

Aurora Moving and Storage Co., Inc.¹ and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 17, Petitioner. Case 27-RC-3541

April 30, 1969

DECISION AND DIRECTION OF
ELECTION

Upon a petition duly filed on January 3, 1969, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Clinton M. Elges. 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 National Labor Relations Board finds:

1. All jurisdictional facts were stipulated on the record. The Employer is licensed by the Colorado Public Utilities Commission to pack, crate, store, and transfer goods within a limited area of the State. During its fiscal year ending November 30, 1968, the Employer grossed over \$145,000 for the performance of its services. The question is whether the Board should assert jurisdiction under any of its standards.

The current standard for transportation and other enterprises engaged as links in interstate commerce is set forth in *H P O Service, Inc.*, 122 NLRB 394, where the Board announced that it would assert jurisdiction over links in commerce if they derived at least \$50,000 per annum from such operations or if they performed services valued at \$50,000 or more per year for enterprises over which the Board would assert jurisdiction under any standard other than indirect inflow or indirect outflow.

During its past fiscal year, the Employer, as an essential link in interstate commerce, performed the following services from which it received over \$45,000:

(a) Nearly \$15,000 was received from the Department of Defense for packing, crating, and storing household and other goods of military personnel who were transferred out of the Colorado area.

(b) Over \$10,000 was received from two exporting companies for packing, crating, and storing of goods subsequently shipped overseas. Each exporter did over \$50,000 worth of interstate business.

(c) Nearly \$20,000 was received from interstate van lines for packing and crating goods which were subsequently moved out of the State. Each van line did over \$50,000 worth of interstate business.

These amounts are clearly includable in

computing the link-in-commerce jurisdictional amount because the amounts were derived from services performed on goods destined for transportation across State lines, on behalf of employers who met the Board's jurisdictional standards (the Department of Defense is included under the doctrine set forth in footnote 12, *Siemons Mailing Service*, 122 NLRB 81, 85).

In addition, over \$10,000 was received from private individuals for the packing and crating of household goods which were subsequently picked up by interstate commercial haulers. The individuals themselves made the shipping arrangements with the interstate carriers; the carriers received the goods from the Employer. The issue is whether this \$10,000 is also to be included with the revenues derived from the Employer's services performed as an essential link in interstate commerce.

When applying a standard to a particular set of transactions, both the purpose of the standard and the substance of the transactions should be considered. The purpose of the link-in-commerce standard is to exercise jurisdiction over enterprises "which exert, or tend to exert, a pronounced impact on commerce."² Thus, the impact on commerce is crucial to the determination of whether to include the \$10,000 in question.

In the instant case what happened to the goods, not who paid for the services, measures the impact on commerce. The goods moved from the Employer directly to interstate carriers. Thus, they were destined for interstate commerce, and as the Employer's packing and crating them was necessary for their shipment, the Employer's services were directly related to the interstate movement of goods. Had the Employer dealt directly with the carriers and been paid by them, the amount in question would clearly be included under the *H P O Service* link-in-commerce standard. Whether the Employer dealt with the individuals or with the carriers, the impact on commerce is identical. In either case the Employer performed essential services on goods destined for interstate commerce.

Accordingly, we find that the \$10,000 derived from services to individuals on goods destined for interstate shipment, together with the \$45,000 set forth above, should be included in computing the jurisdictional amount. Since the Employer derives over \$50,000 from services performed as a link in commerce, it would effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A 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.

4. In accordance with the stipulation of the parties, we find that the following employees of the

¹The name of the Employer appears as amended at the hearing.

²*H P O Service, Inc.*, *supra*, 396.

Employer constitute a unit appropriate for the purposes of collective bargaining:

All warehousemen, drivers and helpers; excluding all office clericals, salesmen, guards and supervisors as defined in the Act.

[Direction of Election³ omitted from publication.]

³An 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 27 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.