

2. By discriminating in regard to the hire and tenure of employment of Earl Strong, Orville Cave, Howard Norris, and Robert W. Adams, thereby discouraging membership in International Woodworkers of America, CIO, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3 By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act

[Recommended Order omitted from publication in this volume]

PAUL W. SPEER, INC. and PAUL ESPARZA

INTERNATIONAL HOD CARRIERS' AND COMMON LABORERS' UNION OF AMERICA, LOCAL 300, AFL, AND LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL and PAUL ESPARZA. *Cases Nos. 21-CA-844 and 21-CB-276. May 4, 1951*

Decision and Order Remanding Cases

On January 30, 1951, Trial Examiner James R. Hemingway dismissed from the bench the consolidated complaints in the above cases. To the extent herein material, the Board 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 Trial Examiner's order, the General Counsel's request for review, the Respondent Union's brief, and the applicable portion of the record in these cases, and makes the following findings.

The Trial Examiner concluded that while the operations of Respondent Speer¹ were substantial and not wholly unrelated to interstate commerce, it would not effectuate the policies of the Act to assert jurisdiction. During 1950 Speer was engaged in construction operations valued at \$280,000 for General Paint Company, an interstate corporation selling more than \$500,000 worth of goods out of State. The Trial Examiner decided that this fact did not bring Respondent Speer within the rule of the *Hollow Tree*² case, because the enterprise was not "customarily or regularly furnishing goods or services to a corporation engaged in interstate commerce."

We do not agree with the Trial Examiner that an employer must *customarily and regularly* furnish goods to an interstate corporation

¹ At the hearing Paul W. Speer, an individual, was joined as respondent

² In *Hollow Tree Lumber Company*, 91 NLRB 635, the Board decided that it would assert jurisdiction over any enterprise which furnishes goods or services valued at \$50,000 essentially proscribed by the Act in the course of their employment *Newspaper and Mail Deliverers* at \$25,000

to come within the rule of the *Hollow Tree* case. As the nature of a contractor's business is generally sporadic, such a test would tend to confuse application of the rules for asserting jurisdiction.

The Respondents contend that the Board should dismiss the complaint because the alleged unfair labor practices occurred in connection with a purely local construction job, which, by itself, has no effect on interstate commerce. We find no merit to this contention, as we believe that in the construction industry, as in others,³ the Board should determine jurisdiction based on the over-all operations of the employer.⁴

We accordingly find that Respondent Speer is engaged in commerce within the meaning of the Act, and that, because Respondent's services to an interstate enterprise exceed the amount specified in the *Hollow Tree* decision, it would effectuate the policies of the Act to assert jurisdiction in order to resolve the substantive issues raised by the complaints.

Order

IT IS HEREBY ORDERED that the order of the Trial Examiner dismissing the complaints be, and it hereby is, reversed; and

IT IS FURTHER ORDERED that the above-entitled Cases Nos. 21-CA-844 and 21-CB-276, be, and they hereby are, remanded to the Trial Examiner for appropriate action, including preparation and issuance of an Intermediate Report, setting forth his findings of fact, conclusions of law, and recommendations with respect to the unfair labor practices alleged in the complaints.

³ *Von's Grocery Company*, 91 NLRB 504; *Federal Stores Division of Spiegel, Inc.*, 91 NLRB 647.

⁴ *West Virginia Electric Corporation*, 90 NLRB 526 (to which Chairman Herzog and Member Reynolds separately dissented) decided prior to the *Hollow Tree* case, is overruled insofar as it is inconsistent with this decision.

LEIGHTON FURNITURE CORPORATION¹ and UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL, PETITIONER. *Case No. 4-RC-1019. May 4, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Harold Kowal, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as amended at the hearing.