

In the Matter of MacFarlane's Candies and Retail Clerks Union,
Local 197, of San Joaquin County, Affiliated with Retail Clerks
International Association, AFL

Case No. 20-CA-311.—Decided October 25, 1950

DECISION AND ORDER

Upon an amended charge filed by Retail Clerks Union, Local 197, of San Joaquin County, affiliated with Retail Clerks International Association, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director of the Twentieth Region (San Francisco, California), issued a complaint dated June 22, 1950, against MacFarlane's Candies, Oakland, California, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices¹ affecting commerce within the meaning of Section 8 (a) (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and charge were duly served upon the Respondent.

On July 31, 1950, the Respondent filed its answer, denying the commission of any of the alleged unfair labor practices. On August 14, 1950, the Respondent filed its motion to dismiss the complaint upon the grounds that its operations do not affect commerce within the meaning of the Act.

Pursuant to notice, a hearing was held on August 15, 1950, at San Francisco, California, before Thomas S. Wilson, the Trial Examiner designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were represented by counsel at the hearing. The Trial Examiner received in evidence the complaint, answer, motion to dismiss, and other formal documents in the case, oral and written stipulations and documentary evidence concerning the effect of the Respondent's operations upon commerce. All parties were afforded full opportunity to be heard and to introduce evidence bearing upon the issue of the Board's jurisdiction over the

¹ The unfair labor practices are alleged to have occurred at the Employer's Stockton, California, store.

Respondent's operations. The Trial Examiner received no evidence as to the merits of the unfair labor practice charges. He heard oral argument upon the Respondent's motion to dismiss and sustained the motion.

Thereafter the General Counsel filed a request for review of the Trial Examiner's dismissal of the complaint, and a brief in support of his request for review. The Respondent filed a brief in opposition to the General Counsel's request for review. The Board² has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the General Counsel's request for review, the briefs filed, and the entire record in the case, and hereby denies the General Counsel's request that the ruling of the Trial Examiner dismissing the complaint be set aside, and makes the following:

FINDINGS OF FACT

The Business of the Employer

The Employer, a California corporation, is engaged in the manufacture and sale of candy and salted nuts. It maintains its principal office and manufacturing plant in Oakland, California, and a branch office and manufacturing plant in Los Angeles, California. In connection with its operations, the Employer owns and operates 31 retail candy stores throughout the State of California. During the year 1949 the Employer's purchases of raw materials, and supplies, from direct and indirect sources outside the State of California, were approximately \$393,000. During the same period, gross sales of the Employer were approximately \$2,500,000, of which \$3,200 was made to distributors in the State of Arizona, and an additional \$4,000 was made to out-of-State purchasers on individual mail requests.

Inasmuch as neither the Employer's annual out-of-State purchases nor its annual out-of-State sales, either direct or indirect, nor any combination thereof, meet the minimum standards recently enunciated by the Board,³ we find that it would not effectuate the policies of the Act to assert jurisdiction herein.⁴ Nor is a different conclusion war-

² 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].

³ See *Federal Dairy Company, Inc.*, 91 NLRB No. 107; *Stanislaus Implement and Hardware Co., Ltd.*, 91 NLRB No. 116; *Hollow Tree Lumber Company*, 91 NLRB No. 113; *The Rutledge Paper Products, Inc.*, 91 NLRB No. 115.

⁴ We find without merit the General Counsel's contention that the Board does not have discretion in the exercise of its jurisdiction over an employer once a complaint has issued. See *H. W. Smith, d/b/a A-1 Photo Service*, 83 NLRB 546; *Arthur D. Thompson, d/b/a Cream Top Dairy*, 83 NLRB 738; *Lewis Brothers Bakeries, Inc.*, 86 NLRB 1326.

ranted by the fact that the Employer has engaged in multiemployer bargaining on a distinct area basis where, as here, no other employer is involved, and the multiemployer group, even assuming that it is engaged in commerce,⁵ is not a party to the proceeding, and has not bargained on a multiemployer basis for the store at which the unfair labor practices are alleged to have occurred.⁶ Accordingly, we affirm to the Trial Examiner's dismissal of the complaint and deny the General Counsel's request that his ruling be reversed.

ORDER

It IS HEREBY ORDERED that the complaint against MacFarlane's Candies, Stockton, California, be, and it hereby is, dismissed.

⁵ The record does not establish that the other members of the multiemployer group are engaged in commerce to an extent that would warrant the Board's assertion of jurisdiction over the group as a whole.

⁶ Cf. *Carpenter and Skaer, Inc.*, 90 NLRB 417.