In the Matter of McMAHAN'S OF SANTA ANA AND LYNWOOD, SOMETIMES KNOWN AS McMAHAN'S FURNITURE STORES, RESPONDENT *and* NEW FURNITURE AND APPLIANCE DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 196, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, UNION

Cases Nos. 21–CA–555 and 21–CA–556.—Decided October 20, 1950

DECISION AND ORDER

On June 26, 1950, Trial Examiner William E. Spencer issued his Order, a copy of which is attached hereto, dismissing the amended complaint in the above-entitled proceeding, on the ground that the Respondent's business is essentially local in character; and that the assertion of jurisdiction over the Respondent would not effectuate the policies of the National Labor Relations Act. Thereafter, the General Counsel filed his request for a review of the Trial Examiner's Order and exceptions thereto, and the Respondent filed a brief and reply brief to the General Counsel's request for review.[1]

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 [Chairman Herzog and Members Reynolds and Murdock].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Order, the General Counsel's exceptions thereto, the Respondent's briefs, and the entire record in this case, and hereby adopts the findings and Order of the Trial Examiner with the following addition.

The Respondent operates an intrastate retail chain of four furniture stores. All of its sales are made locally. Inasmuch as its annual direct out-of-State purchases are less than $500,000[2] in value, and its indirect annual out-of-State purchases are less than $1,000,000[3]

[1] The Respondent's request for oral argument is denied as the record and briefs adequately present the positions of the parties.

[2] Cf. *Federal Dairy Co., Inc.*, 81 NLRB 638.

[3] Cf. *Dorn's House of Miracles, Inc.*, 91 NLRB 632.

in value,[4] we find that it would not effectuate the policies of the Act to exercise jurisdiction over the Respondent's operations. Accordingly, we shall dismiss the complaint herein.

ORDER

It is hereby ordered that the complaint herein be, and it hereby is, dismissed in its entirety.

ORDER DISMISSING COMPLAINT

Upon amended charges duly filed, the General Counsel of the National Labor Relations Board issued a complaint dated March 15, 1950, in the above-entitled matter. The Respondent filed an answer denying jurisdiction and the commission of the alleged unfair labor practices.

Pursuant to notice a hearing was held on April 18, 19, 20, and 24, 1950, and May 23 and 24, 1950, at Los Angeles, California. All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant and material evidence, to argue the issues orally, and to file briefs and/or proposed findings of fact and conclusions of law. The General Counsel and the Respondent, respectively, filed briefs.

At the hearing the Respondent moved to strike the testimony of three named witnesses insofar as it was related to the business of nonrespondent companies, and ruling was reserved thereon. This motion is now granted except insofar as the testimony of the witnesses was related to the common use of advertising mediums by the Respondent and the aforesaid nonrespondent companies. In view of the findings made below it is not necessary, at this time, to rule on Respondent's motion to dismiss the 8 (a) (5) allegations of the complaint. Respondent's motion to dismiss the complaint on jurisdictional grounds, upon which ruling was reserved at the hearing, is now granted for reasons stated below.

The Respondent, a California corporation, operates four retail stores located, respectively, at Lynwood, Maywood, Bell, and Bell Gardens, in Los Angeles County, California, and one store at Santa Ana, Orange County, California. The Lynwood, Maywood, Bell, and Bell Gardens stores are located within the metropolitan Los Angeles area, and are relatively close to each other. The Maywood store is located about one-half mile from the Bell store, 1½ miles from the Bell Gardens store, and 6 miles from the Lynwood store. The Santa Ana store is located 25 miles away from the nearest store in this group.

During the 12-month period from March 1, 1949, through February 1950, the Respondent's total purchases were approximately $995,665. During the calendar year 1949, Respondent purchased approximately $161,141 in value of products which originated outside the State of California. Of this amount, $19,319 in value of products were purchased from sellers located outside the State of California and shipped directly from points outside California to Respondent's stores in California; merchandise valued at $14,182 was purchased through

[4] Nor do the combined direct and indirect out-of-State purchases satisfy the Board's minimal jurisdictional standard. See *The Rutledge Paper Products, Inc.*, 91 NLRB 625.

distributors located within California but shipped directly to Respondent's stores in California from points outside the State; and the remainder was delivered to Respondent from distributors' local warehouses.

The Respondent sells, among other things, nationally advertised brands of appliances, radios, television sets, and furniture, such as Emerson, Zenith, General Electric, Admiral, Bendix, Philco, Sunbeam, Hoover, Teletone, Thor, Simmons, Baby-Line, Bigelow-Sanford, Easy, Virtue Brothers, and Balboa Pacific Company products. Certain of these nationally advertised products are sold by Respondent under retail dealer agreements, servicing dealer franchises, or dealer authorizations. These franchises or dealer agreements are not exclusive, provide very little control over the Respondent's merchandising of the products, and cover such matters as allotments and deliveries, permission to use trade marks and trade names, sales promotion programs, advertising campaigns, protection afforded Respondent against defects in the products, commitments by Respondent as to marketing, advertising, servicing, price ranges, and kindred matters. All such agreements are terminable at will or on very short notice.

In the course and conduct of its business the Respondent utilizes as advertising media, local radio, television, and newspaper facilities. On occasion, Respondent advertises jointly with other California retail furniture stores bearing the name, "McMahan's Furniture Stores," and shares proportionately in the costs thereof. Newspaper advertising by the Respondent is placed in Los Angeles newspapers of general circulation and local community newspapers. This advertising, on occasion, is set up and paid for, partially or wholly, by the company distributing or producing the nationally advertised product named in the advertising matter. This type of advertising includes advertisements for Philco, Emerson, General Electric, Zenith, and Teletone products, among others.

All of Respondent's sales are made within the State of California.[1]

Because of its direct out-of-the-State purchases as well as its purchases of products which originate outside the State of California, it is clear, and is found, that the Respondent is engaged in commerce within the meaning of the Act. The Board does not, however, assert jurisdiction in every case where its jurisdiction lies. If the business is peculiarly or predominantly local in character, the Board may, as a matter of policy, decline to assert jurisdiction. While the issue is a fairly close one here, it is believed that the Board's policy, as defined in a long line of cases, excludes the exercise of jurisdiction in this case.

The Respondent operates a chain of five retail furniture stores, none of which is located outside the State of California. Therefore, there is no interstate exchange of goods, services and communications between the several stores such as is normally found in chain stores which are operated in two or more States and over which the Board has consistently exercised its jurisdiction. The Board has declined to exercise its jurisdiction in cases involving intrastate chains of grocery stores,[2] clothing stores,[3] drug stores,[4] and various other retail establish-

[1] Findings on commerce are based upon a stipulation of the parties or credited testimony, and, with minor exceptions, duplicate the proposed findings contained in the General Counsel's brief. The undersigned declines to take official notice of *Moody's Manual of Investments,* as requested by the General Counsel, and hereby rejects the General Counsel's offer of certain excerpts from this publication marked for identification as General Counsel Exhibit No. 10.

[2] See *Hom-Ond Food Stores, Inc.,* 77 NLRB 647, involving a chain of 13 retail grocery stores.

[3] See *Fashion Fair Shops and Millan Shop,* 88 NLRB 1512, involving a chain of five retail clothing stores; also, *Squire's, Inc.,* 88 NLRB 8, involving three men's clothing stores.

[4] See *Haleston Drug Stores,* 82 NLRB 1264, involving a chain of four drug stores.

ments,[5] though the direct interstate shipment of goods involved greatly exceeded like shipments in the case at bar. Of a total of $995,665 of purchases made by the Respondent during a representative year, only $161,141 in value was for merchandise originating outside the State. Of this amount, direct shipments to Respondent's stores amounted to only $33,501 in value. These amounts, of course, do not fall within the *de minimis* doctrine but are indicative of the slight degree to which interstate operations would be affected by a dispute involving one or more of Respondent's stores. It is common knowledge that nationally advertised brands of merchandise are now sold in retail grocery, clothing and drug stores, and therefore the fact that the Respondent buys and sells electrical appliances and other products which are nationally advertised is not sufficient to distinguish its operations from those of establishments over which the Board has declined to assert its jurisdiction.

Of the cases in which the Board has exercised jurisdiction, perhaps the closest in kind to the operations here involved, are the department store cases. However, department stores over which the Board has exercised jurisdiction normally receive a much higher percentage of their merchandise directly through channels of interstate commerce, make substantial shipment of goods to customers outside the State, and, in some cases, are integrated to a substantial degree in a national organization.[6] It is not believed that the volume of interstate transactions is substantial enough here to overcome the essentially local character of Respondent's operations.

The General Counsel further relies on cases involving franchised automobile dealers over whom the Board normally exercises jurisdiction.

It is true that the Respondent sells certain nationally advertised products under franchises or dealer agreements, but these agreements are not exclusive and impose but slight control over Respondent's merchandising of the products. Unlike the automobile dealer who normally handles only one make of car under a direct factory dealer franchise, the Respondent handles many nationally advertised products, most of which are purchased through local dealers, and these represent but a fractional part of its total business. Clearly, an interruption in Respondent's operations would have but indirect and slight effect on interstate shipments of these nationally advertised products. And, as already noted, it is common knowledge that the same, or other nationally advertised merchandise, is handled by small as well as large retail establishments throughout the country. In short, if the merchandising of nationally advertised products under dealer agreements such as exist in the case at bar, were to be made the criterion, the exercise of the Board's jurisdiction would soon extend to multitudinous retail establishments of the corner grocery store variety.

These, then, are the factors which persuade the undersigned that the Board will not, as a matter of policy, exercise jurisdiction over an intrastate chain of retail furniture stores whose business is predominantly and essentially local in character. Accordingly,

IT IS HEREBY ORDERED that the complaint be dismissed in its entirety.

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[5] See *Quigleys Department Store No. 3*, 89 NLRB 381, involving a chain of seven 5 & 10 stores in Los Angeles county.

[6] See *May Department Stores Company*, 326 U. S. 376; *Parks-Belk Company of Elizabethton*, 77 NLRB 429; *Sam's, Inc.*, 78 NLRB 826; *Block and Kuhl Department Stores*, 83 NLRB 419. In *The P. B. Magrane Store, Inc.*, 84 NLRB 345, all sales were local, but 50 percent of the purchases represented shipments in interstate commerce.

Any party may obtain a review of the foregoing Order, pursuant to Section 203.27 of the Rules and Regulations of the Board, by filing a request therefor with the Board, stating the grounds for review, and immediately upon such filing serving a copy thereof on the Regional Director and the other parties. Unless such request for review is filed within ten (10) days from the date of this Order of dismissal, the case shall be closed.