

In the Matter of CENTRAL TOWER, INC. and CATHERINE FERRARE AND
MARY BERNATT, AS INDIVIDUALS

Case No. 8-CA-76.—Decided June 20, 1949

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge filed by Catherine Ferrare and Mary Bernatt, as individuals, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director of the Eighth Region (Cleveland, Ohio) issued his complaint dated January 11, 1949, against Central Tower, Inc., Youngstown, Ohio, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and the charge were duly served upon the Respondent.

On February 7, 1949, the Respondent filed its answer to the complaint, denying the commission of any of the alleged unfair labor practices and contending that the Board should not assert jurisdiction over its operations. At the same time the Respondent filed a motion, applying for an order of the Board refusing to assert jurisdiction in the case and dismissing the complaint. On February 7, 1949, the Regional Director referred the motion to the Trial Examiner who would conduct the hearing in the case.

Pursuant to notice, a hearing was held on February 23, 1949, at Youngstown, Ohio, before Eugene E. Dixon, the Trial Examiner designated by the Chief Trial Examiner. The General Counsel, the Respondent, and Catherine Ferrare were represented by counsel at the hearing. The Trial Examiner received in evidence the complaint, answer, and other formal documents in the case, a stipulation as to facts concerning the effect of the Respondent's operations upon commerce, and the testimony of one witness offered by the Respondent

to show that during a 2-day strike in May 1948 the Respondent continued to operate the facilities of its building. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issue of the Board's jurisdiction over the Respondent's operations. The Trial Examiner received no evidence as to the merits of the unfair labor practice charges. He heard oral argument upon the Respondent's motion to dismiss the complaint, and sustained the motion.

Thereafter the General Counsel filed a request for review of the Trial Examiner's dismissal of the complaint, a brief in support of his request for review, and a request for oral argument before the Board. The Respondent filed a brief in support of the Trial Examiner's ruling.

The Board¹ 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 request of the General Counsel for oral argument is hereby denied, as the record and briefs, in our opinion, adequately present the issues and the positions of the parties. The Board has considered the General Counsel's request for review, the briefs filed, and the entire record in the case, and hereby denies the General Counsel's request that the ruling of the Trial Examiner dismissing the complaint be reversed, and makes the following:

FINDINGS OF FACT

THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, operates a general office building in Youngstown, Ohio. The building contains approximately 53,000 square feet of rentable space. The Respondent services the stairways, halls, lobby, and elevators of the building, but does not handle the delivery of freight, packages, or mail to the tenants. The Respondent buys all its maintenance supplies locally.

The Respondent's building houses approximately 100 tenants, all except one of whom are month-to-month tenants. Among the tenants are local professional and businessmen and certain companies whose operations affect commerce within the meaning of the Act. The latter companies—including a strip mining and limestone grinding company, a jobbing subsidiary of the United States Steel Corporation, a coal mining company, insurance agencies, and manufacturers of comptometers, hearing aids, and dental supplies—maintain executive, sales, or service offices in the Respondent's building. None of them performs any production work in the building.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Murdock].

Upon these facts we conclude that the Respondent's operation of a general office building is essentially local in character. Without deciding whether the Respondent's operations affect commerce within the meaning of the Act, we find that it will not effectuate the policies of the Act to assert jurisdiction in this case.² Accordingly, we affirm the Trial Examiner's dismissal of the complaint and deny the General Counsel's request that his ruling be reversed.³

ORDER

IT IS HEREBY ORDERED that the General Counsel's request that the Board reverse the Trial Examiner's dismissal of the complaint in this case be, and it hereby is, denied;

AND IT IS FURTHER ORDERED that the complaint against Central Tower, Inc., Youngstown, Ohio, be, and it hereby is, dismissed.

² See *Midland Building Company*, 78 N. L. R. B. 1243.

³ We find no merit in the General Counsel's contention that we cannot determine whether to assert jurisdiction over the Respondent's operations until we have considered the merits of the unfair labor practices alleged in the complaint. We also reject the contention that the General Counsel has exclusive authority to decide whether to assert jurisdiction in a complaint case. See *H. W. Smith d/b/a A-1 Photo Service*, 83 N. L. R. B. 564.