

In the Matter of MAURICE Y. NICOLE, CECIL E. FLETCHER AND CLARENCE J. WISEMAN, INDIVIDUALLY AND AS CO-PARTNERS, D/B/A PACIFIC DENTAL LABORATORY OF SAN FRANCISCO *and* GEORGE A. WINDRICK, AN INDIVIDUAL

In the Matter of MAURICE Y. NICOLE, CECIL E. FLETCHER AND CLARENCE J. WISEMAN, INDIVIDUALLY AND AS CO-PARTNERS, D/B/A PACIFIC DENTAL LABORATORY OF SAN FRANCISCO *and* NORTHERN CALIFORNIA DENTAL TECHNICIANS UNION, LOCAL 24116, AFL

Cases Nos. 20-CA-352 and 20-CA-366.—Decided October 20, 1950

DECISION AND ORDER

Upon separate charges filed by George A. Windrick, an individual, and by Northern California Dental Technicians Union, Local 24116, AFL, 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 Twentieth Region (San Francisco, California) issued a complaint dated June 13, 1950, against Maurice Y. Nicole, Cecil E. Fletcher, and Clarence J. Wiseman, individually and as co-partners, d/b/a Pacific Dental Laboratory of San Francisco, San Francisco, California, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1), (3), and (5) 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 charges were duly served upon the Respondent.

On July 14, 1950, 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 August 15, 1950, at San Francisco, California, before Thomas S. Wilson, the Trial Examiner designated by the Chief Trial Examiner. The General Counsel and the Respondent 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 on 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 arguments upon the Respondent's motion to dismiss and granted the motion.

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

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 requests for review, the briefs filed, and the entire record in the case, and makes the following:

FINDINGS OF FACT

THE BUSINESS OF THE RESPONDENT

The Respondent, a copartnership having its principal office and only place of business in San Francisco, California, is engaged in the manufacture of dental restoratory devices, such as dentures, crowns, inlays, and bridges, for members of the dental profession and for other laboratories. During the year 1949 the Respondent's purchase of supplies and materials totaled \$42,506, of which \$15,761 was received from points outside the State of California, and \$18,110 was received from points within that State but was out-of-State origin. During the same period the Respondent's sales totaled \$271,613, of which only \$14,212 was shipped to points outside the State of California.

All the Respondent's dentures are manufactured on prescription by dentists. Under a license agreement with the Austenal Laboratories, of Chicago, Illinois, the Respondent is privileged, within certain designated areas of California, to use a patented alloy called Vitallium as one of the raw materials in its products. The agreement also provides for payment of royalties to Austenal Laboratories for the use of certain patented processes and techniques in the manufacture of dental devices.

While we do not hold that the operations of the Respondent are wholly unrelated to commerce, we are of the opinion that, as these operations are essentially local in character,¹ to assert jurisdiction in this case would not effectuate the policies of the Act.² In reaching this conclusion, we have considered and find without merit the General Counsel's contention that the license and royalty agreement between the Respondent and Austenal Laboratories in effect makes the Respondent an integral part of a national enterprise to such an extent as to cause us to assert jurisdiction on that theory.³ Rather, we view Austenal Laboratories in this case as only a supplier of raw materials utilized by the Respondent in the manufacturing operations. Accordingly, we affirm the Trial Examiner's dismissal of the complaint and deny the General Counsel's request that his ruling be reversed.⁴

ORDER

IT IS HEREBY ORDERED that the complaint issued herein against Maurice Y. Nicole, Cecil E. Fletcher, and Clarence J. Wiseman, individually and as co-partners, d/b/a Pacific Dental Laboratory of San Francisco, San Francisco, California, be, and it hereby is, dismissed.

¹ The Respondent's imports of raw materials from outside California and its exports of finished products are not sufficient to remove it from this category of enterprises. See *Hollow Tree Lumber Company*, 91 NLRB 635; *Federal Dairy Co., Inc.*, 91 NLRB 638; *Dorn's House of Miracles*, 91 NLRB 632; *The Rutledge Paper Products, Inc.*, 91 NLRB 625.

² *Eberharr-Conway Company*, 84 NLRB 24, and cases cited therein.

³ Cf. *The Borden Company, Southern Division*, 91 NLRB 628.

⁴ We also reject the General Counsel's further contention that the Board has no discretionary authority to dismiss a complaint on policy grounds merely because legal jurisdiction does in fact exist. See *Local 905 of Retail Clerks International Association (AFL) et al. (H. W. Smith d/b/a A-1 Photo Service)*, 83 NLRB 564, and *Waitresses and Cafeteria Women's Local No. 305, et al. (Haleston Drug Stores, Inc.)*, 86 NLRB 1166.