Agents are fixed by the Federal Reserve Board.

"The salaries of all other officers of a Federal reserve bank are fixed by the board of directors of the bank, and the salaries of other employees are fixed by the same board or by the executive committee with the approval of the board. All such salaries, however, are subject to the approval of the Federal Reserve Board, and each bank is required to make full reports to the Federal Reserve Board with reference to salary matters." (page 14)

In a series of articles written by Congressman Jerry Voorhis, of California, for the Workers' Education Bureau on the operation of the Federal Reserve System, article No. VI, entitled "Who Owns the Federal Reserve System?," states as follows:

"When the Federal Reserve Act was passed in 1913, a lot of people believed that the twelve central Federal Reserve Banks created by that Act were going to be government institutions. But they were not then made so and never have been. Every penny of stock in the Federal Reserve Banks belongs to the private member banks of the Federal Reserve System. In the words of the late Senator Glass of Virginia who, as author of the Federal Reserve Act, certainly should have known, "The Government does not own one dime of proprietary interest in the Federal Reserve Banks."

The Wage-Hour Division of the Department of Labor has formally ruled that "Federal Reserve Banks and their branches are not synonymous with the United States. That therefore their employees cannot be considered employees of the United States with-

in the meaning of the F.L.S.A." (Wage-Hour Manual, 1944-45 edition, pp. 113-114.)

Applicable court decisions are likewise conclusive on the question in favor of the contention made by the Union herein. In the Bank of America case (N.L.R.B. v. Bank of America, 130 Fed. (2d) 624), in which the jurisdiction of the Board over employees of national banks was determined, it was contended by the bank that it, as a national bank and acting as an agent of the federal government in various respects, was an instrumentality of the United States and hence not an employer under Section 2(2) of the Act. The Court replied to this contention as follows:

> "On this point it seems enough to observe that respondent is not within the terms of the exclusion. It is a privately owned corporation, privately managed and operated in the interest of its stockholders. United States Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Co., 275 U. S. 415, 416, 425, 48 S. Ct. 198, 72 L. Ed. 345. The United States did not create it, but has merely enabled it to be created. True, national banks are subject to strict regulation and supervision, but so are a host of other private enterprises. It is true, also, that national banks may at times be called upon as aids in carrying out the fiscal policies of the government, but their activities in these respects are occasional and incidental to the primary purpose of the individuals who organize them."

In United States v. Shipping Board Emergency Fleet Corporation v. Western Union Telegraph Company, 275 U. S. 415, the Supreme Court, speaking through Justice Brandeis, stated very specifically, albeit in dictum, as follows:

> "It is urged that if the Fleet Corporation is granted the government rate, it may likewise be claimed by every instrumentality of the government. Instrumentalities like the national banks or the federal reserve banks, in which there are private interests, are not departments of the government. They are private corporations in which the government has an interest."

The foregoing deliberate statement, made by a unanimous court, would seem to be conclusive on the present question. It would be

difficult to find more specific language.

In an earlier case, also involving the Fleet Corporation, (United States v. Strang, 254 U.S. 491), the Court held that the Fleet Corporation, although all of its stock was owned by the United States and although it exercised specific governmental powers and duties, was not an agent of the United States. The Court Stated:

> "The Corporation was controlled and managed by its own officers, and appointed its own servants and agents, who became directly responsible to it. Notwithstanding all its stock was owned by the United States, it must be regarded as a separate entity. Its inspectors were not appointed by the President, nor by any officer designated by Congress; they were subject to removal by the Corporation only, and could contract only for it. In such circumstances we think they were not agents of the United States within the true intendment of Sec. 41."

In Billings Utility Co. v. Advisory Committee, Board of Governors, 135 Fed. (2d) 108, the Eighth Circuit specifically held that the officers and employees of the Federal Reserve Banks are private employees and are not public officers.

In addition to the foregoing Court determinations, the following decisions of this Board indicate the propriety of assertion of jurisdiction over employees of Federal Reserve Banks.

In In the Matter of Joseph R. Gregory, 31 N.L.R.B. 71, the Board, in holding that it had jurisdiction over employees of an individual transporting mail under a contract with the United States Government, stated:

> "The respondent does not directly assert that he is the United States. He argues that he must be considered an 'agent' of the United States by virtue of the fact that he is engaged in what is termed a 'governmental function,' and he readily concedes that one who is not so engaged is an employer within the meaning of the Act even though he conducts his operations solely under contract with the Government. However relevant such distinctions may be in other fields of law, we think

> it clear that the remedial provisions of the Act, designed to protect and effectuate the national policy that employees shall have the right to self-organization and to collective bargaining with their employers, should not be suspended merely because an individual who has obtained a government contract in competitive bidding with other private individuals seeking profit from the performance thereof, is engaged thereunder in what has been termed a 'governmental function' in cases arising under other circumstances. The respondent argues that 'in the event the employees of the respondent organized for the purpose of securing higher wages then there would be no doubt but that payment of these wages would be ultimately borne by the United States.' While the Act, of course, only guarantees that employees shall have the right to bargain collectively concerning wages, the respondent's contention is equally applicable to all persons who, by contract with the Government, have undertaken to supply goods to or perform services for the Government. They, like the respondent, are engaged in business for profit, and it is manifest that they are not within any accepted definition of 'the United States.' Congress, in the various Civil Service, Classification and other Acts, has established provisions governing the conditions of employment in various branches and agencies of the Government. Employees of these bodies would, in the final analysis, have to seek adjustment of many matters properly the subject of collective bargaining from the Congress itself. The respondent's employees are not within the protection of these statutes; nor could the Post Office Department under the terms of the respondent's contract entertain requests for or bind the respondent in collective bargaining with representatives of the respondent's employees. These matters lie wholly within the determination of the respondent."

In the Salt River Valley Water Users' Association case, 32 N.L.R.B. 460, the Board held that a company operating a Federal Reclamation Project concerning which the United States exercised numerous visitatorial and regulatory powers was not an agent or instrumentality of the United States and that its employees were entitled to the protection of the Act.

In the Navy Yard Cafeteria case, 41 N.L.R.B. 1230, the Board held that an employer operating cafeterias in the United States Navy Yard in the District of Columbia, pursuant to a contract with the Commandant of the Navy Yard, was not an agent or instrumentality of the United States, and this even though all

cafeteria equipment was owned by the United States Government and all employees of the cafeteria were required to conform to Navy Yard regulations and were subject to the approval of the Commandant before they were hired, and could be summarily dismissed by the Commandant in his complete discretion. See also 45 N.L.R.B. 285, in which the Board held that the employees of the Department of Agriculture Welfare Association, operating cafeterias in the Department of Agriculture subject to the close control and supervision of the Secretary of Agriculture, were subject to the jurisdiction of the Act.

Finally, the Board is referred to the considerations advanced by Board Member Edwin F. Smith in his dissenting opinion in the Oxnard Harbor District case, 34 N.L.R.B. 1285, at 1291, in which Board Member Smith urged that, under the limited scope of the phrase "the United States, or any State or political subdivision thereof," the Board should not exclude employees even of governmental instrumentalities when such instrumentalities were engaged in non-governmental proprietary functions. Board Member Smith stated as follows:

> "The legislative history of the Act is silent on the precise meaning of the phrase 'the United States, or any State or political subsivision thereof.' However, it is pertinent to note that the bill proposed in 1934 excluded from the term 'employer' 'the United States, or any State, municipal corporation, or other governmental instrumentality,' which is a broader exclusion than the language in the Act 'the United States or any State or political subdivision thereof.' It is evident therefore that in narrowing the definition the intent of the Congress was also to narrow the exclusion of employers from the Act and it is reasonable to infer that Congress in using the terms 'State' and 'political subdivisions' had in mind the accepted meaning of the terms as limited to those functions which have been traditionally considered to be of a governmental nature. The operations of the District, in so far as the employees here involved are concerned, which operations are performed by private concerns in other ports on the Pacific Coast, are

> of a proprietary, non-governmental character. As to such operations the District should not be excluded from the term 'employer' in Section 2(2) of the Act. Its broad public policy and social objectives warrant a liberal construction of the Act and its application to employees of governmental instrumentalities engaged in non-governmental, proprietary functions. The necessity of exercising the rights of organizaing, bargaining collectively, and engaging in other union activities and the need for protection of such rights are as pressing in the case of such employees as they are in the case of employees of private employers. The rapid increase in the number of such instrumentalities and in the number of their employees and the necessity of and intent to afford such employees the benefits of the Act must have been in the contemplation of the Congress. Moreover, the Board in effectuating the policies of the Act has in the past taken jurisdiction over vessels owned by the Maritime Commission, but operated by private companies; over a corporation owned and controlled by and operated for the account of the United States, but engaged in business for profit; and over companies performing functions in connection with United States mail.
>
> "Such a construction and application of the Act is in accord with established traditions in both common law and constitutional law."

CONCLUSION

For the reasons hereinbefore set forth, it appears that there is no question but that the Board could, as a matter of law and if it so desired, proceed to entertain jurisdiction over Federal Reserve Banks and their employees. This being true, it is respectfully urged that the Board does assume such jurisdiction in the case involving the Dallas employees. Surely, the Board would perpetuate a grave injustice on these employees, ranking as they do among the most poorly compensated of any category of employee, if it denied them the one means whereby they can seek to better their working standards and, hence, living conditions.

Respectfully submitted,

_____

Joseph A. Padway,

_____

Herbert S. Thatcher,
Counsel for
Office Employes International Union.