STATE OF CONNECTICUT
DEPARTMENT OF LABOR

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the Matter of
THE HOWARD COMPANY
- and -
UNITED CONSTRUCTION WORKERS, AFFILIATFD WITH UNITED MINE WORKERS OF AMFRICA, REGION 2

Case No. E-572
Decision No. 300
Decided December 11, 1953

APEARANCES

Mr. Joseph Stuart Whiteside, for the Employer

Mr. William Foley, for the Union

DECISION AND ORDER
Statement of the Case

On October 9, 1953, a petition on behalf of United Construction Workers, affiliated with United Mine Workers of America, Region 2, hereinafter called the Union, was filed with the Connecticut State Board of Labor Relations, hereinafter called the Board, alleging that a question or controversy had arisen concerning the representation of the truck drivers, maintenance and production employees employed by The Howard Company of New Haven, Connecticut, hereinafter called the Employer. The petition also requested the Board to conduct an investigation and certify the representative of such employees for collective bargaining purposes pursuant to Section 7393 of the Connecticut State Labor Relations Act, hereinafter called the Act.

The Employer questioned the jurisdiction of the Board to entertain the petition contending that it was engaged in interstate commerce and therefore not subject to the provisions of the Act.

On December 7, 1953, a hearing was held by the Board at the County Court House, New Haven, Connecticut for the sole purpose of determining the nature and character of the Employer’s business activities in order to decide whether it had jurisdiction to entertain the petition. The Employer appeared and was represented by Joseph Stuart Whiteside, its labor relations consultant. The Union appeared and was represented by national representative, William Foley. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence rearing upon the issues was afforded the parties.
Upon the entire record of the proceedings the Board makes the following:

FINDINGS OF FACT

The Howard Company is a corporation organized under the laws of the State of Connecticut with its principal office and plant located at 250 Boulevard, New Haven, Connecticut. It is engaged in the manufacturing of fire brick and the retailing and wholesaling of mason materials supplies and fuel. At the time of hearing it employed twenty-nine maintenance and production employees. During its fiscal year ending October 31, 1952, total sales made by it amounted to $573,192.00. Approximately 20% of the sales were destined for out-of-state shipment and consisted mostly of fire brick. In addition, some of the sales were to large manufacturing companies including Winchester and American Steel and Wire Company which are admittedly engaged in interstate commerce. During the same period total purchases by it amounted to $583,000.00. Approximately 70% of which represented purchase from out-of-state suppliers.

The Employer's figures for the fiscal year ending October 31, 1953 were not available at the time of the hearing. These figures are presently being prepared by the Employer's auditors but they will be substantially the same as the figures for the fiscal year given.

THE QUESTION OF JURISDICTION OF THE BOARD

Section 7388-subsection 6-of our Act expressly exempts persons from its provisions who are subject to the National Labor Relations Act. This section provides in part:

(6) ""Employer" shall mean any person acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include ___ any person subject to the provisions of the National Labor Relations Act, unless the national labor relations board has declined to assert jurisdiction over such person, ---".

No evidence was offered to show that the National Labor Relations Board has declined to assert jurisdiction over this Employer. By the specific provisions of the above-quoted section of our Act, the Employer is not subject to the jurisdiction of this Board if it is subject to the provisions of the National Labor Relations Act. As we have said in many previous cases concerning this question the test of the National Labor Relations Board’s jurisdiction is not whether an employer's operations constitute interstate commerce but whether a stoppage or interference of its operations by threatened industrial strife would burden or obstruct the flow of interstate commerce. It is clear from the facts found in this case that the business activities of the Employer do directly and substantially affect interstate commerce. The volume of the Employer's sales destined for out-of-state shipment and the volume of purchases from out-of-state suppliers in their total effect meet the National Labor Relations Board's standards for the exercise of jurisdiction under the Taft-Hartley Act. Since the Employer is subject to the provisions of the National Labor Relations Act, it is not subject to the jurisdiction of this Board.
ORDER

For the foregoing reasons it is hereby

ORDERED That the petition filed in this case be and the same is hereby dismissed for lack of jurisdiction, without prejudice to the refiling with this Board in the event that the National Labor Relations Board declines to assert jurisdiction.

CONNECTICUT STATE BOARD OF LABOR RELATIONS
BY:

/s/ A. G. Gulliver
Chairman

/s/ Peter A. McManus
Member

TO:

The Howard Company
250 Boulevard
New Haven, Connecticut (RRR)

Mr. Joseph Stuart Whiteside
Industrial Relations Consultant
241 Orange Street
New Haven, Connecticut

United Construction Workers, affiliated with United Mine Workers of America, Region 2
152 Temple Street
New Haven, Connecticut (RRR)