

Chapman-Dyer Steel Mfg. Co., C & D Realty and Equipment Co., Inc., and Superior Steel Supply and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 28-RC-1126. November 27, 1963*

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before a Hearing Officer of the National Labor Relations Board. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Fanning].

Upon the entire record, the Board finds:

Chapman-Dyer Steel Mfg. Co. is engaged in commerce within the meaning of the Act. It is an Arizona corporation organized in 1954, and its business consists of fabricating heavy steel components to be used for such purposes as building construction. Its office and shop are located in Tucson, Arizona. C & D Realty and Equipment Co., Inc., and Superior Steel Supply are likewise Arizona corporations, chartered in 1954 and 1963, respectively.¹ C & D holds title to the plant sites occupied by Chapman-Dyer and Superior; it also owns trucks, cranes, and heavy-loading equipment which it rents to Superior and other concerns in the Tucson area. Superior, which opened for business early this year, operates a warehouse on a plot of land next to Chapman-Dyer's establishment. It purchases and stocks plate and sheet steel and related materials and supplies, e.g., pipe, wire cable, and tools, which it sells to fabricating companies and ironwork shops in the Tucson area, and to manufacturers of refrigerating and air-conditioning equipment as well. Between 5 and 7 percent of Superior's sales are made to Chapman-Dyer, which buys between 10 and 15 percent of its supplies from Superior. Chapman-Dyer has about 50 non-supervisory employees in its fabricating shop. Superior has three employees at its warehouse, excluding supervisory, clerical, and sales personnel. C & D has no employees of its own; it is apparently owned and managed by the proprietors of Chapman-Dyer, and all its business transactions are handled in Chapman-Dyer's office by Chapman-Dyer personnel.

Petitioner was certified in February 1960 as the representative of the Chapman-Dyer employees,² and it has a contract with that firm at

¹ There is no evidence that either Superior or C & D, viewed independently, is engaged in commerce

² Case No 21-RC-6159.

the present time.³ In the instant proceeding, however, Petitioner alleges that the existing unit ought to be expanded so as to include the three employees of Superior. Despite the fact that the latter is a separate corporation engaged in a different business at a separate location, Petitioner contends that it, like C & D, is a subsidiary of Chapman-Dyer, or that all three companies constitute a single employer because they are owned and managed by the same persons, as a single, integrated, enterprise. In arguing that the operations of Chapman-Dyer and Superior are "interdependent," Petitioner also asserts that there is an "interchange" of employees between the two establishments. We find, however, that the unit sought by the Petitioner is inappropriate, for the reasons stated below.

The record does not bear out Petitioner's contention that Superior is a subsidiary or *alter ego* of Chapman-Dyer. The latter corporation is controlled by its cofounder and president, Marvin Chapman, who, together with his wife and two sons, Marvin, Junior, and Ronald, own all its stock. Superior, on the other hand, is evidently controlled by its president, James Gillespie, who owns 140 of its 143 shares of issued stock. The two Chapman sons, identified above, hold one share apiece in Superior,⁴ and one of the sons is a member of its board of directors. It also appears that Gillespie, the dominant figure in Superior, is a director, corporate officer, and full-time executive employee of Chapman-Dyer. However, Gillespie owns no stock in Chapman-Dyer, nor is Marvin Chapman, Sr., the dominant figure in Chapman-Dyer, a stockholder, director, or officer of Superior.

There is also no evidentiary support for Petitioner's contention that employees are "interchanged" between Chapman-Dyer and Superior, and that the two companies' operations are "interdependent." As noted above, Chapman-Dyer is by no means Superior's only customer, nor does it depend on Superior as a major source of supply. Superior has its own separate premises, as well as a separate payroll; its supervisors and employees do not even enter the adjacent Chapman-Dyer establishment except for the purpose of making deliveries. Nor do the Chapman-Dyer employees perform any work at Superior's warehouse, except when Chapman-Dyer, acting for C & D, sends mechanics to the Superior property to adjust or repair equipment owned by C & D and leased to Superior.⁵

In view of the substantially diverse ownership, the lack of operational integration, and the separate management and control of Chapman-Dyer and Superior, we find that Chapman-Dyer and Superior are separate independent entities and that a unit combining the

³ Although the contract will not expire until February 1964, it is not raised as a bar to the present petition.

⁴ The remaining Superior stockholder, owner of one share, is Elmer Jones, an accountant employed by Chapman-Dyer.

⁵ C & D, using Chapman-Dyer employees, furnishes such repair services to all its equipment-rental customers.

employees of these two companies is not appropriate for purposes of collective bargaining.

Since the proposed unit is inappropriate, we find that no question concerning representation has arisen in this case, and we shall accordingly dismiss the petition.

[The Board dismissed the petition.]

Highway Truck Drivers and Helpers, Local 107, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and George F. Paravicini, individually and trading as D.L.W. Transportation Company.

Case No. AO-63. November 29, 1963

ADVISORY OPINION

This is a petition filed by Highway Truck Drivers and Helpers, Local 107, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Petitioner, for an Advisory Opinion in conformity with Sections 102.98 and 102.99 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended.

On October 18, 1963, George F. Paravicini, individually and trading as D.L.W. Transportation Company, herein called the Employer or primary employer, filed an "Answer to Petition for Advisory Opinion." Thereafter, on October 23, 1963, Bernard Samoff, Regional Director for the Fourth Region of the National Labor Relations Board, herein called Regional Director, filed a motion to intervene setting forth jurisdictional facts developed in the course of his investigation of an unfair labor practice charge filed on September 23, 1963, by the Employer against the Petitioner in Case No. 4-CP-63. On October 28, 1963, the Employer filed an answer to motion to intervene, and on the same date, the Petitioner filed a reply to jurisdictional facts. The motion of the Regional Director to intervene is hereby granted.

In pertinent part, the petition, the answer, the intervention, and the answer and reply to the intervention allege as follows:

1. There is pending a complaint in equity filed by the Employer against the Petitioner docketed as Court of Common Pleas No. 5 of Philadelphia County, June term, 1963, No. 5003, in which the Employer seeks an injunction against the Petitioner's picketing of his truck at the stops and points of delivery which the Employer makes in the course of his business. The complaint in equity alleges that the Petitioner, by its picketing, "is presently engaged in a course of con-