

In the Matter of WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, RESPONDENT and BERNARD HYMOWITZ, AN INDIVIDUAL D/B/A BEST HOUSEKEEPING CO., EMPLOYER-PETITIONER

Case No. 2-CC-118.—Decided May 11, 1950

DECISION

AND

ORDER REMANDING CASE TO TRIAL EXAMINER

On January 30, 1950, Trial Examiner Horace A. Ruckel issued an order granting the motion of Local 65, Wholesale & Warehouse Workers Union, Respondent, to dismiss the complaint in the above-entitled proceedings upon the ground that the operations of the Employer, while not wholly unrelated to commerce, are essentially local in character and that the assertion of jurisdiction in this cause would not effectuate the policies of the National Labor Relations Act. Thereafter, the General Counsel filed his Request for Review, alleging that the Trial Examiner erroneously concluded that the Employer's business operations are essentially local in character, and that his action in dismissing the complaint herein was erroneous upon the facts and as a matter of law.

The Board has considered the order of the Trial Examiner dismissing the complaint on the grounds noted above. Upon the entire record in this case the Board finds merit in the General Counsel's allegation that the action of the Trial Examiner dismissing the complaint was erroneous.

The record reveals that the Employer operates two stores in New York City, selling, at both wholesale and retail, gas ranges, refrigerators, television and radio sets, and other household appliances. During the year 1948, the Employer purchased such appliances in the amount of approximately \$650,000, of which 80 percent was shipped to the Employer from points outside the State of New York. During the same period, the Employer made sales of such appliances amounting to more than \$700,000, of which 12 percent was sold and shipped to customers outside the State of New York. During the first 6 months of 1949, the Employer made purchases amounting to

\$272,000, of which 80 percent was shipped to the Employer from points outside the State, and it made sales amounting to \$341,000, of which 2.5 percent were sales and shipments to points outside the State. In the great majority of the out-of-State purchases, the Employer ordered such appliances from distributors located in New York City, but the shipments were from points out of the State, made directly to New York warehouses for the Employer. In some instances, the Employer holds franchises from out-of-State manufacturers authorizing the Employer to sell the product within the territory of New York.¹ The Employer's wholesale operations constitute a substantial portion of its business.²

On these facts we do not agree with the Trial Examiner that the Employer's business is essentially local in character and that it would not effectuate the policies of the Act for the Board to assert jurisdiction. On the contrary, and upon the entire record in this case, we find that the Employer is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that it would effectuate the policies of the Act to assert jurisdiction for the purpose of resolving the substantive issues raised by the complaint and the issuance of an appropriate order with respect thereto.³

ORDER

IT IS HEREBY ORDERED that the order dismissing the complaint made herein by the Trial Examiner be, and it hereby is, reversed, and

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Trial Examiner for the purpose of preparing and issuing an Intermediate Report, setting forth his findings of fact, conclusions of law, and recommendations with respect to the unfair labor practices alleged in the complaint herein.

MEMBER STYLES took no part in the consideration of the above Decision and Order Remanding Case to Trial Examiner.

¹ The record indicates that the Employer holds franchises for the sale of household and electrical appliances manufactured by Maytag Company, Radio Corporation of America, Caloric Stove Company, Bendix Company, General Electric Company, Crosley, Inc., and the Emerson Co. A few of these franchises are dealer contracts obtained directly from manufacturers. Others are contracts executed by corporations which serve as distributors of the manufacturer's product.

² Of the \$705,100 in sales made during the year 1948, those to points out-of-State amounted to \$75,200 wholesale, and \$10,300 retail; those made intra-State amounted to \$275,700 wholesale and \$344,500 retail. Of the \$341,999 in sales for the first 6 months of 1949, those to points out-of-State amounted to \$2,123 wholesale and \$7,196 retail; those made intra-State amounted to \$89,120 wholesale and \$243,599 retail.

³ Cf. *Johns Brothers, Inc., et al.*, 84 NLRB 294; *Riesmeyer Motors Company*, 88 NLRB No. 152; *William F. Crome Co.*, 80 NLRB 986; *Dixie Wholesale Company, Inc.*, 73 NLRB 1203.