

CONCLUSIONS OF LAW

1. By picketing vehicles of The Caradine Company, Inc., at the premises of other employers with an object of forcing or requiring such other employers to cease doing business with The Caradine Company, Inc., the Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

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

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL MEMBERS OF GENERAL DRIVERS, SALESMEN, WAREHOUSEMEN & HELPERS, LOCAL UNION 984, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT induce or encourage the employees of any employer other than The Caradine Company, Inc., to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities, or to perform any services for their respective employers, where an object thereof is to force or require any employer or person to cease doing business with The Caradine Company, Inc.

GENERAL DRIVERS, SALESMEN, WAREHOUSEMEN & HELPERS, LOCAL UNION 984, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Pazan Motor Freight, Inc., Petitioner and Truck Drivers Local No. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case No. 7-RM-164. November 14, 1956

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Myron K. Scott, 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 Petitioner, an intra-State trucker, contends that the Board should not assert jurisdiction herein because the Petitioner's operations do not meet the jurisdictional standards prescribed in the *Breeding Transfer* case¹ for local haulers. In that case, the Board an-

¹ *Breeding Transfer Company*, 110 NLRB 493.

nounced that it would assert jurisdiction over "transportation or other local activities which constitute a link in the chain of interstate commerce only where the annual income received by the particular company involved from services which constitute a part of interstate commerce totals no less than \$100,000." Thereafter, in the *Edelen Transfer* case,² the Board restated the rule as follows:

The Board decided in *Breeding Transfer Company* . . . that jurisdiction will be asserted over a wholly intrastate hauling firm if its annual business with interstate carriers (i. e. interlining operations) amount to at least \$100,000.

It was stipulated that Petitioner annually performs services valued in excess of \$100,000 for companies which annually ship goods in the value of \$50,000 out of State. However, as this income is not derived from interlining operations with interstate carriers, the jurisdictional standard established by the *Breeding* case does not apply.

The Union contends, however, that the Board should assert jurisdiction on the ground that the Petitioner annually receives more than \$100,000 for services performed by it for companies which annually ship goods in the value of \$50,000 out of State. This contention assumes the applicability to the Petitioner of the rule laid down by the Board in the *Jonesboro* case.³ We find merit in that contention. The local hauling services performed by Petitioner are indistinguishable from such other types of services for interstate businesses as might, under the *Jonesboro* rule, afford a basis for asserting jurisdiction.⁴ As that standard has been met in the instant case, we find that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Union is a labor organization, claiming to represent employees of the Petitioner.

3. In February 1955, the Petitioner and the Union executed a contract, effective until January 31, 1961, which *inter alia*, recognized the Union as the exclusive representative of the Employer's owner-operators.⁵ The instant petition was filed on June 15, 1956. The Union

² *Edelen Transfer and Storage Company, Inc*, 110 NLRB 1881.

³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, 484

⁴ Cf. *Potash Mines Transportation Company, Inc*, 116 NLRB 1295; *Local 148, Truck Drivers and Warehousemen's Union, etc*, 114 NLRB 1494. In the *Potash* case, the Board asserted jurisdiction on the basis of *Jonesboro* over a local bus company which received more than \$100,000 annually from interstate industrial firms for charter operations. Although the bus company had some small public transit operations, the public transit standard of *The Greenwich Gas Company and Fuels, Incorporated*, case (110 NLRB 564, 565) was not applied.

To the extent that the decisions in *Breeding* and *Edelen Transfer* imply that the Board will not apply the *Jonesboro* standards to a trucker such as the Employer, those decisions are hereby overruled.

⁵ All the Petitioner's drivers are owner-operators, i. e., they own the vehicles which they operate.

contends that the petition is barred by the foregoing contract. The Petitioner contends that the contract is no bar because *inter alia* (1) it is of unreasonable duration, (2) the contract does not cover the owner-operators, because they are not employees but independent contractors, (3) the Petitioner is entitled to a board certification of the Union under the doctrine of the *General Box* case,⁶ and (4) the Union has not enforced the contract.

As to (1), even if we assume, without deciding, that the contract is of unreasonable duration, it would nevertheless be a bar for the first two years of its life—i. e., until February 1957.⁷

As to (2), the contract, on its face, purports to cover owner-operators, Article XXXII containing elaborate provisions dealing with the terms of employment of owner-operators. Moreover, even if it be true, as Petitioner contends, that the agreement does not apply to owner-operators because they are independent contractors, and not employees, it would be necessary to dismiss the petition, in any event, as not involving individuals covered by the Act.

As to (3), the Board has held that even where a union had a current collective-bargaining contract, which would otherwise bar an election, it was entitled to seek a Board certification because of the special protection afforded by certain provisions of the Act to certified unions which was not available to other unions.⁸ While the Board has also held that an employer is, by the same token, entitled to the benefits attendant upon dealing with a certified union,⁹ the Board has not deemed it proper to exempt such employer petitions from the contract bar rule, even though filed for the purpose of obtaining the benefit of dealing with a certified union.¹⁰

As to (4), even if we assume that the failure of the Union to enforce its contract is relevant to the contract bar issue, the record does not support the Petitioner's assertion that the Union has been derelict in this respect.

Accordingly, we find that the contract is a bar and that no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act. We will therefore dismiss the petition.

[The Board dismissed the petition.]

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

⁶ *General Box Company*, 82 NLRB 678.

⁷ *Bath Iron Works Corporation*, 101 NLRB 849.

⁸ See *The Zia Company*, 108 NLRB 1134; *Natona Mills, Inc.*, 97 NLRB 11.

⁹ *J. P. O'Neil Lumber Company*, 94 NLRB 1299.

¹⁰ Cf. *J. P. O'Neil Lumber Co.*, *supra*; *Schye & Sullivan, a partnership, and Riedesel Construction Company*, 115 NLRB 1427.