

WAVE PUBLICATIONS, INC. *and* MRS. EDWIN SELVIN

LOS ANGELES TYPOGRAPHICAL UNION NO. 174 *and* MRS. EDWIN SELVIN. Cases Nos. 21-CA-1243 and 21-CB-388. August 28, 1953

DECISION AND ORDER

On June 25, 1953, Trial Examiner Maurice M. Miller issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action. Thereafter, the Respondents filed exceptions to the Intermediate Report and supporting briefs.

The Respondent Union's request for oral argument is hereby denied because the record, including the exceptions and briefs, adequately presents the issues and positions of the parties.

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 Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in the contention that the complaint should be dismissed on the ground that it would not effectuate the policies of the Act for the Board to assert jurisdiction in this case.

The commerce facts are detailed in the Intermediate Report. Briefly, they are as follows.¹

The Respondent, a California corporation, herein called the Company, prints and publishes 6 community newspapers, having a total circulation of about 111,000, in Los Angeles County. In addition, it engages in an unstated amount of commercial printing, which is small in amount. Four of the newspapers, having a total circulation of about 81,000, are published twice a week, the remaining 2 newspapers, having a total circulation of about 30,000, are published once a week.

The newspapers are "throwaways," that is, the Company gives them away without charge; the subscribers do not pay for the newspapers.² The Company's revenue is derived almost entirely from advertising.³

The Company has no out-of-State subscribers, circulation being confined to Los Angeles County. The Company is not a member of any interstate wire service.

¹Neither the General Counsel nor the charging party filed exceptions to the Trial Examiner's findings as to commerce facts.

²Except for an unstated amount of newspapers placed on sale at drug stores and other stands, which is small in amount.

³In addition to its commercial printing business, the Company accepts Western Union telegrams on a dealer discount basis. The income from these two sources is negligible.

For a 12-month period ending in November 1949, the Company purchased materials and supplies valued at \$255,000, of which approximately 70 percent was shipped directly to the Company from outside California. In addition, the Company paid about \$3,000 annually for syndicated cartoons, columns, and advertising mat services distributed from outside California.

For the same 12-month period mentioned above, the Company's gross income was approximately \$875,000, almost all of which represented advertising revenue. About \$10,000 worth of this advertising was placed with the Company by national advertising agencies, located outside California, on behalf of national product advertisers. Another \$10,000 represented locally placed advertising for such advertisers. National chain store advertising, handled either by the local outlet or by national advertising agencies, accounted for \$78,000 during this period. The record does not show (1) the volume of interstate transactions of any local outlet of any one of the national chains; or (2) whether any such local outlet, or combination of such outlets, purchased \$50,000 worth of advertising from the Company. The bulk of the Company's advertising income, amounting to over \$500,000, was the result of cooperative advertising. These advertisements, which include advertising of local and national products, are placed by local merchants who are reimbursed, in part, for the expense involved in advertising the national product, by the national manufacturer. The record does not show what portion of the \$500,000 is allocable to advertising national products.

On the basis of the facts indicated above, the Trial Examiner concluded that the Company is engaged in commerce within the meaning of the Act and that, because the Company "functions as an instrumentality and channel of commerce," the Board should assert jurisdiction.

We agree with the Trial Examiner that the Company is engaged in commerce within the meaning of the Act and, thus, the Board has jurisdiction in the sense that the Board has power or authority to act in this case. However, the record does not support the Trial Examiner's conclusion that the Board should assert its jurisdiction here.⁴

The facts established here do not show that the Company's operations meet any of the announced requirements for the assertion of jurisdiction. The Company is neither a public utility nor a transit system;⁵ it does not operate as an integral part of a multistate enterprise;⁶ it does not produce

⁴In a prior decertification case involving the same employer, the Board held that it had jurisdiction in the power sense based upon the same commerce facts presented here. 90 NLRB 274. That case, however, was decided in June 1950, before adoption by the Board of its present jurisdiction plan, and thus the Board had no occasion in that proceeding to consider whether the requirements of the jurisdiction plan were met.

⁵W C King d/b/a Local Transit Lines, 91 NLRB 623.

⁶The Borden Company, Southern Division, 92 NLRB 628

or handle goods destined for out-of-State shipment or perform services outside California;⁷ it has neither a direct inflow of \$500,000 a year or an indirect inflow of \$1,000,000 a year, or a combined percentage of any outflow or inflow requirement totaling 100 percent;⁸ and it has no particular connection with national defense.⁹ Nor is the Company an enterprise furnishing service or materials which are valued at \$50,000 or more per annum and are necessary to the operation of (a) instrumentalities and channels of interstate and foreign commerce; (b) public utilities or transit systems; or (c) enterprises engaged in producing or handling goods destined for out-of-State shipment, or performing services outside the State, in the value of \$25,000 or more per annum.¹⁰

As indicated above, the Trial Examiner concluded that it would be appropriate for the Board to assert jurisdiction here on the ground that the Company operates as "an instrumentality and channel of commerce." It is true that the Board has asserted jurisdiction on this ground over newspapers which were members of interstate news services.¹¹ But here, as the Trial Examiner recognizes, the Company is not a member of any interstate news service. The Board has also asserted jurisdiction over news agencies which distribute newspapers and magazines, but--and this the Trial Examiner also recognizes--under the categories relative to inflow and outflow of goods rather than as an instrumentality or channel of commerce.¹² Notwithstanding this, the Trial Examiner has offered no explanation as to why the principle underlying these newspaper and news agency cases should be applied to the instant case. In fact, the Board has declined to assert jurisdiction over a company engaged in printing newspapers of the neighborhood, shopping guide type, not making use of any of the national news services, where neither inflow nor outflow, singly or in combination, was sufficient to meet the Board's jurisdictional standards, notwithstanding the fact that the newspapers carried advertisements of nationally known prod-

⁷Stanislaus Implement and Hardware Company, Ltd., 91 NLRB 618.

⁸Federal Dairy Co., Inc., 91 NLRB 638; Dorn's House of Miracles, Inc., 91 NLRB 632; The Rutledge Paper Products Co., 91 NLRB 625.

⁹Westport Moving and Storage Co., 91 NLRB 902.

¹⁰Hollow Tree Lumber Company, 91 NLRB 635. In the instant case, the Company sold advertising in the total sum of approximately \$78,000 to local outlets of national chain stores. However, the record does not show any data as to the inflow or outflow of any of these local outlets or as to whether the Company sold in value \$50,000 or more advertising to any local outlet of such national chains, or combination of such outlets, shipping outstate goods valued at \$25,000 or more a year. In this connection, the Board has excluded sales to local units operating as integral parts of multistate enterprises from the type of sales to be taken into account, except where such a local unit itself has sufficient inflow or outflow which would warrant asserting jurisdiction over it, National Gas Co., 99 NLRB 273 at page 276; Frank Smith & Sons, 100 NLRB 1382.

¹¹Press, Incorporated, 91 NLRB 1360; Tampa Times Company, 93 NLRB 224.

¹²Manson News, 93 NLRB 1112; Rockaway News Supply, 94 NLRB 1056; Newark News-dealer Supply, 94 NLRB 1667.

ucts and of public utility companies. J. Weiss Printers, 92 NLRB 993.

On the basis of the foregoing, we conclude that the Company's operations do not meet the Board's jurisdictional standards. Accordingly, consistent with such standards, the Board has no alternative but to dismiss the complaint in its entirety, which we shall do.¹³

[The Board dismissed the complaint.]

Members Murdock and Rodgers took no part in the consideration of the above Decision and Order.

¹³Chairman Farmer agrees with the dismissal on jurisdictional grounds. This is not to be taken, however, as reaffirming the previously established jurisdictional plan.

IRVING Z. LEE, ANNE E. LEE AND J. J. ERLICH, TRUSTEE, CO-PARTNERS d/b/a NORTHWESTERN PHOTO ENGRAVING COMPANY *and* WILLARD G. LEPINS,¹ Petitioner *and* CHICAGO PHOTOENGRAVERS UNION, LOCAL NO. 5. Case No. 13-RD-187. August 28, 1953

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 Richard B. Simon, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 [Chairman Farmer and Members Styles and Peterson].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Union moved to dismiss the petition upon the grounds that (a) a court decree ordering the Employer to bargain with the Union was entered less than 1 year before the filing of the decertification petition, (b) unfair labor practice charges are pending against the Employer, and (c) the Employer assisted the Petitioner in connection with this proceeding.

¹After the close of the hearing, the Petitioner died. The employees involved have requested, however, that the Board proceed with the processing of the petition. In view of the fact that the individual Petitioner was acting in behalf of these employees, the Union's request that the petition be dismissed is hereby denied.