

Ark Readi-Mix Concrete Corporation and Petroleum, Construction, Tankline Drivers and Allied Employees, Local Union No. 311, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case No. 5-RC-5350. May 4, 1966

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Maurice J. Nelligan, Jr., of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Subsequent to the hearing, the Employer filed a brief and a supplemental brief, which the Board has considered.

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

1. The Employer, Ark Readi-Mix Concrete Corporation, a Maryland corporation, is engaged in the business of supplying sand, gravel, and concrete to customers in the Baltimore city area. The Petitioner seeks to represent a unit of all employees at the Employer's Joppa Road, Baltimore city, plant. The Employer contends that the Board cannot properly assert jurisdiction in this case.

During the period October 1, 1964, through September 30, 1965, the Employer's gross sales to its customers, all within the State of Maryland, amounted to about \$450,000, of which over 50 percent was to commercial and industrial users.¹ However, during the same period, the Employer purchased goods and materials valued at approximately \$12,000 from an out-of-State concern, and on the basis thereof, we find that the Board has statutory jurisdiction over the Employer's operations.²

The question remains as to whether the Employer meets any of the Board's present discretionary jurisdictional standards. In this connection, the record reflects that one of the Employer's customers is Ridge Gardens, Inc., a Baltimore apartment house project, to which the Employer sold concrete valued in excess of \$50,000 during the pertinent period. Ridge Gardens is engaged in the construction of permanent residential apartment house units of a garden type, and in the subsequent rental of these units to the general public in the Baltimore city area. The concrete purchased from the Employer was used in this construction project.

The Ridge Gardens project was started in September 1964, and when completed as expected in October 1966, it will have about 600

¹ The record does not identify these commercial and industrial users, or reflect any jurisdictional data with respect to their interstate operations.

² *Siemons Mailing Service*, 122 NLRB 81.

apartment units, with a gross income in excess of \$500,000 annually. At the time of the hearing in December 1965, over 350 apartment units were completed, 150 units were under construction, and 101 units were yet to be started. In constructing the project, Ridge Gardens acts as a general contractor, and accordingly, subcontracted the brick work, heating, plumbing, carpentry work, etc. During the initial construction phase, Ridge Gardens purchased directly from out-of-State concerns furnishings having a value in excess of \$50,000, such as kitchen cabinets, gas ranges, vanities, and formica tops for kitchen cabinets, which were used in the furnishing of the apartments.

Since it is clear that the Employer sold goods and materials in excess of \$50,000 to Ridge Gardens, Inc., the question arises as to whether the Board can assert jurisdiction over the Employer under its indirect outflow standard.³ As noted, Ridge Gardens, Inc., is engaged in the construction of an apartment house project, albeit for its own use. In the construction of this project, Ridge Gardens purchased furnishings valued at approximately \$60,000 from out-of-State sources for installation in the apartment units. The Employer contends that these expenditures are of a nonrecurring, capital type, and, accordingly, may not be used for the purpose of determining whether Ridge Gardens meets the Board's jurisdictional standards. We find no merit in this contention. As it is customary for the builder of an apartment house project to install furnishings of the character involved here, whether he intends to operate the project, as in this case, or sell it to another, the expenditures for such furnishings, as were installed in Ridge Gardens, are a part of the normal cost of construction of the project.⁴

Under the foregoing circumstances, which show that the Employer is a nonretail enterprise, and furnishes goods and materials in excess of \$50,000 to a firm, Ridge Gardens, Inc., whose operations in the construction field satisfy the Board's jurisdictional standards, we find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

³ The term "indirect outflow" refers to sales within the State to users meeting any standard except solely an indirect inflow or indirect outflow standard. *Stemons Mailing Service, supra*, 85.

⁴ See *Carpenters Local No. 2133, United Brotherhood of Carpenters and Joiners of America, AFL-CIO*; and *Salem Building and Construction Trades Council, AFL-CIO (Cascade Employers Association)*, 151 NLRB 1378, enf. 356 F. 2d 464 (C.A. 9).

4. We find that the following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer at its 3617 Joppa Road, Baltimore, Maryland, operation, but excluding all office clerical employees, professional employees, salesmen, guards, casual and temporary employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.⁵]

⁵ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 5 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

The Singer Company, Wood Products Division and United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Local Union 2705, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases Nos. 26-CA-1922 and 26-CA-2042. May 5, 1966

DECISION AND ORDER

On January 11, 1966, Trial Examiner Laurence A. Knapp issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial