

LOUIS RUBINO, LOUIS P. RUBINO, JR., and PETER L. RUBINO, individually, and as CO-PARTNERS, d/b/a ALPINE MILL AND LUMBER COMPANY *and* ELMO HECKMAN

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 266, AFL *and* ELMO HECKMAN.
Cases Nos. 20-CA-795 and 20-CB-264. January 20, 1954

DECISION AND ORDER

Upon charges filed by Elmo Heckman, an individual, the General Counsel of the National Labor Relations Board, through the Regional Director for the Twentieth Region (San Francisco, California), issued a consolidated complaint dated March 24, 1953, against Louis Rubino, Louis P. Rubino, Jr., and Peter L. Rubino, individually, and as co-partners, d/b/a Alpine Mill and Lumber Company, and United Brotherhood of Carpenters and Joiners of America, Local 266, AFL, the Respondents, and herein called, respectively, the Company and the Union, alleging that the Company had engaged in and was 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, and alleging that the Union had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the Act. Copies of the complaint, charges, order consolidating cases, and notice of hearing were duly served upon the Company, the Union, and the charging party. The Respondent filed answers wherein they denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Stockton, California, on April 21 and 27 and August 19, 1953, before James R. Hemingway, a Trial Examiner duly designated by the Associate Chief Trial Examiner. All parties were represented by counsel and participated in the hearing. All parties were offered a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Trial Examiner made rulings on various motions and on objections to the admission of evidence.

On August 27, 1953, the Trial Examiner issued his Intermediate Report herein, 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 remedial action. Thereafter, the Company and the Union filed exceptions to the Intermediate Report and supporting briefs.

To the extent here material, the Board has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. Such rulings are hereby affirmed. The Board has considered the Intermediate

Report, the Respondents' exceptions thereto and supporting briefs, and the entire record in the case, and is of the opinion that the assertion of jurisdiction over the Company's operations is not warranted.

The Company is engaged at Stockton, California, in purchasing, milling, planing, and selling lumber and purchasing and selling other building materials. Its total sales for 1952 were in excess of \$600,000, including sales of approximately \$2,000, shipped to points out-of-State, and sales of approximately \$20,847 sold to the United States Army for delivery at a California depot. Out-of-State sales and sales to the Army amounted to about $3\frac{1}{2}$ percent of the Company's total sales. Sales to the Army in 1951 amounted to \$42,999. The record gives no information as to the amount or source of the Company's purchases.

While we do not believe that the Company's operations are wholly unrelated to commerce, we believe that, in view of their essentially intrastate character and the small amount of sales to points outside the State, the Company's operations do not have a sufficient impact on interstate commerce to justify our taking jurisdiction in this proceeding.¹ Nor do we believe that sales to the Army have a sufficient effect upon national defense to warrant our asserting jurisdiction for that reason. Accordingly, we shall dismiss the complaint on the ground that it would not effectuate the policies of the Act to assert jurisdiction herein.

[The Board dismissed the complaint.]

Member Murdock, dissenting:

In view of the fact that this Employer sold \$42,999 worth of lumber to the United States Army in 1951 and \$20,847 in 1952, I would assert jurisdiction over it consistent with 3 years of Board precedents following the Westport case² which laid down the rule that the Board would assert jurisdiction over enterprises which substantially affect the national defense. Although the majority in disagreeing refers to the "small amount of sales to the Army" as not having "the kind of effect upon national defense" to warrant taking, I note that the amount is no less than in the lead Westport case. In my Taichert, Inc.,³ dissent I have set forth at length my views on the proper application of the national defense section of the Board's jurisdictional plan, and I shall not repeat them in detail here.

¹Upshur Rural Electric Cooperative Corporation, 107 NLRB 207, and cases cited therein, San Jose City Lines, Inc., 106 NLRB 1167; Johnson Concrete Company, 106 NLRB 1255.

²Westport Moving & Storage Co., 91 NLRB 902.

³107 NLRB 779.