

In view of the foregoing and the record as a whole, we find that the Employer's objections do not raise substantial or material issues affecting the results of the election. Accordingly, in agreement with the Regional Director's recommendation we hereby overrule the Employer's objections and deny its request for a hearing on the objections. As the Petitioner has received the majority of the valid votes cast, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified the International Union, UAW-AFL-CIO, as the designated collective-bargaining representative of the production and maintenance employees employed at the Employer's Chicago, Illinois, bulk milk cooler manufacturing plant including shipping employees, but excluding toolroom employees, machine maintenance employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act as their representative for purposes of collective bargaining.]

Pease Oil Company; Evans Oils, Inc. and Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 3-CA-1091. December 8, 1958*

DECISION AND ORDER

On August 21, 1958, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceeding recommending dismissal of the complaint for jurisdictional reasons, 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.

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 [Members Rodgers, Bean, and Fanning].

The Board has considered the rulings of the Trial Examiner made at the hearing in connection with the jurisdictional issue and finds that no prejudicial error was committed. These rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the brief, and the entire record in this case. In view of the Board's recent revision of its jurisdictional standards, the Board adopts the Trial Examiner's findings of fact, but not his conclusions or recommendations.

Respondent Pease is engaged in the wholesale and retail distribution of gasoline, fuel oil, and automotive accessories within New York State. From November 1, 1956, to November 1, 1957, Pease

purchased locally more than \$500,000 worth of gasoline and fuel oil from Respondent Evans¹ which, in turn, received most of its products from sources outside the State of New York.

In addition to denying the allegations of the complaint,² Pease moved to dismiss the complaint on the grounds that its volume of business was insufficient to meet the Board's jurisdictional standards. The General Counsel argued, however, that Pease and Evans constitute a single employer and that the business of the two companies together meets the Board's jurisdictional standards. The Trial Examiner rejected this contention of the General Counsel and recommended dismissal of the complaint on the grounds that Pease's business standing alone did not justify asserting jurisdiction.

As Pease is engaged in wholesale and retail distribution, the Board's nonretail standards are applicable here.³ In *Siemons Mailing Service*,⁴ the Board stated that it would assert jurisdiction over all nonretail enterprises which have an outflow or inflow across State lines of at least \$50,000, whether such outflow or inflow be regarded as direct or indirect. Since Pease had over \$50,000 in indirect inflow, we find that the Board's revised standards are satisfied and that it would effectuate the policies of the Act to assert jurisdiction herein.⁵

Accordingly, we shall deny the Respondents' motion to dismiss for jurisdictional reasons. We shall also remand the case to the Trial Examiner for the preparation of a supplemental Intermediate Report concerning the merits of the complaint.

[The Board denied the Respondents' motion to dismiss the complaint and ordered the case remanded to the Trial Examiner.]

¹ At the time of the hearing (July 8 and 9, 1958), and for some time prior thereto, Evans had ceased conducting any business whatever.

² The complaint alleges that Respondent Pease violated Section 8(a) (3) and (1) of the Act by terminating or laying off two of its employees because of union activities.

³ *The T. H. Rogers Lumber Company*, 117 NLRB 1732, 1733.

⁴ 122 NLRB 81.

⁵ The Board has determined that it will apply its revised jurisdictional standards to all future and pending cases. *Siemons Mailing Service*, *supra*.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Upon charges filed by Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, herein called the Union, the General Counsel of the National Labor Relations Board, on May 20, 1958, issued a complaint against the Respondents Pease Oil Company, herein referred to as Pease, and Evans Oils, Inc., herein referred to as Evans, alleging that the Respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) and 8(a)(1) and (3) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. More specifically, the complaint, as amended at the hearing, declares that Pease discharged or laid-off employees Edward Place and Joseph A. Chirico on November 4 and 11, 1957, respectively, because of their membership and activities in behalf of the Union, and since October 31, 1957, by other conduct set forth in the complaint, has further interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7. Respondents filed an answer denying that they committed the

alleged unfair labor practices and contesting the Board's jurisdiction in this proceeding.

Pursuant to notice, a hearing was held on July 8 and 9, 1958, at Buffalo, New York, before Herbert Silberman, the duly designated Trial Examiner. The General Counsel and Respondents were represented at the hearing by counsel and were afforded full opportunity to participate. Decision was reserved on Respondents' motion to dismiss the complaint on the ground that the General Counsel failed to establish the Board's jurisdiction in this matter and upon the further ground that the unfair labor practices alleged in the complaint were not substantiated by the evidence. The motion is disposed of in accordance with the findings, conclusions, and recommendation made below.

The business of Respondent Pease, which alone is alleged to have engaged in the conduct complained of, does not meet any of the criteria by which the Board determines to assert its jurisdiction. However, the Board's jurisdiction is sought to be invoked on the theory that Respondents Pease and Evans constitute a single employer within the meaning of Section 2(2) of the Act and the operations of Evans satisfy the Board's jurisdictional standards.

Respondent Evans is a New York corporation. It has maintained its principal office in Buffalo, New York, where it has been engaged in the wholesale distribution of gasoline and oil products. During the 12-month period between November 1, 1956, and November 1, 1957, Evans purchases exceeded \$1,000,000. Its principal supplier was United Refining Company of Warren, Pennsylvania, whose sales to Evans, during this period, totaled \$944,516.49. Of this amount, products valued at \$550,948.90 were delivered to Evans at Warren, Pennsylvania, and were transported by Evans either in its own trucks or by common carrier to Buffalo, New York, and the balance was delivered to Evans from United's terminals in the vicinity of Buffalo, New York. The volume and character of the business done by Evan during the aforesaid period satisfy the Board's standards for the assertion of jurisdiction. *Jonesboro Grain Driving Cooperative*, 110 NLRB 481. However, at the time of the hearing, and for some time prior thereto, Evans had ceased conducting any business whatsoever.

Respondent Pease, which also is a New York corporation with offices in Buffalo, New York, is engaged in the wholesale and retail distribution of gasoline, fuel oil, and automotive accessories. Pease sells its products to approximately 20 gasoline service stations, some of which it owns and operates, and, in addition, sells fuel oil to home owners, State institutions, and industrial firms. From November 1, 1956, to November 1, 1957, Pease purchased all its requirements of gasoline and fuel oil from Evans. These purchases totaled \$564,092.94. In addition, during the same period, the purchases of Pease from other sources were: tires in the amount of approximately \$25,000; lubricating oil in the amount of approximately \$7,500; and antifreeze in the amount of approximately \$10,000.¹ In the same period, Evans' sales to Pease and other customers, including approximately five gasoline service stations, were in excess of \$1,500,000.

Pease and Evans have separate places of business in the city of Buffalo.² With the exception of a bookkeeper, there has been no interchange of employees between the two companies and each maintains its separate payroll. From about July 1954 or 1955 until the end of December 1957,³ the bookkeeper on Pease's payroll also worked on the books of Evans.⁴ There is no evidence of any exchange of equipment between the two companies other than that Evans borrowed a stake truck from Pease three or four times which the former used for 1 day only on each of those occasions. The only transactions between the two companies were the purchases of gasoline and fuel oil by Pease from Evans, referred to above, the sale of automotive accessories by Pease to Evans,⁵ and Pease sometimes awarded subcontracts to Evans for the delivery of certain grades of fuel oil which Pease was not equipped to supply to its customers. With respect to the subcontracts, the evidence shows that whenever Pease obtained a contract

¹ Evans to some extent also sold lubricating oil and antifreeze on a wholesale basis.

² The record does not show whether Evans gave up its business quarters when it ceased its operations.

³ There is no evidence as to what the situation was after December 1957.

⁴ Testimony was adduced that the invoices received by Pease were sent to the Company's treasurer, James O. Porter, at premises different from Pease's, where checks were drawn in payment therefor. There is no evidence regarding these matters with respect to Evans.

⁵ No evidence was adduced as to the amount of these sales. However, since Evans did not deal in such products, presumably it purchased only what was required for its own vehicles.

from a school requiring it to furnish No. 2 or No. 6 grade fuel oil, it subcontracted the service part of the contract to a licensed engineer and subcontracted the delivery part of the contract either to a common carrier or to Evans. The value of the subcontracts between Pease and Evans was not shown. However the General Counsel does not appear to rely upon the subcontracts nor the sales of automotive accessories by Pease to Evans to support his contention that the two companies constitute a single integrated enterprise.

The General Counsel places considerable reliance upon the relationship among the stockholders, directors, and officers of the two companies to support the assertion of jurisdiction in this case. The sole stockholder of Pease is Henry T. Upton, while his grandson, Henry M. Porter, is the sole stockholder of Evans. The directors of Pease are: James O. Porter, Ann D. Porter, and Ruth Miller. The directors of Evans are: James O. Porter and Ruth Miller. Ann D. Porter is the wife of James O. Porter and the daughter of Henry T. Upton. Henry M. Porter is the son of James O. and Ann D. Porter. Ruth Miller is the stenographer-secretary in the offices of James O. Porter. The officers of Pease are: George Bastian, vice president,⁶ Ruth Miller, secretary, and James O. Porter, treasurer. The officers of Evans are: William A. Evans, vice president,⁷ Ruth Miller, secretary, and James O. Porter, treasurer. Neither corporation has a president.

No evidence was adduced relating to the functions or authority of any of the officers or directors of Evans,⁸ or to what extent any of the officers, directors, or the sole stockholder of Evans participated in the management of the affairs of that Company. Respondents offered to stipulate that the operations of Evans were in the direct charge of William A. Evans, but the General Counsel did not accept the stipulation. On the other hand, as to Pease, Vincent MacVittie, the former vice president, and George Bastian, the present vice president, gave testimony relating to their authority.

MacVittie testified that he was appointed vice president of Pease in 1954 by James O. Porter and that he was responsible to Porter for the performance of his duties. During his tenure in office, MacVittie was in charge of operations which included sales, production, and the purchase or lease of retail outlets (gasoline service stations), while James O. Porter had charge of purchasing materials and merchandise for Pease. MacVittie further testified that he had full authority to hire employees⁹ and fix their initial wage rates.¹⁰ However, before he awarded any employee a merit increase he sought James O. Porter's approval which, in every instance, was given. Also, he obtained Porter's prior approval before he instituted a vacation program for the employees. George Bastian, who succeeded MacVittie as vice president and general manager of Pease, testified that he has discharged employees and has given other employees wage increases without consulting Porter in advance.

The Board has no rigid rule which it mechanically applies to ascertain whether two or more separate enterprises are sufficiently integrated to constitute them a single employer for jurisdictional purposes. In making such determinations, the Board in each case looks to the extent to which there is: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. No one of these factors is controlling, although the Board usually places particular emphasis upon the presence or absence of centralized control of labor relations.¹¹

With respect to interrelation of operations, the dependence of Pease and Evans upon one another is minimal. Except for a bookkeeper in common, each has its own force of employees who work in premises separate from one another.

⁶ From 1954 to September 15, 1957, Vincent MacVittie was the vice president instead of Bastian.

⁷ As of January 15, 1958, William A. Evans ceased holding his office. There is no evidence that he has been replaced. However, according to the assertion in Respondents' brief, that was when Evans ceased its operations.

⁸ Robert Clowes testified that he was hired as a bookkeeper for Evans in February 1957. He testified that, although he was interviewed by James O. Porter, his advertisement for a position was answered, in the first instance, by Mr. Evans and the latter hired him. I cannot infer from this scant evidence that James O. Porter exercised any authority regarding personnel matters at Evans Oils, Inc.

⁹ MacVittie testified that he had no occasion to discharge any employees.

¹⁰ MacVittie testified that he based the wage rates for new employees upon the prevailing rates being paid to other employees of comparable experience.

¹¹ Twenty-First Annual Report of the National Labor Relations Board, pp. 14-15.

Each maintains its separate payroll and there is no interchange of employees between the two. Furthermore, there is no joint use of equipment by the two companies¹² and neither performs services for the other. The only business of any consequence transacted between the two companies was the purchase by Pease of its gasoline and fuel oil requirements from Evans, which dollar-wise represented about 93 percent of all purchases made by Pease in the 12 months between November 1, 1956, and November 1, 1957. However, in the same period, Evans bought from United Refining Company of Warren, Pennsylvania, approximately the same proportion of its total requirements of the products in which it dealt. Thus, as an indicium that the operations of two companies are integrated, the purchases Pease made from Evans has no more significance than the purchases Evans, in turn, made from United Refining. The fact that a company obtains all, or substantially all its requirements of particular products from one source normally does not point to any relationship between the two other than the customary relationship of buyer and seller. Where the Board has relied upon the interrelation of operations between two companies in finding a single employer status, the evidence usually demonstrated significantly greater functional integration than is present in this case.¹³

The next two factors upon which the Board also places particular stress, namely, centralized control of labor relations and common management, also are absent here. Although the evidence shows that the vice president of Pease is in direct charge of questions affecting personnel, the testimony of MacVittie indicates that James O. Porter participated to some extent in determining wages and conditions of employment of the Company's employees. However, there is no evidence that Porter, or anyone else in the managerial hierarchy of Pease, had anything to do with personnel practices or labor relations at Evans. Consequently, even were an inference to be drawn that the ultimate power to direct personnel policies at Pease rests with Porter, there is no basis on the record for drawing a similar inference with regard to Evans. Similarly, although the evidence shows that Porter participated in the operations of Pease, at least to the extent of making all purchases of materials and merchandise for the Company, because there is no evidence as to his participation in the business of Evans, there is no basis for inferring the two companies did not conduct their business entirely independent of one another,¹⁴ or that there was common management of the two companies.

On the other hand, because of the family relationship between the sole stockholders of each of the companies and because the two have substantially identical boards of directors, there is present here common ownership or financial control. However, of the four guides which the Board uses to determine whether two or more companies constitute an integrated enterprise, the least weight is given to this factor. Thus, although the operations and control of Pease and Evans are not completely unrelated, the evidence adduced in this case is insufficient to establish that the companies are integrated to a degree sufficient to consider the business of both together in applying the Board's jurisdictional standards.¹⁵ Furthermore, mili-

¹² The testimony that Evans borrowed a stake truck from Pease three or four times does not establish joint use of equipment.

¹³ E.g., *Gibbs Oil Company and Henry and Paul Gibbs d/b/a Boulder Transportation Company*, 120 NLRB 1783; *Roanoke Railway and Electric Company et al.*, 117 NLRB 1775; *Metco Plating Company*, 110 NLRB 615; *Venus Die Engineering Co.*, 110 NLRB 336.

¹⁴ Ann Ferguson Reynolds, who was the bookkeeper for Pease and Evans until October 1957, testified that Pease did not pay Evans for its purchases of gasoline and fuel oil (and that Evans did not pay Pease for its purchases, which, because they were limited to items required for the operation of its vehicles, could not have amounted to more than a trifling sum), and that Evans borrowed money from Pease which was never repaid. However, upon cross-examination, it developed that Mrs. Reynolds did not have charge of the Companies' general ledgers (they were kept by the firms' auditor) and that her testimony was based upon inferences only. Thus, what she construed to have been loans may well have been payments by Pease to Evans in settlement for purchases made by the former from the latter. The testimony of Mrs. Reynolds, who was obviously bitter because of her peremptory discharge by Pease in October 1957, is too vague and uncertain from which to infer that the financial transactions between Pease and Evans were handled in any substantially different way than similar transactions between unrelated buyers and sellers.

¹⁵ *American Furniture Company, Inc., of El Paso*, 116 NLRB 1496; *Clark Concrete Construction Corporation*, 116 NLRB 321; *Electronic Circuits, Inc.*, 115 NLRB 940; *Central Dairy Products Co.*, 114 NLRB 1189; *Modern Linen & Laundry Service, Inc.*, 110 NLRB 1305 and 114 NLRB 166; *Dan Dee Central Ohio Corporation*, 106 NLRB 1303.

tating against finding that the two companies constitute a single employer is the fact that Evans has ceased conducting its business. *Imperial Outfitters*, 107 NLRB 2. Accordingly, contrary to the contention of the General Counsel, I find that Evans and Pease are not a single employer within the meaning of Section 2(2) of the Act. Because Pease's operations alone do not meet the Board's jurisdictional standards, I hereby recommend that the complaint in this case be dismissed.

**Sumner Williams, Inc. and International Union of Electrical,
Radio and Machine Workers, AFL-CIO, Petitioner. Case
No. 1-RC-5368. December 8, 1968**

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before Joseph C. Barry, 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 National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organization involved claims to represent employees of the Employer.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act, for the following reason:

Following a Board-conducted election,¹ AFL-CIO was certified on October 25, 1957, as the exclusive representative for a production and maintenance unit at the Employer's plant at Boston, Massachusetts. Contract negotiations were begun between the Employer and the certified labor organization. After some months of unsuccessful negotiations, AFL-CIO and International Union of Electrical, Radio and Machine Workers, AFL-CIO, the Petitioner here, agreed between themselves to have the Petitioner assume the representative status which the Board had granted to AFL-CIO. Some weeks later, the employees in the unit, at a private meeting, voted to accept IUE as their new representative. At no time did AFL-CIO advise the Board that it wished to disclaim its certified representative status, nor did it request the Board's permission to transfer its certificate. The Employer protested against being asked to sign an agreement with any labor organization other than the certified

¹ *Sumner Williams, Inc.*, 1-RC-5028, unpublished.