

In the Matter of ROCK ASPHALT, INC. AND GENERAL CONTRACTING
EMPLOYERS' ASSOCIATION *and* NAPOLEON SARGENT, AN INDIVIDUAL

In the Matter of ROCK ASPHALT, INC. AND GENERAL CONTRACTING
EMPLOYERS' ASSOCIATION *and* COKER LOCKE, AN INDIVIDUAL

In the Matter of INTERNATIONAL HOD CARRIERS', BUILDING & COMMON
LABORERS' UNION OF AMERICA, LOCAL 210, A. F. L. *and* NAPOLEON
SARGENT, AN INDIVIDUAL

In the Matter of INTERNATIONAL HOD CARRIERS', BUILDING & COMMON
LABORERS' UNION OF AMERICA, LOCAL 210, A. F. L. *and* COKER LOCKE,
AN INDIVIDUAL

*Cases Nos. 3-CA-206, 3-CA-302, 3-CB-57, and 3-CB-81.—Decided
November 6, 1950*

DECISION AND ORDER

On May 24, 1950, during the course of the hearing in Cases Nos. 3-CA-206 and 3-CB-57, Trial Examiner Albert P. Wheatley granted the Respondents' motion to dismiss the complaints on jurisdictional grounds, finding that the business of the Respondent Company is not the type over which the Board asserts jurisdiction. At the same time, the Trial Examiner ruled upon the Respondents' further motion to dismiss the complaints on the merits by dismissing substantially the entire complaint against the Respondent Union and parts of the complaint against the Respondent Company. The General Counsel filed with the Board a request for review of the Trial Examiner's ruling and moved to set aside such ruling. Subsequently, charges were filed in Cases Nos. 3-CA-302 and 3-CB-81. The General Counsel moved to amend the complaints in Cases Nos. 3-CA-206 and 3-CB-57, consolidate these cases with the recently filed cases, and reopen the record. The Respondent Company filed a brief in opposition to this motion.

The Board¹ has considered the rulings of the Trial Examiner, the request of the General Counsel for review of the dismissal by the Trial Examiner, the motion of the General Counsel to amend the com-

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

plaints, consolidate the cases, and reopen the record, the briefs, and the entire record in the case, and makes the following findings:

The record reveals the following facts bearing on the jurisdictional issue: The Respondent Company is a New York corporation doing business in that State, engaged primarily in the paving of streets and roads. During the year 1949, the Respondent Company made purchases of supplies and materials amounting to \$317,973 in value. Of these purchases, approximately \$15,000 worth represented material shipped to the Respondent Company directly from points outside the State of New York. Of the remaining purchases, 5 percent, though bought locally, originated out of the State.

During 1949 the Respondent Company had a total revenue of approximately \$1,239,000, all of which was obtained for work done within the State of New York. Approximately \$287,000 of this amount was received for services to two public utilities, the New York Telephone Company and the Buffalo Niagara Electric Company. The work performed for the former consisted of excavating and placing tile in connection with the laying or changing of telephone lines. For the latter company, the Respondent Company placed light posts along Buffalo streets.

Buffalo Niagara Electric Company is a subsidiary of Niagara Hudson Power Corporation, over which the Board has asserted jurisdiction.² The Board has asserted jurisdiction also over the New York Telephone Company.³

On the foregoing facts we find that the Respondent Company is engaged in operations affecting commerce within the meaning of the Act.

Inasmuch as the Respondent Company performs services having a value of over \$50,000 per year for public utility companies over which we assert jurisdiction, and such services are necessary to the operations of those companies, we find that the operations of the Respondent Company affect commerce to the extent that it will effectuate the policies of the Act to assert jurisdiction in this case.⁴ Accordingly, we will remand this matter to the Trial Examiner for the purpose of resolving the substantive issues raised by the complaints, receiving additional evidence, if necessary, and issuing an appropriate order with respect thereto.

As to the merits, we reverse the Trial Examiner's dismissal of substantially the entire complaint against the Respondent Union and parts of the complaint against the Respondent Company. We do

² 79 NLRB 1115.

³ 89 NLRB 383.

⁴ *Hollow Tree Lumber Company*, 91 NLRB 635.

this without passing in any respect on the merits of the allegations in the complaints. We believe that, as considerable evidence was adduced with regard to the paragraphs of the complaint dismissed on the merits in the Trial Examiner's ruling, such portions should more appropriately be treated in the complete Intermediate Report to be prepared and issued by the Trial Examiner.

We grant the motion of the General Counsel for consolidation of the cases herein, and for a reopening of the record. We will remand the motion for amendment of the complaints to the Trial Examiner for his consideration and appropriate action thereon.

ORDER

IT IS HEREBY ORDERED that the above-entitled proceedings, be, and they hereby are, reopened, consolidated, and remanded to the Trial Examiner for his ruling on the motion of the General Counsel to amend the complaints, for the taking of further evidence and for the preparation and issuance of an Intermediate Report, setting forth his findings of facts, conclusions of law, and recommendations with respect to the unfair labor practices alleged in the complaints herein.