

**Amalgamated Packinghouse, Leather and Allied Food Workers of Wisconsin and Packerland Packing Company, Inc. Case 30-CC-253**

June 25, 1975

**DECISION AND ORDER**

BY MEMBERS FANNING, KENNEDY, AND  
PENELLO

Upon a charge filed on December 30, 1974, by Packerland Packing Company, Inc., hereafter Packerland, against Amalgamated Packinghouse, Leather and Allied Food Workers of Wisconsin, hereafter Respondent, the General Counsel of the National Labor Relations Board by the Regional Director for Region 30 issued a complaint and notice of hearing, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B) of the National Labor Relations Act, as amended. Thereafter, on February 21, 1975, the Regional Director issued an amendment to the complaint. The complaint, as amended, alleges in substance that Respondent<sup>1</sup> threatened and coerced Hillshire Farm Co., a Division of Consolidated Foods, hereafter Hillshire; Great Atlantic & Pacific Tea Co., Inc., hereafter A & P; Jewel Tea Company, hereafter Jewel; and other persons engaged in commerce, with an object of forcing or requiring Jewel, A & P, and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with Hillshire, with the further object of forcing or requiring Hillshire to cease using, selling, handling, transporting, or otherwise dealing in the products of Packerland, in violation of Section 8(b)(4)(ii)(B) of the Act. Copies of the charge, complaint, and amendment thereto were duly served on Respondent. Thereafter, Respondent filed timely answers to the complaint and amendment thereto, admitting in part and denying in part the allegations of the complaint and denying the commission of unfair labor practices.

On March 3, 1975, the General Counsel, by counsel, filed with the Board a motion for judgment on the pleadings, submitting, in effect, that the pleadings raised no material issues of fact or law which required a hearing, and therefore requested that the Board grant the motion and issue an appropriate order. On March 11, 1975, the Board issued an order transferring the proceedings before it and a notice to show cause why the General

Counsel's motion should not be granted. On April 3, 1975, Respondent filed opposition to the General Counsel's motion, requesting that it be denied and the complaint dismissed.

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

Upon the entire record in this proceeding,<sup>2</sup> the Board makes the following:

**Ruling on the Motion for Judgment on the Pleadings**

The underlying facts of this dispute, as set forth in the parties' pleadings, are as follows. Hillshire purchases beef carcass quarters from Packerland and then processes them at its plant together with products from other sources to make finished sausages, which in turn are marketed by A & P, Jewel, and other retail stores. Since about September 1973, Local 444 has been engaged in a labor dispute with Packerland at its Chippewa Falls, Wisconsin, plant, and has been engaged in picketing at that facility. In furtherance of this primary dispute, Respondent's agent sent letters dated December 16, 1974, to various retail grocery stores, including Jewel and A & P, secondary employers not involved in the dispute, which stated in pertinent part:

Upon conducting a survey of retail stores in Wisconsin, we found that, among others, Jewel (A & P) was offering for sale meat products processed by the Hillshire Packing Co.

The Wisconsin unit of the Amalgamated Meat Cutters is going to inform via leaflets and picket signs that Hillshire Packing Co. processes meat purchased from a struck Packerland plant.

We will do only that which we are permitted within the existing laws and will not engage in any secondary boycott.

We estimate our informational program to begin about January 1, 1975.

Should you have any questions relating to our program feel free to contact our office.

The General Counsel characterizes this letter as a threat to picket the various secondary retail stores

General Counsel modifies his complaint to conform to the answer in this regard.

<sup>2</sup> Unless noted otherwise, our decision herein rests on uncontroverted allegations of the parties' pleadings.

<sup>1</sup> In its answer, Respondent denies that it has been involved in a labor dispute with Packerland. However, it admits that its constituent member, Local 444, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereafter Local 444, has been. In his motion, the

selling Hillshire sausage because the sausage contained Packerland meat.<sup>3</sup>

In his motion, the General Counsel argues in substance, that Packerland's product (beef) has become so integrated with Hillshire's product (sausage) that it no longer has a separate identity, and that therefore any picketing of A & P or Jewel or other retail stores which sell Hillshire products could not be confined to the "struck product" of Packerland. Accordingly, he asserts that such picketing necessarily would have as an object the cessation of business between the secondary retail stores (A & P and Jewel) and Hillshire, as well as between the secondary employers and the primary employer (Packerland). In this situation, he asserts that the informational picketing would not be lawful under the principles enunciated in *Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of IBT [Tree Fruits Labor Relations Committee, Inc.] v. N.L.R.B.*, 377 U.S. 58 (1964), commonly referred to as *Tree Fruits*.<sup>4</sup> In that case, the Supreme Court held that consumer picketing at the site of a neutral secondary employer is not illegal as long as it is confined to persuading customers not to purchase the "struck product" of the primary employer, but is unlawful if it seeks to persuade customers not to deal with the neutral employer.

Respondent concedes that Packerland's product has become so intermingled with that of Hillshire so as to lose its separate identity, but argues that it only announced a lawful consumer information program and did not threaten, coerce, or restrain anyone, alluding to the language of its letter specifically disclaiming an intent to engage in a secondary boycott and advising of its intent to abide by existing law. In response to the General Counsel's argument that *any* picketing of the secondary retail stores would be unlawful due to the commingling of Packerland's product with that of Hillshire, Respondent asserts, in substance, that such a *per se* rule is not within Board or court law. Further, it argues that inasmuch as no picketing has occurred no determination can be made as to the validity thereof, other than to establish that lawful informational picketing is possible. In support of this latter contention, Respondent offers examples of what it contends would be lawful informational picketing in the circumstances herein.

<sup>3</sup> Respondent denies "threatening" A & P, Jewel, or anyone else.

<sup>4</sup> Citing: *Honolulu Typographical Union No. 37, AFL-CIO (Hawaii Press Newspapers, Inc.)*, 167 NLRB 1030 (1967), *enfd.* 401 F.2d 952 (C.A.D.C., 1968), and *Teamsters, Chauffeurs, Helpers and Taxicab Drivers Local 327, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (American Bread Company)*, 170 NLRB 91 (1968), *enfd.* 411 F.2d 147 (C.A. 6, 1969).

<sup>5</sup> It is settled that a threat to picket alone may be coercive, whether or

Crucial to the General Counsel's motion is his contention that since *any* picketing of the secondary retail stores would have been unlawful, due to the product of the primary employer (Packerland) having lost its separate identity with that of the secondary employer (Hillshire), the threat to do so violates Section 8(b)(4) of the Act.<sup>5</sup> We find no merit in this contention. Without delving into the various forms the legend on the picket signs may have taken had picketing occurred, it is sufficient to find that lawful picketing could have been conducted in the circumstances herein, and we so find. Respondent advised the subject secondary employers of its intent to "inform via leaflets and picket signs that Hillshire Packing Co. processes meat purchased from a struck Packerland plant" and of its intent only to engage in lawful activity and not a secondary boycott. There is no basis for inferring that there is bad faith or subterfuge by Respondent as evidenced by its letters. It is entitled to publicize its primary dispute with Packerland by all lawful means. Having found that lawful means may include informational picketing in the circumstances herein, Respondent's advising secondary employers that it will do so does not evidence a violation of the Act.<sup>6</sup> In these circumstances, we conclude that the pleadings are insufficient to sustain the complaint and, accordingly, we shall deny the General Counsel's motion and dismiss the complaint.

Upon the basis of the entire record herein, the Board makes the following:

## FINDINGS OF FACT

### I. JURISDICTION

(a) Hillshire Farm Co., a Division of Consolidated Foods, is a Maryland corporation engaged in the processing and sale of meat and agricultural products from its plant in New London, Wisconsin. During the past calendar year, a representative period, Hillshire had gross sales in excess of \$500,000 and during this same period sold and shipped in interstate commerce products valued in excess of \$50,000 from its New London, Wisconsin, plant directly to customers located outside the State of Wisconsin.

(b) The Great Atlantic and Pacific Tea Co., Inc., is a Delaware corporation engaged in the retail sale of grocery and meat products throughout the United

not picketing actually ensues, and if the threat is intended to achieve a proscribed objective it may violate Sec. 8(b)(4). *General Teamster, Warehouse and Dairy Employees Union Local No. 126, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ready Mixed Concrete, Inc.)*, 200 NLRB 253 (1972).

<sup>6</sup> Cf. *General Drivers, Chauffeurs, and Helpers, Local Union No. 886 (The Stephens Company)*, 133 NLRB 1393, 1396 (1961).

States, including at its stores located in the State of Wisconsin which are involved herein. During the past calendar year, a representative period, A & P had gross sales from its stores located within the State of Wisconsin in excess of \$500,000, and during this same period these A & P stores purchased and received goods and materials valued in excess of \$500,000 directly from suppliers located outside the State of Wisconsin.

(c) Jewel Tea Company, a New York corporation, is engaged in the retail sale of grocery and meat products in Illinois and Wisconsin. The only stores involved herein are located in Milwaukee, Wisconsin. During the past calendar year, a representative period, Jewel had gross sales in excess of \$500,000 from its Milwaukee stores, and during the same period these Jewel stores purchased and received goods and materials valued in excess of \$500,000 directly from suppliers located outside the State of Wisconsin.

(d) Packerland is a Wisconsin corporation engaged in the processing, packing, and transportation of meat products with its main office in Green Bay, Wisconsin, and plants located in Green Bay and Chippewa Falls, Wisconsin, and Pampa, Texas. During the past calendar year, a representative period, Packerland sold and shipped in interstate commerce products valued in excess of \$50,000 directly to points located outside the State of Wisconsin.

On the basis of the foregoing facts, we find that at all times material herein Packerland, Hillshire, A & P, and Jewel are, and have been, employers as defined in Section 2(2) of the Act, engaged in

commerce and in industries affecting commerce as defined in Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Respondent, Amalgamated Packinghouse, Leather and Allied Food Workers of Wisconsin, is a labor organization within the meaning of Section 2(2) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record, we make the following:

### CONCLUSIONS OF LAW

1. Packerland, A & P, Jewel, and Hillshire are persons engaged in commerce or in industries affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Packinghouse, Leather and Allied Food Workers of Wisconsin is a labor organization within the meaning of the Act.

3. The conduct of Respondent as alleged in the complaint to constitute an unfair labor practice within the meaning of Section 8(b)(4)(ii)(B) of the National Labor Relations Act, as amended, has not been sustained by the pleadings.

### ORDER

It is hereby ordered that the General Counsel's motion for judgment on the pleadings be, and it hereby is, denied.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed.