

In summary, the Trial Examiner concludes and finds that the Respondent Union must be held accountable for the above-described conduct on the part of its agent, Elliott, and the pickets. (*International Longshoremen's and Warehousemen's Union*, 79 NLRB 1487.) It is further concluded and found that the following specific conduct was in violation of Section 8 (b) (1) (A) of the Act: (1) The threats of violence and the actual violence visited upon employee Phillips (*Roadway Express, Inc.*, 108 NLRB 874 at 876); (2) the rock-throwing by Hodges, both at employee Roan and upon the roof above the heads of nonstriking employees; (3) the following of nonstrikers as they proceeded from work; (4) the threats uttered to Superintendent Cox in the presence of nonstriking employees (*District 50, United Mine Workers of America*, 106 NLRB 903 at 922); and (5) the threat of violence to employee Craig.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the activities of the Employers described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has violated Section 8 (b) (1) (A) of the Act, the Trial Examiner will recommend that it cease and desist therefrom, and that it take certain affirmative action designated to effectuate the policies of the Act.

Upon the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Steelworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

**New Jersey Poultry & Egg Cooperative Association, Inc. and
Amalgamated Food & Allied Workers Union, Local 56, AFL.**
Case No. 4-RM-183. October 19, 1955

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Eugene M. Levine, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer, a New Jersey corporation located near Flemington, New Jersey, is engaged in processing and packaging eggs which it ships to customers in New Jersey and New York. Its direct out-of-State sales for the fiscal year ending May 31, 1955, amounted to \$30,410.19, and \$38,520.30 for the fiscal year ending May 31, 1954. During the same periods, its direct purchases from points outside the State of New Jersey amounted to \$47,774.89 and \$54,983.36, respectively. In addition, during the fiscal year ending May 31, 1955, the

Employer sold eggs of a total value of \$1,107,955 to several large interstate retail chain enterprises as follows: Atlantic & Pacific Tea Company (\$408,000); Grand Union Company (\$247,125); American Stores (\$248,615); Borden Farm Products Company (\$170,649); and Bordens-Castania (\$38,556). These sales are made to local outlets of the above-named retail chain enterprises, and with the exception of Bordens-Castania, it does not appear that the local outlets to whom the sales are made, make any sales directly to points outside the State of New Jersey. Bordens-Castania sold approximately \$11,000 worth of eggs, butter, and milk to places outside the State of New Jersey.

The Employer contends that its operations meet the indirect outflow criterion for nonretail enterprises,¹ because it sells eggs valued in excess of \$100,000 to enterprises over which the Board would assert jurisdiction, because the latter do an annual gross volume of business in excess of \$10,000,000 and thus meet the Board's jurisdictional standards for multistate retail chain enterprises.²

We find no merit in this contention. It is well established that sales to a local unit of retail chain enterprises do not constitute indirect outflow of the seller, under the jurisdictional standards unless the local unit of the retail enterprise which makes the purchases, itself, has sufficient outflow to warrant the Board's assertion of jurisdiction over it.³ Accordingly, as it does not appear that the local outlets of the retail chains which received the Employer's products had sufficient direct outflow to warrant the Board's assertion of jurisdiction over them, we find that the Employer's sales to such local units do not constitute indirect outflow. As no other basis appears on which to ground an assertion of jurisdiction, we find that it will not effectuate the policies of the Act to assert jurisdiction herein.⁴ Accordingly, we shall dismiss the petition.⁵

[The Board dismissed the petition.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

¹ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

² *Hogue and Knott Supermarkets*, 110 NLRB 543.

³ *Redfern Sausage Company*, 98 NLRB 6; *Crown Sign and Construction Company*, 99 NLRB 843; *National Gas Company*, 99 NLRB 273, 276; *Frank Smith & Sons*, 100 NLRB 1382; *Wave Publications, Inc.*, 106 NLRB 1064, footnote 10. Insofar as the latter three cases indicate that sales to a retail store, over whom the Board would assert jurisdiction on the basis of its direct inflow, constitute indirect outflow, they are hereby overruled. See also *Frank Smith & Sons*, 111 NLRB 241. The Employer's reliance on this case for support of its position is misplaced. Therein the Board asserted jurisdiction over an Employer which sold products valued in excess of \$100,000 to a warehouse of Safeway Stores, Incorporated, which warehouse itself had made sufficient shipments directly out of State to warrant the Board's exercise of jurisdiction over it on that basis.

⁴ *Jonesboro Grain Drying Cooperative*, *supra*.

⁵ In view of our disposition of the case, we find it unnecessary to pass upon other issues raised by the parties.