

In the Matter of LEWIS BROTHERS BAKERIES, INC., A CORPORATION *and*
BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION,
LOCAL No. 199, A. F. L.

Case No. 14-CA-166.—Decided November 10, 1949

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon a second amended charge filed by Bakery and Confectionery Workers International Union, Local No. 199, A. F. L., herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director of the Fourteenth Region (St. Louis, Missouri) issued a complaint dated August 18, 1949, against Lewis Brothers Bakeries, Inc., Anna, Illinois, 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), (2), 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 charge were duly served upon the Respondent.

On August 25, 1949, the Respondent filed its answer to the complaint, denying that its operations affect commerce within the meaning of the Act, and further denying the commission of any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on September 21, 1949, at Jonesboro, Illinois, before John Lewis, the Trial Examiner designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were represented by counsel at the hearing. The Trial Examiner received in evidence the complaint, answer, and other formal documents in the case, and written and oral stipulations and documentary evidence concerning the effect of the Respondent's operations upon commerce. The Respondent thereupon moved to dismiss the complaint, on the ground that it would not effectuate the policies of the Act for the Board to assert jurisdiction in this case. All parties were afforded full opportunity to be heard 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 and, relying upon the Board's decision in an earlier representation case involving the Respondent,¹ sustained the motion.

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

The Board² 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 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 is an Illinois corporation having its principal office and only place of business in Anna, Illinois, where it is engaged in the manufacture and sale, at wholesale and retail, of bakery products. During 1948, its total purchases amounted to \$303,627.10, of which about 45 percent was directly shipped and about 5 percent indirectly shipped from sources outside the State of Illinois. Total sales for the same year, amounting to \$526,871.31, were made wholly within the State to grocery stores, markets, and other places of business as well as to individual consumers at retail.

The General Counsel contends that the foregoing commerce facts reflect a volume of business substantially greater than that reflected in the earlier representation proceeding,³ and that such increase in volume of business constitutes more of a basis for asserting jurisdiction in this proceeding than in the earlier case. We do not agree. As volume of business is only one of the criteria to be considered in determining whether it will effectuate the policies of the Act to assert

¹ *Matter of Lewis Brothers Bakeries, Inc.*, 81 N. L. R. B. 1230, issued March 8, 1949.

² 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 [Chairman Herzog and Members Houston and Gray].

³ Footnote 1, *supra*. The Board therein declined to assert jurisdiction on a showing that during 1947, the Respondent's purchases amounted to \$105,000, of which about 35 percent was directly shipped and in excess of 15 percent indirectly shipped from out-of-State sources; for the same year total sales, all intrastate, exceeded \$450,000.

jurisdiction,⁴ and as there has been no substantial change in the nature of the Respondent's business, we find, as in the earlier case, that it will not effectuate the policies of the Act to assert jurisdiction in this case over this essentially local enterprise.⁵ Accordingly, we affirm to the Trial Examiner's dismissal of the complaint and deny the General Counsel's request that his ruling be reversed.⁶

ORDER

IT IS HEREBY ORDERED that the complaint against Lewis Brothers Bakeries, Inc., Anna, Illinois, be, and it hereby is, dismissed.

⁴ See, for example, *Matter of Conlon Baking Company*, 81 N. L. R. B. 934, in which the Board declined to assert jurisdiction over a bakery whose purchases exceeded \$1,000,000, of which 70 percent originated out-of-State.

⁵ See also *Matter of The O'Rourke Baking Company, Inc.*, 79 N. L. R. B. 1456, in which the Board declined to assert jurisdiction over a bakery with annual purchases of approximately \$800,000, of which \$160,000 was directly shipped and approximately \$600,000 indirectly shipped from out-of-State.

⁶ We find without merit the General Counsel's contention that the character and timing of the alleged unfair labor practices are material to the jurisdictional issue. *Matter of Central Tower Inc.*, 84 N. L. R. B. 357. We also reject the contention that the Board has no discretionary authority to dismiss a complaint on policy grounds, if legal jurisdiction does in fact exist. See *Matter of Local 905 of The Retail Clerks International Association (AFL) et al. (H. W. Smith, d/b/a A-1 Photo Service)*, 83 N. L. R. B. 564; *Matter of Waitresses and Cafeteria Women's Local No. 305, et al. (Haleston Drug Stores, Inc.)*, 86 N. L. R. B. 1166, issued October 31, 1949.