

In the Matter of RASH SAVILLE CRAWFORD, INC. and JOURNEYMEN
PIPE FITTERS LOCAL UNION No. 392, UNITED ASSOCIATION OF JOUR-
NEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING IN-
DUSTRY OF THE UNITED STATES AND CANADA

Case No. 9-CA-86.—Decided March 28, 1950

DECISION
AND
ORDER

On November 25, 1949, Trial Examiner Isadore Greenberg issued his order granting the Respondent's motion to dismiss the complaint in the above-entitled proceeding upon the ground that the operations of the Respondent, while not wholly unrelated to commerce, were essentially local in character, and that the assertion of jurisdiction would not effectuate the policies of the Act. Thereafter, the General Counsel and the Union each filed a request for review of the Trial Examiner's order, and the Respondent filed a brief in support of that order.

The Board has reviewed the rulings made by the Trial Examiner 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 requests for review, the Respondent's brief, and the entire record in the case, and hereby affirms the Trial Examiner's order for the reasons stated therein.

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 complaint issued herein against the Respondent, Rash Saville Crawford, Inc., Cincinnati, Ohio, be, and it hereby is, dismissed.

MEMBER REYNOLDS, dissenting:

I would assert jurisdiction on the facts in this case and consequently dissent from the Decision and Order herein.

ORDER DISMISSING COMPLAINT

Upon a first amended charge duly filed by Journeymen Pipe Fitters Local Union No. 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, the General Counsel of the National Labor Relations Board by the Regional Director for the Ninth Region (Cincinnati, Ohio), issued his complaint dated June 29, 1949,

against Rash Saville Crawford, Inc., Cincinnati, Ohio, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act as amended. The Respondent thereafter filed its answer denying that it was engaged in commerce within the meaning of the Act and denying that it had engaged in any unfair labor practices.

Thereafter a hearing was held at Cincinnati, Ohio, on July 26, 27, and 28, 1949, before the undersigned Trial Examiner, and evidence was received on all issues raised in the pleadings.

During the hearing counsel for the Respondent moved to dismiss the complaint because of the alleged lack of jurisdiction of the National Labor Relations Board, and ruling upon said motion was reserved by the undersigned Trial Examiner.

Thereafter briefs were received from counsel for the General Counsel and for the Respondent. In the brief submitted by the latter the motion to dismiss the complaint was renewed.

The evidence adduced at the hearing with respect to the business of the Respondent is summarized below:

The Respondent, Rash Saville Crawford, Inc., is an Ohio corporation, having its office and place of business in Cincinnati, Ohio. It is engaged in the business of selling, delivering, installing, and servicing air conditioning and refrigeration equipment. In the conduct of this business, the Respondent, during the period herein discussed, employed approximately 23 workers, exclusive of office and clerical employees.

During the period from July 1, 1948, through June 30, 1949, the Respondent made sales and rendered services to its customers from which it derived a total revenue of \$114,308.00. Of this sum, \$5,259.88 represented the value of sales made and services rendered to customers outside the State of Ohio. Of the total amount of revenue derived by the Respondent during the aforesaid year, \$91,678.81 was for services rendered; the remainder, \$22,629.19, was for merchandise sold. Of these amounts, \$87,793.93 represented the value of services rendered customers in the State of Ohio; \$3,884.88, services rendered outside the State of Ohio; \$21,254.19, the amount of sales made to customers in Ohio, while \$1,375.00 represented the total amount of sales made to customers outside that State. The last figure includes an accommodation sale in the amount of \$1,007.18, made without profit to a relative of one of the Respondent's officers. Thus, the amount of out-of-State sales made by the Respondent during the stated period, in the ordinary course of its business, was only \$367.82.

During the year in question, the Respondent purchased air conditioning units, refrigerators, freezers, parts, and miscellaneous supplies, in the amount of \$33,833.43. Of these purchases, \$32,209.43 represented the value of such merchandise purchased by the Respondent from suppliers in the State of Ohio, and \$1,624.00, the value of purchases made from suppliers outside that State. The air conditioning units, freezers, and refrigerators purchased by the Respondent within the State of Ohio were originally manufactured outside that State.

A substantial portion (approximately 22%) of the Respondent's services are rendered to two wholesale distributors, Tri-State Distributing Corporation, and The Bimel Company, wholesale distributors in the Cincinnati territory, respectively, for Philco air conditioning units and refrigerators, and for Admiral refrigerators. By arrangement with these two distributors, the Respondent delivers and installs, for a set fee, air conditioning units and refrigerators sold by these distributors through some of their retail dealers, and performs services

on such units, also for a set fee, under the 1-year warranty which covers such units when sold. During the year herein discussed, the Respondent performed services such as above described, for Tri-State and Bimel, for which it received an aggregate revenue of approximately \$20,000. Of this amount, approximately \$1,900 represented the value of services rendered by the Respondent for Tri-State and Bimel outside the State of Ohio. The rest represents the value of services rendered within that State. Thus, under its arrangements with Tri-State and Bimel, the Respondent, during the year, delivered and installed 132 air conditioning units within the State of Ohio, and 4 outside of Ohio; during the same period it delivered and installed 1,482 refrigerators inside the State of Ohio, and 278 refrigerators outside the said State. Practically all of the refrigerators thus delivered and installed by the Respondent were domestic refrigerators, delivered to private residences as distinguished from commercial establishments. For the most part, also, the air conditioning units delivered and installed by the Respondent were installed in private homes, professional offices, and small local business offices.

The Respondent did not have an exclusive arrangement with either Tri-State or Bimel. In other words, the Respondent did not deliver, install, or service all of the air conditioning units or refrigerators sold by these distributors in the Cincinnati area.¹ Both Tri-State and Bimel are concededly engaged in interstate commerce.

With respect to the aggregate services rendered by the Respondent to customers within the State of Ohio, for which the Respondent derived revenue of \$87,793.93, it was stipulated that approximately \$300.00 of this amount represented the value of services rendered to 14 different customers who themselves are engaged in interstate commerce. Similarly, it was stipulated that of the \$21,254.19 worth of sales made by the Respondent within the State of Ohio, one such sale, in the amount of \$2,497.50, was to a customer who is engaged in interstate commerce. The rest of the sales made by the Respondent were for the most part made to domestic users, with only about 11 sales being made to local businesses such as a funeral home, delicatessen stores, and the like.

Now, THEREFORE, the undersigned Trial Examiner, being fully advised in the premises, having duly considered the entire record in the case, particularly with respect to the commerce allegations and evidence, is of the opinion that the operations of the Respondent are essentially local in character, and although it does not appear that the said operations of the Respondent are wholly unrelated to commerce, the Trial Examiner is of the opinion that assertion of jurisdiction in this case would not effectuate the policies of the National Labor Relations Act.

The motions heretofore made by the Respondent urging dismissal upon jurisdictional grounds are hereby granted, and it is hereby

ORDERED that the complaint be dismissed in its entirety.

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

ISADORE GREENBERG,
Trial Examiner.

Dated November 25, 1949.

¹ The Respondent's services to Tri-State and Bimel were rendered within "the greater Cincinnati area," which encompasses the territory within a 10-mile radius from downtown Cincinnati. This area includes a small part of the State of Kentucky.