

In the Matter of CLARENCE ROW, AN INDIVIDUAL DOING BUSINESS AS ROW  
CONSTRUCTION COMPANY *and* LUTHER STAGNER

In the Matter of LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPEN-  
TERS, AFL, AND LOCAL 1052, UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, AFL<sup>1</sup> *and* LUTHER STAGNER

*Cases No. 21-CA-304 and 21-CB-106.—Decided February 9, 1950*

## DECISION

AND

## ORDER

On November 28, 1949, Trial Examiner A. Bruce Hunt issued his order granting the Respondents' motion to dismiss the complaint in the above-entitled proceedings upon the ground that the operations of the Respondent, Row, while not wholly unrelated to commerce, are essentially local in character and that the assertion of jurisdiction in these cases would not effectuate the policies of the National Labor Relations Act. Thereafter, the General Counsel filed a statement of exceptions, a brief, and a motion that the Board issue an order directing the Trial Examiner to prepare and issue a Supplemental Intermediate Report setting forth his findings of fact, conclusions of law, and recommendations with respect to legal jurisdiction and the unfair labor practices alleged in the complaint herein. In connection with the foregoing motion to remand, the General Counsel does not challenge the Trial Examiner's authority to dismiss complaints pursuant to Section 203.35 (h) of the Board's Rules and Regulations, as amended. However, he seemingly argues that this case presents an exception to the above provision because a matter of policy is involved, i. e., whether or not it would effectuate the purposes of the Act to exercise jurisdiction here. We do not find this argument persuasive. This section of the Rules grants to Trial Examiners, with respect to cases assigned to them, the unqualified authority "to dismiss complaints or portions thereof." We see no reason at this time to create an exception to our Rules and Regulations and depart from our established procedure<sup>2</sup>

<sup>1</sup> As amended at the hearing.

<sup>2</sup> *Haleston Drug Stores, Inc.*, 86 NLRB 1166; *Lewis Brothers Bakeries, Inc., A Corporation*, 86 NLRB 1326; *George W. Looby*, 85 NLRB 412; *Central Tower, Inc.*, 84 NLRB 357.

by imposing upon the authority delegated to Trial Examiners to dismiss complaints the limitation suggested by the General Counsel. Accordingly, we hereby deny the General Counsel's motion to remand these cases to the Trial Examiner for the issuance of an Intermediate Report. In view of the fact that the General Counsel's statement of exceptions and brief were filed within 10 days from the date of the order of dismissal, we shall treat these papers as a request to review the order of the Trial Examiner dismissing the entire complaint, pursuant to Section 203.27 of the Board's Rules and Regulations.

The Board 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 order issued by the Trial Examiner, the statement of exceptions filed by the General Counsel, the briefs of the parties, and the entire record in the case.

The Respondent Employer, Clarence Row, is a licensed general contractor whose principal place of business is his residence in Pasadena, California. During the entire year 1948 and early 1949, the period covered by the testimony in the record, Row's business activities were limited to construction of small municipal buildings for the city of Los Angeles at the total contract price of \$176,107. The value of all the materials and finished products used on the aforesaid construction projects by both the Respondent, Row, and his subcontractors was \$50,000. Although \$16,000 worth of the supplies and materials originated from points outside the State of California, all such materials used by Row and his subcontractors were purchased from local dealers. For the reasons stated in the order issued by the Trial Examiner herein, we find that the assertion of jurisdiction in these proceedings would not effectuate the policies of the National Labor Relations Act.<sup>3</sup> Accordingly, we shall affirm the Trial Examiner's order dismissing the complaint herein.

### ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the consolidated complaint against Clarence Row, an individual doing business as Row Construction Company, and Los Angeles District Council of Carpenters, AFL, and Local 1052, United Brotherhood of Carpenters and Joiners of America, AFL, be, and it hereby is, dismissed.

<sup>3</sup> *Petrodis and Fryer*, 85 NLRB 241; *Walter J. Mentzer*, 82 NLRB 389.

## ORDER

Upon charges duly filed, the General Counsel issued his consolidated complaint dated June 17, 1949, in the above-entitled cases. Answers were filed by the three Respondents, namely, Clarence Row; Los Angeles County District Council of Carpenters, AFL; and Local 1052, United Brotherhood of Carpenters and Joiners of America, AFL;<sup>1</sup> denying the jurisdiction of the Board and the commission of unfair labor practices.

A hearing was held at Los Angeles, California, before the undersigned Trial Examiner on August 9 to 12, 1949. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, and to file briefs and/or proposed findings and conclusions. Briefs were received from the parties.

At the close of the hearing, the Respondents moved to dismiss the complaint on jurisdictional and other grounds. This motion was taken under advisement and is now granted for the following reasons.

The Respondent Employer, Clarence Row, is a licensed general contractor whose principal place of business is his residence in Pasadena, California. He has no office employees, but is assisted in business matters by his wife. Row owns the following equipment for use in his business: a table saw; 2 electric "skill" saws which are hand-manuvered; a surveyor's level; a drill; 2 wheelbarrows; a typewriter; and an adding machine. Row rents, on occasions when needed, certain heavier equipment, such as a trench digger, a "jeep" digger, a truck, and a "skip" loader.

During the entire year 1948 and early 1949, the period covered by the evidence, Row's business consisted of the construction of several small municipal buildings for the City of Los Angeles. The total contract prices for this construction was \$176,107, of which the principal projects were a fire station at \$102,951 and 2 high school music buildings or rooms at \$45,637. The number of Row's employees at any time depends upon the size and number of projects. The highest number of employees on any project at the peak period of construction was approximately 20, and was considerably less in all other instances.

In erecting all projects, Row made purchases of materials, such as lumber, sand, tile, cement, and steel, from suppliers in the City and County of Los Angeles. He also entered into various contracts with subcontractors within the same geographical area, for the installation of finished products, such as gas heaters and electrical and plumbing supplies. The total value of materials and finished products used on all construction projects, covering the 14-month period of January 1948 through February 1949, was \$50,000, of which \$34,000 represented purely local materials and finished products, and \$16,000 represented both materials and finished products received from points outside the State of California by the individuals and concerns within the City and County of Los Angeles with whom Row did business.

I am of the opinion, having considered the jurisdictional allegations of the pleadings, the evidence thereon, and the positions of the parties as stated in the record, that the operations of the Respondent Row, while not wholly unrelated to commerce, are essentially local in character and that the assertion of jurisdiction in these cases would not effectuate the policies of the National Labor Relations Act. The General Counsel in fact concedes that the business of Row,

<sup>1</sup> As amended at the hearing.

standing alone, is so small that the Board, should it follow certain precedents, would not exercise jurisdiction herein.<sup>2</sup> But, according to the General Counsel, there are reasons why jurisdiction should be asserted here. *First*, that the general contracting industry is a multimillion dollar industry, conducted primarily by small units which constitute, in the aggregate, a vast volume of interstate commerce; that nearly 50 percent of all general contracting within Southern California is performed by contractors with three or less employees and that the fact that Row's "own contribution to the demand for construction products may be small in volume is not enough to remove him from the scope of Federal regulation. . . ." <sup>3</sup> A similar argument was advanced before the Board in the *Mentzer* case, and disposed of adversely to the General Counsel.<sup>4</sup> *Second*, that if jurisdiction exists in this proceeding, the Board must exercise it, that discretion does not lie within the Board to dismiss a complaint solely because it believes that to assert jurisdiction would not effectuate the policies of the Act, and that the question whether jurisdiction should be asserted in any case is for determination exclusively by the General Counsel. This proposition too has been considered by the Board, and decided adversely to the General Counsel.<sup>5</sup>

For the reasons stated, the motion to dismiss the complaint upon jurisdictional grounds is hereby granted; and it is hereby

ORDERED, that said complaint be dismissed in its entirety.

Any party may obtain a review of the foregoing order, pursuant to Section 203.27 of the Rules and Regulations of the Board, Series 5 as amended August 18, 1948, by filing a request therefor with the Board, stating the grounds for review, and immediately upon such filing serving a copy thereof on the Regional Director and the other parties. Unless such request for review is filed within ten (10) days from the date of this order of dismissal, the case shall be closed.

A. BRUCE HUNT,  
*Trial Examiner.*

Dated November 28, 1949.

<sup>2</sup> See *Petredis & Fryer*, 85 NLRB 241, and cases cited therein.

<sup>3</sup> The record contains a stipulation concerning the general contracting industry in California, which was agreed to by the attorney for the Respondents after noting his objection upon grounds of immateriality and irrelevancy.

<sup>4</sup> *Walter J. Mentzer*, 82 NLRB 389. Nor do I believe that the nature of Row's business, as an individual, lost its character as "local" because he was a member of an association of general contractors, one of the functions of which was to bargain collectively with various unions in the industry. This association is not a party to the instant proceeding and the record does not disclose the volume of business done by the individual members thereof.

<sup>5</sup> *Haleston Drug Stores, Inc.*, 86 NLRB 1166.