

In the Matter of BREWER & BREWER SONS, INC., EMPLOYER and  
LAWRENCE STRATTON, VIRGIL DAVIS, JOE STANLEY, PETITIONERS and  
LOCAL UNION 143, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,  
UNION

*Case No. 9-RD-36.—Decided July 27, 1949*

## DECISION

AND

## ORDER

Upon a petition duly filed, a hearing was held before William A. McGowan, 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.<sup>1</sup>

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-member panel [Members Reynolds, Murdock, and Gray].

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

1. The Employer, an Ohio corporation, with offices at Chillicothe, Ohio, is engaged in the processing and sale of sand, gravel, asphalt, and ready-mixed concrete; it also sells building supplies, and maintains a road construction department,<sup>2</sup> the activities of which are confined to asphalt surfacing. The Employer uses some of the materials which it processes in its own road building operations.

In 1948, the Employer derived a gross income of approximately \$1,000,000 (including interdepartmental transfers amounting to about \$200,000) from its sales of processed materials and building supplies and from its road construction operations. The Employer processed

<sup>1</sup> United Construction Workers, affiliated with the United Mineworkers of America, moved to intervene at the hearing. As this labor organization is not in compliance with the filing requirements of Section 9 of the Act and has no contractual relationship with the Employer, the hearing officer correctly denied the motion. *Matter of Schutte & Koerting Company*, 79 N. L. R. B. 599.

<sup>2</sup> The Employer operates three separate processing plants, all near Chillicothe: one for processing sand and gravel, another for processing asphalt, and a third for processing ready-mixed concrete. These, with its building supply department, which is located at Chillicothe, and its road construction department, which operates within a radius of approximately 30 miles from Chillicothe, constitute the five separate internal divisions of the Employer's business.

no materials, made no sales, and carried on no road construction operations outside Ohio.

In 1948, the Employer made purchases of approximately \$500,000, of which approximately \$50,000 represents the purchase price of liquid asphalt shipped to the Employer from out-of-State points, and of which about \$100,000 represents the purchase price of trucks and vehicles bought from dealers in Ohio but manufactured outside that State.

In 1948, the Employer also conducted road building operations, consisting of asphalt surfacing, on main highways in Ohio, connecting Ohio with other States. These highways include U. S. 23, U. S. 35, and U. S. 50, part of the Federal-aid system of highways. This work was paid for by the State and by its political subdivisions.<sup>3</sup>

The Petitioners contend, and the Employer and the Union deny, that the Employer is engaged in commerce within the meaning of the Act.

Although we do not find that the Employer's operations are wholly unrelated to commerce, we believe that the assertion of jurisdiction in this case would not effectuate the policies of the Act. We shall therefore dismiss the petition.<sup>4</sup>

#### ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, the National Labor Relations Board hereby orders that the petition for decertification of representatives of employees of Brewer & Brewer Sons, Inc., filed herein by Lawrence Stratton, Virgil Davis, and Joe Stanley, be, and it hereby is, dismissed.

<sup>3</sup> The record does not disclose the proportion which such activities bear to the Employer's total business.

<sup>4</sup> *Matter of Makins Sand & Gravel Co., Inc.*, 85 N. L. R. B. 213, and cases therein cited. In view of the substantial out-of-State in-flow of liquid asphalt (\$50,000) which is one of the products sold by the Employer, Member *Murdock* would assert jurisdiction here consistent with the views expressed in his dissent in the *Makins Sand and Gravel* case. Moreover, he is not disposed wholly to disregard the work of resurfacing U. S. highways as affecting interstate commerce, although it would not be necessary to rely also on that activity to take jurisdiction. He feels bound by the decision of the majority in the *Makins Sand and Gravel* case (which had an even larger inflow of materials for resale) however, and therefore joins in this decision.