

[The Board certified International Union of Electrical, Radio, and Machine Workers, CIO, as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate in the Decision and Direction of Election herein.]

THOMAS W. BROOKS AND COLLIN BROOKS d/b/a BROOKS WOOD PRODUCTS *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO). Case No. 7-CA-719. November 30, 1953

DECISION AND ORDER

Upon a charge and amended charge filed by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Seventh Region (Detroit, Michigan), issued a complaint dated December 12, 1952, against Thomas W. Brooks and Collin Brooks, d/b/a Brooks Wood Products, herein called the Respondents, alleging that the Respondents had engaged in and were engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. Copies of the charges, the complaint, and notice of hearing were duly served upon the Respondents and the Union. The Respondents duly filed their answer, in which they denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at West Branch, Michigan, on January 26, 1953, and at Mio, Michigan, on various dates between January 27 and February 19, 1953, before Sydney S. Asher, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondents were represented by counsel; the Union by its international representative. All parties participated in the hearing and were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On July 6, 1953, the Trial Examiner issued his Intermediate Report, finding that the Respondents had engaged in and were engaging in certain unfair labor practices alleged in the complaint, and recommending that they cease and desist therefrom and take certain affirmative remedial action. Thereafter, the Respondents and the Union filed exceptions to the Intermediate Report; the Respondents also filed a supporting brief.

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 Intermediate Report, the exceptions, the brief, and the entire record in the case and finds merit in the Respondents' exceptions with respect to the issue on the Board's exercise of jurisdiction over the Respondents.¹

The Respondents are a Michigan partnership engaged at Mio, Michigan, in the manufacture and sale of wooden pallets, separators, and related items used in the storing, handling, and crating of other products, such as automotive parts. Annually they sell about \$223,000 worth of goods to their sole customer, Plymouth Wood Products, herein called Plymouth, also an independent Michigan partnership. Plymouth, in turn, does all of its business in the State of Michigan; it sells about 70 percent of the Respondents' products to the Budd Company and the Kelsey-Hayes Wheel Company, both located in Michigan and both doing a very substantial interstate business. Although Plymouth buys and takes title to all products bought from the Respondents, at Plymouth's request and direction the Respondents make direct deliveries to Budd and Kelsey-Hayes. The record shows that annually at least \$49,000 worth of the Respondents' products are used in packing and crating goods for out-of-State shipments by the Budd Company and that Kelsey-Hayes probably uses directly in interstate commerce as much as 20 percent of the \$84,000 worth of the Respondents' products which it receives.

We agree with the Trial Examiner's conclusion that the Respondents are engaged in commerce within the meaning of the Act. We do not believe, however, that it would effectuate the policies of the Act for the Board to assert jurisdiction in this case. The Respondents' business and the business of its only customer, Plymouth, are entirely intrastate. As the Respondents' business is not once, but twice removed from interstate commerce, the volume of their business is immaterial. They clearly would be covered by the Board's past jurisdictional policy with respect to firms doing business with companies engaged in interstate commerce if they sold to either Budd or Kelsey-Hayes in amounts exceeding \$50,000 annually. The Trial Examiner's finding, that the Respondents' operations satisfy the Board's jurisdictional criteria because they ship directly to Budd and to Kelsey-Hayes products valued in excess of \$50,000 annually, is an unwarranted extension of the Hollow Tree Lumber Company decision.² We believe that there is insufficient impact upon interstate commerce to warrant our exercise of jurisdiction here.³ We shall, therefore, dismiss the complaint.

¹The Respondents' request for oral argument is hereby denied as the record, including the brief and the exceptions, adequately presents the issues and the positions of the parties.

²91 NLRB 635. However, we do not hereby adopt the Board's ruling in that case as a permanent policy.

³To the extent that our holding herein is inconsistent with the Board's earlier decision in National Gas, 99 NLRB 273, that decision is hereby overruled.

[The Board dismissed the complaint.]

Member Murdock, dissenting:

I emphatically disagree with my colleagues' conclusion that there is insufficient impact upon interstate commerce to warrant exercise of jurisdiction here.

I do not agree with the majority's finding that Respondents' operations do not come within the reach of category 5 of the Board's jurisdictional plan or the Hollow Tree case in which it was first made public. During 1952 Respondents sold approximately \$223,000 worth of crating and packing materials to Plymouth Wood Products and at Plymouth's direction delivered approximately \$156,000 worth of these products directly to the Budd Company and Kelsey-Hayes Wheel Company. The last-named corporations together ship annually in excess of \$43,000,000 worth of automotive parts directly in interstate commerce from their Detroit plants. The crating materials such as wooden pallets and separators furnished by Respondents are used by Budd and Kelsey-Hayes to ship their products in interstate commerce. More than \$65,000 worth of Respondents' materials are shipped out of the State by Budd and Kelsey-Hayes with their products. These facts clearly bring Respondents within the reach of category 5 of the Board's jurisdictional plan which embraces:

Intrastate enterprises furnishing services or materials necessary to the operation of enterprises falling within categories 1, 2, 3 or 4 of the plan provided such goods or services are valued at \$50,000 per annum. (Emphasis supplied.)

Category 4 of the plan embraces:

enterprises engaged in producing or handling goods destined for out-of-state shipment or performing services outside the state, if the goods or services are valued at \$25,000 per annum.

There is no question but that Budd and Kelsey-Hayes are both category 4 enterprises as they ship in excess of \$43,000,000 out of the State. Therefore, as Respondents furnish crating materials "necessary to the operation" of Budd and Kelsey-Hayes valued in excess of \$50,000, they clearly fall within category 5 of the plan. The Trial Examiner's finding that Respondents' operations satisfy the Board's jurisdictional criteria, far from being an unwarranted extension of the Hollow Tree doctrine, as suggested by the majority, is instead squarely in accord with that doctrine as applied by the Board not only in the National Gas⁴ case but also in Gaby Iron &

Metal Company.⁵ In the Gaby case, the Board asserted jurisdiction over an Illinois employer who sold \$121,000 worth of scrap iron and steel to brokers located within the State of Illinois, which was then delivered directly to Illinois plants of Republic Steel Company which were category 4 enterprises.

The majority admits that if Respondents sold their products directly to Budd and Kelsey-Hayes they would clearly fall within category 5 of the Board's jurisdictional plan. But because Respondents first sell to Plymouth, which transaction involves only a paper transfer of title to the goods, before delivery to Budd and Kelsey-Hayes, my colleagues find that the effect upon interstate commerce of a strike of Respondents' employees would be somehow less. The majority does not explain how the mere paper transfer of title can achieve this result as indeed they cannot. For the fact that Respondents no longer have title to the goods which they directly deliver to Budd and Kelsey-Hayes does not and cannot change in any way the degree of impact on interstate commerce resulting from a strike of Respondents' employees. The fact remains that if Respondent cannot deliver crating materials to Budd and Kelsey-Hayes because of a labor dispute, there will be an impact on the latter's ability to ship their products out of the State. As the Supreme Court said in the Fainblatt case:⁶

The end sought in the enactment of the Statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act. That these consequences may ensue from strikes of the employees of manufacturers who are not engaged in interstate commerce where the cessation of manufacture necessarily results in the cessation of the movement of the manufactured products in interstate commerce has been repeatedly pointed out by this court.

The Supreme Court went on to point out the immateriality of considerations of where title to goods lies:

We cannot say, other things being equal, that the tendency differs in kind, quantity or effect merely because the merchandise which the manufacturer ships instead of being his own, is that of a consignee or his customer in other states. In either case commerce is being obstructed in the same way and to the same effect.

If it would effectuate the policies of the Act to assert jurisdiction over Respondent if they sold direct to either Budd or Kelsey-Hayes, as the majority indicates, it effectuates the

⁵ 13-RC-2311, 97 NLRB No. 229.

⁶ 306 U. S. 601 (1939).

policies of the Act precisely to the same extent to assert jurisdiction over Respondents under existing circumstances.

In my view the dismissal of this case on the stated ground that there is "insufficient impact upon interstate commerce" represents not alone a departure from what my colleagues characterize as the Board's "past jurisdictional policy" (a practice which seems to be recurring with increasing frequency). To me it also represents a lack of perspective and realism in appraising and guarding against the possible serious effect on interstate commerce of a cessation of operations by this employer who provides necessary crating materials for the shipment in interstate commerce of automotive products of Budd and Kelsey-Hayes.

Budd is one of the Nation's three leading independent body manufacturers. Its principal customers include Chrysler Corporation, Ford Motor Co., Fruehauf, General Motors Corp., Kaiser-Frazer Corp., Nash-Kelvinator Corp., and Studebaker Corp. Its Charlevoix Avenue plant in Detroit covers 1,955,200 square feet on a 74-acre site devoted to the production of automobile body components, wheels, hubs, drums, and brakes for passenger cars and trucks.⁷ As noted in the Intermediate Report, its Detroit plant shipped in excess of \$42,000,000 worth of products out of State in 1 year.

Kelsey-Hayes manufactures passenger car and truck wheels, as well as wheels, hubs, brakes, rims, drums, etc., for tractors and farm implements. It operates 2 plants in Detroit and Jackson, Michigan, with a floor area of 1,100,000 square feet on 50 acres and a daily capacity for making 50,000 wheels.⁸

In the assembly-line system in use in today's automobile manufacturing industry the vital importance of having the proper parts on hand at the proper time scarcely needs laboring. Delay in the timely receipt of parts may mean a complete stoppage of the assembly line and a cutoff in the flow of finished automobiles in interstate commerce. Accordingly, the possible impact of a work stoppage at this Respondent's operations not only on Budd's and Kelsey-Hayes' interstate shipments but also on the manufacture and flow of countless automobiles in interstate commerce is evident. It should require no great amount of imagination to visualize the chain reaction in the impact of a shutoff in the supply of Respondents' crating materials on Budd's and Kelsey's shipments of automotive parts; and then in turn the impact on the production of automobiles of Budd's and Kelsey's inability to make timely delivery of essential parts to assembly plants. To some extent this situation presents a mechanical age illustration of the old proverb: "For want of a nail the shoe was lost; for want of a shoe the horse was lost, etc."

Accordingly, I believe that Respondents' operations affect interstate commerce sufficiently to warrant our exercise of

⁷Moody's Industrials, 1953.

⁸Ibid.

jurisdiction in this case, and that reason and logic as well as past decisions of the Board require us to do so in order to best effectuate the policies of the Act.

ROBERT H. SNOW, d/b/a AUTO PARTS CO. *and* ARTHUR J. SHUMAN. Case No. 19-CA-740. November 30, 1953

DECISION AND ORDER

On April 13, 1953, Trial Examiner Martin S. Bennett 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 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,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:

We agree with the Trial Examiner's conclusion that the record does not sustain the complaint allegation that the Respondent violated Section 8 (a) (3) of the Act when it discharged Shuman. In reaching this conclusion, however, we find it unnecessary to adopt the various rationales set out in the Intermediate Report.

It is clear that Shuman's conduct amounted to a refusal to carry out part of his assigned work task and that the Respondent released him for such reason and only for such reason.² As set forth in the Intermediate Report, on his very first day on the job as delivery man Shuman complained to Snow, his employer, that he disliked making deliveries to certain customers of the Respondent where the I.A.M. was maintaining a picket line. Snow advised him that those deliveries were necessary, like all others, and that they would have to be made. The next day Shuman avoided making a similar delivery through the I.A.M. picket line in the course of his work by arranging with a fellow employee to make it for him. Having learned of this, Snow reiterated to Shuman the warning that he would have to do the work assigned him and this time

¹On motion by the General Counsel the Board remanded the case for further evidence. The parties thereafter submitted a stipulation of facts in satisfaction of the remand. We have considered that stipulation as part of the entire case.

²There is no evidence of antiunion bias. That Snow acted only to preserve efficient operation of his business is shown by the fact (stipulated by the parties after the hearing) that he hired a replacement who was willing to make the necessary deliveries without reservation.