In the Matter of LOS ANGELES TURF CLUB, INC. *and* DONALD MOYNAHAN

In the Matter of HOLLYWOOD TURF CLUB *and* DONALD MOYNAHAN

In the Matter of BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, A. F. L., ITS AFFILIATE PARI MUTUEL EMPLOYEES GUILD, LOCAL NO. 280, AND ITS LOCAL UNIONS NO. 76, 399, AND 193; INTERNATIONAL BROTHERHOOD OF HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, A. F. L., AND ITS AFFILIATES SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS, LOCAL NO. 300 AND LOCAL NO. 1082; GARAGE, AUTOMOTIVE AND SERVICE STATION EMPLOYEES UNION, LOCAL NO. 495, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L. *and* DONALD MOYNAHAN

Cases Nos. 21-CA-320, 21-CA-349, 21-CB-68, and 21-CB-115.—Decided June 2, 1950

DECISION AND ORDER

On October 6, 1949, Trial Examiner Frederic B. Parkes 2nd, issued his Intermediate Report in the above-entitled proceeding, recommending that the complaint be dismissed upon the grounds that the operations of the Respondents Los Angeles Turf Club, Inc., and Hollywood Turf Club,[1] while not unrelated to commerce, are essentially local in character, and that the assertion of jurisdiction in these cases would not effectuate the policies of the Act, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, briefs in support of the Intermediate Report were filed by Respondents Hollywood, Building Service Employees' Union, and Garage, Automotive and Service Station Employees' Union. The charging party, Donald Moynahan, filed a brief in opposition to the Intermediate Report. The General Counsel filed exceptions to the Intermediate Report and a supporting brief.[2]

[1] Hereinafter referred to collectively as Respondent Tracks and individually as Respondent Los Angeles and Respondent Hollywood, respectively.

[2] The General Counsel also filed a motion requesting that the Board issue an order directing the Trial Examiner to prepare and issue a Supplemental Intermediate Report, setting forth findings of fact, conclusions of law, and recommendations with respect to

The Board has reviewed the Trial Examiner's rulings 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 briefs, and the entire record in the cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

As fully detailed in the Intermediate Report, the Respondent Tracks are engaged solely in conducting race meets. Their revenues are derived principally from their percentages of the pari mutuel pools at the tracks and catering concessionaire receipts, and from admission, and parking lot fees. Their principal expenses are purses to winners of races and rental fees for pari mutuel betting machinery paid to the American Totalizator Company, hereinafter called Tote. There are also small expenditures for maintenance of the tracks, almost all of which are made locally and advertising expenses, which are also almost entirely local.

It is not seriously contended that the Respondent Tracks, in their immediate operations, are engaged in commerce. However, the General Counsel contends that mainly by reason of the interstate shipment of horses, the relationship to Tote and the Daily Racing Form, and the conduct of claiming races, jurisdiction must be asserted.[3] We do not agree.

With respect to the shipment of horses across State lines, this activity, effected by the individual owners, is clearly analogous to the transportation of participants in baseball games considered by the Supreme Court in the *Baseball* case.[4] The Court in an opinion by Mr. Justice Holmes there held that such transportation was merely incidental to, and not an essential element of, the sporting events concerned and did not serve to alter the intrastate character of those events so as to bring the baseball clubs within the purview of the Sherman Anti-

legal jurisdiction and the unfair labor practices alleged in the complaint herein. In support of his motion, the General Counsel contends that a Trial Examiner does not have power to dismiss a case on policy grounds alone, where there is no showing of a clear lack of legal jurisdiction. For reasons fully stated in *Row Construction Company,* 88 NLRB 580, we find no merit in this contention. Accordingly, the General Counsel's motion is hereby denied.

[3] The General Counsel also contends that the functions of the catering company which operates the numerous eating places at the Tracks, afford a substantial basis for asserting jurisdiction over the Tracks. This contention is without merit. As indicated in the Intermediate Report, although an unspecified portion of the foodstuffs used by the catering company may originate outside the State, all its purchases are made from local wholesalers and all its sales are made locally. Cf. *Child's Company,* 88 NLRB 720; *Bartenders Union Local 52, AFL,* 85 NLRB 412.

[4] *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U. S. 200. The Court of Appeals for the Second Circuit has recently observed that this case is still controlling precedent. *Martin* v. *National League Baseball Club,* 174 F. 2d 917 (C. A. 2).

Trust Act.[5] Without holding that case necessarily decisive of the issue of legal jurisdiction under our own Act, it is strongly persuasive of the propriety of treating the Respondent Tracks as essentially local enterprises.

As to the relationship between the Respondent Tracks and Tote and the Daily Racing Form, the General Counsel argues, in substance, that the latter 2 companies and the Respondent Tracks constitute, in effect, a single functionally related enterprise, although there are no elements of common management or control, and that, as Tote and the Daily Racing Form are in commerce, the Tracks must be so held. However, the Respondent Tracks are only 2 of Tote's 70 customers, and similarly are only 2 of the Daily Racing Form's many subscribers. Moreover, with respect to Tote, the machinery leased from it is in the nature of capital equipment and, as we have recently held, interstate purchase of capital equipment is not a sufficient factor to cause us to assert jurisdiction over an otherwise local enterprise.[6] Accordingly, we find no merit in this contention.

Finally, with respect to the claiming races,[7] the General Counsel contends that because of such races, Respondent Tracks are comparable to stockyards which have been held to be in commerce.[8] The analogy is not persuasive. In the case of stockyards, the provision of a market place is the major, or possibly the sole, purpose of the organization concerned. In the instant proceeding, however, it is clear that the purpose of claiming races is not to provide a market place for thoroughbred horses but to equalize competition on the theory that a horse will not be entered in a race below his class where he is subject to purchase at a bargain price. In this connection, it is significant that, at Respondent Los Angeles' Track, of about 30 horses entered daily in claiming races, only about 1 horse is claimed.

Accordingly, upon the entire record, we find that, while the operations of the Respondent Tracks are not wholly unrelated to commerce, assertion of jurisdiction in these cases would not effectuate the policies of the Act.[9] We shall, therefore, affirm the Trial Examiner's order dismissing the complaint herein.

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[5] "The business is giving exhibitions of baseball which are purely state affairs. . . . But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business."

[6] *Richter Transfer Company,* 80 NLRB 1246.

[7] Any horse entered in a claiming race is thereby subject to purchase under conditions, including price, which are set by the track.

[8] See, for example, *Stafford* v. *Wallace,* 258 U. S. 495. Cf. *International Trade Mart,* 87 NLRB 616.

[9] Cf. *Olympia Stadium Corporation,* 85 NLRB 389.

ORDER

Upon the entire record in the cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the consolidated complaint issued herein against the Respondents Los Angeles Turf Club, Inc.; Hollywood Turf Club; Building Service Employees' International Union, AFL, its affiliate, Pari Mutuel Employees' Guild, Local No. 280, and its Local Unions No. 76, 399, and 193; International Brotherhood of Hod Carriers, Building and Common Laborers Union of America, AFL, and its affiliates, Southern California District Council of Laborers, Local No. 300 and Local No. 1082; Garage, Automotive, and Service Station Employees Union, Local No. 495, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., be, and it hereby is, dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

MEMBER REYNOLDS, dissenting:

I would assert jurisdiction in this proceeding.

INTERMEDIATE REPORT

James W. Cherry, Jr., Esq. and *Charles Hackler, Esq.*, for the General Counsel.

Victor Ford Collins, Esq. and *Arnold M. Cannan, Esq.*, of Los Angeles, Calif., for the Respondent Los Angeles.

Arthur Freston, Esq. and *Ralph E. Lewis, Esq.*, of Los Angeles, Calif., for the Respondent Hollywood.

Daniel D. Carmell, Esq., by *Lester Asher, Esq.*, of Chicago, Ill., and *John C. Stevenson, Esq.*, of Los Angeles, Calif., for the Respondent Building Service Employees and affiliates and for the Respondent Teamsters.

David Sokol, Esq., of Los Angeles, Calif., for the Respondent Hod Carriers and affiliates.

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Donald Moynahan, an individual, and in accordance with an order of the General Counsel of the National Labor Relations Board,[1] dated January 25, 1949, consolidating the four cases, the General Counsel, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a complaint dated January 25, 1949, against Los Angeles Turf Club, Inc., Arcadia, California, herein called the Respondent Los Angeles; Hollywood Turf Club, Inglewood, California, herein called the Respondent Hollywood;[2] Building Service Employees International Union,

[1] The General Counsel and his representatives at the hearing are herein referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

[2] Respondent Los Angeles and Respondent Hollywood are herein collectively referred to as the Respondent Companies.

A. F. L., its affiliate Pari Mutuel Employees Guild, Local No. 280, and its Local Unions No. 76, 399, and 193, herein called the Respondent Building Service Employees; International Brotherhood of Hod Carriers, Building and Common Laborers Union of America, A. F. L., and its affiliates, Southern California District Council of Laborers, Local No. 300 and Local No. 1082, herein called the Respondent Hod Carriers; and Garage, Automotive and Service Station Employees Union, Local No. 495, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., herein called the Respondent Teamsters,[3] alleging that the Respondent Companies had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations, 61 Stat. 136, herein called the Act, and that the Respondent Unions had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b), subsections (1) (A) and (2) and Section 2 (6) and (7) of the Act. Copies of the charges, the complaint, and notice of hearing were served upon the Respondent Companies and the Respondent Unions.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance that: (1) on or about December 16, 1947, and December 22, 1948, the Respondent Companies and the Respondent Unions entered into collective bargaining agreements containing illegal closed-shop provisions, have enforced and given effect to such agreements, and have required membership in the Respondent Unions as a condition of employment;[4] (2) these agreements and subsequent renewals were entered into at a time when the Respondent Companies' race tracks were not in operation, when the Respondent Companies had no employees in the classes of work covered by the contracts, and when none of the Respondent Unions represented a majority of the employees in the bargaining units covered by the contracts;[5] and (3) from on or about December 1948, the Respondent Los Angeles denied employment to Donald Moynahan for the reason that the Respondent Pari Mutuel Employees' Guild, Local No. 280 refused to accept Moynahan into membership or issue him a work permit.[6] The complaint alleged that by the foregoing conduct the Respondent Companies engaged in violations of Section 8 (a) (1), (2), and (3) of the Act and the Respondent Unions engaged in violations of Section 8 (b), subsections (1) (A) and (2) of the Act.

Thereafter, the Respondent Los Angeles, the Respondent Hollywood, the Respondent Hod Carriers, and the Respondents Building Service Employees and Teamsters duly filed answers, denying that any of them engaged in any of the unfair labor practices alleged in the complaint and that the Respondent Companies were engaged in commerce within the meaning of the Act.

Pursuant to notice, a hearing was held from March 1 to 11, 1949, at Los Angeles, California, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel,

[3] The Respondent Building Service Employees, the Respondent Hod Carriers, and the Respondent Teamsters are collectively referred to herein as the Respondent Unions.

[4] The complaint was amended at the hearing to allege that illegal contracts were entered into on December 22, 1948.

[5] The complaint was further amended to allege that the contracts were executed at a time when none of the Respondent Unions represented a majority of the employees within the bargaining units.

[6] Similar allegations of the complaint with respect to the Respondent Hollywood were dismissed on motion of the General Counsel inasmuch as the provisions of Section 10 (b) had not been fulfilled.

the Respondent Companies, and the Respondent Unions were each represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the outset of the hearing, the undersigned denied motions for a continuance made by the Respondent Unions and a motion that the complaint be dismissed, urged by the Respondents Building Service Employees and Teamsters. Ruling was reserved upon the motion for dismissal of the complaint as to the Respondent Hod Carriers, pending development of the facts as to the contractual status between the Respondent Companies and the Respondent Hod Carriers. The motion is hereby denied. At the conclusion of the General Counsel's case-in-chief, the Respondents Building Service Employees and Teamsters moved that the complaint be dismissed. The motion was denied. At the close of the hearing, the motion was renewed and ruling thereon was reserved. Consistent with the findings hereinafter set forth, the motion is granted. At the conclusion of the hearing, the undersigned granted a motion by the General Counsel to conform the pleadings to the proof as to dates, spelling, and minor variances. Upon the conclusion of the hearing, the undersigned advised the parties that they might argue before, and file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner. The parties waived oral argument, although the General Counsel stated his position briefly on several issues. Thereafter, the Respondent Hollywood filed a brief, joined in by the Respondent Los Angeles. The Respondent Hod Carriers and the Respondent Building Service Employees and Teamsters also filed briefs.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESSES OF THE RESPONDENT COMPANIES

A. *In general*

The Respondent Los Angeles Turf Club, Inc., a California corporation with its principal office and place of business in Arcadia, California, is engaged in the business of conducting the racing of thoroughbred horses at its race track, commonly called the Santa Anita Park. Its race track was constructed in 1934 and 1935 at an approximate cost of $1,000,000 upon land valued at approximately $500,000. In the succeeding years, Respondent Los Angeles has erected additional construction to its track in the approximate value of three or four million dollars. Its race meet customarily is held from late December until the following March for a total of 50 racing days, scheduling 8 races per day. Approximately half of these races are claiming races, a condition of which all horses entered are subject to claim or purchase for a stipulated price prior to the race by anyone who had registered for racing in the meet and had started a horse in a race at such meet. The claiming price of these races ranges between $3,000 and $10,000. In the 1948–49 meet at the Respondent Los Angeles' track, 52 horses were claimed. The claiming prices for these horses totalled $280,000. During the meet, the Respondent Los Angeles employs between 1,500 and 2,000 employees. The remainder of the year, approximately 125 employees maintain the property.

Prior to the meet, the Respondent Los Angeles distributes stake books, describing its racing program and the conditions of principal races, to horse owners upon request and sends supplies of the stake books to other race tracks for

distribution. Some of these brochures are sent to points outside the State of California.

During the fiscal year ending November 30, 1948, the Respondent Los Angeles purchased general supplies in the amount of $38,471.81 and mechanical equipment valued at $48,550.25. All such purchases were made locally in California. However, among the mechanical equipment was a Cadillac automobile and possibly a truck. During the same period, the Respondent Los Angeles spent $26,949.83 in advertisements in newspapers published in the State of California, $204 in advertisements in 2 magazines published in States other than California, $240 in advertisements in the New York edition of the Daily Racing Form, and $240 in advertisments in the Chicago edition of the same publication.

The Respondent Hollywood Turf Club, a California corporation with its principal office and place of business in Inglewood, California, is engaged in the business of conducting the racing of thoroughbred horses at its race track, commonly called the Hollywood Park. Its race track was built about 1938 and at the time of the hearing was valued in excess of $6,000,000, excluding the value of its real estate purchased at a cost of more than $1,000,000. Its race meet of 50 days is customarily held from May to July each year. Approximately 70 percent of its races are claiming races. During 1948, the Respondent Los Angeles purchased materials and supplies and equipment valued at approximately $175,000. Included among these purchases was a "Dodge stake truck" bought from a local dealer. All such purchases were made locally in California with the exception of equipment valued at $920 which was purchased outside the State of California.[7] In 1948, the Respondent Hollywood spent $54,000 in advertising. Of this amount, $437 was the cost of token advertisments in 6 magazines published outside the State of California and $1,885 was for advertisements in editions of the Daily Racing Form published outside California. The remainder was for advertisements in California publications.

Prior to its meeting, the Respondent Hollywood distributes approximately 1,000 stake books, of which approximately 25 percent are sent upon request to horse owners outside the State of California.

Each of the Respondent Companies has facilities for stabling approximately 1,300 horses during their race meetings. Prior to the meeting, horse owners file applications for stall space for their horses. Determining factors in the acceptance or rejection of the applications are the general reputation of the horse owners themselves and the proved or prospective abilities of the horses and the known value of the horses. Upon the granting of stall space, the Respondent Companies exercise no control over the care or management of the horses. The horse owners determine whether to participate in the racing program, supply the grooms, handlers, and trainers to care for the horses, provide food for the horses and equipment (such as beds, linens, etc.) for the grooms, handlers, and trainers. The Respondent Companies merely supply empty stall space for the horses, empty tack rooms for equipment and supplies necessary to care for the horses, and vacant rooms to house the horse owners' retinue of employees. Free electricity and water is provided by the Respondent Companies. The horse owners also bear the cost of transportation of their horses to the track, by Railway Express, vans, trailers, or aeroplane, as well as the cost of insurance on their stables.

[7] At one point, the record reflects that the out-of-State purchases totalled $920,000. This is obviously a typographical error. Elsewhere the amount is stated to be $920, which concurs with the undersigned's trial notes.

Of the approximately 1,300 horses stabled at the Respondent Hollywood's track in its 1948 meet, only 45 were shipped to the track from points outside the State of California. However, 10 of the 45 horses were recent purchases by residents of California who had acquired them outside the State. Consequently, only 35 horses were shipped into California by nonresident owners for the Respondent Hollywood's 1948 race meeting.

The records of the past performances of horses scheduled to run races in the 1948–1949 race meeting of the Respondent Los Angeles were introduced into evidence. These records reveal, according to the undersigned's analysis, that approximately 820 horses had never participated in race meetings outside the State of California, and that approximately 252 had raced at tracks located outside the State of California.[8]

The operations of the Respondent Companies are regulated by statutes of the State of California, administered by the California Horse Racing Board.[9] During the 1948 race meeting of the Respondent Hollywood, the Horse Racing Board issued licenses to race to approximately 35 out-of-State horse owners. Prior to the 1948–1949 race meeting of the Respondent Los Angeles, the California Horse Racing Board issued licenses to race to approximately 75 out-of-State horse owners. During the same period prior to the race meeting of the Respondent Los Angeles, the California Horse Racing Board issued licenses to race to between 400 and 500 horse owners, residents in the State of California.

In the spring of each year, the Western Harness Racing Association conducts a meet of 35 days, leasing the facilities of the Respondent Companies alternatively from year to year.

The record shows that the Respondent Companies are among the leading race tracks in the United States in the amount of money distributed as prizes and stakes, the number of large stake races conducted, the size of attendance, and the amount of money wagered.[10]

B. *The American Totalisator Co.*

By lease agreement, the American Totalisator Co., herein called the Tote Company, furnishes and maintains electrical mechanical equipment to both of the Respondent Companies for the purpose of selling wager tickets, summation of the wagers, and supplying information of the wagering of each race to the pari mutuel department of the Respondent Companies and to the public assembled at the race. The Tote Company, whose main office is in Baltimore, Maryland, furnishes similar equipment and services to some 70 race tracks located in New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Florida, Illinois, Ohio, Kentucky, Louisiana, Arkansas, Nebraska, California, Oregon, Washington, and Arizona. Its district office in Pasadena, California, services 11 race meetings in California, as well as others in Oregon, Washington, and Arizona. The Tote Company maintains shops for construction and repair of its equipment in Baltimore, Maryland, New York, New York, Chicago, Illinois, and Pasadena, California.

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[8] Of these horses, 47 had raced at tracks in Maryland, 136 in New York, 28 in Washington, 15 in Kentucky, 56 in Illinois, 8 in Canada, 43 in New Jersey, 27 in Delaware, 1 in Ohio, 5 in Michigan, 9 in Massachusetts, 8 in Rhode Island, 6 in New Mexico, 3 in Oregon, 4 in Florida, 1 in New Hampshire, 2 in Nebraska, 16 in Mexico, 1 in England, and 1 in Ireland.

[9] Business and Professional Code of the State of California, Sections 1400 to 2038, inclusive, and Section 19561.

[10] Dixon-Bell Press supplies racing programs to the Respondent Companies by contract.

Generally speaking, the equipment consists of selling machines, adding machines, and indicator boards to display to the public the total of the wagers and the odds. The selling machines are manufactured in England and adapted for use in this country by the Tote Company at one of its various plants. The adding machine equipment in use presently in California was manufactured by the Tote Company in Baltimore but the equipment has not been shipped out of the State of California since it was sent there in 1947. The indicator boards are made by various concerns, some within the State of California and some without. The equipment is utilized at the various race tracks in California consecutively. Some of the ticket selling machines and indicator equipment is used at the race tracks in Washington and Oregon. The value of the Tote Company's equipment in use at the Respondent Los Angeles' track in the 1948–1949 meet ranged between $100,000 and $500,000. The equipment used at the Respondent Hollywood's meet in 1948 was valued between $75,000 and $400,000. The rental fee paid by the Respondent Los Angeles was approximately $200,000 for its usual meet. In addition, a portion of the insurance premium on the Tote Company's equipment is borne by the Respondent Companies as part of the rental fee.

The equipment is installed and maintained by approximately 25 employees on the staff of the Tote Company. The record reveals that neither the Respondent Companies nor Respondent Unions has any control or direction over the employees of the Tote Company or the purchase and transfer of equipment of the Tote Company.

C. *The Harry Curland Catering Company*

Both Respondent Companies by formal agreement have granted to The Harry Curland Catering Company, herein called the Catering Company, a concession to operate bars, restaurants, food counters, and cafeterias at both tracks.[11] The agreements provide that the Catering Company should furnish all equipment and pay the Respondent Companies 25 percent of its gross income from the concessions. At the track of the Respondent Los Angeles, the Catering Company maintains 14 bars, 27 food counters, a stable cafeteria, and restaurants in a coffee shop, club house, turf club, and paddock room. At the Respondent Hollywood's track, the Catering Company maintains 15 bars, 17 food counters, a stable cafeteria, and a restaurant in a coffee shop, club house, turf club, and terrace. On week days the Catering Company employs between 450 and 500 employees at each of the Respondent Companies and approximately 600 employees on holidays and Saturdays. The following table reflects the purchases and sales of the Catering Company:

	Purchases	*Sales*
Respondent Los Angeles 1947–8:		
Beer	$69,000	$80,250
Liquors	180,000	675,000
Food	360,000	675,000
Supplies	105,000	-------
Respondent Los Angeles 1948–9, first month of operations:		
Beer	$13,000	$40,000
Liquors	90,000	300,000
Food	160,000	300,000

[11] The Catering Company has similar concessions at three other race tracks in California.

Respondent Hollywood 1948:	*Purchases*	*Sales*
Beer	$72,000	$140,000
Liquors	125,000	700,000
Food	405,000	630,000
Supplies	120,000	-------

All purchases are made from local California wholesalers and suppliers, who purchase a considerable amount of the goods from sources outside the State of California and who store the goods in their warehouses for an indeterminate period of time before delivery to the Catering Company.

D. *Conclusions*

Inasmuch as the purchase of supplies from out-of-State sources, advertisements in out-of-State publications, and distribution of stake books out of the State of California by the Respondent Companies are so negligible in amount as to have little probative effect in determining whether the Respondent Companies are subject to the jurisdiction of the Board, the General Counsel apparently relies upon the shipment of race horses into California by out-of-State owners and upon the operations of the Tote Company and the Catering Company to establish the Board's jurisdiction over the Respondent Companies.

Although the operations of the Respondent Companies, in some measure, affect commerce, the undersigned is persuaded that the effect is so remote and indirect that the horse racing industry is one over which the Board does not assume jurisdiction. In a recent case dealing with a professional hockey club, the Board declined to assert jurisdiction, stating:

> Although we do not find that the operations of the Employer are wholly unrelated to commerce, we believe that the Employer's operations are essentially local in character and that to assert jurisdiction in this case would not effectuate the policies of the Act.[12]

The undersigned believes that the Board's determination in the *Olympia Stadium* case, above quoted, is controlling on the jurisdictional issue herein,[13] and will accordingly recommend that the complaint be dismissed.

RECOMMENDATIONS

For the reasons above set forth, the undersigned recommends that the complaint herein be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each

[12] *Olympia Stadium Corporation*, 85 NLRB 389.

[13] Cf. *White Sulphur Springs Company*, 85 NLRB 1487. See also *Herbert Bayard Swope et al.*, 24 LRRM 1065, a decision of the New York Labor Relations Board rendered on April 26, 1949, and cases cited therein.

of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 6th day of October 1949.

FREDERIC B. PARKES, 2nd,
Trial Examiner.