

Pelnik Wrecking Company, Inc. and Ronald Heath

Local 7, International Hod Carriers', Building & Common Laborers' Union of America, AFL-CIO, and Its Business Agent Peter Pavlisak and Ronald Heath

Pelnik Wrecking Company, Inc. and Russell Nichols, Jr.

Local 7, International Hod Carriers', Building & Common Laborers' Union of America, AFL-CIO, and Its Business Agent Peter Pavlisak and Russell Nichols, Jr.

Pelnik Wrecking Company, Inc. and James Snyder

Local 7, International Hod Carriers', Building & Common Laborers' Union of America, AFL-CIO, and Its Business Agent Peter Pavlisak and James Snyder. Cases Nos. 3-CA-1285, 3-CB-408, 3-CA-1286, 3-CB-406, 3-CA-1287, and 3-CB-407. January 20, 1960

DECISION AND ORDER

Upon charges duly filed on June 12, 1959, by Ronald Heath, Russell Nichols, Jr., and James Snyder, the General Counsel for the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Third Region, issued a complaint dated August 26, 1959, against Pelnik Wrecking Company, Inc., and Local 7, International Hod Carriers', Building & Common Laborers' Union of America, AFL-CIO, and its Business Agent Peter Pavlisak, herein collectively called the Respondents, alleging that the Respondents had engaged in unfair labor practices within the meaning of Section 8(a) (1) and (3) and 8(b) (1) (A) and (2) of the Act. Copies of the complaint, charges, and notice of hearing were duly served upon the Respondents and the Charging Parties. On or about September 10, 1959, the Respondents filed separate answers to the complaint denying the commission of any unfair labor practices.

On November 12, 1959, Trial Examiner Sidney Asher conducted a hearing on the issues alleged in the complaint. Testimony regarding the alleged unfair labor practices and the Board's jurisdiction was received. At the close of the hearing the Trial Examiner granted Respondents' motion to dismiss the complaint on the grounds that the General Counsel had failed to establish that the business operations of the Employer-Respondent met the Board's jurisdictional standards. The Trial Examiner did not file an Intermediate Report. Pursuant to Section 102.27 of the Board's Rules and Regulations, the General Counsel filed a request with the Board to review the dismissal of the complaint.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the request for review and the entire record in the case, and, for the reasons stated hereinafter, hereby adopts the findings and conclusions of the Trial Examiner.

THE BUSINESS OF THE RESPONDENT EMPLOYER

The Respondent Employer is engaged in the wrecking business within the State of New York. During the year from June 1, 1958, to May 31, 1959, it rendered services to the following firms and in the amounts stated entirely within New York State:

Central Hudson Gas & Electric Corporation.....	\$ 8,527.50
Tidewater Oil Co.....	3,500.00
Carrier Corporation.....	1,500.00
J. P. Lewis Co.....	1,750.00
Syracuse Supply Co.....	16,000.00
Henney Motors.....	9,200.00
Kallet Theaters.....	5,000.00
F. W. Woolworth Co.....	1,800.00
Alpha Portland Cement Co.....	2,400.00
	<hr/>
Total.....	\$49,677.50

The General Counsel contends that the Trial Examiner improperly allocated the contract price of a job performed for Alpha Portland Cement Co. to the critical jurisdictional period thereby understating the amount of work performed during that period. The Employer-Respondent had a \$6,400 contract with Alpha Portland Cement calling for the demolition of a building and the levelling of land on which it stood. Testimony was received that the work began on May 19, 1959, and was completed on June 19, 1959.³ The General Counsel argues that 50 percent of the work was completed by May 31, 1959, and, accordingly, one half the contract price (\$3,200) should be allocated to the jurisdictional year. The only evidence as to progress of completion was the testimony of the area manager of Alpha that in "his opinion" 50 percent of the work was completed by May 31, 1959.

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel (Members Rodgers, Bean, and Fanning).

² The General Counsel has excepted to certain rulings of the Trial Examiner relating to proof of interstate activities of customers of the Employer-Respondent. As the Trial Examiner assumed, for the purposes of his final ruling, that such companies were engaged in interstate commerce, we find no prejudice in his rulings.

³ This completion date is questionable as there is other testimony which seems to indicate that the work was not completed until the end of June. In basing his finding on the June 19 date, the Trial Examiner resolved this question most favorably to the General Counsel.

Upon cross-examination, it was obvious that the witness lacked expertise in the demolition and wrecking business and that his estimate was no more than a lay opinion based on casual observation. In these circumstances, the Trial Examiner refused to give any weight to this witnesses' estimate. In the absence of other evidence, the Trial Examiner assumed that the work was evenly distributed over the period of completion. Thus, he found that there were 24 working days between May 19 and June 19, 1959, and that 9 of those days, or three-eighths of the total, fell within the jurisdictional year. Accordingly, he allocated three-eighths of the contract price or \$2,400 to the jurisdictional year. With this method of allocation, the Trial Examiner found that the Employer-Respondent did a total of \$49,677.50 business with interstate companies, a sum insufficient to meet the Board's jurisdictional standards.⁴ He therefore granted the motion to dismiss the complaint.

In the absence of affirmative substantial evidence showing rate of completion of the work, the method of allocation used by the Trial Examiner was reasonable. Indeed, it was the only practicable method that could be used in the circumstances. Accordingly, we affirm the ruling of the Trial Examiner and shall dismiss the complaint.

[The Board dismissed the complaint.]

⁴ *Siemons Mailing Service*, 122 NLRB 81.

Tidelands Marine Service, Inc. and Seafarers' International Union of North America, Atlantic and Gulf Districts, AFL-CIO. Cases Nos. 15-CA-922, 15-CA-951, and 15-CA-962. January 20, 1960

ORDER REOPENING RECORD AND REMANDING PROCEEDING

The original hearing herein was held between April 15 and June 26, 1958, before Trial Examiner A. Norman Somers. As the rule of the *A. & P.* case¹ was then in effect, Respondent's demands for the production of the pretrial statements of certain General Counsel witnesses were denied by the Trial Examiner in reliance on that rule. On August 28, 1958, the Board in *Ra-Rich Manufacturing Corporation*² overruled the *A & P* case, holding that the rule of the *Jencks*³ case applies to Board proceedings and affords parties thereto, upon proper demand, the right to production for purposes of cross-examination

¹ 118 NLRB 1280.

² 121 NLRB 700.

³ *Jencks v. United States*, 353 U.S. 657.