

4. Respondent did not discriminate against Earlene Rochester, nor did it fail or refuse to reinstate said Earlene Rochester to her former position in violation of Section 8 (a) (3) of the Act.

[Recommended Order omitted from publication in this volume.]

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HOWARD W. SAVELAND AND THELMA B. SAVELAND, COPARTNERS, DOING BUSINESS AS PACIFIC WOODCRAFT *and* UNITED FURNITURE WORKERS OF AMERICA, LOCAL 576, CIO. *Case No. 21-CA-720. June 28, 1951*

### Decision and Order Dismissing Complaint

On June 1, 1951, Trial Examiner Robert L. Piper issued an Order (a copy of which is attached hereto) granting the Respondents' motion to dismiss the complaint in the above-entitled proceeding, on the ground that the assertion of jurisdiction would not effectuate the policies of the Act because the Respondents' operations fail to satisfy the Board's minimum requirements. Thereafter, Furniture Workers, Upholsterers and Wood Workers Union, Local 576, Independent, alleged successor to the charging union, filed a "Motion for Review of Order Dismissing Complaint," in which it does not dispute the Trial Examiner's commerce findings but urges nevertheless that the Board should assert jurisdiction.

To the extent here material, the Board<sup>1</sup> 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 issued by the Trial Examiner, the motion for review of that Order, and the entire record in the case, and hereby adopts the findings and conclusions of the Trial Examiner.

### Order

IT IS HEREBY ORDERED that the complaint issued herein against the Respondents, Howard W. Saveland and Thelma B. Saveland, co-partners doing business as Pacific Woodcraft, be, and it hereby is, dismissed.

### Order

Charges having been duly filed in the above-captioned case, and a complaint and notice of hearing having been issued on June 26, 1950, by the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region;

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

An answer having been filed by the Respondents;

A hearing having been held in Los Angeles, California, on August 8 and 9, 1950, before the undersigned Trial Examiner, and evidence having been received on all issues raised in the pleadings;

A motion having been made at the close of the hearing by the Respondents for dismissal of the complaint, and ruling upon said motion having been reserved;

Briefs having thereafter been received;

An order having been issued January 24, 1951, by the undersigned granting the motion to dismiss the complaint, after consideration of the briefs and the entire record, because the assertion of jurisdiction would not effectuate the policies of the National Labor Relations Act;

The Board, upon the General Counsel's request for review of the order dismissing the complaint and upon the motion of Furniture Workers, Upholsterers and Woodworkers Union, Local 576, Independent, as alleged successor to the charging party, for a review of said order and remand to take further testimony upon the commerce issue, having issued a corrected order on April 3, 1951, directing the reopening of the record and remanding the case to the undersigned for further hearing with respect to the dollar volume of the Respondent's purchases and sales from August 1 to December 31, 1950, and the identity and continued existence of the charging union or the identity of any successor thereto;

A further hearing having been held in Los Angeles, California, on April 30, May 2 and 3, 1951, before the undersigned, and evidence having been received upon the above issues as directed by the corrected order of the Board;

A motion having been made at the close of the remanded hearing by the Respondents for dismissal of the complaint, and ruling upon said motion having been reserved; and

A summary of the evidence adduced at both hearings as to the business of the Respondents being as follows:

Howard W. Saveland and Thelma B. Saveland are copartners doing business as Pacific Woodcraft at Los Angeles, California, where they are engaged in the manufacture, sale, and distribution of redwood yard furniture and allied redwood products.

During the year 1950, Respondents purchased \$3,503.56 worth of supplies outside the State of California, sold \$8,891.12 worth of products outside the State of California, and sold \$27,379.89 worth of products in California to Montgomery Ward & Co., a company engaged in interstate commerce within the meaning of the Act.

As stated in my previous order dismissing the complaint, the Board has set forth certain alternative minimum requirements which as a matter of policy must be met in order for the Board to determine that it would effectuate the purposes of the Act to assert jurisdiction. Among these criteria are out-of-State sales, out-of-State purchases, intrastate sales to companies which are engaged in interstate commerce, and combined percentages of such sales and purchases which, although each is less than the specified minimum, equal or exceed 100 percent when totaled. Under this policy, the Board has determined that the minimum amount for out-of-State sales is \$25,000,<sup>1</sup> for direct out-of-State purchases is \$500,000,<sup>2</sup> and for intrastate sales to companies engaged in interstate commerce is \$50,000.<sup>3</sup> It is of course only necessary to meet any one of these standards. None of the amounts listed above equals the minimum established

<sup>1</sup> *Stanislaus Implement and Hardware Co., Ltd.*, 91 NLRB 618.

<sup>2</sup> *Federal Dairy Co., Inc.*, 91 NLRB 638.

<sup>3</sup> *Hollow Tree Lumber Company*, 91 NLRB 635.

by the Board in the respective category. There remains for consideration a determination whether the combined percentages of the minimum amounts equal or exceed 100 percent, which the Board has found to be sufficient for the assertion of jurisdiction.<sup>4</sup>

During 1950, Respondent's out-of-State purchases totaled \$3,503.56 or 0.7 percent of \$500,000. Their out-of-State sales totaled \$8,891.12 or 35.56 percent of \$25,000. Their sales to Montgomery Ward & Co. totaled \$27,379.89 or 54.76 percent of \$50,000. The combined total of percentages is 91.02 percent, or less than 100 percent.

Now, THEREFORE, the undersigned, being fully advised in the premises, is of the opinion that the operations of the Respondent are essentially local in character, and although it does not appear that they are wholly unrelated to commerce, the assertion of jurisdiction in the instant case would not effectuate the policies of the Act;

Said motion urging dismissal upon jurisdictional grounds is hereby granted; and it is hereby

ORDERED, that said complaint be dismissed in its entirety.

Any party may obtain a review of the foregoing order, pursuant to Section 102.27 of the Board's Rules and Regulations, by filing a request therefor with the Board, stating the grounds for review, and immediately on such filing serve a copy thereof on the Regional Director and the other parties. Unless such request for review is filed within 10 days from the date of the order of dismissal, the case shall be closed.

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<sup>4</sup> *The Rutledge Paper Products Co.*, 91 NLRB 625.

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TRI-PAK MACHINERY SERVICE, INC. and INTERNATIONAL ASSOCIATION  
OF MACHINISTS. Case No. 39-CA-149. June 28, 1951

### Decision and Order

On March 29, 1951, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> 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 Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner. We, too, believe that Staiger was a supervisor within the meaning of the amended Act.

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<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relation Act, the Board has delegated its powers in connection with this case to a three-member panel (Chairman Herzog and Members Murdock and Styles).