

In the Matter of MID-Co GASOLINE COMPANY and INTERNATIONAL
ASSOCIATION OF MACHINISTS

Case No. 16-C-1468

SUPPLEMENTAL FINDINGS
CONCLUSIONS AND RECOMMENDATION

October 10, 1949

On July 30, 1948, the National Labor Relations Board, herein called the Board, issued a Decision and Order in this case,¹ in which it found that Mid-Co Gasoline Company, herein called the Respondent, had engaged in and was engaging in certain unfair labor practices affecting commerce, and ordered the Respondent to cease and desist therefrom and take certain affirmative remedial action.

The Board thereafter petitioned the United States Court of Appeals for the Fifth Circuit to enforce its order against the Respondent. On February 16, 1949, the court handed down its opinion, remanding the case to the Board for "the taking of such further evidence as is available and relevant" with respect to the Respondent's business; and directed the Board "to make further findings of fact and conclusions of law thereupon."²

On April 13, 1949, the Board issued an order reopening the record, remanding the proceeding to its Regional Director for the Sixteenth Region for the purpose of conducting a hearing to receive further evidence in accordance with the court's opinion, and authorizing the Regional Director to issue a notice of such further hearing. The Regional Director issued a notice of hearing on May 3, 1949.

On June 10, 1949, all the parties to this proceeding, being desirous of obviating the necessity of a formal hearing, entered into a stipulation of fact and agreed that the Board may make such findings as it deems necessary and justified by the record previously made herein and on the aforesaid stipulation. The parties expressly waived any right to any further hearing before the Board. The stipulation is hereby accepted and made a part of the record herein.

¹ 78 N. L. R. B. 740.

² 172 F. 2d 974.

86 N. L. R. B., No. 62.

Pursuant to the remand by the United States Court of Appeals for the Fifth Circuit and upon consideration of the entire record in the proceeding, the Board makes the following:

SUPPLEMENTAL FINDINGS

With respect to the factors on which additional evidence was served, the record shows:³

1. Lone Star uses dry natural gas and casinghead gas, as well as residue gas, in its operations. All three types of gas are interchangeable and commingled, no particular type of gas being necessary for Lone Star's operations. During the year 1946, Lone Star sold to consumers in Dallas, Texas, 16,797,847 M cubic feet of all types of gas, of which amount 5.04 percent was delivered by Mid-Co. During the year 1946, Mid-Co sold 2,018,601 M cubic feet of gas to Lone Star, of which amount 38 percent was used by Lone Star for Dallas consumers and the remaining percentage was used elsewhere in Texas.

2. On a daily basis, the capacity of Lone Star's pipe lines from the Cayuga Field⁴ to Dallas is 165,552 M cubic feet. On a similar basis, 251,926 M cubic feet of gas is available in the Cayuga Field.

3. On a daily basis, 5,311 M cubic feet of gas is deliverable by Mid-Co through existing connections to Lone Star's pipe lines.

4. All gas delivered by Lone Star to industrial consumers in Dallas is a combination of two or more types of gas. If Mid-Co ceased its operations, Lone Star could secure an adequate substitute of gas from Texas sources without interference with the practical, reasonable, and economical operation of its business. Lone Star's available supply in the Cayuga Field, during the year 1946, could have been decreased by 86,374 M cubic feet before it would have experienced interference with

³ In our prior Decision and Order (78 N. L. R. B. 740), the Board found as follows:

Mid-Co Gasoline Company, a Texas corporation, operates at Malakoff, Texas, a natural gasoline plant and a small refinery which process natural gas into natural and white gasoline, butane, kerosene, kerosene distillate, fuel oil, and residue gas. The Employer annually purchases raw materials valued at over \$100,000 from various oil and gas producers, all located within the State of Texas. It annually sells and delivers over \$300,000 worth of refined products to petroleum and refining companies within the State, which companies, in turn, sell said products locally. During a similar period, it sells a small portion of residue gas to the Athens Natural Gas Company, which supplies the fuel gas needs of the town of Athens, Texas; in addition, it delivers the remainder of the residue gas to pipe line gathering system of the Lone Star Gas Company, a public utility company which is itself engaged in interstate commerce. During the year 1946, the Lone Star Gas Company purchased from the Employer 2,018,601 cubic feet of residue gas, valued at over \$100,000. This gas, which was thus intermingled with gas purchased from refiners, was sold by the Lone Star Gas Company in the city of Dallas, Texas, to interstate carriers, and to other consumers, whose operations admittedly affect interstate commerce.

The record in that proceeding also showed that aside from the Cayuga Field, where the Respondent's plant is located, Lone Star also obtained gas from a source of supply in the State of Oklahoma.

⁴ Mid-Co's operations are in the Cayuga Field. The record also refers to Mid-Co's operations as the Malakoff Field. Malakoff, Texas, is the post-office address of Mid-Co.

the practical, reasonable, and economic operation of its business. Other gas is available in the Cayuga Field in sufficient quantities to replace the gas received from Mid-Co, "and nothing would be required of Lone Star to obtain such additional supply other than the opening of valves to allow the gas to flow into its gathering system in the Cayuga Field."

5. The pipe lines through which Mid-Co obtains its supply of natural gas and through which it delivers its residue gas to Lone Star are not owned or controlled by Lone Star, and such lines would not be available to Lone Star in the event Mid-Co ceased operations.

6. (a) During 1946, the total sales by Lone Star to all of its consumers in Dallas amounted to \$6,829,532, of which amount \$224,710, or 3.3 percent, represented sales to 12 specific consumers engaged in businesses affecting interstate commerce.

(b) During 1946, the total sales by Lone Star to all its consumers in the State of Texas amounted to \$24,494,585, of which amount 0.92 percent (ninety-two hundredths of 1 percent) represented sales to the 12 specific consumers.

(c) There is no evidence to show what "proportion of the sale of gas [by Lone Star] to interstate consumers within the city of Dallas bore to the total gas received during the same period of time from the State of Oklahoma."

7. (a) During 1946, in the absence of the supply of gas furnished by Mid-Co, Lone Star had sufficient gas lines running from Cayuga Field to Dallas, together with lines supplying gas from other sources, to have met the requirements of its Dallas customers.

(b) During 1946, there was no difference between the cost per M cubic feet of gas supplied by Mid-Co and gas supplied from other sources within the Cayuga Field.

8. Of Lone Star's gas requirements in 1946 for Dallas users, 4.97 percent was received from Oklahoma; 27.19 percent from Cayuga Field, exclusive of Mid-Co; and 5.04 percent from Mid-Co. The remainder of the gas supplied to Dallas users was produced from other sources in Texas.

9. (a) During 1946, the average cost to Lone Star of gas received from Oklahoma was 5.18 cents per M cubic feet in the field, and the cost of gas received from Mid-Co was 6 cents per M cubic feet at the plant.

(b) If Mid-Co should cease its operations, it would not be possible for Lone Star to call more heavily on the Oklahoma supply of gas, because all of the Oklahoma gas is now being transported.

Conclusions

We are here concerned with the effect of the Respondent's intrastate residue gas operations on interstate commerce, as defined by the Act.

Under existing circumstances, a stoppage of the Respondent's gas production would directly and immediately increase over 5 percent the amount of gas needed by Lone Star from other sources for distribution to its Dallas consumers, including the Western Union Telegraph Co., certain interstate railroad carriers, and 12 named industrial users whose businesses affect commerce within the meaning of the Act. In view of the fact that the Respondent regularly supplies a portion of the gas used and needed by business affecting interstate commerce and that the Respondent's contribution to the supply enables these businesses to operate and function in their normal manner, we find that a labor dispute at the Respondent's plant would affect commerce.

In determining whether or not this effect on commerce is substantial enough to warrant application of the Act, we have considered the fact that the Respondent's contribution to the total gas supply is relatively small. However, since under existing circumstances the Respondent's contribution, whether it be small or large, is necessary to fulfill the gas requirements of business affecting commerce, we find that the Respondent's business substantially affects commerce. In any event, the effect of the Respondent's unfair labor practices on interstate commerce "is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others . . . , the total incidence of which, if left unchecked may well become far-reaching in its harm to commerce."⁵

This principle is particularly applicable here, where we are seeking to protect businesses affecting interstate commerce from injury resulting from a stoppage or diminution of their normal gas requirements, which are satisfied by the pooling of gas from a number of suppliers. In our opinion, for purposes of the Act, it makes little difference whether, for physical or economic reasons, Lone Star obtains its gas from a number of different suppliers, like the Respondent, or from a single supplier. The business of supplying gas to Lone Star, regardless of the number of entities involved and the proportion supplied by each, must be viewed as a single integrated operation. To protect the commerce which is substantially affected by the total supply of gas, we find it necessary to assert jurisdiction over the labor dispute with the Respondent, whose contribution to the total supply of gas is representative of other suppliers. Otherwise, if Lone Star obtained its supply of gas rateably from 20 different small suppliers like the Respondent and the contribution of each were deemed trivial in isolation, the entire supply of gas could be obstructed by separate

⁵ *Polish National Alliance v. N. L. R. B.*, 322 U. S. 643, 648.

labor disputes among its suppliers and the resultant effect on commerce would remain unremedied.

Moreover, we are convinced that the assertion of jurisdiction over the Respondent would tend to assure the continuity of operation of other suppliers to Lone Star. The record shows that the Respondent as well as other suppliers operate in the Cayuga oil field. It therefore follows that all employees in that field have a close community of interest with respect to wages, hours, and working conditions. Experience has demonstrated that strikes are frequently spontaneous and contagious and it is reasonable to believe that under the circumstances here present a strike or labor dispute at the Respondent's operation, arising over its refusal to bargain, could well lead to similar disturbance at the Cayuga operations of other Lone Star suppliers.⁶

Finally, we have considered the conclusionary testimony that in the event the Respondent ceased supplying gas, Lone Star could secure an equivalent supply from other sources in the Cayuga Field by opening its valves. In this connection it is noted that the record fails to disclose the relationship of this substitute gas supply to other gas which flows in commerce or to other businesses affecting commerce. In any event, it is well settled by the highest authority that the availability of a substitute arrangement is not material, as a matter of law, to the issue of jurisdiction.⁷ Lone Star, in the operation of its business affecting commerce, has determined that its supply of gas could best be obtained in part from the Respondent and "any outside act that would compel [it] to change [its] mode of operation would affect such business."⁸

On the basis of the entire record, we find that the Respondent's unfair labor practices affect commerce within the meaning of the Act and that it would best effectuate the policies of the Act to assert jurisdiction in this case.

RECOMMENDATION

The National Labor Relations Board respectfully recommends to the United States Court of Appeals for the Fifth Circuit that the Board's Order of July 30, 1948, be enforced.

MEMBERS MURDOCK and GRAY took no part in the consideration of the above Supplemental Findings, Conclusions, and Recommendation.

⁶ See *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 42.

⁷ *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318, 326; *J. L. Brandeis and Sons v. N. L. R. B.*, 142 F. 2d 977, 980 (C. A. S.), cert. denied 323 U. S. 751.

⁸ *Pueblo Gas and Fuel Co. v. N. L. R. B.*, 118 F. 2d 304, 306.