In the Matter of THE HARTZELL BROTHERS COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO

In the Matter of THE HARTZELL BROTHERS COMPANY, EMPLOYER *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO, PETITIONER *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 298, AFL, INTERVENOR

Cases Nos. 8–CA–220 and 8–RC–461.—Decided July 27, 1950

DECISION AND ORDER

On May 12, 1950, Trial Examiner Martin S. Bennett issued his Order and Recommendation in the above-entitled proceedings wherein he found that it would not effectuate the policies of the Act to assert jurisdiction in these cases. Accordingly, he dismissed the complaint in Case No. 8–CA–220 and recommended that the objections to the election in Case No. 8–RC–461 be overruled and the proceeding dismissed, as set forth in the copy of the Order and Recommendation attached hereto. Thereafter, the General Counsel filed a Request for Review, pursuant to Section 203.27 of the Board's Rules and Regulations, and a supporting brief.

The Board[1] has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Order and Recommendation of the Trial Examiner, the General Counsel's request for review and supporting brief, and the entire record in the case. Although the Employer's retail operations are not unrelated to commerce, they are essentially local in character, and we find that it would not effectuate the policies of the Act to assert jurisdiction in this case.[2] Accordingly, we shall affirm the Trial Examiner's dismissal of the complaint in Case No. 8–CA–220 and shall dismiss the petition in Case No. 8–RC–461.

[1] 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 Reynolds, Murdock, and Styles].

[2] *Volk Bros. Company*, 90 NLRB No. 68 and cases cited therein.

ORDER

IT IS ORDERED that the complaint against The Hartzell Brothers Company in Case No. 8–CA–220 be, and it hereby is, dismissed; and

IT IS FURTHER ORDERED that the petition filed by Amalgamated Clothing Workers of America, CIO, in Case No. 8–RC–461 be, and it hereby is, dismissed.

ORDER DISMISSING COMPLAINT

AND

RECOMMENDING DISMISSAL OF OBJECTIONS TO ELECTION

On April 27, 1949, a stipulation for certification upon consent election was executed in Case No. 8–RC–461 by The Hartzell Brothers Company, Youngstown, Ohio, herein called Respondent, Amalgamated Clothing Workers of America, CIO, herein called the Union, and Retail Clerks International Association, Local 298, AFL, herein called the AFL. An election was duly conducted on May 14, 1949, among the employees in the unit described in the stipulation, under the supervision of the Regional Director for the Eighth Region (Cleveland, Ohio) of the National Labor Relations Board, herein called the Board, and a majority of the ballots was cast against the participating labor organizations. Objections to the conduct of the election were filed by the Union on May 18, 1949.

Thereafter, on June 13, 1949, the Union filed a charge of unfair labor practices against Respondent in Case No. 8–CA–220 and the Regional Director issued his complaint on December 21, 1949, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. In reply, Respondent filed its answer denying the commission of any unfair labor practices. In the meantime, the Regional Director, on December 13, 1949, had issued a report on the objections to the election, after investigating the issues raised by the objections as well as by the charge of unfair labor practices, and therein found that the issues raised in both proceedings were closely related and in many instances identical. He recommended that a formal hearing be held upon the objections to the conduct of the election and that the case be consolidated with the unfair labor practice proceeding for the purpose of hearing.

The Board, on December 23, 1949, directed that a hearing be held on the aforesaid objections, as recommended by the Regional Director, and that the hearing officer make appropriate findings and recommendations to the Board as to the disposition of said objections.[1] On December 27, 1949, the Regional Director issued an order directing that the two proceedings be consolidated for hearing. Copies of the charge, complaint, and order consolidating cases were duly served upon the appropriate parties.

Pursuant to notice, a hearing was held at Youngstown, Ohio, from January 10 through 12, 1950, inclusive, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Chief Trial Examiner, and evidence was received on all issues raised in the pleadings.

[1] Apparently, no exceptions were filed to the Regional Director's report on objections. It is assumed therefore that the Board, in directing that a hearing be held on said objections, did not pass upon the question of assertion of jurisdiction.

On February 16, 1950, the undersigned, *sua sponte*, issued an order directing that the parties show cause why the complaint should not be dismissed and why it should not be recommended that the objections to the election be overruled on the ground that Respondent's business operations appeared to be essentially local in character and the policies of the Act would not be effectuated by the assertion of jurisdiction over Respondent. The undersigned, on March 3, 1950, subsequently granted, over the objection of Respondent, a motion by the General Counsel to stay the order to show cause and to reopen the record to receive further evidence with respect to the business operations of Respondent.[2] Thereafter, on April 21, 1950, a stipulation was received from the General Counsel and Respondent wherein certain facts concerning the business operations of Respondent were stipulated and further hearing was waived; on April 21, 1950, the undersigned admitted the stipulation in evidence, rescinded his order reconvening the hearing, and closed the hearing.[3]

The facts

Findings herein are based primarily upon admissions in pleadings and on the joint stipulation by the parties.

Respondent, The Hartzell Brothers Company, is an Ohio corporation which maintains its sole place of business at Youngstown, Ohio, where it is engaged in the retail sale of men's and boys' clothing, haberdashery, and shoes. During the year 1949, Respondent purchased merchandise for reseale valued at approximately $375,000, of which about 76 percent was shipped to its store from and through States other than the State of Ohio. During the same period, Respondent sold merchandise at retail valued at approximately $574,000, of which all save about 1.5 percent was sold locally.

In urging that jurisdiction be asserted over the operations of Respondent, the General Counsel initially contended that its business operations, *standing alone*, were in commerce within the meaning of the Act. It seems clear, however, and the undersigned so finds in view of recent Board decisions, that the business operations of Respondent, although not wholly unrelated to commerce, are when considered *per se* essentially local in character and of a type over which the Board has declined to assert jurisdiction.

Thus, in *Fashion Fair Shops and Millan Shop*, 88 NLRB 1512, the Board declined to assert jurisdiction over a chain of five stores located in one State and engaged in the retail sale of women's clothing. In that case, the employer in 1949 purchased merchandise valued at approximately $210,000, all of which was shipped in commerce, and made sales amounting to approximately $300,000, all local. The Board stated that although the employer's operations were not unrelated to commerce, nevertheless, they were essentially local in character. In *Joseph's*, 88 NLRB 11, the Board declined to assert jurisdiction over a store engaged in the retail sale of men's and boys' clothing. During 1949, that employer purchased merchandise at an annual rate of approximately $206,000, 91 percent of which was purchased in commerce, and made sales of merchandise at an annual rate of approximately $315,000, almost all local. There too, the Board expressly refrained from finding that the operations of the employer

[2] As stated by the General Counsel in his motion, no issue had been raised at the hearing before the undersigned with respect to commerce; the *Squire's Inc.* decision, 88 NLRB No. 2, discussed below in more detail and relied upon in large measure by the undersigned in issuing his order to show cause, had not been made public prior to the commencement of the instant hearing.

[3] On April 24, 1950, the Union joined in the stipulation.

were unrelated to commerce, but found that they were essentially local in character. In *Squire's Inc.*, 88 NLRB 8, jurisdiction was not asserted over a chain of three retail men's clothing stores in one State which purchased merchandise during 1949 at an annual rate of $406,000, 80 percent of which was shipped from without the State, and made sales at the annual rate of $620,000, all but 1 percent local.[4] Here as well, the Board found the employer's operations not to be unrelated to commerce, but nevertheless considered them to be essentially local in character.

In *Evans Fur Company and Evans Apparel Company*, 88 NLRB 209, decided March 14, 1950, jurisdiction was declined over *Evans Fur Company* which was engaged in the retail sale of furs and fur apparel. During 1949, that employer purchased materials valued in excess of $500,000, of which over 80 percent was purchased from without the State, and sold fur coats and scarves valued in excess of $750,000, all but a nominal amount within the State. In that same proceeding, jurisdiction was also declined over the business operations of *Evans Apparel Company* which is engaged in the retail sale of women's suits and coats. During 1949, that employer purchased apparel valued in excess of $300,000, of which over 80 percent was purchased from points outside the State, and during the same period sold goods valued in excess of $400,000, all but a nominal amount within the State. With respect to these two employers, the Board expressly refrained from finding their respective operations to be unrelated to commerce, but found that the relationship to commerce was remote and that the operations were essentially local in character.

In view of the policy delineated by the Board in the above decisions, the undersigned finds that the business operations of Respondent, The Hartzell Brothers Company, *considered separately as a corporate entity*, are not wholly unrelated to commerce but are nevertheless essentially local in character, and that the policies of the Act would not be effectuated by assertion of jurisdiction.

The General Counsel further contends that certain other stores are owned and operated by the same management organization, and that a consideration of the structure and scope of these operations would serve to shed additional light on the question of assertion of jurisdiction. With this, in principle, the undersigned agrees as ". . . an essentially local enterprise loses its local character when it is part of an interstate chain operation." *Childs Company*, 88 NLRB 720. See also, *Block & Kuhl Department Store*, 83 NLRB 418, and *Epp Furniture Company*, 86 NLRB 120.

Turning therefore to the other alleged business operations relied upon by the General Counsel, it appears that he places reliance on the operations of another Ohio corporation, Rose & Sons, concerning which the following facts appear:

Rose & Sons, herein called Rose, is an Ohio corporation which owns and operates three stores in that State. Two are located in Youngstown, one engaging in the retail sale of men's and boys' clothing, and the other in the retail sale of men's, boys', children's, and women's wear. The third store is located in Warren, Ohio, and is engaged in the sale of men's and boys' clothing. During the year 1949, Rose purchased merchandise for resale at its three stores valued at approximately $455,000, of which about 74 percent was shipped to its stores from points outside the State of Ohio. During the same period, Rose sold

[4] In the *Squire's Inc.*, and *Joseph's* decisions, the purchases and sales figures have been converted to an annual basis for the purposes of comparison.

merchandise valued at approximately $650,000, of which all but 1 percent was sold locally.

The pertinent facts concerning the management and corporate organization of Respondent and Rose are as follows:

Board of directors

Hartzell	*Rose*
J. C. Rose	J. C. Rose
H. H. Levine	H. H. Levine
A. L. Mack	A. L. Mack
G. J. Orwell	F. C. Rose
Mrs. S. K. Rose	G. H. Rose

As is apparent, three of the five directors are identical, and it may be noted that Mrs. S. K. Rose is the wife of J. C. Rose, and that G. H. Rose is the latter's brother.

Officers

Title	*Hartzell*	*Rose*
President	J. C. Rose	J. C. Rose
Vice president	H. H. Levine	H. H. Levine
Vice president	G. J. Orwell	F. C. Rose
Secretary-treasurer	A. L. Mack	A. L. Mack

It thus appears that the officers of the two corporations are identical save for the respective occupants of one of the vice president positions.

Stockholders

Hartzell	*Percent*	*Rose*	*Percent*
J. C. Rose	20. 8	J. C. Rose	55. 6
F. C. Rose	4. 2	F. C. Rose	8. 7
H. H. Levine	9. 0	H. H. Levine	9. 8
Norman Levine	16	Norman Levine	8. 7
G. J. Orwell	25	G. J. Orwell	4. 3
A. L. Mack	25	A. L. Mack	11. 1
		Mrs. S. K. Rose	. 9
		G. H. Rose	. 9

As appears above, the stockholders of both are the same persons, save for the fact that Rose has two more stockholders than Respondent; and these, the wife and brother of J. C. Rose, own but .9 percent of the stock each, or a total of 1.8 percent.

Formulation of labor policy

	Rose	
Hartzell	*2 Youngstown stores*	*Warren store*
A. L. Mack (Secretary-treasurer of both corporations)	A. L. Mack, together with J. C. Rose and F. C. Rose	G. J. Orwell

Buying of merchandise

		Rose	
Hartzell	*Youngstown*	*Youngstown*	*Warren*
G. J. Orwell	J. C. Rose	H. H. Levine with advice of J. C. Rose	G. J. Orwell

It is apparent from the above that with slight exception the same individuals hold official posts in both corportions and that there are interlocking directorates.

Furthermore, stockholders of the two corporations are identical save for two minute interests in Rose held by the brother and wife of the president of Rose who is also president of Respondent. These factors, together with evidence of merchandise buying for the respective corporations and handling of labor relations by individuals who are interested officially or financially in the other corporation, are significant. In some degree, therefore, this is distinguishable from the case of two companies which, although commonly owned, are separately managed, operate as distinct enterprises, do their own purchasing, and have no commingling of personnel. Cf. *Acme Corrugated Box Company*, 88 NLRB 96, and *Whitfield Bus Lines*, 88 NLRB 261. On the other hand, assuming, *arguendo*, that these two corporations are sufficiently integrated so as to warrant a finding by the Board that they constitute a unitary employer under the Act, the undersigned is of the belief that recent decisions by the Board reflect a policy of terming two enterprises whose scope of business operations is comparable to these as local in nature.

The total purchases of Respondent and Rose in 1949 were approximately $830,000, of which about 75 percent was shipped in interstate commerce. Sales in the four stores totalled $1,224,000, all but a negligible amount sold locally. In *Evans Fur Company, supra*, two employers who were separate Illinois corporations had the same corporate officers and stockholders, and maintained their offices and sole places of business in the same office building. *Evans Fur Company* sold fur coats, scarves, and apparel at retail, and *Evans Apparel Company* sold fur-trimmed coats, untrimmed coats, and women's suits at retail. The purchases of both totalled in excess of $800,000, more than 90 percent of which was purchased from without the State, and sales of both totalled $1,115,000, all but a nominal amount sold locally. In the view of the undersigned, there is a striking parallel between the nature and volume of the business operations of these two employers and those of Respondent and Rose in the instant proceeding. And, in the *Evans Fur Company* case, the Board held, *inter alia*, that the operations of the two employers, considered jointly, although not wholly unrelated to commerce, were but remotely related thereto and were essentially local in character; it therefore declined to assert jurisdiction.

See also, *Quigley's Department Store, No. 3*, 89 NLRB 46, decided April 13, 1950. In that case, the employer operated seven 5 and 10 cent retail variety stores in one State, and during 1948 purchased merchandise valued at $701,000, of which a substantial amount was shipped from without the State. During the same period, sales of merchandise totalled $1,152,600, all local. The Board declined to assert jurisdiction over one of the seven stores on the ground that the operations of the employer were essentially local in character, and that the policies of the Act would not be effectuated by an assertion of jurisdiction thereover. Cf. *King Brooks, Inc.*, 84 NLRB 652, where the Board had asserted jurisdiction but which was expressly overruled in *Squire's, Inc., supra*.

In view of the foregoing authority, the undersigned is of the belief that the complaint herein should be dismissed on the ground that the policies of the Act would not be effectuated by an assertion of jurisdiction over Respondent, inasmuch as the Board has consistently declined to assert jurisdiction over analagous business operations, on the ground that they were local in character. And, in view of the foregoing, the undersigned recommends that the objections to the election in Case No. 8–RC–461 be overruled and the representation proceeding dismissed.

NOW, THEREFORE,

IT IS HEREBY ORDERED that the complaint against the The Hartzell Brothers Company be, and the same hereby is, dismissed.

Any party may obtain a review of the foregoing order, pursuant to Section 203.27 of the Rules and Regulations of the National Labor Relations Board, 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 on 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.

Dated at Washington, D. C., this 12th day of May 1950.

MARTIN S. BENNETT,
Trial Examiner.