

**Local 502, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO [Cement-Work, Inc.] and Ernest Fortunato. Case No. 22-CB-356. March 6, 1963**

**ORDER REOPENING RECORD AND REMANDING PROCEEDING TO REGIONAL DIRECTOR FOR FURTHER HEARING**

On January 18, 1963, by a notice to the parties, the Board found that it would effectuate the policies of the Act to permit the Respondent, Local 502, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, to introduce evidence as to whether or not the Respondent's members who were employed by the Employer, Cement-Work, Inc., on its apartment project at East Orange, New Jersey, were entitled to certain cement form stripping work in dispute. The Board also notified the parties, including Essex County and Vicinity District Council of United Brotherhood of Carpenters and Joiners of America, that unless they submitted to the Board, within 10 days after receipt of the notice, satisfactory evidence that they have adjusted such work assignment dispute or that they have agreed upon methods for the voluntary adjustment thereof, the Board would direct that a further hearing be held before Trial Examiner Owsley Vose on the issue of entitlement to the disputed work assignment.

Accordingly, as more than 10 days has elapsed since the receipt of the notice, and as no such evidence has been received by the Board as a result of the notice,

IT IS HEREBY ORDERED that the record in this proceeding be, and it hereby is, reopened; and that a further hearing be held before Trial Examiner Owsley Vose for the purpose of receiving all relevant evidence, including admissible collective-bargaining agreements, concerning whether employees represented by the Essex County and Vicinity District Council of United Brotherhood of Carpenters and Joiners of America or by the Respondent were entitled to the cement form stripping work in dispute.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for the Twenty-second Region for the purpose of arranging such a hearing, and that the said Regional Director be, and he hereby is, authorized to issue early notice thereof, including a notice to the Essex County and Vicinity District Council of United Brotherhood of Carpenters and Joiners of America.

IT IS FURTHER ORDERED that, upon conclusion of the hearing, the Trial Examiner shall prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact, conclusions of law,

and recommendations concerning the alleged violations of Section 8(b) (1) (A) and (2) of the Act based upon the entire record, including any additional evidence adduced at the reopened hearing, and that, following the service of such Supplemental Intermediate Report upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

**MEMBERS RODGERS and LEEDOM, dissenting:**

As we have indicated previously in this case, in our opinion, jurisdictional issues, or rights, under Sections 10(k) and 8(b) (4) (D) are not properly asserted here as defenses to allegations under Section 8(b) (1) (A) and 8(b) (2). Accordingly, we would not have issued the prior notice, nor would we now remand this proceeding for further hearing. We would, instead, proceed to consider the Section 8(b) (1) (A) and the Section 8(b) (2) allegations on their merits.

---

**Omega Food Products, Inc. and Napoleon Guerrero.** *Case No. 20-CA-2320. March 7, 1963*

**DECISION AND ORDER**

On November 23, 1962, Trial Examiner A. Norman Somers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed as to such allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report.

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, Leedom, and Fanning].

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 Intermediate Report and the entire record in the case, including the exceptions, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

---

<sup>1</sup> For the reasons stated in their dissenting opinion in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Members Rodgers and Leedom are convinced that the award of interest in this case exceeds the Board's remedial authority. While adhering to such view, for the purpose of this decision they are acceding to the majority Board policy of granting interest on moneys due.