Local No. 393, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO *and* Fabcon, Incorporated and Laborers District Council of Minnesota and North Dakota; and Bricklayers and Allied Craftsmen, Local Union No. 1, St. Paul, Minnesota, and Local Union No. 2, Minneapolis, Minnesota. Case 13-CD-283

May 6, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Fabcon, Incorporated, herein called the Employer, alleging that Local No. 393, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, herein called the Ironworkers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by the Ironworkers rather than to employees represented by Laborers District Council of Minnesota and North Dakota, herein called the Laborers, and Bricklayers and Allied Craftsmen, Local Union No. 1, St. Paul, Minnesota, and Local Union No. 2, Minneapolis, Minnesota, herein called the Bricklayers.

Pursuant to notice, a hearing was held before Hearing Officer Sheryl Sternberg on November 19, 20, and 25, 1980. The Laborers, the Employer, and the Ironworkers appeared and were afforded the opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and Ironworkers filed briefs.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Minnesota corporation engaged in the manufacture and installation of prestressed concrete wall panels, floor slabs, beams, columns, stairways, landings, and wood slabs. During the past year, the Employer sold and installed goods and materials valued in excess of $50,000 outside the State of Minnesota. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The record indicates, and we find, that the Ironworkers, the Bricklayers, and the Laborers, and any locals of those Unions that are involved herein, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work In Dispute*

The parties stipulated, and we find, that the work in dispute is the erection and installation of precast, prestressed concrete wall panels for the VWR Scientific Distribution Center, Batavia, Illinois. The work includes the hooking up, erecting, and plumbing of panels; grouting of the base of all panels; installing all grouted connections, welded connections, and bolted connections; and removal of temporary shores and loading of said shores on trailers.

B. *Background and Facts of the Dispute*

Since 1971, the Employer has had a series of collective-bargaining agreements with the Bricklayers and Laborers in Minnesota and North Dakota which specify that the Employer's field crew will be composed of laborers and bricklayers. The Employer employs a permanent work force of approximately 40 employees, who are members of Bricklayers and Laborers. It also, at times, employs local bricklayers and laborers to supplement its nucleus of permanent employees. Whenever the Employer has needed to hire additional crew members for jobs performed in the Chicago area, it has executed agreements with area locals of the Bricklayers and the Laborers, and has thereby agreed to pay the prevailing area wage rates and fringe benefits.

Prior to beginning performance of a concrete panel installation subcontract at the VWR Scientific Distribution Center site, the Employer assigned all installation work to an integrated crew of its employees represented by the Bricklayers and the Laborers. Another subcontractor, Corporate Steel, was responsible for installing both a permanent structural steel skeleton and temporary "I-Beam" steel shoring at the VWR site.

On October 6, 1980,[1] the Employer's crew arrived at the jobsite and started unloading and erecting the panels. James Treest, a business agent for the Ironworkers, told Richard Kolosky, the Em-

[1] All dates hereafter refer to 1980.

ployer's foreman, that the work should be done by members of the Ironworkers and the Bricklayers and asked Kolosky if he was going to put an ironworker on the crew. Kolosky said he would not do so. Ironworkers for Corporate Steel then walked off the jobsite. The following day, members of the local Building and Trades Council demanded that Kolosky put an ironworker on the crew. Kolosky again refused. The Employer's crew worked at other jobsites from October 8 until October 23, when work resumed at the VWR site. On October 24, members of the local Building and Trades Council returned to the jobsite and Kolosky again refused their demand to put an ironworker on the Employer's crew.

On October 28, the Employer received a telegram from the Ironworkers stating that the Employer was working in violation of area standards and that commencing on October 29 the public would be informed of that fact. The following day, members of the Ironworkers picketed the project carrying signs which stated, "Fabcon is working on this job in violation of Area Standards—Local Union 393 AFL-CIO. This sign is not directed at the Employees of this Company or the Employees of any other Employer servicing this job, but solely at the public." The jobsite was closed down that day and the Employer's crew did not return to the project until November 6. It was unable to perform any work that day because pickets were still at the jobsite and the crane operator hired by the Employer refused to cross the picket line. Thereafter, the general contractor set up a reserved gate for the Employer's employees. The Employer returned to the project on November 7 and continued to perform the work in dispute. At some point thereafter, the picketing ceased. The Employer has since completed its work on the project.

C. *Contentions of the Parties*

The Employer contends that the work in dispute was properly assigned to employees represented by the Bricklayers and the Laborers on the basis of collective-bargaining agreements, its preference and past practice, skills, and efficiency and economy of operation.

The Ironworkers contends that there is an agreed-upon method for the voluntary adjustment of the dispute. It further contends that factors of skill, safety, efficiency of operation, and area practice favor awarding the disputed work to employees represented by the Ironworkers.[2]

[2] Treest testified that the Ironworkers was not now claiming the work at the VWR jobsite because that work had been finished, rather that the Ironworkers contended that an ironworker should be included on the Employer's crew on any concrete work done by the Employer in the DuPage County area, involved herein.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that there is no agreed-upon method which is binding on all parties for the voluntary adjustment of the dispute.

The record shows that the business agent for the Ironworkers and the members of the local Building and Trades Council demanded that the Employer include an ironworker in its crew and that the Employer refused. Subsequently, the Ironworkers threatened to picket and actually did picket against the Employer at the VWR jobsite. Although the picket signs referred to the Employer's alleged failure to observe area standards, we find from the record as a whole that an object of the Ironworkers' threats and picketing was to force or require the Employer to assign the work in dispute to employees represented by the Ironworkers.[3]

The record also shows that the Employer is not a party to an agreed-upon method for the voluntary adjustment of jurisdictional disputes. The Bricklayers, Laborers, and Ironworkers are apparently subject to the authority of the International Jurisdictional Disputes Board of the Building and Trades Council. The contracts, however, between the Employer and the Bricklayers and the Laborers are silent with respect to any method for resolving work disputes.

Based on the foregoing, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there is no agreed-upon method for the voluntary settlement of the work dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits to the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various factors.[4] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on

[3] See, e.g., *Cement Masons Local Union No. 577 (Rocky Mountain Prestress, Inc.)*, 233 NLRB 923, 924 (1977); *Painters and Drywall Finishers, Local No. 79, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO (Richard O'Brien Plastering Co.)*, 213 NLRB 788, 790 (1974).

[4] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

commonsense and experience reached by balancing the factors involved in a particular case.[5]

The following factors are relevant in making the determination of the dispute before us.

1. Certification and collective-bargaining agreements

There are no Board certifications of any of the unions involved in the dispute. The Employer has had a series of collective-bargaining agreements with the Bricklayers and the Laborers. The current agreements with the two unions specifically discuss the work in dispute herein.[6] The Employer has also executed agreements with the Chicago area locals of the Bricklayers and Laborers Unions which state that any bricklayer or laborer would be paid the local area wage rates. The Employer does not have a contract with the Ironworkers. We therefore find that the Employer's collective-bargaining agreements with the Bricklayers and Laborers favor awarding the work in dispute to employees represented by those two Unions.

2. Employer's assignment and past practice

The Employer, in accordance with its preference, assigned the work in dispute to employees represented by the Bricklayers and the Laborers. Further, the record indicates that since its inception in 1971 the Employer has always assigned such work to integrated crews of bricklayers and laborers. In *International Association of Bridge, Structural and Ornamental Ironworkers, Local No. 563, AFL-CIO (Fabcon, Incorporated)*, 211 NLRB 736 (1974), and in *Local 512, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO (Fabcon, Incorporated)*, 203 NLRB 1017 (1973), the Board resolved similar work disputes in Minnesota by awarding the work to the Employer's employees, who were represented by the Bricklayers and the Laborers, when such work was also claimed by a different local of the Ironworkers Union. Accordingly, we find that the Employer's assignment and past practice favors awarding the work to employees represented by the Bricklayers and the Laborers.

3. Area and industry practice

The Ironworkers business agent, Treest, testified that whenever concrete erection work has been done in the Chicago area, ironworkers have been assigned to the crew to perform the work of welding, rigging, and the removal of temporary shores. He stated that these assignments conformed to the 1954 and 1962 agreements between the Internationals of the Bricklayers and Ironworkers Unions. On the other hand, the business manager for the local Bricklayers Union testified that crews composed of bricklayers and laborers performed most of the precast cement work done in the area. It does not appear from the record as a whole, therefore, that area practice favors awarding the disputed work to employees represented by the Bricklayers and the Laborers or to employees represented by the Ironworkers.

With respect to industry practice, the record indicates that the Employer's crews of bricklayers and laborers have performed the work in dispute in seven States. In addition, the vice president of the 1,500-member Mason Contractors Association of America testified that the Association had agreements with both the Bricklayers and the Laborers Union to assign the erection of precast and prestressed concrete panels to crews of bricklayers and laborers. He also testified that the 1954 and 1962 agreements between the Internationals of the Bricklayers and Ironworkers did not bind the Association to assign ironworkers to concrete panel erection crews.

Accordingly, we find that industry practice favors assigning the work in dispute to employees represented by the Bricklayers and the Laborers.

4. Skills, safety, economy, and efficiency of operation

The record discloses that the Employer teaches both bricklayers and laborers the skills required to perform all aspects of the disputed work. As a result of this training, the Employer's employees are able to work in an integrated and interchangeable fashion concerning all the various phases of the erection and installation of walls. These employees are also certified welders. The Ironworkers maintains that, as a result of apprenticeship programs and its more stringent welding certification procedures, its members possess greater skills than the Employer's employees in performing such tasks as welding, rigging, and the removal of temporary shores. It asserts that an ironworker should be added to the Employer's crew to perform those

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1042 (1962).

[6] Art. XIV of the respective agreements states in part:

a. on beams, columns, floors and roofs a minimum of one bricklayer will be integrated with laborers in a construction crew at the discretion of the Employer.

b. On wall panels a minimum of two bricklayers will be integrated with laborers at the discretion of the Employer. This has been a past practice and will continue throughout the life of the Agreement.

All welding shall be performed by either qualified bricklayers or qualified laborers who are employed on the crew.

The work jurisdiction of construction laborers interchangeable and integrated with bricklayers at the discretion of the Employer shall consist of hooking up, erection, grouting, welding, patching, grinding and applying latex on floors and other work requirements associated with the work of the job crew.

tasks. However, the Ironworkers does not claim greater expertise in performing the remaining jobs involved in performing the disputed work such as patching or grouting. Therefore, inasmuch as ironworkers do not possess the skills involved necessary to perform all of the functions of the disputed work, we find that the broader and more diverse skills of the Employer's employees who are represented by the Bricklayers and the Laborers favor awarding the work to those employees.

With respect to safety, there is no evidence to indicate that this factor favors awarding the work in dispute to employees represented either by the Bricklayers and the Laborers or by the Ironworkers.

As noted above, the Employer's employees are trained to be familiar with the entire erection process. Therefore, the record discloses that they can be used to help in other areas of erection if the materials they may need for their own work are not available at that moment. An ironworker, if added to the crew, would be able to do only the work prescribed by his craft and would not be able to perform other jobs. Accordingly, the factors of efficiency and economy of operation also favor awarding the disputed work to employees represented by the Bricklayers and the Laborers.

Conclusion

Upon the entire record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Bricklayers and the Laborers are entitled to perform the work in dispute. We reach this conclusion based on the Employer's collective-bargaining agreements with the Bricklayers and the Laborers, the Employer's assignment of the disputed work to its employees represented by the Bricklayers and the Laborers, the Employer's past practice, industry practice, and the skills, efficiency, and economy of operation involved in performing the work in dispute. In making this determination, we are awarding the work in question to employees who are represented by the Bricklayers and the Laborers, but not to those Unions or their members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Fabcon, Incorporated, who are represented by the Bricklayers and Allied Craftsmen, Local Union No. 1, St. Paul, and Local Union No. 2, Minneapolis, Minnesota, and by the Laborers District Council of Minnesota and North Dakota, are entitled to perform the work of erecting and installing precast, prestressed concrete walls at the VWR Scientific Distribution Center project.

2. Local No. 393, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Fabcon, Incorporated, to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local No. 393, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, shall notify the Regional Director for Region 13, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.