

In the Matter of EARL McMILLIAN COMPANY, EMPLOYER and LODGE
744, DISTRICT 37, INTERNATIONAL ASSOCIATION OF MACHINISTS,
PETITIONER

Case No. 16-RC-221.—Decided February 14, 1919

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

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

1. The Employer, a Texas corporation with its principal office and plant located in Houston, Texas, is engaged in the business of reconditioning Ford engines, fuel pumps, carburetors, and distributors, exclusively for Ford dealers. The Employer operates under a franchise from the Ford Motor Company, covering the Houston territory, which comprises the southern half of Texas from the border of Louisiana to the border of Mexico at Del Rio, Texas. The Employer does business only with dealers located within the State of Texas. The reconditioning is conducted on an exchange basis, the dealer exchanging an old motor for each reconditioned motor.

New parts used by the Employer in reconditioning motors are purchased from a Ford Motor Company distributor located in Houston, Texas. Cleaning materials, grinding materials, tools, and machinery are purchased, for the most part, from distributors located in Houston, Texas. All the parts purchased from the Ford Motor Company, and most of the other materials, tools, and machinery purchased by the Employer are manufactured outside the State.

During the year 1947, the Employer made sales amounting to \$492,047, and purchases amounting to \$362,310.04, \$10,223.04 of

*Chairman Herzog and Members Houston and Murdock.

which were made directly from sources outside the State.¹ From January 1, 1948, to July 31, 1948, the Employer made sales amounting to \$515,740.12, and purchases amounting to \$250,796.78, \$9,569.98 of which were made directly from sources outside the State. During both the 1947 and the 1948 periods, the purchases made by the Employer from the Ford Motor Company distributor in Houston represented more than 60 percent in value of the Employer's gross purchases.

The Employer moved to dismiss the petition on the ground that its operations are essentially local in character and do not affect commerce within the meaning of the Act. The Employer's motion was based, in part, upon a ruling of the Wage and Hour Division of the Department of Labor that the Employer's shop employees, the employees herein involved, are not covered by the Fair Labor Standards Act. The application of that Act, however, is limited to employees "engaged in commerce or in the production of goods for commerce."² The Board's jurisdiction is not so limited, but extends to employers and employees whose operations "affect commerce." We find, contrary to the Employer's contention, that it is engaged in commerce within the meaning of the Act,³ and we shall therefore deny the Employer's motion to dismiss.

2. The labor organization named below claims to represent employees of the Employer.

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

4. The following employees of the Employer at its Hempstead Highway Plant in Houston, Texas, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

¹ The Employer sends connecting rods for reconditioning on an exchange basis to a company located outside the State of Texas. The figures set forth above as representing the Employer's out-of-State purchases cover payments for such reconditioning services as well as purchases made outside the State of plant machinery and equipment.

² 29 U. S. C. § 206, 207.

³ Cf. *Matter of Liddon White Truck Company, Inc.*, 76 N. L. R. B. 1181; *Matter of Puritan Chevrolet, Inc.*, 76 N. L. R. B. 1243.

If this were a matter of first impression, Chairman Herzog would not exercise jurisdiction in this case. He believes, however, that he is bound by the majority decision of the full Board in the *Liddon White* case, to which he dissented early in 1948. He considers the essential commerce facts and the character of the enterprise here to be indistinguishable as a practical matter from those passed upon in the earlier case. The Chairman believes that it would only serve to confuse the Board's Regional Offices, as well as employers and labor organizations in the automobile retail trade, to draw the distinctions suggested in the dissenting opinion.

All production and maintenance employees,⁴ including all employees engaged in the erection, installing, dismantling, and/or repairing of machinery, but excluding all other employees, guards, watchmen, office and clerical employees, professional employees, and all supervisors.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Lodge 744, District 37, International Association of Machinists.

MEMBER MURDOCK, dissenting:

I would dismiss the petition because I believe that the employer's operations are essentially local in character and that the effect on commerce is too slight for me to conclude that it would effectuate the policies of the Act to assert jurisdiction. The Employer's business is reconditioning old automobile motors which come from within the State and are sold within the State. This is plainly an enterprise which in its main aspects is entirely local in character, and applicable precedents would require dismissal.⁵ Except for a minute number

⁴ The parties stipulated that the following job classifications or employees in the following job classifications (but not necessarily limited to the following job classifications) are properly included within the meaning of "production and maintenance employees": valve assembly, porters, rod machine operators, engine assembly, parts men, boring bar operators, valve disassembly, block honing, rod cut-back, fuel pump assembly, steam cleaning, engine tester, cleaning department employees, carburetor assembly, valve machine operator, block repair, valve seat grinder, crankshaft grinding, valve assembly, bore bar operator, oil pump assembly, engine disassembly, C. S. grinder, distributor assembly, pin fitting, engine inspection, small parts disassembly.

⁵ *Matter of Richter Transfer Company*, 80 N. L. R. B. 1246; *Matter of Texas Construction Material*, 80 N. L. R. B. 1248.

purchased from sources outside the State, all the new parts used in reconditioning the motors are purchased from the stock of a Ford distributor within the State. The fact that these parts were originally manufactured outside the State does not change the essentially local character of the Employer's business.

I cannot agree with my colleagues that this case is controlled by *Liddon White Truck Company*⁶ and succeeding cases in which the Board has asserted jurisdiction over retail automobile dealers. In those cases, the Employer's main product—automobiles of substantial value—regularly came from without the State for retail distribution. There is no such flow of interstate commerce in the instant case, as the main product, reconditioned motors, comes from within the State and never leaves the State, and the new parts which are incidentally added in the process are almost entirely purchased from local stocks within the State.

⁶ 76 N. L. R. B. 1181.