

**Hesperia Liquid Gas Company, d/b/a Standard Liquid Gas Company and d/b/a Boron Gas and General Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 982, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31-CA-337.**

June 21, 1967

**DECISION AND ORDER**

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND ZAGORIA

On November 14, 1966, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, recommending dismissal of the complaint filed therein, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision with supporting briefs.

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

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 Examiner's Decision, the exceptions of the General Counsel and the Respondent, the supporting briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the complaint herein be dismissed in its entirety.

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

JAMES R. WEBSTER, Trial Examiner: This case, with all parties represented, was heard in Barstow, California, on September 13 and 14, 1966, on complaint of the General Counsel and answer of Hesperia Liquid Gas Company, d/b/a Standard Liquid Gas Company and d/b/a Boron Gas, herein referred to as Respondent. The complaint was issued on June 23, 1966, upon charges filed March 7, 1966, and April 19, 1966. The complaint alleges that Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, herein called the Act. The Respondent has moved to dismiss the complaint for lack of jurisdiction, and the principal issue in the case is whether or not Respondent's operations have a substantial impact on national defense.

The General Counsel and the Respondent have filed briefs herein and they have been carefully considered. Upon the entire record and my observation of the witnesses, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS**

Respondent is a California corporation doing business in Hesperia, California, as Hesperia Liquid Gas Company, in Barstow, California, as Standard Liquid Gas Company, and in Boron, California, as Boron Liquid Gas Company. Respondent is engaged in the sale and distribution of propane gas in the area of these three towns.

During the past 12 months, Respondent sold and distributed from its plants or distribution points, products valued in excess of \$150,000 of which products valued at approximately \$12,000 were sold to Edwards Air Force Base and other Federal military installations located in the State of California. One of Respondent's employees testified, and I find, that the gas is used on Edwards Air Force Base for heating in many of the buildings and for running some machinery used by the Santa Fe engineers on some installation work. The employee did not know the kind of installation involved, nor did he know any other use that was made of the propane gas.

The General Counsel contends that the sale of \$12,000 worth of propane gas to military establishments for heating purposes constitutes a substantial impact on national defense, and Respondent contends to the contrary. Respondent also contends that the Board does not have legal or statutory jurisdiction.

I agree with the contention of the Respondent that Respondent's operations do not have a substantial impact on the national defense, and I grant Respondent's motion to dismiss for lack of jurisdiction.

The Board's current jurisdictional standard on establishments involving national defense was announced in 1958 in *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318. In that case the Board revised its former standard as to enterprises affecting national defense and stated:

The Board has determined that it best effectuates the policies of the Act to assert jurisdiction over all enterprises, as to which the Board has statutory jurisdiction, whose operations exert a substantial impact on the national defense, irrespective of whether the enterprise's operations satisfy any of the Board's other jurisdictional standards.

In adopting this standard the Board has eliminated the requirements that an enterprise's national defense operations must be directly related to national defense, must be performed pursuant to contracts or subcontracts with the Government, and must amount at least to \$100,000, a year. It has done so because it believes that it has a special responsibility as a Federal agency to reduce the number of labor disputes which might have an adverse effect on the Nation's defense effort. The Board believes that this responsibility can best be carried out by the more flexible standard announced herein.

No dollar-volume of business is determinative in this test, but to assert jurisdiction it must be established that the Board has "statutory jurisdiction," that the operations of a respondent have a "substantial impact" on "national defense." The General Counsel is of the view that the test is met herein since the amount of business exceeds a *de*

*minimis* sum and the gas is sold to and used on a military establishment for heating.

There is no evidence as to whether Respondent is the sole supplier of propane gas on Edwards Air Force Base, nor as to the nature or extent of its impact on national defense, other than the fact that it is used for heating and was of a value of \$12,000 during the past 12 months.<sup>1</sup> It could be reasoned that a work stoppage by Respondent's employees would result in loss of heat to those buildings heated by Respondent's propane gas. I cannot find that this would constitute a substantial impact on national defense.<sup>2</sup>

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<sup>1</sup> As to the use of the gas in installation machinery, the evidence is too vague and indefinite as to its duration and nature for a finding in this respect

As to the issue of legal or statutory jurisdiction, I find that the transfer of goods and commodities to a Federal compound from a location within a State and the use of such goods and commodities on a Federal installation constitute commerce as defined in Section 2(6) and (7) of the Act, and therefore, that statutory jurisdiction exists in this case.

#### RECOMMENDED ORDER

It is recommended that the complaint be dismissed for lack of jurisdiction.

<sup>2</sup> *Ben Patrick, d/b/a Westside Pattern Works*, 150 NLRB 1730, *Rome Laundry, Inc*, 51 LRRM 1583, *Crystal Water Co*, 50 LRRM 1115