

In the Matter of PARAMOUNT SALES COMPANY, EMPLOYER and DAVID  
F. GODIN AND ROBERT C. LUTTMAN, PETITIONERS.

*Case No. 1-CA-475.—Decided August 15, 1950.*

### DECISION AND ORDER

On March 1, 1950, Trial Examiner Martin S. Bennett issued his Order, a copy of which is attached hereto, in the above-entitled proceeding, finding that the Respondent's business is essentially local in character and that the assertion of jurisdiction over the Respondent would not effectuate the policies of the National Labor Relations Act. Thereafter, the General Counsel filed exceptions to the Order and a supporting brief.

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 [Members Reynolds, Murdock, and Styles].

The Board 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, the General Counsel's exceptions and brief, and the entire record in the case. We hereby adopt the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

IT IS HEREBY ORDERED that the complaint be, and it hereby is, dismissed in its entirety.

### ORDER

Upon a charge and additional charge duly filed, the General Counsel of the National Labor Relations Board issued a complaint in the above-entitled matter on December 29, 1949. An answer was filed by Respondent, Paramount Sales Company, wherein it denied the commission of any unfair labor practices and, in effect, denied that its business operations affected interstate commerce.

A hearing was held at Boston, Massachusetts, before the undersigned Trial Examiner, Martin S. Bennett, from January 17 through 20, 1950, inclusive. The General Counsel and Respondent were represented by counsel who participated in the hearing and were afforded full opportunity to be heard, to examine and

cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were granted an opportunity to file briefs and/or proposed findings and conclusions with the undersigned and briefs have been duly received from the General Counsel and Respondent.

At the outset of the hearing, Respondent moved that the complaint be dismissed on the grounds that (1) there was a lack of jurisdiction by the National Labor Relations Board over Respondent, and (2) it would not effectuate the policies of the National Labor Relations Act to assert jurisdiction over Respondent. These motions were denied with leave to renew at the conclusion of the hearing. They were duly renewed and taken under advisement.

Respondent, Paramount Sales Company, is a Massachusetts corporation whose sole office and place of business is located at Boston, Massachusetts, where it is engaged in the sale and distribution at wholesale of bottled beer and ale; it does not handle draught beer and ale. During the year 1949, Respondent purchased bottled beer and ale valued at approximately \$450,000 from the Haffenreffer Brewing Company and the Boston Beer Company, both of which operate breweries in the city of Boston. This beer and ale was brewed and bottled at the Boston breweries of the two companies, delivered by them to Respondent's Boston warehouse which is located but a short distance from the breweries, and sold by Respondent to retail stores and markets in the Boston area.

Respondent handles only these two lines of merchandise; it has not handled any others and does not contemplate doing so. The only exception was one purchase by Respondent in 1948 of bottled beer, valued between \$1,500 and \$1,600, from a Philadelphia, Pennsylvania brewery. However, this shipment was not sold by Respondent because of an alleged breach of contract by the brewery and it is presently stored in its warehouse. Respondent contemplates no further transactions with that brewery.

During 1949, Respondent sold bottled beer and ale valued at approximately \$500,000 to retailers, 95 percent of whom are located in the city of Boston and the remainder in surrounding cities or towns, all within the Commonwealth of Massachusetts. The actual distribution was carried out by the approximately six or seven employees on Respondent's pay roll and, as stated above, consisted solely of the products of the Haffenreffer Brewing Company and the Boston Beer Company.

Of the two breweries, only the Haffenreffer Brewing Company sells beer and ale in any volume outside the Commonwealth of Massachusetts. Thus, in 1949, Haffenreffer Brewing Company purchased raw materials valued at approximately \$800,000, consisting principally of malt together with hops and sugar; of these the malt and hops were purchased outside the Commonwealth of Massachusetts. During the same year it sold beer and ale valued at approximately \$6,000,000, of which 13.8 percent was shipped outside the Commonwealth of Massachusetts largely to the other New England States.

Boston Beer Company in 1949 purchased raw materials consisting principally of malt, hops, and sugar valued at approximately \$225,000, of which the malt and hops were purchased outside the Commonwealth of Massachusetts. Its sales of beer and ale during that year were valued at approximately \$2,400,000, of which approximately 1.6 percent, valued at \$39,000, was shipped outside the Commonwealth of Massachusetts.

The business relationship of Paramount with each of the two breweries is almost identical. There is no written agreement in either instance but rather an oral understanding between each brewery and Respondent that Respondent will distribute its product within a given area. With respect to Haffenreffer

products, Respondent is one of three distributors to whom Haffenreffer has allotted the greater Boston area.<sup>1</sup> Haffenreffer assigns to each of the three a certain portion of the area but, as stated, this is done purely under an oral understanding. The Boston Beer Company also has three distributors in the greater Boston area, of whom Respondent is one. Under that relationship, however, Respondent is permitted to sell to anyone within the over-all greater Boston area.

Respondent is free to handle other lines of merchandise if and when it chooses, but the only instance of such an undertaking was the abortive purchase of beer valued at \$1,500 to \$1,600 from a Philadelphia brewery in 1948, as set forth above. Although Respondent has distributed the products of the two Boston breweries for a number of years, this has been done solely under the oral agreements, if they may be so termed, with the respective breweries which are indefinite and may be terminated by either party thereto at will. Furthermore, each of the breweries is free to appoint additional distributors in any given area if it sees fit.

The General Counsel contends that the *William A. Mosow* decision, 86 NLRB 680, is controlling herein. However, in that decision, the Board, in asserting jurisdiction over a distributor of beer and carbonated beverages, pointed out that its policy was ". . . to assert jurisdiction over franchised wholesale distributors of out-of-State beer, wine and liquor, . . ." [Emphasis added.] And, as the text of the *Mosow* decision reveals, the employer in that case was a franchised distributor of out-of-State beer and carbonated beverages. But in the instant case, it is obvious that Respondent purchased and distributed in the Commonwealth of Massachusetts only locally brewed beer and ale. Therefore, the *Mosow* decision is deemed inapposite. Furthermore, it appears doubtful whether the business relationship between Respondent and each of the respective breweries may be termed a franchise, inasmuch as it is not bottomed upon a written agreement but is oral, is terminable at will, and imposes no restrictions upon other business operations of Respondent or the breweries. Cf. *Auto Supply and Equipment Co.*, 85 NLRB 893.

The undersigned believes and finds that the business of Respondent is analogous and closely similar to that of the employer in *Monroe Beer Distributors*, 86 NLRB 384, where the employer distributed beer, wine, and soft drinks in the State of Michigan; almost all of this consisted of beer purchased from a Michigan brewery admittedly engaged in interstate commerce. There, although the employer took no stand of commerce, the Board ruled that the policies of the Act would not be effectuated by the assertion of jurisdiction.

In view of the findings hereinabove made, the undersigned is of the belief that the business operations of Respondent, assuming that they are not wholly unrelated to interstate commerce, are essentially local in character and that the assertion of jurisdiction over Respondent would not effectuate the policies of the National Labor Relations Act. For the reasons stated above, the motion to dismiss the complaint on the ground that the policies of the Act would not be effectuated by an assertion of jurisdiction over the operations of Respondent is hereby granted, and it is hereby

ORDERED that the complaint in this proceeding be dismissed in its entirety.

<sup>1</sup> This area includes the city of Boston and surrounding towns or cities.

<sup>2</sup> A similar rationale appears to underlie the decisions of the Board in *Henry J. Norts, Inc.*, 86 NLRB 580, and *State Beverage Distributors No. 4, Inc.*, 88 NLRB 62, decided January 11, 1950.

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Any party may obtain a review of the foregoing order, pursuant to Section 203.27 of National Labor Relations Board Rules and Regulations by filing a request therefor with the Board stating the grounds for review, and immediately upon such filing, serve a copy thereof on the Regional Director for the First Region and 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.

MARTIN S. BENNETT,  
*Trial Examiner.*

Dated March 1, 1950.